

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 22-19**  
**Z.C. CASE NO. 22-19**  
**McDonald's Corporation**  
**(Zoning Map Amendment @ Square 3786, Lot 1)**  
**January 26, 2023**

Pursuant to notice, at its public hearing on January 26, 2023, the Zoning Commission for the District of Columbia (the "Commission") considered an application (the "Application") by McDonald's Corporation (the "Applicant") for an amendment to the Zoning Map from the MU-3A zone to the MU-7B zone (the "Map Amendment") for the property at 4950 South Dakota Avenue, NE, and which is more particularly known as Lot 1 in Square 3786 (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 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") 5A, the ANC in which the Property is located. 11-Z DCMR § 403.5.
2. The Commission received no requests for party status.

**NOTICE**

3. On March 9, 2022, the Applicant mailed a notice of intent to file the Application to all property owners within 200 feet of the Property as well as ANC 5A, as required by Subtitle Z §§ 304.5 and 304.6. (Exhibit ("Ex.") 3J).
4. On August 9, 2022, the Office of Zoning ("OZ") sent notice of the November 28, 2022 virtual public hearing to:
  - ANC 5A;
  - ANC Single Member District ("SMD") 5A03;
  - Office of the ANCs;
  - Office of Planning ("OP");
  - District Department of Transportation ("DDOT");
  - DC Council;
  - Department of Energy & Environment ("DOEE");
  - DCRA General Counsel;
  - Commission Lead Attorney; and
  - Property owners within 200 feet of the Property. (Ex. 16, 18).

5. OZ published notice of the public hearing in the August 19, 2022, *D.C. Register* (69 DCR 010581), as well as on the OZ's public hearing calendar on the OZ's website. (Ex. 15).

#### **THE PROPERTY**

6. The Property is located in the northeast quadrant of the District and consists of approximately 21,000 square feet of land area (approximately 0.48 acres).
7. The square within which the Property lies is generally bounded by South Dakota Avenue to the northeast, Delafield Street to the northwest, and Decatur Street to the south.
8. The Property is generally surrounded by detached single family homes and light commercial uses.
9. The Property is presently improved with an eating and drinking establishment that was constructed in 1968; the building consists of approximately 3,100 square feet. (Ex. 3B).
10. The Property is located within 0.49 miles from the Fort Totten metro station. A bus stop for the Route 80 North Capitol Street line is located in front of the Property along South Dakota Avenue. As such, the Property has a Transit Score of 69 (good transit).
11. The properties located to the northwest of the Property, across Delafield Street, are zoned R-2. The properties located to the northeast of the Property, across South Dakota Avenue, are zoned MU-3A. The properties located to the south of the Property, in Square 3786, are zoned R-2.

#### **CURRENT ZONING**

12. The Property is 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.
13. As a matter of right, the MU-3A zone requires/permits:
  - A maximum Floor Area Ratio ("FAR") of 1.0 (1.2 with Inclusionary Zoning ("IZ")) (11-G DCMR § 402.1)
  - A 40-foot and 3-story maximum building height, not including the penthouse; (11-G DCMR § 403.1)
  - A 60% maximum lot occupancy (11-G DCMR § 404.1)
  - A minimum rear yard of 20 feet (11-G DCMR § 405.1)
  - If provided, a 5-foot minimum side yard (11-G DCMR § 406.1)
  - A minimum Green Area Ratio ("GAR") of 0.3 (11-G DCMR § 407.1)
  - The uses permitted in MU-Use Group D (*see* 11-U DCMR § 500.2; *see also* 11-U DCMR § 510).

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

### **Equity and the Comprehensive Plan**

14. Pursuant to 11-X DCMR § 500.3, the Zoning 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.
15. In applying the standard of review applicable to the Map Amendment, the CP requires the Commission to do so through a racial equity lens. Consideration of equity is intended to be based on the policies of the CP, and part of the Commission’s considerations of whether the Map Amendment is “not consistent” with the CP, rather than a separate determination about a zoning action’s equitable impact.
16. The CP Framework Element states that equity is both an outcome and a process. 10A DCMR § 213.6. As an outcome, the District achieves racial equity when race no longer determines one’s socioeconomic outcomes; when everyone has what they need to thrive, no matter where they live or their socioeconomic status; and when racial divides no longer exist between people of color and their white counterparts. As a process, we apply a racial equity lens when those most impacted by structural racism are meaningfully involved in the creation and implementation of the institutional policies and practices that impact their lives, particularly people of color. 10A DCMR § 213.9
17. The CP Implementation Element provides guidance to help guide the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states “[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.” 10A DCMR § 2501.6.

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

18. The GPM highlights areas where more detailed policies are necessary, both within the Comp Plan and in follow-up plans, to most effectively chart the District’s envisioned growth. 10A DCMR § 225.1.
19. The GPM is intended to “guide land use decision-making in conjunction with the text of the CP, the Future Land Use Map, and other CP maps. Boundaries on the map are to be interpreted in concert with these other sources as well as the context of each location.” 10A DCMR § 225.2.
20. The CP’s GPM designates the Property as a Neighborhood Commercial Center. The CP defines Neighborhood Commercial Center as:

*“Neighborhood Commercial Centers meet the day-to-day needs of residents and workers in adjacent neighborhoods. The area served by a Neighborhood Commercial Center is usually less than one mile. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks,*

*restaurants, and basic services such as dry cleaners, hair cutting, and childcare. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. Many buildings have upper-story residential uses.” 10A DCMR § 225.15 (emphasis added).*

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

21. The FLUM shows the general character and distribution of recommended and planned uses across the District, and, along with the GPM, is intended to provide generalized guidance on whether areas are designated for conservation, enhancement, or change. 10A DCMR §§ 200.5 and 224.4.
22. The land use category descriptions on the FLUM describe the general character of development in each area, citing typical floor area ratios as appropriate. However, the granting of density bonuses may result in densities that exceed those typical ranges stated in the land use category descriptions. 10A DCMR § 228.1(c).
23. The CP’s FLUM designates the Property as Moderate Density Commercial. The CP defines Moderate Density Commercial as:

*“The Moderate Density Commercial 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 in Moderate Density Commercial areas. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger businesses districts uses that draw from a broader market area. The Framework Element states that the MU-5 and MU-7 zone districts are representative of zone districts consistent with the Moderate Density Commercial category.” See 10A DCMR § 227.12 (emphasis added).*

#### **Upper Northeast Area Element**

24. The Property falls within the Upper Northeast Area Element. The Upper Northeast Area Element calls for:
  - The encouragement of “growth while enhancing the neighborhoods of Upper Northeast, such as Michigan Park, North Michigan Park, University Heights, Woodridge, Brookland, Queens Chapel, South Central, Lamond-Riggs, and Arboretum” (10A DCMR § 2408.2);
  - The improvement of “neighborhood shopping areas throughout Upper Northeast” (10A DCMR § 2408.7); and
  - The improvement of “linkages between residents and jobs within Upper Northeast so that more of the area’s working-age adults fill the jobs located within the Planning Area” (10A DCMR § 2409.4).

## II. THE APPLICATION

### **PROPOSED ZONING**

25. The Application proposes to rezone the Property from the MU-3A zone to the MU-7B zone.
26. The MU-7B 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. 11-G DCMR § 400.6.
27. As a matter of right, the MU-7B zone permits/requires:
- A maximum Floor Area Ratio (“FAR”) of 4.0 (4.8 with IZ) (2.5 maximum non-residential uses) (11-G DCMR § 402.1)
  - A 65-foot maximum building height, not including the penthouse; (11-G DCMR § 403.1)
  - A 75% maximum lot occupancy (80% with IZ) (11-G DCMR § 404.1)
  - A minimum rear yard equal to 2.5 inches per 1 foot of vertical height (11-G DCMR § 405.2)
  - If provided, a 5-foot minimum side yard (11-G DCMR § 406.1)
  - A minimum Green Area Ratio (“GAR”) of 0.25 (11-G DCMR § 407.1)
  - The uses permitted in MU-Use Group F (*see* 11-U DCMR § 500.2; *see also* 11-U DCMR § 515).
28. A Zoning Map Amendment of the Property to the MU-7B zone would permit enhanced development standards that would facilitate the redevelopment of the Property with additional retail, service, or residential uses as anticipated by the FLUM.

### **APPLICANT’S JUSTIFICATION OF RELIEF**

#### **Not Inconsistent with the CP**

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

#### **GPM**

30. The Applicant asserted that the Map Amendment is not inconsistent with the GPM because:
- The Neighborhood Commercial Center designation is intended to allow additional development that complements existing uses, accordingly, the Map Amendment will allow for additional development on the Property that will complement the existing commercial uses across South Dakota Avenue.

- The Map Amendment will support additional neighborhood-serving commercial uses that can meet the day-to-day needs of nearby residents and workers by providing an enhanced commercial development on the Property.
- The Map Amendment will conserve the economic viability of the area by permitting additional commercial uses and by increasing the Subject Property's development potential.

### ***FLUM***

31. The Applicant asserted that the Map Amendment is not inconsistent with the FLUM because:

- The Property's FLUM designation, Moderate Density Commercial, expressly states the MU-7 zones are consistent with the category;
- The MU-7B Zone permits a maximum density of 4.0 FAR (4.8 with IZ), which falls within the FAR contemplated by the Moderate Density Commercial FLUM category, which specifies a density range of 2.5 FAR and 4.0 FAR, with greater density possible when complying with IZ or when approved through a PUD; and
- The Moderate Density Commercial FLUM category describes shopping and service areas that are somewhat greater in scale and intensity than the Low-Density Commercial areas and states retail, office, and service businesses are the predominate uses.

### ***Upper Northeast Planning Area***

32. The Applicant asserted that the Map Amendment advances a number of planning objectives of the Upper Northeast Area Element by providing enhanced commercial opportunities and increasing the Property's development potential, ultimately furthering strategic development and economic vitality within the surrounding area.

### ***Land Use Element***

33. The Applicant asserted that the Map Amendment is not inconsistent with the policies of the Land Use Element because the Map Amendment would facilitate the redevelopment of an aging lot and will permit the development of a larger commercial structure due to the enhanced development standards. Moreover, as stated in the Land Use Element, commercial uses are an essential part of the District's neighborhoods because commercial centers in neighborhoods provide amenities to residents, help to define public life, and provide community anchors and places for social interaction. 10A DCMR §§ 313.1, 313.2.

34. The approval of the Map Amendment has the potential to result in an enhanced commercial use for the surrounding neighborhood.

### ***Transportation Element***

35. The Applicant asserted that the Map Amendment is not inconsistent with the policies of the Transportation Element because the Map Amendment would facilitate a new

commercial development that is likely to involve streetscape improvements and increased access to neighborhood-serving commercial uses while also advancing equitable transportation access to residents, workers, and visitors within the District. See 10A DCMR § 403.13.

### ***Environmental Protection Element***

36. The Applicant asserted that the Map Amendment is not inconsistent with the policies of the Environmental Protection Element because the Map Amendment would facilitate the redevelopment of the Property with new development that is required to comply with applicable Building Code requirements and energy-efficient building systems and technologies, therefore furthering the District's energy efficiency goals and complying with the Green Building Act.

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

37. The Applicant conducted a thorough Comp Plan evaluation using a racial equity lens and determined that the Application is not inconsistent with the Comp Plan when read as a whole. In conducting its evaluation, the Applicant identified any and all instances where the Application could be viewed as being potentially inconsistent with certain Comp Plan policies; the result being that while the Applicant did identify a few policies where the Project may be viewed as inconsistent, these potential inconsistencies are outweighed by the Project's overall consistency with the FLUM and numerous other competing Comp Plan policies relating to land use, transportation, environmental sustainability, economic development, and urban design.
38. The Applicant stated that the potential policy inconsistencies relate to the development of mixed-use buildings consisting of housing near Metrorail stations. Although the existing building could continue to be used as a fast food restaurant, it was constructed in the 1960s and lacks modern amenities that allow the business to be competitive in today's market. Redevelopment of the Property is consistent with the Comp Plan's goals of encouraging development and infill development along corridors (LU-1.4.6, LU-1.5.1). The Map Amendment has the potential to result in enhancements to the pedestrian network, including sidewalks and landscape (T-2.4.2, E-2.1.2), and will allow for redevelopment that will support a low-density neighborhood with compatible building height and density (LU-1.5.1, UD-2.2.4). The Property's proximity to a Metrorail station and bus routes foster transit-accessible employment that provide entry-level opportunities, living-wage jobs, and upward mobility (T-1.3.1, ED-4.2.6, ED-4.2.7, ED-4.2.9). Therefore, redevelopment of the Property in a manner that better utilizes land area along a corridor in proximity to transit and amenities to provide jobs and sustainable features outweighs its continued use in its current condition.

### ***Community Outreach***

39. The Applicant met with the SMD representative for ANC 5A03, ANC 5A, and the North Michigan Park Civic Association to discuss the Application. (Ex. 13D, 17, 36). ANC 5A submitted a letter, dated June 22, 2022, indicating their support of the Map Amendment to the Commission. (Ex. 17). ANC 5A submitted an additional letter, dated November 28, 2022, indicating their continued support of the Map Amendment to the

Commission. (Ex. 36). In an email to the Applicant, the North Michigan Park Civic Association stated that the Applicant satisfactorily addressed questions regarding the zoning change. (Ex. 13D).

### ***Public Hearing Testimony***

40. At the public hearing on November 28, 2022, the Applicant presented its case, including testimony from:
- Ms. Brandice Elliott, Director of Planning Services, Holland & Knight, LLP, whom the Commission has recognized as an expert in zoning and land use planning.
  - Mr. Raoul Alvarez, owner/operator of the existing establishment on the Property.
41. At the public hearing Commissioner Lucio, ANC 5A, presented testimony in support of the Application.

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

### **OP REPORTS AND TESTIMONY**

42. OP submitted a report, dated July 20, 2022, recommending the Commission set down for a public hearing the Applicant's request for a Zoning Map amendment (the "OP Setdown Report") and concluding that the Map Amendment would not be inconsistent with the CP because: (Ex. 11)
- **GPM** – The density permitted in the proposed MU-7B zone would be consistent with the guidance of the FLUM and Comprehensive Plan policies and the proposed rezoning would facilitate the redevelopment of the Property in the future with additional retail, service or residential uses as anticipated by the FLUM. Additionally, the convenient location along South Dakota Avenue anticipates future redevelopment that would also support improvements to public space and the pedestrian realm;
  - **FLUM** – The map amendment to MU-7B is consistent with the FLUM designation. The MU-7B zone is an appropriate zone for the Property given its alignment along a main arterial road and on a bus route which connects to nearby Metrorail lines. Additionally, the Map Amendment would meet the goal of allowing more neighborhood serving uses close to and convenient to residents for their day-to-day needs.
  - **Upper Northeast Area Plan** – The Map Amendment would direct growth to an area designated for redevelopment that could include additional retail and housing. Neighborhood-serving retail is strongly encouraged in this area designated for commercial or mixed-uses. In addition, any redevelopment, including housing, would result in market rate and affordable housing units.



- **Land Use Element** – The Map Amendment would permit a moderate density commercial or mixed-use development, which could include retail, office, service businesses, and apartments. These uses would be permitted in the current MU-3A zone, but at a density and height that is lower than what is envisioned for this site in the CP, and lower than what would be permitted in the proposed MU-7B zone. Overall, the MU-7B zone would accommodate a development that would allow for additional space for a broader range of locally serving retail establishments to better serve the surrounding community, along a main arterial, and within approximately a half mile of a Metrorail station. Additionally, the Map Amendment would support the revitalization of the small commercial area at the intersection of South Dakota Avenue/Delafield Street and Emerson Street, NE.
  - **Transportation Element** – The Property has access to both Metrobus and to Metrorail via bus, therefore affording future residents easy access throughout the region without the need for an automobile to access employment and other services throughout the region. Moreover, future, secure, long-term bicycle parking would be provided in a new development, with minimal vehicle parking as desired by the Regulations.
  - **Environmental Development Element** – The Map Amendment would facilitate future development that would help meet the day to day retail needs of the surrounding neighborhood. Further, new retail and additional residents would reinforce the existing businesses. The commercial area could also revitalize and promote the vitality of this neighborhood commercial area through providing a mix of goods and services to residents.
  - **Housing Element** – The Map Amendment could accommodate a mixed use-development with new housing and neighborhood shopping to complement the existing neighborhood character around South Dakota Avenue. With its Metrobus and Metrorail-accessible location, new development would generate affordable and market rate units and would further the revitalization of the area.
  - **Urban Design Element** – The Map Amendment would facilitate essential infill development of a site on a major corridor.
43. OP submitted a hearing report, dated November 18, 2022, that largely reiterated the OP Setdown Report’s conclusions, and recommended approval of the Map Amendment. (Ex. 21)
44. At the public hearing, OP reiterated its support for the Application as detailed in its reports.

#### **DDOT REPORT**

45. DDOT submitted a report dated November 18, 2022 (the “DDOT Report”) (Ex. 20) stating that it recommends the “Zoning Commission consider a different zone, with

similar densities to the MU-7B [zone], but which does not include a drive-through by-right” because:

- After participating in a Preliminary Design Review Meeting (PDRM) with the Applicant on May 24, 2022, to review proposed site plans for a raze and rebuild of the existing McDonald’s to include a drive-through, DDOT concluded approval of the Map Amendment would result in a drive-through;

46. DDOT did not provide testimony at the public hearing.

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

47. ANC 5A submitted a letter in support of the Application, dated June 22, 2022 (the “ANC 5A Report”), stating at its properly noticed public meeting of June 22, 2022, at which a quorum was present, the ANC voted to support the Application. (Ex. 17).

48. ANC 5A submitted a letter, dated November 28, 2022 (the “ANC 5A Report of Continued Support”), expressing their continued support for the Application. (Ex. 36).

49. During the public hearing, Commissioner Lucio, SMD Representative, ANC 5A03, and Carmen Roberts-Williams, President, North Michigan Park Civic Association, testified on behalf of their respected organizations in favor of the Application.

50. During the public hearing, Matthew Kirkland spoke in opposition to the Map Amendment, expressing concerns about the traffic, health and environmental impacts of a drive-through.

#### **PERSONS IN OPPOSITION**

51. Letters and materials in opposition to the Application were submitted by ANC 5A Commissioner-elect Ammerman, Gavin Baker, Matthew Kirkland, Vijay Kapur, Uchenna Evans, Getachew Woldemichael, Emily Simmons, Noah Simmons, Jacqueline Kazil, Katie Morgan, and Carolyn Currie. (Ex. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 34).

#### **POST-HEARING SUBMISSIONS**

52. On December 2, 2022, the Applicant submitted its post-hearing submission in response to the Commission’s request to address the discrepancy between the MU-7 zones being classified as medium density in the Zoning Regulations and moderate density in the Comprehensive Plan and to clarify the number of seats permitted in a fast food restaurant. (Ex. 38).

53. On December 5, 2022, OP submitted its post-hearing submission addressing the following questions and comments by the Commission:

- Are the use permission for the MU-5A and the MU-5B zones the same?
- What are the limitations on the number of seats for the fast food establishment?

- Address the differences between the Zoning Regulations and the Comprehensive Plan density descriptions. (Ex. 39).

#### **NATIONAL CAPITAL PLANNING COMMISSION (“NCPC”)**

54. The Commission referred the Application to the National Capital Planning Commission (“NCPC”) on December 20, 2022, for the 30-day review period required by § 492(b)(2) of the District Charter. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(b)(2); D.C. Official Code 6-641.05)). (Ex. 40).
55. On December 29, 2022, NCPC filed a report stating that the Map Amendment was not inconsistent with the federal elements of the Comprehensive Plan and would not adversely impact any identified federal interests. (Ex. 41).

#### **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-7B 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).

**Racial Equity**

6. The Commission concludes that the Map Amendment is not inconsistent with racial equity policies because:
  - The increase in allowable density permitted by the Map Amendment would meet the goal of allowing more neighborhood serving uses close to and convenient to residents for their day-to-day needs; and
  - The Map Amendment would increase the allowable density to moderate density levels and would permit a mix of uses that will enhance the Property's opportunity for development.

**GPM**

7. The Commission concludes that the Map Amendment is not inconsistent with the GPM's designation of the Property as a Neighborhood Commercial Center because:
  - The Map Amendment will allow for additional development on the Property that will complement the existing commercial uses along this section of South Dakota Avenue;
  - The Map Amendment will support additional neighborhood-serving commercial uses that can meet the day-to-day needs of nearby residents and workers by providing an enhanced commercial development on the Property; and
  - The Map Amendment will conserve the economic viability of the area by permitting additional commercial uses and by increasing the Property's development potential. (Findings of Fact "FF" 30).

**FLUM**

8. The Commission concludes that the Map Amendment is not inconsistent with the Property's Moderate Density Commercial FLUM designation because:

- The Property's FLUM designation, Moderate Density Commercial, expressly states the MU-7 zones are consistent with the category;
- The densities permitted within the MU-7B Zone are within the FAR contemplated by the Moderate Density Commercial FLUM category; and
- The Moderate Density Commercial FLUM category describes shopping and service areas that are somewhat greater in scale and intensity than the Low-Density Commercial areas and states retail, office, and service businesses are the predominate uses. (FF 31).

### **Upper Northeast Planning Area**

9. The Commission concludes that the Map Amendment furthers the policies of the area element because:
  - The Map Amendment will provide enhanced commercial opportunities and will increase the Property's development potential, ultimately furthering strategic development and economic vitality within the surrounding area. (FF 32).

### **Land Use Element**

10. The Commission concludes that the Map Amendment furthers the Land Use Element because:
  - The Map Amendment will facilitate the redevelopment of an underperforming lot and will permit the development of a larger commercial structure due to the enhanced development standards. (FF 33).
  - The Map Amendment has the potential to result in an enhanced commercial use for the surrounding neighborhood. (FF 34).

### **Housing Element**

11. The Commission concludes that the Map Amendment furthers the Housing Element because it will have the capability to accommodate a mixed use-development with new housing and neighborhood shopping, thus complementing the existing neighborhood character around South Dakota Avenue. (FF 42).

### **Transportation Element**

12. The Commission concludes that the Map Amendment furthers the Transportation Element as it will facilitate a new commercial development that is likely to involve streetscape improvements and increase access to neighborhood-serving commercial uses while also advancing equitable transportation access to residents, workers, and visitors within the District. (FF 35).

### **Environmental Protection Element**

13. The Commission concludes that the Map Amendment is not inconsistent with the policies of the Environmental Protection Element because the Map Amendment would

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facilitate the redevelopment of the Property with new development that is required to comply with applicable Building Code requirements and energy-efficient building systems and technologies, therefore furthering the District’s energy efficiency goals and complying with the Green Building Act. (FF 36).

**GREAT WEIGHT TO THE RECOMMENDATIONS OF OP**

14. 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)).
15. 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.

**“GREAT WEIGHT” TO THE ANC REPORTS**

16. 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. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted)).
17. The ANC 5A Reports expressed the ANC’s recommendation of support for the Map Amendment. The Commission concurs with the ANC’s recommendations.

**DECISION**

In consideration of the record for Z.C. Case No. 22-19 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	LOT(S)	MAP AMENDMENT
3786	1	MU-3A to MU-7B

**Proposed Action**

**Vote (November 28, 2022): 3-1-1** (Joseph S. Imamura, Anthony J. Hood, Robert E. Miller to **APPROVE**; Peter G. May to **DENY**).

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**Final Action**

**Vote (January 26, 2023):** \_-\_- ( ).

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 22-19 shall become final and effective upon publication in the *D.C. Register*, that is on [REDACTED], 2023.

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**ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION**

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**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.