

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 21-17  
Z.C. CASE NO. 21-17  
Congress Park Community Partners, LLC  
(Zoning Map Amendment @ Square 5914, Eastern Portion of Lot 806)  
February 14, 2022

Pursuant to notice, at its February 14, 2022 public hearing, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) for a Zoning Map amendment by Congress Park Community Partners, LLC (the “Applicant”) for approval of an amendment of the Zoning Map from the RA-1 zone to the MU-8B zone (the “Map Amendment”) for the eastern portion of Lot 806 in Square 5914 (the “Property”)<sup>1</sup>, 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 Commission (“ANC”) 8E, the ANC in which the Property is located and the “affected ANC” pursuant to Subtitle Z § 101.8 and 403.5(b).
2. The Commission received no requests for party status.

**NOTICE**

3. The Applicant served the Application on the affected ANCs on June 24, 2021 as evidenced by the certificate of service included in the Application. (Exhibits [“Ex.”] 3M.)
4. On December 21, 2021, the Office of Zoning (“OZ”) sent notice of the February 14, 2022 virtual public hearing, to:
  - Applicant;

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<sup>1</sup> A subdivision plat was recorded in the Office of the Surveyor on February 3, 2022, at Book 219, Page 112, such that the eastern portion of Lot 806 that is subject to this Application is now known as Lot 9 in Square 5914.

- ANC 8E;
  - ANC Single Member District (“SMD”) 8E04;
  - Office of the ANCs;
  - Office of Planning (“OP”);
  - Department of Consumer and Regulatory Affairs (“DCRA”);
  - Office of Zoning Legal Division (“OZLD”);
  - Department of Energy & Environment (“DOEE”);
  - District Department of Transportation (“DDOT”);
  - DC Council; and
  - Property owners within 200 feet of the Property. (Ex. 21, 22.)
5. OZ published notice of the public hearing in the December 31, 2021, *D.C. Register* (68 DCR 14140), as well as on the calendar on OZ’s website. (Ex. 20.)
  6. Pursuant to Subtitle Z §§ 402.8 and 402.9, the Applicant filed an affidavit supported by photos stating that on December 30, 2021, it had posted the required notice of the public hearing. (Ex. 23-23C.)
  7. Pursuant to Subtitle Z § 402.10, the Applicant filed an affidavit attesting that it had maintained the posting of the notice on the subject property. (Ex. 26.)

**THE PROPERTY**

8. The Property encompasses the eastern portion of Lot 806 in Square 5914 (now identified as Lot 9 in Square 5914), which is currently owned by the District of Columbia and is the site of the former Malcolm X Elementary School campus.
9. The former school was closed in 2013 and is now occupied by the District Department of Parks and Recreation Opportunity Center, a District Department of Human Services hypothermia center, and other community-based organizations.
10. The Property is unimproved and contains approximately 46,165 square feet of land area (approximately 1.06 acres) and is bounded by Alabama Avenue, S.E. to the north, Savannah Street, S.E. to the south, Congress Street, S.E. to the east, and the former school building to the west.
11. The Property is located in the Congress Heights neighborhood of Ward 8. The area surrounding the Property contains a collection of commercial, residential, institutional, and government uses. To the northwest, across Alabama Avenue, is the historic Saint Elizabeths East Campus, including the recently completed Entertainment and Sports Arena and Residences at St. Elizabeths East. Directly north of the Property are cemetery and church uses, as well as some moderate-density residential uses. To the northeast is moderate-density residential uses. To the south, west, and immediate east are moderate-density residential uses. The Shops at Park Village, a retail center containing a Giant grocery store and a number of other retail, service, and eating and drinking establishment uses is also located approximately 0.15 miles to the east of the Property. (Ex. 3C.)

12. Other notable uses within proximity to the Property include Turner Elementary School (approximately 0.3 miles east), Malcolm X Elementary School (approximately 0.2 miles south), and Oxon Run Park (approximately 0.2 miles south). THE ARC (Town Hall Education Arts Recreation Campus), a state-of-the-art community facility offering access to high-quality educational, health, cultural, recreational, and social service programs, is located approximately 0.4 miles southeast of the Property. The Congress Heights Metrorail station is located only approximately 450 feet west of the Property. (Ex. 3C.).
13. An active planned unit development (“PUD”) is located at the Metrorail station, just west of the Property. Initially approved in 2015, the PUD project consists of a mixed-use building containing ground-floor retail with office and residential uses above. (See Z.C. Order No. 13-08 (dated May 11, 2015, effective June 5, 2015).)<sup>2</sup> The approved PUD has a maximum density of 5.06 FAR, and a maximum height of 90 feet. As part of its approval of the PUD, the Commission approved a PUD-related map amendment to rezone the PUD site to C-3-B, which is the ZR58 equivalent of the MU-8B zone proposed for the Property under ZR16.

#### **MALCOLM X ELEMENTARY CAMPUS REQUEST FOR PROPOSALS**

14. The District intends to dispose of the Property for redevelopment under a long-term ground lease. On July 30, 2020, the Deputy Mayor for Planning and Economic Development (“DMPED”), on behalf of the District of Columbia, released a Request for Proposals (the “RFP”) for the redevelopment of the Property. The RFP emphasizes the District’s equity goals by giving priority to respondents that maximize the inclusion of racial and ethnic minorities or other persons that are members of historically disadvantaged groups, particularly in leadership positions. (Ex. 3.)
15. The RFP required respondents to reflect the important value of the Property to the surrounding community and embody certain characteristics such as: (i) maximizing affordable housing; (ii) maximizing equity ownership and majority control opportunities for Disadvantaged Business Enterprises; (iii) uses that are compatible with and leverage surrounding neighborhood development; (iv) responsiveness to community preferences; (v) transit-oriented development; and (vi) opportunities for teacher and/or educator housing. (Ex. 3.).
16. The RFP sets forth a number of District goals and requirements that respondents are expected to achieve. As related to zoning, these goals include: (i) maximizing density on the Property; (ii) supporting for mixed-use, transit-oriented development; (iii) maximizing housing affordability; (iv) neighborhood compatibility while accommodating necessary uses; (v) providing neighborhood-serving retail; and (vi) supporting workforce development centers.
17. On April 20, 2021, DMPED selected the Applicant for the redevelopment of the Property. Redevelopment of the Property by the Applicant will ultimately be governed by a Land

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<sup>2</sup> The validity of Z.C. Order No. 13-08 has been extended pursuant to Z.C. Order Nos. 13-08A, 13-08(1), and 13-08B.

Development Disposition Agreement (“LDDA”) between the Applicant and the District which is subject to approval by the D.C. Council.

**CURRENT ZONING**

18. The Property is in the RA-1 zone, which provides for areas predominantly developed with low- to moderate-density development, including detached dwellings, row houses, and low-rise apartments. (Subtitle F § 300.2.)
19. As a matter of right, the RA-1 zone requires/permits:
  - Density: 0.9 FAR (1.08 FAR with Inclusionary Zoning (“IZ”); (*See* Subtitle F §§ 302.1, 302.2.)
  - Height: 40 feet and 3-stories, not including the penthouse; (*See* Subtitle F § 303.1.)
  - Height (penthouse): 12 feet (one story); and (*See* Subtitle F § 303.2.)
  - Lot Occupancy: 40%. (*See* Subtitle F § 304.1.)

**COMPREHENSIVE PLAN (TITLE 10-A OF THE DCMR, THE “CP”)**

**Equity and the Comprehensive Plan**

20. Pursuant to Subtitle X § 500.3, the Commission shall find that the Map Amendment is not inconsistent with the CP and with other adopted public policies and active programs related to the Property.
21. In applying the standard of review applicable to the Map Amendment, the CP requires the Commission to do so through a racial equity lens. Consideration of equity is intended to be based on the policies of the CP, and part of the Commission’s consideration of whether the Map Amendment is “not inconsistent” with the CP, rather than a separate determination about a zoning action’s equitable impact.
22. The CP Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (10-A DCMR § 213.6.) Further, “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development, and employment opportunities.” (10-A DCMR § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (10-A DCMR § 213.9.)
23. The CP Implementation Element provides guidance to help guide the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states that “[a]long with consideration of the defining language on equity and racial equity in the Framework Element, guidance in the Citywide Elements on District-wide equity objectives, and the Area Elements should be used as a tool to help guide equity interests and needs of different areas in the District.” (10-A DCMR § 2501.6.)

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

24. The CP’s GPM designates the Property as a Neighborhood Enhancement Area.
25. The CP Framework Element describes the Neighborhood Enhancement Area designation 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.)*

26. The guiding philosophy in Neighborhood Enhancement Areas is to ensure that new development responds 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 CP policies. Overall neighborhood character should be protected or enhanced as development takes place. (10-A DCMR § 225.7) 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 (10-A DCMR § 225.8.)

### **Future Land Use Map (the “FLUM”)**

27. The CP’s FLUM Designates the Property as Local Public Facilities.
28. The CP Framework Element describes the Institutional land use designations as:

*“[L]and facilities occupied and used by the District of Columbia government or other local government agencies (such as WMATA), excluding parks and open space. Uses include public schools including charter schools, public hospitals, government office complexes, and similar local government activities. Other non-governmental facilities may be co-located on site. While included in this category, local public facilities smaller than one acre – including some of the District’s libraries, police and fire stations, and similar uses – may not appear on the map*

*due to scale. Zoning designations vary depending on surrounding uses. (10-A DCMR § 227.17.)*

29. The CP Framework Element states that the FLUM “does not show density or intensity on institutional and local public sites. If a change in use occurs on these sites in the future (for example, a school becomes surplus or is redeveloped), the new designations should be generally comparable in density or intensity to those in the vicinity, unless otherwise stated in the Comprehensive Plan Area Elements or an approved Campus Plan. (10-A DCMR § 228.1(h).)

**Far Southeast / Southwest Area Element**

30. The Property falls within the Far Southeast / Southwest Area Element.
31. Planning and Development priorities within the Far Southeast / Southwest Element include, among other things:
- More high-quality housing options, especially affordable housing;
  - Increased density around Metrorail stations that could provide opportunities for older adults, households without cars, younger renters, and others;
  - Improved educational system, including additional facilities to provide job training to help alleviate unemployment, under-employment, and poverty; and
  - Greater retail services.
32. The Property is within the Far Southeast / Southwest Area Element, Congress Heights Metro Station Policy Focus Area.

**II. THE APPLICATION**

**PROPOSED ZONING**

33. The Application proposed to rezone the Property from the RA-1 zone to the MU-8B zone.
34. The purposes of the Mixed-Use (MU) zones are to:
- Provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale throughout the city;
  - Ensure that infill development is compatible with the prevailing development pattern within the zone and surrounding areas; and
  - Preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities. (Subtitle G § 100.3.)
35. Specifically, the MU-8 zones are intended to permit medium-density, mixed-use development with a focus on employment and residential use in or near, among other locations, arterial streets and at rapid transit stops. (Subtitle G § 400.7.)
36. As a matter of right, the MU-8B zone permits/requires:

- Density: 5.0 FAR (6.0 FAR with Inclusionary Zoning (“IZ”), of which no more than 4.0 FAR may be devoted to non-residential uses; (*See* Subtitle G § 402.1.)
- Height: 70 feet, not including the penthouse; and (*See* Subtitle G § 403.1.)
- Height (penthouse): 20 feet (one story). (*See* Subtitle G § 403.3.)

**APPLICANT’S JUSTIFICATION OF RELIEF**

**Not Inconsistent with the CP**

37. The Application asserted that the Map Amendment was not inconsistent with the CP and with other adopted public policies and active programs applicable to the Property, as detailed below.

**GPM**

38. The Application asserted that the Map Amendment was not inconsistent with the policy objectives of the GPM because:

- The Map Amendment will make effective use of an underutilized site located in close proximity to Metrorail and other neighborhood serving amenities;
- The Map Amendment will facilitate redevelopment of the Property with mixed-use development that will bring additional housing and neighborhood-serving retail and service uses to the Congress Heights neighborhood;
- The height and density permitted under the proposed MU-8B zone is not inconsistent with the Property’s “Local Public Facilities” FLUM designation and with CP policies pertaining to land use, housing, transit-oriented development, and mixed-use development around Metrorail; and
- The height and density permitted under the proposed MU-8B zone are compatible with the varied heights and densities found in the vicinity of the Property, as follows:
  - Development to the east and south consists of moderate-scale apartment buildings containing three stories that are set back from adjacent (50-70 foot wide) streets; and
  - The approved PUD to the west of the Property has an approved building height of 90 feet.

**FLUM**

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

- Matter-of-right development under the proposed MU-8B zone will be compatible with the existing context around the Property;
- Development on the Property will not adversely impact uses in the vicinity due to the separation provided by adjacent streets and the additional setbacks of adjacent developments;
- The proposed MU-8B zone is appropriate given the Mixed-Use (Medium-Density Commercial/Medium-Density Residential) designation of the area to the immediate west and the Property’s proximity to Metrorail; and
- Development under the proposed MU-8B zone balances the goals of the RFP – including maximizing density and affordable housing and promoting transit-oriented development, with ensuring compatibility within the surrounding development pattern.

### **Far Southeast / Southwest Area Element**

40. The Application asserted that the Map Amendment will enable new multifamily residential development at a height and density that is consistent with the RFP, takes advantage of transit proximity, and is appropriate in relation to surrounding development. (FSS-1.1.1, FSS-1.1.4, FSS-2.4.1.) Further, the proposed MU-8B zone will allow for future development on the Property to also include new retail and service uses that can help address neighborhood needs for greater shopping, eating and drinking, office, and child care uses (FSS-1.1.6.)

### **Land Use Element**

41. The Application asserted that the Map Amendment is not inconsistent with the policies of the Land Use Element because:
- Redevelopment of the Property under the proposed MU-8B zone will help anchor the Neighborhood Commercial Center envisioned on the GPM around the Congress Heights Metrorail Station; (LU-1.4.1, LU-2.4.1, LU-2.4.2.)
  - The proposed MU-8B zone will allow new housing opportunities near Metrorail, including affordable housing for households that rely heavily on public transit. (LU-1.4.2 - LU-1.4.4, LU-2.1.12.) According to the Application, this is particularly notable considering that in the five year period between 2014-2018, over 19% of Ward 8 households have a commute time of 60 minutes or more, the highest in the city, with approximately 38% of Ward 8 households relying upon public transit to get to work;
  - The Map Amendment will provide for retail and service uses on the Property, which are identified in the CP as lacking in the Congress Heights area; and
  - Redevelopment of the Property in accordance with the proposed MU-8B zone will build upon other existing and planned developments around the Congress Heights Metrorail Station and along the Alabama Avenue corridor at a height and density that promotes transit usage and respects the character, scale, and integrity of the surrounding context. (LU-1.4.5, LU-2.1.1, LU-2.1.3.)

### **Transportation Element**

42. The Application asserted that the Map Amendment is not inconsistent with the policies of the Transportation Element because:
- Consistent with the RFP, the Map Amendment will facilitate transit-oriented development immediately adjacent to the Congress Heights Metrorail station and along the priority bus routes that serve the Alabama Avenue corridor (T-1.1.4); and
  - Redevelopment of the Property with mixed-use development will advance equitable access to transportation and ridership potential given the Property's proximity to public transit and the levels of housing affordability that are required under the RFP and the Applicant's development agreement with the District (T-1.1.5 and T-1.1.7).

### **Housing Element**

43. The Application asserted that the Map Amendment is not inconsistent with the policies of the Housing Element because:



- The additional height and density permitted under the proposed MU-8B zone will greatly assist the District in meeting its affordable housing goals on a portion of a District-owned site that is underutilized; and (H-1.1.3, H-1.2.1, H-1.2.4, H-1.4.G.)
- The ability for mixed-use development on the Property supports a “whole neighborhood approach” as it will improve neighborhood access to retail and other neighborhood services, including District government services. (H-1.4.6m H-1.4.G.)

### **Economic Development Element**

44. The Application asserted that the Map Amendment is not inconsistent with the policies of the Economic Development Element because:
- Redevelopment of the Property with a new mix of uses, including substantial affordable housing as required under the RFP, will support equitable access to quality retail and other neighborhood services in Ward 8, which are well-known to be lacking in east of the river neighborhoods.;
  - The Map Amendment will advance the establishment of a new Neighborhood Commercial Center around the Congress Heights Metrorail Station, as envisioned by the GPM. (ED-2.2.1, ED-3.1.1.)

### **Urban Design Element**

45. The Application asserted that the Map Amendment is not inconsistent with the policies of the Urban Design Element because:
- The proposed MU-8B zone will support the establishment of a Neighborhood Commercial Center at the Congress Heights Metrorail Station, as depicted on the GPM, by allowing mixed-use development at a greater density than is currently permitted under the existing RA-1 zone (UD-2.2.3); and
  - Redevelopment of the Property under the proposed MU-8B zone will provide a mix of affordable housing, retail, and service uses in a compact, walkable manner that complements other existing and planned uses, and is compatible with the scale and pattern of adjacent and nearby development (UD-2.2.4, UD-2.2.5).

### **Potential Inconsistencies with the CP**

46. The Application analyzed whether the Map Amendment would be considered inconsistent with certain policies of the CP.
47. The Application acknowledged the potential inconsistency with policies FSS-1.1.1 (Directing Growth) and FSS-2.4.1 (Congress Heights Metro Station Mixed-Use). Both of these policies promote increased density and mixed-use development around Metrorail stations within the Far Southeast / Southwest Planning Area, including the Congress Heights Metrorail station. However, both of these policies state that any increase in zoning or density shall only be made available through the PUD process.
48. The Application asserted that while the Applicant is seeking approval of a map amendment instead of a PUD, the Map Amendment is consistent with the intent of these two policies given the requirements the Applicant must meet under the RFP (mixed-use, transit-oriented

development that is compatible with the neighborhood, maximizing affordable housing, and providing neighborhood-serving retail).

49. The Application also acknowledged the potential inconsistency with policies UD-2.2.4 and UD-2.2.5, which both encourage gradual design transitions and avoidance of overpowering contrasts in scale and height.
50. The Application asserted that to the extent the Map Amendment is inconsistent with the individual CP policies mentioned above, the inconsistency is outweighed by the proposal's consistency with Land Use, Housing and Transportation Element policies relating to development of affordable housing near Metrorail, equitable access to transportation, and locating housing on public-owned sites and together with public facilities. (LU-1.4.4, T-1.1.7, H-1.2.4, H-1.4.G.)

### **Community Outreach**

51. The Applicant presented the Map Amendment to ANC 8E on June 22, 2021.
52. The record includes multiple letters in support of the Application from a number of individuals. (Ex. 27-94.)

### **Public Hearing**

53. At the February 14, 2022 public hearing the Applicant rested on the record, stating that the record was complete and that it fully satisfied the legal standard of review applicable to the Map Amendment. OP also rested on the record. No persons or organizations testified in support, opposition, or undeclared. At the conclusion of the public hearing, the Commission voted to take proposed action on the Map Amendment.

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

### **OP REPORTS AND TESTIMONY**

54. OP submitted a December 6, 2021, 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. 15.)

- **GPM**

- The Map Amendment would allow for the redevelopment of a District owned property at a desirable location with affordable housing and supportive services such as a child care center and retail use to serve existing and future residents of the neighborhood as well as city-wide needs;
- New development on the underutilized Property would respond to the emerging character of development around the Congress Heights Metro station as it would be of a similar scale and density to the [approved PUD] to the west at Alabama Avenue and 13<sup>th</sup> Street (Z.C. Order No. 13-08.) and the redevelopment of the St. Elizabeths East Campus;

- The density and intensity of the development would be complementary to the surrounding apartment buildings; and
  - New housing would improve the neighborhood and would not be inconsistent with the FLUM;
- **FLUM**
  - The FLUM indicates that the site is appropriate for Local Public Facilities which is reflective of the prior use as part of the former Malcom X Elementary School campus;
  - The District is no longer in need of the entire site for a school, and so have offered the Property to be redeveloped with opportunities for housing, including affording housing, to help meet the housing needs of the area;
  - The Framework Element states that “[i]f a change in use occurs on [sites designated for Local Public Facilities] (for example, a school becomes surplus or is redeveloped), the new designations should be generally comparable in density or intensity to those in the vicinity, ...”;
  - The FLUM designation on the remainder of the school site to the immediate west, and on the nearby St. Elizabeths East Campus is Mixed Use (medium density residential/medium density commercial); and
  - The proposed MU-8B zone is designated for a mix of medium density uses and is therefore comparable in density and intensity to the adjacent property;
- **Far Southeast / Southwest Area Element**
  - The Map Amendment would allow for increased height and additional density at a medium range, provide for development with a variety of unit sizes and the opportunity for a range of household sizes and incomes;
  - The Map Amendment would allow for the development of new ground floor, neighborhood-serving retail, service and office uses around the Congress Heights Metro station;
  - The Applicant has agreed on a Community Benefits Agreement (“CBA”) with the ANC that includes affordable housing, educational and job opportunities, assistance to community-based development organizations, and a building that will be compatible to the surrounding garden apartments; and
  - The District is providing incentives to promote and leverage affordable housing at the Property and in the Far Southeast/Southwest Planning Area;
- **Land Use Element** – The Map Amendment would allow for an appropriately scaled development in the vicinity of the Congress Heights Metrorail Station. In addition, the Map Amendment would allow for an increase in residential density, affordable units and support commercial uses. The Map Amendment would not result in the demolition of any housing but would allow new housing on an underutilized site close to a Metro station. The Property is an appropriate location for new residences to help accommodate population growth and advance affordability, and racial equity. Finally, the Map Amendment would allow for a development that would be compatible with existing apartment buildings in the vicinity of the Property and future developments at the Metro station and nearby St. Elizabeths East Campus;

- **Housing Element** – The Map Amendment and the requirements under the RFP will combine to allow a future development with additional density to support expanding the housing supply, including additional affordable units above what would be required under Regular IZ requirements. Given the Property’s location in walking distance to the Congress Heights Metro station and on several bus routes, the Map Amendment will support the Framework Element’s equity requirements for a desirable depth of affordability and access, which reduces future households’ transportation costs thereby providing easier access to employment and services;
- **Transportation Element** – The Map Amendment supports transit-oriented development within a transit-accessible neighborhood, would provide opportunities to lower-income residents who would be able to access employment, nearby schools, and services without the burden of high transportation costs and loss of valuable time to access such needs.;
- **Environmental Protection Element** – Future redevelopment of the Property under the proposed MU-8B zone would be subject to building code requirements that protects the health and well-being of residents across all incomes and the District as a whole; and
- **Racial Equity** – When evaluated through a racial equity lens, the Map Amendment is not inconsistent with the CP. The rezoning would allow the DC Government to utilize a property that is under-developed to provide affordable housing, an early learning center, neighborhood serving retail and service uses, and office space for ANC 8E which would be beneficial to area residents. Making room for affordable housing at this location has the potential to benefit populations of color who on average have lower income than white residents. The proposed map amendment would facilitate a mixed-use building with approximately 180 affordable units for households earning between 30% and 80% the median family income (MFI) with at least 60% of the units projected to be at or below 60% MFI, supported by retail and service uses. The targeted action of this proposed map amendment would support equitable development while contributing to the increase in the affordable housing supply for the Planning Area.

55. The OP Setdown Report also recommended that the Map Amendment not be subject to IZ Plus, a higher affordable housing requirement than the regular IZ requirements, due to the disproportionate amount of existing affordable housing within the ANC 8E boundary and the larger Far Southeast/Southwest Planning Area, noting that: (Ex. 15.)

- According to the “2019 Housing Equity Report: Creating Goals for Areas of Our City”:
  - The Far Southeast/Southwest Planning Area had 31% of all of the city’s affordable housing units; and
  - 51% of the housing in the Planning Area is affordable housing.

56. In addition, the OP Setdown Report stated that the Property is owned by the District government which has granted the Applicant the development rights for an all-affordable development with affordability at 30%, 50%, 60% and 80% MFI and with a high

percentage of the units having three bedrooms. This affordability, which will be in perpetuity, will be greater than would be required by the regular IZ requirements. As such, OP does not recommend that IZ Plus be required at this location due to these mitigating circumstances identified in its reports pursuant to Subtitle X § 502.2(c).

57. OP submitted a January 28, 2022, report that reiterated the OP Setdown Report's conclusions, and recommended approval of the Map Amendment. (Ex. 25.)
58. At the public hearing, OP reiterated its support for the Application as detailed in its reports.

#### **DDOT REPORT**

59. DDOT submitted a February 4, 2022, report (the "DDOT Report") stating that it had no objection to the Application because: (Ex. 24.)
  - The proposed rezoning would likely lead to a minor-to-moderate 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;
  - The Property is a short distance to the Congress Heights Metrorail Station and the project is consistent with DDOT's approach to new development that supports higher densities, walkable design, and [is] transit oriented; and
  - It is expected that the Applicant will work with DDOT through the permitting process (e.g., public space permitting and EISF) if and when a development proposal is put forth.
60. DDOT did not provide testimony at the public hearing.

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

61. On June 22, 2021, ANC 8E voted unanimously to support the Map Amendment. (Ex. 14A.) In its letter of support, ANC 8E states that the intended redevelopment of the Property will add residences "without making the building too large or out of place in the neighborhood." The ANC further states that the Map Amendment "will further facilitate the implementation of broad public policy and the District's Comprehensive Plan.
62. ANC 8E did not submit a written report into the case record, nor appear at the public hearing.

#### **PERSONS IN SUPPORT**

63. 68 letters in support of the Map Amendment were submitted to the case record. (Ex. 27-94.)

#### **NATIONAL CAPITAL PLANNING COMMISSION ("NCPC")**

64. The Commission referred the Application to the National Capital Planning Commission ("NCPC") on February 15, 2022, 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.)

65. On March 30, 2022, NCPC staff filed a letter stating that the Map Amendment falls under an exception listed in Chapter 8 (Exceptions and Project Changes) of NCPC’s submission guidelines; therefore, the Map Amendment is exempt from NCPC review. (Ex. 99.)

**OTHER RESPONSES**

66. On March 30, 2022, the Commission received comments from the Office of the Attorney General (“OAG”) regarding the Map Amendment. (Ex. 100A.) Because the comments were received after the case record was closed, the Commission granted OAG’s motion to reopen the record to allow the comments into the record. (Ex. 100.) OAG’s comments stated its disagreement with OP’s recommendation not to apply IZ Plus to the Map Amendment due to the “disproportionate amount of existing affordable housing already in existence” in ANC 8D and the Far Southeast/Southwest Planning Area. OAG stated that OP’s recommendation fails to recognize that:

- Much of this existing affordable housing is “naturally occurring” and therefore is not permanently affordable but inherently instable and subject to the market; (CP § 500.7e, 1803.2.)
- The imposition of IZ Plus would provide permanently affordable housing in the area, which is a crucial tool in protecting lower income families from displacement, thereby allowing generations of families to remain in their communities; and
- The Applicant’s intent to develop the site with an all-affordable development cannot be considered by either OP, or the Commission as part of their respective analyses, however admirable, because an all-affordable development may or may not come to pass, and the Map Amendment will endure long beyond the term of a single development. (Ex. 100A.)

**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, OP, DDOT, and ANC 8E that the Map Amendment from the RA-1 zone to the MU-8B 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.
5. The Commission concludes that the Map Amendment is inconsistent with those Far Southeast / Southwest Planning Area Element policies requiring a PUD for any increases in height and density.
6. Even if the Map Amendment conflicts with one or more individual policies associated with the CP, this does not, in and of itself, preclude the Commission from concluding that the Map Amendment would be consistent with the CP as a whole. (*See Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013).) In this case, the Commission concludes that the inconsistency with certain Far Southeast / Southwest Planning Area Element policies is outweighed by the fact that the RFP, and the Applicant's Community Benefits Agreement with ANC 8E, will provide a development and range of community benefits similar to a PUD.

**GPM**

7. 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 make effective use of an underutilized site located in close proximity to Metrorail;
  - The Map Amendment will facilitate redevelopment of the Property with mixed-use development that will bring additional housing and neighborhood-serving retail and service uses to the Congress Heights neighborhood;
  - The height and density permitted under the proposed MU-8B zone are compatible with the varied heights and densities found in the vicinity of the Property, including the 90-foot high approved PUD to the west of the Property;
  - The height and density permitted under the proposed MU-8B zone are not inconsistent with the Mixed Use FLUM designation of the area immediately to the west of the Property, and are consistent with the heights and densities permitted in the nearby StE zones; and

- The height and density permitted under the proposed MU-8B zone will not adversely impact existing apartment buildings to the east and south due to the substantial separation provided by adjacent streets.

### **FLUM**

8. The Commission concludes that the Map Amendment is not inconsistent with the Property’s Local Public Facilities FLUM designation because:
- Matter-of-right development under the proposed MU-8B zone will be compatible with the existing context around the Property. (*See* Z.C. Order Nos. 17-27, 16-11, 06-31, 11-02/11-02A, and 11-10.)
  - Development on the Property will not adversely impact uses in the vicinity due to the separation provided by adjacent streets and the additional setbacks of adjacent developments;
  - The proposed MU-8B zone is appropriate given the Mixed Use (Medium Density Commercial / Medium Density Residential) designation of the area to the immediate west and the Property’s proximity to Metrorail; and
  - Development under the proposed MU-8B zone balances the goals of the RFP – including maximizing density and affordable housing and promoting transit-oriented development, with ensuring compatibility within the surrounding development pattern.

### **Far Southeast / Southwest Area Element**

9. The Commission concludes that the Map Amendment furthers the goals and policies of the Far Southeast / Southwest Area Element because:
- The Application will enable new multifamily residential development at a height and density that are consistent with the RFP, takes advantage of transit proximity, and is appropriate in relation to surrounding development; and
  - The proposed MU-8B zone will allow for mixed-use development that will help address neighborhood needs for greater shopping, eating and drinking, office, and child care uses.

### **Land Use Element**

10. The Commission concludes that the Map Amendment furthers this element because:
- Redevelopment of the Property under the MU-8B zone will advance the establishment of a Neighborhood Commercial Center around the Congress Heights Metrorail Station consistent with the GPM;
  - The Map Amendment will facilitate development of new housing opportunities near Metrorail, which will include significant affordable housing under the Applicant’s land development agreement with the District; and
  - Redevelopment of the Property under the MU-8B zone is consistent with CP support for greater density around Metrorail while maintaining compatibility with the character, scale, and integrity of the surrounding context.

### **Transportation Element**

11. The Commission concludes that the Map Amendment furthers this element because:



- The Map Amendment will facilitate transit-oriented development immediately adjacent to Metrorail and priority bus routes; and
- Redevelopment of the Property with mixed-use development will advance equitable access to transportation, particularly given that the amount of affordable housing that will be required on the Property under the RFP and the Applicant’s land development agreement with the District.

**Housing Element**

12. The Commission concludes that the Map Amendment furthers this element because:
- The additional height and density permitted under the MU-8B zone will assist the District in meeting its affordable housing goals; and
  - The mixed-use development made possible through the Map Amendment will improve neighborhood access to retail, day care, and other services, including District government services.

**Economic Development Element**

13. The Commission concludes that the Map Amendment furthers this element because redevelopment of the Property with a new mix of uses will support equitable access to quality retail and neighborhood serving amenities in Ward 8.

**Urban Design Element**

14. The Commission concludes that the Map Amendment furthers this element because redevelopment of the Property under the proposed MU-8B zone will promote a mix of affordable housing, retail, and service uses in a compact, walkable manner near transit that complements other existing and planned uses, and is compatible with the scale and pattern of adjacent and nearby development.

**GREAT WEIGHT TO THE RECOMMENDATIONS OF OP**

15. 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).)
16. 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’s rezoning would not be inconsistent with the CP Zoning Maps, Citywide and Area Elements, and would advance the equity policies of the CP when evaluated through a racial equity lens, as discussed above.
17. The Commission also concurs with OP’s recommendation that the proposed map amendment not be subject to IZ Plus. Pursuant to Subtitle X § 502.2(c), the Commission is authorized to determine that IZ Plus is not appropriate due to mitigating circumstances identified by OP in its report recommending that the Map Amendment not be subject to IZ Plus. In these factual circumstances, the Commission finds OP’s recommendation

persuasive given the mitigating circumstances affecting this Property. Those mitigating circumstances include the fact that the Property that is the subject of this Map Amendment is District government owned; the District selected the Applicant for redevelopment of the Property through an RFP process; the Applicant entered into a Community Benefits Agreement with ANC 8E that includes a commitment to provide all-affordable units; and the redevelopment will be governed by a Land Disposition and Development Agreement between the Applicant and the District and subject to D.C. Council approval. For these reasons, the Commission believes that an all-affordable development will come to pass in these factual circumstances. Further, as OP noted in its reports, the all-affordable development will be in perpetuity and will provide for greater affordability than would be required by the regular IZ requirements. Accordingly, the Commission is confident that its decision not to apply IZ Plus to this Map Amendment will not conflict with the CP's goals of ensuring long-term affordability and minimizing displacement. Still, the Commission is thoughtful in its consideration of the arguments raised in OAG's comments strongly supporting the imposition of IZ Plus in this case. As OAG's comments note, a proposed map amendment's consistency with the CP is the determinative factor in every map amendment case—not a potential project that may or may not come to pass. This case is certainly not an exception to that rule as the Commission finds the proposed map amendment is not inconsistent with the CP and with other adopted public policies and active programs related to the Property notwithstanding all other considerations.

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

18. 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 Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
19. The Commission acknowledges ANC 8E's support for the Map Amendment on the basis that the Map Amendment will, in part:
  - Add residences to the building without making the building too large or out of place in the neighborhood;
  - Further facilitate the implementation of broad public policy and the District's Comprehensive Plan; and
  - Support the District's Comprehensive Plan by providing medium-density housing and neighborhood-serving retail and service uses in the Congress Heights area.
20. The Commission concludes that the letter in support submitted by ANC 8E provides persuasive advice as to why the Map Amendment is not inconsistent with the CP, and why

the development resulting from the Map Amendment will be compatible with the surrounding context.

**DECISION**

In consideration of the record for Z.C. Case No. 21-17 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:

<b>SQUARE</b>	<b>LOTS</b>	<b>MAP AMENDMENT</b>
5914	Eastern portion of Lot 806, now identified as Lot 9 per the subdivision plat recorded in the Office of the Surveyor on February 3, 2022, at Book 219, Page 112, and as described more particularly in Ex. 3B of the case record)	RA-1 to MU-8B

**Proposed Action**

**Vote (February 14, 2022): 4-0-1**

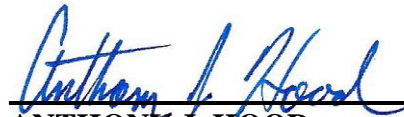
(Peter G. May, Joseph S. Imamura, Anthony J. Hood, Robert E. Miller to **APPROVE**; third Mayoral appointee position vacant).

**Final Action**


**Vote (March 31, 2022, 2022): 4-0-1**

(Peter G. May, Joseph S. Imamura, Anthony J. Hood, Robert E. Miller to **APPROVE**; third Mayoral appointee position vacant).

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 21-17 shall become final and effective upon publication in the *D.C. Register*, that is on July 15, 2022.



**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.