

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 22-22
Z.C. CASE NO. 22-22
Preservation DC L&6, LLC
(Zoning Map Amendment @ Square 449, Lot 64)
January 26, 2023

Pursuant to notice, at its public hearing on December 19, 2022 and its January 26, 2023 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) for a Zoning Map amendment by Preservation DC L&6, LLC (the “Applicant”) for approval of a map amendment of the Zoning Map from the RA-2 zone to the MU-8A zone (the “Map Amendment”) for Lot 64 in Square 449 (the “Property”), pursuant to Subtitle X § 500.1 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), Zoning Regulations of 2016, to which all references are made unless otherwise specified.)

The Commission determined the Property is appropriate for Inclusionary Zoning (“IZ”) Plus. The Property shall be indicated with an “IZ+” symbol on the Zoning Map. For 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 1.8.

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”) 6E, the ANC in which the Property is located and the “affected ANC” pursuant to Subtitle Z §§ 101.8 and 403.5(b).
2. The Commission received no requests for party status.

NOTICE

3. On March 8, 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 6E, as required by Subtitle Z § 304.5. (Exhibit [“Ex.”] 2I.)

4. On August 30, 2022, the Office of Zoning (“OZ”) sent notice of the December 19, 2022 virtual public hearing, to:
 - Applicant;
 - ANC 6E (no longer affiliated as of 01/01/2023);
 - ANC Single Member District (“SMD”) 6E04 (no longer affiliated as of 01/01/2023);
 - ANC 2G (affected ANC as of 01/01/2023);
 - ANC SMD 2G02 (as of 01/01/2023);
 - Office of the ANCs;
 - Office of Planning (“OP”);
 - District Department of Transportation (“DDOT”);
 - At-Large Councilmembers and the Chair of the Council;
 - The Ward 6 Councilmember;
 - Department of Energy & Environment (“DOEE”);
 - Department of Consumer and Regulatory Affairs (“DCRA”);
 - Office of Zoning Legal Division (“OZLD”); and
 - Property owners within 200 feet of the Property.(Ex. 13-14.)
5. OZ published notice of the public hearing in the September 2, 2022 *D.C. Register* (69 DCR 010983 *et seq.*), as well as on the calendar on OZ’s website. (Ex. 12.)
6. Pursuant to Subtitle Z §§ 402.8 and 402.9, the Applicant filed an affidavit supported by photos stating that on November 2, 2022, it had posted the required notice of the public hearing. (Ex. 16.)
7. Pursuant to Subtitle Z § 402.10, the Applicant filed an affidavit attesting that it had maintained the posting of the notice on the Property. (Ex. 19.)

THE PROPERTY

8. The Property is a corner lot located in the northwest quadrant of the District and consists of approximately 8,586 square feet of land area.
9. The Property is located in the Mount Vernon Square Historic District.
10. The square within which the Property lies is generally bounded by M Street to the north, 7th Street to the west, L Street to the south, and 6th Street to the east.
11. The Property has approximately 81 linear feet of frontage along 6th Street, and approximately 106 linear feet of frontage along L Street. The Property abuts a small condo building to the north and abuts a two-story commercial property to the west. South of L Street, across from the Property is a high-rise mixed-use office and retail building. To the east, across 6th Street, are two and three-story row houses, flats, and small apartment buildings.

12. The Property is improved with a historic three-story brick building, including commercial space on the first floor; the building is vacant building but was previously used for commercial purposes. A portion of the site on the north side of the lot is unimproved and fenced with a curb cut providing vehicular access from 6th Street.
13. The Property is located approximately two-tenths of a mile (0.2 mi.) from the Mount Vernon Square-Convention Center Metro Station.
14. The properties to the north of the Property are zoned RA-2; the property directly west of the Property is zoned RA-2, but beyond that the properties to the west are zoned MU-6B. The properties to the south, across L Street, N.W., are zoned D-4-R; and the properties to the east, across 6th Street, N.W., are zoned RA-2.

CURRENT ZONING

15. The Property is in the RA-2 zone. The RA-2 zone permits predominately moderate density residential development. (F § 300.3.)
16. The RA-2 zone imposes the following limits for matter-of-right developments:
 - A maximum permitted Floor Area Ratio (“FAR”) of 1.8 or 2.16 for an IZ development (Subtitle F § 302.1-302.2.);
 - A maximum height of 50 feet with no limit on the number of stories (Subtitle F § 303.1.);
 - A maximum lot occupancy of 60% (Subtitle F § 304.1.); and
 - The uses permitted in Subtitle U § 401.1.

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

Equity and the Comprehensive Plan

17. 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.
18. In applying the standard of review applicable to the Map Amendment, the CP requires the Commission to do so through a racial equity lens. (CP § 2501.8.) Consideration of equity is intended to be based on the policies of the CP, and part of the Commission’s considerations of whether the Map Amendment is “not inconsistent” with the CP, rather than a separate determination about a zoning action’s equitable impact.
19. 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.)

20. 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”)

21. The CP’s GPM designates the Property as a Neighborhood Conservation Area. The Neighborhood Conservation Area is defined as:

“[N]eighborhoods . . . that are generally residential in character.[...] Where change occurs, it will typically be modest in scale and will consist primarily of infill housing, public facilities, and institutional uses. Major changes in density over current (2017) conditions are not expected but some new development and reuse opportunities are anticipated, and these can support conservation of neighborhood character where guided by Comprehensive Plan policies and the Future Land Use Map. [...] Limited development and redevelopment opportunities do exist within these areas. The diversity of land uses and building types in these areas should be maintained and new development, redevelopment, and alterations should be compatible with the existing scale, natural features, and character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map and Comprehensive Plan policies. Approaches to managing context-sensitive growth in Neighborhood Conservation Areas may vary based on neighborhood socio-economic and development characteristics. In areas with access to opportunities, services, and amenities, more levels of housing affordability should be accommodated...” (CP§ 225.4-225.5)

Future Land Use Map (the “FLUM”)

22. The CP’s FLUM designates the Property as Mixed-Use - Medium Density Residential and Medium Density Commercial.

Medium Density Residential – *“This designation is used to define neighborhoods or areas generally, but not exclusively, suited for mid-rise apartment buildings. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. Pockets of low and moderate density housing may exist within these areas. Density typically ranges from 1.8 to 4.0 FAR, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The RA-3 Zone District is*

consistent with the Medium Density Residential category, and other zones may also apply.” (CP § 227.7.)

Medium Density Commercial – *“This designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Moderate Density Commercial areas. Retail, office, and service businesses are the predominant uses, although residential uses are common. Areas with this designation generally draw from a citywide market area. Buildings are larger and/or taller than those in Moderate Density Commercial areas. Density typically ranges between a FAR of 4.0 and 6.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-8 and MU-10 Zone Districts are consistent with the Medium Density category, and other zones may also apply.” (CP § 227.12.)*

Mixed Use

The FLUM indicates areas where the mixing of two or more land uses is encouraged, and the mixed-use category generally applies in established, pedestrian-oriented commercial areas, commercial corridors where more housing is desired in the future, large sites where opportunities for multiple uses exist, and development that includes residential uses, particularly affordable housing; (CP § 227.20.)

- The general density and intensity of development within a given Mixed Use area is determined by the specific mix of uses shown. The CP Area Elements may also provide detail on the specific mix of uses envisioned; (CP § 227.21.)
- The “Mixed Use” designation is intended primarily for larger areas where no single use predominates today, or areas where multiple uses are specifically encouraged in the future; and (CP § 227.22.)
- A variety of zoning designations are used in Mixed Use areas, depending on the combination of uses, densities, and intensities. (CP § 227.23.)

Near Northwest Area Element

23. The Property falls within the Near Northwest Area Element, which encourages using the historic preservation design review process to promote high quality architecture and urban design in Near Northwest’s designated historic districts, including the Mt. Vernon Historic District. (CP § 2109.9.)

II. THE APPLICATION

PROPOSED ZONING

24. The Application proposes to rezone the Property from the RA-2 zone to the MU-8A zone.
25. The MU-8 zones are intended to:
- Permit medium-density mixed-use development, with a focus on employment and residential use;

- Be located in uptown locations, where a large component of development will be office-retail and other non-residential uses; and
 - Be located in or near the Central Employment Area, on arterial streets, in uptown and regional centers, and at rapid transit stops. (Subtitle G § 400.7.)
26. As a matter of right, the MU-8A zone permits:
- A maximum FAR of 5.0 (6.0 with IZ) and 1.0 FAR maximum non-residential use (Subtitle G § 402.1.);
 - A 70-foot maximum building height, not including the penthouse (Subtitle G § 403.1.);
 - No limitations on lot occupancy (Subtitle G § 404.1.); and
 - The uses permitted in MU-Use Group F (Subtitle U § 500.2; *see also* Subtitle U §§ 501, 515.).

APPLICANT’S JUSTIFICATION OF RELIEF

Not Inconsistent with the CP

27. The Application asserted that the Property has a history of commercial uses and there have been multiple failed redevelopment attempts, including as part of a Planned Unit Development. The Application asserted that the Property is currently underutilized, and the Map Amendment will allow for a wider range of uses on the site, including but not limited to, increased residential density, lodging, and commercial uses such as service and retail. In addition, the rezoning would be subject to IZ Plus, which will require a higher affordable housing set aside for any future residential development on the site. The Application asserted that the Map Amendment would not be inconsistent with the CP and with other adopted public policies and active programs applicable to the Property, as detailed below. (Ex. 2.)

GPM

28. The Application asserted that the Map Amendment would not be inconsistent with the Property’s GPM designation as a Neighborhood Conservation Area because:
- The Map Amendment will allow for the redevelopment of the Property while preserving the existing historic building, will allow for a mix of uses on the Property, and will be subject to Historic Preservation Review Board approval to ensure compatibility with the existing scale and architectural character of the area.

FLUM

29. The Application asserted that the Map Amendment would not be inconsistent with the Property’s Mixed-Use FLUM designation because:
- The Medium Density Commercial category expressly states that the proposed MU-8 zone is consistent with the category (CP § 227.12.);
 - The Medium Density Residential category contemplates density ranging from 1.8-4.0 FAR but states that greater density may be possible when complying with Inclusionary Zoning; and (CP § 227.7.)

- The Property is located in an area where the mixing of two or more land uses is encouraged, and no single use predominates today.

Racial Equity

30. The Application asserted that the Map Amendment will further racial equity goals. Specifically, the rezoning will allow additional density that could result in market-rate and affordable housing. It will also allow for a broader mix of commercial uses at the Property. Even though the Property has had commercial uses in the past, due to its RA-2 zoning, most changes of the commercial uses require Board of Zoning Adjustment (“BZA”) approval. The rezoning to MU-8A will allow new commercial uses without BZA approval eliminating significant time, expense, and uncertainty to the process of opening a business in this location. Further, new commercial uses at the Property could provide additional employment opportunities in extremely close proximity to a metro station.

Near Northwest Area Element

31. The Application asserted that the Map Amendment will balance the goals of the Near Northwest Area Element to both use the historic design review process and encourage development adjacent to the Mount Vernon Square Metro station. Because the existing building on the Property is a contributing building, any additions will go through the Historic Preservation Review Board design review process, and the Property is 0.2 miles from the Mount Vernon Square Metro station. (Ex. 2; CP §§ 2109.9, 2111.7.)

Land Use Element

32. The Application asserted that the Map Amendment is not inconsistent with the policies of the Land Use Element because the Map Amendment will encourage mixed-use development near a metro station and facilitate the provision of new housing and affordable housing in a high opportunity area. (Ex. 2; CP §§ 307.9, 307.14, 307.20).

Housing Element

33. The Application asserted that the Map Amendment is not inconsistent with the policies of the Housing Element because the Map Amendment will encourage private sector new housing development on underutilized land in a Planning Area with high housing costs and fewer affordable housing options. The rezoning could help to meet the need for higher-density housing and affordable housing in the area. (Ex. 2; CP §§ 503.3, 503.5, 504.17, 504.29).

Transportation Element

34. The Application asserted that the Map Amendment is not inconsistent with the policies of the Transportation Element. Given the Property’s close proximity to a Metro station, the Map Amendment will support transit-oriented development and could encourage upgrades to surrounding infrastructure and additional job opportunities nearby. (Ex. 2; CP §§ 403.10, 405.7)

Environmental Protection Element

35. The Application asserted that the Map Amendment is not inconsistent with the policies of the Environmental Protection Element because the Map Amendment would allow for new development compliant with the Green Energy codes, which could include green roofs, permeable materials, and other planting elements currently not on the Property. (Ex. 2; CP §§ 615.3-4).

Public Hearing Testimony

36. At the December 19, 2022 public hearing, the Applicant presented its case, including testimony from:
- Alexandra Wilson, Senior Associate Attorney, Sullivan & Barros, LLP; and
 - Aydin Hayri, Representative of the Applicant.
- (Transcript [“Tr.”] from December 19, 2022, hearing at pp. 6-15, 21-22.)

III. RESPONSES TO THE APPLICATION

OP REPORTS AND TESTIMONY

37. OP submitted a report, dated July 18, 2022, recommending the Commission setdown the Application for a public hearing (the “OP Setdown Report”), and concluding that the Map Amendment would not be inconsistent with the CP because: (Ex. 6)
- **GPM** – The Property is designated as Neighborhood Conservation Areas. The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs. The proposed MU-8A zoning could contribute to the conservation and enhancement of the long vacant historic structure on the Property and could allow for adaptive reuse, potentially with a mix of uses, including housing or a new use permitted by the MU-8A zone;
 - **FLUM** – The Property is designated mixed-use Medium Density Residential and Medium Density Commercial. Consistent with the Medium Density Residential component of the designation, the proposed MU-8A zoning would permit a variety of new residential uses, including multi-family, and the increase in permitted density would assist in the development of new housing including affordable housing. Consistent with the Medium Density Commercial component of the designation, the MU-8A zoning would permit offices, including medical offices, restaurants, retail uses and financial institutions, that could provide support services to the surrounding neighborhood and the District overall;
 - **Land Use Element** – The proposed rezoning has the potential to revitalize an underutilized corner site that has been long vacant and for which a Planned Unit Development was approved but never constructed. The rezoning would permit an increase in uses permitted, including commercial and office uses and an increase in the number of potential housing units, including affordable housing units under IZ Plus, at a location within a census tract with a high poverty rate that would also take advantage of the investment in Metrorail;
 - **Housing Element** – Through an increase in the permitted density, the Map Amendment would permit an increase in the amount of market rate and affordable housing than currently could be constructed under the existing zoning;

- **Urban Design Element** – The Property has an existing historic building and could accommodate additional infill housing and consequently affordable housing. The proposed MU-8A zone would allow for residential development and a building height that could bridge the divide between the rowhouse neighborhood directly to the north and the larger mixed-use office and commercial buildings to the south across L Street;
 - **Historic Preservation Element** – The Map Amendment would have the potential to facilitate the redevelopment of the Property, including the renovation of the existing vacant historic structure on the Property and its expansion; and
 - **Racial Equity** – A key piece of this map amendment is the potential to create additional affordable housing through an IZ Plus set-aside requirement. The potential affordable housing units that could be created under the MU-8A zone is substantially higher than under the existing RA-2 zone. (Ex. 6, 17.)
38. The OP Setdown Report also stated that an IZ Plus set-aside requirement was appropriate for the Map Amendment, pursuant to Subtitle X § 502.1(b), noting that:
- The map amendment would rezone the property to MU-8A, which allows a higher maximum permitted FAR than the existing RA-2 zone; and
 - The 2019 Housing Equity Report prepared by the Office of Planning and the Department of Housing and Community Development reports that:
 - ANC 6E, within which the subject property is located, only had 0.4 percent of the District’s total number of affordable housing units as of 2018; and
 - Ward 6 had a median rent of \$2,143 in 2019, in excess of the Districtwide median of \$1,603.
39. OP submitted a hearing report dated December 9, 2022, that largely reiterated the OP Setdown Report’s conclusions, and recommended approval of the Map Amendment. (Ex. 17.)
40. At the December 19, 2022 public hearing, OP reiterated its support for the Application as detailed in its reports. (Tr. from December 19, 2022 hearing at p. 18.)

DDOT REPORT

41. DDOT submitted a December 9, 2022 report (the “DDOT Report”), stating that based on the information provided, the proposed rezoning would not likely impact the District’s transportation network if redeveloped with the most intense matter-of-right uses under MU-8A zoning. Given the Property is near several major transit routes, and the existing number of vehicle trips would likely not change significantly DDOT has no objection to the Map Amendment. (Ex. 18.)
42. DDOT did not provide testimony at the public hearing.

ANC REPORTS AND TESTIMONY

43. ANC 6E submitted an ANC Setdown Form, stating that at its June 7, 2022, properly noticed public meeting with a quorum present, the ANC voted 7-0-0 in support of setting down the Map Amendment for public hearing. (Ex. 4.)

44. On June 17, 2022, ANC 6E submitted a letter noting its June 7, 2022, vote in unanimous support of the Map Amendment, and stating the following: “the proposed map amendment will facilitate new development opportunities at the Property that will produce corporate housing and employment opportunities in this downtown area across from a large office building and one block from the Walter E. Washington Convention Center. This property has been blighted for decades which has been a site for criminal activity. Redevelopment will activate this corner and be positive for this area of the neighborhood.” (Ex. 5.)
45. The ANC did not provide testimony at the public hearing.

PERSONS IN SUPPORT

46. No letters in support were submitted to the record.
47. No persons in support testified at the public hearing.

PERSONS IN OPPOSITION

48. At the conclusion of the December 19, 2022 public hearing, the Commission left the record open for the Applicant to provide additional information regarding outreach to civic associations in the area. The Applicant was to provide the additional information by January 23, 2022.
49. On December 21, 2022, the Applicant submitted an email from Rachele Nigro, SMD 6E04, the SMD for the Property, noting that there are no civic associations in the area. The email explained that the previous civic association, the Mount Vernon Square Civic Association, folded years ago. (Ex. 24, 24A.)
50. On December 21, 2022, the Commission received a request to reopen the record to accept an untimely filing. (Ex. 23.) The Chair granted the request and reopened the record to allow submission of testimony from Mr. Al-Hajj Mahdi/Leroy J. Thorpe, Jr. in his capacity as President of two organizations, the Shaw East Central Civic Association and the Shaw Citizens Organized Patrol Efforts/Red Hats Patrol. (Ex. 23A.) The testimony opposed the Map Amendment and stated that both ANC 2E and the Applicant failed to engage either organization to participate in discussions regarding the Map Amendment denying them of due process. The testimony also stated that ANC 2E has a history of racist practices in ignoring black residents and organizations in Shaw regarding zoning cases. (*Id.*)
51. On January 20, 2023, the Applicant submitted a response to the opposition testimony clarifying that there are no civic associations in ANC 6E (now ANC 2G), and that the Property is in the Mt. Vernon Historic District not the Shaw Historic District. The Applicant also acknowledged that it is not clear on the boundaries of the two organizations who filed opposition testimony, but proper notice regarding the Map Amendment proceeding was provided to ANC 6E (now ANC 2G), in which boundary the Property is located. Finally, the Applicant stated that it would reach out to Mr. Al-Hajj Mahdi/Leroy J. Thorpe, Jr. given his interest and opposition testimony on behalf of two organizations. (Ex. 26.)

NATIONAL CAPITAL PLANNING COMMISSION (“NCPC”)

52. The Commission referred the Application to 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. 22.)
53. On January 6, 2023, NCPC filed a letter stating the proposed Map Amendment is not inconsistent with the Comprehensive Plan for the National Capital and would not adversely impact any other identified federal interests. (Ex. 25.)

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 the 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 of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.
3. The Commission must ensure that the Zoning Map, and all amendments to it, are “not inconsistent” with the CP pursuant to § 492(b)(1) of the District of Columbia Home Rule Act. (§ 2 of the Zoning Act; D.C. Official Code § 6-641.02.) Subtitle X § 500.3 incorporates this intent to the Zoning Regulations by requiring that map amendments be “not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.”

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

4. The Commission concludes, based on the filings in the record, including OP’s reports, and the testimony from the public hearing, that the Map Amendment from the RA-2 zone to the

MU-8A zone is not inconsistent with the CP, including its maps and elements, and will advance a number of CP policies 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. (*Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013).) In this case, the Commission concludes that any inconsistencies with CP policies are outweighed by the Map Amendment's overall consistency with the CP Maps and Citywide and Area Element policies, which support, among other things, increasing density to permit more mixed-use and housing development, including affordable housing, on underutilized property in proximity to transit.

Racial Equity

6. The Commission concludes that the Map Amendment is not inconsistent with the CP when evaluated through a racial equity lens because:
 - The Map Amendment would increase the allowable density to medium density levels and would permit a mix of uses that will enhance the Property's opportunity for development with affordable housing, and an IZ Plus set-aside requirement will apply to the Map Amendment; and
 - The provision of new commercial uses at the Property could create employment opportunities near a metro station.

GPM

7. The Commission concludes that the Map Amendment is not inconsistent with the GPM's designation of the Property as a Neighborhood Enhancement Area because:
 - The Map Amendment will facilitate the development of the Property with a mix of uses while preserving the existing historic building;
 - The development permitted by the Map Amendment will be subject to Historic Preservation Review Board design approval to ensure compatibility with the existing scale and architectural character of the neighborhood; and
 - The additional density permitted under the MU-8A zone will support housing development and citywide housing needs; and the new mix of uses permitted could attract complementary new ground-floor retail and service uses at the Property to serve the needs of surrounding residents.

FLUM

8. The Commission concludes that the Map Amendment is not inconsistent with the Property's Mixed Use – Medium Density Residential / Medium Density Commercial FLUM designation because:
 - The MU-8 zones are intended to permit medium-density mixed-use development, with a focus on employment and residential use; be located in uptown locations, where a large component of development will be office-retail and non-residential uses; and be located in or near the Central Employment Area, on arterial streets, in uptown and regional centers, and at rapid transit stops;

- The Medium Density Residential category contemplates density ranging from 1.8-4.0 FAR but states that greater density may be possible when complying with Inclusionary Zoning; and
- The Medium Density Commercial category expressly identifies the MU-8 zone as consistent with the designation.

Near Northwest Area Element

9. The Commission concludes that the Map Amendment furthers the policies of the area element because it will:
- Encourage using the historic preservation design review process to promote high quality architecture and urban design in Near Northwest’s designated historic districts, including Mount Vernon Square; and
 - Encourage development adjacent to the Mount Vernon Square Metro station.

Land Use Element

10. The Commission concludes that the Map Amendment furthers this element because it will:
- Encourage the revitalization of an underutilized site adjacent to a Metrorail station with mixed-use development that respects the character, scale, and integrity of the adjacent neighborhood; and
 - Encourage housing development, including affordable housing subject to IZ Plus set aside requirements.

Housing Element

11. The Commission concludes that the Map Amendment furthers this element because it will:
- Encourage private sector development of new market rate and affordable housing on underused land; and
 - Ensure that land is planned and zoned to enable the District to meet its long-term housing needs, including the need for higher-density housing.

Transportation Element

12. The Commission concludes that the Map Amendment furthers this element because it will:
- Support transit-oriented development given the Property’s close proximity to a Metrorail station and could result in pedestrian-oriented transportation improvements.

Environmental Protection Element

13. The Commission concludes that the Map Amendment furthers this element because it will:
- Allow for new development on the site utilizing permeable materials, tree planting, and vegetated spaces, to absorb and reduce stormwater runoff and mitigate the urban heat island, with the use of green roofs.

Historic Preservation

14. The Commission concludes that the Map Amendment furthers this element because it will facilitate redevelopment of the Property, including the renovation of the existing vacant historic structure on the Property and its expansion.

Urban Design

15. The Commission concludes that the Map Amendment furthers this element because the proposed MU-8A zone could accommodate additional infill housing in the existing historic building and would allow for new residential development at a building height that could bridge the divide between the rowhouse neighborhood directly to the north and the larger mixed-use office and commercial buildings to the south across L Street.

GREAT WEIGHT TO THE RECOMMENDATIONS OF OP

16. 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).)
17. The Commission concludes that OP’s reports, which provided an in-depth analysis of the Map Amendment, 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 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

18. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).)
19. The Commission finds ANC 6E’s support for the Map Amendment persuasive and concurs in its judgment. However, the Commission acknowledges the opposition testimony submitted by Mr. Al-Hajj Mahdi/Leroy J. Thorpe, Jr. in his capacity as President of both the Shaw East Central Civic Association and the Shaw Citizens Organized Patrol Efforts/Red Hats Patrol, and his assertions of racist ANC practices and exclusion of certain people from this process. The Commission understands that as of January 1, 2023, the Property is currently in the boundary of ANC 2G (formerly ANC 6E), and that the Property is not located in the boundary of the Shaw Historic District or the Shaw East Central Civic Association. Regardless, the Commission recognizes that ANC boundaries shift and strongly encourages robust community outreach efforts, both within the immediate and

surrounding community, of property where a Map Amendment is proposed. The Commission looks forward to continued improvement regarding community outreach and inclusion within the zoning process and promoting CP racial equity goals and policies.

DECISION

In consideration of the record for Z.C. Case No. 22-22 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 |
|--------|--------|---------------|
| 449 | 64 | RA-2 to MU-8A |

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 1.8.

On December 19, 2022, upon the motion of Commissioner Imamura, as seconded by Vice Chair Miller, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the Application at the close of the public hearing by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Joseph S. Imamura to approve; third Mayoral appointee seat vacant, not voting).

On January 26, 2023, upon the motion of Vice Chairman Miller, as seconded by Chairman Hood, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **4-0-1** (Robert E. Miller, Anthony J. Hood, Peter G. May, and Joseph S. Imamura to approve; 3rd Mayoral appointee seat vacant, not voting).


In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 22-22 shall become final and effective upon publication in the *D.C. Register*, that is on March 24, 2023.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (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.