

NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 19-30
Advisory Neighborhood Commission (ANC) 5D
(Zoning Map Amendment @ Squares 4494, 4495, 4506, and 4507 and Parcels 160/22 and 160/38)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2018 Repl.)), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206, as amended; D.C. Official Code § 2-505 (2013 Repl.)), hereby gives notice of its adoption of the following amendments to the Zoning Map:

- Rezone the following properties from the RA-2/MU-4¹ to the RF-4 zone (Proposed RF-4 Area):
 - Square 4494: Lots 38-55, 75-90, and 827²
 - Square 4495: Lots 2-65
 - Square 4506: Lots 88-139 and 141-163
 - Square 4507: Lots 89-101, 112-118, and 143-164
- Rezone the following properties from the RA-2/MU-4³ to the MU-5A zone (Proposed MU-5A Area):
 - Square 4506: Lots 74-75, 77-79, 81, 83-87, and 164-167⁴
 - Square 4507: Lots 1-9, 20, 119-132, 138-142, and 166-170⁵
 - Parcels 160/22 and 160/38 (southern portion below line connecting the east-west alley in Square 4506 and the northern line of Parcel 160/22)

Setdown

ANC 5D, the “affected ANC” as defined by Subtitle Z § 101.8, filed a petition pursuant to Subtitle X, Chapter 5, 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) requesting the Commission approve these proposed amendments (Map Amendment) to the Zoning Map on December 1, 2019 (Exhibits 1-3, as revised on December 11, 2019 (Exhibit 1B), on May 5, 2020 (Exhibit 17), and on September 4, 2020 (Exhibits 28-28A, collectively, the ANC Petition).

The ANC Petition asserted that the Map Amendment is not inconsistent with the CP as a whole and would balance out the downzoning to the RF-4 zone with the upzoning to the MU-5A zone to create more affordable housing and family-sized housing.

¹ The Proposed RF-4 Area includes Lots 88 and 89 in Square 4506 that are currently split-zoned RA-2/MU-4 (all others are currently zoned RA-2).

² In Square 4495, Record Lots 83 and 84 are known for assessment and taxation (A&T) purposes as A&T Lot 843.

³ The Proposed MU-5A Area includes Lots 127-132, 138-142, and 166-170 in Square 4507 that are currently in the RA-2 zone (all others are currently zoned MU-4).

⁴ In Square 4506, the following Record Lots are known as the following A&T Lots: 74 = 803, 75 = 805, 77 = 809, 78 = 811, 79 = 813, 81 = 817, 83 = 821, and 84 = 823.

⁵ In Square 4507, the following Record Lots are known as the following A&T Lots: 1-3 = 938, 4-5 = 940, 6-8 = 935, 9 and 20 = 937, 122 = 943, and 124 = 944.

Proposed RF-4 Area

The Proposed RF-4 Area includes approximately 13.5 acres of land between 18th and 21st Streets, N.E., on both sides of H Street, N.E., and is characterized by two-story residential rowhouses.

The Comprehensive Plan (10A DCMR, the CP) designates the Proposed RF-4 Area on the General Policy Map (GPM) as a Neighborhood Conservation Area, which the CP describes as generally residential neighborhoods with little vacant or underutilized land in which new development, redevelopment and alterations should be compatible with the existing scale, natural features, and character of the neighborhood, which should be conserved and enhanced, but not preclude development, particularly that which addresses city-wide housing needs (CP §§ 225.4-225.5).

The CP's Future Land Use Map (FLUM) designates the Proposed RF-4 Area, except for Lot 66 in Square 4495, for Moderate Density Residential uses, which the CP contemplates for neighborhoods with single-family houses, two- to four-unit buildings, row houses, low-rise garden apartment apartments. The CP calls for a density of up to a 1.8 floor area ratio (FAR), although greater density may be possible for developments complying with Inclusionary Zoning (IZ) or when approved through a Planned Unit Development (PUD). The CP identified both the current RA-2 and the proposed RF-4 zones as consistent with the Moderate Density Residential category (CP §§ 227.6).

Lot 66 in Square 4495 has a Medium Density Residential FLUM designation, which the CP contemplates for neighborhoods composed generally of mid-rise apartment buildings, although pockets of low or moderate density housing may be included, with density typically ranging from 1.8 to 4.0 FAR, although greater density may be possible for IZ developments or PUDs. The CP identifies the RA-3 zone as consistent with Medium Density Residential uses, although other zones may also be consistent (CP §§ 227.7).

The current RA-2 zone of most of the Proposed RF-4 Area is intended to provide for areas developed with predominantly moderate-density residential. The RA-2 zone has:

- No limits on the number of residential units;
- No minimum lot dimensions;
- A maximum building height of fifty feet (50 ft.);
- A maximum lot occupancy of sixty percent (60%); and
- A maximum FAR of 1.8 (2.16 for IZ developments).

The current MU-4 zoning of a small portion (Lots 88 and 89 in Square 4506 and Lots 127-132, 138-142, and 166-70) of the Proposed RF-4 Area is intended to provide for moderate-density mixed-use development providing office, retail, and housing facilities in low- and moderate-density residential areas with access to main roadways or transit stops. The MU-4 zone has:

- A maximum height of fifty feet (50 ft.);
- A maximum lot occupancy for residential use of sixty percent (60%) (seventy-five percent [75%] for IZ developments); and
- A maximum FAR of 2.5 (3.0 for IZ developments), with a maximum 1.5 non-residential FAR.

The proposed RF-4 zone is intended to provide for areas predominantly developed with row houses of three (3) or more stories, within which may also exist a mix of apartment buildings, and to promote the continued row house character and appearance of these areas as well as the residential use of larger row house buildings. The RF-4 zone has:

- A maximum of three residential units per lot;
- A minimum lot area of one thousand eight hundred square feet (1,800 sq. ft.) for row dwellings or flats, three thousand square feet (3,000 sq. ft.) for semi-detached dwellings, and four thousand square feet (4,000 sq. ft.) for all other structures (one thousand five hundred square feet [1,500 sq. ft.] for IZ developments);
- A minimum lot width of eighteen feet (18 ft.) for row dwellings or flats, thirty feet (30 ft.) for semi-detached dwellings, and forty feet (40 ft.) for all other structures (eighteen feet [18 ft.] for IZ developments);
- A maximum building height of three (3) stories and forty feet (40 ft.);
- A maximum lot occupancy of sixty percent (60%); and
- A maximum FAR of 1.8.

Proposed MU-5A Area

The Proposed MU-5A Area includes approximately 4.3 acres of land on the north side of Benning Road, N.E. between 17th and 21st Streets, N.E. and is characterized by a variety of two (2)- and three (3)-story residential rowhouses, three-story mixed-use buildings, low-rise retail uses, a gas station, and a decommissioned power plant.

The GPM designates the western fourth of the Proposed MU-5A Area (Lots 127-132, 138-142, and 166-170 in Square 4507) as a Neighborhood Conservation Area, with the remainder designated as a Main Street Mixed Used Corridor, which the CP describes as pedestrian oriented commercial business corridors with traditional storefronts, with upper-story residential or office uses. (CP §§ 225.14) The FLUM designates the eastern fourth (Parcels 160/22 and 160/38) designated for Medium Density Residential uses, with the remainder designated for Moderate Density Residential uses. Although the definitions of the Moderate and Medium Density Residential use categories do not specifically identify the current MU-4 or proposed MU-5A zones as consistent with these use categories, both categories specify that other zones may apply.

The current MU-4 zoning of the Proposed MU-5A Area is intended to provide for moderate-density mixed-use development providing office, retail, and housing facilities in low- and moderate-density residential areas with access to main roadways or transit stops. The MU-4 zone has:

- A maximum height of fifty feet (50 ft.);
- A maximum lot occupancy for residential use of sixty percent (60%) (seventy-five percent [75%] for IZ developments); and
- A maximum FAR of 2.5 (3.0 for IZ developments), with a maximum 1.5 non-residential FAR.

The proposed MU-5A zoning is intended to provide for medium-density mixed-use development with an emphasis on residential use providing office, retail, and housing facilities on arterial streets and rapid transit stops. The MU-5A zone has:

- A maximum height of sixty-five feet (65 ft.) (seventy feet [70 ft.] for IZ developments);

- A maximum lot occupancy for residential use of eighty percent (80%); and
- A maximum FAR of 3.5 (4.2 for IZ developments), with a maximum 1.5 non-residential FAR.

OP Setdown Report

The Office of Planning (OP) filed an April 14, 2020 report (OP Setdown Report) recommending that the Commission setdown the ANC Petition for a public hearing. The OP Setdown Report concluded that the Map Amendment - except for Lot 66 in Square 4495 - would not be inconsistent with the CP because:

- The proposed RF-4 zoning would not be inconsistent with the GPM's Neighborhood Conservation Area designation because it would maintain the current neighborhood character while allowing smaller apartment houses and would not be inconsistent with the FLUM's designations of Moderate Density Residential designation for most of the Proposed RF-4 Area and Medium Density Residential for the remainder.
- The proposed MU-5A zoning would align with the GPM's Main Street Mixed-Use Corridor designation for most of the Proposed MU-5A Area, with the CP's Upper Northeast Area Element and Small Area Plan, with the FLUM's Medium Density Residential designation for the eastern fourth of the Proposed MU-5A Area, and with the historic and current uses of the Proposed MU-5A Area as a mixed-use neighborhood commercial corridor. OP concluded that this alignment with these CP policies and maps together outweigh the GPM's Neighborhood Conservation Area designation of the western fourth and the FLUM's Moderate Density Residential designation of the western three-quarters with its lower density framework so that the proposed MU-5A zoning is not inconsistent with the CP as a whole.
- OP expressed a concern with the proposed inclusion of Lot 66 in Square 4495 in the Proposed MU-5A Area because of its Moderate Density Residential FLUM designation that calls for a higher density than allowed under the RF-4 zone.

At its April 27, 2020, public meeting, the Commission heard testimony from OP in support of the Map Amendment and voted to set it down for a public hearing. The Commission approved a revised setdown to add Lot 827 in Square 4494 to the Proposed RF-4 Area at its May 11, 2020, public meeting.

Public Hearing

DDOT Report

The District Department of Transportation (DDOT) issued an August 28, 2020, report that determined that the Map Amendment would have a minimal impact on the transportation network and the Proposed MU-5A Area's increased density is consistent with DDOT's approach to support adjacent transit and businesses with increased foot traffic.

OP Hearing Report

OP submitted a September 4, 2020, Hearing Report that reiterated OP's recommendation to approve the Map Amendment but with the exclusion of Lot 66 in Square 4495.

The Commission received several written comments opposing the Map Amendment's proposed downzoning of the Proposed RF-4 Area because it would limit the supply of housing needed to reduce the affordable housing crisis.

At its September 17, 2010, public hearing, the Commission heard testimony from ANC 5D and OP, which emphasized the complementary nature of the Map Amendment's proposed upzoning and downzoning that would further the Mayor's initiative to create an additional thirty-six thousand (36,000) new housing units by 2025 including twelve thousand (12,000) affordable housing units. In response to questions from the Commission, OP repeated its recommendation to remove Lot 66 in Square 4495 because its current RA-2 zoning, but not the proposed RF-4 zoning, matched its FLUM Medium Density Residential designation. The Commission also heard public testimony from supporters and opponents of the Map Amendment, with most opponents criticizing the proposed downzoning of the Proposed RF-4 Area and one opposing the proposed upzoning of the Proposed MU-5A Area.

Proposed Action

OP Supplemental Report

OP submitted an October 5, 2020, Supplemental Report in response to the Commission's request reporting that the Proposed RF-4 Area includes five existing apartment houses with four or more dwelling units - including the apartment house on Lot 66 in Square 4495 that OP recommended be excluded from the Map Amendment - as well as two existing buildings in the process of being converted to apartment houses with four or more dwelling units. OP's Supplemental Report reiterated OP's recommendation to approve the Map Amendment with the exclusion of Lot 66 in Square 4495.

"Great Weight" to the Recommendations of OP

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)

The Commission finds OP's recommendation that the Commission take proposed action to adopt the Map Amendment, provided that Lot 66 in Square 4495 is removed, persuasive and concurs in that judgment.

"Great Weight" to the Written Report of the ANCs

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).

The Commission finds persuasive the ANC Petition's concern to increase the supply of affordable housing by focusing density along Benning Road, N.E., and encouraging family-sized units in the

Proposed RF-4 Area and concurs with the ANC Report’s support of the Map Amendment as addressing these concerns except for Lot 66 in Square 4495, which the Commission concurs with OP’s recommendation to leave it in its current RA-2 zone as more consistent with its Medium Density Residential FLUM designation.

At its October 15, 2020, public meeting, the Commission voted to take **PROPOSED ACTION** to adopt the Map Amendment, as modified by OP’s recommendation to exclude Lot 66 in Square 4495, and to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (October 15, 2020): 5-0-0 (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**)

The complete record in the case can be viewed online at the Office of Zoning’s Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by e-mail at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

PROPOSED MAP AMENDMENT

SQUARE	LOTS	CURRENT ZONE	NEW ZONE
4494	38-55, 75-90, & 827 ⁶	RA-2	RF-4
4495	2-65	RA-2	
4506	88-89	RA-2/MU-4	
	90-139 and 141-163	RA-2	
4507	89-101, 112-118, and 143-164	RA-2	MU-5A
4506	74-75, 77-79, 81, 83-87 164-167 ⁷	MU-4	
4507	1-9, 20, & 119-126 ⁸	MU-4	
	127-132, 138-142, & 166-170	RA-2	
Parcels 160/22 and 160/38 (southern portion)		MU-4	

⁶ In Square 4495, Record Lots 83 and 84 are known as A&T Lot 843.

⁷ In Square 4506, the following Record Lots are known as A&T Lots as follows: 74 = 803, 75 = 805, 77 = 809, 78 = 811, 79 = 813, 81 = 817, 83 = 821, and 84 = 823.

⁸ In Square 4507, the following Record Lots are known as A&T Lots as follows: 1-3 = 938, 4-5 = 940, 6-8 = 935, 9 & 20 = 937, 122 = 943, and 124 = 944.