

NOTICE OF PROPOSED RULEMAKING

Z.C. CASE NO. 24-10

Office of Planning

(Zoning Text and Map Amendments to Create the Pennsylvania Avenue East Neighborhood Mixed Use (NMU-5A/PAE) Zone @ Square 5553, Lots 1, 27, 52 809 & 810; Square 5556, Lots 29, 38, 39, 61, 62, 823, 824 & 825; Square 5559, Lots 35 & 806; Square 5560, Lots 39, 40, 43, 44, 45, 46, 52, 55, 814, 815, 816 & 817; Square 5579, Lots 63, 64, 67, 806 & 807; and Square 5581, Lot 804)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2018 Repl.), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2505(c) (2016 Repl.)), hereby gives notice of its intent to amend the Zoning Map to create and map a proposed new Pennsylvania Avenue East Neighborhood Mixed Use (NMU-5A/PAE) zone and to amend the following sections of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified), with the proposed text at end of this notice.

The proposed text amendments would do the following to create a new NMU-5A/PAE zone:

- Amend Subtitle H to add a new Chapter 11, PENNSYLVANIA AVENUE EAST NEIGHBORHOOD MIXED-USE (NMU-5A/PAE) ZONE, to add the proposed new NMU-5A/PAE zone;
- Amend Subtitle H, Chapter 60, USE PERMISSIONS FOR NEIGHBORHOOD MIXED-USE (NMU) ZONES, to add the proposed new NMU-5A/PAE zone; and
- Amend Subtitle W, Chapter 1 BOUNDARIES, to add a new § 126 describing the area where the new NMU-5A/PAE zone would be applied.

Setdown

On July 15, 2024, the Office of Planning (OP) filed a report that served as a petition requesting amendments to the Zoning Regulations and Map to create a new Pennsylvania Avenue East Neighborhood Mixed Use (NMU-5A/PAE) zone (OP Setdown Report) (Exhibit ["Ex."] 2). The NMU-5A/PAE zone is proposed for properties located in Ward 7 generally fronting on Pennsylvania Avenue, S.E. between Fairlawn Avenue, S.E., and 27th Street, S.E. (Property.) The OP Setdown Report stated that as part of the 2021 update of the Comprehensive Plan, the Ward 7 Economic Development Advisory Council requested that the designation for the Pennsylvania Avenue, S.E. and Minnesota Avenue, S.E. intersection change on the Future Land Use Map (FLUM) from low density commercial to moderate density commercial to promote a mix of uses to increase housing supply, including workforce housing, and enhance opportunities for retail and neighborhood services for Ward 7 residents. Additionally, the Pennsylvania Avenue East Community Coalition, residents, and other stakeholders requested to have a small area plan for the area to attract responsible inclusive development, establish the corridor as a retail destination, address pedestrian/vehicle safety, and improve the public realm; following community outreach and collaboration, the Pennsylvania Avenue East Small Area Plan (PAESAP) was approved by the Council of the District of Columbia on February 7, 2023 (Resolution 25-0027). The OP

Setdown Report stated that the proposed text and map amendments to create the new NMU-5A/PAE zone are the next step in implementing policies of the Comprehensive Plan and the guidelines of the PAESAP envisioned for the eastern end of the Pennsylvania Avenue East corridor.

The OP Setdown Report stated that the Property's current MU-4 zoning is consistent with the low density commercial FLUM category and does not provide adequate density to support the additional housing and retail envisioned for the area by the Comprehensive Plan and the PAESAP. The OP Setdown Report stated that the proposed NMU-5A/PAE zone is based on the MU-5A zone because the MU-5 zone is listed as a consistent zone in the Comprehensive Plan Framework Element description of the moderate density commercial FLUM category, and it allows a density and height appropriate for the level of development desired by the Comprehensive Plan and PAESAP.

The OP Setdown Report stated that the Neighborhood Mixed Use (NMU) zones are applied to many neighborhood commercial corridors and are intended to, among other things: provide for a mix of residential, employment, retail, and service uses; preserve and enhance neighborhood shopping areas; encourage a general compatibility in scale between new and older buildings; and identify designated areas within which ground floor use restriction can apply. OP noted other NMU zones such as Takoma, Woodley Park, and H Street N.E., and stated that while each NMU zone is different, the zoning text that applies to all NMU zones would also apply to the proposed NMU-5A/PAE zone. The NMU-5A/PAE zone would allow moderate density mixed use development generally consisting of retail, restaurant, or service uses (as would be required by the zone) on the ground floor, and residential use on the floors above, and would reflect the recommendations and guidelines of the PAESAP, including:

- New buildings and additions along Pennsylvania Avenue, S.E. would have a minimum height of twenty-five feet (25 ft.);
- Ground floor commercial spaces of new building would have a minimum clear floor to ceiling height of fifteen feet (15 ft.);
- Retail space along a building frontage would have a minimum depth of fifty feet (50 ft.);
- At least seventy-five percent (75%) of the front building façade would be built to the front lot line;
- Commercial entrances would be spaced out on average every forty feet (40 ft.) on the ground floor;
- Retail space required to be accessed from Pennsylvania Avenue S.E. and be at grade with the sidewalk;
- Where the lot has access to an alley or side street, parking and loading would not be accessed from Pennsylvania Avenue, S.E.;
- A rear step-back of 1:1 above a building height of twenty-five feet (25 ft.), would be required, to transition massing down to the lower density neighborhoods; and
- A density bonus of 0.5 FAR is proposed for a grocery store, to encourage the provision of this use along this portion of the corridor.

At its July 25, 2024 public meeting, the Commission voted to set down the proposed text and map amendments for a public hearing as a rulemaking case. The OP Setdown Report served as the Pre-hearing Filing required by Subtitle Z § 501.

Notice

Pursuant to Subtitle Z § 502, the Office of Zoning (OZ) sent notice of the February 20, 2025 public hearing, on December 23, 2024 (Ex. 5, 6), and published notice of the public hearing in the December 27, 2024, *District of Columbia Register* as well as on the calendar on OZ's website. (Ex. 4).

Comments

Prior to the February 20, 2025 public hearing, the Commission received no comments in response to the proposal.

On February 10, 2025, the District Department of Transportation (DDOT) filed a report stating no objection to the proposed text and map amendments (Ex. 8).

OP Reports

The OP Setdown Report and the OP Hearing Report (hereinafter, the OP Reports) concluded that the proposal would not be inconsistent with the Property's designation on the FLUM of the Comprehensive Plan as Moderate Density Commercial or its designation on the Generalized Policy Map of the Comprehensive Plan as Main Street Mixed Use Corridor (Ex. 2, 7). The OP Reports also concluded that the proposal would not be inconsistent with the Comprehensive Plan, on balance, including when viewed through a racial equity lens, and would further policies of the Land Use, Housing, Economic Development, and the Far Northeast and Southeast Area Element. (*Id.*) The OP Setdown Report included Disaggregated Race and Ethnicity data for the Far Northeast and Southeast Planning Area, over the 2012-2016 and 2018-2022 time periods, showing a slight decrease in the majority Black population from ninety-three and eight tenths percent (93.8%) to ninety and fifty-nine hundredths percent (90.59%), substantially lower median income than the District as a whole, and significant growth in homeownership such that the rate is almost the same as the District as a whole. OP concluded that the Far Northeast and Southeast Planning Area has experienced many years of disinvestment, poverty, and unemployment; therefore, the proposal would advance many Comprehensive Plan racial equity policies through the provision of housing, ground floor retail space, job creation, and overall revitalization of an underserved area (Ex. 2). The OP Reports included a discussion of OP's community outreach and engagement regarding the proposal, which included outreach to ANCs 7B and 8A, civic groups, property owners, and neighboring ANC Single Member Districts; OP presented the proposal to AND 7B at its January 16, 2025 public meeting (Ex. 2, 7).

Public Hearing

At the February 20, 2025 public hearing¹, the Commission heard testimony from OP in support of the proposal. OP stated that it made the following minor changes to the proposed text amendments in its Hearing Report:

- Streamlined the requirements cited Subtitle H § 1104.1 by referencing the grocery store use definition described in Subtitle B § 100; and
- Removed the addition of the Entertainment and Arts use in the NMU-Use Group B Matter of Right Uses under Subtitle H § 6006.1 because the use group is already permitted in Subtitle H § 6001.2.

(Ex. 7, p. 2).

No person or entity appeared to testify.

“Great Weight” to the Recommendations of OP

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 § 504.6 (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).

The Commission finds persuasive OP’s recommendation that the Commission take proposed action to adopt the proposed text and map amendments to create the new NMU-5A/PAE zone, as revised in the OP Hearing Report, and concurs in OP’s judgment.

“Great Weight” to the Written Report of the ANC

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 § 505.1. 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. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted)).

ANC 7B filed a written report at Exhibit 10, stating that at its regularly scheduled and properly noticed public meeting on January 16, 2025, with a quorum present, the ANC voted unanimously to support the proposal (Ex.10). The ANC 7B report does not cite any issues and concerns.

¹ On February 18, 2025, OP filed a waiver request from the requirement, under Subtitle Z § 502.1(e), to post notice of the public hearing on the property (Ex. 9.) OP stated that compliance with the posting requirement would be impractical because many properties are involved in the case and most are privately owned; and there is good cause for the waiver because notice was published in the District of Columbia Register and OP conducted extensive outreach including 3 community townhalls, 4 visioning conversations, an urban design workshop, and 2 recommendation meetings (*Id.*). At the beginning of the February 20, 2025 public hearing, the Commission granted OP’s waiver request and proceeded with the hearing as scheduled.

Proposed Action

At the close of the February 20, 2025, public hearing, the Commission voted to take **PROPOSED ACTION** to adopt the Petition, as revised by OP in its Hearing Report, and to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (April 10, 2025): 5-0-0 (Gwen Wright, Tammy Stidham, Anthony J. Hood, Robert E. Miller, and Joseph S. Imamura to **APPROVE.**)

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *District of Columbia Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by e-mail at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice of proposed rulemaking in the *District of Columbia Register*.

The complete record in the case can be viewed online at the Office of Zoning's Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

PROPOSED ZONING MAP AMENDMENT

The proposed amendments to the Zoning Map are as follows:

Square	Lot(s)	From	To
Square 5553	Lots 1, 27, 52, 809 & 810	MU-4	NMU-5A/PAE
Square 5556	Lots 29, 38, 39, 61, 62 & 823-825		
Square 5559	Lots 35 & 806		
Square 5560	Lots 39, 40, 43, 44-46, 52, 55 & 814-817		
Square 5579	Lots 63, 64, 67, 806 & 807		
Square 5581	Lot 804		

PROPOSED TEXT AMENDMENT

The proposed amendments to the text of the Zoning Regulations are as follows (new is shown in **bold underline** text, and deletions from existing text are shown in **~~bold strikethrough~~** text, with the exception of the proposed new Subtitle H Chapter 11, which is all new text so is shown without the bold and underline for ease of reading):

**I. Proposed Amendments to Subtitle H, NEIGHBORHOOD MIXED-USE
(NMU) ZONES**

A new Chapter 11, PENNSYLVANIA AVENUE EAST NEIGHBORHOOD MIXED-USE (NMU-5A/PAE) ZONE is proposed to be added to Subtitle H, NEIGHBORHOOD MIXED-USE (NMU) ZONES, to read as follows:

**CHAPTER 11 PENNSYLVANIA AVENUE EAST NEIGHBORHOOD MIXED-USE
(NMU-5A/PAE) ZONE**

1100 PURPOSE AND INTENT

1100.1 The purposes of the NMU-5A/PAE zone shall be those of the MU-5A zone as set forth in Subtitle G § 101, those of the Neighborhood Mixed-Use zones, as set forth in Subtitle H § 101, and the following:

- (a) **Implement the policies and goals of the Pennsylvania Avenue East Small Area Plan as approved by the Council of the District of Columbia, effective February 7, 2023 (Resolution 25-27);**
- (b) **Permit mixed-use development at a moderate density;**
- (c) **Establish Pennsylvania Avenue, S.E. between Fairlawn Avenue, S.E. and 27th Street, S.E. as an active, pedestrian-oriented commercial corridor with a convenient mix of neighborhood-serving shops and services;**
- (d) **Implement the design guidelines of the Pennsylvania Avenue East Small Area Plan to enhance the existing strengths and identity of the commercial corridor and to transform it into an attractive destination for the community; and**
- (e) **Allow and encourage residential development and a greater range of resident diversity to advance the District's housing equity goals, and by mapping the NMU-5A/PAE zone as subject to IZ Plus**

1100.2 The NMU-5A/PAE zone is intended to permit mixed-use development at a moderate density.

1101 DEVELOPMENT STANDARDS

1101.1 The MU-5A zone development standards in Subtitle G, Chapter 2 shall apply to the NMU-5A/PAE zone except as specifically modified by this chapter. In

the event of a conflict between the provisions of this chapter and other regulations of this title, the provisions of this chapter shall control.

1102 DESIGNATED USE AREA

1102.1 In the NMU-5A/PAE zone, the designated use area shall include any lot that fronts onto Pennsylvania Avenue, S.E. Within this area, designated uses shall be provided pursuant to Subtitle H § 6001.

1103 DESIGNATED ROADWAY

1103.1 In the NMU-5A/PAE zone, the designated roadway shall be Pennsylvania Avenue, S.E.

1104 DENSITY

1104.1 An additional 0.5 FAR shall be permitted for a grocery store use, as described in Subtitle B § 100, subject to:

- (a) A minimum of five thousand square feet (5,000 s.f.) of gross floor area shall be devoted to customer-accessible sales and display area used for the sale of a general line of food products intended for home preparation and consumption; and
- (b) A maximum of fifteen percent (15%) of the gross floor area of the store may be devoted to the sale of alcohol for off-site consumption.

1105 HEIGHT

1105.1 Buildings along the designated street should have a minimum height of twenty-five feet (25 ft.).

1106 – 1108 RESERVED

1109 DESIGN REQUIREMENTS PENNSYLVANIA AVENUE EAST NEIGHBORHOOD MIXED-USE (NMU-5A/PAE) ZONE

1109.1 In the NMU-5A/PAE zone, the following design requirements shall apply to a new building or addition on any lot fronting onto Pennsylvania Avenue, S.E.:

- (a) No part of the building, including the penthouse or rooftop structure, shall project above a plane drawn at a forty-five degree (45°) angle from a line located twenty-five feet (25 ft.) directly above a rear property line that abuts an alley, or zone boundary line with an R or RF zone;
- (b) Buildings shall be designed and built so that not less than seventy-five percent (75%) of the street wall(s) at the street level shall be

constructed to the property line abutting the street right-of-way, not including permitted projections into public space;

- (c) **Buildings on corner lots shall be constructed to all property lines abutting public streets;**
- (d) **Buildings shall be designed so as not to preclude a commercial entrance every forty feet (40 ft.) on average for the linear frontage of the building;**
- (e) **Not less than fifty percent (50%) of the surface area of the street wall at the ground level of each building shall be devoted to display windows having clear or clear/low emissivity glass and to entrances to commercial uses or to the building;**
- (f) **Security grilles shall have no less than seventy percent (70%) transparency;**
- (g) **The ground floor level of each new building or building addition with a commercial use on the ground floor shall have a minimum clear floor-to-ceiling height of fifteen feet;**
- (h) **The depth of new retail spaces along a building frontage shall be a minimum of fifty feet (50 ft.);**
- (i) **Each space devoted to a designated use with frontage on Pennsylvania Avenue, S.E. shall have an individual public entrance directly at grade with the public sidewalk along Pennsylvania Avenue, S.E.;**
- (j) **On a corner lot that fronts onto both Pennsylvania Avenue, S.E. and a side street, any entrance to residential portions of the building shall be located on the side street;**
- (k) **Vehicle parking, loading and trash collection shall be accessed from the alley where an alley of exists. Trash and recycling rooms shall be located internal to the building, and located at-grade level of the building; and**
- (l) **Vehicle parking spaces shall be located below or at grade. If at grade, no portion of the parking shall be within twenty feet (20 ft.) of the Pennsylvania Avenue, S.E. right of way and shall be screened along Pennsylvania Avenue, S.E. with designated uses.**

1109.2 The Board of Zoning Adjustment may grant as a special exception pursuant to Subtitle X, Chapter 9 and Subtitle H, Chapter 52, relief from the design requirements of Subtitle H § 1109.1

CHAPTERS ~~10-12~~ through ~~42~~ 51 [RESERVED]

Subsection 6000.8 of Section 6000, GENERAL USE PERMISSIONS, of CHAPTER 60, USE PERMISSIONS FOR NEIGHBORHOOD MIXED USE (NMU) ZONES, of Subtitle H, NEIGHBORHOOD MIXED USE (NMU) ZONES is proposed to be amended to read as follows:

6000.8 Use groups for the NMU zones are as follows:

TABLE H § 6000.8: NMU USE GROUPS

Use Group A	Use Group B	Use Group C
NMU-3A/MW	NMU-4/TK NMU-4/CP NMU-4/WP NMU-4/GA NMU-4/H-H NMU-5A/H-H NMU-6B/H-H NMU-4/H-A NMU-4/H-R NMU-5A/H-R <u>NMU-5A/PAE</u>	NMU-5A/WP NMU-7B/ES NMU-7B/GA NMU-7B/H-H NMU-8B/H-H NMU-7B/H-A

Subsection 6001.3(b) of § 6001, DESIGNATED AND RESTRICTED USES of CHAPTER 60, USE PERMISSIONS FOR NEIGHBORHOOD MIXED USE (NMU) ZONES, of Subtitle H, NEIGHBORHOOD MIXED USE (NMU) ZONES is proposed to be amended to read as follows:

6001.3 The designated uses shall occupy no less than fifty percent (50%) of the gross floor area of the ground floor level of the building within a designated use area, subject to the following requirements:

- (a) ...²
- (b) Except in the NMU-5A/PAE, NMU-4/H-H, NMU-4/H-A, NMU-4/H-R, NMU-5A/H-H, NMU-5A/H-R, NMU-6B/H-H, NMU-7B/H-H, NMU-7B/ES, NMU-7B/H-A, and NMU-8B/H-H zones, eating and drinking establishments, and fast food establishments where permitted, shall be subject to the following limitations:

² The use of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

...

II. Proposed Amendments to Subtitle W, SPECIFIC ZONE BOUNDARIES

A new § 126, PENNSYLVANIA AVENUE EAST NEIGHBORHOOD MIXED USE ZONE, to be added to Chapter 1, BOUNDARIES, of Subtitle W, SPECIFIC ZONE BOUNDARIES, to read as follows:

CHAPTER 1 BOUNDARIES

126 PENNSYLVANIA AVENUE EAST NEIGHBORHOOD MIXED-USE (NMU-5A/PAE) ZONE

126.1 The Pennsylvania Avenue East Neighborhood Mixed Use (NMU-5A/PAE) zone shall be mapped in Squares 5553, 5556, 5559, 5560, 5579, and 5581 on lots along Pennsylvania Avenue, S.E., between Fairlawn Avenue, S.E. and 27th Street, S.E. It also includes Lot 804 in Square 5581. These properties are identified in the Comprehensive Plan and Pennsylvania Avenue East Small Area Plan for moderate density commercial development.