

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 19-28**

**Z.C. CASE NO. 19-28**

**Square 417, LLC**

**(Zoning Map Amendment @ Square 417, Lots 53 and 54)**

**September 14, 2020**

Pursuant to notice, at its July 14, 2020 public hearing, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) for a Zoning Map amendment by Square 417, LLC (the “Applicant”)<sup>1</sup> for approval of A map amendment of the Zoning Map from the RF-1 zone to the ARTS-3 zone (the “Map Amendment”) for Lots 53 and 54 in Square 417 (the “Property”), pursuant to Subtitle X § 500.1 of 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.)

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. In addition to the Applicant, the parties to this case were: Advisory Neighborhood Commissions (“ANC”) 1B, the ANC in which the Property is located, and ANC 6E, which shares a boundary with the Property, the “affected ANCs” pursuant to Subtitle Z §§ 101.8 and 403.5(b).
2. The Commission received no requests for party status.

**NOTICE**

3. On October 1, 2019, the Applicant mailed a notice of intent to file the Application to all property owners within 200 feet of the Property as well as ANCs 1B and 6E, as required by Subtitle Z §§ 304.5 and 304.6. (Exhibit [“Ex.”] 4.)
4. On May 21, 2020, the Office of Zoning (“OZ”) sent notice of the July 14, 2020, virtual public hearing to:
  - ANCs 1B and 6E;

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<sup>1</sup> The Applicant is the designated representative of the land owner, Howard University.

- ANC Single Member District (“SMD”) 1B01;
  - Office of the ANCs;
  - Office of Planning (“OP”);
  - District Department of Transportation (“DDOT”);
  - DC Council; and
  - Property owners within 200 feet of the Property. (Ex. 16-16A.)
5. OZ published notice of the public hearing in the May 29, 2020, *D.C. Register* (67 DCR 5580), as well as on the calendar on OZ’s website. (Ex. 15, 16A.)

**THE PROPERTY**

6. The Property is located in the northwest quadrant of the District and consists of approximately 42,751 square feet of land area (approximately 0.98 acres).
7. The Property is bounded by 7<sup>th</sup> Street, N.W. on the east; S Street, N.W. on the south; a 10-foot-wide public alley on the west; and T Street, N.W. on the north. (Ex. 2.)
8. The Property is currently improved with a three-story office building. (Ex. 2.)
9. The Property is located on the west side of 7<sup>th</sup> Street, N.W., across the street from the Shaw-Howard University Metrorail station, and is also within 0.2 miles of 10 Metrobus routes. The Property is located within a pedestrian-oriented area with immediate proximity to transit, as indicated by its Transit Score of 83 (excellent transit) and a Walk Score of 98 (walker’s paradise). (Ex. 2.)
10. The Property is bounded by the following zones:
- The ARTS-2 zone – To the north and east, except for a planned unit development (“PUD”) (directly east) with a 6.3 floor area ratio (“FAR”) and a maximum 90-foot height, and which included a PUD-related rezoning to the ARTS/C-2-C zone by the Commission in Z.C. Case No. 07-07; and
  - The RF-1 zone – To the south and west.

**CURRENT ZONING**

11. The Property is in the RF-zone, which provides for areas predominantly developed with row houses on small lots within which no more than two dwelling units are permitted. (Subtitle E § 300.1.)
12. As a matter of right, the RF-1 zone requires/permits:
- A 35-foot and 3-story maximum building height, not including the penthouse; (Subtitle E § 303.1.)
  - A 60% maximum lot occupancy (40% for structures other than detached, semi-detached, or row dwellings, flats, and places of worship); (Subtitle E § 304.1.)
  - A minimum lot width of 18 feet for a row dwelling or flat, 30 feet for a semi-detached dwelling; and 40 feet for all other structures; (Subtitle E § 201.1.)

- A minimum lot area of 1,800 square feet for a row dwelling or flat (1,500 square feet with Inclusionary Zoning [“IZ”]), 3,000 square feet for a semi-detached dwelling, and 4,000 square feet for all other structures; and (Subtitle E § 201.1.)
- Residential uses (including flats with a maximum of two dwelling units), boarding houses, corner stores, medical care uses, and child/elderly development centers. (Subtitle U § 301.)

**COMPREHENSIVE PLAN (Title 10A of the DCMR, the “CP”)**

**Generalized Policy Map (the “GPM”)**

13. The CP’s GPM designates the Property as a Neighborhood Enhancement Area, defined as:

*[N]eighborhoods ... that are primarily residential in character, as well as mixed-use and industrial areas ... These areas present opportunities for compatible infill development, including new single-family homes, townhomes, other density housing types, mixed-use buildings, and, where appropriate, light industrial facilities. Land uses that reflect the historical mixture and diversity of each community and promote inclusivity should be encouraged. ...[N]ew development [should] respond[] to the existing character, natural features, and existing/planned infrastructure capacity. New housing should be encouraged to improve the neighborhood and must be consistent with the land-use designation on the Future Land Use Map and with Comprehensive Plan policies. The unique and special qualities of each area should be maintained and conserved, and overall neighborhood character should be protected or enhanced as development takes place. ... New development in these areas should support neighborhood and city-wide housing needs, reduce crime and blight, and attract complementary new uses and services that better serve the needs of existing and future residents. (CP § 225.6-225.8.)*

**Future Land Use Map (“FLUM”)**

14. The CP’s FLUM designates the Property for Medium-Density Residential and Medium-Density Commercial uses, defined as:

- Medium-Density Residential –  
*“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.”; and (CP § 227.7.)*
- Medium-Density Commercial –  
*“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.” (CP § 227.12.)*

### **Near Northwest Area Element**

15. The Property falls within the Near Northwest Area Element that calls for, among other things:
  - The maintenance and enhancement of the “historic, architectural distinctive mixed density character of Near Northwest residential neighborhoods[,]”;
  - The enhancement of stable commercial areas;
  - The revitalization of neighborhood retail;
  - The production of affordable housing; and
  - A pedestrian-friendly environment. (CP § 2108.)
  
16. The Near Northwest Area Element locates the Property within the Shaw/Convention Center Area Policy Focus Area (the “Convention Center Focus Area”), which has the following goals:
  - Generate new quality housing;
  - Revitalize local businesses;
  - Improve sidewalks and public space; and
  - Upgrade parks and public facilities. (CP § 2111.3.)

### **Small Area Plans**

17. The Property is within the boundaries of two small area plans:
  - The DUKE – Development Framework for a Cultural Destination District within Washington, DC’s Greater Shaw/U Street (the “DUKE SAP”); and
  - The Convention Center Strategic Development Plan (the “Convention Center SAP”).

### ***The DUKE SAP***

18. The DUKE SAP places the Property within the Howard Theatre Sub-District, which contemplates mixed-use redevelopment, including active ground-floor retail.
  
19. The DUKE SAP identifies the Property as an “other developable site” and recommends the demolition of the existing building on the Property in order to “allow mixed use redevelopment, including active, ground floor retail, which complement other proposed destination uses and optimized density.”

### ***The Convention Center SAP***

20. The Convention Center SAP was prepared to help the District and the community guide development to realize several key objectives, including:
  - Generation of quality housing that will ensure that the community remains demographically diverse and offers a wide range of housing types; and

- Strengthening neighborhood businesses by attracting new business in Shaw through capital investment that meets the needs of visitors and tourists and creates job opportunities and tax revenues for local services.
21. The Property is located within the Convention Center SAP’s Uptown Destination District sub-area, which is:  
*“lined with ground floor shops, restaurants and clubs. Activity spills into the sidewalks, which are furnished with new trees, lights and public art. The upper level of some buildings within the Uptown Designation District are residential; the larger projects include affordable units.”*
22. The Convention Center SAP identifies the Property as a “priority development site” noting:
- The Property is a “potential site for high and medium density residential development” and a “preferred location of ground floor retail” along 7<sup>th</sup> Street, N.W.; and
  - The existing building on the Property is:  
*“not an ideal use for its location, adjacent to a Metro station – and is architecturally insignificant; its current configuration fails to take advantage of its proximity to Metro, and ground floor ceiling heights are lower than desirable for retail; the site, on the west side of the 1800 block of 7<sup>th</sup> Street, is zoned R-4 and not consistent with the surrounding commercial zones.”*

## II. THE APPLICATION

### PROPOSED ZONING

23. The Application proposed to rezone the Property from the RF-1 zone to the ARTS-3 zone.
24. The purposes of the ARTS Districts are to:
- Encourage pedestrian activity, especially residential, retail, and entertainment uses;
  - Expand the area’s housing supply in a variety of rent and price ranges;
  - Expand business and job opportunities, and encourage development of residential and commercial buildings; and
  - Strengthen the design character and identity of the area by means of physical design standards. (Subtitle K § 800.1)
25. Specifically, the ARTS-3 zone is intended to permit medium-density, mixed-use development, with a focus on employment. (Subtitle K § 800.4.)
26. As a matter of right, the ARTS-3 zone permits/requires:
- A maximum density of 4.0 FAR (4.8 with IZ), of which no more than 2.5 FAR can be devoted to non-residential uses; (Subtitle K § 802;)
  - A maximum permitted height of 75 feet, subject to the following limitations:
    - No penthouse shall exceed a height of 83.5 feet above the measuring point used for the building; and
    - If a lot abuts either a R, RF, or RA zone or an alley that serves as the zone boundary line of an adjacent R, RF, or RA zone, no part of the building will project above a

plane drawn at a 45-degree angle from a line located 50 feet directly above the property line that abuts the R, RF, or RA zone or the alley; (Subtitle K § 803.3.)

- A maximum permitted occupancy of 75% for residential uses (80% with IZ); (Subtitle K § 804.1.)
- A minimum rear yard of two and one-half inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet; and (Subtitle K § 805.1)
- A minimum green area ratio (“GAR”) of 0.25. (Subtitle K § 808.1.)

#### **APPLICANT’S JUSTIFICATION OF RELIEF**

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

27. 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.

##### ***GPM***

28. The Application asserted that the Map Amendment would not be inconsistent with the GPM because:

- The Map Amendment will allow for the redevelopment of the Property with a mixed-use building that will be consistent with the heights and densities of existing density along 7<sup>th</sup> Street;
- The additional density will allow for the Property to support a range of uses, including multi-family residential and street-level retail; and
- The redevelopment of the Property will support nearby transit options, including Metrorail, and will also provide the opportunity for improvements to pedestrian facilities.

##### ***FLUM***

29. The Application asserted that the Map Amendment would not be inconsistent with the FLUM because:

- The ARTS-3 zone is intended to allow medium-density, mixed-use development;
- The ARTS-3 zone’s 4.0 FAR falls within the range of 1.8 to 6.0 included in the FLUM designation; and
- The ARTS-3 development standards fall within the maximums of the zones identified as being specifically consistent with the FLUM, including the MU-8 zone.

##### ***Near Northwest Area Element***

30. The Application asserted that the Map Amendment would direct more reinvestment into the Shaw neighborhood by facilitating the redevelopment of an infill site with new mixed-use development, including multi-family housing and local-serving retail while remaining consistent with the Convention Center Focus Area’s preference for residential uses due to the ARTS-3 zone’s 2.5 FAR cap on non-residential density, and furthering a number of specified area element policies.



### ***Land Use Element***

31. The Application asserted that the Map Amendment would allow for the redevelopment of an underused infill site with new, mixed-use development, including multi-family housing, in a manner that reflects the character and scale of the surrounding development and provides a transition zone between the lower-density RF-1 zone to the west and the ARTS-2 and higher-density PUD to the east while furthering a number of specified Land Use Element policies.

### ***Transportation Element***

32. The Application asserted that the Map Amendment would facilitate the redevelopment of the Property near a major District transit corridor and in accordance with current DDOT design principles and practices, including the implementation of Transportation Demand Management (“TDM”) plans and would further a number of specified Transportation Element policies.

### ***Housing Element***

33. The Application asserted that the Map Amendment would facilitate the redevelopment of the Property with new market-rate and affordable housing options in a “high opportunity” location, proximate to transit options and commercial corridors, thereby supporting the District’s housing goals and furthering a number of specified Housing Element policies.

### ***Environmental Protection Element***

34. The Application asserted that the Map Amendment would allow for the redevelopment of the Property with new buildings which would incorporate new energy-efficient building systems and technologies which would further the District’s energy efficiency goals and comply with the Green Building Act, in addition to furthering a number of specified Environmental Protection Element policies.

### ***SAPs***

35. The Application asserted that the Map Amendment would:
- Further the Convention Center SAP by facilitating the redevelopment of the underdeveloped Property, which is considered a “priority development site” with new high quality market-rate and affordable housing, and ground-floor retail use that would ensure that the surrounding neighborhood would remain economically diverse while also strengthening the local economy; and
  - Further the DUKE SAP, and the Howard Theater Sub-district by allowing for the redevelopment of the Property with mixed-use development including ground-floor retail which will complement other nearby “destination uses.”

### ***Community Outreach***

36. The Applicant stated that it met with the following groups regarding the Map Amendment:
- The Howard Community Advisory Committee, which the Applicant stated supported the Map Amendment; and

- The Parent Teacher Association for Cleveland Elementary School, which is located immediately west of the Property, to discuss potential impacts of the eventual redevelopment of the Property. (Ex. 23.)

### **Public Hearing Testimony**

37. At the July 14, 2020, public hearing the Applicant presented its case, including testimony from:
- Mr. Derrek Niec-Williams, Executive Director of Campus Planning, Architecture, and Development at Howard University; and
  - Mr. Shane Dettman, Director of Planning Services, Holland & Knight LLP, whom the Commission has recognized as an expert in zoning and land use planning.

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

### **OP REPORTS AND TESTIMONY**

38. OP submitted a February 14, 2020, report recommending that the Commission set down for a public hearing the Applicant’s request for a Zoning Map amendment (the “OP Setdown Report”) and concluding that the Map Amendment would not be inconsistent with the CP because: (Ex. 12.)
- **GPM** – The Map Amendment would allow for the redevelopment of the Property with mixed-use development including residential uses above ground-floor retail;
  - **FLUM** – The ARTS-3 zone can be considered a medium-density commercial zone when considering the overall densities permitted under the Zoning Regulations in relation to the Framework Element of the CP. The existing RF-1 zoning of the Property is inconsistent with the FLUM designation due to its location along a transit-rich, mixed-use corridor which would support future development;
  - **Near Northwest Area Element** – The Map Amendment would allow for the replacement of an office building with mixed-use development that would provide housing and service uses for nearby residents, thereby contributing more to the identity and quality of the neighborhood;
  - **Convention Center Focus Area** – the Map Amendment would allow for the redevelopment of an underutilized property with new mixed-use development that would provide housing, retail, and a “continuous pedestrian experience” along the 7<sup>th</sup> Street corridor;
  - **Land Use Element** – The Map Amendment would allow for the redevelopment of the Property with new multi-family housing, including affordable units, and ground-floor retail across from the Shaw-Howard University Metrorail station, which would continue the revitalization of the Shaw neighborhood;
  - **Housing Element** – The Map Amendment would permit the development of additional housing density, including affordable housing, near Metrorail and the 7<sup>th</sup> Street/Georgia Avenue Corridor; and
  - **SAPs** - The Property is a “target location” in both the DUKE and Convention Center SAPs for higher-density development, including a mix of retail and residential uses, than what would be permitted under the existing RF-1 zoning.



39. OP submitted a May 4, 2020, report that largely reiterated the OP Setdown Report's conclusions, and recommended approval of the Map Amendment. (Ex. 14.)
40. At the public hearing, OP reiterated its support for the Application as detailed in OP reports.

#### **DDOT REPORT**

41. DDOT submitted a June 30, 2020, report (the "DDOT Report") stating that it had no objection to the Application because: (Ex. 19.)
  - DDOT's conclusion that 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;
  - DDOT strongly encouraged the minimization of any off-street parking on the Property due to the proximity to the Shaw-Howard Metro station;
  - DDOT expected that all loading, trash pick-up, and vehicle parking will take place from the 10-foot public alley in the rear of the Property; and
  - DDOT expected the Applicant to continue to coordinate with DDOT through the permitting process for any future development proposals in order to minimize any transportation network impacts caused by the increased matter-of-right density possible on the Property.
42. DDOT did not provide testimony at the public hearing.

#### **ANC REPORTS AND TESTIMONY**

43. ANC 1B submitted a December 9, 2019, resolution (the "ANC 1B Report") stating that at its properly noticed public meeting of May 12, 2019, at which a quorum was present, the ANC voted in support of the Application and expressed no issues or concerns with the Map Amendment. (Ex. 11.)
44. ANC 6E submitted a July 12, 2020, resolution (the "ANC 6E Report") stating that at its properly noticed meeting of May 5, 2020, at which a quorum was present, the ANC voted in opposition to the Application. (Ex. 22.) The ANC 6E Report raised the following issues and concerns:
  - **Parking** – The increased density under the Map Amendment would adversely affect current neighborhood residents' ability to use on-street Residential Permit Parking ("RPP") areas that are already limited by illegal non-RPP parking, which the ANC believed could be addressed by barring residents of the future development of the Property from participating in the RPP program; and
  - **Alley congestion** – The increased density under the Map Amendment would adversely affect current neighborhood residents' ability to use the northern portion of the existing 10-foot alley, which the ANC believe could be addressed by requiring the Applicant to widen that northern portion to the 20-foot width of the rest of the alley.

The ANC objected to the Applicant's decision to not pursue a PUD, which would have provided more opportunities for participation by the ANC and public. The ANC noted that while it understood that the Commission was not able to impose conditions under the map amendment process, that the ANC could not support an application when "the applicant

refuses to address the ANC's legitimate concerns about a proposed development" and designated Commissioner Alexander Padro, Single Member District 6E01, to represent the ANC before the Commission.

45. ANC 6E01 Commissioner Padro testified at the July 14, 2020 public hearing and reiterated the ANC's opposition to the Map Amendment, particularly the concerns regarding transportation issues and the inability to reach a final agreement with the Applicant addressing community concerns. (July 14, 2020 Public Hearing Transcript at 36-40.)

#### **PERSONS IN SUPPORT**

46. One public witness testified at the public hearing in support of the Map Amendment: Mr. Nicholas Smith, who resides at 711 S Street, N.W., which is located directly west of the public alley that abuts the Property.

#### **PERSONS IN OPPOSITION**

47. The French Street Neighborhood Association submitted a letter in opposition to the Map Amendment because of concerns about the impacts to parking, future traffic congestion, and widening of the alley adjacent to the Property. (Ex. 25.)
48. No one testified in opposition to the Map Amendment at the public hearing.

#### **National Capital Planning Commission ("NCPC")**

49. The Commission referred the Application to the National Capital Planning Commission ("NCPC") on July 16, 2020, for the 30-day review period required by § 492(b)(2) of the District Charter. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(b)(2); D.C. Official Code 6-641.05.)
50. NCPC filed a September 2, 2020, report stating that NCPC had determined, pursuant to delegated authority, that the Map Amendment was not inconsistent with the federal elements of the Comprehensive Plan and would not adversely impact any identified federal interests. (Ex. 28.)

#### **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) 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 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 the map amendment is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Property.

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

4. The Commission concludes, based on the filings and testimony of the Applicant and OP, that the Map Amendment from the RF-1 zone to the ARTS-3 zone is not inconsistent with the CP in its entirety, including all CP maps and elements, and will advance a number of CP Elements as discussed below.

**GPM**

5. The Commission concludes that the Map Amendment is not inconsistent with the GPM's designation of the Property as a Neighborhood Enhancement Area because:
  - The Map Amendment will facilitate redevelopment of the underutilized Property in a manner that responds to and is consistent with the heights and densities of neighboring development along 7<sup>th</sup> Street, N.W.;
  - The development permitted by the Map Amendment will enhance the existing character of the surrounding neighborhood by facilitating medium-density, mixed-use development along the 7<sup>th</sup> Street, N.W. commercial corridor;
  - New development under the ARTS-3 will support neighborhood and city-wide housing needs and attract complementary new ground-floor retail and service uses that better serve the needs of existing and future residents; and
  - The provision of ground-floor retail and service uses near Metrorail and other transit options will encourage pedestrian traffic and facilitate improvements to the pedestrian space surrounding the Property. (Findings of Fact ["FF"] 13, 28, 38.)

**FLUM**

6. The Commission concludes that the Map Amendment is not inconsistent with the Property's Medium-Density Residential and Medium-Density Commercial FLUM designation because:
  - The ARTS-3 Zone is intended to allow medium-density, mixed-use development;

- The ARTS-3 zone’s maximum 4.0 FAR (4.8 FAR with IZ) falls within the 4.0-6.0 FAR range of Medium-Density Commercial FLUM category and the 1.8-4.0 FAR range of Medium-Density Residential FLUM category;
- The ARTS-3 zone’s development parameters fall within those of the MU-8 zone that the CP identifies as “consistent” with the Medium-Density Commercial FLUM designation; and
- The Map Amendment will achieve greater compatibility with the envisioned density and uses for the Property than the current RF-1 zoning for the Property which is substantially below the anticipated density for this FLUM designation. (FF 14, 29, 38.)

**Near Northwest Area Element**

7. The Commission concludes that the Map Amendment furthers the area element and in particular the policies of the Convention Center Focus Area because:
- It will facilitate development that will maintain and enhance the Shaw neighborhood by directing growth to Shaw, through the production of new market-rate and affordable housing and revitalization neighborhood commercial retail uses along 7<sup>th</sup> Street, N.W.;
  - The ARTS-3 zone’s cap on non-residential FAR will ensure mixed-use development with an emphasis on housing consistent with the Convention Center Focus Area’s preference for residential uses;
  - It will allow for the development of ground-floor retail uses which will help foster associated public space improvements that will enhance the pedestrian experience along the 7<sup>th</sup> Street, N.W. and integrate the Property into the 7<sup>th</sup> Street commercial corridor. (FF 15, 16, 30, 38.)

**Land Use Element**

8. The Commission concludes that the Map Amendment furthers this Element because:
- The increased density permissible under the ARTS-3 zone will support new, infill multifamily development near the Shaw-Howard University Metrorail Station on land that is currently underutilized; and
  - It will allow for heights and densities that are more consistent with the surrounding neighborhood, due in part to the penthouse and setback requirements of the ARTS-3 zone which will provide a transition area between the lower-density zones to the west and the higher density zones, including the approved PUD, to the east. (FF 31, 38.)

**Transportation Element**

9. The Commission concludes that the Map Amendment furthers this element as it will facilitate the redevelopment of the Property with transit-oriented development, including housing. In addition, the Commission credits the conclusions of the DDOT report that the Map Amendment will not result in undue adverse impacts to the surrounding transportation network. (FF 32, 41.)

**Housing Element**

10. The Commission concludes that the Map Amendment furthers this element because it will allow the Property to be redeveloped with new market-rate and affordable housing to help meet the needs of present and future District residents. Consistent with the Mayor’s

housing initiative, the ARTS-3 zone will allow for greater amounts of new housing in a “high opportunity” location. (FF 33, 38.)

### **Environmental Protection Element**

11. The Commission concludes that the Map Amendment furthers this element because it enables future redevelopment of the Property that will incorporate energy-efficient systems to reduce energy use, and which will comply with the Green Building Act. (FF 34.)

### **SAPs**

12. The Commission concludes that the Map Amendment is not inconsistent with the recommendations of the DUKE SAP because Map Amendment will facilitate new mixed-use development including ground floor retail and upper floor residential on an underutilized site that will be compatible with the surrounding Shaw neighborhood, and specifically the Howard Theatre Sub-District. (FF 18, 19, 35, 38.)
13. The Commission concludes that the Map Amendment will enable the exact type of development envisioned for the Property by the Convention Center SAP because:
  - The Map Amendment will allow for medium-density residential development including new housing and affordable housing on an underutilized site; and
  - Redevelopment of the Property also has the potential to expand ground floor retail in a location that reinforces a traditional main street pattern of commercial development and creates a unified identity for the community. (FF 20-22, 35, 38.)

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

14. The Commission must give “great weight” to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
15. The Commission concludes that OP’s reports, which provided an in-depth analysis of the proposed map amendment, are persuasive and concurs with OP’s recommendation that the Property be rezoned, as discussed above.

### **“GREAT WEIGHT” TO THE ANC REPORTS**

16. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. 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).)

17. Although the ANC 1B Report did not express any legally relevant issues or concerns to which the Commission can give great weight, the Commission notes ANC 1B’s support for the Map Amendment and concurs in that judgement. (FF 43.)
  
18. The Commission does not find the issues and concerns raised by the ANC 6E Report persuasive for the following reasons:
  - **Parking** – The Commission finds persuasive the DDOT Report’s: (i) determination that the Map Amendment is not likely to lead to a significant increase in the number of peak hour vehicle trips on the District’s transportation network; and (ii) recommendation to minimize vehicle parking on-site due to the proximity to the Shaw-Howard Metro station. The Commission therefore concludes that restricting RPP eligibility for future residents/occupants of the Property is not warranted; and
  - **Alley Congestion** – The Commission finds persuasive the DDOT Report’s: (i) determination of the limited transportation impacts of the Map Amendment; and (ii) expectation that the existing 10-foot alley would handle the loading, trash pick-up, and vehicle parking for the Property without changes. The Commission therefore concludes that requiring the Applicant to widen the alley is not warranted. (FF 44.)
  
19. The Commission acknowledges ANC 6E’s frustration that the Applicant chose to pursue a Map Amendment instead of a PUD in which the ANC would have had a more defined role, but notes that PUDs and map amendments are different zoning mechanisms for establishing the development parameters of a particular site and that an applicant has the right to choose to pursue a map amendment or PUD, as the ANC 6E Report acknowledged. As a map amendment, the Application is not a proposal for a specific project but instead a request to change the zoning designation for an area and thereby establish the parameters for future development projects. In evaluating a map amendment, the Commission only considers the appropriateness of the requested zoning based on its consistency with the CP as a whole, including its maps and elements. (FF 44.)

**DECISION**

In consideration of the record for Z.C. Case No. 19-28 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	MAP AMENDMENT
417	53 and 54	RF-1 to ARTS-3

**Proposed Action**

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



**Final Action**

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

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 19-28 shall become final and effective upon publication in the *D.C. Register*; that is on January 15, 2021.



**ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION**



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

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS THE D.C. HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (THE "ACT"). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE 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. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.