

**BEFORE THE ZONING COMMISSION  
OF THE DISTRICT OF COLUMBIA**

**A. Summary of Requested Action**

This is a petition to zone property bound by: Irving Street, N.E. on the north; Michigan Avenue, N.E. on the east; residential and commercial uses to the south; and the North Capitol Street cloverleaf traffic interchange on the west (Parcel 121/31) (the “**Property**”). The petition is being brought by MIRV Holdings, LLC (the “**Applicant**”). The owner of the Property is the United States Government, with the District of Columbia having jurisdictional authority over the Property<sup>1</sup>. The Property consists of approximately 238,909 square feet, or approximately 5.5 acres, of land area. Approximately 60% of the Property is occupied by a surface parking lot which includes entrances/exits on Michigan Avenue and Irving Street, with the remainder of the Property adjacent to the North Capitol Street cloverleaf interchange being undeveloped.

The Property is currently the subject of an approved First-Stage PUD and Zoning Map Amendment application (ZC Order No. 08-33A – 08-33G). ZC Order No. 08-33 approved the establishment of the C-3-A Zone for the Property (see **Exhibit C**). There is no underlying Zone District due to the federal ownership of the Property, so the Property is deemed to be unzoned. The Property is designated as Mixed Use, Medium Density Residential/Moderate Density Commercial on the Comprehensive Plan’s Future Land Use Map (see **Exhibit D**). The Applicant is proposing to zone the Property to the MU-5-B Zone District, which is consistent with the Comprehensive Plan’s Future Land Use Map designation for the Property, numerous Policies of

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<sup>1</sup> An Agent Authorization Letter, signed by the Office of the Deputy Mayor for Planning and Economic Development, authorizing MIRV Holdings, LLC to process this Zoning Map Amendment application is attached as **Exhibit B**.

various Elements of the Comprehensive Plan, and the overall goals and policies of the District of Columbia Zoning Regulations.

### **B. Previous Zoning Commission Approvals on the Property**

Zoning Commission Case No. 08-33 approved a Consolidated PUD and First-Stage PUD project, as well as a Zoning Map Amendment, for the Property. The consolidated PUD project authorized the construction of a hotel, conference center, restaurant, parking structure, and retail space on the eastern half of the Property. The hotel (which included a restaurant) and conference center had frontage along Michigan Avenue, NE and Irving Street, NE and a four-story above-grade structure along Michigan Avenue that was to include retail uses at grade and in a basement level and 400 parking spaces. A 200 space surface parking lot on the western portion of the Property was also approved in the consolidated PUD application. ZC Order No. 08-33 also authorized the rezoning of the Property from unzoned to the C-3-A Zone District. The Zoning Commission approved a modification of the hotel building in ZC Case No. 08-33C to allow a 336 room hotel that included a 168 room Residence Inn and a 168 room Courtyard by Marriott. The location of the hotel remained along the Property's frontage at the intersection of Michigan Avenue and Irving Street and the hotel building had a measured building height of 94.5 feet.

The first-stage PUD approval included two nine story buildings with a measured building height of 94.5 feet (as measured from the curb at Irving Street) that were to be no taller than 90 feet as measured from the finished grade at the building. The two buildings were to be dedicated to either additional hotel and/or residential units and could include more space for conference center uses. A below-grade parking structure including 295 parking spaces was also included in the first-stage PUD approval.

The Zoning Commission approved a series of time extensions in ZC Order Nos. 08-33A, 08-33B, 08-33D, 08-33E, 08-33F, and 08-33G. The Consolidated PUD Approval has expired, while the First-Stage PUD approval is valid through December 31, 2018. The Applicant now longer desires to construct the PUD project that was approved in ZC Order Nos. 08-33A – 08-33G.

### **C. Satisfaction of Zoning Map Amendment Application Approval Standards**

This case is being brought as a contested case pursuant to Subtitle Z § 201.2, §304 and Chapter 5 of Subtitle X of the District of Columbia Zoning Regulations. Pursuant to Subtitle X, § 500.3, in order to approve a Zoning Map Amendment application, the Zoning Commission shall find that the new zone category is not inconsistent with the Comprehensive Plan (D.C. Code Sec. 6-641.02) and with other adopted public policies and active programs related to the subject site. Consistent with the Comprehensive Plan’s designation for the Property, the Applicant is petitioning to rezone the Property to the MU-5-B Zone District. The MU-5-B Zone District is appropriate for the Property given the Future Land Use Map designation; Mixed Use, Medium Density Residential/Moderate Density Commercial and the enumerated goals and intent of the MU-5 Zone which are: to permit medium-density, compact mixed-use development with an emphasis on residential development (see Subtitle G § 400.4(a)); provide facilities for shopping and business needs, housing and mixed-uses for large segments of the District of Columbia outside of the central core (see Subtitle G § 400.4(b)); and be located on arterial streets, in uptown and regional centers, and at rapid transit stops (see Subtitle G § 400.4(c)).

The MU-5-B Zone District permits a maximum building height of 75 feet and a maximum Floor Area Ratio (“FAR”) of 3.5 (of which up to 1.5 FAR is permitted to be non-residential). Guest rooms and service areas of a lodging use with 30 or more rooms are

considered residential use for the purpose of calculating FAR. The C-3-A Zone which was previously approved for the Property allowed a maximum building height of 65 feet and a maximum FAR of 4.0 (2.5 commercial) as a matter-of-right.

The Applicant intends to construct a project that will continue hotel, retail, residential, and restaurant uses on the Property. These uses will be provided in a number of different buildings that will be developed on the Property in accordance with the matter-of-right requirements of the MU-5-B Zone. The most significant change to the plan is that the hotel uses have been pushed to rear of the Property and the Property's frontage along Michigan Avenue, NE and Irving Street will be lined with mixed-use buildings that are anticipated to include ground floor retail uses with residential uses above. A preliminary site plan is attached as **Exhibit E**. The Applicant believes that the updated plan is more dynamic as it provides for better retail opportunities, an enhanced pedestrian experience, and allows the development of the Property to move forward more quickly and with greater certainty.

This Zoning Map Amendment application is consistent with the Comprehensive Plan's Future Land Use designation for the Property and other Policies and Elements of the Comprehensive Plan. In addition, the MU-5-B Zone allows for a mix of uses that are consistent with the Zoning Commission's previous approvals for the development of a mixed-use project at heights and densities that are similar to the matter-of-right densities that were allowed in the previous C-3-A Zone District.

#### **D. Compliance with the Comprehensive Plan**

This petition is not inconsistent with the Comprehensive Plan and satisfies the Citywide Elements and the Area Element as follows:

1. Future Land Use Map Designation: The rezoning of the Property is consistent with the Property's Future Land Use Map Designation:

**Definition of Medium Density Residential:** This designation is used to define neighborhoods and corridors where mid-rise (4-7 stories) apartment buildings are the predominant use. (§225.5)

**Definition of Moderate Density Commercial:** This designation is used to define shopping and service areas . . . Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts that draw from a broader market area. Buildings are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height. The corresponding Zone districts are generally C-2-A, C-2-B, and C-3-A, although other districts may apply. (§225.9)

**Mixed Use Categories:** The Future Land Use Map indicates where the mixing of two or more land uses is encouraged. The Mixed Use category generally applies in (a) established, pedestrian-oriented commercial areas which also include substantial amounts of housing, typically on the upper stories of buildings with ground floor retail or office uses; [and] (b) commercial corridors or districts which may not contain substantial amounts of housing today, but where more housing is desired in the future. The pattern envisioned for such areas is typically one of pedestrian-oriented streets, with ground floor retail or office uses and upper story housing. . . ." (§228.18)

The background and facts related to the development of the Property are very similar to the facts that were the basis of Zoning Commission Case No. 14-16. Case No. 14-16 created the C-2-B-1 Zone (now known as the MU-5-B Zone) and also re-zoned property (bound by New York Avenue, NE, Montana Avenue, NE, and Bladensburg Road, NE) from the C-M-1 Zone to the C-2-B-1 Zone. The Future Land Use Map Designation for that Property was also Medium Density Residential/Moderate Density Commercial. The Office of Planning Report noted the following with regard to the C-2-B-1 Zone, and its appropriateness for properties that have a Medium Density Residential/Moderate Density Commercial Future Land Use Category designation:

- The C-2-B-1 Zone will be identical in all respects to the C-2-B Zone, except that instead of 65 feet, the matter-of-right height limit in the zone would be 75 feet. The additional matter-of-right height will allow property owners to take advantage of certain moderate-to-medium designations in the Comprehensive Plan as well as

changes in the building code. When compared to the matter-of-right C-2-B building envelope, the proposed zone could have more slender buildings with greater light and air available to on-site units, as well as nearby properties.

- In regards to the specific site, OP noted that the proposed C-2-B-1 Zone was “not inconsistent with the mixed use Medium Density Residential and Moderate Density Commercial designation on the Comprehensive Plan’s Future Land Use Map, and Plan policies support that site’s redevelopment.” (See Exhibit F, relevant portions of the OP report in Case No. 14-16.)

Rezoning of the Property to the MU-5-B Zone is entirely consistent with the Future Land Use Map’s designation for the Property, as the MU-5-B Zone (and its predecessor Zone – C-2-B-1) was specifically created for the Medium Density Residential/Moderate Density Commercial land use category. In addition, the Property’s location along Michigan Avenue and the satisfaction of numerous Comprehensive Plan Policies noted below support the proposed Zoning Map Amendment application. Approval of this application would be entirely consistent with the Zoning Commission’s approval in ZC Case No. 14-16.

2. Guiding Principles and Framework Element: The rezoning of the Property is consistent with the following Guiding Principles enumerated in the Framework Element of the Comprehensive Plan:

- (6) Redevelopment and infill opportunities along corridors and near transit stations will be an important component of reinvigorating and enhancing our neighborhoods. Development on such sites must not compromise the integrity of stable neighborhoods and must be designed to respect the broader community context. Adequate infrastructure capacity should be ensured as growth occurs. (§217.6)
- (7) Growth in the District benefits not only District residents, but the region as well. By accommodating a larger number of jobs and residents, we can create the critical mass needed to support new services, sustain public transit, and improve regional environmental quality. (§217.7)
- (21) Land development policies should be focused to create job opportunities for District residents. This means that sufficient land should be planned and zoned for new job centers in areas with high unemployment and under-employment. A mix of employment opportunities to meet the needs of residents with varied job skills should be provided. (§219.6)

- (27) Washington’s wide avenues are a lasting legacy of the 1791 L’Enfant Plan and are still one of the city’s most distinctive features. The “great streets” of the city should be reinforced as an element of Washington’s design through transportation, streetscape, and economic development programs. (§220.3)

The proposed MU-5-B Zone and the development of the Property with hotel, residential, and retail uses are entirely consistent with these elements of the Comprehensive Plan.

3. Land Use: The petition to rezone the Property is consistent with the following policies of the Land Use Element of the Comprehensive Plan:

***Policy LU-1.3: Transit Oriented and Corridor Development:*** Certain principles should be applied to the management of land around all of the District’s neighborhood stations, include[ing]: a preference for mixed residential and commercial uses rather than single purpose uses, particularly a preference for housing above ground floor retail uses.

***Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods:*** Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to “create successful neighborhoods” in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others.

***Policy LU-1.4.1: Infill Development***

Encourage infill development on vacant land within the city, particularly in areas where there are vacant lots that create “gaps” in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern.

***Policy LU-1.4.3: Zoning of Infill Sites***

Ensure that the zoning of vacant infill sites is compatible with the prevailing development pattern in surrounding neighborhoods. This is particularly important in single family and row house neighborhoods that are currently zoned for multi-family development.

***Policy LU-2.4.6: Scale and Design of New Commercial Uses***

Ensure that new uses within commercial districts are developed at a height, mass, scale and design that is appropriate and compatible with surrounding areas.

The proposed commercial uses and proposed MU-5-B Zone District are consistent with these policies of the Land Use Element of the Comprehensive Plan. The proposed project will replace

a surface parking lot, a “gap” in the urban fabric of Michigan Avenue, with a project that will further pedestrian activity by creating uses that will attract people to come to the Property and by creating an attractive and inviting physical environment that will encourage people to stroll along Michigan Avenue. The potential hotel, residential, and retail uses are entirely complementary to the surrounding institutional and educational uses and the proposed height, mass and scale of potential development on the Property are compatible with the surrounding buildings and structures and the proposed development.

4. Housing: The petition to rezone the Property is consistent with the following policies of the Housing Element of the Comprehensive Plan:

***Policy H-1.1 Expanding Housing Supply:*** Expanding the housing supply is a key part of the District’s vision to create successful neighborhoods. Along with improved transportation and shopping, better neighborhood schools and parks, preservation of historic resources, and improved design and identity, the production of housing is essential to the future of our neighborhoods. It is also a key to improving the city’s fiscal health. The District will work to facilitate housing construction and rehabilitation through its planning, building, and housing programs, recognizing and responding to the needs of all segments of the community. The first step toward meeting this goal is to ensure that an adequate supply of appropriately zoned land is available to meet expected housing needs.

***Policy H-1.1.1: Private Sector Support:*** Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives.

***Policy H-1.1.3: Balanced Growth.*** Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing.

***Policy H-1.1.4: Mixed Use Development.*** Promote mixed use development, including housing, on commercial zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations.

The MU-5-B Zone District appropriately allows and encourages additional housing at the Property that will bring additional residential units to the District in a smart, transit-oriented way



with convenient nearby amenities. The MU-5-B Zone allows for appropriate amounts of mixed-use development, which is entirely consistent with the proposed hotel, retail, and residential uses.

5. Economic Development The petition to rezone the Property is consistent with the following policy of the Economic Development Element of the Comprehensive Plan:

***Policy ED-2.2.1: Expanding the Retail Sector:*** Pursue a retail strategy that will allow the District to fully capitalize on the spending power of residents, workers and visitors, and that will meet the retail needs of underserved areas.

***Policy ED-2.2.3: Neighborhood Shopping***

Create additional shopping opportunities in Washington's neighborhood commercial districts to better meet the demand for basic goods and services. Reuse of vacant buildings in these districts should be encouraged, along with appropriately-scaled retail infill development on vacant and underutilized sites.

***Policy ED-2.3.4: Lodging and Accommodation***

Support the development of a diverse range of hotel types, serving travelers with varying needs, tastes, and budgets. New hotels should be encouraged both within Central Washington and in outlying commercial areas of the city, particularly in areas which presently lack quality accommodation.

***Policy ED-2.3.9: Hospitality Workforce Development***

Recognize the potential for the hospitality sector to generate entry level jobs and opportunities for upward mobility for District residents by promoting vocational, job training, and job placement initiatives in this sector, and by working with local hotels, the District of Columbia Hotel Association, the Washington Convention and Tourism Corporation, and others.

***Policy ED-3.2.8: LSDBE Programs***

Expand opportunities for local, small, and disadvantaged business enterprises through city programs, incentives, contracting requirements, and other activities.

***Policy ED-4.2.12: Local Hiring Incentives***

Maintain requirements for resident job training and placement for projects built and/or operated with any form of public subsidy/loan, grant or other incentives. Promote incentives for similar training and hiring programs by the private sector.

Rezoning the Property to the MU-5-B Zone District allows appropriate retail use that is consistent with the Future Land Use Map designation and encourages the policies of the Economic Development Element of the Comprehensive Plan. By allowing significant amounts of

commercial use, the Map Amendment makes the uses permitted at the Property consistent with the Comprehensive Plan.

The Applicant expects that the demand for the retail space provided in this project will come from predominantly neighborhood serving retailers that will provide basic goods and services. The creation of hotel uses at this location is entirely consistent with the policy of creating a range of hotel types in various parts of the District of Columbia. The anticipated hotel uses on the Property will also provide significant job opportunities in the hospitality sector. Pursuant to the terms of its lease with the District, the Applicant will enter into First Source Employment and CBE Agreements related to the development of the Property.

6. Area Element: Upper Northeast: The petition to rezone the Property is consistent with the following policies of the Upper Northeast Area Element:

***Policy UNE-1.2.1: Streetscape Improvements***

Improve the visual quality of streets in Upper Northeast, especially along North Capitol Street, Rhode Island Avenue, Bladensburg Road, Eastern Avenue, Michigan Avenue, Maryland Avenue, Florida Avenue, and Benning Road. Landscaping, street tree planting, street lighting, and other improvements should make these streets more attractive community gateways.

***Policy UNE-1.2.4: Linking Residents to Jobs***

Improve linkages between residents and jobs within Upper Northeast so that more of the area's 40,000 working age adults fill the approximately 40,000 jobs located within the Planning Area. Achieve this linkage by developing additional vocational and trade schools within Upper Northeast, encouraging apprenticeships and internships, and creating new partnerships between the area's major employers, the District, the public and charter schools, local churches, and major institutions.

***Policy UNE-L2.5: Increasing Economic Opportunity***

Create new opportunities for small, local, and minority businesses within the Planning Area, and additional community equity investment opportunities as development takes place along New York Avenue, Bladensburg Road, Benning Road, and around the Metro stations.

Development on the Property consistent with the MU-5-B Zone will further these goals and policies of the Upper Northeast Area Element of the Comprehensive Plan. Development on the

Property will enhance the vibrancy and appearance of Michigan Avenue. Development of the Property and the infrastructure modifications that will be made by the Applicant to the intersection of Michigan Avenue and Irving Street will result in significant landscaping improvements in the public space along Michigan Avenue, and will create a more attractive and vibrant stretch of this gateway avenue. Development on the Property will result in the creation of a significant number of new jobs, jobs that can be filled by residents of the surrounding communities. This project will also provide for increased economic opportunity for District residents. The Applicant will enter into a First Source Employment Agreement and a CBE Agreement as a result of this project.

#### **E. Community Dialogue**

The Applicant filed a Notice of Intent on September 15, 2017 with ANC 5A and all property owners located within 200 feet of the property. A copy of that Notice of Intent is included in Exhibit G. The Applicant made a presentation to Advisory Neighborhood Commission (“ANC”) 5A on October 25, 2017. At that meeting, the Applicant and the ANC 5A Chairman noted that ANC 5A, and the predecessor ANC, had supported the previous PUD project and that they anticipated talking formal action on the application at a later date. ANC 5A did adopt a resolution in support of allowing residential uses on the Property and agreed to send a letter to Congresswoman Eleanor Holmes Norton noting that they support such residential uses.

The Applicant’s counsel received a phone call from representatives of The Catholic University of America and responded to general questions about the potential future development on the Property. The Applicant’s counsel also has engaged in correspondence with the Single Member District Commissioner of ANC 5E01 and the Chairperson of ANC 5E regarding this application. The Property is not located in ANC 5E, but the boundaries of ANC

5E include two properties (owned by Trinity University and the Oblates College) that are located on the eastern side of Michigan Avenue, across from the Property.

**F. Exhibits**

The following Exhibits are attached to this statement:

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| <u>Exhibit A</u> | Application Form  |
| <u>Exhibit B</u> | Authorization Letters   |
| <u>Exhibit C</u> | Zone Map Excerpt and Proposed Change of Zoning                          |
| <u>Exhibit D</u> | Comprehensive Plan's Future Land Use Map Excerpt                        |
| <u>Exhibit E</u> | Proposed Site Plan  |
| <u>Exhibit F</u> | Relevant Portions of the Office of Planning Report in ZC Case No. 14-16 |
| <u>Exhibit G</u> | Certificate of Notice   |
| <u>Exhibit H</u> | Compliance with Regulations   |
| <u>Exhibit I</u> | List of Publicly Available Information                                  |
| <u>Exhibit J</u> | List of Property Owners within 200 Feet of the Property                 |
| <u>Exhibit K</u> | Surveyor's Plat   |

**G. Conclusion**

For the foregoing reasons, we respectfully request that the Commission set this Zoning Map Amendment application down for a public hearing at its earliest convenience.

Respectfully,



Paul Tummonds