

**MEMORANDUM**

**TO:** District of Columbia Zoning Commission

**FROM:** Maxine Brown-Roberts, Development Review Specialist  
JLS  
Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation

**DATE:** December 5, 2022

**SUBJECT:** ZC 22-19 – Supplemental Report: Petition for a Map Amendment to Rezone 4950 South Dakota Avenue, NE from the MU-3A to the MU-7B zone.

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At the public hearing on November 28, 2022, the Zoning Commission requested that the Office of Planning (OP) address the following:

1. Are the use permissions for the MU-5A and the MU-5B zones the same?
2. What are the limitations on the number of seats for the fast food establishment; and
3. Address the differences between the Zoning Regulations and the Comprehensive Plan density descriptions.

***1. Are the use permissions for the MU-5A and the MU-5B zones the same?***

The use permissions for the MU-5A and MU-5B zones are the same. The use permissions for fast food establishments in the MU-5 zone are found at Subtitle U § 512.1(e)(2) which allows fast food establishments subject to conditions and does not allow drive throughs. A drive through in the MU-5 zone would require a use variance.

*512.1 The following uses shall be permitted in MU-Use Group E as a matter of right subject to any applicable conditions:*

- (a) . . . .
- (e) *Eating and drinking establishment uses, subject to the following conditions:*
- (1) *A fast food establishment or food delivery service shall not be permitted within the MU-4, MU-17, MU-24, MU-25, MU-26, or MU-27 zones; and*
  - (2) *A fast food establishment or food delivery service in all other MU-Use Group E zones, subject to the following conditions:*
    - (A) *No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a residential zone, unless separated therefrom by a street or alley;*
    - (B) *If any lot line of the lot abuts an alley containing a zone district boundary line for a residential zone, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be*

- constructed and maintained on the lot along the length of that lot line;*
- (C) Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face a residential zone;*
  - (D) **The use shall not include a drive-through; and***
  - (E) Subparagraphs (A) and (B) shall not apply to a fast food establishment located in Square 5912; [emphasis added]*
  - (3) A prepared food shop in a MU-4, MU-17, MU-24, MU-25, MU-26, and MU-27 zone shall be limited to eighteen (18) seats for patrons;*

The matter-of-right use permissions for the MU-7 zone (applicable to both MU-7A and MU-7B zones) are found at Subtitle U § 515.1(f) which allows all eating and drinking establishments, including fast food establishments, with no restrictions and allows a drive-through as a matter-of-right.

*515.1 The following uses shall be permitted in MU-Use Group F as a matter of right, subject to any applicable conditions:*

- (a) Uses permitted . . .*
- (f) Eating and drinking establishments with no restrictions;*

## ***2. What are the limitations on the number of seats for the fast food establishment?;***

There is no limit on the number of seats in a fast food establishment in any zone where it is permitted. The limit on the number of seats in an eating and drinking establishment is only applicable to prepared food shops in the zones shown in Subtitle U § 512.1(e)(3) below.

- (3) A prepared food shop in a MU-4, MU-17, MU-24, MU-25, MU-26, and MU-27 zone shall be limited to eighteen (18) seats for patrons;*

## ***3. Address the differences between the Zoning Regulations and the Comprehensive Plan density descriptions.***

As part of the 2021 Comprehensive Plan Update, the Future Land Use Map (FLUM) designation for Square 3786, Lots 0001 and 0801 was changed from Low Density Commercial to Moderate Density Commercial (Change # 2081).

The Comprehensive Plan recommendation on the FLUM for moderate density development specifically states that “***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 Plan recommends the MU-5 and **MU-7** Zone Districts as moderate density zones and that other zones may also apply.

The Zoning Regulations at Subtitle G § 400.7 describes the MU-7 zone for medium density development which allows a maximum FAR of 4.0 (4.8 with IZ) with a maximum of 2.5 FAR for non-residential uses.

The Comprehensive Plan gives general recommendations unlike the Zoning Regulations which gives specific requirements and limitations. The Comprehensive Plan is general in its recommendations, and for “moderate density” it recommends the MU-5 and the MU-7 zones but goes on to stipulate that “other zones may apply”.

The Comp Plan recommended FAR for the moderate density category is a range of 2.5 FAR to 4.0 FAR but also allows higher FAR in some circumstances. The Framework Element states *“A range of densities and intensities applies within each category, and the use of different zone districts within each category should reinforce this range. There are many more zone districts than there are Comprehensive Plan land-use categories.”*

The density allowed under the MU-7 zone is not inconsistent with the 2.5 FAR to 4.0 FAR called for by the moderate density commercial designation. The Applicant’s request for the MU-7B allows for the maximization of the commercial use on the site, up to 2.5 FAR, which is at the lower end of the Comprehensive Plan’s FAR recommendation. The MU-7B zone allows for the maximization of development on the site.

The Commission enquired about the option for the MU-4 zone on the site. The Zoning Regulations describes the MU-4 zone as moderate density (Subtitle G § 400.3). However, the Comprehensive Plan recommends the MU-4 zone for the low density designation with a density of up to 3.0 FAR with IZ and 1.5 FAR for non-residential use. The MU-4 zone on the site would be inconsistent with the density envisioned by the Comprehensive Plan for the property.

In summary, the requested MU-7B for the property would not be inconsistent with the Comprehensive Plan.