

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 22-12
Z.C. CASE NO. 22-12
Mid-Atlantic Neighborhood Development Corporation
(Zoning Map Amendment @ Square 2819, Lots 810-813)
January 30, 2023

Pursuant to notice, at its public hearing on February 13, 2023, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”), for a Zoning Map amendment by Mid-Atlantic Neighborhood Development Corporation (the “Applicant”)¹ for approval of a Zoning Map amendment from the MU-3A to the MU-7A zone (the “Map Amendment”) for Lots 810, 811, 812, and 813 in Square 2819 (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 determined the property was appropriate for Inclusionary Zoning (“IZ”) Plus. The property shall be indicated with an “IZ+” symbol on the Zoning Map.

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”) 4C and ANC 4E. The Property was located within the boundaries of ANC 4C when the Application was initially filed; however, new ANC boundaries took effect on January 1, 2023. The Property now lies within the boundaries of ANC 4E, which is thus an “affected ANC” pursuant to Subtitle Z §§ 101.8 and 403.5(b).
2. The Commission received no requests for party status.

NOTICE

3. On January 24, 2022, the Applicant mailed a Notice of Intent to file the initial Application to all property owners within 200 feet of the Property and to ANC 4C, as required by Subtitle Z §§ 304.5 and 304.6. (Exhibit [“Ex.”] 3J.)

¹ The Applicant is the designated representative of Tsion Assefa, owner of Lot 810 in Square 2819; Lydia Asefa, owner of Lot 811 in Square 2819; Gloria Emanuele Capron, Trustee of the Emanuele Living Trust, owner of Lot 812 in Square 2819; and Xi Omega Chapter Alpha Kappa Sorority Inc., owner of Lot 813 in Square 2819.

4. On March 28 2022, the Office of Zoning (“OZ”) sent copies of the Notice of Filing to:
 - Authorized counsel for the Applicant;
 - ANC 4C;
 - ANC Single Member District (“SMD”) 4C05;
 - Office of the ANCs;
 - Office of Planning (“OP”);
 - District Department of Transportation (“DDOT”);
 - Councilmember Janeese Lewis George, the Ward 4 Councilmember in whose district the Property is located;
 - Chairman and At-Large Members of the D.C. Council;
 - Department of Energy & Environment (“DOEE”);
 - DCRA General Counsel; and
 - Commission Lead Attorney.(Ex. 8.)
5. On June 8, 2022, the Applicant mailed a Notice of Intent to file an amended application² to all property owners within 200 feet of the Property and to ANC 4C. (Ex. 13.)
6. On October 12, 2022, OZ sent notice of the January 30, 2023, virtual public hearing to:
 - Authorized counsel for the Applicant;
 - ANC 4C;
 - ANC SMD 4C05;
 - Office of the ANCs;
 - OP;
 - DDOT;
 - Councilmember Janeese Lewis George, the Ward 4 Councilmember in whose district the Property is located;
 - Chairman and At-Large Members of the D.C. Council;
 - DOEE
 - DCRA General Counsel;
 - Commission Lead Attorney; and
 - Property owners within 200 feet of the Property.(Ex. 21.)
7. OZ published notice of the public hearing in the October 21, 2022 *D.C. Register* (69 DCR 12817), as well as on the calendar on OZ’s website. (Ex. 19, 21.)
8. The Applicant submitted evidence that it had posted notice of the public hearing on the Property in accordance with Subtitle Z § 402.9 and maintained said notice in accordance with Subtitle Z § 402.10. (Ex. 23, 28.)

² The Application was amended to include Lots 810, 811, and 812 in Square 2819.

THE PROPERTY

9. The Property is located in northwest quadrant of the District and consists of approximately 19,623 square feet of land area (approximately 0.45 acres).
10. The Property is generally bounded by 14th Street, N.W. to the west, Arkansas Avenue, N.W. to the east, and multifamily buildings to the north and to the south.
11. The square within which the Property lies is generally bounded by 14th Street, N.W. to the west, Arkansas Avenue, N.W. to the east, Allison Street, N.W. to the north, and Webster Street, N.W. to the south.
12. The individual lots comprising the Property are described as follows:
 - Lots 810 and 811 are currently improved with a one-story commercial building (grocery and delicatessen use);
 - Lot 812 is currently improved with a one-story warehouse building; and
 - Lot 813 is currently improved with a one-story warehouse building known as the “Xi Omega Center” that was originally constructed in or about 1941 and an associated surface parking lot.(Ex. 3.)
13. The immediate neighborhood contains a mix of low to moderate residential uses and neighborhood-serving uses. Further to the north of the Property, along 14th Street, is a four-story apartment house, a filling station and a religious use. The Washington Metropolitan Area Transit Authority (“WMATA”) Northern Bus Garage and a 14th Street neighborhood commercial node are located approximately 0.15 miles to the north of the Property.
14. The Property is located approximately one mile from the George Avenue-Petworth Metro station (green and yellow line service). In addition, the Property is in close proximity to the Priority bus corridor along George Avenue, which provides access to WMATA Bus Routes 70 and 79.
15. The lots immediately to the north and south of the Property are zoned MU-3A. Further north, across Allison Street, the lots, including the WMATA bus garage, are zoned PDR-1. The lots to the west are zoned RF-1; and the lots to the east, across Arkansas Avenue, are zoned RF-1, and improved with the Upshur Recreation Center.

CURRENT ZONING

16. The Property is currently in the MU-3A zone. The MU-3A zone permits low-density mixed-use development and provides for convenient retail and personal service establishments for the day-to-day needs of a local neighborhood, as well as residential and limited community facilities with a minimum impact upon surrounding residential development. 11-G DCMR § 400.2.
17. As a matter of right, the MU-3A zone requires/permits:
 - A maximum FAR of 1.0 (1.2 with IZ); (Subtitle G § 402.1)

- A maximum building height of 40 feet and three stories, not including the penthouse; (Subtitle G § 403.1)
- A maximum permitted penthouse height of 12 feet and one story, except 15 feet and a second story is permitted for penthouse mechanical space; (Subtitle G § 403.3.)
- A maximum lot occupancy of 60% for residential uses; (Subtitle G § 404.1)
- A minimum rear yard of 20 feet; (Subtitle G § 405.1)
- If provided, a minimum side yard of five (5) feet; (Subtitle G § 406.1)
- A minimum Green Area Ratio (“GAR”) of 0.3; (Subtitle G § 407.1)
- The uses permitted in MU-Use Group D. (Subtitle U §§ 500.2 and 510)

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

Generalized Policy Map (the “GPM”)

18. The CP’s GPM designates the Property as a Neighborhood Conservation Area, which the CP’s Framework Element describes as:

- *[A]reas [that] have little vacant or underutilized land. They are generally residential in character. ... Where changes occurs, it will typically be modest in scale and will consists primarily of infill housing, public facilities, and institutional uses. ... Major changes in density ... are not expected but some new development and reuse opportunities are anticipated, and these can support conservation of neighborhood character. ... The guiding philosophy ... is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs. ... The diversity of land uses and building types in these areas should be maintained and new development, redevelopment, and alterations should be compatible with the existing scale, natural features, and character of each area. ...In areas with access to opportunities, services, and amenities, more levels of housing affordability should be accommodated. (CP § 224.4-225.5.)*

Future Land Use Map (the “FLUM”)

19. The CP’s FLUM designates the Property as a Mixed Use – Medium-Density Residential Moderate-Density Commercial:

- **Medium-Density Residential**
“Neighborhoods or areas generally, but not exclusively, 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.)

- **Moderate-Density Commercial**

“This designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Low-Density Commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in Low Density Commercial areas. Density typically ranges between a FAR of 2.5 and 4.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-5 and MU-7 Zone Districts are representative of zone districts consistent with the Moderate Density Commercial category, and other zones may also apply.” (CP § 227.11.)

- **Mixed Use**

- The FLUM indicates areas where the mixing of two or more land uses is especially encouraged, and generally applies in established, pedestrian-oriented areas, commercial corridors where more housing is desired, large sites, and development that includes residential uses, particularly affordable housing. (CP § 227.20.)
- The general density and intensity of development within a given Mixed Use area is determined by the specific mix of uses shown. The CP Area Elements may also provide detail on the specific mix of uses envisioned. (CP § 227.21.)
- The “Mixed Use” designation is intended primarily for larger areas where no single use predominates today, or areas where multiple uses are specifically encouraged in the future. (CP § 227.22.)
- A variety of zoning designations are used in Mixed Use areas, depending on the combination of uses, densities, and intensities. (CP § 227.23.)

Rock Creek East Area Element

20. The Property falls within the Rock Creek East Area Element that calls for, among other things:

- Maintaining and strengthening of the neighborhoods of the Planning Area “while providing new housing opportunities for a range of incomes and household sizes”;
- Ensuring that new construction respects the scale and densities of adjacent properties;
- Concentrating economic development activity, employment growth, and new housing, including affordable housing, near public transit;

- Encouraging the development of multi-use neighborhood shopping and services; and
- Keeping housing affordable for current and future residents with a range of ages and household sizes.

(CP § 2208.)

21. The Rock Creek East Area Element locates the Property within the Central 14th Street NW Policy Focus Area (the “Central 14th Street Focus Area”), which includes the following goals:

- Supporting nodal redevelopment opportunities;
- Improving pedestrian safety and connectivity; and
- Facilitating mixed-use redevelopment of commercial properties.

(CP § 2217)

Small Area Plan

22. The Property is within the boundaries of the Central 14th Street Vision Plan and Revitalization Strategy (the “14th Street SAP”).

23. The 14th Street SAP provides guidance on how to maintain and enhance the 14th Street corridor’s history of being a family oriented and neighborhood-serving retail area in the District.

24. The 14th Street SAP identifies three distinct nodes along the 14th Street corridor. The Property is located in Node Two, which generally extends from Webster Street north to Decatur Street, and is described as “a major anchor institution with a large daytime population that supports businesses[.]”

25. The overarching development objective for Node Two is to “[p]ursue land use change and infill development that is designed with the contextual sensitivity and attract a medium-scale grocery store anchor to support existing businesses and spur increased foot traffic.”

II. THE APPLICATION

PROPOSED ZONING

26. The Applicant proposes to rezone the Property from the MU-3A to the MU-7A zone.

27. The purposes of the Mixed Use zones are to, among other things: (Subtitle G § 100.3)

- Provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale throughout the city;
- Reflect a variety of building types, including shop-front buildings that may include a vertical mixture of residential and non-residential uses, or buildings containing all residential or non-residential uses; and

- Ensure that infill development is compatible with the development pattern within the zone and surrounding areas.
28. Specifically, the MU-7A zone is intended to permit medium density mixed-use development and be located on arterial streets, in uptown and regional centers, and at rapid transit stops. (Subtitle G § 400.7.)
29. As a matter of right, the MU-7A zone permits/requires:
- A maximum density of 4.0 FAR (4.8 with IZ), of which no more than 1.0 FAR can be devoted to non-residential uses; (Subtitle G § 402.1.)
 - A maximum permitted height of 65 feet and no limit on the number of stories; (Subtitle G § 403.1.)
 - A maximum permitted penthouse height of 12 feet and one story, except 18 feet, 6 inches and a second story is permitted for penthouse mechanical space; (Subtitle G § 403.3.)
 - A maximum permit lot occupancy of 75% for residential uses (80% with IZ); (Subtitle G § 404.1.)
 - A minimum rear yard of 12 feet; (Subtitle G § 405.3.0)
 - If provided, a minimum side yard of five (5) feet; (Subtitle G § 406.1.) and
 - A minimum GAR of 0.25; (Subtitle G § 407.2.) and
 - The uses permitted in MU-Use Group F. (Subtitle U §§ 500.2 and 515)

APPLICANT'S JUSTIFICATION OF RELIEF

Not Inconsistent with the CP

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

Racial Equity

31. The Applicant asserted that the Map Amendment would not be inconsistent with racial equity policies. The Applicant noted that equity is conveyed throughout the CP where priorities of affordable housing, displacement, and access to opportunity are distinguished. The Map Amendment would increase the allowable density and permit a mix of uses which would enhance the opportunity for:
- Redevelopment of the Property for the production and preservation of housing and certainly affordable housing, as IZ Plus will apply to the Map Amendment;
 - Redevelopment of the Property with a mix of uses at a transit accessible location; and

- Redevelopment of the Property would expand access to employment, education, health, wellness, environmental benefits, and neighborhood amenities, regardless of background or socioeconomic status.

(Ex. 3.)

GPM

32. The Applicant asserted that the Map Amendment would not be inconsistent with the GPM because:

- Additional density will support future redevelopment of the Property with a potential mixed-use building, inclusive of housing and affordable housing that will address critical city-wide housing needs;
- The Map Amendment will foster opportunities to revitalize the Property in a manner that remains compatible with the surrounding lower-scale residential uses, thus maintaining the existing neighborhood character;
- Future revitalization of the Property has the potential to attract complementary new uses and services that better serve the needs of existing and future residents; and
- The redevelopment of the Property will support nearby transit options, including Metrorail, and will also provide the opportunity for improvements to pedestrian facilities.

(Ex. 3.)

FLUM

33. The Applicant asserted that the Map Amendment would not be inconsistent with the FLUM because:

- The MU-7A zone is intended to allow medium density, mixed-use development;
- The MU-7A zone's 4.0 FAR (4.8 with IZ) falls within the 1.8-4.0 FAR range of the Medium Density Residential FLUM category and the 2.5-4.0 FAR range of the Moderate Density Commercial category; and the descriptions provided in the CP's Framework Element for both FLUM categories state that greater density is possible when complying with IZ;
- The FLUM indicates a preference for the residential category, as it is assigned to medium density, whereas the commercial category is assigned to moderate density; and
- The MU-7 zones are specifically identified as being consistent with the Property's FLUM designation.

(Ex. 3.)

Rock Creek East Area Element

34. The Applicant asserted that the Map Amendment would advance the major planning objectives of the Rock Creek Area Element, particularly in the area surrounding the Property along the 14th Street Corridor, because it would facilitate the redevelopment of an infill site with a new mixed-use development, including multi-family housing, but in a manner that ensures compatibility with the character and scale of the surrounding neighborhood. Furthermore, the Map Amendment is consistent with the Central 14th Street Policy Focus Area’s emphasis on nodal redevelopment, as it would foster opportunities for ground-floor, neighborhood-serving retail conducive to pedestrian activity. (Ex. 3.)

Land Use Element

35. The Applicant 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 protects the character and scale of the surrounding development. The Map Amendment would further a number of specific Land Use Element policies because the additional density would promote the production of new housing and affordable housing and accommodate neighborhood-serving retail and/or service uses in a favorable location along the 14th Street corridor. The Map Amendment would strike an appropriate balance in bringing additional density to the Property while advancing parallel District objectives. (Ex. 3.)

Housing Element

36. The Applicant asserted that because the Map Amendment would provide for a substantial increase in permitted density for residential use, it would help meet the housing needs of present and future District residents. The Map Amendment also would further specific policies under the Housing Element that call for housing diversity and meeting the housing needs of specific groups, such as the elderly. (Ex. 3.)

Transportation Element

37. The Applicant asserted that in connection with any redevelopment, the streetscape surrounding the Property would likely be enhanced, which would establish safe pedestrian connections and improve access to neighborhood-serving retail and amenities along the 14th Street corridor. Accordingly, the Applicant asserted that the Map Amendment would further several policies under the Transportation Element, specifically relating to transforming major corridors and establishing a viable pedestrian network. (Ex. 3.)

Environmental Protection Element

38. The Applicant asserted that the Map Amendment would facilitate the redevelopment of the Property with new construction that would incorporate new energy-efficient building systems and technologies in furtherance of the District’s energy efficiency goals and comply with the Green Building Act, in addition to advancing a number of specified Environmental Protection Element policies. (Ex. 3.)

Potential Inconsistencies with the CP

39. The Applicant analyzed whether the Map Amendment would be considered inconsistent with certain policies of the CP. The Map Amendment could be viewed as conflicting with certain Land Use Element policies relating to rehabilitating underused older buildings (LU-2.1.4) and preserving and protecting the row house character that defines the area to the west of the Property, across 14th Street (LU-2.1.6). The Applicant noted that the Property does not have any historic designations, and asserted that the benefits of constructing a new, high-quality, mixed use project at this site along the 14th Street corridor far outweigh any preference to maintain the Property in its current state. The Applicant also asserted that the development parameters of the MU-7A zone will ensure compatibility with the surrounding neighborhood, while providing additional density for new multi-family housing and affordable housing. As such, any potential inconsistencies are tenuous at best, and are outweighed by the Application’s overwhelming consistency with a number of specific policies in the CP. The District’s need to meet its housing and affordable housing production targets would be addressed, to the extent possible, by the higher density afforded through the proposed Map Amendment to MU-7A, unlike the current MU-3A zoning that facilitates fewer units. (Ex. 3.)

The 14th Street SAP

40. The Applicant asserted that the Map Amendment would further the 14th Street SAP by:
- Facilitating a contextually sensitive redevelopment of an underutilized Property with new high quality market-rate and affordable housing;
 - Furthering the goals of Node Two, which generally encourages an attractive streetscape and an active business community, because a future infill mixed use project could accommodate ground-floor retail and spur improvements to nearby pedestrian facilities;
 - Helping to materialize the vision for Node Two, as the increased height and density will accommodate an influx of residents that can support existing businesses and attract more diverse retailers to the surrounding area.
- (Ex. 3.)

Community Outreach

41. The Applicant presented the request to the full ANC at its duly-noticed, regularly scheduled public meeting on February 9, 2022; and subsequently presented the amended Application to the full ANC at its duly-noticed, regularly scheduled public meeting on October 12, 2022.
42. Effective January 1, 2023, the Property is now located within the boundaries of ANC 4E. The Applicant presented the Application to ANC 4E at its duly-noticed, regularly scheduled public meeting on January 17, 2023.

Public Hearing Testimony

43. At the public hearing held on January 23, 2023, the Applicant presented its case, including testimony from Ms. Alfreda Edwards, Chairman of the Xi Omega Property Redevelopment Committee and Ms. Raven Hill, President of the Xi Omega Chapter of Alpha Kappa Alpha Sorority.

III. RESPONSES TO THE APPLICATION

OP REPORTS AND TESTIMONY

44. OP submitted a report, dated August 29, 2022, recommending that the Commission set down for a public hearing the Applicant’s request for an amendment to the Zoning Map to rezone the Property from the MU-3A to MU-7A zone (the “OP Setdown Report”), and concluding that the Map Amendment would not be inconsistent with the CP and would be appropriate for an IZ Plus set-aside requirement pursuant to Subtitle X § 502. (Ex. 15.)
45. The OP Setdown Report made the following conclusions regarding the CP:
- **Racial Equity** – The Implementation Element calls for “the Zoning Commission to evaluate all actions through a racial equity lens as part of its [CP] consistency analysis” under § 2501.8. The direction to consider equity is intended to be based on the policies of the CP and whether the proposed zoning action is “not inconsistent” rather than a separate determination about a zoning action’s equitable impact. In the case of a map amendment, the Commission does not know whether and when the subject site will be redeveloped, or whether the site would still be redeveloped if proposed rezoning were to be denied. Thus, a racial equity evaluation will only be able to analyze the potential development, uses, and impacts under the proposed zone compared to the existing zone. The proposed Map Amendment would support CP equity policies relating to housing and affordable housing production, alleviating pressure on housing costs, preventing displacement, facilitating transit connections, and expanding access to employment, education, and recreation opportunities. When applying a racial equity lens, the Map Amendment is also not inconsistent with CP because it permits a mix of residential and commercial uses that can benefit all populations, regardless of socioeconomic status.
 - **GPM** – The Map Amendment is not inconsistent with a Neighborhood Conservation Area that aims to conserve and enhance established neighborhoods, but does not preclude development, particularly to address housing needs. The proposed MU-7A zone allows for a compatible infill development that could provide neighborhood-serving retail and residential uses, including market rate and affordable dwelling units.
 - **FLUM** – The Map Amendment is not inconsistent with the CP’s FLUM designation for the Property because the proposed MU-7A zone would permit moderate to medium mixed-use development with a maximum FAR of 4.0 and up to 4.8 for the provision of

IZ units.³ Moreover, the Framework Element of the CP specifically notes MU-7 as an appropriate zone. (§ 227.11.)

- **Rock Creek East Area Element** – The Map Amendment would direct growth to a key node along 14th Street for redevelopment that could provide additional retail and housing, including affordable housing. Neighborhood-serving retail is strongly encouraged in areas designated for commercial or mixed-uses, including the subject sites. Future infill development under the parameters of the MU-7A zone would also respect the scale and density of adjacent properties.
 - **Land Use Element** – The Map Amendment would permit medium density mixed use development on several underutilized lots, which could include retail, office, service businesses, and apartment houses. The additional density afforded by the MU-7A zone would accommodate more housing, both affordable and market-rate, that would be located on an infill site with good access to mass transit. Moreover, the Map Amendment would support revitalization along 14th Street while conserving the existing and adjacent residential uses.
 - **Housing Element** – The Map Amendment would increase the potential for new market-rate and affordable housing options on a major corridor. Additional density will support expanding the District’s housing supply, including additional IZ units or all affordable units within a multifamily development. The Map Amendment also supports equity objectives relating to affordability and access.
 - **Transportation Element** – The Map Amendment would support the District’s goals of providing more housing, including affordable housing, in proximity to safe, affordable, and reliable transportation regardless of one’s background or socioeconomic status, given the Property’s location along the 14th Street corridor.
 - **The 14th Street SAP** – The Map Amendment is consistent with the recommendations for Node Two in the 14th Street SAP, as the increased density provides additional options for retail tenants, and more residential units would increase foot traffic and support for neighborhood-serving uses.
46. OP recommended that the Map Amendment be subject to Enhanced Inclusionary Zoning also referred to as “IZ Plus.” Decisions to amend the Zoning Map only consider the consistency of the proposed new zone with the CP; a map amendment application does not include specific development proposals. Therefore, the amount of residential floor area built in any future development under the MU-7A zone would determine the actual IZ Plus set-aside requirement and would be determined at the building permit stage.

³ Page 6 of the OP Setdown Report erroneously states that the MU-7A permits up to 4.2 FAR for the provision of IZ units.

47. OP's Setdown Report made the following conclusions regarding its recommendations for an IZ Plus set-aside requirement:
- IZ Plus requires a higher affordable housing set-aside requirement than Regular IZ based on either:
 - A sliding-scale that is correlated to the total floor area built; or
 - The amount of IZ bonus density built; and
 - An IZ Plus set-aside requirement is appropriate for this Map Amendment, pursuant to Subtitle X § 502, because:
 - The Map Amendment would rezone the Property to MU-7A, which allows a higher maximum permitted FAR than the existing MU-3A zone; and
 - The 2019 Housing Equity Report prepared by OP and the Department of Housing and Community Development reports that the Rock Creek East Planning Area only contained 5.1 percent of the District's total number of affordable housing units as of 2018.
48. OP submitted a final report, dated January 20, 2023, that largely reiterated the OP Setdown Report's conclusions, and recommended approval of the Map Amendment. (Ex. 26.)
49. At the public hearing, OP reiterated its support for the Application as detailed in its reports.

DDOT REPORT

50. DDOT submitted a January 20, 2023 report (the "DDOT Report"), stating that it had no objection to the Application because:
- DDOT concluded 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 found that the site's proximity to Priority bus routes on 14th and 16th Streets, coupled with the additional density enabled by the proposed rezoning, were consistent with DDOT's transit-oriented development objectives;
 - DDOT noted that any development proposals for the Property will need to account for a long-term bicycle parking storage room and short-term bicycle parking; 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, given the achievable matter-of-right density possible on the Property.
- (Ex. 27.)
51. DDOT did not provide testimony at the public hearing.

ANC REPORTS AND TESTIMONY

52. Included with the original Application was ANC 4C's resolution, dated February 9, 2022, stating that at its properly noticed public meeting of February 9, 2022, at which a quorum was present, the ANC voted in unanimous support of the Applicant and expressed no issues or concerns with the Map Amendment. The resolution stated "that it would be in the community's best interest and the District as a whole for the property at 4411 14th Street NW to be redeveloped from an underutilized, antiquated, one story store front building, to an attractive, modern, mixed-use development[.]" (Ex. 3K.)
53. ANC 4C submitted a second resolution, dated October 12, 2022, stating that at its properly noticed public meeting of October 12, 2022, at which a quorum was present, the ANC voted in unanimous support of the amended Application and expressed no issues or concerns with the Map Amendment. The resolution acknowledged that the Applicant amended its Application "to include the abutting Lots 810, 811, and 812 in addition 813 in Square 2819 to allow for more consistent rezoning for the block" and to achieve greater consistency with the CP. (Ex. 22.)
54. The ANC 4C resolutions described in Findings of Fact ("FF") Nos. 52 and 53 are hereinafter referred to as the "ANC 4C Reports". ANC 4C did not appear at the public hearing.
55. ANC 4E submitted a resolution, dated January 17, 2023 (the "ANC 4E Report") , stating that at its properly noticed public meeting of January 17, 2023, at which a quorum was present, the ANC voted in unanimous support of the Application and expressed no issues or concerns with the Map Amendment. (Ex. 25.) The ANC 4E Report acknowledged the preceding ANC 4C's unanimous support of the application.
56. Commissioner Ulysses E. Campbell testified in support of the Application on behalf of ANC 4E at the public hearing, and reiterated ANC 4E's support for the future development that would be enabled by the Map Amendment. (Hearing Transcript ["Hr. Tr."] January 30, 2023 at p. [REDACTED].)

PERSONS IN SUPPORT OR OPPOSITION

57. No persons or organizations submitted comments to the case record or testified at the public hearing.

NATIONAL CAPITAL PLANNING COMMISSION ("NCPC")

58. The Commission referred the Application to the NCPC on January 31, 2023, 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.) (Ex. 31.)
59. NCPC filed a [REDACTED], 2023, report stating that NCPC had determined [REDACTED].

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 MU-3A zone to the MU-7A 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. 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. D.C. Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). Accordingly, the Commission concludes that any potential inconsistencies with the CP, and particularly those identified by the Applicant (*see* FF No. 39), are far outweighed by the Map Amendment’s consistency with the CP’s maps and its advancement of specific CP

policies under the Rock Creek East Area Element, Land Use Element, Housing Element, Transportation Element, and Environmental Protection Element.

Racial Equity

6. The Commission concludes that the Map Amendment is not inconsistent with racial equity policies because:
- The Map Amendment would increase the allowable density to medium density levels and permit a mix of uses that would enhance the opportunity for redevelopment of the Property with affordable housing and an IZ Plus set-aside requirement will apply to the Map Amendment to further increase affordable housing supply;
 - The housing development permitted by the Map Amendment would help to balance supply and demand of housing which could help mitigate increases in housing prices and costs; and
 - The Map Amendment would foster opportunities for redevelopment of the Property with a mix of uses in a transit accessible location, expanding access to employment opportunities, existing commercial uses and services along the 14th Street corridor, and other neighborhood amenities, regardless of background or socioeconomic status. (FF Nos. 31, 45.)

GENERALIZED POLICY MAP (GPM)

7. The Commission concludes that the Map Amendment is not inconsistent with the GPM’s designation of the Property as a Neighborhood Conservation Area because:
- The Map Amendment to MU-7A permits additional density that will support the potential redevelopment of the Property with a mixed-use building, inclusive of market-rate and affordable housing that will help to address citywide housing needs;
 - New development permitted under the MU-7A zone will serve to conserve and enhance the existing character of the surrounding neighborhood, because it ensures that future infill development will be compatible with nearby residential uses, yet facilitates moderate- to medium-density, mixed use development along the 14th Street corridor, thus enhancing access to housing and other opportunities; and
 - Future revitalization of the Property has the potential to attract an appropriate influx of residents as well as new, complementary uses and services that better serve the needs of existing and future residents. (FF Nos. 18, 32, 45.)

FUTURE LAND USE MAP (FLUM)

8. The Commission concludes that the Map Amendment is not inconsistent with the Property’s Mixed Use – Medium-Density Residential / Moderate-Density Commercial FLUM designation because:
- The MU-7A is intended to allow medium density, mixed-use development;

- Based on the densities indicated by the FLUM indicate that residential use is favored at the Property, and the MU-7A limits non-residential uses to 1.0 FAR;
- The MU-7A zone’s 4.0 FAR (4.8 with IZ) falls within the 1.8-4.0 FAR range of the Medium Density Residential FLUM category and within the 2.5-4.0 FAR range of the Moderate Density Commercial category; and the descriptions provided in the CP’s Framework Element for both FLUM categories state that greater density is possible when complying with IZ;
- The MU-7 zones are identified as being “representative of zone districts consistent with the Moderate Density Commercial category”; and
- The Map Amendment will achieve greater compatibility with the envisioned density and uses for the Property than the current MU-3A zoning for the Property, which is substantially below the anticipated density for this FLUM designation. (FF Nos. 19, 33, 45.)

Rock Creek East Area Element

9. The Commission concludes that the Map Amendment furthers this area element and in particular the policies of the Central 14th Street Focus Area because:
- It will facilitate the redevelopment of an infill site with a new mixed-use development in manner that achieves compatibility with the scale and character of the surrounding neighborhood;
 - It will stimulate appropriate growth in an area that has been identified as a key node along the 14th Street corridor, specifically through the production of new market-rate housing and affordable housing;
 - It will allow for the development of ground-floor retail uses which will help foster associated public space improvements and, consistent with the Central 14th Street Focus Area’s focus on cultivating pedestrian activity (FF Nos. 20-21, 34, 45.)

Land Use Element

10. The Commission concludes that the Map Amendment furthers this element because:
- The increased density permissible under the MU-7A zone will support new, infill multifamily development near public transit options and on land that is currently underutilized; and
 - It will allow for height and densities that are appropriate for the Property’s location along the 14th Street corridor that confronts lower-density, RF-1 zoned properties to the east and to the west, while furthering a number of specific Land Use Element policies. (FF Nos. 35, 45.)

Housing Element

11. 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 MU-7A zone will allow for greater amounts of new housing in an accessible and desirable location. (FF Nos. 36, 45.)

Transportation Element

12. The Commission concludes that the Map Amendment furthers this element given the Property's transit-accessible location and that the streetscape surrounding the Property will likely be enhanced in connection with any redevelopment, which will create safer pedestrian connections and increase access to existing retail and amenities along the 14th Street corridor. (FF Nos. 37, 45.)

Environmental Protection Element

13. 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 Nos. 38, 45.)

SMALL AREA PLAN

14. The Commission concludes that the Map Amendment is not inconsistent with the recommendations of the 14th Street SAP because it 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 neighborhood, and will advance the objectives for Node Two which advocate for a pedestrian-oriented environment and diverse commercial activity. (FF Nos. 22-25, 40, 45.)

"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 Map Amendment, are persuasive and concurs with OP's recommendation that the Property be rezoned, as discussed above. (FF Nos. 44-48.)

"GREAT WEIGHT" TO THE ANC REPORTS

17. 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).)

18. Although the ANC 4C Reports and the ANC 4E Report did not express any issues or concerns to which the Commission can give great weight, the ANC notes ANC 4C’s and ANC 4E’s support for the Map Amendment and concurs in that judgement. (FF Nos. 52-55.)

DECISION

In consideration of the record for Z.C. Case No. 22-12 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	LOTS	MAP AMENDMENT
2819	810, 811, 812, and 813	MU-3A to MU-7A

Proposed Action

Vote (January 30, 2023): 4-0-1 (Peter G. May, Joseph S. Imamura, Anthony J. Hood, Robert E. Miller to **APPROVE**; one seat vacant, not voting)

Final Action

Vote (March 9, 2023): #-#-#

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 22-12 shall become final and effective upon publication in the *D.C. Register*, that is on [REDACTED], 2023.

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.

DRAFT