*APPLICANT'S DRAFT ORDER*

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**
**ZONING COMMISSIONER ORDER NO. 24-06**
**Z.C. CASE NO. 24-06**
**District of Columbia and Fletcher-Johnson Community Partners**
**(Zoning Map Amendment @ Square 5344, Lot 802)**
**February 27, 2025**

Pursuant to notice, at its public hearing on January 13, 2025, the Zoning Commission for the District of Columbia (the "Commission") considered an application (the "Application") by the District of Columbia and Fletcher-Johnson Community Partners ("FJCP") (together, the "Applicant") for approval of an amendment to the Zoning Map from the RA-1 zone (the "Existing Zone") to the MU-8B zone (the "Map Amendment") for Lot 802 in Square 5344 (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 not appropriate for the Property.

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") 7E, 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 September 1, 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 7E, as required by Subtitle Z §§ 304.5 and 304.6. (Exhibit ["Ex."] 3D.)

4. On April 22, 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 7E;
- ANC Single Member District ("SMD") 7E04;
- Councilmember Vincent Gray, the Ward 7 Councilmember in whose district 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. 5-9.)

5. On November 13, 2024, OZ sent notice of the January 13, 2025 virtual public hearing to:

- The Applicant's land use counsel;
- ANC 7E;
- ANC SMD 7E04;
- Councilmember Vincent Gray, the Ward 7 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. 17, 18.)

6. OZ published notice of the public hearing in the November 22, 2024 *District of Columbia Register* (Vol. 71 / 47), as well as on the calendar on OZ's website. (Ex. 16.)

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. 19.)

**THE PROPERTY**

8. The Property is located in the Marshall Heights neighborhood of Ward 7, and is bounded by Benning Road, SE to the west, C Street, SE to the north, St. Louis Street, SE to the east, and apartment buildings to the south. The Property contains approximately 15.26 acres (664,839 square feet) of land area. (Ex. 3.)

9. The Property is improved with the former Fletcher-Johnson public school campus and adjacent athletic field. The building has been vacant since 2011, and the District disposed of the Property through a competitive and public RFP process in 2019-2020. The District awarded the redevelopment rights to Fletcher-Johnson Community Partners, one of the Applicant parties, in 2020. (Ex. 3.)

10. The Property is designated Mixed Use (Medium Density Residential, Medium Density Commercial, and Local Public Facilities) on the Comprehensive Plan's Future Land Use Map. The Property is in a Neighborhood Commercial Center on the Comprehensive Plan's Generalized Policy Map. (Ex. 3, 3I.)

11. Other applicable public policies with respect to the Application include the Mayor's Housing Order and the OP Housing Equity Report. (Ex. 3.)

12. The Property is located in a predominantly residential area developed primarily with low-rise apartment buildings. The Woodlawn Cemetery is located to the west across Benning Road. KIPP DC LEAP Academy is located to the southwest of the Property, and low-rise apartment buildings are located directly to the south. (Ex. 3.)

**CURRENT ZONING**

13. The Property is currently zoned RA-1. (Ex. 3B.)

14. The Residential Apartment (RA) zones are residential zones, designed to provide for residential areas suitable for multiple dwelling unit development and supporting uses. (Subtitle F §§ 101.1.)

15. In particular, the RA-1 zone provides for areas predominantly developed with low- to moderate-density development, including detached houses, row houses, and low-rise apartments. (Subtitle F §§ 101.4.)

16. The RA-1 zone does not permit most commercial uses. (Subtitle U § 401.1.)

17. The RA-1 zone imposes the following limits and permissions for matter of right development:

- A maximum density of 0.9 FAR for non-public library structures, and 1.08 FAR for IZ developments; (Subtitle F § 201.1, 201.4.)
- A maximum building height of 40 feet and three stories; (Subtitle F § 203.2.)
- A maximum penthouse height of 12 feet and one story; and (Subtitle F § 205.1.)
- A maximum lot occupancy of 60%. (Subtitle F § 210.1.)

**COMPREHENSIVE PLAN (TITLE 10-A OF THE DCMR, THE "CP")**
**Equity and the Comprehensive Plan**

18. 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.

19. 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.

20. 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.)

21. 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 the Office of Planning 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 the Office of Planning 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**

22. The CP's GPM designates the Property as a Neighborhood Commercial Center, which the Framework Element describes as:

- *"Neighborhood Commercial Centers meet the day-to-day needs of residents and workers in the adjacent neighborhoods. The area served by a Neighborhood Commercial Center is usually less than one mile. Typical uses include convenience stores…, supermarkets, restaurants… and basic services. Office space for small businesses…also may be found in such locations. Many buildings have upper-story residential uses… Neighborhood Commercial Centers include both auto-oriented centers and pedestrian-oriented shopping areas… New development and redevelopment within Neighborhood Commercial Centers must be managed to conserve the economic viability of these areas while allowing additional development., including residential, that complements existing uses." (CP §§ 225.15-225.16.)*

**Future Land Use Map (the "FLUM")**

23. The CP's FLUM designates the Property as Mixed Use – Medium Density Residential / Medium Density Commercial / Local Public Facilities.

- 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.)*
- Medium Density Commercial – *"This designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Moderate Density Commercial areas. Retail, office, and service businesses are the predominant uses, although residential uses are common. Areas with this designation generally draw from a citywide market area. Buildings are larger and/or taller than those in Moderate Density Commercial areas. Density typically ranges between a FAR of 4.0 and 6.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-8 and MU-10 Zone Districts are consistent with the Medium Density category, and other zones may also apply." (CP § 227.10.)*
- Local Public Facilities – *"This designation includes land and facilities occupied and used by the District of Columbia government or other local government agencies (such as WMATA), excluding parks and open space. Uses include public schools including charter schools, public hospitals, government office complexes, and similar local government activities. Other non-governmental facilities may be co-located on site. While included in this category, local public facilities smaller than one acre – including some of the District's libraries, police and fire stations, and similar uses – may not*

*appear on the map due to scale. Zoning designations vary depending on surrounding uses." (CP § 227.17.)*

- 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; and (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.)

**Far Northeast & Southeast Area Element**

24. The Property is located within the Far Northeast & Southeast Area Element of the Comprehensive Plan. The Far Northeast & Southeast Area encompasses the 8.3 square miles located east of I-295 and north of Naylor Road SE. (CP § 1700.1.) Far Northeast and Southeast is known for its established neighborhoods and its diverse mix of housing. The area has a robust transportation network, including the Benning Road Metrorail station, Interstate I-295, and several major avenues linking neighborhoods to the underserved communities in Wards 7 and 8 to Central Washington. (CP § 1700.2.) According to the CP, the addition of new residents and daytime office workers has made the ground floor retail here a success, sparking more interest from the private sector to consider Far Northeast and Southeast as an upcoming retail and commercial market. (CP § 1700.7.)

## II. THE APPLICATION

**PROPOSED ZONING**

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

26. The MU-8 zones are specifically intended to: (Subtitle G § 101.10.)

- 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.

27. As a matter of right, the MU-8B zone permits:

- A maximum density of 5.0 FAR and 6.0 FAR for IZ developments, of which up to 4.0 FAR can be devoted to non-residential uses; (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
- No maximum lot occupancy. (Subtitle G § 210.1.)

**APPLICANT'S JUSTIFICATION OF RELIEF**
**Not Inconsistent with the CP**

28. 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. ). (Ex.3, 3I.)

29. Overall, the Property is underutilized and currently improved with a vacant former school building and athletic field that does not allow for commercial uses. The Map Amendment would permit additional height, additional density, and commercial uses at the Property, thus enabling new mixed-use development with expanded opportunities for retail, healthcare, and residential uses. Moreover, the Map Amendment is not inconsistent with the District's racial equity objectives. (Ex. 3, 3I, 11, 14.)

**GPM**

30. The Map Amendment would not be inconsistent with the Property's GPM designation as a Neighborhood Commercial Center because: (Ex. 3I, 11.)

- The Map Amendment allows for the redevelopment of the Property potentially resulting in new housing and affordable housing in accordance with the significant set aside requirements of the District's Disposition of District Land for Affordable Housing Act (Ex. 3I, 11.)
- The Map Amendment presents opportunities for compatible infill development that enhance the surrounding community and may include commercial and residential uses that meet the day-to-day needs of residents and workers in the adjacent neighborhoods, including uses such as convenience stores, supermarkets, branch banks, restaurants, and services such as dry cleaners, hair cutting, and childcare, office space for small businesses, and residential uses. (Ex. 3I, 11.)

**FLUM**

31. The Map Amendment would not be inconsistent with the Property's FLUM designation of Mixed Use (Medium Density Residential / Medium Density Commercial / Local Public Facilities.) because: (Ex. 3, 3I.)

- The Medium Density Residential category contemplates density ranging from 1.8-4.0 FAR but states that greater density may be possible when complying with IZ; (CP § 227.7.)
- The Medium Density Commercial category contemplates a range in density between a FAR of 4.0 and 6.0, with greater density possible when complying with IZ; (CP § 227.12.)
- The Local Public Facilities category includes land and facilities occupied and used by the District of Columbia government or other local government agencies, and non-governmental facilities may be co-located on site; (CP § 227.17.)
- The MU-8B zone is specifically intended to permit mixed-use development with an emphasis on employment and residential development, and permits a maximum FAR of 5.0 (6.0 for an IZ development), of which up to 4.0 FAR can be devoted to non-residential use;
- The density permissions of the MU-8B zone fall within the density ranges recommended by the Property's FLUM designation; 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.)

**Racial Equity**

32. The Map Amendment furthers racial equity goals. Specifically, the proposed rezoning will facilitate the redevelopment of the Property with a significant amount of new housing (both for sale and rental), including a substantial amount of affordable housing for very-low, low, and moderate-income households that will meet or exceed the District's requirements for public land dispositions under D.C. Code 10-801. In addition, the Zoning Map amendment will help address food insecurity and known retail and service use deficiencies in neighborhoods located east of the Anacostia River, including the potential for a new full-service grocery store. Finally, through First Source and CBE requirements that are tied to the District's disposition of the Property, the proposed Zoning Map amendment will pave the way for numerous employment, training, and entrepreneurial opportunities for District residents. The Property does not contain any active tenants, residents, or users, so it avoids any direct displacement of residents or businesses. The Application also asserted that the Map Amendment, and any associated redevelopment of the Property, could expand access to employment opportunities and other neighborhood amenities in ways the current state of the Property and zoning does not allow. (Ex. 3I)

33. The Application included information regarding the Applicant's extensive engagement with ANC 7E, and with the broader community through the Fletcher-Johnson Task Force ("FJTF"), which is a coalition of community members, ANC members, civic associations, and other community organizations. Specifically, the Applicant first introduced the proposed redevelopment of the Property to the full ANC 7E at its duly noticed, regularly scheduled public meeting on March 9, 2021, and it attended a total of 14 ANC 7E public meetings. The Applicant specifically presented the Map Amendment application at ANC 7E's July 9, 2024 public meeting. The Applicant also presented the redevelopment plans, including the Map Amendment, to the FJTF at eight (8) meetings starting on January 27,

2021. The Applicant also conducted outreach to the surrounding neighborhood and individuals continuously from February 2021 through December 2024. Additionally, the Applicant submitted logs detailing its outreach efforts, meeting dates, and participants. (Ex. 3I.)

34. The Applicant identified the following concerns raised by the community:

- Overabundance of deeply affordable housing and need for market-rate and workforce housing;
- Lack of quality retail and service uses, including grocery stores;
- Potential increased traffic and impacts on parking availability; and
- Potential increased noise. (Ex. 3I.)

35. In response to those concerns, the Applicant took the following steps:

- As part of the District's RFP process to select the FJCP to redevelop the Property, the Deputy Mayor for Planning and Economic Development conducted extensive community engagement to solicit feedback from the community about what it would like included in the redevelopment;
- Inclusion in the RFP of uses identified by the community that it would like to see in the redevelopment Property; and
- The Applicant's commitment to ongoing ANC 7E and community engagement to refine the redevelopment plan for the Property. (Ex. 3I)

**Far Northeast / Southeast Area Element**

36. The Map Amendment advances the goals of the Far Northeast / Southeast Area Element. Rezoning the Property to the MU-8B zone provides an opportunity to redevelop an underutilized site with new construction that can provide new, diverse housing options and commercial uses. The proposed Zoning Map amendment to MU-8B will support the redevelopment of an underutilized District-owned site near transit with new mixed-use development containing a significant amount of new for-sale and rental housing (market rate, affordable, senior) to help meet the housing goals of the FNS Planning Area and the District overall (FNS-1.1.2, FNS-1.1.3, FNS-1.1.4). The rezoning also promotes long sought after neighborhood-serving retail and service uses (FNS-1.1.4). (Ex. 3I)

**Land Use Element**

37. The Map Amendment is not inconsistent with the policies of the Land Use Element because the Map Amendment encourages mixed-use development at a large and vacant site along a large corridor with good Metrorail and Metrobus access, and may provide new market-rate housing, affordable housing, and commercial uses as well recreational and healthcare uses, the latter two of which are "Local Public Facilities" uses. The Application also asserted that the current zoning of the Property does not allow for more than a moderate amount of residential density or for commercial uses. As such, the Existing Zone is inconsistent with the Property's FLUM designation, and rezoning the Property would help

to facilitate meeting long-term neighborhood and citywide demands for additional housing, mixed-uses, retail and service uses, and employment opportunities. Further, the height and density permitted under the proposed MU-8B zone appropriately balances the need to respect the character, scale, and integrity of the adjacent existing neighborhood. (Ex. 3I; LU-1.4.1, LU-1.4.2, LU-1.4.4; LU-1.4.6; LU-2.1.1; LU-2.4.2; LU-2.4.2.)

**Transportation Element**

38. The Map Amendment is not inconsistent with the policies of the Transportation Element. The Map Amendment enables new mixed-use development, inclusive of housing and affordable housing and retail/services uses, on a site that is located within ½ mile of the Benning Road Metrorail station and multiple Metrobus stops. In connection with a future redevelopment of the Property, the Map Amendment also has the potential to trigger streetscape improvements that enhance the pedestrian experience and facilitate improved access to and from the Property. (Ex. 3I; T-1.1.4; T-1.1.7; T-2.4.1.)

**Housing Element and OP Housing Equity Report**

39. 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 varied housing types. The Property is located within the Far Northeast / Southeast Area Element, where the recommended number of affordable housing units is satisfied. Still, the Map Amendment advances high-priority planning objectives related to inclusivity and equity, increasing potential for demographic diversity and access to market-rate housing in a high-opportunity, transit-accessible area. The various housing types accommodated on the Property in accordance with the proposed MU-8B zone and the affordable housing requirements accompanying a District disposition property helps address citywide housing needs for a mixture of household income levels and tenure types. (Ex. 3, 3I; H-1.1.1, H-1.1.3, H-1.1.4, H-1.1.9, H-1.2.1, H-1.2.3, H-1.2.4, H-1.2.11, H-1.3.1, H-1.3.2, H-2.1.6, H-3.1.1, H-4.3.2.)

**Environmental Protection Element**

40. The Map Amendment is not inconsistent with the policies of the Environmental Protection element because future development of the Property will lead to the removal of an inefficient building and a surface parking lot in exchange for more efficient and sustainable construction. Given the Property's proximity to multiple modes of transit, including Metrorail and well-connected bicycle and pedestrian networks, future development of the Property will not induce automobile dependency. Furthermore, the Map Amendment and any associated redevelopment of the Property will require compliance with the District's various "green," efficiency, and sustainability requirements, will involve community input, and could trigger new landscaping, and environmentally friendly enhancements to the abutting streetscape. (Ex. 3, 3I; E-1.1.2, E-2-1-2, E-3.2.3, E-3.2.6, E-3.2.7, E-4.1.2, E-4.2.1, E-6.7.2.)

**Economic Development Element**

41. The Map Amendment is not inconsistent with the policies of the Economic Development Element. The proposed MU-8B zone supports new, local retail and service uses, and builds physical capacity for such new business to open where none currently exists. The proposed MU-8B zone also creates opportunities for nearby residents to own, operate, and work in businesses in their neighborhood. Furthermore, the District disposition and public review process for any redevelopment on the Property will ensure that any new commerce at the Property will be commensurate with the community's needs and wants. In addition to new commercial uses, the proposed rezoning allows development of new housing near Metrorail and Metrobus corridors. (Ex. 3, 3I; ED-1.1.4, ED-1.1.5, ED-2.2.3, ED-2.2.4, ED-2.2.5, ED-3.2.8, ED-4.2.1, ED-4.2.3, ED-4.2.6, ED-4.2.12.)

**Urban Design Element**

42. The Applicant finds the proposed Zoning Map amendment to be not inconsistent with the policies and actions of the Urban Design Element. The proposed Zoning Map amendment allows for the redevelopment of the Property with new mixed-use development on a large, unused site in an established neighborhood that can bring needed neighborhood-serving amenities and housing to the community in a well-planned and designed redevelopment. Future development on the Property likely will involve reconstruction of adjacent public space to DDOT standards. Furthermore, the redevelopment of the Property will result in a new mixed-use neighborhood center that will accommodate new housing (of various types), retail, and services that are currently limited or lacking in the surrounding neighborhood. (Ex. 3, 3I; UD-2.2.7, UD-3.2.3)

**Community Services and Facilities Element**

43. The Applicant finds the proposed Zoning Map amendment to be not inconsistent with the policies and actions of the Community Services and Facilities Element. The proposed MU-8B zone will allow for a multitude of community-serving uses that are not allowed under the current zone and/or cannot be accommodated at the Property in its current condition. The proposed MU-8B zone will facilitate the construction of new buildings that will contain uses wanted and needed by the community commensurate with the disposition and engagement processes the Property's redevelopment plan. Such potential news uses include recreation centers, medical offices, and hospitals. (Ex. 3, 3I; CSF-1.1.1, CSF-1.1.2, CSF-1.1.4, CSF-1.1.5, CSF-2.1.B, CSF-2.3.1, CSF-2.3.10)

**Potential Inconsistencies with the CP**

44. The Applicant acknowledged that the Map Amendment may be viewed as being inconsistent with certain CP policies. The Applicant cited to Policy LU-2.1.12 (titled, "Reuse of Public Buildings") as one potential inconsistency, given that a future redevelopment will involve the removal of the existing Fletcher-Johnson school building. The Applicant also identified Policy LU-2.4.1 (titled, "Conservation of Steep Slopes") as another potential inconsistency given the large grade change and slopes on the Property from Benning Road that a redevelopment may alter or impact. However, the Applicant asserted that the proposed Map Amendment advances numerous other policies in the CP, particularly under the Land Use Element and Housing Element, and that the proposed

rezoning of the Property is not inconsistent with the CP when read as a whole when viewed through a racial equity lens. Moreover, the Applicant provided a detailed analysis for each of the foregoing policy objectives explaining how each objective is either inapplicable when read in conjunction with alternative policy guidance or is outweighed when reviewed in the context of the CP as a whole. (Ex. 3I; *see also* Transcript ["Tr."] from January 13, 2025 hearing at pp. 15-16.)

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

45. The Applicant asserted that the Map Amendment furthers the public health, safety, and general welfare of the District because the requested rezoning to the MU-8B zone allows the Property to be put to more productive use, thus contributing to the ongoing revitalization of the Marshall Heights neighborhood and Ward 7 overall. The Map Amendment does not result in adverse consequences. Instead, the requested rezoning contributes to several positive and important benefits as it facilitates the redevelopment of a significantly underutilized site with new mixed-use development that can bring new housing (market rate and affordable) and long sought after services and neighborhood-serving amenities. Redevelopment of the Property will result in the replacement of a vacant outdated building and surface parking lot with a high-quality mixed-use development that will help address many of the District's critical planning and development objectives. Overall, the rezoning promotes the efficient use of high value land in a manner that supports a substantial amount of new housing and neighborhood-serving amenities, improves community facilities, advances equity, and increases access to economic opportunity.

**Public Hearing Testimony**

46. At the January 13, 2025 public hearing, the Applicant presented its case, including testimony from:

- Oussama Souadi, 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 January 13, 2025 hearing at pp. 9-17.)

## III. RESPONSES TO THE APPLICATION

**OP REPORTS AND TESTIMONY**

47. OP submitted a report dated June 3, 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 for the following reasons:

- **GPM** – The Generalized Policy Map designates the subject property as a Neighborhood Commercial Center. The proposed MU-8B zoning would permit enough nonresidential density to allow a mix of uses on the site, including retail, restaurant, office, and services uses as well as open space to serve and support the future residents of the site and the surrounding neighborhood. Thus, the proposed map amendment

would therefore be not inconsistent with the GPM's Neighborhood Commercial Center designation;

- **FLUM** – In the most recent Comprehensive Plan update, the FLUM designation for the Property was changed to Mixed Use Medium Density Residential, Medium Density Commercial, and Local Public Facilities. The proposed MU-8B zone allows for medium density mixed use development and therefore would be not inconsistent with the Comprehensive Plan's FLUM designation for the Property;
- **Land Use Element** – The proposed Map amendment would be not inconsistent with the Land Use Element of the Comprehensive Plan. The site is an underutilized property and approval of a map amendment would facilitate redevelopment of the site with a mix of new housing, including affordable and market rate housing, commercial and service uses as well as community-serving facilities. Specifically, the proposed Map Amendment furthers the following policies and actions of the Land Use Element: LU-1.4.1, LU-1.4.9, LU-1.4.10; LU-1.4.B; LU-1.5.1; LU-2.1.1; LU-2.1.2, LU-2.1.3, LU-2.1.10, LU-2.3.5, LU-2.4.1, LU-2.4.2; LU-2.4.6.
- **Transportation Element** – The proposed MU-8B zone would not be inconsistent with the policies of the Transportation Element. The proposed zone would allow mixed use, transit-oriented development within 0.4 miles of the Benning Road Metrorail station on the Blue and Silver Lines, and several bus routes. Two bus routes travel along the Benning Road frontage and would allow persons to live and work in close proximity to transit to assist in providing equity in transportation. Currently, there are sidewalks along the streets adjacent to the Property. Specifically, the proposed Map Amendment would further the following policies and actions: T-1.1.2, T-1.1.4; T-1.1.5, T-1.1.7; T-1.1.8, T-1.4.1, T-2.4.1, T-2.4.2.
- **Housing Element** – The proposed MU-8B zone would be not inconsistent with the polices and actions of the Housing Element, which encourages more density for mixed use development and in particular the provision of new housing and affordable housing, near Metrorail stations. The proposed map amendment would encourage housing at the higher density that is called for on this site in the FLUM. The proposed zone would allow for a variety of housing types, sizes and affordability complemented by service and retail used to serve the new residents as well as the surrounding residential community. As a disposition property, the site's redevelopment would be subject to a higher requirement for affordable housing. While policies particularly encourage the provision of affordable housing close to Metrorail stations, OP notes the disproportionate share of affordable housing already in this planning area, and has recommended the IZ Plus not apply, although regular IZ would apply, as would the affordability requirements of the RFP. Specifically, the proposed amendment would particularly further the following policies and actions: H-1.1.1, H-1.1.2, H-1.1.3, H-1.1.4, H-1.1.9, H-1.2.1, H-1.2.3, H-1.2.4, H-1.2.5, H-1.2.9, H-1.2.11, H-1.3.1, H-1.3.2, H-1.4.6, H-2.1.6, H-3.1.1, H-4.3.2, H-4.3.3.
- **Environmental Sustainability Element** – The proposed MU-8B zone would not be inconsistent with the policies of the Environmental Element. Future development of the property would be reviewed by DOEE to implement District policies implied and encouraged under the Sustainable DC Plan and Code requirements which protects the health and well-being of residents across all incomes and the District as a whole. The

proposed Map Amendment could further the following policies and actions: E-1.1.2, E-2.1.2, E-2.1.3, E-3.2.3, E-3.3.2, E-3.2.8, E-4.2.1.

- **Economic Development Element** – The proposed Map Amendment would not be inconsistent with the Economic Development Element. In a mixed-use zone, the Property could provide neighborhood serving retail and services alongside new residential uses. Neighborhood-serving retail, services, and public facilities on the site would enhance the Benning Road corridor, which is an underserved community in comparison to many other neighborhoods in the District. The increase in residential units on the Property would add more potential shoppers and users who could support the business that serve the neighborhood for which there is a critical need in the neighborhood. Although the Property is proximate to the Benning Road/Minnesota retail area, the subject property should not pull businesses or retailers from that area. Specifically, the proposed Map Amendment would further the following policies and actions: ED-1.1.4, ED-1.1.5, ED-2.2.1, ED-2.2.3, ED-2.2.4, ED-2.2.5, ED-3.1.1, ED-3.2.8.
- **Urban Design Element** – he proposed MU-8B zone would not be inconsistent with the polices and actions of the Urban Design Element. This Element encourages streetscape enhancements that improve walkability and the overall experience at the human scale. The MU-8B zone would encourage retail and community space to encourage walking and the use of public spaces. Specifically, the proposed Map Amendment would further the following policies and actions: UD-2.1.1, UD-2.2.3, UD-2.2.7, UD-3.3.1.
- **Community Services and Facilities Element** – The proposed MU-8B zone would not be inconsistent with the polices and actions of the Community Services and Facilities Element (CSF). The CSF element encourages the siting of community facilities in locations that optimize efficient delivery of public services. Although there is no specific recommendation for a specific community services facilities, the proposed MU-8B zone would allow for such a facility(s) on the site to serve the residents as well as the wider community and would facilitate the siting of Local Public Facilities on the site as recommended by the FLUM. The proposed Map Amendment would further the following policies and actions: CSF-1.1.2, CSF-1.1.4, CSF-1.1.5, CSF-1.1.8, CSF-1.1.9, CSF-2.1.B.
- **Far Northeast / Southeast Area Element** – The proposed MU-8B zone would not be inconsistent with the polices and actions of the Far Northeast and Southeast Area Element. As part of the Update to the Comp Plan, the community noted that "more density is appropriate on land within one-quarter mile of the Metro Stations at…Benning Road…" The Plan encourages the redevelopment of the Fletcher-Johnson property, and the proposed MU-8B zone could help to achieve this goal. The proposed zone would be proximate to the Benning Road Metrorail Station (0.4 mile walk), and Benning Road is a street appropriate for more mixed-use and residential density. The proposed Map Amendment could attract more new housing development to this location and help to protect the surrounding residential community by focusing mixed use development to this location. Specifically, the proposed amendment would further the following policies: FNS-1.1.2, FNS-1.1.3, FNS-1.14, FNS-2.2.5.

- **Racial Equity** – The OP Setdown Report provides a racial equity analysis, anticipating that the MU-8B zone generally leads to positive impacts, and that the Map Amendment, when evaluated through a racial equity lens, is not inconsistent with the CP because:
  - Direct Displacement - The proposed Map amendment would not result in direct displacement of any residents or businesses because the Property is currently vacant;
  - Indirect Displacement – The Map Amendment would not result in indirect displacement because The development would create new opportunities for a mix of housing types and affordability levels in the neighborhood;
  - Physical - It is not likely that the proposed rezoning would result in negative impacts on the physical environment. Redevelopment would result in public space, streetscape, and stormwater infrastructure improvements. The Property will be required to comply with the most current standards and codes. Plus The Applicant has been working with the FJTF which could encourage the celebration and inclusion of arts, culture and history of the community on this prominent site.
  - Employment Opportunity – Within the Marchall Heights area, there are several public and private opportunities for job training. Any commercial space could provide job and small business opportunities on the site. Further, new development could result in jobs related to construction, building maintenance, property management, retail and service uses;
  - Disaggregated Race and Ethnicity Data- The OP racial equity analysis provides disaggregated race and ethnicity data for the Far Northeast / Southeast Planning Area, in which the Property is located. Based on the data it compiled, OP made the following observations and conclusions about the area immediately surrounding the Property:
    - In the 2018-2022 period, the Far Northeast/Far Southeast Planning Area had a population of 84,778 or about 12.6% of the District's total population. The rate of increase was consistent with that of the District as a whole, and in the 2012-2016 time period, Black residents made up by far the largest portion of the population in the planning area, at 93.8% of the area's residents. This is also considerably more than for the District as a whole (48.3%). In the 2017-2021 period, Blacks continued to make up the largest portion of the population but the percentage fell slightly to 90.6%, although the number of Black residents increased by more than 1,000.
    - The median income of the Far Northeast/Far Southeast Planning Area was below that of the District in both the 2012-2016 and 2018-2022 time periods. Black or African American residents had the lowest median income of all segments of the population in both time periods, ($36,490 and $41,254). Whites, Asians, and "Some Other Race" had higher median incomes.
    - Between 2012-2016 and 2018-2022, the percentage of owner occupancy in the District rose only slightly, from 40.7% to 41.4%. The percentage of owner occupancy in the Far Northeast and Far Southeast Planning Area rose at a higher rate, from 35% to 40.9%, to a level similar to that of the District as a whole.
    - The Far Northeast Southeast Planning Area had a higher percentage of both children and older adults 2012-2016 time period when compared to the District

as a whole. Between the two time periods, the percentage of seniors and children rose.
    - In 2012-2016, the 18.2% unemployment rate in the Planning Area was more than twice the rate for the District as a whole. While the unemployment rate fell for both the District and the Planning Area in 2018-2022, the Planning Area's unemployment rate remained over twice that of the District's at 15.3%.
    - The proposed Map Amendment to the MU-8B zone would permit a greater variety of permitted housing types than the existing zoning, as well as retail and amenity opportunities desired by many in the community, that the current zoning does not permit. (Ex. 11.)
- **Potential CP Inconsistencies** – The OP Setdown Report acknowledges that the Comprehensive Plan contains policies that can be conflicting. Specifically, Land Use Element policy 2.1.12, which encourages reuse of public buildings through rehabilitation, may conflict with the proposed Map Amendment. (Ex. 11.)

48. The OP Setdown Report also stated that an IZ Plus set-aside requirement is not appropriate for the Map Amendment, pursuant to Subtitle X § 502.1(b), noting, among other things, that:

- A disproportionate amount of existing affordable housing already in existence in the immediate area. The intent of IZ Plus is to produce more affordable housing, particularly in areas where there are relatively few affordable units; and
- The Property is owned by the District, and any disposition and development of the Property will be subject to the more rigorous affordability requirements of District Law 10-801 that require proposals which include multi-family residential units to reserve 30% of the units as affordable in perpetuity. (Ex. 11.)

49. The OP Setdown Report also noted that the Map Amendment would advance the objectives and recommendations of the Benning Road Corridor Redevelopment Framework Plan ("Benning Road CRFP") because the Benning Road CRFP calls for the increase in neighborhood livability and to create a new environment that stipulates private investment and neighborhood revitalization. The MU-8B zone would be not inconsistent with the development types envisaged in the plan, which includes new residential development, community serving retail, and public services. (Ex. 11.)

50. OP submitted a hearing report dated July 5, 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 not be appropriate for IZ Plus, and recommended approval of the Map Amendment. (Ex. 21.)

51. At the January 13, 2025 public hearing, OP reiterated its support for the Application as detailed in its reports. (Tr. from January 13, 2025 hearing at pp. 45-47.)

**DDOT REPORT**

52. DDOT submitted a January 3, 2025 report (the "DDOT Report"), stating that it had no objection to the Application because the proposed rezoning would support nearby transit and generate additional foot traffic to support nearby businesses. This is consistent with DDOT's approach to infill sites which should be dense, compact, transit-oriented, and improve the public realm (Ex. 22.)

53. At the January 13, 2025 public hearing, DDOT did not provide testimony.

**ANC REPORTS AND TESTIMONY**

54. On January 2, 2025 ANC 7E submitted a resolution ("ANC Resolution") indicating the ANC's vote of 3-0-2 in support of the Map Amendment as part of a larger community benefits agreement between the ANC and FJCP. (Ex. 15A.)

55. At the January 13, 2025 public hearing, ANC 7E did not provide testimony.

**NATIONAL CAPITAL PLANNING COMMISSION ("NCPC")**

56. The Commission referred the Application to NCPC on [ ], 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. [ ].)

57. On [ ], NCPC filed a letter stating that the proposed Map Amendment is not inconsistent with the Comprehensive Plan for the National Capital and would not adversely impact any other identified federal interests. (Ex. [ ].)

**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 Zoning Map Amendment from the existing RA-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.

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. (*Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013).) In this case, the Commission concludes that any inconsistencies with CP policies, including policies that support the reuse of public buildings and conservation of steep slopes, 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 Far Northeast / Southeast Area Element policies, which support, among other things, increasing density to permit more mixed-use and housing, retail, and service use development on a large and vacant parcel of property that is in proximity to transit. (FF ___.)

**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 the Applicant, inclusive of community outreach and engagement information, and the OP Reports, inclusive of disaggregated race and ethnicity data for the Far Northeast / Southeast Planning Area. (FF ____.) The Commission finds that the racial equity analyses provided address the components of the Commission's Racial Equity Tool and that the Map Amendment furthers CP racial equity goals, primarily because of its potential for new mixed use development, including housing, retail, service, and health care uses, as discussed in more detail below: (*Id.*)
   - Displacement – The Map Amendment does not result in any direct displacement of residents or businesses because there is no existing use on the Property, which has been vacant since 2011. The Commission also acknowledges that the Map Amendment likely does not result in any indirect displacement because it is a unique site that was previously a public school; (*Id.*)

- Community Outreach and Engagement – The Applicant's racial equity analysis included evidence that it conducted outreach with various community stakeholders as detailed in outreach logs filed to the record, including ANC 7E, the FJTF, and neighbors. Much of the community input concerns specific redevelopment plans for the Property. However, this Application only pertains to a Map Amendment to the MU-8B zone, that is whether the matter-of-right development standards under the MU-8B zone are not inconsistent with the Comprehensive Plan; (FF ) and
- Disaggregated Race and Ethnicity Data – OP's racial equity analysis included disaggregated race and ethnicity data for the Far Northeast / Southeast Planning Area showing that the Planning Area is significantly higher percentage of Black residents than the District as a whole; and though the Black population has declined in percentage terms in recent years, it has increased in absolute population growth. Stark racial disparities exist in terms of household income. The Planning Area data shows significant the disparity between median household income is greatest between White residents and Black residents, with incomes among Black residents of the Planning Area lagging behind those in the District generally and showing only very modest growth over the past decade. (*Id.*) Owner occupancy rates in the Planning Area are slightly below those District-wide for nearly all races but have increased over the past decade. Unemployment rates, the percentage of cost-burdened households, and poverty rates have all declined over the past decade but all show persistent gaps between Black residents of the Planning Area and residents of other races.

**GPM**

7. The Commission concludes that the Map Amendment is not inconsistent with the GPM's designation of the Property as a Neighborhood Commercial Center because the Map Amendment permits redevelopment of a currently vacant infill site with mixed-use development that is compatible with the scale and character of the surrounding area, and that could help to address the District's city-wide housing needs and provide commercial services for existing and future residents. (FF .)

**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, Medium Density Commercial, and Local Public Facilities. The Map Amendment to the MU-8B zone provides for increased density on a site that is vacant and underutilized and would facilitate development with housing, commercial, service, and public recreation uses. The recent 2021 update to the Comprehensive Plan modified the Property's FLUM designation to Mixed-Use (Medium Density Residential, Medium Density Commercial, and Local Public Facilities), thus contemplating greater density and commercial uses for the Property than allowed under the existing RA-1 zone. Consistent with the FLUM's preferred mix and intensity of uses, the MU-8B zone balances the density of residential and non-residential uses. The proposed MU-8B zone allows the uses that are contemplated by the Property's Mixed Use FLUM designation. The Commission finds the MU-8B zone appropriate for

the Property as it allows for medium density development with a mix of residential and non-residential uses on the Property, as contemplated by the FLUM. (FF ___.)

**Far Northeast / Southeast Planning Area**

9. Based on the facts stated above, the Commission concludes that the Map Amendment furthers multiple policies of the Far Northeast / Southeast Area Element. (FF ___ & ___.)

**Land Use Element**

10. The Commission concludes that the Map Amendment furthers the Land Use Element of the CP based on the findings stated above that it will advance multiple policies. (FF 50.)

**Transportation Element**

11. The Commission concludes that the Map Amendment furthers this element because it will further numerous polices, as stated in the findings above. (FF ____.)

**Housing Element and OP Housing Equity Report**

12. The Commission concludes that the Map Amendment furthers the Housing Element because it advances numerous polices, as stated in the findings above. (FF ____.)
13. The Map Amendment also furthers the OP Housing Equity Report and Mayor's Goal toward affordable housing by providing the minimum amount required by a District disposition site.

**Environmental Protection Element**

14. The Commission concludes that the Map Amendment furthers this element based on the findings stated above. (FF ____.)

**Economic Development Element**

15. The Commission concludes that the Map Amendment advances the Economic Development Element because of the findings stated above. (FF ___.)

**Urban Design Element**

16. The Commission concludes that the Map Amendment furthers this element because it will advance multiple polices, as described in the findings stated above. (FF ___.)

**Community Services and Facilities Element**

17. The Commission concludes that the Map Amendment furthers this element because it will further numerous polices, as stated in the findings above. (FF ___.)

**Benning Road CRFP**

18. The Commission concludes that the Map Amendment furthers the objectives and recommendations of Benning Road CRFP because of the findings stated above. (FF ___.)

**Potential Inconsistencies with the CP**

19. The Commission has reviewed the potential inconsistencies with certain CP policies and concludes that when read as a whole 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 as a whole, including other adopted public policies and programs applicable to the Property. In particular, as described in the findings above, the Application is not inconsistent with the land use policies cited by the Applicant and OP as potential inconsistencies, when those objectives are read in the context of the CP taken as a whole and through the lens of racial equity. (FF ____.)

**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 Maps, the Citywide Elements and Far Northeast / Southeast Area Element and would advance CP equity goals when evaluated through a racial equity lens, as discussed above. The Commission also concurs with OP that IZ Plus is not appropriate for the proposed Map Amendment. (FF ___.)

**GREAT WEIGHT TO THE ANC REPORT**

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 credits the recommendation of the ANC Resolution in support for the Map Amendment and concurs. (FF _____.) The Commission understands that ANC 7E's

recommendation was part of a community benefits agreement with FJCP that the ANC submitted to the record. However, that agreement is a private agreement between those parties and does not pertain to this Application. The elements of that agreement shall not be conditions of approval for this Application since the decision shall be based only on the standards set forth in Subtitle X § 500.

## DECISION

In consideration of the record for Z.C. Case No. 24-06 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 |
|---|---|---|
| 5344 | 802 | RA-1 to **MU-8B** |

**Proposed Action**
**Vote (January 13, 2025): 5-0-0**

(Robert E. Miller, Joseph S. Imamura, Anthony J. Hood, Gwen Wright, and Tammy Stidham to **APPROVE**)

**Final Action**
**Vote (February 27, 2025): [x-x-x]**

([____])

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 24-06 shall become final and effective upon publication in the *D.C. Register*, that is on [_____], 2025.

**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**

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.