

APPLICANT'S DRAFT ORDER

GOVERNMENT OF THE DISTRICT OF COLUMBIA Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA ZONING COMMISSION ORDER NO. 24-03 Z.C. Case No. 24-03 Good Hope Road LLC (Zoning Map Amendment @ Square 5765, Lot 1015) [_____] J, 2024

Pursuant to notice, at its public meeting on [_____] J, 2024, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) ¹ submitted by Good Hope Road LLC (the “Applicant”) for approval of an amendment to the Zoning Map from the MU-4 zone to the MU-7A zone (the “Map Amendment”) for the property located at 1603 Marion Barry Avenue, S.E. (Square 5765, Lot 1015) (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 [the “Zoning Regulations”] to which all references are made unless otherwise specified).

The Commission determined that Inclusionary Zoning (“IZ”) Plus is not appropriate for the Property.²

The Commission considered the Application as a contested case pursuant to Subtitle A § 210 and Subtitle Z, Chapter 4. For the reasons set forth below, the Commission hereby **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”) 8A, 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.

¹ The Zoning Commission held a public hearing on the Application on July 29, 2024, and considered the Application for proposed action at its public meeting on September 26, 2024.

² [This assumes that the Zoning Commission adopts the Office of Planning’s recommendation.]

NOTICE

3. On August 31, 2023, the Applicant mailed a Notice of Intent to file an application for a Zoning Map Amendment to all property owners within 200 feet of the Property, as well as ANC 8A, as required by Subtitle Z § 304.5. (Exhibit [“Ex.”] 3G.)
4. On February 8, 2023, the Office of Zoning (“OZ”) sent copies of the Notice of Filing to:
 - The Applicant;
 - ANC 8A;
 - ANC Single Member Districts (“SMD”) 8A02 and 8A05;
 - The Office of the ANCs;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Buildings (“DOB”);
 - Councilmember Trayon White, Sr.;
 - The Office of Zoning Legal Division (“OZLD”);
 - The Department of Energy and Environment (“DOEE”); and
 - The Chair and At-Large members of the D.C. Council.

(Ex. 9.)
5. On May 28, 2024, OZ sent notice of the July 29, 2024, public hearing to:
 - The Applicant;
 - ANC 8A;
 - ANC SMD 8A02 and 8A05;
 - The Office of the ANCs;
 - OP;
 - DDOT;
 - DOB;
 - Councilmember Trayon White, Sr.;
 - OZLD;
 - DOEE;
 - The Chair and At-Large members of the D.C. Council; and
 - Property owners within 200 feet of the Property.

(Ex. 15.)
6. OZ also published notice of the July 29, 2024, virtual public hearing, in the June 7, 2024, *D.C. Register* (71 DCR 6864 *et seq.*) as well as through the calendar on OZ’s website. (Ex. 13.)
7. Pursuant to Subtitle Z § 402.3, the Applicant posted notice of the hearing on the Property on June 18, 2024, and maintained such notice in accordance with Subtitle Z § 402.10. (Ex. 17, 27.)

THE PROPERTY

8. The Property is located in the Anacostia neighborhood in Ward 8 and is bounded by Marion Barry Avenue, S.E. (formerly Good Hope Road, S.E.) to the north, 16th Street, S.E. to the west, an alley and low density residential development to the south, and surface parking lots to the east.
9. The Property consists of approximately 10,248 square feet of land area.
10. The Property is currently improved with a single-story commercial building that was previously occupied by a laundromat and is surrounded by a parking lot.

CURRENT ZONING

11. The Property is currently located in the MU-4 zone, which is intended to permit moderate-density mixed-use development, provide for facilities for shopping and business, housing, and mixed uses, and be located in low- and moderate-density residential areas with access to main roadways and rapid transit stops, among other things. (11-G DCMR § 101.9.)
12. As a matter of right, the MU-4 zone allows a maximum density of 2.5 FAR (3.0 FAR with IZ bonus density), of which no more than 1.5 FAR may be devoted to non-residential uses, and a maximum height of 50 feet, not including the penthouse. (11-G DCMR §§ 201.1 and 203.2.)

COMPREHENSIVE PLAN (10A DCMR)

13. 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.

Equity and the Comprehensive Plan

14. In applying the standard of review applicable to the Map Amendment, the Comprehensive Plan requires the Commission to do so through a racial equity lens. (10-A DCMR § 2501.8.) Consideration of equity is intended to be based on the policies of the Comprehensive Plan, and part of the Commission's considerations of whether the Map Amendment is "not inconsistent" with the Comprehensive Plan, rather than a separate determination about a zoning action's equitable impact.
15. The Comprehensive Plan 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. (10-A DCMR § 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." (*Id.* § 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. (*Id.* § 213.9.)

16. The Comprehensive Plan 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.” (10-A DCMR § 2501.6.)

Generalized Policy Map (the “GPM”)

17. The Comprehensive Plan’s GPM situates the Property in a Main Street Mixed Use Corridor, which the Comprehensive Plan’s Framework Element describes as “traditional commercial business corridors with a concentration of older storefronts along the street. The area served can vary from one neighborhood to multiple neighborhoods. 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.” (10-A DCMR § 223.14.)

Future Land Use Map (the “FLUM”)

18. The Comprehensive Plan’s FLUM designates the Property within the Moderate Density Commercial designation, which the Framework Element describes as “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 proposed MU-7A zone is expressly referred to in the Framework Element as being consistent with the Moderate Density Commercial FLUM designation. (10-A DCMR § 224.12.)

Far Southeast/Southwest Area Element

19. The Property falls within the Far Southeast/Southwest Area Element that calls for, among other things:

- Encouraging additional opportunities for housing development and potentially employment growth in the Far Southeast/Southwest Planning Area along a designated Great Streets corridor. (10-A DCMR § 1808.2.)
- Supporting infill housing development on vacant sites within the area, especially within e.g. historic Anacostia. (*Id.* § 1808.5.)
- Supporting additional retail development within the area, especially within e.g. historic Anacostia, and in particular development that combines upper story housing or offices and ground floor retail. (*Id.* § 1808.7.)

II. THE APPLICATION

PROPOSED ZONING

20. The Applicant seeks to rezone the Property to the MU-7A Zone District.
21. The purposes of the Mixed Use zones are to, among other things:
 - Provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale throughout the city;
 - Reflect a variety of building types, including shop-front buildings that may include a vertical mixture of residential and non-residential uses, or buildings containing all residential or non-residential uses; and
 - Ensure that infill development is compatible with the development pattern within the zone and surrounding areas.

(11-G DCMR § 101.3.)
22. Specifically, the MU-7A zone is intended to permit medium-density, mixed-use development and to be located on arterial streets, in uptown and regional centers, and at rapid transit stops. (11-G DCMR § 101.6.)
23. As a matter of right, the MU-7A zone permits:
 - A maximum density of 4.0 FAR (4.8 FAR with IZ), of which no more than 1.0 FAR may be devoted to non-residential uses. (11-G DCMR § 201.1.)
 - A maximum height of 65 feet, not including penthouse. (*Id.* § 203.2.)

APPLICANT'S JUSTIFICATION FOR APPLICATION

Not Inconsistent with the Comprehensive Plan

24. The Applicant asserted that the Application is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs applicable to the Property, as detailed below:

Racial Equity

25. The Applicant asserted that the Map Amendment would not be inconsistent with the racial equity policies and goals of the Comprehensive Plan. The Applicant noted that equity is conveyed throughout the Comprehensive Plan where priorities of affordable housing, preventing displacement, and access to opportunity are distinguished. The Map Amendment would not directly result in the physical displacement of residents since the Property currently does not contain any residential uses. The Map Amendment would increase the allowable density and permit a mix of uses which would promote planning and development priorities set forth in the Comprehensive Plan's city-wide Elements and the Far Southeast/Southwest Area Element including: housing and affordable housing production, equitable distribution of affordable housing, high-quality housing options, environmental sustainability, climate resilience, and improving neighborhood-serving amenities and retail services in underserved areas.

GPM

26. The Applicant asserted that the Map Amendment would not be inconsistent with the GPM because the proposed rezoning will facilitate redevelopment of the Property with a new mixed-use project containing ground-floor commercial uses and residential uses above, which will replace an underutilized, single-story building and surface parking lot, both of which are physically and programmatically inconsistent with what is envisioned for a Main Street Mixed Use Corridor under the GPM.

FLUM

27. The Applicant asserted that the Map Amendment would not be inconsistent with the FLUM because:

- The density that is permitted under the proposed MU-7A Zone District (4.0 FAR or 4.8 FAR for IZ developments) is not inconsistent with the density range envisioned for the Moderate Density Commercial FLUM designation under the applicable Framework Element guidance, and the MU-7 zones are specifically referenced in the Framework Element as being consistent with the FLUM's Moderate Density Commercial designation that applies to the Property;
- Redevelopment of the Property in accordance with MU-7A matter-of-right parameters, and requiring approval from the Historic Preservation Review Board ("HPRB") due to the Property's location within the Anacostia Historic District, will yield a context-sensitive development that provides neighborhood-serving commercial uses and new housing, and that is compatible with the Historic District;
- Redevelopment of the Property with a mixed-use project that strengthens the retail mix and urban design quality of the Marion Barry Avenue, S.E. corridor will help advance the District's commercial revitalization goals for a designated Great Streets corridor. Together, the higher-quality commercial space and increased residential density gained through the Zoning Map amendment, and business-owner assistance provided through the Great Streets program will help support existing small businesses, attract new businesses, increase the District's tax base, create new job opportunities for District residents, and help transform the Marion Barry Avenue, S.E. corridor into a thriving and inviting main street mixed use neighborhood center.

Far Southeast/Southwest Area Element

28. The Applicant asserted that the proposed Map Amendment is not inconsistent with the policies set forth in the Far Southeast/Southwest Area Element. Consistent with the planning and development priorities identified in the Area Element, the proposal will provide additional opportunities for housing development and potentially employment growth in the Planning Area along a designated Great Streets corridor, which will help meet the housing needs of low- and moderate-income residents within the Planning Area, help decrease the District's waitlist for affordable housing, and help avoid displacement of low- and moderate-income families that are in jeopardy of displacement due to rising housing costs. The proposed rezoning promotes growth in a location of the Planning Area where it makes sense, along an arterial corridor near transit and other mixed-use development. In addition to additional housing, the proposed rezoning will also facilitate new retail and service uses in the Far Southeast/Southwest Planning Area and historic Anacostia, and the planned re-establishment of a laundromat use on the Property. (10-A DCMR §§ 1808.2, 1808.5, and 1808.7.)

Land Use Element

29. The Applicant asserted that the proposed Map Amendment to the MU-7A Zone District is not inconsistent with the Land Use Element as it will support the growth and revitalization of Marion Barry Avenue, S.E. into a successful, transit-oriented, pedestrian-friendly commercial main street that contains new retail amenities that are supported by new and existing residential uses, will facilitate infill development on the Property with new housing that will help achieve the District's housing goals. Further, redevelopment of the Property subject to review by the HPRB for consistency with the Anacostia Historic District, will result in development with a height and massing that is consistent with the surrounding context. (10-A DCMR §§ 307.14, 308.6, 310.7, 310.10, 313.10, and 313.14.)

Transportation Element

30. The Applicant asserted the proposed Map Amendment is not inconsistent with the Transportation Element because it will support mixed-use transit-oriented development given the Property's location immediately adjacent to a priority bus route along Marion Barry Avenue, S.E., which in addition to promoting transit use will also promote walkability through active ground-floor uses and reconstruction of adjacent public space to District Department of Transportation ("DDOT") standards. The increase in allowable density for new housing, particularly affordable housing, will also advance equitable access to transportation, and the rezoning will discourage auto-oriented uses by facilitating redevelopment of the Property that will replace existing surface parking and all curb cuts with a new mixed-use development that is constructed to the street lot lines and locates all parking and loading access along the public alley on the south side of the site. The elimination of curb cuts and consolidation of vehicular access to the public alley will improve pedestrian and bicycle safety along the Property's two street frontages. (10-A DCMR §§ 403.10, 403.13, 404.6, and 411.5.)

Housing Element

31. The Applicant asserted that the Map Amendment is not inconsistent with the Housing Element as it will facilitate redevelopment of an underutilized site on a designated Main Street mixed-use corridor and D.C. Great Street with a new mixed-use project containing new housing and ground-level commercial uses. The production of housing that results from the proposed rezoning, including affordable housing set aside in accordance with IZ, will aid the District in achieving its housing production targets and equity goals for the Far Southeast/Southwest Planning Area and help address citywide housing needs for low- and moderate-income households, as well as add new market rate units to this area of the city. Further, the additional market rate housing facilitated by the proposed rezoning has the potential to increase the socioeconomic diversity of the Planning Area and help provide a balance of housing opportunities, while the new dedicated IZ affordable housing will help offset the rising cost of housing and minimize the potential for displacement. (10-A DCMR §§ 503.3, 503.4, 503.5, 503.6, 504.8, 504.9, 504.10, 504.19, and 505.9.)

Environmental Protection Element

32. The Applicant asserted that the Map Amendment is not inconsistent with the policies and objectives of the Environmental Protection Element because the rezoning will facilitate the redevelopment of the Property, which is currently improved with an underutilized, one-story building and surface parking and is entirely impervious and lacks any sustainable stormwater management, whereas the proposed redevelopment will be significantly more sustainable as it will be subject to the requirements of the District's Green Building Act, the DOEE's stormwater regulations, and site study and mitigation efforts, among other requirements. Future redevelopment of the Property will help mitigate urban heat island impacts caused by the existing impervious condition of the site and will also result in substantial improvements to the quality of the public space surrounding the Property, which will include improvements to street trees and implementation of sustainable landscape practices. (10-A DCMR §§ 603.6, 605.6, 605.7, and 616.3.)

Economic Development Element

33. The Applicant asserted that the Map Amendment is not inconsistent with the Economic Development Element because it will support an appropriate amount and type of new, neighborhood-serving retail and service uses that will not unduly impact the surrounding neighborhood in terms of noise, traffic, and loading, including the laundromat use that the Applicant has committed to re-establish on the site in response to community input. The additional commercial space resulting from the proposed rezoning will also support opportunities for local entrepreneurs, and the new housing, including affordable housing, resulting from the rezoning will increase access to employment by permitting moderate density mixed-use development adjacent to a priority bus corridor that will connect residents to major employment areas within and around the District. (10-A DCMR §§ 708.8, 708.9, 713.5, and 718.10.)

Urban Design Element

34. The Applicant asserted that the Map Amendment is not inconsistent with the policies set forth in the Urban Design Element as it will facilitate the Applicant's effort to redevelop the Property with a new mixed-use development that will greatly enhance the urban design quality of the site, as well as the Marion Barry Avenue, S.E. commercial corridor, and has already received HPRB concept approval. (10-A DCMR §§ 906.3, 908.3, 908.8, 909.5, 909.8, 909.9, and 909.10.)

Historic Preservation Element

35. The Applicant asserted that the Map Amendment is not inconsistent with the policies set forth in the Historic Preservation Element as it will facilitate the Applicant's redevelopment of the Property, which is currently a detriment to the character of the Anacostia Historic District, with a new mixed-use project that has received concept approval from HPRB as consistent with the Historic District. (10-A DCMR §§ 1008.5, 1013.3, 1014.9, and 1014.10.)

Potential Inconsistencies with the Comprehensive Plan

36. The Applicant analyzed whether the Map Amendment would be considered inconsistent with certain policies of the Comprehensive Plan. Upon review, the Applicant did not

identify any instances where the proposal to rezone the Property to the MU-7A zone was categorically inconsistent with applicable Comprehensive Plan policies such that a balancing of potential inconsistencies with the Map Amendment's consistency with other Comprehensive Plan policies and considerations was necessary.

Hearing Testimony

37. At the public hearing held on July 29, 2024, the Applicant presented its case, including testimony from Amir Irani, a representative of the Applicant, and Shane Dettman, the Applicant's expert in zoning and land use planning. (Transcript of July 29, 2024 Public Hearing ("Public Hearing Tr.") at 7-42.)
38. The Commission received testimony from the following individuals and organizations in support of the Map Amendment at the public hearing:
 - Dr. Jacque Patterson, a resident of the area in which the Property is located, who testified that the rezoning would support the growth and improvement of the Marion Barry Avenue, S.E. corridor and economic development in the area;
 - Patrick O'Keefe, a resident living on U Street, S.E., one block south of the Property, who testified that rezoning the Property will help address public safety concerns in the area and economic development in the area;
 - Allister Chang, a representative of Civic Suds, a non-profit organization that is working with the Applicant to provide community services at the Property following its redevelopment, who testified in support of the rezoning; and
 - Daniel McGee, a resident living on U Street, S.E., one block south of the Property, who testified that the rezoning will support the growth and economic stability of the Marion Barry Avenue, S.E. corridor.

(Public Hearing Tr. at 57-81.)
39. The Commission received testimony from the following individuals and organizations in opposition to the Map Amendment at the public hearing:
 - Greta Fuller, a representative of the Historic Anacostia Preservation Society ("HAPS"), who testified that HAPS opposed the application and believed the Applicant's proposed redevelopment was not a good fit for the area because the project will bring more affordable housing to the area, which Ms. Fuller stated already has too much affordable housing.
 - Commissioner Jamila White, the ANC Single Member District Representative for the Property, testified that the ANC opposed the Application and referenced possible changes to the project at the Property. (Public Hearing Tr. at 42-46, 63-74, and 85-87.)³

III. RESPONSES TO THE APPLICATION

OP REPORTS AND TESTIMONY

³ Commissioner White stated that she was testifying on behalf of the ANC. However, no letter or report was filed from the ANC stating the ANC's position on the Application or authorizing Commissioner White to testify on the ANC's behalf at the public hearing.

40. OP submitted a Setdown Report dated April 15, 2024, recommending that the Commission set down the case for a public hearing (the “OP Setdown Report”). (Ex. 10.)
41. The OP Setdown Report concluded that the proposed MU-7A Zone District would not be inconsistent with the Comprehensive Plan for the following reasons:
 - **Racial Equity:** Overall, when evaluated through a racial equity lens, the proposed Map Amendment is not inconsistent with the Comprehensive Plan. The proposed zoning action does not result in any physical displacement of residents or any commercial use because the site is currently vacant, and OP concluded that indirect displacement is also unlikely as a result of the Zoning Map Amendment. The rezoning will permit construction of new housing, including both market-rate and affordable housing, and redevelopment will result in public space and streetscape improvements along Marion Barry Avenue, S.E. The rezoning would increase access to opportunity, including public facilities and gathering spaces in the neighborhood, and OP concluded that the Applicant’s continuing community outreach efforts for the Map Amendment and redevelopment were well-documented.
 - **FLUM:** The proposed MU-7 zoning is representative of the Moderate Density Commercial designation and is appropriate for the site and is consistent with the FLUM designation for other properties to the east, west, and north of the Property. The site’s location within the Anacostia Historic District and consequent HPRB review requirement will ensure redevelopment is tailored to be compatible and respectful of the lower density dwellings in the area. Therefore, the MU-7A Zone District is compatible with the development pattern envisioned for this portion of Marion Barry Avenue, S.E. and would not be inconsistent with the FLUM.
 - **GPM:** Rezoning the Property is not inconsistent with the FLUM’s Main Street Mixed Use Corridor designation for the Property. The development of the Property with retail and housing opportunities would be in keeping with other recent and planned redevelopments in the area to serve neighborhood needs and would respond to the emerging mixed-use character of development on Marion Barry Avenue S.E.
 - **Far Southeast/Southwest Area Element:** The MU-7A Zone District is consistent with the Area Element because it allows for increased height and additional density at a moderate range over what is currently allowed and would allow a development with a variety of unit sizes and incomes, along with ground floor retail or services. The location of the Property allows for easy access to transportation which is a key element for affordably moving people around to jobs and amenities in an environmentally-friendly way. (10-A DCMR §§ 1808.2, 1808.5, 1808.7, 1808.10, and 1808.17.)
 - **Land Use Element:** The Map Amendment furthers the policies set forth in the Land Use Element as it allows a new development of currently underutilized and vacant property with a mix of multifamily housing and retail uses, which could create opportunities for neighborhood revitalization and beautification, thereby accommodating population growth in new development consistent with the planning intent and advancement of affordability and racial equity goals. Further, it permits ground-floor neighborhood serving uses, that would help to widen the types of neighborhood services available to existing and prospective residents and improve the character of the existing neighborhood and the streetscape of Marion Barry Avenue S.E. (10-A DCMR §§ 307.14, 308.6, 310.9, 310.10, 310.17, and 311.5.)

- **Transportation Element:** The Map Amendment furthers the policies set forth in the Transportation Element as it allows for an appropriately scaled development along a transportation corridor which connects to the Anacostia Metrorail station, and which could help reduce the necessity of auto use and ownership in support of a related reduction in household expenses for future residents. Active retail uses along this corridor and along a transit route could enable a pedestrian-oriented environment and a transit-oriented development. The Map Amendment supports redevelopment of the Property to meet the expectations of equity in transportation accessibility, as the Property is one (1) mile from the Anacostia Metro Station (Green Line) and is connected via several Metrobus routes (92, W6, B2 and V2). (10-A DCMR §§ 403.13, 404.6, and 405.7.)
- **Housing Element:** The Map Amendment furthers the policies set forth in the Housing Element because it facilitates redevelopment of an underutilized site and will assist in addressing the District's housing needs along a corridor where mixed-use development is envisioned. The proposed redevelopment facilitated by this Map Amendment would make a substantial contribution to the District's housing and affordable housing goals and advance Comprehensive Plan policies related to housing. The location of the Property along a transit corridor with several bus routes connecting to the Anacostia Metro station supports the Framework Element's equity requirements for a desirable depth of affordability and access, which reduces future households' transportation costs thereby providing easier access to employment and services. (10-A DCMR §§ 503.3, 503.5, 503.6, 503.11, 504.8, 504.9, 504.10, 504.13, 504.17, 504.19, and 505.8.)
- **Environmental Protection Element:** The Map Amendment furthers the policies set forth in the Environmental Protection Element because future development of the Property would be reviewed by DOEE to implement District policies encouraged under the Sustainable DC Plan and code requirements which protect the health and well-being of residents across all incomes and the District as a whole. (10-A DCMR §§ 603.6, 612.4, and 613.6.)
- **Economic Development Element:** The Map Amendment furthers the policies set forth in the Economic Development Element because it will provide the opportunity for new neighborhood retail uses and services along the Marion Barry Avenue, S.E. corridor. (10-A DCMR §§ 708.8, 78.10, 708.11, and 713.5.)
- **Urban Design Element:** The Map Amendment furthers the policies set forth in the Urban Design Element because the proposed MU-7A Zone District provides for a new mixed-use building on a currently vacant property, to a height and scale and use mix consistent with the Comprehensive Plan and the character of the area. The proposed zone permits ground-floor retail to activate the street, while allowing housing units above, which will help to further activation of the street. Any development on the site would be required to meet current streetscape and environmental standards for new buildings. (10-A DCMR §§ 909.5, 909.6, 909.10, and 918.4.)
- **Historic Preservation Element:** The Map Amendment furthers the policies set forth in the Historic Preservation Element because it would facilitate redevelopment of a non-contributing site with a project that has been reviewed and approved by HPRB, indicating that the development would be compatible to the surrounding neighborhood in architecture, design, and intensity. The project would have setbacks on the rear to

provide transition to the low-density residential uses to the south and would be consistent with the moderate density development envisioned along the Marion Barry Avenue mixed use corridor. (10-A DCMR §§ 1008.5, 1013.3, 1014.9, and 1014.10.) (Ex. 10.)

42. The OP Setdown Report recommended that IZ Plus not be applied for the Map Amendment because the intent of IZ Plus is to produce more affordable housing, particularly in areas where there are relatively few affordable units, whereas the Far Southeast/Southwest Planning Area far exceeds the Planning Area target for the provision of affordable housing. (Ex. 10.)

43. On July 19, 2024, OP submitted a hearing report (the “OP Hearing Report”) recommending approval of the Application that largely reiterated the OP Setdown Report’s recommendations. The OP Hearing Report highlighted general written elements of the Comprehensive Plan rather than specific policies furthered by the Map Amendment. Ultimately, the OP Hearing Report reiterated that the Map Amendment is not inconsistent with the Comprehensive Plan. (Ex. 20.)

44. At the July 29, 2024 public hearing, OP testified in support of the Application and reiterated its recommendations in the OP Setdown Report and OP Hearing Report. (Public Hearing Tr. at 47-55.)

DDOT REPORT

45. DDOT submitted a report dated July 19, 2024 (the “DDOT Report”) stating that it had no objection to the Application. DDOT concluded that the proposed rezoning is expected to lead to a moderate increase in the amount of transit, biking, and walking trips, and a minor increase in vehicle trips with minimal impact on the roadway network. (Ex. 21.)

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

ANC REPORTS AND TESTIMONY

47. [...]

OTHER AGENCIES, PERSONS, AND ORGANIZATIONS

48. The Commission received letters of support of the proposed Zoning Map Amendment from the following individuals: Ashley Whitfield, Patrick O’Keefe, Alejandro Schwedhelm, Jessica Anderson, Brian McKenzie, Angela Nguyen, Andrew Nguyen, Dietrich Williams, and Mark Garrett. (Ex. 22, 23, 24, 25, 26, 28, 30, 32, 34, and 35.)

49. The Commission received a letter in opposition from attorneys representing complainants in a complaint filed with the U.S. Department of Housing and Urban Development against the District of Columbia that alleges racial discrimination through the alleged misuse of the Low-Income Housing Tax Credit (“LIHTC”) program and concentration of LIHTC projects in Ward 8. The letter stated that the proposed Zoning Map Amendment would result in further overconcentration of low-income affordable housing in the surrounding community. (Ex. 33.)

NATIONAL CAPITAL PLANNING COMMISSION (“NCPC”)

50. On [. . .], the Commission referred the proposed map amendment to NCPC for review and comment pursuant to the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code § 1-201 *et seq.* (Ex. 42.)
51. On [. . .], NCPC filed a report stating [. . .]. (Ex. [].)

CONCLUSIONS OF LAW

1. Section 1 of the Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, ch. 534; D.C. Official Code § 6-641.01, *et seq.*) (“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.” (§ 1 of the Zoning Act; D.C. Official Code § 6-641.01.)
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 on 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 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.

NOT INCONSISTENT WITH COMPREHENSIVE PLAN (SUBTITLE X § 500.3)

3. 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.
4. The Commission concludes, based on the filings and/or testimony of the Applicant, OP, DDOT, and the letters in support submitted to the case record that the Map Amendment from the MU-4 Zone District to the MU-7A Zone District is not inconsistent with the Comprehensive Plan as a whole, including the Comprehensive Plan Maps and Elements, and will advance a number of Comprehensive Plan Elements as discussed below.

5. Even if the Map Amendment conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the Map Amendment would be consistent with the Comprehensive Plan as a whole. (*See Durant v. D.C. Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013).) In its evaluation of the Map Amendment, the Applicant stated that it did not identify any instances where the proposal to rezone the Property to the MU-7A zone was categorically inconsistent with applicable Comprehensive Plan policies. The Commission concludes that it agrees with the Applicant that the proposed Map Amendment does not appear to be in direct conflict with any applicable Comprehensive Plan policies. The Commission further concludes that to the extent the proposal is inconsistent with any Comprehensive Plan policies, such inconsistency would be far outweighed by the Map Amendment's consistency with the FLUM and numerous other competing Comprehensive Plan policies relating to land use, housing, transit-oriented development, and other policies as described in this Order.

Racial Equity

6. The Commission concludes that the Map Amendment is not inconsistent with the Comprehensive Plan when evaluated through a racial equity lens because:

- The Map Amendment will not directly result in the physical displacement of residents or any commercial use as the Property is currently vacant.
- The Map Amendment increases the allowable density and permits a mix of uses which promote planning and development priorities set forth in the Comprehensive Plan's city-wide Elements and the Far Southeast/Southwest Area Element, including increasing housing and affordable housing production, equitable distribution of affordable housing, high-quality housing options, environmental sustainability, climate resilience, and improving neighborhood-serving amenities and retail services in underserved areas.
- The rezoning will increase access to opportunity, including public facilities and gathering spaces in the neighborhood, and the Applicant has conducted extensive community outreach regarding the Map Amendment and the current redevelopment proposal for the Property.

(Finding of Fact ["FF"] ¶¶ 14-16, 25, and 41; *see* 10-A DCMR §§ 213.6, 213.7, and 213.9.)

GPM

7. The Commission concludes that the Map Amendment is not inconsistent with the GPM's designation of the Property within a Main Street Mixed Use Corridor because:

- The Map Amendment to the MU-7A Zone District will facilitate redevelopment of the Property with a new mixed-use project containing ground-floor commercial uses and residential uses above, replacing an underutilized, single-story building and surface parking lot.
- The development of the Property with retail and housing opportunities is in keeping with other recent and planned redevelopments in the area to serve neighborhood needs and responds to the emerging mixed-use character of development on Marion Barry Avenue S.E.

(FF ¶¶ 17, 26, and 41; *see* 10-A DCMR § 225.14.)

FLUM

8. The Commission concludes that the Map Amendment is not inconsistent with the FLUM's designation of the Property for Moderate Density Commercial development because:

- The density permitted under the proposed MU-7A Zone District (4.0 FAR or 4.8 FAR for IZ developments) is not inconsistent with the density range envisioned for the Moderate Density Commercial FLUM designation under the relevant Framework Element guidance, and the MU-7 zones are specifically referenced in the Framework Element as being consistent with the FLUM's Moderate Density Commercial designation that applies to the Property.
- Redevelopment of the Property in accordance with MU-7A development standards, and requiring approval from the HPRB for development within the Anacostia Historic District, will yield a context-sensitive development that provides neighborhood-serving commercial uses and new housing and is compatible with the Historic District.
- Redevelopment of the Property with a mixed-use project that strengthens the retail mix and urban design quality of the Marion Barry Avenue, S.E. corridor will help advance the District's commercial revitalization goals for a designated Great Streets corridor, help support existing small businesses and attract new businesses, increase the District's tax base, and create new job opportunities for District residents.
- Consistent with prior decisions, the Commission acknowledges that a provision of the Zoning Regulations states that the MU-7 zones are medium density zones, and that this language is inconsistent with language in the Comprehensive Plan stating that the MU-7 zones are moderate density zones. The Commission is mindful of the directive of § 2 of the Zoning Act, which provides that the Zoning Regulations shall not be inconsistent with the Comprehensive Plan, and therefore believes that the language of the Comprehensive Plan is controlling in this case. *See also* Z.C. Order No. 22-19 at Conclusion of Law ¶ 4 (stating same).

(FF ¶¶ 18, 20, and 41; *see* 10-A DCMR § 227.11.)

Far Southeast/Southwest Area Element

9. The Commission concludes that the Map Amendment is not inconsistent with and furthers the policies of the Far Southeast/Southwest Area Element because:

- The Map Amendment will provide additional opportunities for housing development and potentially employment growth along a designated Great Streets corridor, helping to meet the housing needs of low- and moderate-income residents within the Planning Area, decrease the District's waitlist for affordable housing, and avoid displacement of low- and moderate-income families that are in jeopardy of displacement due to rising housing costs.
- The rezoning promotes growth along an arterial corridor near transit and other mixed-use development and will also facilitate, in addition to housing, new retail and service uses in the Planning Area and historic Anacostia.

(FF ¶¶ 19, 28, and 41; *see* 10-A DCMR §§ 1808.2, 1808.5, and 1808.7.)

Land Use Element

10. The Commission concludes that the Map Amendment is not inconsistent with the Land Use Element because:

- The Map Amendment supports the growth and revitalization of Marion Barry Avenue, S.E. into a transit-oriented, pedestrian-friendly commercial main street with new retail amenities that are supported by new and existing residential uses.
- The rezoning will facilitate infill development on the Property that will help achieve the District's housing goals and will be consistent with the Anacostia Historic District and result in development with a height and massing that is consistent with the surrounding context.

(FF ¶¶ 29 and 41; *see* 10-A DCMR §§ 307.14, 308.6, 310.7, 310.9, 310.10, 313.10, 310.17, 311.5, and 313.14.)

Transportation Element

11. The Commission concludes that the Map Amendment is not inconsistent with the Transportation Element because:

- The Map Amendment supports mixed-use, transit-oriented development immediately adjacent to a priority bus route along Marion Barry Avenue, S.E., promoting both transit use and walkability through active ground-floor uses and reconstruction of adjacent public space to DDOT standards.
- The increase in allowable density for new housing, particularly affordable housing, established by the new zoning will advance equitable access to transportation and discourage auto-oriented uses by facilitating redevelopment of the Property that replaces existing surface parking.
- Given the site's proximity to both the Anacostia Metro Station and Metrobus routes, the Map Amendment supports redevelopment of the Property to meet the expectations of equity in transportation accessibility.

(FF ¶¶ 30 and 41; *see* 10-A DCMR §§ 403.10, 403.13, 404.6, 405.7, and 411.5.)

Housing Element

12. The Commission concludes that the Map Amendment is not inconsistent with the Housing Element because:

- The Map Amendment facilitates redevelopment of an underutilized site on a designated Main Street Mixed-Use Corridor and D.C. Great Street with a new mixed-use project containing new housing and ground-level commercial uses, which will help the District in achieving its housing production targets and equity goals for the Far Southeast/Southwest Planning Area and help address citywide housing needs.
- In addition to increasing the supply of low- and moderately-priced housing, the additional market-rate housing facilitated by the proposed rezoning has the potential to increase the socioeconomic diversity of the Planning Area.

(FF ¶¶ 31 and 41; *see* 10-A DCMR §§ 503.3, 503.4, 503.5, 503.6, 503.11, 504.8, 504.9, 504.10, 504.13, 504.17, 504.19, 505.8, and 505.9.)

Environmental Protection Element

13. The Commission concludes that the Map Amendment is not inconsistent with the Environmental Protection Element because:

- The rezoning facilitates the redevelopment of a currently vacant, one-story building and surface parking that is entirely impervious and lacks any sustainable stormwater management with a new project that will be subject to the District's Green Building

Act, the DOEE's stormwater regulations, and site study and mitigation efforts, among other requirements.

- Redevelopment of the Property will help mitigate urban heat island impacts caused by the existing impervious condition of the site and will result in substantial improvements to the quality of the public space surrounding the Property, which will include improvements to street trees and implementation of sustainable landscape practices.

(FF ¶¶ 32 and 41; *see* 10-A DCMR §§ 603.6, 605.6, 605.7, 612.4, 613.6, and 616.3.)

Economic Development Element

14. The Commission concludes that the Map Amendment is not inconsistent with the Economic Development Element because:

- The Map Amendment will support new, neighborhood-serving retail and service uses that will not unduly impact the surrounding neighborhood in terms of noise, traffic, and loading and will support opportunities for local entrepreneurs.
- The new housing resulting from the rezoning will increase access to employment by permitting moderate density mixed-use development adjacent to a priority bus corridor that will connect residents to major employment areas within and around the District.

(FF ¶¶ 33 and 41; *see* 10-A DCMR §§ 708.8, 708.9, 78.10, 708.11, 713.5, and 718.10.)

Urban Design Element

15. The Commission concludes that the Map Amendment is not inconsistent with the Urban Design Element because the Map Amendment will facilitate the redevelopment the Property with a new mixed-use development with the potential to greatly enhance the urban design quality of the site and the Marion Barry Avenue, S.E. commercial corridor more broadly. (FF ¶¶ 34 and 41; *see* 10-A DCMR §§ 906.3, 908.3, 908.8, 909.5, 909.6, 909.8, 909.9, 909.10, and 918.4)

Historic Preservation Element

16. The Commission concludes that the Map Amendment is not inconsistent with the Historic Preservation Element because the Map Amendment will facilitate redevelopment of the Property, which is currently a detriment to the character of the Anacostia Historic District, with a new mixed-use project that will be subject to review and approval by the HPRB and this will be required to be consistent with the Historic District. (FF ¶¶ 35 and 41; *see* 10-A DCMR §§ 1008.5, 1013.3, 1014.9, and 1014.10.)

IZ Plus

17. The Commission concludes that IZ Plus should not be applied for the Map Amendment given that the Far Southeast/Southwest Planning Area well exceeds the Planning Area target for the provision of affordable housing, and the intent of IZ Plus is to produce more affordable housing, particularly in areas where there are relatively few affordable units. (FF ¶ 42.)

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

18. 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, the Commission must give “great weight” to the recommendations of OP.

19. The Commission concludes that OP's reports, which provided an in-depth analysis of the proposed MU-7A Zone District for the Property and its consistency with the Comprehensive Plan and advancement of Comprehensive Plan racial equity policies, are persuasive and concurs with OP's recommendation that the Property be rezoned to MU-7A, as discussed above. (FF ¶¶ 40-44.)
20. The Commission also concurs with OP's recommendation that the proposed Map Amendment not be subject to IZ Plus for the reasons discussed above. (FF ¶ 42.)

“GREAT WEIGHT” TO THE ANC 5F REPORT

21. 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, the Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public.
22. [. . .]

DECISION

In consideration of the record 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 |
|--------|--------|---------------|
| 5765 | 1015 | MU-4 to MU-7A |

On [_____,_____,] upon the motion of [_____,] as seconded by [_____,] the Zoning Commission took **PROPOSED ACTION** and **APPROVED** the Application by a vote of [---] ([_____,] to approve; third Mayoral appointee seat vacant, not voting).

On [_____._____.], upon the motion of [_____], as seconded by [_____], the Zoning Commission took **FINAL ACTION** and **APPROVED** the Application at its public meeting by a vote of [----] ([_____.] to approve; third Mayoral appointee seat vacant, not voting).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 24-03 shall become final and effective upon publication in the *D.C. Register*; that is on [_____, ____].