

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSIONER ORDER NO. 24-04

Z.C. CASE NO. 24-04

NL 1271 5TH ST, LLC

(Zoning Map Amendment @ Square 3591, Lot 3)

September [12], 2024

Pursuant to notice, at its public hearing on July 8, 2024, the Zoning Commission for the District of Columbia (the “**Commission**”) considered an application (the “**Application**”) by NL 1271 5TH ST, LLC (the “**Applicant**”) for approval of an amendment to the Zoning Map from the PDR-1 zone (the “**Existing Zone**”) to the MU-8B zone (the “**Map Amendment**”) for Lot 3 in Square 3591 (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 subsequent section references are made unless otherwise specified).¹

The Commission determined IZ Plus is appropriate for the Property. The Property shall be indicated with an “IZ+” symbol on the Zoning Map.

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**”) 5D, 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 Commission took proposed action and final action to approve the Application on July 8, 2024, and September [12], 2024, respectively.

NOTICE

3. On December 20, 2023, the Applicant mailed a Notice of Intent to file the Application to all property owners within 200 feet of the Property and to ANC 5D, as required by Subtitle Z §§ 304.5 and 304.6. (Exhibit [“**Ex.**”] 3I.)
4. On March 4, 2024, the Office of Zoning (“**OZ**”) sent copies of the Notice of Filing to:
 - The *D.C. Register*;
 - The Applicant’s land use counsel;
 - ANC 5D;
 - ANC Single Member District (“**SMD**”) 5D01;
 - Councilmember Zachary Parker, the Ward 5 Councilmember in whose Ward the Property is located;
 - Chairman and At-Large Members of the D.C. Council;
 - Office of the ANCs;
 - Office of Planning (“**OP**”);
 - District Department of Transportation (“**DDOT**”);
 - Department of Energy & Environment (“**DOEE**”);
 - Department of Buildings (“**DOB**”) General Counsel; and
 - Zoning Commission Lead Attorney.(Ex. 10.)
5. On May 14, 2024, OZ sent notice of the July 8, 2024 virtual public hearing to:
 - The Applicant’s land use counsel;
 - ANC 5D;
 - ANC SMD 5D01;
 - Councilmember Zachary Parker, the Ward 5 Councilmember;
 - Chairman and At-Large Members of the D.C. Council;
 - Office of the ANCs;
 - OP;
 - DDOT;
 - DOEE;
 - DOB General Counsel;
 - Zoning Commission Lead Attorney; and
 - Property owners within 200 feet of the Property.(Ex. 15-16.)
6. OZ published notice of the public hearing in the May 24, 2024 *District of Columbia Register* (71 DCR 6497 *et seq.*), as well as on the calendar on OZ’s website. (Ex. 14.)
7. The Applicant submitted evidence that it posted notice of the public hearing on the Property in accordance with Subtitle Z § 402.9 and maintained said notice in accordance with Subtitle Z § 402.10. (Ex. 17 and 23.)

THE PROPERTY

8. The Property is located at 1271 5th Street, N.E. within the Union Market District on the block bounded by 5th Street, N.E. to the west, 6th Street, N.E. to the east, Penn Street, N.E. to the north, and Morse Street, N.E. to the south. The Property is comprised of approximately 13,634 square feet of land area in the PDR-1 zone. (Ex. 3.)
9. The Property is currently improved with a two-story commercial structure with a fitness center and limited other uses. The Property is mid-block with frontage only on 5th Street, N.E. with vehicular access via only a central, private alley system (the “**Square 3591 Alley**”) accessible from Morse Street, N.E. to the south of the Property. (Ex. 3.)
10. The Property is designated Mixed Use (High Density Commercial/Medium Density Residential/Production, Distribution, and Repair [“**PDR**”]) on the Future Land Use Map. The Property is within a Multi-Neighborhood Center on the Generalized Policy Map. (Ex. 3.)
11. The Property is located within the boundary of the Florida Avenue Market Study Small Area Plan, which was approved by the D.C. Council October 6, 2009 per R18-0257 (“**SAP**”). The SAP designates the Property as appropriate for a mix of uses at a “Medium-High” density, which corresponds to a building envelope consistent with that sought by this Application. Other applicable public policies include the Ward 5 Works Industrial Land Use Study (“**W5W Study**”), DDOT’s MoveDC plan (“**MoveDC**”), and the Mayor’s 2019 Housing Order (“**Housing Order**”). (Ex. 3.)
12. The Property is the only lot in Square 3591 that has not previously been rezoned from the underlying PDR-1 zone. All other lots in Square 3591 have been rezoned to the C-3-C zone district (now MU-9) in relation to approved Planned Unit Developments (“**PUDs**”) and Zoning Map amendments:
 - Immediately to the south of the Property is a high-density, mixed-use building (“**550 Morse**”) with ground floor commercial uses and upper-story residential uses and approved as part of a PUD and related Zoning Map amendment by Z.C. Order No. 16-05. The 550 Morse PUD and related Zoning Map amendment amended the zoning for that site to the C-3-C zone district, allowing 550 Morse to reach a maximum height of 120 feet and achieve a floor area ratio (“**FAR**”) of 8.0. The north façade of 550 Morse does not have windows on the lower eight (8) floors of that building façade adjacent to the Property because it was constructed with the expectation that the Property would be built up to the shared lot line between the Property and 550 Morse and that the Property would likely be the subject of a PUD and Zoning Map amendment allowing for a 120 foot building height. As a result, the future development of the Property up to the MU-8B-maximum height of 70 feet will not interfere with any windows of 550 Morse.
 - Immediately to the north and east of the Property across the Square 3591 Alley is a development site approved for two high-density, mixed-use buildings with ground floor commercial uses and upper-story residential uses and approved as part of a

PUD and related Zoning Map amendment by Z.C. Order No. 15-24B (“**JBGS/Gallaudet Parcel 3**”). JBGS/Gallaudet Parcel 3 is approved for a maximum height of 120 feet and an FAR of 6.9. Like 550 Morse, the JBGS/Gallaudet Parcel 3 is in the C-3-C zone district pursuant to the approved PUD and related Zoning Map amendment. Plans for the JBGS/Gallaudet Parcel 3 building approved by the Zoning Commission do not contemplate any windows on the south elevation of JBGS/Gallaudet Parcel 3 adjacent to the Property because JBGS/Gallaudet Parcel 3 was also designed with the expectation that the Property would be built up to the shared lot line between the Property and JBGS/Gallaudet Parcel 3 and that the Property would likely be the subject of a PUD and Zoning Map amendment allowing for a 120 foot building height. Based on the maximum 70-foot building height permitted on the Property following the Map Amendment, JBGS/Gallaudet Parcel 3 could add windows to the uppermost 50 feet of the south façade of that building.

13. Opposite 5th Street, N.E. of the Property are two-story commercial buildings at the heart of the Union Market Historic District, all of which are in the PDR-1 zone. The Applicant’s ownership entity’s headquarters office is located in this row of commercial buildings along 5th Street, N.E. directly across 5th Street, N.E. from the Property. (Ex. 3.)

CURRENT ZONING

14. The Property is currently zoned PDR-1. (Ex. 2A2.)
15. The Production, Distribution, and Repair (PDR) zones provide for the following:
 - Heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive zones; and
 - Areas suitable for development as heavy industrial sites, but at the same time protect those industrial developments from the intrusion of non-industrial uses that impede the full utilization of properly located industrial sites. (Subtitle J § 101.1.)
16. In particular, the PDR-1 zone is intended to permit moderate-density commercial and PDR activities employing a large workforce and requiring some heavy machinery under controls that minimize any adverse impacts on adjacent, more restrictive zones. (Subtitle J § 101.3.)
17. The PDR-1 zone imposes the following limits and permissions for matter of right development:
 - A maximum density of 3.5 FAR for certain PDR use categories and, and 2.0 FAR for all other uses permitted in the PDR-1 zone; (Subtitle J § 201.1.)
 - A maximum building height of 50 feet with no limit on the number of stories; and (Subtitle J § 203.2.)
 - A maximum penthouse height of 12 feet and one story, except 15 feet and a second story are permitted for penthouse mechanical space. (Subtitle J § 205.1.)

18. The PDR-1 zone does not permit most residential uses. (Subtitle U § 801.1(w).)

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

Equity and the Comprehensive Plan

19. 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.
20. In applying the standard of review applicable to the Map Amendment, the CP requires the Commission to do so through a racial equity lens. (CP §§ 2501.4-2501.6, 2501.8.) Consideration of equity is intended to be based on the policies of the CP, and part of the Commission’s considerations of whether the Map Amendment is “not inconsistent” with the CP, rather than a separate determination about a zoning action’s equitable impact.
21. 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.)
22. 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.) In addition, the CP Implementation Element suggests preparing and implementing tools to use as a part of the Commission’s evaluation process. Consistent with Comprehensive Plan guidance, the Commission utilizes a Racial Equity Tool in evaluating zoning actions through a racial equity lens; the Commission released a revised Tool on February 3, 2023. The Tool requires submissions from applicants and OP analyzing the zoning action’s consistency with the Citywide and Area Elements of the Comprehensive Plan, and Small Area Plans, if applicable; a submission from applicants including information about their community outreach and engagement efforts regarding the zoning action; and a submission from OP including disaggregated race and ethnicity data for the Planning Area affected by the zoning action. The Racial Equity Tool emphasizes community outreach, and is intended to facilitate proactive and meaningful engagement with the community most likely to be affected by the proposed zoning action to gain insight on negative conditions that may exist in the community, particularly those that are a result of past and present discrimination,

develop an understanding of community priorities, and solicit input on potential positive and negative outcomes of the proposed zoning action.

Generalized Policy Map (“GPM”)

23. The GPM designates the Property as a Multi-Neighborhood Center, which the Framework Element describes as: “[C]ontaining many of the same activities as Neighborhood Commercial Centers, but in greater depth and variety. The area served by a Multi-Neighborhood Center is typically one to three miles. These centers are generally found at major intersections and along key transit routes. These centers might include supermarkets, general merchandise stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers also may include residential and office space for small businesses, although their primary function remains retail trade.... Mixed-use infill development at these centers should be encouraged to provide new retail and service uses, and additional housing and job opportunities. Infrastructure improvements to allow safe access by all transportation modes to these centers are also important for increasing equitable access.” (CP §§ 225.17-225.18.)

Future Land Use Map (the “FLUM”)

24. The CP’s FLUM designates the Property as Mixed Use (High Density Commercial/Medium Density Residential/PDR). That designation is defined as follows:
- High Density Commercial: “This designation is used to define the central employment district, other major office centers, and other commercial areas with the greatest scale and intensity of use in the District. Office and mixed office/retail buildings with densities greater than a FAR of 6.0 are the predominant use, although high-rise residential and many lower scale buildings (including historic buildings) are interspersed. The MU-9, D-3, and D-6 Zone Districts are consistent with the High Density Commercial category, and other zones may also apply.” (CP § 227.13.)
 - Medium Density Residential: “This designation is used to define neighborhoods or areas generally, but not exclusively, suited for mid-rise apartment buildings. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. Pockets of low and moderate density housing may exist within these areas. Density typically ranges from 1.8 to 4.0 FAR, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The RA-3 Zone District is consistent with the Medium Density Residential category, and other zones may also apply.” (CP § 227.7.)
 - PDR: “[The PDR] category is used to define areas characterized by manufacturing, warehousing, wholesale and distribution centers, transportation services, food services, printers and publishers, tourism support services, and commercial, municipal, and utility activities which may require substantial buffering from housing and other noise-, air pollution- and light-sensitive uses. This category is also used to denote railroad rights-of-way, switching and maintenance yards, bus garages, and uses related to the movement of freight, such as truck terminals. It is important to

ensure that adequate, appropriate land is provided for these PDR uses that are critical to supporting the retail, transportation and service needs of the city. A variety of zone districts apply within PDR areas, recognizing the different intensities of use and impacts generated by various PDR activities. The corresponding zone category is PDR, and the present density and height limits set in these districts are expected to remain for the foreseeable future. Other districts may also apply where the PDR map designation is striped with other land uses. In an area striped to include PDR, development must include PDR space, and on sites containing existing PDR space the amount of PDR space on-site should be substantially preserved.” (CP § 227.14.)

- **Mixed Use:** The FLUM indicates areas where the mixing of two or more land uses is encouraged, and the mixed-use category generally applies in established, pedestrian-oriented commercial areas, commercial corridors where more housing is desired in the future, large sites where opportunities for multiple uses exist, and development that includes residential uses, particularly affordable housing. (CP § 227.20.) The general density and intensity of development within a given Mixed Use area is determined by the specific mix of uses shown. The CP Area Elements may also provide detail on the specific mix of uses envisioned. (CP § 227.21.) The Mixed Use designation is intended primarily for larger areas where no single use predominates today, or areas where multiple uses are specifically encouraged in the future. (CP § 227.22.) A variety of zoning designations are used in Mixed Use areas, depending on the combination of uses, densities, and intensities. (CP § 227.23.)

Upper Northeast Area Element

25. The Property is located within the Upper Northeast Area Element of the Comprehensive Plan. The Upper Northeast Planning Area encompasses the 8.7 square miles and includes about two-thirds of the District’s northeastern quadrant. The Planning Area’s western boundary is formed by North Capitol Street (north of Rhode Island Avenue) and the CSX railroad tracks (south of Rhode Island Avenue), and its southern boundary is formed by Florida Avenue, Benning Road, and the Anacostia waterfront area. The northern/eastern border is Eastern Avenue at the District of Columbia line. (CP § 2400.1.) According to the CP, the mix of uses in Upper Northeast is particularly diverse compared to other parts of Washington, DC. (CP § 2400.3.) Upper Northeast is also home to the “historic Union Market” considered the District’s fresh produce district, as well as dozens of small shops and local businesses. (CP § 2400.4.)

Small Area Plan

26. The Property is located within the boundary of the SAP, which was adopted by resolution of the D.C. Council in October 2009. The purpose of the SAP is intended to “provide[] a framework for the strategic redevelopment of the [Union Market] Study Area as a vibrant, mixed-use neighborhood that protects the look and feel of the historic retail markets, while also providing a basis for new development and rehabilitation.” (SAP at 12.)
27. The SAP Plan includes intensity and use maps. The intensity map shows the Property as appropriate for “Medium-High” density as a matter-of-right, specifying a height of 70 feet

and a FAR of 5.0. The use map shows the Property as “Pedestrian Active” with entertainment, restaurant, or retail uses. (SAP at 52, 55-58, 61, 92.)

II. THE APPLICATION

PROPOSED ZONING

28. The Application proposes to rezone the Property in its entirety from the PDR-1 zone to the MU-8B zone. (Ex. 3.)
29. The MU-8 zones are specifically intended to:
 - Permit medium-density mixed-use development with a focus on employment and residential use;
 - Be located in uptown locations, where a large component of development will be office-retail and other non-residential uses; and
 - Be located in or near the Central Employment Area, on arterial streets, in uptown and regional centers, and at rapid transit stops. (Subtitle G § 101.13.)
30. As a matter of right, the MU-8B zone permits:
 - A maximum FAR of 5.0 (6.0 for IZ developments), of which up to 4.0 can be devoted to non-residential use; (Subtitle G § 201.1.)
 - A maximum building height of 70 feet with no limit on the number of stories; (Subtitle G § 203.2.)
 - A maximum penthouse height of 20 feet with a second story permitted for penthouse mechanical space; (Subtitle G § 205.1.) and
 - A maximum lot occupancy of 100%. (Subtitle G § 210.1.)

APPLICANT’S JUSTIFICATION OF RELIEF

Not Inconsistent with the CP

31. The Application stated that the Map Amendment would not be inconsistent with the CP nor would it be inconsistent with other adopted public policies and active programs applicable to the Property, as detailed below in Findings of Fact (“**FF**”) Nos. 32-45. (Ex. 3, 3E, 12, 26.)
32. Overall, the Property is underutilized and currently improved with a two-story building that does not permit residential uses. The Map Amendment would permit additional height and additional density at the Property, thus enabling new development with expanded opportunities in the upper levels. Moreover, the Map Amendment is not inconsistent with the District’s racial equity objectives. (Ex. 3, 3E.)
33. FLUM: The Map Amendment would not be inconsistent with the Property’s FLUM designation of Mixed Use (High Density Commercial/Medium Density Residential/PDR) because:

- The High Density Commercial category contemplates density greater than 6.0 FAR and zones including the MU-9 although expressly notes that other zones may apply; (CP § 227.13.)
- The Medium Density Residential category contemplates buildings that range in density from 1.8 to 4.0, with greater density possible when complying with IZ; (CP § 227.7.)
- The PDR category includes areas characterized by manufacturing, warehousing, wholesale and distribution centers, and notes that areas striped to include the PDR designation with other land uses may be eligible for other zones; (CP § 227.14.)
- The MU-8B zone is specifically intended to permit the mixed-use development contemplated by the FLUM;
- The density permissions of the MU-8B zone fall within the density ranges recommended by the Property's FLUM designations; and
- The Mixed-Use designation indicates where the mixing of two or more land uses is especially encouraged, and the Map Amendment would provide opportunities to integrate multiple uses at the Property. (CP § 227.20.) (Ex. 3.)

34. GPM: The Map Amendment would not be inconsistent with the Property's GPM designation as a Multi-Neighborhood Center because:

- The Map Amendment enhances the Property's designation as part of a Multi-Neighborhood Center, which is generally found at major intersections, such as that created by the intersection of New York Avenue, N.E. and Florida Avenue, N.E. to the west of the Union Market District, and which include a large depth and variety of commercial uses. The MU-8B zone's permitted mix of uses, maximum height, and density are all not inconsistent with the GPM's Multi-Neighborhood Center designation for the Property within the Florida Avenue Market/Union Market District; and
- The GPM is silent as to the FLUM's encouraged PDR uses. The definition of "Multi-Neighborhood Center" does contemplate a depth and variety of commercial uses and provides that the ground floor is to be used "primarily for retail trade." (Ex. 3, 3E.)

35. Upper Northeast Area Element: The Applicant asserted that the Map Amendment is not inconsistent with the policy objectives of the Upper Northeast Area Element, including those applicable to the Union Market District specifically. The Application facilitates new mixed-use development on an infill development site near Florida Avenue, N.E. and New York Avenue, N.E. The Application provides for new growth in Ward 5 on an infill site that is located away from the predominantly residential Upper Northeast neighborhoods and therefore more readily allows for the preservation of those neighborhoods. The Application also improves economic development, business, and linkages to job opportunities and pedestrian-oriented retail near Florida Avenue, N.E. and Metrorail in a manner that does not diminish the "area's ability to function as an industrial district" given that no industrial uses are present on the Property today and all adjacent properties have been rezoned for residential uses. Finally, the Application provides for uses that are environmentally improving relative to more intense PDR uses allowed as a matter-of-right on the Property and reduces emissions and other impacts from PDR uses by prohibiting PDR uses. (Ex. 3, 3E; CP §§ 2408.2, 2408.7, 2408.9, 2409.1, 2411.7, 2413.6, 2416.4.)

36. Land Use Element: The Applicant provided evidence that the Application balances the numerous and sometimes competing objectives of the Land Use Element. The Applicant also cited to the CP which provides that the Land Use Element should be given the greatest weight in the Commission’s assessment of the Application’s consistency with the CP. The Application’s permitted uses and density advance the objectives of this Element. The Application makes possible a future pedestrian-oriented development. No residents are displaced as a result of the Application. The Application is not inconsistent with any of the applicable PDR-retention related objectives of the Land Use Element or Economic Development Element given the Property’s inclusion within the SAP, the CP’s deference to the SAP specifically on issues relating to PDR policies and the express language of the SAP characterizing the Property as appropriate for mixed use development. (Ex. 3, 3E; CP §§ 305.7, 305.8, 307.13, 307.14, 308.6, 310.7, 310.9, 313.9, 313.10, 313.14-313.16, 316.2-316.8.)
37. Transportation Element and MoveDC: The Application makes possible within the Union Market District overall future pedestrian, public space, and parking optimization objectives of the Transportation Element. The Application was ultimately accompanied by a robust analysis and TDM measures as part of a companion case for special exception relief from the Board of Zoning Adjustment. In addition to the Transportation Element, in December 2021 DDOT adopted an update to its District-wide long-range transportation plan called MoveDC. MoveDC identifies seven broad goals of safety, equity, mobility, project delivery, management and operations, sustainability, and enjoyable spaces along with nearly twenty policies and three-dozen “strategies.” The Applicant provided evidence that the Map Amendment is not inconsistent with the MoveDC Plan. (Ex. 3, 3E; CP §§ 403.8, 403.10, 403.13, 403.14, 404.6, 406.2, 409.7, 410.10, 411.5, 411.8, 415.10, 417.15, 427.3.)
38. Housing Element and Housing Order: The Map Amendment is not inconsistent with the policies of the Housing Element because the Map Amendment increases the permitted residential density at the Property, thus creating new opportunities for housing and affordable housing. The Application is an IZ-Plus Zoning Map amendment that also has the potential to provide HPTF funding for habitable penthouse space. Although the Applicant does not anticipate developing the Property with residential uses, the Application does make such uses possible where they are not permitted today and if the Property were to be developed with residential uses any time in the future, the development would be subject to a requirement to reserve 20% of its residential gross floor area for income-restricted affordable housing. (Ex. 3, 3E; CP §§ 504.10, 504.15, 506.11.)
39. Environmental Protection Element: The Application advances climate resiliency, stormwater, landscaping, water efficiency, renewable energy, and energy efficiency objectives of the CP. The project that proceeds due to the approval of the Application will meet the District’s enhanced sustainability requirements and include resiliency, stormwater, landscaping and water and energy efficient components at a minimum. (Ex. 3, 3E; CP §§ 603.5, 603.6, 615.3, 615.4, 616.3, 618.3, 620.14, 623.4, 623.8, 628.4.)
40. Economic Development Element: The Map Amendment is not inconsistent with the policies of the Economic Development Element. The Application permits a change to the

uses for the Property to make possible a greater mix of retail, service, eating and drinking uses, and lodging uses than is possible under the Existing Zone. As a result, the Map Amendment helps revitalize the underutilized Property to become a thriving element within this unique area and add entry-level and salaried jobs. (Ex. 3, 3E; CP §§ 7013.13, 703.14, 708.8, 709.5, 709.6, 709.7, 709.8, 709.12, 709.13, 711.7, 713.5, 713.9, 713.12, 714.11, 717.10, 717.14, 717.15, 717.16, 717.17, 718.5.)

41. Urban Design Element: The Application’s zoning supports future development design that advances the CP’s design objectives on scales ranging from massing, orientation, and siting to the streetscape, placemaking, and pedestrian-level façade detailing. The Application and the future development that it facilitates will allow for an addition to the diversity of open spaces in the Union Market District, including the linear interconnected series of pedestrianized areas along 5th Street, N.E. (Ex. 3, 3E; CP §§ 903.9, 903.14, 904.4, 904.6, 908.3, 908.4, 908.5, 908.6, 908.8, 908.9, 908.10, 909.5, 909.6, 909.8, 909.9, 909.10, 913.8, 913.10, 913.12, 917.11, 918.3, 918.4, 918.5, 918.6, 918.9, 919.4, 919.6, 919.8, 919.10.)
42. Community Services and Facilities Element: The Application continues the incremental advancement of community-serving facilities in Ward 5, and the Property is served by adequate infrastructure, which will be updated as necessary as part of the development of the Property. (Ex. 3, 3E; CP §§ 1103.13.)
43. SAP: The Application advances the SAP’s overarching goals and the eight-point vision statement for the future of the Union Market District, including the specific recommendations for 5th Street, N.E. The Application is consistent with the “Zoning and Intensity Plan” designation for the Property as appropriate for “medium – high density” development, which provides for a “matter of right” density at a maximum height of 70 feet and a maximum density of 5.0. The SAP’s “Illustrative” (i.e., land use) map identifies the Property as appropriate for mixed-use development including services, entertainment, and/or restaurant uses, consistent with the Application’s permitted uses. (Ex. 3, 3E.)
44. W5W Study: The Application advances the W5W Study’s overarching “Vision” and many of the eight specific “Goals”. The Vision seeks “a cutting-edge and sustainable production, distribution, and repair industry that diversifies the District’s economy, serves as a hub for low-barrier employment, complements and enhances the integrity of neighborhoods, and provides opportunities for arts, recreation and other community amenities.” The Application provides the zoning infrastructure for complementary community amenities uses. The Application continues the Union Market District’s diversification of the District’s economy, and provides for uses that create inclusive employment opportunities and other amenities. The Application helps “Create great places, improve physical appearance and enhance connectivity” per the W5W Study. (Ex. 3, 3E.)
45. Racial Equity: The Application advances many of the CP’s racial equity goals through its access to retail, employment, and economic development opportunities, lack of displacement of existing residents, commitment to IZ Plus and obligation to make a penthouse-related affordable housing contribution. The Application also follows a robust and ongoing community engagement process that builds on years of work by the

Applicant's affiliates in the surrounding community to develop partnerships and provide multi-cultural events, dedicated community space, employment and career pathways, and economic development opportunities. (Ex. 3, 3E.)

46. The Application included information regarding the Applicant's engagement with ANC 5D and outreach efforts to the broader community. (Ex. 3, 3E.)

Potential Inconsistencies with the CP

47. The Applicant acknowledged that the Map Amendment may be viewed as being inconsistent with the FLUM, given the PDR "stripe" for the Property on that map, whereas the MU-8B zone does not permit the most intense PDR uses. The inclusion of both a residential use designation and a PDR designation on the FLUM is inherently in tension because residential zones preclude PDR uses and PDR zones prohibit virtually all residential uses. However, the Land Use Element provides language that helps resolve any inconsistency with the FLUM for the proposed amendment from the PDR-1 zone to the MU-8B zone. The Land Use Element provides that policies relative to retention of PDR areas are inapplicable to areas subject to any Small Area Plan, including the SAP. *See* 10-A DCMR § 316.2. Furthermore, because the Property is subject to the SAP specifically, the SAP controls over the CP with respect to PDR designations on the FLUM. *Id.* § 316.4. Finally, the Property is exactly the type of lot designated as PDR on the FLUM that is appropriate for rezoning from a PDR zone to a non-PDR zone. The Land Use Element provides that the Commission may "[a]llow the rezoning of industrial land for nonindustrial purposes only when the land can no longer viably support industrial or PDR activities is located such that industry cannot co-exist adequately with adjacent existing uses." *Id.* § 316.7. Given the Property's size and adjacency to high density mixed-use development, the Property cannot viably support industrial or PDR activities (e.g., the PDR zone setback requirements of the Zoning Regulations would reduce the buildable area of the Property to less than 5,000 square feet (or well less than half of the lot area of the Property), too small for nearly any true PDR use and in an oddly configured and situated building). The Applicant also provided an explanation of the status of the tenants on the Property and evidence that no PDR uses occupy the Property at present. (Ex. 3, 3E, and 12.)

Promotion of Health, Safety, Morals, Convenience, Order, Prosperity, and General Welfare

48. The Applicant asserted that the Map Amendment furthers the public health, safety, and general welfare of the District. The Application's modest density and height maximums protect the light and air objectives of the Zoning Act. The Application also helps prevent the overcrowding of land by adding commercial density outside of the Downtown core of the District, which is a distribution of commercial uses that brings the benefits of commercial growth to Ward 5 in a manner that creates conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities for the Union Market District and all of Ward 5. The zoning designation that would be approved through approval of the Application would allow for a mix of uses and permitted density of development that would tend to further

the economic goals of the District and Ward 5 in a manner that permits the efficient supply of public services, such as utilities and emergency services. Finally, the Application is made with consideration of the MU zones' suitability for the uses permitted therein with a view toward encouraging the stability of the Union Market neighborhood and the stability of land values in that neighborhood and surrounding neighborhoods. Future development of the neighborhood protects against declining land values, which was the Zoning Act's original intent in stabilizing land values. (Ex. 3.)

Public Hearing Testimony

49. At the July 8, 2024 public hearing, the Applicant presented its case, including testimony from Reynolds Allen, as a representative of the Applicant, and Shane Dettman, Urban Planner Goulston & Storrs, who was proffered and qualified as an expert witness in urban planning. (Tr. from July 8, 2024 hearing at pp. 11-22, 25-39.)

III. RESPONSES TO THE APPLICATION

OP REPORTS AND TESTIMONY

50. OP submitted a report dated April 1, 2024, recommending the Commission set down the Application for a public hearing (the “**OP Setdown Report**”) and concluding that the Map Amendment is not inconsistent with the CP because:
- GPM: The GPM designates the subject property as a Multi-Neighborhood Center, a designation which contemplates a depth and variety of commercial uses, provides that the ground floor is to be used primarily for retail trade, and does not contemplate PDR uses;
 - FLUM: The FLUM is to be interpreted in conjunction with applicable guidance from the text of the CP, including the Citywide Elements, such that the Map Amendment is not inconsistent with the FLUM;
 - SAP: Although the SAP provides that developers wishing to maximize the height and density potential of the FLUM would have to seek maximum height and density through a PUD process, the SAP also provides guidance as to what would be “matter of right” development, which for this Property is consistent with the Map Amendment – a height of 70 feet and an FAR of 5.0 – and that the Map Amendment to MU-8B is an appropriate process to attain matter of right rezoning;
 - W5W Study: The W5W Study encourages inclusive job growth, offering residents a range of employment opportunities, well-paid jobs with low entry barriers and career ladder potential, creating great places, improving physical appearance, and enhancing connectivity;
 - Land Use Element: The Property is located on the edge of the Central Employment Area, which is intended to include the greatest concentration of high-density mixed-use, including commercial/retail and hotel uses, consistent with the Application, which also increases the possibility for density on currently underutilized land and in a manner compatible with the surrounding Multi-Neighborhood Center and the medium- to high-

density scale of the SAP area that takes development pressure away from lower-density neighborhoods;

- Transportation Element: The Transportation Element supports transit-oriented development and equitable access to transportation options and opportunities, and the MU-8B zone adds density and uses in the Union Market District that will ultimately help justify adding transit investments and a connection to the NoMA Metrorail station;
- Housing Element: The Application permits housing consistent with the CP and SAP and with IZ-Plus, because the Application also has the potential to provide Housing Production Trust Fund funding for habitable penthouse space, and because the request avoids any direct displacement of existing residents as there are currently none on the Property;
- Economic Development Element: The Application allows a level of density commensurate with CP direction and development on the Property that would assist with creating employment opportunities close to transit options and expand commercial opportunities in a way that avoids “unreasonable and unexpected traffic, parking, litter, shadow, view obstruction, odor, noise, and vibration impacts” on nearby residences and because the Application also increases development potential in a commercial node and away from low intensity residential areas;
- Urban Design Element: The Map Amendment would be consistent with the block-scale massing, design, Height Act-limited/horizontal urbanism and streetscape principles in Washington, D.C. and because the request advances the streetscape objectives of the CP at a scale complementary to adjacent development and facilitating transitions in mass, scale, and character relative to the historic district across 5th Street, N.E.;
- Upper Northeast Area Element: The requested MU-8B zone adds density and permits additional uses on an underutilized lot in a manner consistent with the FLUM, GPM, and SAP when all three are taken together.

51. Racial Equity/Disaggregated Race and Ethnicity Data: The OP Setdown Report provides a racial equity analysis, identifying disaggregated census data and providing trends over time:

- The Upper Northeast Planning Area has a majority Black population, and the Black population decreased from the earlier time period to the later one, reflective of a District-wide trend over those time periods;
- The median income of the Upper Northeast Planning Area was below that of the District as a whole. The planning area median income, however, tracked with the citywide trend and increased significantly over the ten (10)-year period, although those gains were not distributed evenly across racial groups. The median income of White and Asian residents saw significant increases, while other groups saw more modest gains, or, in the case of those identifying as two or more races, a decrease.
- More residents in the Upper Northeast Planning Area own their own home than residents of the District as a whole. The homeownership rate in the Planning Area remained virtually unchanged or decreased slightly over the two survey periods, while the overall rate in the District increased slightly. The homeownership rate among Black households in the Planning Area decreased, while other racial groups, such as

American Indian and Alaskan Native, and Asian, saw dramatic increases in the homeownership rate.

- The analysis of disaggregated data regarding race and ethnicity suggests that there are disparities in the planning area, particularly for Black or African American residents who make up the largest share of the population.

52. Racial Equity/Evaluation Criteria: The OP Setdown Report also examines the Application against a half-dozen equity criteria:

- Direct Displacement: The proposed Map Amendment would not result in direct displacement of any residents. The rezoning may result in the displacement of the existing business(es) operating on the Property.
- Indirect Displacement: OP does not anticipate the indirect displacement of residents and the prevailing community culture as a result of this zoning action.
- Housing: The rezoning to MU-8B would permit residential uses whereas the current PDR-1 does not. Any future residential uses for the rezoned property would be subject to IZ Plus requirements. Even if housing is not provided on the Property, there is a significant amount of new housing in the immediate vicinity, and a non-residential use like lodging would provide opportunities for new jobs for people at a wide range of skill levels, which could help some cost burdened households in the Planning Area.
- Physical: The action could result in new stormwater infrastructure to manage runoff, improvements to pedestrian and bicycle infrastructure on existing streets and streetscape improvements to meet the Union Market Streetscape Design Guidelines.
- Access to Opportunity: Future development of the Property could include new commercial spaces or lodging use that would provide new job opportunities, including opportunities for entrepreneurs to establish new businesses or expand existing businesses, at a site that is conveniently located to public transit options, including the NoMa Metrorail station.
- Community: No community concerns relating to the Map Amendment or the future development of the Property were identified.

Potential CP Inconsistencies

53. The OP Setdown Report acknowledges that potential inconsistencies arise mainly related to the provision of housing, and the provision of PDR uses on this site. However, the report finds that inconsistency would be mitigated the zone permitting the density and height anticipated by the FLUM and specifically called for in an otherwise by-right scenario in the SAP.
54. OP submitted a hearing report dated June 28, 2024, (the “**OP Hearing Report**” and, together with the OP Setdown Report, the “**OP Reports**”), that largely reiterated the OP Setdown Report’s conclusions, including OP’s recommendation that the Map Amendment would be appropriate for IZ Plus, and recommended approval of the Map Amendment. (Ex. 20.)

55. At the July 8, 2024 public hearing, OP reiterated its support for the Application as detailed in its reports. (Tr. from July 15, 2024, hearing at pp. 40-42.)

DDOT REPORT

56. DDOT submitted a June 28, 2024 report (the “**DDOT Report**”), stating that it had no objection to the Application because the Application would support nearby transit and generate additional foot traffic to support nearby businesses, consistent with DDOT’s approach to infill sites which should be dense, compact, transit oriented, and improve the public realm. (Ex. 21.) DDOT did not provide testimony at the July 8, 2024 public hearing.

ANC REPORTS AND TESTIMONY

57. On March 13, 2024, ANC 5D submitted a letter in support (“**ANC 5D Letter**”) indicating the ANC’s vote of 7-0-0 in support of the Map Amendment. (Ex. 18.)
58. No representative of the ANC spoke at the July 8, 2024 public hearing. (Tr. from July 8, 2024, hearing at p. 44.)

NATIONAL CAPITAL PLANNING COMMISSION (“NCPC”)

59. The Commission referred the Application to NCPC on July 9, 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 6-6401.05).) (Ex. 28.)
60. On August 28, 2024, NCPC filed a letter stating that the proposed Map Amendment is consistent with the Height Act, would not cause adverse impacts on federal property or other federal interests, applies to an area located outside the boundary of the L’Enfant City, and is therefore exempt from NCPC review. (Ex. 29.)

LETTERS OF SUPPORT

61. The Commission received a letter in support of the Map Amendment from Maggie Michael, who owns a business currently located on the Property. Ms. Michael noted that her lease has been extended and that the Applicant’s affiliates have provided gallery space elsewhere in the Union Market District and have a history of creating places for small businesses to emerge and thrive. (Ex. 24.)
62. The Commission also received a letter in support of the Map Amendment from Kent Robinson, who also owns a business currently located on the Property. Mr. Robinson also noted that his business’s lease has been extended for several years before construction on the Property and that the Applicant’s affiliates have a history of creating places for small businesses to emerge and thrive. (Ex. 25.)

CONCLUSIONS OF LAW

1. Section 1 of the Zoning Act of 1938 (effective June 20, 1938, as amended, 52 Stat. 797 ch. 534; 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 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.
3. The Commission must ensure that the Zoning Map, and all amendments to it, are “not inconsistent” with the CP pursuant to § 492(b)(1) of the District of Columbia Home Rule Act. (§ 2 of the Zoning Act; D.C. Official Code § 6-641.02.) Subtitle X § 500.3 incorporates this intent to the Zoning Regulations by requiring that map amendments be “not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.”

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

4. The Commission concludes, based on the filings in the record, including OP’s Reports, and the testimony from the public hearing, that the Map Amendment from the existing PDR-1 zone to the MU-8B zone is not inconsistent with the CP, including its maps and written elements, and advances a number of CP policies as discussed below.
5. 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 Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1034 (D.C. 2016).) With respect to this Map Amendment, the Commission concludes that any inconsistencies with CP policies, including policies that support mitigating the transition in density and increasing the amount of affordable housing in transit-oriented developments or on property owned by District agencies, are outweighed by the Map Amendment’s overall consistency with the CP. The Map Amendment would be consistent with the CP Maps and Citywide and Upper Northeast Area Element policies, which support, among other things,

increasing density to permit more mixed-use development, including economic development, on underutilized property that is in proximity to transit. (FF 31-47, 50-54.)

Racial Equity

6. The Commission concludes that the Map Amendment is not inconsistent with the CP when evaluated through a racial equity lens. The Commission reaches this conclusion based on the case record and the racial equity analyses provided by (a) the Applicant, inclusive of its community outreach and engagement information, and (b) OP, inclusive of the disaggregated race and ethnicity data for the Upper Northeast Planning Area in the OP Reports. (FF 31-47, 50-54.) The racial equity analyses provided by the Applicant and OP address the components of the Commission's Racial Equity Tool, so the Commission concludes that the Map Amendment furthers CP racial equity goals regarding housing, physical improvements, access to opportunities, and community outreach. Notwithstanding that the Applicant does not anticipate constructing new housing on the Property, the Map Amendment does impose IZ Plus requirements on a site that does not permit any meaningful residential uses today and makes possible future development of the Property that may contribute to affordable housing in the District via a penthouse-related affordable housing payment. From a racial equity perspective, the Map Amendment does not displace any residents because there are none on site today. The zoning action does have the potential to displace business tenants of the Property. However, those concerns are mitigated by the tenants' support on the record for the Map Amendment. Overall, the Application is not inconsistent with the CP's racial equity considerations.

GPM

7. The Commission concludes that the Map Amendment is not inconsistent with the GPM's designation of the Property as a Multi-Neighborhood Center because the Property is located near the major intersections of Florida Avenue, N.E. and New York Avenue, N.E. and because of the mix of uses permitted in the MU-8B zone. (FF 34, 50.)

FLUM

8. The Commission concludes that the Map Amendment is not inconsistent with the FLUM's designation of the Property as Mixed-Use Medium Density Residential, High Density Commercial, and PDR. The Map Amendment to the MU-8B zone provides for increased density on a site that is underutilized and would facilitate development with housing, including more affordable housing, notwithstanding such use is not currently the Applicant's stated intent for the Property. Notably, the Map Amendment does not seek the maximum amount of density contemplated on the FLUM. The Property's High Density Commercial designations contemplates a density in excess of 6.0 FAR for the Property with greater density permitted when complying with Inclusionary Zoning. The maximum FAR allowed under the proposed MU-8B zone of 5.0 or 6.0 with Inclusionary Zoning falls slightly below or at the maximum range. Although the FLUM includes a PDR use among the mix of identified uses, that use is in tension with the residential designation, and a review of all of the guidance in the CP and SAP leads the Commission to conclude that the best balance is in favor of the proposed MU-8B zone. (FF 33, 50.)

Upper Northeast Planning Area

9. The Commission concludes that the Map Amendment furthers the policies of the Area Element including those applicable to the Union Market District specifically because it facilitates new mixed-use development on an infill development site, improves economic development, business, and linkages to job opportunities and pedestrian-oriented retail, and provides for uses that are environmentally improving relative to more intense PDR uses allowed as a matter-of-right on the Property and reduces emissions and other impacts from PDR uses by prohibiting PDR uses. (FF 35, 50.)

Land Use Element

10. The Commission concludes that the Map Amendment furthers this element because it balances the numerous and sometimes competing objectives of the Land Use Element and most notably provides a mix of uses at a density that advances the objectives of this Element. (FF 36, 50.)

Transportation Element and MoveDC

11. The Commission concludes that the Map Amendment furthers this element because it supports future pedestrian, public space, and parking optimization objectives of the Transportation Element and the MoveDC plan, including by adding density and uses in the Union Market District that help justify adding transit investments and a connection to the NoMA Metrorail station. (FF 37, 50.)

Housing Element and Housing Order

12. The Commission concludes that the Map Amendment furthers the Housing Element because it increases the permitted residential density at the Property, thus creating new opportunities for housing and affordable housing. The Application is an IZ-Plus Zoning Map amendment that also has the potential to provide HPTF funding for habitable penthouse space. Although the Applicant does not anticipate developing the Property with residential uses, the Application does make such uses possible where they are not permitted today and if the Property were to be developed with residential uses any time in the future, the development would be subject to a requirement to reserve 20% of its residential gross floor area for income-restricted affordable housing. (FF 38, 50.)

Environmental Protection Element

13. The Commission concludes that the Map Amendment furthers this element because it advances climate resiliency, stormwater, landscaping, water efficiency, renewable energy, and energy efficiency objectives of the CP. (FF 39.)

Economic Development Element

14. The Commission concludes that the Map Amendment furthers this element because it permits a change to the uses for the Property to make possible a greater mix of retail,

service, eating and drinking uses, and lodging uses than is possible under the Existing Zone, helps revitalize the underutilized Property to become a thriving element within this unique area, and adds entry-level and salaried jobs. (FF 40, 50.)

Urban Design Element

15. The Commission concludes that the Map Amendment furthers this element because future development on the Property advances the CP's design objectives on scales ranging from massing, orientation, and siting to the streetscape, placemaking, and pedestrian-level façade detailing. (FF 41, 50.)

Community Services and Facilities Element

16. The Commission concludes that the Map Amendment furthers this element because it continues the incremental advancement of community-serving facilities in Ward 5, and the Property is served by adequate infrastructure. (FF 42.)

SAP

17. The Commission concludes that the Map Amendment furthers the objectives and recommendations of the SAP because is consistent with the “medium – high density” designation, which provides for a “matter of right” density at a maximum height of 70 feet and a maximum density of 5.0 and because of the identification of service, entertainment, and/or restaurant uses, consistent with the Application's permitted uses. These designations in the SAP weigh heavily in favor of the MU-8B zone (which permits residential and commercial uses) notwithstanding the PDR designation among the mix of uses on the FLUM (insofar as a PDR-permitting zone would not permit any meaningful residential uses.) (FF 43, 50.)

W5W Study

18. The Commission concludes that the Map Amendment is consistent with the W5W Study because it provides the zoning infrastructure for complementary community amenities uses and continues the Union Market District's diversification of the District's economy. (FF 44, 50.)

Potential Inconsistencies with the CP

19. The Commission has reviewed the potential inconsistencies with the FLUM and certain CP policies and concludes that when read as a whole through the lens of racial equity the Map Amendment is more consistent with the CP than not and that it satisfies the relevant standard of being not inconsistent with the CP, including other adopted public policies and programs applicable to the Property (i.e., the SAP, MoveDC, and Housing Order). Specifically, the Commission concludes that the Applicant's balancing of the use and density considerations in the FLUM, GPM, and SAP tilt in favor of the MU-8B zone rather than a zone that permits more industrial PDR uses. Similarly, the Commission concludes that the Application is not inconsistent with the racial equity considerations of the CP

notwithstanding the potential for business tenant displacement given the written support in the record from those tenants. (FF 47, 52, 53.)

GREAT WEIGHT TO THE RECOMMENDATIONS OF OP

20. 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).)
21. The Commission concludes that OP’s 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’s maps, the Citywide Elements, Upper Northeast Area Element, SAP, and other applicable policy guidance and would advance CP equity goals when evaluated through a racial equity lens, as discussed above. The Commission concurs with OP that IZ Plus is appropriate for the proposed Map Amendment. (FF 50-55.)

GREAT WEIGHT TO THE ANC REPORTS

22. 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).)
23. The Commission finds the ANC 5D Letter in support for the Map Amendment persuasive and concurs in ANC 5D’s judgement. (FF 57, 58.) The Commission acknowledges the ANC’s interests are ensuring the development of the Property moves forward in an orderly way without adverse effects on neighboring property within the ANC.

DECISION

In consideration of the record for Z.C. Case No. 24-04 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	MAP AMENDMENT
3591	3	PDR-1 to <u>MU-8B</u>

Proposed Action

Vote (July 8, 2024): 4-0-1

(Robert E. Miller, Joseph S. Imamura, Anthony J. Hood, and Tammy Stidham to **APPROVE**; 3rd Mayoral Appointee seat vacant, not voting)

Final Action

Vote (September [12], 2024): [x-x-x]

([Robert E. Miller, Joseph S. Imamura, Anthony J. Hood, and Tammy Stidham] to **APPROVE**; [3rd Mayoral Appointee seat vacant, not voting])

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 24-02 shall become final and effective upon publication in the D.C. Register, that is on [REDACTED], 202[4].

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ANTHONY 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.