

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 23-14**

**Z.C. CASE NO. 23-14**

**14<sup>th</sup> Street Collective Property Owners**  
**(Zoning Map Amendment from MU-3A to MU-5A**  
**@ Square 2704, Lots 1, 16, 17, 824, 56-61; and**  
**Square 2706, Lots 49-54, 18-26)**  
**April 1, 2024**

Pursuant to notice, at its public hearing on April 1, 2024, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) by a collective of property owners<sup>1</sup> who own certain properties on the 4600 and 4700 blocks of 14<sup>th</sup> Street, N.W. (collectively, the “Applicant”) for approval of an amendment to the Zoning Map from the MU-3A zone to the MU-5A zone (the “Map Amendment”) for the properties located at Lots 1, 16, 17, 824, and 56-61 in Square 2704 and Lots 49-54 and 18-26 in Square 2706 (collectively, the “Property”), pursuant to Subtitle X § 500.1 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations [“DCMR”], Zoning Regulations of 2016, to which all references are made unless otherwise specified).

The Commission determined the Property is appropriate for Inclusionary Zoning (“IZ”) Plus pursuant to Subtitle X § 502.1. The Property shall be indicated with an “IZ+” symbol on the Zoning Map. For the purposes of calculating an IZ Plus set-aside requirement pursuant to Subtitle C § 1003, the maximum permitted floor area ratio (“FAR”) of the existing MU-3A zone is equivalent to 1.0 FAR.

The Commission considered the Application as a contested case pursuant to Subtitle A § 210 and Subtitle Z, Chapter 4. For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**I. BACKGROUND**

**PARTIES**

1. In addition to the Applicant, the only other party to this case was Advisory Neighborhood Commission (“ANC”) 4E, the ANC in which the Property is located and the “affected ANC” pursuant to Subtitle Z §§ 101.8 and 403.5(b).
2. The Commission received no requests for party status.

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<sup>1</sup> A full list of the property owners and their respective properties is included in the case record at Exhibit 3A.

### NOTICE

3. On May 2, 2023, the Applicant mailed a notice of intent to file the Application to ANC 4E and property owners within 200 feet of the Property, as required by Subtitle Z § 304.5. (Exhibit [“Ex.”] 3E)
4. On June 27, 2023, the Office of Zoning (“OZ”) sent notice of the filing of the Application to:
  - Applicant;
  - ANC 4E;
  - ANC/Single Member Districts (“SMD”) 4E04 and 4E05;
  - Office of the ANCs;
  - Office of Planning (“OP”);
  - District Department of Transportation (“DDOT”);
  - At-Large Councilmembers and the Chairman of the Council;
  - The Ward 4 Councilmember;
  - Department of Energy & Environment (“DOEE”);
  - Department of Buildings (“DOB”) General Counsel; and
  - OZ Legal Division (“OZLD”).(Ex. 7-9, 11)
5. OZ published notice of the filing of the Application in the July 14, 2023, issue of the *District of Columbia Register* (70 DCR 009841 *et seq.*) as well as on the calendar on OZ’s website. (Ex. 10)
6. On February 12, 2024, OZ sent a notice of the April 1, 2024, virtual public hearing to:
  - Applicant;
  - ANC 4E;
  - ANC/SMDs 4E04 and 4E05;
  - Office of the ANCs;
  - Ward 4 Councilmember;
  - OP;
  - DDOT;
  - DOB General Counsel;
  - DOEE;
  - OZLD;
  - At-Large Councilmembers and the Chairman of the Council; and
  - Property owners within 200 feet of the Property.(Ex. 20, 21)
7. OZ published the notice of the public hearing in the February 23, 2024, issue of the *District of Columbia Register* (71 DCR 001919 *et seq.*) as well as on the calendar on OZ’s website. (Ex. 19, 20)

8. The Applicant submitted evidence that it had posted notice of the public hearing on February 20, 2024, as required by Subtitle Z §§ 402.8 and 402.9 and maintained said notice in accordance with Subtitle Z § 402.10. (Ex. 22, 26)

#### **THE PROPERTY**

9. The Property consists of 25 properties (Lots 1, 16, 17, 824, 56-61 in Square 2704 and Lots 49-54 and 18-26 in Square 2706) located in the northwest quadrant of the District on the west side of 14<sup>th</sup> Street, N.W. (Ex. 3)
10. The Squares within which the Property lies are generally bounded by Decatur Street, N.W. to the north, a public alley to the west, Buchanan Street, N.W. to the south, and 14<sup>th</sup> Street to the east. (Ex. 3)
11. The Property is comprised of nearly all commercial uses (e.g., stores, eating and drinking establishments, retail). One of the properties is a mixed-use residential and commercial building (4730 14<sup>th</sup> Street, N.W.) and one is designated as a religious use (4604 14<sup>th</sup> Street, N.W.). (Ex. 3)
12. The area is characterized by a mix of commercial and residential uses. Across 14<sup>th</sup> Street, to the east, in the PDR-1 zone, is the 14<sup>th</sup> Street Northern Bus Garage, colloquially known as the “Bus Barn.” There are lower density residential uses in the RF-1 zone further to the west, across the alley. (Ex. 3)

#### **CURRENT ZONING**

13. The Property is in the MU-3A zone. The MU-3 zones are intended to permit low-density mixed-use development and provide for convenient retail and personal service establishments for the day-to-day needs of a local neighborhood, as well as residential and limited community facilities with a minimum impact upon surrounding residential development. (Subtitle G § 101.8)
14. As a matter of right, the MU-3A zone requires/permits:
  - A maximum FAR of 1.0 (1.2 with IZ bonus density), with a maximum non-residential FAR of 1.0; (Subtitle G § 201.1)
  - A maximum building height of 40 feet / three stories; (Subtitle G § 203.2)
  - A maximum permitted penthouse height of 12 feet / one story, except 15 feet/a second story is permitted for penthouse mechanical space; (Subtitle G § 205.1)
  - A maximum lot occupancy of 60% for residential uses; and (Subtitle G § 210.1)
  - A minimum Green Area Ratio (“GAR”) of 0.3. (Subtitle G § 211.1)

#### **COMPREHENSIVE PLAN (TITLE 10-A DCMR, THE “CP”)**

##### **Equity and the Comprehensive Plan**

15. Pursuant to Subtitle X § 500.3, the Commission shall find that the Map Amendment is not inconsistent with the CP and with other adopted public policies and active programs related to the Property.

16. In applying the standard of review applicable to the Map Amendment, the CP §§ 2501.4-2501.6 and 2501.8 requires the Commission to do so through a racial equity lens. Consideration of equity is intended to be based on the policies of the CP, and part of the Commission’s consideration of whether the Map Amendment is “not inconsistent” with the CP, rather than a separate determination about a zoning action’s equitable impact.
17. The CP Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (CP § 213.6) Further, “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development, and employment opportunities.” (CP § 213.7) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (CP § 213.9)
18. The CP Implementation Element provides guidance to help the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states “[a]long with consideration of the defining language on equity and racial equity in the Framework Element, guidance in the Citywide Elements on District-wide equity objectives, and the Area Elements should be used as a tool to help guide equity interests and needs of different areas of the District.” (CP § 2501.6)
19. In addition, CP § 2501.8 suggests to prepare and implement tools to use as a part of the Commission’s evaluation process. Consistent with CP guidance, the Commission utilizes a Racial Equity Analysis Tool in evaluating zoning actions through a racial equity lens; the Commission released a revised Tool on February 3, 2023. The revised Tool requires submissions from applicants and OP analyzing the zoning action’s consistency with the Citywide and Area Elements of the CP, and Small Area Plans, if applicable (Part 1); a submission from applicants including information about their community outreach and engagement efforts regarding the zoning action (Part 2); and a submission from OP including disaggregated race and ethnicity data for the Planning Area affected by the zoning action (Part 3).

#### **Future Land Use Map (“FLUM”)**

20. The CP’s FLUM designates the Property as Mixed Use (Moderate Density Residential/Moderate Density Commercial). The CP defines Moderate Density Residential as:  
*“[The Moderate Density Residential] . . . designation is used to define neighborhoods generally, but not exclusively, suited for row houses as well as low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings. In some neighborhoods with this designation, there may also be existing multi-story apartments, many built decades*

*ago when the areas were zoned for more dense uses (or were not zoned at all). Density in Moderate Density Residential areas is typically calculated either as the number of dwelling units per minimum lot area, or as a FAR up to 1.8, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The R-3, RF, and RA-2 Zone Districts are consistent with the Moderate Density Residential category, and other zones may also apply. (CP § 227.6)*

The CP defines Moderate Density Commercial as:

*“[The Moderate Density Commercial] . . . designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Low-Density Commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in Low Density Commercial areas. Density typically ranges between a FAR of 2.5 and 4.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-5 and MU-7 Zone Districts are representative of zone districts consistent with the Moderate Density Commercial category, and other zones may also apply. (CP § 227.11)*

### **Generalized Policy Map (“GPM”)**

21. The CP’s GPM designates the Property as within a Main Street Mixed-Use Corridor. The CP defines Main Street Mixed-Use Corridors as:

*These are traditional commercial business corridors with a concentration of older storefronts along the street. The area served can vary from one neighborhood (e.g., 14<sup>th</sup> Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper-story residential or office uses. Some corridors are underutilized, with capacity for redevelopment. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment. (CP § 225.14)*

### **Rock Creek East Area Element**

22. The Property falls within the boundaries of the Rock Creek East Area Element. A goal of the Area Element is to provide more diverse housing choices:

*“While preserving established neighborhoods is a priority, Rock Creek East also recognizes the need to provide a variety of housing choices. This community has always taken pride in the fact that it is economically integrated, with housing options for older adults, lower-income households, young professionals, moderate-income families, and persons with disabilities, as well as high-income households. Appropriate sites for infill housing have been identified along Georgia Avenue NW,*

*around the Takoma Metro station, between Upshur and Taylor Streets NW near 14<sup>th</sup> Street NW, along Kennedy Street NW, and on a limited number of other properties in the community. Development on these sites should be in keeping with the scale of the surrounding community, provide ample green space, address parking and traffic issues, upgrade infrastructure where needed, and serve a variety of incomes. Existing housing should continue to be renovated and rehabilitated, with programs to assist older adults and low-income residents and avoid displacement.” (CP § 2207.3)*

### **Small Area Plan**

23. The Property is within the boundaries of the Central 14<sup>th</sup> Street Vision Plan and Revitalization Strategy (the “14<sup>th</sup> Street SAP”), a Small Area Plan approved by the D.C. Council on July 2, 2012. The purpose of this SAP is to direct economic growth along 14<sup>th</sup> Street and improve neighborhood retail choices and amenities along the corridor. (Ex. 3)
24. The Property is within an area categorized as “Node 2” in the 14<sup>th</sup> Street SAP, which is described as “*Predominantly characterized by one-story commercial storefronts and the WMATA Bus Barn, Node Two has great potential as a future neighborhood hub on 14<sup>th</sup> Street. Wide sidewalks, attractive streetscape, an active business community, and the catalytic Bus Barn site will help this node realize its economic potential.*” (Ex. 3)

## **II. THE APPLICATION**

### **PROPOSED ZONING**

25. The Application proposes to rezone the Property from the MU-3A zone to the MU-5A zone. (Ex. 3)
26. The MU-5 zones are intended to permit medium-density,<sup>2</sup> compact mixed-use development with an emphasis on residential use; provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and be located on arterial streets, in uptown and regional centers, and at rapid transit stops. (Subtitle G § 101.10)
27. As a matter of right, the MU-5A zone permits/requires:
  - A maximum FAR of 3.5 (4.2 with IZ bonus density), with a maximum non-residential FAR of 1.5; (Subtitle G § 201.1)
  - A maximum building height of 65 feet (70 feet with IZ bonus density) with no story limit; (Subtitle G § 203.2)
  - A maximum permitted penthouse height of 12 feet / one story, except 18.5 feet/a second story is permitted for penthouse mechanical space; (Subtitle G § 205.1)

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<sup>2</sup> The Zoning Regulations describe the MU-5 zones as a “medium-density” zone; however, the Comprehensive Plan’s Framework Element states that the MU-5 zone is consistent with the Moderate Density Commercial FLUM category. The Commission has requested and OP has indicated its intent to bring forward a text amendment to change the Zoning Regulations such that they are consistent with the Comprehensive Plan’s Framework Element in describing the MU-5 zones as moderate density.



- A maximum lot occupancy of 80% for residential uses; and (Subtitle G § 210.1)
- A minimum GAR of 0.3. (Subtitle G § 211.1)

#### **APPLICANT'S JUSTIFICATION FOR REZONING**

##### **Not Inconsistent With the CP**

28. The Applicant asserted that the Map Amendment is not inconsistent with the CP, including the CP maps, and advances the objectives and recommendations of the Citywide Elements, the Rock Creek East Area Element, the 14<sup>th</sup> Street SAP, and CP racial equity goals. (Ex. 3, 14-14C, 15-16C)

##### **FLUM**

29. The Applicant asserted that the Map Amendment is not inconsistent with the Property's FLUM designation as Mixed Use (Moderate Density Residential / Moderate Density Commercial) because the MU-5 zone is cited as a consistent zone district in the CP Framework Element's description of the Moderate Density Commercial category; and is also consistent with the Moderate Density Residential designation. (Ex. 3)

##### **GPM**

30. The Applicant asserted that the Map Amendment is not inconsistent with the GPM because:
- The Map Amendment has the potential to conserve and enhance the area, which is currently underutilized, by allowing additional density and the possibility of placing residential uses above commercial uses; and
  - This will encourage patronage of the commercial uses below, which would likely be uses responding to neighborhood needs.
- (Ex. 3)

##### **Land Use Element**

31. The Application asserted that the Map Amendment is not inconsistent with the Land Use Element because the proposed Map Amendment will facilitate the creation of new housing and new affordable housing on the Property. Fourteenth Street is a priority corridor in the District, and this would encourage growth along that corridor, as well as contribute to neighborhood revitalization. There will be more opportunity for neighborhood-serving retail and commercial uses by increasing the available FAR for commercial uses. (Ex. 3; CP §§ 307.14, 307.16, 310.9, 310.10)

##### **Housing Element**

32. The Application asserted that the Map Amendment is not inconsistent with the policies of the Housing Element because the Map Amendment will facilitate the production of new housing where none currently exists. This could help meet the need for higher density and affordable housing in the area. It could also aid in advancing the goal of achieving more affordable units in the area. (Ex. 3; CP §§ 503.3, 503.5, 503.6, 504.17, 504.29)

##### **Transportation Element**

33. The Application asserted that the Map Amendment is not inconsistent with the policies of the Transportation Element because the Map Amendment will facilitate a potential transit-

oriented development around a major transportation bus corridor. (Ex. 3; CP §§ 403.10, 405.7)

### **Environmental Protection Element**

34. The Application asserted that the Map Amendment is not inconsistent with the policies of the Environmental Protection Element because the Map Amendment would allow for new development on the Property compliant with the Green Energy codes, which could include green roofs and other planting elements currently not on site. (Ex. 3; CP §§ 615.3, 615.4)

### **Economic Development Element**

35. The Application asserted that the Map Amendment is not inconsistent with the policies of the Economic Development Element because the Map Amendment would allow for additional shopping opportunities along the corridor to better meet the demand for goods and services. It will promote the continuation of the neighborhood's commercial vitality and diversity by retaining existing businesses, attracting new businesses, and improving the mix of goods and services to residents and neighbors. It will also allow for owner-occupied tenant opportunities, which in turn would support local entrepreneurs. (Ex. 3; CP §§ 708.6, 708.8, 708.9, 708.12)

### **Rock Creek East Area Element**

36. The Applicant asserted that the proposed Map Amendment furthers the goals stated in the Rock Creek East Area Element by allowing for potential new mixed-use housing. Further, it will support the Rock Creek East Neighborhood Shopping Area by maintaining and encouraging the development of multi-use neighborhood shopping and services in those areas designated for commercial or mixed-uses on the FLUM. (Ex. 3; CP § 2207.3)

### **14<sup>th</sup> Street SAP**

37. The Applicant asserted that the Map Amendment is not inconsistent with the 14<sup>th</sup> Street SAP because the proposal will allow for further development and direct economic growth, resulting in more neighborhood retail and amenities. Further, the Map Amendment could result in market rate and affordable housing, bringing patrons to sustain existing and any future businesses in Node 2 and along this corridor, which the 14<sup>th</sup> Street SAP describes as having "great potential as a future neighborhood hub on 14<sup>th</sup> Street. Wide sidewalks, attractive streetscape, an active business community, and the catalytic Bus Barn site will help this node realize its economic potential." (Ex. 3)

### **Racial Equity**

38. The Application noted that equity is conveyed throughout the CP where priorities of affordable housing, preventing displacement, and access to opportunity are discussed. In light of the guidance provided by relevant CP policies the Applicant asserted that the Map Amendment would not be inconsistent with the CP, including when evaluated through a racial equity lens. In support of its assertion, the Applicant evaluated the Map Amendment's consistency with the CP through a racial equity lens by applying the Commission's Racial Equity Analysis Tool. (Ex. 3, 14-14C)



39. The Applicant provided the following information about the community and its outreach in its responses to the Community Outreach and Engagement component of the Commission's revised Racial Equity Analysis Tool:
- The Applicant states that prior to filing the Application, it conducted significant community outreach, including:
    - Reaching out to ANC 4E representatives via email and personal phone calls;
    - Informal conversations with neighbors within 200 feet which have been generally positive or neutral;
    - On June 12, 2023, the Applicant sent an email notice to the listservs for the 16<sup>th</sup> Street Neighborhood Association and the Carter Barron East Neighborhood Association, as well as the Ward 4 Councilmember's office, ANC 4E, and the Washington Metropolitan Area Transit Authority ("WMATA"), advertising a June 20, 2023, in-person meeting organized by the Applicant's team to discuss the Map Amendment. On June 12, 2023, the Applicant also sent the email notice to the listserv for the Crestwood Citizens Association. The Applicant also mailed flyers advertising the meeting to those located on the 1400-1500 blocks of Buchanan, Crittenden and Decatur Streets, N.W., as well as the 4500 block of 14<sup>th</sup> Street and all remaining properties within 200 feet;
    - On June 21, 2023, the Applicant provided a summary of the June 20<sup>th</sup> meeting to various stakeholders, including the Ward 4 Councilmember and ANC 4E commissioners;
    - The Applicant attended ANC 4E's meeting on June 27, 2023, and discussed the Property's history and potential benefits; and
    - Two ANC 4E commissioners held a joint SMD meeting on July 19, 2023, at which the Applicant presented the Application. Notice of the meeting was sent to the 16<sup>th</sup> Street Neighborhood Association; and
  - The Applicant states the zoning action should not result in any residential displacement, as the goal of the action is to maintain and support existing uses on site and allowing more opportunities for these business owners.
- (Ex. 3, 3H, 14-14C, 27)
40. In response to the Commission's concerns expressed at the time of setdown about the potential impacts of the Map Amendment on minority business owners at the Property, the Applicant filed a prehearing statement dated January 8, 2024 (Ex. 16-16C), stating that its group is made up of 13 business owners, 10 of whom are minorities, and all of whom have a vested interest in the community's success. The prehearing statement explained that the Map Amendment "will effectively permit an additional floor of commercial density and permit residential density on top of existing commercial uses—residential density that does not currently exist. The increase in density to the MU-5A zone would create new retail and residential space and help drive business growth to the area. The proposal would not eliminate existing business, but rather naturally help support existing small businesses while allowing more space for new local business that does not already exist. This will better meet the demand for neighborhood goods and services, increase the mix of neighborhood serving commercial uses, and therefore support the neighborhood's commercial vitality and diversity." (Ex. 16-16C)

41. Based on the foregoing and based on the Applicant's filings, the Applicant asserted the proposed Map Amendment would result in positive outcomes overall, and therefore, the Application is not inconsistent with the CP, including when evaluated through a racial equity lens. (Ex. 3, 14-14C, 15-16C)

***Potential Inconsistencies With the CP***

42. The Applicant did not identify any potential inconsistencies with the CP. However, OP identified certain CP inconsistencies in its report, as detailed below.

***Public Hearing Testimony***

43. At the April 1, 2024, public hearing, the Applicant presented its case, including testimony from:
- Martin Sullivan, Partner, Sullivan & Barros, LLP; and
  - Audrey Nwanze, George Nwanze, Norm Veenstra, and Taalib-Din Uqdah, Representatives of the Applicant.
- (Transcript from April 1, 2024, Public Hearing ["Tr."] at pp. 6-25)

**III. RESPONSES TO THE APPLICATION**

**OP REPORTS AND TESTIMONY**

44. OP submitted a setdown report, dated November 16, 2023, recommending the Commission set down the Application for a public hearing (the "OP Setdown Report") and concluding that the Map Amendment would be appropriate for IZ Plus and would not be inconsistent with the CP maps and policies, including when viewed through a racial equity lens. The OP Setdown Report's CP analysis concluded the following: (Ex. 13)
- Land Use Element – The Land Use Element supports expanding "access to affordable housing, education, transportation, employment, and services for communities of color, low-income households, and vulnerable populations." (CP § 304.4) The Map Amendment could enhance access to affordable housing for residents should housing be provided in future development, with enhanced access to employment due to the properties' location on a well-traveled metrobus corridor; (See Policies LU-1.4.6, LU-1.4.B, LU-1.5.1, LU-2.1.3, LU-2.1.8, LU-2.1.10, LU-2.4.5, LU-2.3.4)
  - Housing Element – The Housing Element supports additional housing development, particularly on underutilized sites near transit. The CP describes that without increased housing, the imbalance between supply and demand will drive up housing prices in a way that creates challenges for many residents, particularly low-income residents. Housing at this location, on currently underutilized land, would not result in the displacement of existing residents; (See Policies H-1.1.1, H-1.2.3, H-1.2.5, H-1.2.9, H-1.2.11, H-1.3.2, H-1.2.1, H-1.2.2)
  - Transportation Element – An important objective of corridor development has been to accommodate growth in a way that minimizes the number and length of auto-trips generated and reduce household expenses on transportation by providing options for car-free (or one car) living. (CP § 307.3) The potential provision of commercial and residential uses within future new development along a priority transportation

corridor that is 14<sup>th</sup> Street would help realize this objective; (See Policies T-1.1.4, T-1.1.7)

- Economic Development Element – The success of small businesses is particularly important in Washington, DC’s underserved or underfunded communities. Small businesses in these areas can catalyze neighborhood renewal and provide local jobs. Washington, DC’s small business proprietors have initiated many of the District’s commercial revitalization efforts, driven by a desire and commitment to upgrade their businesses, properties, and neighborhoods; (See Policies ED-1.1.F, ED-2.1.6, ED-2.1.B, ED-2.2.3, ED-2.2.9)
- Rock Creek East Area Element – The Map Amendment would facilitate mixed-use commercial and residential development which could eventually provide new housing, including affordable housing, within a key node on 14<sup>th</sup> Street, where none currently exists. New retail space could be constructed to support neighborhood serving small businesses in the area, and in combination with the future arts space proposed under the Dance Loft Planned Unit Development (“PUD”) approved in Z.C. Case No. 21-18, the Map Amendment could help create a unique destination for the local community. Long- and short-term bicycle parking would be required for future development, and this would improve accessibility along the corridor; (See Policies RCE-1.1.3, RCE-1.1.4, RCE-1.1.13, RCE-2.7.1, RCE-2.7.2, RCE-2.7.4, RCE-2.7.A)
- 14<sup>th</sup> Street SAP – The purpose of the 14<sup>th</sup> Street SAP is to direct economic growth along 14<sup>th</sup> Street and improve neighborhood retail choices and amenities along the corridor. The 14<sup>th</sup> Street SAP indicates the need for storefront improvements, and the Map Amendment could eventually provide for new modern retail space fronting 14<sup>th</sup> Street. In addition, the 14<sup>th</sup> Street SAP finds that Node Two (in which the Property is located) has the potential for 130 new residential units, and the Map Amendment could contribute new residential units to that meet that goal. Future mixed-use development would have to conform to the Node Two Design Guidance including:
  - The surrounding residential uses between Crittenden and Buchanan consist of single-family homes with rear yards backing to the opportunity site. In all cases, height and density should front on 14<sup>th</sup> Street and step back away from existing residential neighborhoods;
  - To decrease the appearance of mega blocks, storefront improvement should be consistent with the corridor’s existing, neighborhood-serving retail character; and
  - To create a more pedestrian-friendly area, continuous street frontage should be established where possible; and
- Potential CP Inconsistencies – The OP Setdown Report identified a potential inconsistency with CP Policy ED-3.2.6 (Commercial Displacement), which discourages the displacement of small, minority, and local businesses. OP stated that the Map Amendment could impact small business retention in the existing structures. Through rezoning, the potential density is increased and that could result in increased pressure to redevelop the properties and potentially increase the cost of leasing for small and minority-owned business on the corridor. However, the Map Amendment could also result in additional new space and increased opportunities for small and minority-owned businesses. OP noted that the Property’s FLUM designation was

specifically changed to support mixed-use moderate density zoning as part of the 2021 Comprehensive Plan update, and the proposed Map Amendment would on balance not be inconsistent with the other overarching policies of the CP and 14<sup>th</sup> Street SAP.

45. The OP Setdown Report included a racial equity analysis with the following findings in response to the revised Racial Equity Analysis Tool:
- Disaggregated Race and Ethnicity Data: The OP Setdown Report provided disaggregated race and ethnicity data for the Rock Creek East Planning Area, which showed that the area had a majority minority population in the 2017-2021 period with 53% of its residents being Black and 22% being Hispanic. Though in the majority, the Black population decreased from 60% of the population to 53% from 2012 to 2021, which is similar to the District-wide trend during this period. The white population increased from 21% to 24%. In addition, the Planning Area as a whole had a slightly higher median income than the District median in the 2017-2021 period, an increase from the 2012-2016 period when the area had a lower median income than the District. More than half of the residents in Rock Creek East owned their home in both five-year periods, which was a much higher percentage compared to the District as a whole. The area also had a lower cost burden percentage than the District as a whole. This seems to indicate that Rock Creek East has been one of the more affordable neighborhoods in the District to purchase a home. (Ex. 13)
46. The OP Setdown Report concluded that the Map Amendment would be appropriate for IZ Plus, pursuant to Subtitle X § 502, because:
- The Map Amendment would allow a higher maximum permitted FAR than the existing MU-3A zone;
  - The 2019 Housing Equity Report, prepared by OP and the Department of Housing and Community Development, set a goal for the Rock Creek East Planning Area to produce 1,500 affordable housing units by 2025; and
  - According to DC's Comeback Plan (January 2023), the Rock Creek East Planning Area has only achieved 57.9% (as of January 2023) of its 2025 affordable housing production goal; it is projected that the Planning Area will reach 84.4% of the goal by 2025.
- (Ex. 13)
47. OP submitted a hearing report dated March 25, 2024 (the "OP Hearing Report" and together with the OP Setdown Report, the "OP Reports"), that largely reiterated the OP Setdown Report's conclusions, and recommended approval of the Map Amendment. In response to the Commission's concerns expressed at the time of setdown about the potential impacts on minority business owners, the OP Hearing Report noted that the Application is based on years of collaboration among the property owners to encourage improved mixed-use development in this section of the 14<sup>th</sup> Street corridor. The Applicant has provided information showing that most of its constituent business owners are minority owners. (Ex. 16) Further, the increase in density is intended to allow additional space for new local businesses and to better support neighborhood demand for services. This

supports the purposes of the 14<sup>th</sup> Street SAP, which include directing economic growth along 14<sup>th</sup> Street and improving neighborhood retail choices and amenities along the corridor. (Ex. 25)

48. At the public hearing, OP reiterated its support for the Application as detailed in its reports. (Tr. at pp. 41-43)

#### **DDOT REPORT**

49. DDOT submitted a report dated March 22, 2024 (the “DDOT Report”), stating that “DDOT has no objection to the approval of the requested Map Amendment.” (Ex. 24) The DDOT Report stated that the increased density is expected to generate a moderate increase in transit, biking, and walking trips, and a minor increase in vehicle trips; and that the additional vehicle trips generated by the additional density are expected to have a minimal impact on the roadway network.

50. DDOT did not provide testimony at the public hearing.

#### **ANC REPORT**

51. On August 8, 2023, ANC 4E submitted a setdown form stating that at its July 27, 2023, public meeting with a quorum of four members present, ANC 4E voted in favor of recommending the map amendment be setdown for a public hearing. (Ex. 12)
52. On March 12, 2024, ANC 4E submitted a report (the “ANC 4E Report”) stating that at a duly noticed meeting on February 27, 2024, with a quorum of five commissioners present, ANC 4E voted 5-0-0 in support of the Map Amendment. The ANC 4E Report stated that the Map Amendment is not inconsistent with the 14<sup>th</sup> Street SAP and will encourage additional shopping opportunities along the corridor; and allow for owner occupied tenant opportunities—living upstairs—while operating a business downstairs at street level. In addition, the ANC believes the IZ Plus set-aside is in the best interest of the community. (Ex. 23)
53. At the public hearing, ANC 4E reiterated its support for the Application. (Tr. at pp. 50-54)

#### **INDIVIDUALS AND ORGANIZATIONS IN SUPPORT**

54. The Commission received a letter in support of the Application from Michelle Melton and Kevin Malone. (Ex. 5)

#### **INDIVIDUALS AND ORGANIZATIONS IN OPPOSITION**

55. The Commission received six letters and written testimony in opposition from various individuals and organizations. The letters and written testimony expressed the following concerns about the Application:
- The Map Amendment will result in the displacement of the existing small businesses on the Property, many of which are immigrant- and minority-owned, with conflicts with racial equity goals and CP policies that encourage strengthening small

businesses along the Central 14<sup>th</sup> Street corridor, including RCE-1.2.5 (Small and Local Businesses) and RCE-2.7.4 (Small Business Opportunities);

- The Map Amendment will result in tall buildings and density that are inconsistent with the 14<sup>th</sup> Street SAP and CP policies that encourage design transitions to relate to lower scale surrounding neighborhoods, including RCE-2.2.1 (Development Character Design) and RCE-1.1.2 (Design Compatibility);
- The Map Amendment will purportedly set no limit on the number of stories a building can have and will result in large developments that will have negative light, privacy, parking, traffic, and noise impacts on neighbors;
- The Applicant did not conduct sufficient community outreach;
- The Map Amendment will not require the Applicant to provide any public benefits based on community input, as would be the case in a PUD; and provides no incentives for small developers to build quality developments; and
- There were no impact and environmental studies to support the FLUM amendment that is cited as a basis for approving this Map Amendment.

(Ex. 28-33)

56. At the April 1, 2024, public hearing, the Commission heard testimony from two individuals in opposition to the Application:

- Ms. Gabrielle Butler expressed concerns about the potential residential uses that could be allowed on the Property as a result of the Map Amendment and the various unknowns regarding a future potential project on the Property; and
- Ms. Christina Boland expressed concern that the Map Amendment would result in adverse impacts to the neighborhood character. She also expressed concern that the proposed MU-5A zone would purportedly allow no limits on the number of floors a building could have.

(Ex. 32; Tr. at pp. 56-62)

#### **NATIONAL CAPITAL PLANNING COMMISSION (“NCPC”)**

57. The Commission referred the Application to the National Capital Planning Commission (“NCPC”) on April 3, 2024, for the 30-day review period required by § 492(b)(2) of the District Charter. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(b)(2); D.C. Official Code 6-641.05). (Ex. 35)

58. On April 25, 2024, NCPC staff filed a letter stating that the proposed Map Amendment is exempt from NCPC review. (Ex. 37)

#### **CONCLUSIONS OF LAW**

1. Section 1 of the Zoning Act of 1938 (effective June 20, 1938, as amended, 52 Stat. 797; D.C. Official Code § 6-641.01 *et seq.* (2012 Repl.)) (the “Zoning Act”) authorizes the Commission to create zones within which the Commission may regulate the construction and use of property in order to “promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital.”



2. Section 2 of the Zoning Act (D.C. Official Code § 6-641.02) further provides that:  
*Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.*
3. The Commission concludes the Application advances the purposes of the Zoning Act. For the reasons described below, the Commission finds that the Map Amendment is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Property.

**NOT INCONSISTENT WITH THE COMPREHENSIVE PLAN (SUBTITLE X § 500.3)**

4. Pursuant to Subtitle X § 500.3, the Commission shall find that the Map Amendment is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Property.
5. The Commission concludes, based on the filings and testimony of the Applicant, OP, and DDOT, that the Map Amendment from the MU-3A zone to the MU-5A zone is not inconsistent with the CP on balance, including its maps, and will advance a number of CP Elements as discussed below. (Findings of Fact [“FF”] 28-40, 44-47, 49)
6. Even if the Map Amendment conflicts with one or more individual policies associated with the CP, this does not, in and of itself, preclude the Commission from concluding that the Map Amendment would be consistent with the CP as a whole. (*See Durant v. D.C. Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013)) In this case, the Commission concludes that the Map Amendment’s potential inconsistencies with certain CP policies, particularly those identified by OP (FF 44) and those in opposition (FF 55), as further discussed below, are outweighed by the Map Amendment’s overall consistency with the CP maps, Citywide and Area Element policies, and the 14<sup>th</sup> Street SAP. (FF 28-40, 44-47)

**Racial Equity**

7. The Commission concludes that the Map Amendment is not inconsistent with the CP, including when evaluated through a racial equity lens, and will further CP racial equity goals, because it will permit an increase in the allowable density on the Property and a mix

of uses that will enhance the Property's opportunity for development with an IZ Plus set-aside requirement. (FF 38-40, 45-47)

8. Applicant's Racial Equity Analysis. The Commission finds that the Applicant's racial equity analysis addresses the components of the revised Racial Equity Analysis Tool inclusive of community outreach and engagement information as follows:
  - *Community Outreach and Engagement:* The Applicant's racial equity analysis indicates that it conducted community outreach with ANC 4E, individual ANC commissioners, the Ward 4 Councilmember, neighbors, and various civic associations. In addition, the Applicant held a June 20, 2023, community meeting that was advertised to community groups and other stakeholders, where it presented the Application. The Commission believes the Applicant satisfactorily addressed the revised Racial Equity Analysis Tool's community outreach and engagement component; and (FF 39)
  - *Potential Displacement:* The Commission notes that the Property includes a mixed-use residential and commercial building (4730 14<sup>th</sup> Street, N.W). However, the Applicant stated that the Map Amendment would not result in any direct displacement of residents as the goal of the rezoning is to allow for the potential to add additional floors of commercial and residential density on top of existing commercial uses on the Property. (FF 40) Therefore, the Commission believes the risk of residential displacement is low but encourages the Applicant to keep its tenants apprised of any potential redevelopment plans in the future and work to avoid, or mitigate, the risk of any residential displacement.
9. OP's Racial Equity Analysis: The Commission finds that OP's racial equity analysis in its reports addresses the components of the revised Racial Equity Analysis Tool inclusive of disaggregated race and ethnicity data for the Rock Creek East Planning Area as follows:
  - *Disaggregated Race and Ethnicity Data:* OP's racial equity analysis included disaggregated race and ethnicity data for the Rock Creek East Planning Area showing that the area is relatively diverse compared to the District overall, with a higher percentage of residents who are homeowners and a slightly higher median income. (FF 45, 47) This diversity is reflected in the composition of the property owners who make up the Applicant group, and the Commission believes that the Map Amendment will allow the Property to provide new potential residential and retail opportunities for the neighborhood. In addition, with the application of IZ Plus, the Commission is hopeful that the Property will allow the neighborhood to retain its diversity if it is redeveloped to include residential uses above the existing ground-floor commercial uses.

## **FLUM**

10. The Commission concludes that the Map Amendment is not inconsistent with the Property's Mixed Use (Moderate Density Residential/Moderate Density Commercial) designation on the FLUM because:
  - The MU-5A zone permits a maximum density of 3.5 FAR (4.2 FAR with IZ bonus density), which is within the density range contemplated by the Moderate Density

Commercial designation. Specifically, the Framework Element states that density in this category typically ranges between 2.5 and 4.0 FAR, with greater density being possible when complying with IZ, as is the case here since IZ Plus will apply to this Map Amendment;

- The Framework Element identifies the MU-5 zones as being “representative of zone districts consistent with the Moderate Density Commercial category”; and
- Although the MU-5A zone’s maximum allowable density exceeds the density range contemplated by the Moderate Density Residential category, that category also states that greater density is possible when complying with IZ, which will be the case here since the Map Amendment will be subject to IZ Plus.

(FF 20, 29, 44, 46-47)

### **GPM**

11. The Commission concludes that the Map Amendment is not inconsistent with the Property’s Main Street Mixed-Use Corridor designation on the GPM because the Map Amendment will permit a higher density and residential uses to be placed above the existing commercial uses, which would result in a mix of uses that has the potential to enhance an underutilized site while creating space for new residents and businesses to contribute to the neighborhood’s economic vitality. (FF 21, 30, 44, 47)

### **Land Use Element**

12. The Commission concludes that the Map Amendment is not inconsistent with the Land Use Element because the Map Amendment will facilitate the creation of additional commercial space, housing, and affordable housing on the Property with the application of IZ Plus. The Map Amendment will allow for mixed-use development having a density envisioned by the Property’s updated FLUM designation with building heights that will provide an appropriate transition between the lower density residential areas to the west and the taller buildings along 14<sup>th</sup> Street. (FF 31, 44, 46, 47)

### **Housing Element**

13. The Commission concludes that the Map Amendment is not inconsistent with the Housing Element because it will allow for residential density to be added to the existing buildings on the Property. In addition, IZ Plus will apply to any future redevelopment, which would help the Rock Creek East Planning Area meet its affordable housing goal as set forth in the 2019 Housing Equity Report. (FF 32, 44, 46, 47)

### **Transportation Element**

14. The Commission concludes that the Map Amendment is not inconsistent with the Transportation Element as it will facilitate a mix of uses on a priority transportation corridor. (FF 33, 44, 47)

### **Economic Development Element**

15. The Commission concludes that the Map Amendment is not inconsistent with the Economic Development Element because the Map Amendment will enable additional

retail opportunities on the Property that could enhance the neighborhood's economic vitality. (FF 35, 44, 47)

### **Environmental Protection Element**

16. The Commission concludes that the Map Amendment is not inconsistent with the Environmental Protection Element because the Map Amendment will allow for new development on the Property that complies with updated Green Energy codes. (FF 34, 44, 47)

### **Rock Creek East Area Element**

17. The Commission concludes that the Map Amendment is not inconsistent with the policies of the Rock Creek East Area Element because the Map Amendment will facilitate the revitalization of storefront properties and the creation of new housing, including affordable housing, within a key node along the 14<sup>th</sup> Street corridor. (FF 36, 44, 47)

### **Potential CP Inconsistencies**

18. In its reports, OP stated that the Map Amendment may be viewed as potentially inconsistent with Policy ED-3.2.6 (Commercial Displacement), which discourages displacement of small, minority, and local businesses. In addition, some of those in opposition raised concerns about potential inconsistencies with Policies RCE-1.2.5 (Small and Local Businesses) and RCE-2.7.4 (Small Business Opportunities), as well as RCE-2.2.1 (Development Character Design) and RCE-1.1.2 (Design Compatibility): (FF 44, 55)
  - Commission's Response: The Commission acknowledges that the Map Amendment may be viewed as potentially inconsistent with certain CP policies that discourage the displacement of small, minority, and local businesses and support the preservation of neighborhood character. However, the Commission believes the Map Amendment will allow new commercial space to be created without a significant risk of displacing the existing commercial tenants at the Property. The Commission is persuaded by the fact that the Applicant is a collective of business owners, most of whom are minority business owners who have an interest in preserving the neighborhood's diversity and maintaining their relationships with their current business tenants. The Applicant has also engaged with the community and obtained the support of the affected ANC. With regard to concerns about the Map Amendment's potential inconsistency with CP policies that encourage new development to respect the scale and densities of the surrounding neighborhood, the Commission believes the proposed MU-5A zone will enable moderate density development that is compatible with the character of the neighborhood as well as the Property's FLUM and GPM designations. However, to the extent the Map Amendment is inconsistent with certain CP policies identified by OP and those in opposition, the Commission believes such inconsistencies are outweighed by the Application's overall consistency with other policies and goals of the CP and 14<sup>th</sup> Street SAP that encourage mixed-use development and the production of housing and affordable housing on transit-accessible, commercial corridors such as 14<sup>th</sup> Street, N.W. (FF 20, 21, 23-24, 29-37, 40, 44, 47)

## 14<sup>th</sup> Street SAP

19. The Commission concludes that the Map Amendment is not inconsistent with the 14<sup>th</sup> Street SAP because it will further the SAP's objectives and recommendations by facilitating moderate-density, mixed-use development, potentially with new housing and affordable housing, along the 14<sup>th</sup> Street corridor. The 14<sup>th</sup> Street SAP specifically identifies the potential for 130 new residential units in Node Two, which would be supported by this Map Amendment. The Commission notes the following Node Two Design Guidelines, which are intended to ensure that future development conforms with the surrounding neighborhood: (FF 23, 24, 44, 47)
- The surrounding residential uses between Crittenden and Buchanan consist of single-family homes with rear yards backing to the opportunity site. In all cases, height and density should front on 14<sup>th</sup> Street and step back away from existing residential neighborhoods;
  - To decrease the appearance of mega blocks, storefront improvement should be consistent with the corridor's existing, neighborhood-serving retail character; and
  - To create a more pedestrian-friendly area, continuous street frontage should be established where possible.

## OPPOSITION ARGUMENTS

20. The Commission acknowledges the letters and testimony in opposition to the Map Amendment, which raised the arguments listed below. (FF 55, 56) The Commission's responses to each of the opposition arguments are also listed below:
- The Map Amendment will result in the displacement of the existing small businesses on the Property, many of which are immigrant- and minority-owned, which conflicts with racial equity goals and CP policies that encourage strengthening small businesses along the Central 14<sup>th</sup> Street corridor, including RCE-1.2.5 (Small and Local Businesses) and RCE-2.7.4 (Small Business Opportunities).
    - Commission's Response: The Commission acknowledges that there is a risk of commercial displacement of the existing businesses at the Property if the Property is redeveloped but is persuaded by the Applicant's assertion that it is seeking this Map Amendment to allow for potential residential and commercial uses to be added above the ground-floor commercial spaces without eliminating the existing businesses on the Property. The Commission notes that the Applicant has conducted significant community outreach efforts and has obtained the support of the affected ANC. And as further discussed herein, to the extent the Map Amendment is potentially inconsistent with certain CP policies that discourage commercial displacement, such inconsistencies are outweighed by the Application's overall consistency with the CP maps and policies as well as the 14<sup>th</sup> Street SAP; (FF 28-40, 44-47; *see also* Conclusion of Law 18)
  - The Map Amendment will result in tall buildings and densities that are inconsistent with the 14<sup>th</sup> Street SAP and CP policies that encourage design transitions to relate to lower scale surrounding neighborhoods, including RCE-2.2.1 (Development Character Design) and RCE-1.1.2 (Design Compatibility).



- Commission's Response: The Commission acknowledges the concerns about the potential height and density that would be permitted by the MU-5A zone. While no specific project is being contemplated at this time, the MU-5A zone would permit a building height of up to 65 feet (70 feet with IZ bonus density) which would exceed the heights of the current buildings on the Property;
- With respect to the 14<sup>th</sup> Street SAP, it designates the section of 14<sup>th</sup> Street in which the Property is located (i.e., Node Two) as an area in need of revitalization, land use change, and infill development—all of which will be facilitated by this Map Amendment. The 14<sup>th</sup> Street SAP also identifies a need for the creation of new residential units in this area, which will be enabled by the proposed MU-5A zone. Furthermore, the 14<sup>th</sup> Street SAP calls for strengthening opportunities for small businesses, which the Commission believes this Map Amendment will enable by allowing additional commercial space to be created on top of the existing retail spaces on the Property; and (FF 23-24, 37, 44, 47)
- With respect to the CP policies that encourage compatible scale and density with the surrounding neighborhood, the Commission believes that the additional density allowed under the MU-5A zone would be beneficial and appropriate given the Property's moderate density designation on the FLUM and the fact that IZ Plus will apply to this Map Amendment, meaning any future residential development would be subject to an enhanced affordable housing set-aside requirement. To the extent the Map Amendment is potentially inconsistent with the CP with regard to allowable height and density under the proposed MU-5A zone, the Commission believes such inconsistency is outweighed by the Map Amendment's consistency with other CP policies and goals that encourage the creation of housing and a mix of uses on this section of 14<sup>th</sup> Street; (FF 28-40, 44-47; *see also* Conclusion of Law 18)
- The Map Amendment will purportedly set no limit on the number of stories a building can have and will result in large developments that will have negative light, privacy, parking, traffic, and noise impacts on neighbors.
  - Commission's Response: In response to these arguments, the Commission reiterates that this Application is a standalone Map Amendment and that no specific project is being contemplated at this time. Therefore, project-specific negative impacts related to light, privacy, parking, traffic, and noise are not germane to the Commission's evaluation of this application. The Applicant has provided justifications for why the Map Amendment meets the applicable standard of review. The Commission notes that the MU-5A zone does place a limit on building height at 65 feet (70 feet with IZ bonus density), which will limit the number of stories that can be built. Therefore, the Commission concludes that the foregoing arguments are not persuasive or relevant to the standards of approval in this case, i.e., consistency with the CP and other adopted policies and programs; (*See* Subtitle X § 500.3)
- The Applicant did not conduct sufficient community outreach.
  - Commission's Response: With regard to concerns about the Applicant's community outreach and engagement, the Commission finds that the



Applicant's outreach efforts were robust and involved multiple meetings with the affected ANC and neighborhood residents, as well as a public meeting on June 20, 2023, that was advertised to and attended by various civic associations and stakeholders. Therefore, the Commission concludes the Applicant adequately addressed the community outreach and engagement component of the revised Racial Equity Analysis Tool; (FF 39, 44, 47)

- The Map Amendment will not require the Applicant to provide any public benefits based on community input, as would be the case in a PUD; and provides no incentives for small developers to build quality developments.
  - Commission's Response: The Commission understands the oppositions' concerns and frustrations that the Map Amendment will allow for future development that is both unknown and without public benefits, unlike a PUD. However, the Commission is responsible for evaluating the standalone map amendment application to the MU-5A zone before it. The evaluation criteria for the Application are that the matter-of-right development standards of the MU-5A zone be not inconsistent with the Comprehensive Plan and with other adopted policies and programs related to the Property. (See Subtitle X § 500.3) For the reasons stated herein, the Commission finds that the proposed MU-5A zone meets the applicable evaluation criteria. The Commission also believes that the Applicant conducted adequate community outreach and engagement regarding the proposal as evidenced by the Applicant's responses to the community outreach and engagement component of the Commission's Racial Equity Analysis Tool, and the community participation in this proceeding; and (FF 28-40, 44-47)
- There were no impact and environmental studies to support the Property's D.C. Council-approved FLUM amendment; therefore, the 2021 Comprehensive Plan update was unlawful.
  - Commission's Response: The FLUM update which preceded this Application was approved by the D.C. Council as part of the 2021 Comprehensive Plan update, and arguments about the legality of that update are beyond the purview of the Commission.

#### **"GREAT WEIGHT" TO THE RECOMMENDATIONS OF OP**

21. The Commission must give "great weight" to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016))
22. The Commission concludes that the OP Reports, which provided an in-depth analysis of the Map Amendment, are persuasive and concurs with OP's recommendation that the Property's rezoning would not be inconsistent with the CP maps, the Citywide Elements, and the Rock Creek East Area Element, including when viewed through a racial equity lens, as discussed above. The Commission also concurs with OP that the proposed Map Amendment is appropriate for IZ Plus. (FF 44-47)

### **“GREAT WEIGHT” TO THE ANC REPORT**

23. The Commission must give “great weight” to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted))
24. The ANC 4E Report expressed the ANC’s recommendation of support for the Map Amendment. The Commission concurs with the ANC’s recommendation. (FF 52)

### **DECISION**

In consideration of the record for Z.C. Case No. 23-14 and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and, therefore, **APPROVES** the Application to amend the Zoning Map as follows:

SQUARE	LOT(S)	MAP AMENDMENT
2704	1, 16, 17, 824, 56-61	MU-3A to MU-5A
2706	49-54, 18-26	MU-3A to MU-5A

For the purposes of calculating an IZ Plus set-aside requirement pursuant to Subtitle C § 1003, the maximum permitted FAR of the existing MU-3A zone is equivalent to 1.0 FAR.


On April 1, 2024, upon the motion of Vice Chairman Miller, as seconded by Commissioner Imamura, the Zoning Commission took **PROPOSED ACTION** to approve the Application at the close of the public hearing by a vote of **4-0-1** (Robert E. Miller, Joseph S. Imamura, Anthony J. Hood, and Tammy Stidham to approve; 3<sup>rd</sup> Mayoral Appointee seat vacant).

On May 9, 2024, upon the motion of Vice Chairman Miller, as seconded by Commissioner Imamura, the Zoning Commission took **FINAL ACTION** to approve the Application at its public meeting by a vote of **4-0-1** (Robert E. Miller, Joseph S. Imamura, Anthony J. Hood, and Tammy Stidham to approve; 3<sup>rd</sup> Mayoral Appointee seat vacant).

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 23-14 shall become final and effective upon publication in the *District of Columbia Register*, that is on February 14, 2025.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.



**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**



**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.