

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING  
Z.C. Case No. 20-16<sup>1</sup>  
Office of Planning  
(Zoning Map Amendment @ Square 442, Lot 106)  
December 17, 2020**

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 amendment to the Zoning Map: a rezoning of Lot 106 in Square 442 (Property) from the ARTS-2 zone to the ARTS-4 zone.

Setdown

On July 17, 2020, the Office of Planning (OP) filed a report that served as a petition (Petition) requesting the Commission approve a proposed amendment of the Zoning Map for the Property from the current ARTS-2 zone to the ARTS-4 zone (Map Amendment). (Exhibit [Ex.] 2.)

The Property consists of approximately 15,317 square feet on the northeast corner of the intersection of 7<sup>th</sup> Street and Rhode Island Avenue, N.W. To the north is a multifamily building in the ARTS-2 zone; to the east are a vacant property and row dwellings in the RF-1 zone and a multifamily residential building developed as a PUD under the C-2-B Zone District; to the south across Rhode Island Avenue are row dwellings in the RF-1 zone and an apartment building in the MU-4 zone; to the southwest is the Shaw Library in the MU-5A and RA-2 zones; and to the west is the Shaw-Howard University Metro Station entrance and an apartment building in the ARTS-2 zone. The area is characterized by a mixture of row dwellings, apartments, small retail, and institutional uses.

The Generalized Policy Map (GPM) of the Comprehensive Plan (CP) designates the Property as a Main Street Mixed-Use Corridor, which the CP's Framework Element<sup>2</sup> defines as traditional commercial business corridors with a pedestrian-oriented environment with traditional storefronts

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<sup>1</sup> For Office of Zoning tracking purposes only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 20-16.

<sup>2</sup> The OP Petition referred to the Framework Element, which became law on August 27, 2020, as the "new" Framework Element" because at the time of the OP Petition it had been approved by the Council and Mayor but not yet become law.

with upper-story residential office uses. Redevelopment of these corridors should foster economic and housing opportunities, serve neighborhood needs, support transit use, and enhance the pedestrian environment.

The CP's Future Land Use Map (FLUM) designates the Property for Mixed-Use Medium-Density Residential/Medium-Density Commercial. The CP's Framework Element defines medium-density residential as including neighborhoods with mid-rise apartment buildings up to a 4.0 floor area ratio (FAR) (with additional FAR anticipated for Inclusionary Zoning [IZ] developments and for Planned Unit Developments [PUD]) as the predominant use, with some taller residential buildings surrounded by large areas of permanent open space, with the RA-3 zone specifically identified as a consistent zone, although other zones may apply. The CP's Framework Element defines medium-density commercial as for retail, office, and service businesses with buildings that are up to 6.0 FAR (with additional FAR anticipated for IZ developments and PUDs), with the MU-8 and MU-10 zones specifically identified as consistent zones, although other zones may apply.

The Property's current ARTS-2 zone is intended to permit medium-density, compact mixed-use development, with an emphasis on residential development. The ARTS-2 zone permits a maximum building height of 65 feet (70 feet for IZ developments); a maximum 3.5 FAR (4.2 for IZ developments), of which a maximum 1.5 FAR may be devoted to non-residential uses; and a maximum lot occupancy of 60% (80% for IZ developments) for residential uses or 100% for non-residential uses.

The ARTS-4 zone proposed for the Property is intended to permit medium- to high-density, mixed-use development, with a balance of uses conducive to a higher quality of life and environment for residents, businesses, employees, and institutions. The ARTS-4 zone permits a maximum building height of 90 feet (100 feet for IZ developments), with buildings above 65 feet subject to a one-to-one setback from property lines abutting a residential zone; a maximum 6.0 FAR (7.2 for IZ developments), of which a maximum 3.0 FAR may be devoted to non-residential uses; and a maximum lot occupancy of 75% (80% for IZ developments) for residential uses or 100% for non-residential uses.

The Petition asserted that the Map Amendment is not inconsistent with the CP because:

- The increased height and density allowed under the proposed ARTS-4 zoning would enable additional residential units and affordable housing and would generate additional pedestrian traffic that would provide additional support for ground floor retail and transit use of the adjacent Metro station;
- Multiple CP Policies, as well as the two Small Area Plans applicable to the Property, recommended mixed-use residential buildings with ground-floor retail and service uses, as did the GPM and FLUM designations; and
- The density and height of the proposed ARTS-4 zone are consistent with the MU-10 zone specifically identified by the CP's Framework Element as consistent with the Medium-Density Commercial FLUM designation.

At its public meeting on July 27, 2020, the Commission heard testimony from OP in support of setting the Map Amendment down for a public hearing and voted to set it down for a public hearing.

### **Public Hearing**

OP submitted an October 9, 2020, Hearing Report that reiterated OP's support for the Map Amendment. (Ex. 8.)

### **ANC Report**

ANC 6E, the "affected ANC" as defined by Subtitle Z § 101.8, submitted an October 18, 2020, report (ANC Report) raising the issue that the ANC wished to ensure a process for community involvement and input in future development of the Property under the Map Amendment but that it supported the OP Petition. (Ex. 12.)

### **Notice**

A written comment submitted to the record on October 15, 2020, raised the issue that the notice placard posted on the Property provided the hearing date as "Thursday, October 19" although the correct hearing date was "Monday, October 19." (Ex. 10.) Pursuant to Subtitle Z § 502.10, the Commission considered the defect in notice at the public hearing and determined that the public hearing should continue as scheduled, because the date of the hearing was correctly advertised, although the incorrect day of the week was listed as a result of a typographical error.

At its public hearing on October 19, 2020, the Commission heard testimony from OP, as well as from Shane Dettman on behalf of Holland and Knight, in support of the Map Amendment.

### **Proposed Action**

At the close of its October 19, 2020, public hearing, the Commission voted to take **PROPOSED ACTION** to adopt the Map Amendment and to authorize the publication of a Notice of Proposed Rulemaking:

**VOTE (October 19, 2020): 5-0-0** (Robert E. Miller, Peter G. May, Anthony J. Hood, Peter A. Shapiro, and Michael G. Turnbull to **APPROVE**)

### **Notice of Proposed Rulemaking**

The Commission published a Notice of Proposed Rulemaking (NPR) in the November 6, 2020, *D.C. Register*. (67 DCR 13160, *et seq.*)

The Commission received one comment responding to the NPR in the thirty- (30) day period required by § 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.)). The Deputy Mayor for Planning and Economic Development (DMPED), the District agency acting on behalf of the District as owner of the Property, stated its support for the Map Amendment and DMPED's commitment to ensure that the development of the Property will include high architectural design, deeper affordable housing than required by law, and continued engagement with the community around visual design elements and other community benefits. (Ex. 18.)

**National Capital Planning Commission (“NCPC”)**

The Commission referred the Petition to the National Capital Planning Commission (NCPC) on November 3, 2020, for the thirty- (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.)

NCPC filed a November 4, 2020, report stating that NCPC had determined, pursuant to delegated authority, that the Petition was not inconsistent with the federal elements of the Comprehensive Plan and would not adversely impact any identified federal interests. (Ex. 17.)

**Final Action**

**“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 adopt the Map Amendment 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 notes that the concerns raised by the ANC Report apply to the future development of the Property and are not applicable to a map amendment case, but also notes the ANC Report’s support of the Map Amendment and concurs in that judgement.

At its December 17, 2020, public meeting, the Commission voted to take **FINAL ACTION** to adopt the Map Amendment and to authorize the publication of a Notice of Final Rulemaking:

**VOTE (December 17, 2020): 5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**)


SQUARE	LOT	MAP AMENDMENT
442	106	ARTS-2 zone to the ARTS-4 zone

In accordance with the provisions of Subtitle Z § 604.9, this Notice of Final Rulemaking shall become final and effective upon publication in the *D.C. Register*; that is, on February 5, 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. BARDIN  
DIRECTOR  
OFFICE OF ZONING