

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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)

March 9, 2023

Pursuant to notice, at its public hearing on January 30, 2023,¹ 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”)² for approval of a Zoning Map amendment from the MU-3A zone 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 is appropriate for Inclusionary Zoning (“IZ”) Plus. The Property shall be indicated with an “IZ+” symbol on the Zoning Map. For purposes of calculating an IZ Plus set-aside requirement pursuant to Subtitle C § 1003, the maximum permitted floor area ratio (“FAR”) of the existing MU-3A zone is equivalent to 1.0.

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 are: Advisory Neighborhood Commissions (“ANC”) 4C and ANC 4E. The Property was located within the boundaries of ANC 4C when the Application was initially filed on March 15, 2022; however, new

¹ On January 30, 2023, the Commission held a public hearing on the Application and, at the conclusion of the hearing, took proposed action to approve the Application. At its March 9, 2023 public meeting, the Commission took final action to approve the Application.

² 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. (Exhibits 3H, 12.)

ANC boundaries took effect on January 1, 2023. As of January 1, 2023, the Property lies within the boundaries of ANC 4E and is directly across the street from ANC 4C; therefore, both ANCs 4C and 4E are “affected ANCs” 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.)
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”);
 - Department of Consumer and Regulatory Affairs (“DCRA”)³ General Counsel; and
 - Zoning Commission Lead Attorney.(Ex. 8.)
5. On June 8, 2022, the Applicant mailed a Notice of Intent to file an amended Application⁴ to all property owners within 200 feet of the Property and to ANC 4C. (Ex. 13, 13A.)
6. On October 12, 2022, OZ sent notice of the January 30, 2023 virtual public hearing to:
 - Authorized counsel for the Applicant;
 - ANC 4E;
 - ANC 4C;
 - ANC SMD 4E05, 4E04, 4C03, and 4C05;
 - Office of the ANCs;
 - OP;
 - DDOT;
 - Councilmember Janeese Lewis George, the Ward 4 Councilmember in whose district the Property is located;

³ As of October 1, 2022, pursuant to the Department of Buildings Establishment Act of 2020, D.C. Law 23-269 (effective April 5, 2021), the building permit and development review duties previously vested with DCRA were transferred to the newly-created Department of Buildings (“DOB”).

⁴ The Application was amended to include Lots 810, 811, and 812 in Square 2819. (Ex. 12.)

- Chairman and At-Large Members of the D.C. Council;
 - DOEE;
 - DOB General Counsel;
 - Zoning Commission Lead Attorney; and
 - Property owners within 200 feet of the Property.
- (Ex. 20, 21.)

7. OZ published notice of the public hearing in the October 21, 2022, *District of Columbia Register* (69 DCR 12817 *et seq.*), as well as on the calendar on OZ’s website. (Ex. 19, 20, 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.)

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) located in the 16th Street Heights neighborhood of Ward 4. (Ex. 3, 12.)
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. (Ex. 3, 12.)
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. (Ex. 3, 12.)
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 brick building known as the “Xi Omega Center” that was originally constructed in or about 1941 and an associated surface parking lot.
 (Ex. 3, 17.)
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. (Ex. 3.)

14. The Property is located approximately one mile from the Georgia Avenue-Petworth Metro station (green and yellow line service). In addition, the Property is in close proximity to the Priority bus corridor along Georgia Avenue, which provides access to WMATA Bus Routes 70 and 79. (Ex. 15.)
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. (Ex. 3.)

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. (Subtitle G § 400.2.)
17. As a matter of right, the MU-3A zone requires/permits:
 - A maximum FAR of 1.0 (1.2 with IZ bonus density); (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 Green Area Ratio (“GAR”) of 0.3; (Subtitle G § 407.1.) and
 - The uses permitted in MU-Use Group D. (Subtitle U §§ 500.2, 510.)

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

Equity and the Comprehensive Plan

18. 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.
19. In applying the standard of review applicable to the Map Amendment, the CP requires the Commission to do so through a racial equity lens. (CP § 2501.8.) Consideration of equity is intended to be based on the policies of the CP, and part of the Commission’s considerations of whether the Map Amendment is “not inconsistent” with the CP, rather than a separate determination about a zoning action’s equitable impact.
20. 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. (CP § 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.” (CP § 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. (CP § 213.9.)

21. The CP Implementation Element provides guidance to help the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states “[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 of the District.” (CP § 2501.6.)

Generalized Policy Map (the “GPM”)

22. 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 § 225.4-225.5.)*

Future Land Use Map (the “FLUM”)

23. The CP’s FLUM designates the Property as Mixed Use – Medium Density Residential and Moderate Density Commercial:

- Medium Density Residential
[N]eighborhoods 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.” (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, which 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.) and
 - 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

24. The Property falls within the Rock Creek East Area Element that calls for, among other things:
- Maintaining and strengthening of the neighborhoods of the Rock Creek East Planning Area “while providing new housing opportunities for a range of incomes and household sizes”; (CP § 2208.2.)
 - Ensuring that new construction respects the scale and densities of adjacent properties; (CP § 2208.3.)
 - Concentrating economic development activity, employment growth, and new housing, including affordable housing, near public transit; (CP § 2208.4.)
 - Encouraging the development of multi-use neighborhood shopping and services; (CP § 2208.5.) and
 - Keeping housing affordable for current and future residents with a range of ages and household sizes. (CP § 2208.6.)
25. 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; (CP § 2217.3.)
- Improving pedestrian safety and connectivity; (CP § 2217.4.) and
- Facilitating mixed-use redevelopment of commercial properties. (CP § 2217.7.)

Small Area Plan

26. The Property is within the boundaries of the Central 14th Street Vision Plan and Revitalization Strategy (the “14th Street SAP”).
27. 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. (14th Street SAP, p. 2.)
28. 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[.]” (14th Street SAP, p. 4.)
29. 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.” (14th Street SAP, p. 32.)

II. THE APPLICATION

PROPOSED ZONING

30. The Applicant proposes to rezone the Property from the MU-3A zone to the MU-7A zone. (Ex. 3, 12.)
31. 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.
32. Specifically, the MU-7A zone is intended to permit medium⁵ density mixed-use development and be located on arterial streets, in uptown and regional centers, and at rapid transit stops. (Subtitle G § 400.6.)

⁵ Subtitle G § 400.6 describes the MU-7 zones are “medium” density while the recent 2021 updates to the Comprehensive Plan describe the MU-7 zone as consistent with the “moderate” density commercial FLUM category. The Commission has noted this discrepancy in the Zoning Regulations and requested that OP bring

33. As a matter of right, the MU-7A zone permits/requires:
- A maximum density of 4.0 FAR (4.8 with IZ bonus density), 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 bonus density); (Subtitle G § 404.1.)
 - A minimum GAR of 0.25; (Subtitle G § 407.2.) and
 - The uses permitted in MU-Use Group F. (Subtitle U §§ 500.2, 515.)

APPLICANT'S JUSTIFICATION OF RELIEF

Not Inconsistent with the CP

34. The Applicant asserted that the Application is not inconsistent with the CP and with other adopted public policies and active programs applicable to the Property, as detailed below.⁶ (Ex. 3.)

Racial Equity

35. The Applicant asserted that the Map Amendment would not be inconsistent with the racial equity policies and goals of the CP.⁷ The Applicant noted that equity is conveyed throughout the CP where priorities of affordable housing, preventing displacement, and access to opportunity are distinguished. The Map Amendment would not directly result in the physical displacement of residents since the Property is currently developed with commercial uses. 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 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

forward a text amendment to describe the MU-7 zones as moderate density in the Zoning Regulations consistent with the FLUM.

⁶ The Applicant submitted its CP consistency analysis with its initial Application (Ex. 3.), which at the time only included Lot 813 in Square 2819. The Applicant later amended the Application to add Lots 810, 811, and 812 in Square 2819 into the rezoning request. In the amended Application, the Applicant explained that the addition of Lots 810, 811, and 812 did not impact its initial CP consistency analysis since those Lots are also designated Neighborhood Conservation Area on the GPM and Mixed Use (Medium Density Residential and Moderate Density Commercial) on the FLUM. (Ex. 12, 17.)

⁷ The Commission released a revised Racial Equity Analysis Tool on February 3, 2023. The new requirements of the revised tool were not applied in the Commission's evaluation of this Application given that substantive proceedings in this case, specifically setdown, the public hearing, and proposed action, preceded the release date of the revised tool.

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

(Ex. 3, 17.)

GPM

36. 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

37. 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 maximum allowed density of 4.0 FAR (4.8 with IZ) falls within the 1.8-4.0 FAR range contemplated by the Medium Density Residential FLUM category and the 2.5-4.0 FAR range contemplated by 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, as is the case with this Map Amendment since future residential development on the Property will be subject to IZ Plus; and
- The MU-7 zones are specifically identified as being consistent with the Property's Moderate Density Commercial FLUM designation.

(Ex. 3.)

Rock Creek East Area Element

38. The Applicant asserted that the Map Amendment would advance the major planning objectives of the Rock Creek East 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

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

39. The Applicant asserted that the Map Amendment is not inconsistent with the policies of the Land Use Element because it 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 enable 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 of protecting neighborhood character and ensuring compatibility of residential use. (Ex. 3.)

Housing Element

40. The Applicant asserted that the Map Amendment is not inconsistent with the policies of the Housing Element because it would provide for an increase in permitted density for residential use and could help meet the housing needs of present and future District residents. Future multifamily housing development at the Property might be devoted to seniors; therefore, the Map Amendment could 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

41. The Applicant asserted that the Map Amendment is not inconsistent with the policies of the Transportation Element because, in connection with any redevelopment, the streetscape surrounding the Property would likely be enhanced, which could 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 could further several policies under the Transportation Element, specifically relating to transforming major corridors and establishing a viable pedestrian network. (Ex. 3.)

Environmental Protection Element

42. The Applicant asserted that the Map Amendment is not inconsistent with the policies of the Environmental Protection Element because it would facilitate the redevelopment of the Property with new construction that would potentially 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

43. The Applicant analyzed whether the Map Amendment would be considered inconsistent with certain policies of the CP. The Applicant stated that the Map Amendment could be viewed as conflicting with certain Land Use Element policies relating to rehabilitating

underused older buildings and preserving and protecting the row house character that defines the area to the west of the Property, across 14th Street. (LU-2.1.4, 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, the Applicant concluded that any potential CP inconsistencies are outweighed by the Application's overall consistency with a number of specific policies in the CP. In particular, 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. Specifically, Policy LU-2.1.8 advocates for "explor[ing] approaches, including rezoning, to accommodate a modest increase in density and more diverse housing types in low-density and moderate-density neighborhoods where it would result in the appropriate production of additional housing and particularly affordable housing." (CP § 310.15; Ex. 3.)

The 14th Street SAP

44. The Applicant asserted that the Map Amendment would further the policies and goals of 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; and
 - Helping to materialize the vision for Node Two, as the increased height and density will accommodate an appropriate influx of residents that can support existing businesses and attract more diverse retailers to the surrounding area.
- (Ex. 3.)

Community Outreach

45. The Applicant presented the initial Application to the full ANC 4C at its duly-noticed, regularly scheduled public meeting on February 9, 2022; and subsequently presented the amended Application to the full ANC 4C at its duly-noticed, regularly scheduled public meeting on October 12, 2022. (Ex. 3, 24.)
46. 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

47. At the public hearing held on January 30, 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

48. 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 § 502.1(b). (Ex. 15.)
49. The OP Setdown Report made the following conclusions regarding the Map Amendment's consistency with the CP:
- **Racial Equity** – The proposed Map Amendment would support CP racial 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. The OP Setdown Report cited race and ethnicity data for the Rock Creek East Planning Area, which suggested that the Planning Area "is slightly more affordable than the District-wide median, which has resulted in greater diversity, although it still falls short of meeting the affordable housing goal as stated in the Housing Equity Report... Additional housing would increase supply and potentially bring down prices, making housing more attainable for more residents in the Planning Area." Further, additional affordable housing has the potential to benefit non-white populations who on average have lower incomes than white residents. Therefore, when applying a racial equity lens, the OP Setdown Report concluded that the Map Amendment is not inconsistent with the CP because it, coupled with IZ Plus, would permit a mix of residential and commercial uses at a higher density than the current MU-3A zone permits and allow for additional multi-family housing, additional affordable housing, and potential future employment opportunities;
 - **GPM** – The Map Amendment is not inconsistent with the Property's Neighborhood Conservation Area designation 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 mixed-use Medium Density Residential and Moderate Density Commercial FLUM designation for the Property because the proposed MU-7A zone would permit moderate to medium density mixed-use development with a maximum FAR of 4.0 and up to 4.8 for the provision of

IZ units.⁸ Moreover, the Framework Element of the CP specifically lists the MU-7 zone as a zone that is consistent with the Moderate Density Commercial FLUM category; (CP § 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; and
- **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.

(Ex. 15.)

50. The OP Setdown Report recommended that the Map Amendment be subject to a higher affordable housing set-aside requirement than Regular IZ also referred to as “IZ Plus.” OP noted that 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. (Ex. 15.)
51. The OP Setdown Report made the following conclusions regarding its recommendation that an IZ Plus set-aside requirement was appropriate for the Map Amendment pursuant to Subtitle X § 502.1(b):

⁸ 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.

- 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 % of the District’s total number of affordable housing units as of 2018; and the affordable housing goal for the Rock Creek East Planning Area⁹ is a total of 1,580 affordable units by 2025.
52. OP submitted a hearing report, dated January 20, 2023 (the “OP Hearing Report” and, together with the OP Setdown Report, the “OP Reports”), that largely reiterated the OP Setdown Report’s conclusions, including OP’s recommendation that the Map Amendment would be appropriate for IZ Plus, and recommended approval of the Map Amendment. (Ex. 26.)
53. At the January 30, 2023 public hearing, OP reiterated its support for the Application as detailed in its reports.

DDOT REPORT

54. 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; and
 - 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.
- (Ex. 27.)
55. At the January 30, 2023 public hearing, DDOT did not provide testimony.

ANC REPORTS AND TESTIMONY

56. Included with the original Application was ANC 4C’s resolution, dated February 9, 2022, stating that at its properly noticed public meeting on February 9, 2022, at which a quorum was present, ANC 4C 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.) The resolution also noted that previously at its February 12, 2020 meeting, ANC 4C unanimously approved a letter of support for a FLUM amendment from Low-Density Commercial to Mixed Use Moderate Density Commercial and Medium Density Residential for this Property, which was subsequently approved. (*Id.*)

⁹ Page 4 of the OP Setdown Report states that the Rock Creek West Area has an affordable housing goal of 1,580 units; however, that goal applies to the Rock Creek East Planning Area, in which the Property is located.

57. ANC 4C submitted a second resolution, dated October 12, 2022, stating that at its properly noticed public meeting on October 12, 2022, at which a quorum was present, ANC 4C voted in 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 revised CP. (Ex. 22.)
58. The ANC 4C resolutions described in Findings of Fact (“FF”) Nos. 56 and 57 are hereinafter referred to as the “ANC 4C Reports”. ANC 4C did not appear at the public hearing.
59. ANC 4E submitted a resolution, dated January 17, 2023 (the “ANC 4E Report”), stating that at its properly noticed public meeting on January 17, 2023, at which a quorum was present, ANC 4E 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, prior to redistricting.
60. ANC 4E Commissioner Ulysses E. Campbell testified in support of the Application on behalf of ANC 4E at the January 30, 2023, public hearing, and reiterated ANC 4E’s support for the future development that would be enabled by the Map Amendment. (January 30, 2023 Hearing Transcript [“Hr. Tr.”] at pp. 24-25.)

PERSONS IN SUPPORT OR OPPOSITION

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

NATIONAL CAPITAL PLANNING COMMISSION (“NCPC”)

62. The Commission referred the Application to 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.)
63. On February 27, 2023, NCPC staff filed a letter dated February 22, 2023, stating that the proposed Map Amendment is exempt from NCPC review because it falls under exception 12 in Chapter 8 of NCPC’s Submission Guidelines. (Ex. 33.)

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 in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population 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 of 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 of districts and of land values therein.

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

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.
4. The Commission concludes, based on the filings and/or testimony of the Applicant, OP, DDOT, ANC 4C, and ANC 4E, that the Map Amendment from the MU-3A zone to the MU-7A zone is not inconsistent with the CP as a whole, including the 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. 43), are 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, as further discussed below.

Racial Equity¹⁰

6. The Commission concludes that the Map Amendment is not inconsistent with the CP when evaluated through a racial equity lens because:

¹⁰ The Commission released a revised Racial Equity Analysis Tool on February 3, 2023, and took final action in this case on March 9, 2023; the Commission did not utilize its revised tool in evaluating this Application as the substantive proceedings and relevant submissions in this case preceded the release of the revised tool.

- The Map Amendment would increase the allowable density 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. 35, 48-53.)

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 the MU-7A zone 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 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. 22, 36, 48-53.)

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 zone is intended to allow medium density, mixed-use development;
 - The MU-7A zone's maximum FAR of 4.0 (4.8 with IZ) falls within the 1.8-4.0 FAR range contemplated by the Medium Density Residential FLUM category and within the 2.5-4.0 FAR range contemplated by 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, which will be the case here since the Map Amendment will be subject to IZ Plus;
 - The MU-7 zones are identified under the Framework Element (CP § 227.11.) 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. 23, 37, 48-53.)

Rock Creek East Area Element

9. The Commission concludes that the Map Amendment is not inconsistent with and furthers the Rock Creek East Area Element and in particular the policies of the Central 14th Street Focus Area because:
- It will facilitate the potential redevelopment of an infill site with a new mixed-use development 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, consistent with the Central 14th Street Focus Area's focus on cultivating pedestrian activity (FF Nos. 24-25, 38, 48-53.)

Land Use Element

10. The Commission concludes that the Map Amendment is not inconsistent with the Land Use Element because:
- The increased density permissible under the MU-7A zone will support new, infill multifamily development near public transit options on land that is currently underutilized;
 - 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; and
 - To the extent the Map Amendment is potentially inconsistent with certain Land Use policies encouraging the rehabilitation of older buildings and the preservation of row homes, the Commission concludes that such inconsistencies are outweighed by the Map Amendment's consistency with competing CP policies and goals which support the revitalization of 14th Street and the creation of more housing and affordable housing near transit. (FF Nos. 39, 43, 48-53.)

Housing Element

11. The Commission concludes that the Map Amendment is not inconsistent with the Housing 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 (Mayor's Order 2019-036), the MU-7A zone will allow for greater amounts of new housing in an accessible and desirable location. (FF Nos. 40, 48-53.)

Transportation Element

12. The Commission concludes that the Map Amendment is not inconsistent with the Transportation Element given the Property's transit-accessible location and that the streetscape surrounding the Property will potentially 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. 41, 48-53.)

Environmental Protection Element

13. The Commission concludes that the Map Amendment is not inconsistent with the Environmental Protection Element because it enables future redevelopment of the Property that will potentially incorporate energy-efficient systems to reduce energy use and comply with the Green Building Act. (FF Nos. 42, 48-53.)

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, potentially 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. 26-29, 44, 48-53.)

"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's consistency with the CP Maps, Citywide Elements, the Rock Creek East Area Element, the 14th Street SAP, and the goals of the CP when evaluated through a racial equity lens, are persuasive and concurs with OP's recommendation that the Property be rezoned, as discussed above. (FF Nos. 48-53.)
17. The Commission also concurs with OP's recommendation that the proposed Map Amendment is appropriate for an IZ Plus set-aside requirement for the reasons discussed above. (*Id.*)

"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. 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 Commission notes ANC 4C’s and ANC 4E’s support for the Map Amendment and concurs in their judgements. (FF Nos. 56-60.)

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

For the purposes of calculating an IZ Plus set-aside requirement pursuant to Subtitle C § 1003, the maximum permitted FAR of the existing MU-3A zone is equivalent to 1.0.

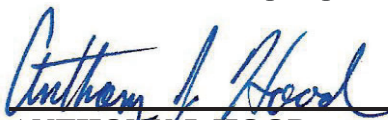
Proposed Action


Vote (January 30, 2023): **4-0-1** (Peter G. May, Joseph S. Imamura, Anthony J. Hood, Robert E. Miller to **APPROVE**; 3rd Mayoral Appointee seat vacant, not voting)

Final Action

Vote (March 9, 2023): **4-0-1** (Peter G. May, Joseph S. Imamura, Anthony J. Hood, Robert E. Miller to **APPROVE**; 3rd Mayoral Appointee seat vacant, not voting)

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 September 15, 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.