

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Z.C. ORDER NO. 19-17

Z.C. Case No. 19-17

Atlas MLK, LLC and 3715 MLK, LLC

(Map Amendment @ Square 6070)

September 14, 2020

Pursuant to notice, at its September 14, 2020, public meeting<sup>1</sup>, the Zoning Commission for the District of Columbia (“Commission”) considered an application (the “Application”) by Atlas MLK, LLC and 3715 MLK, LLC, (the “Applicant”) for the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), Zoning Regulations of 2016, to which all references are made unless otherwise specified): An amendment of the Zoning Map pursuant to Subtitle X § 500.1 from the MU-3 to the MU-4 zone (the “Map Amendment”) for Lots 48, 50, 51, and 52 in Square 6070 (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. The following were automatically parties in this proceeding pursuant to Subtitle Z § 403.5:
  - The Applicant; and
  - Advisory Neighborhood Commission (“ANC”) 8C, in which district the Property is located and so an “affected ANC” pursuant to Subtitle Z § 101.8.
2. The Commission received no requests for party status.

**NOTICE**

3. On March 18, 2019, the Applicant mailed a notice of intent to file the Application to ANC 8C and all owners of property within 200 feet of the Property, as required by Subtitle Z §§ 304.5 and 304.6. (Exhibit [“Ex.”] 4.)

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<sup>1</sup> The Commission approved setdown of the case at its October 21, 2019, public meeting; heard the case at its June 23, 2020, public hearing; approved proposed action at its July 27, 2020, public meeting; and approved final action at its September 14, 2020, public meeting.

4. On January 24, 2020, the Office of Zoning (“OZ”) sent notice of the original March 19, 2020<sup>2</sup>, public hearing to: (Ex. 20-22.)
  - ANC 8C;
  - ANC 8C05 Single Member District Commissioner in whose district the Property is located;
  - The Office of the ANCs;
  - The Office of Planning (“OP”);
  - The District Department of Transportation (“DDOT”);
  - The Ward 8 Councilmember, in whose ward the Property is located;
  - The Chair and At-Large Members of the D.C. Council; and
  - Owners of property within 200 feet of the Property.
5. OZ published notice of the public hearing in the January 31, 2020, *D.C. Register* (67 DCR 814), as well as on the calendar on OZ’s website. (Ex. 20.)

### **THE PROPERTY**

6. The Property is a collection of four lots located along Martin Luther King, Jr. Avenue, S.E. (Ex. 2.)
7. The Property is improved with institutional and commercial buildings, including Unity of Love Praise Temple on Lot 50, Fort Carroll Market on Lot 51, and office buildings on Lots 52 and 48. (Ex. 2.)
8. The Property is bounded:
  - To the east - Martin Luther King, Jr. Avenue, S.E.;
  - To the south and west – undeveloped and unzoned land; and
  - To the north - a mix of residential apartment buildings. (Ex. 2.)
9. The Property is located near several transit options including three Priority Corridor Network metrobus routes, and the South Capitol Street, S.E., entrance to I-295. (Ex. 2.)

### **CURRENT ZONING**

10. The Property is currently zoned MU-3A, the purpose of which is to:
  - Permit low-density mixed-use development;
  - Provide convenient retail and personal service establishments for the day-to-day needs of a local neighborhood; and
  - Provide residential and limited community facilities with a minimum impact upon surrounding residential development. (Subtitle G § 400.2.)
11. The MU-3A zone imposes the following limits for matter-of-right development:

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<sup>2</sup> The public hearing was subsequently rescheduled for a virtual public hearing on June 23, 2020, due to the public health emergency declared in response to the COVID-19 Pandemic. OZ resent notices on May 14, 2020 and published notice in the May 22, 2020, *D.C. Register* (67 DCR 5363), as well as on the calendar on OZ’s website. (Ex. 28-30.)

- A maximum floor area ratio (“FAR”) of 1.0, or 1.2 for developments subject to Inclusionary Zoning (“IZ”), of which no more than 1.0 FAR can be devoted to nonresidential uses; (Subtitle G § 402.1.)
- A maximum height of 40 feet and three stories; (Subtitle G § 403.1.)
- A maximum residential lot occupancy of 60%; and (Subtitle G § 404.1)
- A minimum rear yard of 20 feet is required. (Subtitle § 405.1.)

### COMPREHENSIVE PLAN

12. The CP’s Generalized Policy Map (the “GPM”) designates the Property as a Neighborhood Commercial Center which the CP notes:

*Meet the day-to-day needs of residents and workers in adjacent neighborhoods. The area served by Neighborhood Commercial Centers is typically less than one mile. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and childcare. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. Many buildings have upper-story residential uses. ... New development and redevelopment must be managed to conserve economic viability while allowing additional development, including residential, that complements existing uses. (CP § 225.15, 225.16.)*

13. The CP’s Future Land Use Map (the “FLUM”) designates the Property for Low Density Commercial uses which the CP defines as:

*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. Their common feature is that they are comprised primarily of commercial and mixed-use buildings that range in density generally up to a FAR of 2.5, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-3 and MU-4 Zone Districts are consistent with the Low Density category, and other zones may also apply. (CP § 227.10.)*

14. The Property is located in the Far Southeast/Southwest Area, for which the CP establishes planning priorities that include:

- “safer streets, better schools, more jobs, and improved housing choices”; (CP § 1800.5.)
- More retail services that are needed in the community; and
- Encouraging additional development in existing retail centers along several major roadways, including Martin Luther King, Jr. Avenue, S.E. (CP § 1807.2(f).)

15. The CP’s Transportation Element designates Martin Luther King, Jr. Avenue, S.E., as a “Great Street” under the Transportation Element of the Comprehensive Plan. (CP § 404.4.)

## II. THE APPLICATION

### PROPOSED ZONING

16. The Application proposed to rezone the Property from the current MU-3A zone to the MU-4 zone.
17. The MU-4 zone proposed for the Property is intended to:
  - Permit moderate-density mixed-use development;
  - Provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District outside the central core; and
  - Be applied to 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.)
18. The MU-4 zone has the following matter-of-right development standards:
  - A maximum density of 2.5 FAR, or 3.0 FAR for developments subject to IZ, of which no more than 1.5 FAR can be devoted to nonresidential uses; (Subtitle G § 402.1;)
  - A maximum height of 50 feet with no limit on stories; (Subtitle G § 403.1;)
  - A maximum lot occupancy of 60%, or 75% for developments subject to IZ; and (Subtitle G § 404.1.)
  - A minimum rear yard of 15 feet. (Subtitle G § 405.2.)

### **Applicant's Testimony**

19. At the June 23, 2020, public hearing, the Applicant testified that:
  - The Property is currently underutilized due its current MU-3A zoning; and
  - The Map Amendment would allow for the redevelopment of the Property with a mix of uses, including housing and neighborhood serving commercial uses, near transit. (Transcript of June 23, 2020, public hearing ["Tr."] at 10-11.)

### APPLICANT'S JUSTIFICATION OF RELIEF

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

20. The Application asserted that it was not inconsistent with the CP and with other adopted public policies and active programs applicable to the Property, as detailed below.
21. **GPM** – The Application asserted that the Map Amendment would not be inconsistent with the GPM because:
  - The Map Amendment will allow for higher density development on the Property with both residential and non-residential uses;
  - This higher density development will allow for both the provision of new retail uses, and greater support for existing businesses due to the increased residential population; and
  - The higher density permitted under the MU-4 is more appropriate for the Property given its key location along a designated "Great Street."

22. **FLUM** - The Application asserted that the Map Amendment would not be inconsistent with the FLUM because the FLUM specifically identifies the MU-4 as a zone that is compatible with the low-density commercial designation.
23. **Far Southeast/Southwest Area Element** – The Application asserted that the Map Amendment would:
- Facilitate the development of more housing and neighborhood supporting retail uses along an existing commercial corridor; and
  - Further the Retail Development Policy. (CP § 1808.8.).
24. **Land Use Element** – The Application asserted that the Map Amendment would:
- Ensure the efficient use of land resources by facilitating the development of the Property with a higher and better mix of uses; and
  - Further a number of element policies including:
    - Conserving, Enhancing, and Revitalizing Neighborhoods; (CP § 307.8.)
    - Promotion of Commercial Centers; (CP § 312.5.)
    - Hierarchy of Commercial Centers; and (CP § 312.6.)
    - Scale and Design of New Commercial Uses. (CP § 312.10.)
25. **Transportation Element** – The Application asserted that the Map Amendment would:
- Facilitate the redevelopment of the Property with a mix of uses along a designated “Great Street”;
  - Allow for mixed-use development near various transit options; and
  - Further a number of element policies including:
    - Transit-Oriented Development; (CP § 403.10.)
    - Boulevard Improvements; and (CP § 404.6.)
    - Pedestrian Network. (CP § 410.5.)
26. **Housing Element** – The Application asserted that the Map Amendment would:
- Facilitate the redevelopment of the Property with a mix of uses, including potentially new market-rate and affordable housing; and
  - Further a number of element policies including:
    - Private Sector Support; (CP § 503.2.)
    - Balanced Growth; (CP § 503.4.)
    - Mixed Use Development; and (CP § 503.5.)
    - Production Targets. (CP § 504.7.).
27. **Economic Development Element** – The Application asserted that the Map Amendment would:
- Facilitate development along as designated “Great Street” in a Neighborhood Commercial Corridor; and
  - Further a number of element policies including:
    - Expanding the Retail Sector; (CP § 708.4.)
    - Neighborhood Shopping; and (CP § 708.7.)

- Neighborhood Commercial Vitality. (CP § 713.5).
28. ***Urban Design Element*** – The Application asserted that the Map Amendment would:
- Allow for new development which would improve the appearance and safety of one of the District’s “Great Streets”;
  - Permit new development that would complement the scale and character of the existing neighborhood; and
  - Further a number of element policies including:
    - Avenues/Boulevards and Urban Form; (CP § 906.6.)
    - Priority Avenues/Boulevards; (CP § 906.11.)
    - Neighborhood Character and Identity; (CP § 910.6.)
    - Transitions in Building Intensity; (CP § 910.11.)
    - Infill Development; and (CP § 910.15.)
    - Enhanced Streetwalls. (CP § 913.13.)

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

#### **OP**

29. OP submitted a September 12, 2019, report ( the “OP Setdown Report”), which:
- Noted that the Map Amendment would: (Ex. 16.)
    - Not be inconsistent with the CP;
    - Improve the development potential of four underdeveloped properties along a priority street in the District; and
    - Position the Property to attract the level of mixed-use development appropriate for a neighborhood service commercial district; and
  - Recommended that the Commission set down the case for a public hearing.
30. OP submitted a March 9, 2020, report (the “OP Hearing Report”), which: (Ex. 24.)
- Reiterated that the OP Setdown Report’s conclusions that the Map Amendment would not be inconsistent with the CP and would facilitate the redevelopment of the Property with mixed-use development appropriate for a neighborhood-serving commercial district;
  - Concluded that the Map Amendment would further the goals of the Great Streets Initiative that seeks to facilitate the transformation of corridors into neighborhood centers, including the MLK/South Capitol Great Streets Corridor in which the Property is located; and
  - Noted in response to the Commission’s questions at setdown that including the MU-3A zoned properties on the other side of Martin Luther King, Jr. Avenue, S.E. from the Property, one of which is owned by the District, would delay the Application.
31. At the June 23, 2020, public hearing, OP testified in support of the Application. (Tr. at 14-15.).

## DDOT

32. DDOT submitted a March 2, 2020, report (the “DDOT Report”) that: (Ex. 23.)
- Concluded that the Map Amendment would not likely lead to a significant increase in the number of peak hour vehicle trips on the District’s transportation network given a full build-out of the Property; and
  - Expressed no objection to the Application.

## ANC 8C

33. ANC 8C submitted a June 3, 2019, report (the “ANC Report”) stating that at its properly noticed May 2019 public meeting, at which a quorum was present, the ANC: (Ex. 9.)
- Raised no issues or concerns;
  - Concluded that the Map Amendment was not inconsistent to the CP and in harmony with the FLUM’s designation calling for “low density commercial” ; and
  - Voted to support the Application.

## PERSONS IN SUPPORT

34. Unity of Love Praise Temple, the owner of 3703 Martin Luther King, Jr., Avenue, S.E., one of the parcels included in the Property, submitted a letter in support of the Application. (Ex. 8.)

## NCPC

35. The National Capital Planning Commission (“NCPC”) responded to the Commission’s referral of the Application for review and comment pursuant to the District of Columbia Home Rule Act of 1973, as amended (87 Stat. 790, Pub. L. No. 93-198, D.C. Code § 1-201 *et seq.*) with an September 2, 2020, report stating that NCPC had determined that the Application’s proposed amendment of the Zoning Map was not inconsistent with the Comprehensive Plan for the National Capital and other federal interests. (Ex. 38.)

## 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; *see* Subtitle A § 401.1) 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 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 of districts and of land values therein.*

3. Pursuant to Subtitle X § 500.3, the Commission shall find that map amendments are not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Property.
4. The Applicant requested that the Application be reviewed as a contested case under Subtitle Z, Chapter 4, as a map amendment filed by the owner of a single property per Subtitle Z § 201.2(e).

**NOT INCONSISTENT WITH THE COMPREHENSIVE PLAN (SUBTITLE X § 500.3)**

5. Based on the case record and the Findings of Fact above, the Commission concludes that the Application's proposed amendment of the Zoning Map designation for the Property from the current MU-3A zone to the proposed MU-4 zone would not be inconsistent with the Comprehensive Plan, when considered in its entirety, because the Map Amendment will further:
  - The intent of the GPM and FLUM by providing for new mixed use development, including commercial uses, of a density and scale appropriate to the surrounding neighborhood;
  - The Land Use Element by facilitating the redevelopment of the Property with a mix of uses along a major commercial corridor;
  - The Transportation Element by facilitating the redevelopment of the Property with a mix of residential and commercial uses proximate to transit corridors and along a designated "Great Street";
  - The Housing Element by facilitating the potential redevelopment of the Property with higher density market rate and affordable housing options which will advance the District's housing goals by providing new housing on commercial corridors;
  - The Economic Development Element by facilitating commercial development along a designated Great Street in a Neighborhood Commercial Corridor;
  - The Urban Design Element by facilitating the redevelopment of one of the District's main commercial corridors with a mix of uses that will improve the appearance and livability of the surrounding neighborhood; and
  - The Far Southeast/Southwest Area Element by facilitating the redevelopment of the Property with mixed-use development in neighborhood centers along specific corridors, specifically Martin Luther King, Jr. Avenue, S.E.



**“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP**

- 6. The Commission must give “great weight” to the recommendations of OP pursuant to § 13(d) 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 (2001)) and Subtitle Z § 405.8.
- 7. The Commission finds OP’s analysis of the Map Amendment and conclusion that it is not inconsistent with the CP persuasive and concurs with OP’s recommendation to approve the Application.

**“GREAT WEIGHT” TO THE ANC REPORT**

- 8. 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, the Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public. 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).)
- 9. Since the ANC Report did not raise any issues or concerns with the Application, there is nothing to which the Commission can give “great weight.” Nevertheless, the Commission notes the ANC’s support for the Application and concurs in that judgement.

**DECISION**

In consideration of the record 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	OLD ZONE	NEW ZONE
6070	48, 50, 51, 52	MU-3A	MU-4

**Proposed Action**

**Vote (July 27, 2020):** 5-0-0 (Peter G. May, Robert E. Miller, Peter A. Shapiro, Anthony J. Hood, and Michael G. Turnbull to **APPROVE**)

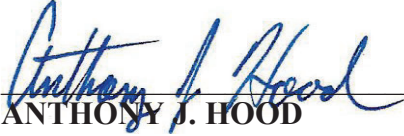
**Final Action**

**Vote (Sept. 14, 2020):** 5-0-0 (Peter A. Shapiro, Robert E. Miller, Anthony J. Hood, Peter G. May, and Michael G. Turnbull to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 19-17 shall become final and effective upon publication in the *D.C. Register*; that is on May 7, 2021.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**SARA A. BORDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.