

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 5<sup>TH</sup> 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 5<sup>TH</sup> 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).

The Commission determined IZ Plus is appropriate for the Property. The Property shall be indicated with an “IZ+” symbol on the Zoning Map. For the purposes of calculating an IZ Plus set aside requirement, pursuant to Subtitle C § 1003, the maximum permitted FAR of the Property’s existing PDR-1 zoning is the equivalent of 3.5<sup>1</sup> FAR.

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

**FINDINGS OF FACT**

**I. BACKGROUND**

**PARTIES**

1. In addition to the Applicant, the only other party to this case was Advisory Neighborhood Commission (“ANC”) 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.

**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.)

---

<sup>1</sup> In the PDR-1 zone, the maximum FAR of 3.5 is limited to the use categories listed in Subtitle J § 201.2, and a maximum FAR of 2.0 applies for all other uses per Subtitle J § 201.3.

4. On March 4, 2024, the Office of Zoning (“OZ”) sent copies of the Notice of Filing to:
  - The *District of Columbia 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
  - Commission Lead Attorney.

(Ex. 10.)
5. OZ published the Notice of Filing in the March 15, 2024 *District of Columbia Register* (71 DCR 3129 *et seq.*). (Ex. 9.)
6. 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;
  - Commission Lead Attorney; and
  - Property owners within 200 feet of the Property.

(Ex. 15-16.)
7. OZ published notice of the public hearing in the May 24, 2024 *District of Columbia Register* (71 DCR 6390 *et seq.*), as well as on the calendar on OZ’s website. (Ex. 14.)
8. 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**

9. The Property is located at 1271 5<sup>th</sup> Street, N.E. within the Union Market District on the block bounded by 5<sup>th</sup> Street, N.E. to the west, 6<sup>th</sup> 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.)

10. 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 5<sup>th</sup> 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.)
11. 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.)
12. 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 allowed under the proposed MU-8B zone sought by this Application. Other applicable public policies include the Ward 5 Works Industrial Land Use Study (“W5W Study”), and DDOT’s MoveDC plan (“MoveDC”). (Ex. 3.)
13. 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, 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 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. 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; and
  - 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 pursuant to the approved PUD and related Zoning Map amendment. Plans for the JBGS/Gallaudet Parcel 3 building approved by the 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. Based on the maximum 70-foot building height permitted on the Property under the proposed MU-8B zone, the JBGS/Gallaudet Parcel 3 could add windows to the uppermost 50 feet of the south façade of that building. (Ex. 3.)

14. Opposite 5<sup>th</sup> 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 5<sup>th</sup> Street, N.E. directly across 5<sup>th</sup> Street, N.E. from the Property. (Ex. 3.)

### **CURRENT ZONING**

15. The Property is currently zoned PDR-1. (Ex. 3.)
16. 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.)
17. 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.)
18. 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.)
19. 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**

20. 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.
21. 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.

22. 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.)
23. 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.

#### **Generalized Policy Map ("GPM")**

24. 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”)

25. The CP’s FLUM designates the Property as Mixed Use (High Density Commercial/Medium Density Residential/PDR). The Framework Element describes these designations 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**

26. 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, and it contains the largest concentration of industrial land uses in the District. (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**

27. 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.)

28. 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, 55-61, 92.)

## **II. THE APPLICATION**

### **PROPOSED ZONING**

29. The Application proposes to rezone the Property in its entirety from the PDR-1 zone to the MU-8B zone. (Ex. 3.)

30. 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.)

31. 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 and one story with a second story permitted for penthouse mechanical space; and (Subtitle G § 205.1.)
- A maximum lot occupancy of 100%. (Subtitle G § 210.1.)

### **APPLICANT'S JUSTIFICATION OF RELIEF**

#### **Not Inconsistent with the CP**

32. 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. (Ex. 3, 3E, 12, 26.)

33. 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. (Ex. 3, 3E.)

34. **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 on the Property 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.)

35. **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." (CP § 225.17-225.18.) (Ex. 3, 3E.)

36. 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. (Ex. 3, 3E; CP §§ 2408.2, 2408.7, 2408.9, 2409.1, 2411.7, 2413.6, 2416.4.)

37. 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.)

38. 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. 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.)

39. Housing Element: 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 Housing Production Trust Fund (“HPTF”) funding for habitable penthouse space. Although the Applicant does not anticipate developing the Property with residential uses, the Application increases the opportunity for such uses when they are limited today. Moreover, the provision of IZ Plus requires that any future residential development on the Property would be subject to a higher IZ set aside requirement than regular IZ. (Ex. 3, 3E; CP §§ 504.10, 504.15, 506.11.)

40. Environmental Protection Element: The Application advances climate resiliency, stormwater, landscaping, water efficiency, renewable energy, and energy efficiency objectives of the CP as future development on the Property 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.)

41. Economic Development Element: The Map Amendment is not inconsistent with the policies of the Economic Development Element. The Application permits increased uses on the Property to allow a greater mix of retail, service, eating and drinking, and lodging uses than is possible under the existing PDR-1 zoning. As a result, the Map Amendment could potentially revitalize this underutilized Property to become a thriving element within this unique area and add entry-level and salaried jobs. (Ex. 3, 3E; CP §§ 703.13, 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.)

42. Urban Design Element: The Application’s proposed MU-8B 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.)

43. 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.)

44. 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.)

45. **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.)
46. **Racial Equity:** The Application advances many of the CP’s racial equity goals through its potential to create retail, employment, and economic development opportunities; lack of displacement of existing residents; and the provision of IZ Plus with potential to provide HPTF funding for habitable penthouse space. 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.)

***Community Outreach and Engagement-*** The Application stated that the Applicant began community outreach and engagement efforts with ANC 5D in September 2023 and presented the Application at the full ANC meeting in August 2023 prior to filing the Application. The Applicant provided an update regarding the Application to the ANC’s Zoning and Development Committee in January 2024 and answered questions. In presenting the Application to the community, the Applicant described its intended future development of the Property; some ANC Commissioners expressed loading and traffic safety concerns regarding future development of the Property. However, no community concerns were cited about the Application, and ANC 5D voted in support of the Application, as discussed below in Finding of Fact (“FF”) No. 56<sup>2</sup>.

***Displacement-*** The Application stated that no residents will be displaced as a result of the Application. However, the Application did acknowledge that the fitness center and artist studio space on the Property would likely be displaced as a result of the Application. But the Applicant stated that the fitness center will relocate prior to any future construction on

---

<sup>2</sup> The Application notes that because the Applicant’s headquarters office is located on 5<sup>th</sup> Street, N.E. and it has developed multiple buildings in the Union Market District over the last 20 years, it meets with the ANC and other community members multiple times annually. (Ex. 3.)

the Property; and the Applicant will assist the artist studio with finding new space in the Union Market District or nearby. (Ex. 3, 3E.)

### **Potential Inconsistencies with the CP**

47. The Applicant acknowledged that the Map Amendment may be viewed as inconsistent with the FLUM, given the PDR “stripe” for the Property on that map, as the MU-8B zone does not permit the most intense PDR uses. The Property’s Mixed-Use FLUM designation, inclusive of a residential use designation (Medium Density Residential) and a PDR designation 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, stating that the areas designated PDR on the FLUM should not fall below current level unless the land is designated for mixed uses including PDR through a Small Area Plan. (See CP § 316.2.) The SAP’s intensity and use maps designate the Property as appropriate for medium-high density development, specifically mixed-use development potentially including services, entertainment, and/or restaurant uses. (SAP at 55-61.) The Land Use Element also states that the Florida Avenue Market Study area shall be subject to the industrial concepts in that Small Area Plan but is not subject to the CP policy to retain and support PDR uses in areas designated for mixed PDR uses. (See CP §316.4.) Accordingly, because the Property is subject to the Florida Avenue Market Study SAP specifically, the SAP controls with respect to the PDR designations on the FLUM. 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 non-industrial 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 evidence that no PDR uses occupy the Property at present. (Ex. 3, 3E, 12.)

### **Public Hearing Testimony**

48. 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. (Transcript from July 8, 2024 hearing [“Tr.”], at pp. 11-22, 25-39.)

## **III. RESPONSES TO THE APPLICATION**

### **OP REPORTS AND TESTIMONY**

49. 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, including when viewed through a racial equity lens, and with other adopted public policies and active programs related to the Property.

Specifically, the Map Amendment would not be inconsistent with the CP maps; would further policy objectives of the Land Use, Transportation, Housing, Economic Development, Urban Design, and Upper Northeast Area Elements, and of the SAP and W5W; and would further racial equity goals, 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 designates the Property as Mixed-Use (High Density Commercial/Medium Density Residential/PDR) and 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;
- 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, and also increases the possibility for density on currently underutilized land in a manner compatible with the surrounding Multi-Neighborhood Center and the medium-to high-density scale of the SAP area that reduces development pressure on lower-density neighborhoods;
- Transportation Element: The Transportation Element supports transit-oriented development and equitable access to transportation options and opportunities, and the proposed MU-8B zone would add 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 proposed MU-8B zone permits housing consistent with the CP and SAP, because the Application would be subject to IZ Plus and also has the potential to provide Housing Production Trust Fund funding for habitable penthouse space;
- Economic Development Element: The Application would allow a level of density commensurate with CP direction and development on the Property that could assist with creating employment opportunities close to transit options by expanding commercial development opportunities 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/vertical urbanism and streetscape principles in Washington, D.C. and the proposal advances the streetscape objectives of the CP at a scale complementary to adjacent development and facilitates transitions relative to the historic district across 5<sup>th</sup> Street, N.E.;
- Upper Northeast Area Element: The proposed MU-8B zone would add density and permit additional uses on an underutilized lot in a manner consistent with the FLUM, GPM, and SAP when all three are taken together;
- 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 the proposed 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. (Ex. 11.)

50. Racial Equity: The OP Setdown Report provided a racial equity analysis, including disaggregated race and ethnicity data<sup>3</sup> for the Upper Northeast Planning Area, and concluding that the proposed MU-8B zone would further racial equity goals by facilitating additional density and uses on an underutilized lot, promoting economic development and linkages to job opportunities and pedestrian oriented retail near Metrorail, and the provision of IZ Plus if future development of the Property included residential uses. (Ex.11.)

Racial Equity Outcomes: The OP Setdown Report also examined the potential outcomes of the proposed Map Amendment and made the following observations:

- 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 zoning does not. Any future residential uses for the rezoned property would be subject to IZ Plus requirements; the Upper Northeast Planning Area is at 65% of the Mayor’s 2025 affordable housing goal based on data from the DMPED 36,000 by 2025 Dashboard;
- 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 uses 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; and
- Community: No community concerns relating to the Map Amendment were identified. (Ex. 11.)

51. The OP Setdown Report stated that IZ Plus would be appropriate for the Map Amendment, pursuant to Subtitle X § 502.1(b) because:

- The map amendment would rezone the property to MU-8B, which allows a higher maximum permitted FAR than the existing PDR-1 zone;
- ANC 5D, within which the Property is located, only had 1.4% of the District’s total number of affordable housing units as of November 2022; and
- The 2019 Housing Equity Report prepared by the Office of Planning and the Department of Housing and Community Development reports that the Upper

---

<sup>3</sup> The American Community Survey (“ACS”) data that appears in the OP Setdown Report is older data for the time period of 2017-2021.

Northeast Planning Area was short of meeting its affordable housing production goals by 471 units. (Ex. 11.)

52. The OP Setdown Report acknowledges that the proposed Map Amendment is potentially inconsistent with CP policy objectives related to the provision of housing, and the provision of PDR uses on this site. However, OP finds these potential CP inconsistencies would be mitigated by lodging being a permitted use in PDR zoned areas, which can provide job opportunities for many people of various skill levels. Moreover, the proposed MU-8B zone would permit the density and height anticipated by the FLUM and specifically called for in an otherwise by-right scenario in the SAP. (Ex. 11)

53. 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.) The OP Hearing Report included more recent disaggregated race and ethnicity data<sup>4</sup> for the Upper Northeast Planning Area than the OP Setdown Report, noting:

- 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. The Black or African American population has declined from 71% to 63% while the white population has increased from 18% to 21% between the 2012-2016 and 2018-2022 ACS time periods;
- The total median household income in the planning area is significantly lower for all households compared to the District as a whole from both the 2012-2016 and the 2018-2022 survey periods. While Black or African American residents in the planning area have a higher median household income compared to the District, they have a lower median household income compared to Asian and white residents who together make up less than half of the Black or African American population; and
- With regard to housing tenure, the majority of residents in the planning area are renters. However, more than half of white and Asian residents in the planning area homeowners. Between the two time periods 2012-2016 and 2018-2022, the share of Black or African American residents who are owners decreased from 45.9% to 42.8% and residents of two or more races decreased from 40.5% to 35.6%. (Ex. 20.)

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

## **DDOT REPORT**

55. DDOT submitted a June 28, 2024 report (the “DDOT Report”), stating that it had no objection to the Application as 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.) The DDOT Report noted that the increased density is expected to generate a

---

<sup>4</sup> The ACS data that appears in the OP Hearing Report is more recent data for the time period of 2018-2022.

significant increase in the amount of transit, biking, and walking trips, and a similar number of vehicle trips. DDOT did not provide testimony at the July 8, 2024 public hearing.

#### **ANC REPORTS AND TESTIMONY**

56. On June 3, 2024, ANC 5D submitted a letter in support (“ANC 5D Letter”) stating that at its March 12, 2024 duly noticed public meeting, with a quorum present, the ANC voted of 7-0-1 in support of the Map Amendment. (Ex. 18.)
57. No representative of the ANC testified at the July 8, 2024 public hearing. (Tr. at p. 44.)

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

58. 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.)
59. On August 28, 2024, NCPC staff filed a letter stating that the proposed Map Amendment falls under an exception listed in NCPC’s submission guidelines and is exempt from NCPC review. (Ex. 29.)

#### **LETTERS OF SUPPORT**

60. 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.)
61. 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.)
62. No individuals or organizations testified in support of the Application at the public hearing.

#### **LETTERS OF OPPOSITION**

63. No letters in opposition were filed to the case record, and no individuals or organizations testified in opposition to the Application at the public hearing.

#### **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 the PDR stripe on the FLUM and CP policies, including policies that encourage the provision of PDR uses and housing on the Property, are outweighed by the Map Amendment’s overall consistency with the CP. Namely, 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 47, 49, 52.)

#### **Racial Equity**

6. The Commission concludes that the Map Amendment is not inconsistent with the CP when viewed through a racial equity lens and will further CP racial equity goals. 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 46, 49, 50, 53.) The racial equity analyses provided by the Applicant and OP address the components of the Commission’s Racial Equity Tool.

*Community Outreach and Engagement* – The Commission concludes that the Applicant provided evidence that it met with ANC 5D in September 2023 and presented the Application at the full ANC meeting in August 2023 prior to filing the Application. The Applicant also provided an update regarding the Application to the ANC’s Zoning and Development Committee in January 2024; and described to the community its intended future development of the Property. The Applicant stated that some ANC Commissioners expressed loading and traffic safety concerns regarding future development of the Property, but no community concerns were cited about the Application. The Commission finds the Applicant’s community outreach and engagement efforts adequate and encourages the Applicant to continue communicating with the ANC and community members multiple times annually, consistent with its past practices. (FF 46.)

*Disaggregated Race and Ethnicity Data* – The Commission concludes that OP’s racial equity analyses included data for the Upper Northeast Planning Area showing that the Black population, which makes up the largest population share in the planning area, has declined over the 2012-2016 and 2018-2022 time periods. For the same time periods, Blacks had lower household incomes compared to whites and Asians. And though the majority of planning area residents are renters, Black and two or more race homeownership rates decreased over the 2012-2016 and 2018-2022 time periods. The Commission is encouraged that the increased density and uses allowed under the MU-8B zone will expand development opportunities to include both commercial and residential uses, resulting in employment opportunities in a commercial node close to transit. 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 with potential to provide HPTF funding for habitable penthouse space. (FF 49-53.)

*Displacement* – The Commission concludes that the Map Amendment will not displace any residents because there are none on site today. However, the Application does have the potential to displace business tenants of the Property, but those concerns are mitigated by the Applicant’s commitment to assist tenants with relocation efforts and tenants’ support on the record for the Map Amendment. (FF 46, 60, 61.)

## **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 24, 35, 49, 53.)

## **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 by the Property's High Density Commercial designation on the FLUM. The Property's High Density Commercial designation 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 above or at the range contemplated by the Medium Density Residential and High Density Commercial designations, respectively. 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 25, 34, 49, 53; *see also* Conclusion of Law 19 below.)

## **Upper Northeast Area Element**

9. The Commission concludes that the Map Amendment furthers the policies of the Upper Northeast Area Element including those applicable to the Union Market District specifically because it facilitates new mixed-use development on an infill development site, with potential to improve 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. (FF 26, 36, 49, 53.)

## **Land Use Element**

10. The Commission concludes that the Map Amendment furthers the Land Use Element because it balances the numerous and sometimes competing objectives of the Element and most notably provides a mix of uses at a density that advances the objectives of this Element. (FF 37, 49, 53.)

## **Transportation Element**

11. The Commission concludes that the Map Amendment furthers the Transportation Element because it supports future pedestrian, public space, and parking optimization objectives of the Element and the MoveDC plan, including adding density and uses in the Union Market District that help justify adding transit investments and a connection to the NoMA Metrorail station. (FF 38, 49, 53.)

## **Housing Element**

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 increases the opportunity for such uses when they are limited today. Moreover, the provision of IZ Plus requires that any future residential development on the Property would be subject to a higher IZ set aside requirement than regular IZ. (FF 39, 49, 51, 53.)

#### **Environmental Protection Element**

13. The Commission concludes that the Map Amendment furthers the Environmental Protection Element because the future development facilitated on the Property could advance climate resiliency, stormwater, landscaping, water efficiency, renewable energy, and energy efficiency objectives of the CP. (FF 40.)

#### **Economic Development Element**

14. The Commission concludes that the Map Amendment furthers the Economic Development Element because it permits an expansion of allowable uses for the Property. Specifically, a mix of residential, retail, service, eating and drinking, and lodging uses that is not possible under the existing PDR-1 zone, and could add entry-level and salaried job opportunities. (FF 41, 49, 53.)

#### **Urban Design Element**

15. The Commission concludes that the Map Amendment furthers the Urban Design Element because the future development facilitated on the Property could advance the CP's design objectives. (FF 42, 49, 53.)

#### **Community Services and Facilities Element**

16. The Commission concludes that the Map Amendment furthers the Community Facilities Element because the future development facilitated on the Property would continue the incremental advancement of community-serving facilities in Ward 5, and the Property is served by adequate infrastructure. (FF 43.)

#### **SAP**

17. The Commission concludes that the Map Amendment furthers the objectives and recommendations of the SAP because it is consistent with the “medium – high density” designation on the SAP’s intensity map, 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 allows a maximum height of 70 feet and 5.0 FAR (6.0 with IZ) and 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 27, 28, 44, 49, 53; see also Conclusion of Law 19.)

#### **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 that could enhance connectivity, encourage inclusive job growth, and continue the Union Market District’s diversification of the District’s economy. (FF 45, 49, 53.)

### **Potential Inconsistencies with the CP**

19. The Commission concludes that the Map Amendment is potentially inconsistent with the Property's PDR stripe on the FLUM and with CP policies that encourage the provision of PDR uses and housing uses on the Property. The Commission believes that the PDR stripe has to be read in conjunction with the Property's other FLUM designations (Medium Density Residential and High Density Commercial); and the fact that simultaneous residential use and PDR use on the Property conflict as residential zones preclude PDR uses and PDR zones prohibit virtually all residential uses. The Commission notes the guidance in the Land Use Element stating that retention of PDR uses is inapplicable to land designated for mixed use including PDR through an SAP; and excluding the Florida Avenue Market Study SAP from the CP policy to retain and support PDR uses in areas designated for mixed PDR use. The Commission further notes that the Property is subject to the Florida Avenue Market Study SAP and its guidance that the Property is appropriate for medium high density mixed-use development, and 70-foot height and 5.0 FAR as a matter-of-right, consistent with the MU-8B zone development standards. Notwithstanding this guidance, the Commission finds any potential CP inconsistencies to be outweighed by the numerous CP policy objectives and goals discussed above that would be advanced by allowing increased density and uses on this underutilized site in proximity to transit. Finally, the Commission finds the Map Amendment's provision of IZ Plus with potential to provide HPTF funding for habitable penthouse space to advance CP housing policy objectives notwithstanding the Applicant's stated intention not to develop the Property with residential uses. (FF Nos. 28, 31, 37, 44, 47, 49, 52.)

### **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 § 405.9. (*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, the Upper Northeast Area Element, the SAP, and other applicable policy guidance, and would advance CP equity goals when viewed through a racial equity lens, as discussed above. The Commission concurs with OP that IZ Plus is appropriate for the proposed Map Amendment. (FF 49-53.)

### **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 56.) The ANC 5D Letter did not cite any issues and concerns.

## **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 <b>MU-8B</b> |

For the purposes of calculating an IZ Plus set aside requirement, pursuant to Subtitle C § 1003, the maximum permitted FAR of the Property’s existing PDR-1 zoning is the equivalent of 3.5<sup>5</sup> FAR.

### **Proposed Action**

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

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

### **Final Action**

**Vote (September 12, 2024): [3-0-2]**

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

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 24-04 shall become final and effective upon publication in the *District of Columbia Register*, that is on November 15, 2024.

## **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. BAR DIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

<sup>5</sup> In the PDR-1 zone, the maximum FAR of 3.5 is limited to the use categories listed in Subtitle J § 201.2, and a maximum FAR of 2.0 applies for all other uses per Subtitle J § 201.3.

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.