

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 19-25

Z.C. Case No. 19-25

Airdome, LLC

Map Amendment @ Square 982, Lots 57, 65, 68, 70 & 823

February 20, 2020

FINDINGS OF FACT

Notice

1. On December 26, 2019, the Office of Zoning (“OZ”) sent notice of the public hearing to:
 - The affected Advisory Neighborhood Commissions (“ANC”) 6A;
 - The affected ANC Single Member District (“SMD”) 6A02;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The DC Council; and
 - Property owners within 200 feet of the Property.(Exhibit [“Ex.”] 16 and 17)
2. OZ also published notice of the map amendment public hearing in the *D.C. Register* on December 27, 2019 (66 DCR 53) as well as through the calendar on OZ’s website. (Ex. 15 and 16)

Parties

3. The parties to the case were the Applicant and ANC 6A, the “affected” ANC pursuant to 11-Z DCMR § 101.8.
4. There were no requests for party status.

The Subject Properties

5. The properties that are the subject of the map amendment are located at 1101-1125 H Street, NE (Square 982, Lots 57, 65, 68, 70 and 823) (collectively, the “Subject Properties”) and comprise the entire south side of H Street, NE, between 11th and 12th Streets, NE.
6. Subject Properties are zoned NC-16, except for the southern-most portion of Lot 70, which is zoned MU-4 for approximately 25% of its land area (approximately 1,464 square feet).
7. The Subject Properties have frontage on H Street, 11th Street, and 12th Street, NE, and otherwise are bounded by private property to the south, other than a small portion of a public alley that dead-ends at the rear of and abuts Lots 57 and 68.
8. The two western-most lots within the Subject Properties are presently improved with a one-story commercial building on Lot 65 and a two-story commercial building on Lot 70. Lots 57 and 68 in the center of the block are each improved with a five-story building devoted

to residential use with ground floor retail. Lot 823 on the eastern side of the block is improved with a two-story commercial building.

9. The Subject Properties are located in the heart of the H Street, NE corridor. H Street supports a wide variety of residential development, restaurants and bars, grocery stores, retail and service establishments, and art venues, and has ample public transportation in the form of Metrobus lines, the DC Streetcar, and the Metrorail accessed at Union Station.

Current Zoning

10. The Subject Properties are presently zoned NC-16 and MU-4.
11. The existing NC-16 zone is intended to permit mixed-use development at a moderate density with an emphasis on the provision of retail uses. 11-H DCMR § 900.13. As a matter-of-right, the NC-16 zone permits:
 - a. A maximum overall density of 2.5 FAR, or 3.0 FAR as an Inclusionary Zoning (“IZ”) development, of which no more than 1.5 FAR may be devoted to nonresidential uses. 11-H DCMR § 902.1.
 - b. New construction that preserves an existing façade constructed before 1958 is (i) entitled to an increase of 0.5 FAR to the maximum permitted non-residential density; and (ii) permitted to use, for residential uses, an additional 0.5 FAR to the maximum permitted residential density. 11-H DCMR §§ 902.3, 902.4, and 909.1(b).
 - c. A maximum height of 55 feet for new construction in the H Street Northeast Neighborhood Mixed-Use zones. 11-H DCMR §§ 903.1 and 909.1(i).
 - d. A maximum residential lot occupancy of 70% or 75% with IZ. 11-H DCMR § 904.1.
12. The existing MU-4 zone is intended to permit moderate-density mixed-use development; provide facilities for shopping and business needs, housing, and mixed-uses outside of the central core; 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. 11-G DCMR § 400.3. As a matter-of-right, the MU-4 zone permits:
 - a. A maximum overall density of 2.5, or 3.0 FAR as an IZ development, of which no more than 1.5 FAR may be devoted to non-residential uses. 11-G DCMR § 402.1.
 - b. A maximum building height of 50 feet. 11-G DCMR § 403.1.
 - c. A maximum residential lot occupancy of 60% or 75% with IZ. 11-G DCMR § 404.1.
13. Properties abutting H Street in close proximity to the Subject Properties are generally zoned NC-16, NC-17, and NC-14. Properties behind lots fronting H Street are generally zoned MU, RA and RF. The NC designations along H Street are consistent with the “H Street Northeast Neighborhood Mixed Use” designation, which encompasses zones NC-9 to NC-17. *See* 11-H DCMR, Chapter 9. Consistent with these zone designations, the prevailing

development pattern in the surrounding area is higher-density mixed-use development along H Street (in the NC zones), and lower density, single-family row homes in the neighborhoods to the north and south of H Street (in the MU, RA, and RF zones).

Comprehensive Plan

14. The Subject Properties are designated on the Comprehensive Plan Future Land Use Map (“FLUM”) as mixed use Medium Density Commercial and Medium Density Residential. (Ex. 3E.)
15. The Comprehensive Plan’s 2019 Framework Element, adopted by the D.C. Council on October 8, 2019 (Bill 23-01) (the “**Framework Element**”) states that a “Mixed-Use” designation on the FLUM is assigned to areas where “the mixing of two or more land uses is especially encouraged” and is generally applied to:
 - 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;
 - b. Commercial corridors or districts which may not contain substantial amounts of housing today, but where more housing is desired in the future;
 - c. Large sites where opportunities for multiple uses exist but a plan depicting the precise location of these uses has yet to be prepared; and
 - d. Development that includes residential uses, particularly affordable housing, and residentially compatible industrial uses, typically achieved through a PUD or in a zone district which allows such a mix of uses.

10A DCMR § 227.20.

16. According to the Framework Element, the Medium Density Residential designation is used to define neighborhoods or areas generally, but not exclusively, suited for mid-rise apartment buildings. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. Pockets of low and moderate density housing may exist within these areas. Density typically ranges from 1.8 to 4.0 FAR, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The RA-3 Zone District is consistent with the Medium Density Residential category, and other zones may also apply. 10A DCMR § 227.7.
17. The Framework Element describes the Medium Density Commercial designation as shopping and service areas that are somewhat greater in scale and intensity than the Moderate-Density Commercial areas. Retail, office, and service businesses are the predominant uses, although residential uses are common. Areas with this designation generally draw from a citywide market area. Buildings are larger and/or taller than those in Moderate Density Commercial areas. Density typically ranges between a FAR of 4.0 and 6.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-8 and MU-10 Zone Districts are consistent with the Medium Density category, and other zones may also apply. 10A DCMR § 227.12.

18. The Subject Properties are designated on the Comprehensive Plan Generalized Policy Map (“GPM”) as a Main Street Mixed Use Corridor. (Ex. 3D.)
19. The Main Street Mixed Use Corridor category includes traditional commercial business corridors with a concentration of older storefronts along the street. The area served can vary from one neighborhood to multiple neighborhoods. Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper story residential or office uses. Some corridors are underutilized, with capacity for redevelopment. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment. *See* 10A DCMR §§ 225.14 of the Framework Element.
20. The Subject Properties are also located within the boundaries of the H Street NE Strategic Development Plan, which is the Small Area Plan applicable to the Site (the “**H Street Plan**”). The H Street Plan was adopted by the D.C. Council in 2004 to guide community, private sector, and public agency actions and investments in revitalizing the H Street corridor. The H Street Plan’s project area extends from North Capitol Street to 17th Street, NE, for approximately 1.5 miles and comprising 13 blocks along H Street, NE. *See* H Street Plan, p. ii. One of the primary purposes of the H Street Plan was to encourage development and redevelopment along the corridor, as indicated by the key land use and zoning issues, which included accommodating new uses through lot consolidation, modifying land uses and/or zoning for preferred development, encouraging new construction and preservation with building design and development guidelines, and diversifying land uses with mixed income housing. *Id.* at ii.

The Application

21. On October 30, 2019, the Applicant filed an application with the Commission to rezone the Subject Properties from the NC-16 and MU-4 zones to the NC-17 zone. (Ex. 1-3.) The NC-17 zone is intended to permit mixed-use development at a moderate- to medium-density with an emphasis on the provision of retail uses. 11-H DCMR §§ 900.14. As a matter-of-right, the NC-17 zone permits:
 - a. A maximum overall density of 3.5 FAR, or 4.2 FAR as an IZ development, of which no more than 1.5 FAR may be devoted to nonresidential uses. 11-H DCMR § 902.1.
 - b. New construction that preserves an existing façade constructed before 1958 is (i) entitled to an increase of 0.5 FAR to the maximum permitted non-residential density; and (ii) permitted to use, for residential uses, an additional 0.5 FAR to the maximum permitted residential density. 11-H DCMR §§ 902.3, 902.4, and 909.1(b).
 - c. A maximum height of 70 feet or 75 feet with IZ for new construction in the H Street Northeast Neighborhood Mixed-Use zones. 11-H DCMR §§ 903.1 and 909.1(i).
 - d. A maximum residential lot occupancy of 70% or 80% with IZ. 11-H DCMR § 904.1.

22. New construction for which a building permit is required is subject to the design requirements of the H Street Northeast Mixed Use zones set forth in 11-H DCMR § 909.

Responses to Application

Office of Planning (“OP”)

23. By report dated November 25, 2019, and through testimony at the public meeting held on December 9, 2019, OP recommended that the Commission set down the case for a public hearing, as the requested map amendment “would not be inconsistent with the Future Land Use Map (FLUM), General Policy Map and text of Comprehensive Plan.” (Ex. 11, p. 1.) OP did not request any additional information from the Applicant in its set down report.
24. By report dated February 7, 2020, and through testimony at the public hearing held on February 20, 2020, OP continued to recommend approval of the application. (Ex. 22.) The OP’s report stated that the map amendment would be not inconsistent with the FLUM and GPM designations or with citywide and area elements of the text of the Comprehensive Plan. The OP report also stated that the map amendment would be not inconsistent with the H Street Plan because it would “promote new investment in future mixed-use infill development of the underutilized parcels, framed within the desired scale of development consistent with existing H Street design requirements.” (Ex. 22, p. 10.)
25. OP summarized its comments by stating that the “subject properties in combination are a targeted location in the Small Area Plan for adaptive reuse and infill development. Their location along a transit-rich, mixed-use corridor would support development that would not be inconsistent with the medium-density, mixed-use development anticipated by the FLUM.” (Ex. 22, p. 10.) The OP report also recommended “approval of the requested map amendment as it is not inconsistent with the policies and goals of the Comprehensive Plan and the H Street Small Area Plan, as summarized in this report and detailed in the application.” *Id.*

District Department of Transportation (“DDOT”)

26. By report dated November 25, 2019, the District Department of Transportation (“DDOT”) submitted a report expressing no objection to the map amendment request. (Ex. 21.)
27. The DDOT report evaluated the Applicant’s transportation study (Ex. 20A) and agreed with its analysis that the additional trips generated by the proposed map amendment “are expected to have a minimal impact on the transportation network.” (Ex. 21, p. 2.)
28. DDOT summarized its comments by stating that it has “reviewed the Applicant’s request and determined that based on the information provided, the proposed rezoning would likely not lead to a significant increase in the number of peak hour vehicle trips on the District’s transportation network if developed with the most intense matter-of-right uses.” (Ex. 21, p. 2.)

Advisory Neighborhood Commission

29. By letter dated September 28, 2019, ANC 6A stated that at its regularly scheduled and properly noticed meeting of September 12, 2019, ANC 6A ANC voted 7-0-0 (with five commissioners required for a quorum) to support the map amendment application.

Persons in Support

30. No letters in support of the application were filed in the case record and no persons or organizations testified in support of the application at the public hearing.

Persons in Opposition

31. No letters in opposition to the application were filed in the case record and no persons or organizations testified in opposition to the application at the public hearing.

Public Hearing

32. At its February 20, 2020 public hearing, the Commission heard testimony from OP in support of the application while the Applicant presented an opening statement and otherwise rested on the record. At the close of the hearing the Commission took proposed action to approve the application and referred it to NCPC for review and comment.

CONCLUSIONS OF LAW

1. The Zoning Act of 1938, approved June 20, 1938, as amended (52 Stat. 797; 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.” (§ 1 of the Zoning Act; D.C. Official Code § 6-641.01.)
2. Section 2 of the Zoning Act 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.”
3. Pursuant to the Home Rule Charter, the District of Columbia Comprehensive Plan Act of 1989 (D.C. Law 8-129), and 11-A DCMR § 401.1, the Commission is charged with

preparing, adopting, and subsequently amending the Zoning Regulations and Zoning Map in a means not inconsistent with the Comprehensive Plan. Pursuant to 11-X DCMR § 500.3, the Zoning 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 subject site. Accordingly, to approve the subject application the Commission must conclude that the request is not inconsistent with the Comprehensive Plan and the H Street Plan.

4. Based upon the following analysis of the Comprehensive Plan, the Applicant's exhibits included in the case record, the reports of OP, DDOT, and ANC 6A, and the testimony provided at the public hearing, the Commission concludes that the Application is consistent with the purpose of the Zoning Act and that the request is not inconsistent with the policies and maps of the Comprehensive Plan, as supplemented by the H Street Plan and therefore complies with D.C. Official Code § 6-641.02, 11-A DCMR § 401.1, and 11-X DCMR § 500.3.

Not Inconsistent with the Comprehensive Plan and Adopted Public Policies

5. The Commission concludes that approval of the requested map amendment is not inconsistent with the Comprehensive Plan because the 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 Subject Properties are located. The Commission's findings below are based on its review of the Applicant's filings in the case record, the reports submitted by OP finding that the map amendment is not inconsistent with the Comprehensive Plan and the H Street Plan, and testimony provided at the public hearing.

Not Inconsistent with the FLUM

6. The Commission concludes that the proposed NC-17 zone is not inconsistent with the FLUM's mixed-use Medium Density Commercial and Medium Density Residential designation given that the NC-17 zone is specifically intended to permit "mixed-use development at a moderate- to medium-density." *See* 11-H DCMR § 900.14.
7. The Commission credits the information provided in the Applicant's filings that the development standards for the NC-17 zone permit less height and density than other zones that are expressly identified in the Framework Element as being consistent with the Medium Density Commercial land use designation on the FLUM. The Commission also credits findings in the OP report that the map amendment would be not inconsistent with the medium density, mixed-use development anticipated by the FLUM. (Ex. 22, p 10.)

Not Inconsistent with the GPM

8. The Commission concludes that the map amendment will help implement the policies embodied in the GPM for Main Street Mixed Use Corridors by increasing the overall density that can be developed on the Subject Properties, including density for housing and

affordable housing. The Subject Properties are presently underutilized considering their proximity to the H Street DC Streetcar line, multiple Metrobus routes, the Metrorail and regional rail lines at Union Station, and their location along one of the District's Great Streets. Therefore, the Commission concludes that the increased density afforded by the map amendment will contribute to the economic vitality of the H Street corridor and generate positive economic benefits for new and existing businesses.

Land Use Element

9. The Commission concludes that the map amendment will facilitate greater utilization of the Subject Properties by permitting a greater height and density that can better meet long-term neighborhood and citywide needs. Redeveloping some or all of the Subject Properties in the future will improve the character, stability, and safety of the neighborhood, reinvigorate underutilized land, and therefore help to balance competing demands for land within the District.

Transportation Element

10. The Commission concludes that the map amendment is not inconsistent with the objectives of the Transportation Element because it will encourage redevelopment of the Subject Properties at a greater height and density than currently permitted along a major mixed-use and transit-oriented corridor. Residents, visitors, and employees of future development at the Subject Properties will have direct access to many forms of affordable transportation options, which will support the District's goal of improving mobility through the District and enhancing access to the city's mixed-use designations. Thus, the Commission finds that increasing the maximum permitted height and density at the Subject Properties is fully consistent with the District's goals for locating housing and mixed uses along highly-trafficked and multi-modal transit corridors.

Housing Element

11. The Commission concludes that the map amendment will encourage the future reuse and redevelopment of the Subject Properties by permitting a greater height and residential density that can facilitate new market-rate and affordable housing to help realize the unmet demand throughout the city.

Economic Development Element

12. The Commission concludes that the map amendment is not inconsistent with the goals of the Economic Development Element because it will encourage mixed-use growth at the Subject Properties by virtue of the increased height and density afforded by the proposed NC-17 zone. The map amendment would allow for new neighborhood serving retail and other commercial uses which will serve residents of and visitors to the surrounding area.

Urban Design Element

13. The Commission concludes that the subject application is not inconsistent with the Urban Design Element because it will promote the redevelopment of the Subject Properties, thus prompting associated improvements to the surrounding public spaces and increased livability and neighborhood identity created as a result of new development. The map amendment will encourage the redevelopment of underutilized sites that could be

redeveloped with new, visually appealing structures that appropriately interact with the surrounding public streets and sidewalks and integrate new construction with the existing and recently developed improvements on the H Street corridor.

Capitol Hill Area Element

- 14. The Commission finds that the map amendment will assist the District in achieving the planning and development priorities for the Capitol Hill Area Element in which the Subject Properties are located. The greater height and density afforded by the NC-17 zone will encourage future development on H Street, NE, which is specifically referenced as a corridor ripe for development, including the establishment of new retail stores and affordable housing. Redevelopment of the Subject Properties enabled by the map amendment will be able to accommodate ground floor commercial uses with housing and affordable housing above. Redevelopment would be paired with improvements to the adjacent public realm along H Street, with designs that are consistent with surrounding development. Thus, the Commission concludes that the application is fully consistent with the community’s goals and priorities for the Capitol Hill Area Element.

Not Inconsistent with the H Street Plan

- 15. The Commission concludes that the map amendment is fully consistent with the goals and recommendations in the H Street Plan. Increasing the height and density permitted at the Subject Properties will help to encourage redevelopment along the corridor, including increasing the potential for lot consolidation for prioritized uses including retail and mixed-income housing. The map amendment would also be consistent with the Central Retail District’s goal of strengthening retail uses and developing new housing by permitting “new land use and/or modifications to accommodate new uses.” *See* H Street Plan, p. 2.
- 16. The Commission also finds that the increased height and density afforded by the map amendment would attract new private investment, encourage the renovation of existing buildings, establish office and residential uses in upper stories, and promote infill development on the existing underutilized lots, all of which are goals encouraged by the H Street Plan. Increased density would also help to achieve the District’s goal of achieving “significant new investment in a mix of renovation and new building projects” and thereby increasing the square footage of development along the corridor. Therefore, based on the foregoing findings, the Applicant’s filings in the case record, and the analysis provided in the OP report, the Commission finds that the proposed map amendment is not inconsistent with the policies and goals of the H Street Plan.

National Capital Planning Commission (“NCPC”) Review

- 17. 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.), the Commission referred the Application to NCPC for review and comment on _____. (Ex. ____.)
- 18. By a letter dated _____, NCPC concluded that _____.

“Great Weight” to the Recommendations of OP

- 19. The Commission is required to give great weight to the recommendations of OP. (D.C. Official Code § 6-623.04 and Subtitle Z § 405.8)
- 20. 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 Subject Properties be rezoned to the NC-17 zone as discussed above.

“Great Weight” to the Written Report of the ANC

- 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 ANC 6A’s report persuasive in recommending support for the Application and concurs with that recommendation.

DECISION

At the conclusion of its February 20, 2020 public hearing, the Zoning Commission for the District of Columbia, upon the motion of Commissioner May, as seconded by Commissioner Shapiro, took **PROPOSED ACTION** to **APPROVE** the Application by a vote of **5-0-0** (Anthony J. Hood, Peter G. May, Robert E. Miller, Peter A. Shapiro, and Michael G. Turnbull to approve).

At its March 30, 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 Commissioner _____, as seconded by Commissioner _____, took **FINAL ACTION** to **APPROVE** the Application for an amendment of the Zoning Map to change the zoning for Square 982, Lots 57, 65, 68, 70 and 823 that are currently zoned MU-4 and NC-16 to NC-17 by a vote of _____ (Anthony J. Hood, Robert E. Miller, Peter G. May, Peter A. Shapiro, and Michael G. Turnbull to _____).

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 _____.

ANTHONY HOOD
Chairman, Zoning Commission

SARA B. BARDIN
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.