

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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
[4950 South Dakota Ave. N.E.]
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, N.E., 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 determined the Property is appropriate for IZ Plus. The Property shall be indicated with an "IZ+" symbol on the Zoning Map. For the purposes of calculating an IZ Plus set-aside requirement pursuant to Subtitle C § 1003, the maximum permitted FAR of the existing zone was 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 were: Advisory Neighborhood Commission ("ANC") 5A, the ANC in which the Property is located. Subtitle Z § 403.5.
2. As of March 21, 2023, the ANC in which the Property is located is ANC 5A08.
3. The Commission received no requests for party status.

NOTICE

4. 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).

5. On August 9, 2022, the Office of Zoning (“OZ”) sent notice of the November 28, 2022 virtual public hearing to:
 - Applicant;
 - ANC 5A;
 - ANC Single Member District (“SMD”) 5A03;
 - Office of the ANCs;
 - Office of Planning (“OP”);
 - District Department of Transportation (“DDOT”);
 - At-Large Councilmembers and the Chair of the Council;
 - The Ward 5 Councilmember;
 - Department of Energy & Environment (“DOEE”);
 - DCRA General Counsel;
 - Office of Zoning Legal Division (“OZLD”); and
 - Property owners within 200 feet of the Property.(Ex. 16, 18).
6. OZ published notice of the public hearing in the August 9, 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

7. 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).
8. The square within which the Property lies is generally bounded by South Dakota Avenue to the northeast; Delafield Street to the northwest; Decatur Street and a three-unit commercial building to the south; a vacant property to the west; and the Faith United Church of Christ church to the south and southwest.
9. The Property is generally surrounded by detached single family homes and light commercial uses.
10. The Property is presently improved with an eating and drinking establishment that was constructed in 1968 and is currently a McDonald’s restaurant; the building consists of approximately 3,100 square feet. (Ex. 3B).
11. 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).
12. 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

13. 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. Subtitle G § 400.2.
14. 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”) (1.0 maximum non-residential uses) (Subtitle G § 402.1.);
 - A 40-foot and 3-story maximum building height, not including the penthouse (Subtitle G § 403.1.);
 - A 60% maximum lot occupancy (Subtitle G § 404.1.);
 - A minimum rear yard of 20 feet (Subtitle G § 405.1.);
 - A minimum Green Area Ratio (“GAR”) of 0.3 (Subtitle G § 407.1.);
 - The uses permitted in MU-Use Group D (Subtitle U § 500.2; *see also* Subtitle U § 510.).

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

Equity and the Comprehensive Plan

15. 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.
16. 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.
17. 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.)
17. 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”)

18. The GPM highlights areas where more detailed policies are necessary, both within the CP and in follow-up plans, to most effectively chart the District’s envisioned growth. (CP § 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.” (CP § 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.” (CP § 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 and guidance on anticipated future land uses. (CP §§ 200.5, 224.4.)
22. 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. 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. 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.” (See CP § 227.11 (emphasis added).)

Upper Northeast Area Element

23. 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.*” (CP § 2408.2);
 - The improvement of “*neighborhood shopping areas throughout Upper Northeast*” (CP § 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.*” (CP § 2409.4).

II. THE APPLICATION

PROPOSED ZONING

24. The Application proposes to rezone the Property from the MU-3A zone to the MU-7B zone. (Ex. 3-3J.) The Application asserts that the Property’s existing MU-3A zoning is inconsistent with the CP, particularly because the MU-3A zone is intended to act as a low-density commercial zone and the FLUM designates the Property as Moderate Density Commercial. (Ex. 3)
25. 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. Subtitle G § 400.6.
26. As a matter of right, the MU-7B zone permits/requires:
- A maximum FAR of 4.0 (4.8 with IZ) (2.5 maximum non-residential uses) (Subtitle G § 402.1.);
 - A 65-foot maximum building height, not including the penthouse (Subtitle G § 403.1.);
 - A 75% maximum lot occupancy (80% with IZ) (Subtitle G § 404.1.);
 - A minimum rear yard equal to 2.5 inches per 1 foot of vertical height but not less than 12 feet (Subtitle G § 405.3.);
 - A minimum GAR of 0.25 (Subtitle G § 407.2.); and
 - The uses permitted in MU-Use Group F (Subtitle U § 500.2; *see also* Subtitle U § 515.):
 - MU-Use Group F permits eating and drinking establishments without restrictions (*see* Subtitle U § 515.1(e))¹, and therefore drive-throughs are permitted in the MU-7 zones; whereas in the next lower intensity MU-Use Group E, which includes the MU-5 zone, drive-throughs are prohibited (Subtitle U § 500.2 and Subtitle U § 512.1(e).)

¹ The Zoning Regulations are currently being amended that will change the numbering of this section of the code, and by the time this is published, the correct reference may be to Subtitle U, § 515.1(f).

27. The Map Amendment 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

28. The Applicant asserted that the Map Amendment is not inconsistent with the CP, including the Property's designations on the GPM and FLUM, and advances the objectives and recommendations of the Upper Northeast Planning Area, Citywide Elements, and racial equity goals. The Application also asserted that the Map Amendment is consistent with the purposes of the Zoning Act in that it will create conditions that are favorable to public health, safety, welfare, and convenience; and consistent with other adopted public policies and active programs applicable to the Property, as detailed below. (Ex. 3.)

GPM

29. 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; 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.
- (Ex. 3.)

FLUM

30. 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.
- (Ex. 3.)

Upper Northeast Planning Area

31. 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. (Ex. 3.)

Land Use Element

32. 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 structure and 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. (CP §§ 313.1, 313.2.) The approval of the Map Amendment has the potential to result in an enhanced commercial use for the surrounding neighborhood. (Ex. 3.)

Transportation Element

33. 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 CP § 403.13; Ex.3.)

Environmental Protection Element

34. 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. (Ex. 3.)

Racial Equity

35. The Applicant asserted that the Map Amendment will further racial equity goals because it will increase the permitted density allowed on the Property, providing for increased commercial uses and housing opportunities on the Property; it will not result in physical displacement of any residents given the current commercial use on the Property; and it could result in improved pedestrian connectivity and increased job opportunity in close proximity to transit and residential uses. (Ex. 3.)

Addressing Potential Inconsistencies with the CP

36. The Applicant conducted a CP evaluation of the Application through a racial equity lens and determined that the Application is not inconsistent with the CP when read as a whole. In conducting its evaluation, the Applicant identified CP policies that are potentially inconsistent with the Application; and concluded that while a few policies may be viewed as inconsistent, these potential inconsistencies are outweighed by the proposed Map Amendment's overall consistency with the FLUM and other CP policies relating to land

use, transportation, environmental sustainability, economic development, and urban design. (Ex. 3.)

37. The Applicant stated that the Map Amendment will facilitate redevelopment of the Property in a manner that better utilizes land area along a corridor in proximity to transit and amenities and outweighs its continued use in its current condition. 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 respect the adjacent neighborhood with compatible building height and density. (LU-1.5.1, UD-2.2.5.) The Property's proximity to a Metrorail station and bus routes fosters transit-accessible employment that provides 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; Ex. 3.)

Community Outreach

38. 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 its support of the Map Amendment. (Ex. 17.) ANC 5A submitted an additional letter, dated November 28, 2022, indicating its continued support of the Map Amendment. (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.)

Applicant's Public Hearing Testimony

39. 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; and
 - Mr. Raoul Alvarez, owner/operator of the existing establishment on the Property.

III. RESPONSES TO THE APPLICATION

OP REPORTS AND TESTIMONY

40. 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") for the Property.² (Ex. 11) OP's report acknowledged that the Zoning Regulations still describe the MU-7 zones as "medium" density while the CP specifically states that the MU-5 and MU-7 zones are consistent with the Moderate Density Commercial category.

² The OP Setdown Report and Hearing Report both note that the Map Amendment is only proposed for Lot 1 in Square 3786. However, OP suggested to the Applicant that it would be better land use planning if the Map Amendment also covered Lot 801, which is contiguous to Lot 1. The Applicant explained that it does not own Lot 801 and cited feedback from community residents who oppose potential larger development on both lots thus Lot 801 will remain zoned MU-3A. (See Ex. 13.)

OP explained that the main difference in Use Groups for the MU-5 (Use Group E) and MU-7 (Use Group F) is in the MU-5 (Use Group E) eating and drinking establishments may not have a drive-through and in the MU-7 (Use Group F) a drive through is permitted. OP concluded that the site is already developed with an existing fast-food establishment thereby making the MU-7 Use Group F appropriate. OP further concluded that the Map Amendment would not be inconsistent with the CP and would further specific goals and objectives of the written elements of the CP because:

- **GPM** – The proposed map amendment is not inconsistent with the Property’s designation as a Neighborhood Commercial Center on the GPM. The density permitted in the proposed MU-7B zone would be consistent with the guidance of the FLUM and CP 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 Moderate Density Commercial 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 Element** – 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 additional affordable housing units because of IZ Plus;
- **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, N.E.;
- **Transportation Element** – The Property has access to both Metrobus and to Metrorail via bus, therefore affording potential 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;
- **Economic 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 additional affordable housing through IZ Plus, and neighborhood shopping to complement and further revitalize the existing neighborhood character around South Dakota Avenue;
- **Urban Design Element** – The Map Amendment would facilitate essential infill development of a site on a major corridor; and
- **Racial Equity** - The proposed amendment would advance racial equity as it would not result in the physical displacement of residents and the density gained in increased commercial use could facilitate the redevelopment of an underutilized site with job opportunities accessible to transit and a metro station. Although redevelopment of the site is not currently anticipated, the rezoning would provide a future opportunity for additional housing options – including a significant amount of affordable housing through IZ Plus– on a major corridor, with transit access and the ability to reach major employment areas either on transit or by biking or walking. The Property is in the Upper Northeast Planning Area. Approximately 70% of the area’s residents are Black, which is higher than the District-wide total of 48%. Since 2000 the Black population has decreased slightly from 51,705 to 49,614, the Hispanic/Latin population has increased from 3% to 10%, and the area has experienced an increase in the foreign-born population from 5% to 12%. Relative to the District, the area has a higher percentage of seniors with almost one in seven residents being 65 or over and the percentage is higher in the North Michigan Park and Woodridge neighborhoods.

41. The OP Setdown Report also stated that an IZ Plus set-aside requirement would be appropriate for the Map Amendment, pursuant to Subtitle X § 502.1(b), noting that:

- Ward 5, within which the subject property is located, had 0.2% of the District’s total number of affordable housing units as of 2018;
- The Upper Northeast Planning Area contains 9% of the District’s total number of affordable housing units as of 2018; and
- The Upper Northeast Planning Area is targeted to produce 1,350 affordable units by 2025 to meet the affordable housing goals for the District.

(Ex. 11.)

42. In addition, with respect to the CP Transportation Element, the OP Setdown Report acknowledged the following and stated that further analysis would be provided in its hearing report:

- The proposed zone allows for drive-throughs which are not fully consistent with the following Transportation Element policy discouraging auto-oriented uses:
 - “Policy T-1.2.3: Discouraging Auto-Oriented Uses Discourage certain uses, like drive-through businesses or stores with large surface parking lots and minimize the number of curb cuts in new developments. Curb cuts and multiple vehicle access points break up the sidewalk, reduce pedestrian safety, and detract from pedestrian-oriented retail and residential areas. 404.6” (*Id.*)

43. OP submitted a hearing report, dated November 18, 2022, (“OP Hearing Report”) that largely reiterated the OP Setdown Report’s conclusions, and recommended approval of the Map Amendment. (Ex. 21.) With respect to Policy T-1.2.3: Discouraging Auto-Oriented Uses, OP stated that drive through businesses are permitted as a matter of right in the proposed MU-7B zone and the Applicant has indicated that it would like to add a drive through to the Property. The Property currently has one curb cut along Delafield and two along South Dakota, and DDOT’s policy is to limit the number of curb cuts to access property. Any redevelopment of the site would entail an assessment of circulation through and around the site to minimize impacts on traffic and safe pedestrian movements and any additional curb cuts would be subject to DDOT approval. (*Id.*)
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”) 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: (Ex. 20.) DDOT has reviewed the Applicant’s request and determined that based on the information provided, the Applicant intends to construct a new fast-food restaurant with a drive-through, which will be a by right use if the rezoning is granted. DDOT discourages construction of drive-through lanes since they negatively impact pedestrian safety and increase impacts to the transportation network. Therefore, DDOT objects to this Map Amendment application since the Applicant does not intend to increase existing uses or density on the site and is using the rezoning solely for the purpose of adding 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 5-0-0 to support the Application. The ANC 5A Report stated that one of the reasons for its support was that it will “facilitate the construction of a new ... restaurant with a drive-through, which is also supported by the community.” (Ex. 17.) The ANC also included a copy of a letter dated October 2, 2017, stating that at its September 27, 2017 properly noticed public meeting, with a quorum present, ANC 5A voted 8-0-0 to support the proposed amendment of the Comprehensive Plan FLUM for both the Property and the adjacent site (Square 3786, Lot 801) to be redesignated from Low Density Commercial to Moderate Density Commercial. (*Id.*)
48. ANC 5A submitted a letter, dated November 28, 2022 (the “ANC 5A Report of Continued Support”), expressing its continued support for the Application. (Ex. 36.) The ANC also included a copy of a letter, dated September 25, 2019, reflecting its continued support of the redesignation of the Property from Low Density Commercial to Moderate Density Commercial on the FLUM. (*Id.*)

49. The letters expressed no issues or concerns with the Application.
50. At the public hearing, Commissioner Lucio, SMD Representative, ANC 5A03, testified in support of the Application.

PERSONS IN SUPPORT

51. At the public hearing, Carmen Roberts-Williams, President, North Michigan Park Civic Association, testified on behalf of her organization in support of the Application. She articulated that she supported a change that would permit a drive-through restaurant because she, and many other members of the community who are older African Americans have mobility issues and would therefore welcome a drive-through restaurant on the site.

PERSONS IN OPPOSITION

52. 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, 34.) The letters all expressed concern that the map amendment would allow redevelopment of the site with a restaurant with a drive-through. The letters expressed that such a use would negatively affect existing traffic conditions and exacerbate existing traffic safety issues and conflicts between pedestrians and automobiles.
53. 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. He testified that South Dakota Avenue, and the alley behind the Subject Property, were both burdened with a high volume of vehicular traffic and dangerous conduct by drivers, resulting in accidents and other traffic related hazards and harmful effects. He testified that upzoning the Property to a zone that would permit a drive-through at the Property, such as proposed in the application, would exacerbate these problems.

POST-HEARING SUBMISSIONS

54. On December 2, 2022, the Applicant submitted its post-hearing submission in response to the Commission's requests (the Commission's requests are bulleted followed by the Applicant's response): (Ex. 38.)
 - 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
 - Applicant's response:
"The Zoning Regulations indicate that the "MU-7 zones are intended to . . . permit medium-density mixed-use development." (11-G DCMR § 400.6(a).)

The Comp Plan defines Moderate Density Commercial as "shopping and service areas that are somewhat greater in scale and intensity than the 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.**" (10A DCMR § 227.11 (emphasis added).)

As a policy, both the Comp Plan and the Zoning Regulations provide that moderate density commercial typically has a density between a FAR of 2.5 and 4.0, with greater density possible for development providing Inclusionary Zoning or a Planned Unit Development. The zones that allow for density within this range include MU-4, MU-5, and MU-7. 10A DCMR § 227.11, 11-G DCMR § 402.1.

Under the Zoning Regulations, in the MU-7B zone, the maximum permitted non-residential density is 2.5 FAR and the maximum permitted residential density is 4.0 FAR, and 4.8 FAR with IZ. **These densities fall squarely within the Moderate Density Commercial thresholds provided in the Comp Plan; and therefore, the requested rezoning is not inconsistent with the Comp Plan.**"

- Clarify the number of seats permitted in a fast-food restaurant.
 - Applicant's response:
"The Zoning Regulations do not limit the number of seats permitted in fast food establishments. Prepared food shops in certain zones are limited to 18 seats, but this is not applicable in the MU-5 or MU-7 zones."

55. On December 5, 2022, OP submitted its post-hearing submission addressing the following questions/requests by the Commission (Commission questions/requests are bulleted followed by the OP response: (Ex. 39.)

- Is the use permission for the MU-5A and the MU-5B zones the same?
 - OP response:
"The use permissions for the MU-5A and MU-5B zones are the same."
- What are the limitations on the number of seats for the fast-food establishment?
 - OP response:
"There is no limit on the number of seats in a fast-food establishment in any zone where it is permitted."
- Address the differences between the Zoning Regulations and the Comprehensive Plan density descriptions.
 - OP response:
The substance of OP's response was largely the same as the Applicant's response to the Commission's request to address the discrepancy between the Zoning Regulations and the Comprehensive Plan stated above (FF 55, first bullet point).

In addition, OP stated, "The Commission enquired about the option for the MU-4 zone on the site. The Zoning Regulations describe 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.”

NATIONAL CAPITAL PLANNING COMMISSION (“NCPC”)

56. 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.)
57. On December 29, 2022, NCPC staff filed a report stating that the Map Amendment falls under an exception listed in Chapter 8 of NCPC’s submission guidelines and is exempt from NCPC review. (Ex. 41.)

CONCLUSIONS OF LAW

ZONING ACT

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. The Commission concludes the Application advances the purposes of the Zoning Act. The Commission found compelling the testimony of community members that they supported a higher intensity restaurant use on the Property, as well as the testimony of the OP that the rezoning would permit more intensive development of retail, service and/or residential uses.

4. The Commission acknowledges that a provision of the Zoning Regulations states that the MU-7 zones are medium density zones, and that language is inconsistent with language in the CP stating that the MU-7 zones are moderate density zones. (Findings of Fact “FF” 54, 55.) The Commission is mindful of the directive of § 2 of the Zoning Act, which provides that the zoning regulations shall not be inconsistent with the CP, and therefore believes that the language of the CP should be controlling.

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

5. 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.
6. 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.
7. 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

8. The Commission concludes that the Map Amendment is not inconsistent with CP 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 (FF 35, 51.); 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. (FF 28.)

GPM

9. 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. (FF 29.)

FLUM

10. 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 30.)

Upper Northeast Planning Area

11. 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 31.)

Land Use Element

12. 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 32.); and
 - The Map Amendment has the potential to result in an enhanced commercial use for the surrounding neighborhood (FF 32.).

Housing Element

13. 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, subject to IZ Plus requirements, and neighborhood shopping, thus complementing the existing neighborhood character around South Dakota Avenue. (FF 40, 41.)

Transportation Element

14. 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 33.)
15. The Commission acknowledges that the Map Amendment is inconsistent with Policy T-1.2.3: Discouraging Auto-Oriented Uses because it would permit a drive through at the Property as a matter of right use. (FF 42, 43, 45.) The Commission concludes that this inconsistency is outweighed by CP policies in the Citywide and Area Element and the Property's FLUM designation which encourage increasing density on the Property to

permit more mixed-use development in proximity to transit, which the rezoning would facilitate. (FF 36, 37.)

Environmental Protection Element

16. The Commission concludes 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. (FF 34.)

GREAT WEIGHT TO THE RECOMMENDATIONS OF OP

17. 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).)
18. 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’s rezoning would not be inconsistent with the CP Maps, the Citywide Elements and Area Element, and would advance CP racial equity goals when evaluated through a racial equity lens, as discussed above. The Commission also concurs with OP that the proposed Map Amendment is appropriate for an IZ Plus set-aside requirement.

“GREAT WEIGHT” TO THE ANC REPORTS

19. 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).)
20. The ANC 5A Reports expressed the ANC’s recommendation of support for the Map Amendment. The Commission concurs with the ANC’s recommendations. Neither report expressed any issues nor concerns with the Application. (FF 47-50.) Accordingly, there is nothing to give “great weight” to.

CONCLUSION

21. The Commission acknowledges the opposition testimony submitted to the record and understands the concerns raised regarding the potential for a drive-through restaurant. One

Commissioner voted against the rezoning because of the potential for the drive-through to induce additional traffic and create additional auto-pedestrian conflicts. However, the majority of the Commission believes that the rezoning is appropriate because it would allow for more intensive development of the site, which advances racial equity by allowing more neighborhood serving uses that are desired by the community and is consistent with the CP's GPM and FLUM guidance.

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

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

Proposed Action

Vote (December 15, 2022): 3-1-1

(Anthony J. Hood, Robert E. Miller, and Joseph S. Imamura to **APPROVE**; Peter G. May to **DENY**; 3rd Mayoral Appointee seat vacant, not voting)

Final Action

Vote (January 26, 2023): 3-1-1

(Anthony J. Hood, Robert E. Miller, and Joseph S. Imamura to **APPROVE**; Peter G. May to **DENY**; 3rd Mayoral Appointee seat vacant, not voting)

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 April 7, 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.