

GOVERNMENT OF THE DISTRICT OF COLUMBIA



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 19-17
Z.C. CASE NO. 19-17

The Zoning Commission for the District of Columbia (the “Commission”) held a properly noticed public hearing on June 23, 2020 to consider an application for a map amendment (the “Application” or the “Amendment”) submitted by Atlas MLK, LLC & 3715 MLK, LLC, (the “Applicant”) pursuant to Subtitle X, Chapter 4 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”) (Zoning Regulations of 2016 [the “Zoning Regulations” or “ZR16”] to which all references are made unless otherwise specified to amend the Zone Map from the MU-3A zone to the MU-4 zone for Lots 50-52 and 48 in Square 6070 (the “Property” or “Properties”). For the reasons set forth below, the Commission hereby **APPROVES** the application.

FINDINGS OF FACT

Notice of Contested Case

1. On March, 18, 2019, the Applicant sent a copy of its Notice of Intent to File an Application for a Zoning Map Amendment to ANC 8C (the affected ANC) and the owners of all property within 200 feet of the perimeter of the Properties. (Ex. 4)
2. On August 8, 2019, the Applicant filed the Application as a contested case. (Ex. 1)
3. Pursuant to the contested case notice requirements of Subtitle Z § 402, the Office of Zoning (“OZ”) sent notice of the new contested case public hearing to all property owners within 200 feet of the Property as well as to ANC 8C, on January 22, 2020. OZ published notice of the public hearing in the *D.C. Register* on January 31, 2020, as well as on the calendar on OZ’s website. (Ex. 20, 21)

Parties

4. The only party other than the Applicant was ANC 8C.

The Property/Properties

5. The Properties are located at 3703 Martin Luther King Jr. Avenue, SE (Square 6070, Lot 50), 3705 Martin Luther King Jr. Avenue, SE (Square 6070, Lot 51), 3707 Martin Luther King Jr. Avenue, SE (Square 6070, Lot 52), and 3715 Martin Luther King Jr. Avenue, SE (Square 6070, Lot 48). (Ex. 2)

6. The Properties are part of a small group of properties zoned MU-3A in the immediately surrounding area. (Ex. 2)
7. The Properties are bounded by Martin Luther King Jr. Ave, SE to the east. (Ex. 2)
8. Abutting the Properties to the north are a mix of residential apartment buildings, flats, and one-family dwellings, all zoned R-2. (Ex. 2)
9. Abutting the Properties to the south and west is unzoned, undeveloped land. (Ex. 2)
10. The Subject Properties are presently improved with institutional and commercial buildings, including the Unity of Love Praise Temple (3703 MLK), Fort Carroll Market (3705 MLK), and two office buildings (3707 & 3715 MLK). (Ex. 2)
11. The Subject Properties are located about two-tenths of a mile (0.2 mi.) from the 295-access ramp on South Capitol Street. (Ex. 2)

Current Zoning

12. The Subject Properties are currently zoned MU-3A, which is intended to permit low-density mixed-use development; and provide convenient retail and personal service establishments for the day-to-day needs of a local neighborhood, as well as residential and limited community facilities with a minimum impact surrounding residential development. (Subtitle G § 400.2)
13. As a matter-of-right, the MU-3A zone permits:
 - a) A maximum density of 1.0 floor area ratio (“FAR”), or 1.2 for developments subject to Inclusionary Zoning (“IZ”), up to all of which can be used for nonresidential purposes. (Subtitle G § 402.1)
 - b) A maximum building height of forty feet (40 ft.) and three (3) stories. (Subtitle G § 403.1)
 - c) A maximum lot occupancy of sixty percent (60%) for residential uses. (Subtitle G § 404.1)

Comprehensive Plan

14. The Future Land Use Map (the “FLUM”) of the Comprehensive Plan (Title 10A of the DCMR, the “CP” or the “Plan”) designates the Property for Low Density Commercial use and as a Neighborhood Commercial Center on the Comprehensive Plan Generalized Policy Map (the “GPM”). (Ex. 2, 2B, 2C, 2D)
15. The Plan is described as “the centerpiece of a ‘Family of Plans’ that guide public policy in the District. 10-A DCMR § 103.1. Under the D.C. Code, the Comprehensive Plan is the one plan that guides the District’s development, both broadly and in detail. Thus, it carries special importance in that it provides overall direction and shapes all other physical plans that the District government adopts. In fact, all plans and regulations relating to the city’s physical development should take their lead from the Comprehensive Plan, building on common goals and shared assumptions about the future. 10-A DCMR § 103.2.

16. As the guide for all District planning, the Plan establishes the priorities and key actions that other plans address in greater detail. The broad direction it provides may be implemented through agency strategic plans, operational plans, long-range plans on specific topics (such as parks or housing) and focuses plans for small areas of the city. 10-A DCMR § 103.3.
17. The purposes of the Comprehensive Plan are six-fold: (1) to define the requirements and aspirations of District residents and, accordingly, influence social, economic and physical development; (2) to guide executive and legislative decisions on matters affecting the District and its citizens; (3) to promote economic growth and jobs for District residents; (4) to guide private and public development in order to achieve District and community goals; (5) to maintain and enhance the natural and architectural assets of the District; and (6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. D.C. Code § 1-245(b).
18. The policies contained in the Comprehensive Plan are based on 36 Guiding Principles that acknowledge that the benefits and opportunities of living in the District are not available to everyone equally and that divisions in the city (physical, social and economic) must be overcome to move from vision to reality. 10-A DCMR § 216.3.
19. The Guiding Principles are derived from the Comprehensive Plan's "vision for growing an inclusive city," and express cross-cutting goals for the District's future. 10-A DCMR § 2004.4.
20. The Guiding Principles are grouped into five core themes: Managing Growth and Change, Creating Successful Neighborhoods, Increasing Access to Education and Employment, Connecting the City, and Building Green and Healthy Communities. 10-A DCMR § 216.2.
21. The Subject Properties are located within the Low-Density Commercial Designation on the Comprehensive Plan Future Land Use Map and are also designated as a Neighborhood Commercial Center area on the Comprehensive Plan Generalized Policy Map.
22. There are a number of Comprehensive Plan policies which encourage mixed-use infill development along Martin Luther King Jr. Ave, SE.
23. The substantive policies of the Comprehensive Plan are organized into 12 Citywide Elements that each address a specific topic that is citywide in scope, and ten Area Elements that focus on issues that are unique to a particular part of the District, and are intended to provide a sense of local priorities and to recognize the different dynamics at work in each part of the city. Although they focus on a specific area of the District, the policies contained within the Area Elements are still general in nature and do not prescribe specific uses or design details. 10-A DCMR §§ 104.4 - 104.6.
24. The Area Elements also do not repeat policies that already appear in the Citywide Elements; however, this does not mean all Comprehensive Plan policies area are mutually exclusive from each other.

25. On the contrary, the Comprehensive Plan specifically recognizes the overlapping nature among and between the Citywide and Area Elements, and that the policies in one element may be tempered by one or more of the other elements where there may be a need to balance competing policies.

Generalized Policy Map

26. The purpose of the GPM is to categorize how different parts of the District may change between 2005 and 2025. 10-A DCMR § 223.1.
27. It highlights areas where more detailed policies are necessary, both within the Comprehensive Plan and in follow-up plans, to manage this change. Id.
28. The GPM is intended to "guide land use decision-making in conjunction with the Comprehensive Plan text, the FLUM, and other Comprehensive Plan maps." Id at § 223.2.
29. Boundaries on the map are approximate and not precise delineations and are to be interpreted in concert with these other sources, as well as the actual physical characteristics of each location shown. Id.
30. The GPM depicts the Subject Properties as being within the Neighborhood Commercial Center designation. As described in the Framework Element, the Neighborhood Commercial Center designation includes both auto-oriented centers and pedestrian-oriented shopping areas. Examples include Penn Branch Shopping Center on Pennsylvania Avenue, SE and the Spring Valley Shopping Center on Massachusetts Avenue, NW. (Ex. 2C)

Future Land Use Map

31. The FLUM, which is adopted as part of the Comprehensive Plan Land Use Element, sets forth a generalized depiction of intended land uses over a period of approximately 20 years. The Framework Element of the Comprehensive Plan states that the FLUM is not a zoning map. See 10-A DCMR § 226.1(a); see also Z.C. Order No. 11-13; Z.C. Order No. 10-28.
32. Whereas zoning maps are parcel-specific and establish detailed requirements for setback, height, use, parking, and other attributes, the FLUM does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. Id. By definition, the FLUM is to be interpreted broadly. Id.
33. Decisions on requests for rezoning shall be guided by the [FLUM] read in conjunction with the text of the Comprehensive Plan (Citywide and Area Elements) as well as Small Area Plans pertaining to the area proposed for rezoning. Id. at § 2504.5.
34. The Properties are designated as Low-Density Commercial on the FLUM. (Ex. 2B)

The Application

35. The Application requests to rezone the Property from MU-3A to MU-4 which is not inconsistent the Comprehensive Plan. The MU-4 zone is intended to permit moderate-density mixed-use development; facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers. (Subtitle G § 400.3)
36. As a matter-of-right, the MU-3A zone permits:
- a) A maximum density of 2.5 floor area ratio (“FAR”), or 3.0 for developments subject to Inclusionary Zoning (“IZ”), up to 1.5 of which can be used for nonresidential purposes. (Subtitle G § 402.1)
 - b) A maximum building height of fifty feet (50 ft.). (Subtitle G § 403.1)
 - c) A maximum lot occupancy of sixty percent (60%)—or seventy-five percent (75%) for an IZ development— for residential uses. (Subtitle G § 404.1)
37. When compared to the current MU-3A zoning, the Application would result in:
- a) A 1.5 increase in FAR, or a 1.8 increase in FAR with IZ (with a 0.5 increase to the FAR that can be devoted to non-residential uses);
 - b) An increase in building height of ten feet (10 ft.);
 - c) No increase in lot occupancy except for IZ developments in which case there is an increase in lot occupancy of fifteen percent (15%).

Office of Planning Report

38. By report dated September 12, 2019, and through testimony at the public meeting held on October 21, 2019, the Office of Planning (“OP”) recommended that the Commission set down the case for a public hearing, as the requested map amendment was not inconsistent with the Comprehensive Plan. (Ex. 16).
39. On March 9, 2020, OP submitted a report recommending approval of the map amendment request, stating that the map amendment would not be inconsistent with the Comprehensive Plan (Ex. 24)

District Department of Transportation Report

40. On March 6, 2020, the District Department of Transportation (“DDOT”) submitted a report expressing no objection to the map amendment request. (Ex. 23)
41. The DDOT report noted that since the site is within ¼ mile of a Priority Corridor Metrobus Route, ZR16 allows a 50% vehicle parking reduction and that DDOT concurs the proposed up-zoning will further support nearby transit and generate additional foot traffic to support nearby businesses which is consistent with DDOT’s approach to infill sites which should be dense, compact, transit oriented, and improve the public realm. (Ex. 23)

ANC Report

42. An ANC Letter in Support was submitted with the Application. The ANC voted to support the Application at its May 2019 public meeting. (Ex. 9)
43. The form of the ANC report was deemed deficient at the hearing on June 23, 2020. The Commission requested that the ANC submit a new report on the proper form. The new ANC report was submitted on July 6, 2020 (Ex. 34-34A)

Persons in Support

44. One letter in support was submitted to the record by the Unity of Love Praise Temple. (Ex. 8)

Persons in Opposition

45. There were no persons in opposition to the Amendment.

Hearing on June 23, 2020

46. At the public hearing, the Applicant – via land use counsel Martin Sullivan—presented to the Zoning Commission via a PowerPoint slide show that summarized the standards for granting a Map Amendment and how the Application met those standards.
47. Specifically, the Applicant demonstrated that the four (4) properties are currently underutilized as they are zoned MU-3A.
48. The Applicant presented a map of the FLUM and GPM showing the four (4) properties.
49. The Applicant presented the standards for approval, noting that the properties had a combined land area of 34,330 square feet, that the properties fronted along Martin Luther King Jr. Avenue, SE—a designated “Great Street”, and that the request is not inconsistent with the Comprehensive Plan. (Ex. 2, 32)
50. The Applicant presented information as to how the Application is consistent with the Comprehensive Plan Policies. Specifically, that rezoning the site would allow for development of underutilized sites, aid in managing growth and change by accommodating the continuing demand for market rate and affordable housing, and support the District’s non-residential growth which in turn creates tax revenue and jobs. (Ex. 2, 32)
51. The Applicant presented information as to how the Application is consistent with the Generalized Policy Map. Specifically that rezoning the site would provide new development within a Neighborhood Commercial area by increasing the overall density and strengthen the ability of the Martin Luther King Jr. Avenue, SE corridor to attract new housing and encourage new neighborhood serving commercial uses. (Ex. 2, 32)
52. The Applicant presented information as to how the rezoning complied with the FLUM designation as “Low Density Commercial” which also includes the MU-4 zone. (Ex. 2, 32)

CONCLUSIONS OF LAW

1. The Commission's authority to amend the Zoning Map derives from the Zoning Act of 1938, effective June 20, 1938. (52 Stat. 797. D.C. Official Code § 6-641.01, et seq.)("Zoning Act".)
2. Section 1 of the Zoning Act authorizes the Commission to regulate the uses of property in order to "promote health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital." (D.C. Official Code § 6-641.01.) Section 2 further provides that:

... zoning regulations shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and 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 or 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 for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

(D.C. Official Code § 6-641.02.)

3. In amending the Zoning Map, the Commission is constrained by the limitation in the District Charter that the Zoning Map be "not inconsistent" with the Comprehensive Plan.(§ 492(b)(1) of the District of Columbia Home Rule 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."
4. Based upon the following analysis of the Comprehensive Plan, the Applicant's exhibits in the record, the testimony of Mr. Sullivan at the Public Hearing, the reports and testimony of DDOT, OP, and ANC 8C, the Commission concludes that the Application is consistent with the purpose of the Zoning Act and also concludes that the request is not inconsistent with the policies and maps of the Comprehensive Plan, as supplemented by the Council approved SAP and the Great Streets Initiative and therefore complies with D.C. Official Code § 6-641.02 and Subtitle X § 500.3.

Not Inconsistent with the Comprehensive Plan and Adopted Policies

5. The Commission concludes that approval of the requested map amendment is not inconsistent with the Comprehensive Plan because the requested map amendment furthers the goals of the Comprehensive Plan and promotes orderly development in conformity with the Zone Plan as embodied in the Zoning Regulations and Map. The Commission further concludes that the requested map amendment is in the best interest of the District of Columbia and will benefit the community in which the Property is located.

6. The Commission notes that the Amendment significantly advances the purposes of the CP by promoting the social, physical and economic development of the District by facilitating the future redevelopment of the Subject Properties with a better mix of uses, including active ground floor retail, at a height and density that is not inconsistent with the Comprehensive Plan.
7. The Commission also notes that rezoning the site and permitting development consistent with the MU-4 zone would help achieve the applicable policies, allow for the development of several underutilized sites, and further the Comprehensive Plan Map designations of low-density commercial use.

Consistent with the GPM

8. The Commission concludes that the map amendment will help implement the policies embodied in the GPM by increasing the overall amount of density that can be developed on the Subject Properties—both residential and non-residential, thus strengthening the ability of the Martin Luther King Jr Avenue, SE corridor to attract new housing and encourage new neighborhood serving commercial uses. (Ex. 2)
9. The Commission notes that the Subject Properties are currently substantially underutilized considering their location along one of the District's Great Streets. New and existing businesses along the Corridor will benefit from the increased amount of residential and non-residential density permitted on the Subject Properties as a result of the subject Amendment, which will contribute to the economic vitality of the Corridor and generate positive economic benefit to business owners and the District. (Ex. 2)
10. The Commission also notes that the Amendment is consistent with the Framework Element because it conserves the economic viability of the area while allowing additional development that complements the existing uses. (Ex. 2)

Consistent with the FLUM

11. The Commission notes Properties are designated as Low-Density Commercial on the FLUM. The designation that was adopted by the D.C. Council as part of the Comprehensive Plan Amendment Act of 2010 (the "2010 Act") and Comprehensive Plan Future Land Use Map and Generalized Policy Map Approval Resolution of 2012 (the "FLUM Amendment"). (Ex. 2B)
12. The Commission concludes that the Applicant's proposal to rezone the Site to MU-4 is consistent with the FLUM designation for the Subject Properties, as the corresponding Zone districts for a Low-Density Commercial designation also includes the MU-4 Zone. (Ex. 2, 2B, 2C)

Land Use Element

13. The Commission concludes that the Amendment will facilitate greater utilization of the Subject Properties with a higher and better mix of uses that can better meet long-term neighborhood and citywide needs.

Transportation Element

14. The Commission concludes that the Amendment will facilitate the development of housing and retail uses in close proximity to Metrobus lines and other transportation options along the Martin Luther King, Jr. Avenue, S.E. corridor.

Housing Element

15. The Commission concludes that the Amendment will facilitate the reuse/redevelopment of the Subject Properties with a new mix of uses, including the potential for new market-rate and affordable housing.

Economic Development Element

16. The Commission concludes that the Amendment will promote the much-needed vitality of this southern gateway of Ward 8 and Congress Heights, a designated Neighborhood Commercial Corridor on the GPM and Martin Luther King Jr. Ave, one of the District's Great Streets.

Urban Design Element

17. The Commission concludes that the Amendment will facilitate new housing which will enhance the livability of the city by improving the vitality, appearance, and security of streets and public spaces.

Far Southeast/Southwest Area Element

18. The Commission concludes that the Amendment will promote additional investment in the existing retail centers along specific corridors, including Martin Luther King Jr. Avenue SE, as well as facade improvements, streetscape improvements, and upgrades public transit to help existing businesses and promote new businesses.

Health, Safety, and General Welfare

19. The Commission concludes that the Amendment will promote the public safety and general welfare through increased activation of the Subject Properties with a range of new uses that will improve connections, add vitality, and contribute to the economic well-being of the District's economy through the creation of new housing and commercial development.

Contested Issues

20. There were no contested issues in this case.

“Great Weight” to the Written ANC Report

21. The Commission is required to give “great weight” to the issues and concerns of the affected ANC expressed in its written report. (§ 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 this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. 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).)

22. The Commission finds the ANC reports persuasive in recommending support for the Application and concurs with that recommendation.

“Great Weight to the Recommendations of OP

23. The Commission is also required to give great weight to the recommendations of OP. (D.C. Official Code § 6-623.04 and Subtitle Z § 405.8)

24. The Commission concludes that the OP reports, which provided an-depth analysis of the proposed map amendment, are persuasive and concurs with OP’s recommendation that the Property be rezoned, as discussed above.

DECISION

At the conclusion of its June 23, 2020 public hearing, the Zoning Commission for the District of Columbia closed the record and set this for decision on proposed action on July 27, 2020.

At its July 27, 2020 public meeting, in consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia, upon the motion of _____, as seconded by _____, took **FINAL ACTION** to **APPROVE** the Application for an amendment of the Zoning Map to change the zoning for Lots 50, 51, 52 and 48 in Square 6070 that are currently zoned MU-3A to MU-4 by a vote of _____ (_____ approve).

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the D.C. Register; that is on _____ **BY THE ORDER OF THE D.C. ZONING COMMISSION** A majority of the Commission members approved the issuance of this Order.