

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 22-34**  
**Z.C. CASE NO. 22-34**  
**Berean Baptist Church**  
**(Zoning Map Amendment @ Square 2991, Lot 77**  
**[924 Madison Street, N.W.]**  
**January 26, 2023**

Pursuant to notice, at its public hearing on June 1, 2023, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) by Berean Baptist Church (the “Applicant”) for an amendment to the Zoning Map from the RF-1 zone to the RA-2 zone (the “Map Amendment”) for the property at 924 Madison Street, N.W., which is more particularly known as Lot 77 in Square 2991 (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 0.9 pursuant to Subtitle X § 502.4.

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”) 4B and ANC 4D. Subtitle Z § 403.5.
2. The Commission received no requests for party status.

**NOTICE**

3. On September 26, 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 4B, as required by Subtitle Z §§ 304.5 and 304.6. (Exhibit (“Ex.”) 3I).
4. On March 22, 2023, the Office of Zoning (“OZ”) sent notice of the June 1, 2023 virtual public hearing to:
  - Applicant;
  - ANC 4D;
  - ANC Single Member District (“SMD”) 4D01;
  - Office of the ANCs;
  - Office of Planning (“OP”);
  - District Department of Transportation (“DDOT”);

- At-Large Councilmembers and the Chair of the Council;
  - The Ward 4 Councilmember;
  - Department of Energy & Environment (“DOEE”);
  - Department of Buildings (“DOB”) General Counsel;
  - Office of Zoning Legal Division (“OZLD”); and
  - Property owners within 200 feet of the Property.
- (Ex. 17, 18).

5. OZ published notice of the public hearing in the March 31, 2023, *D.C. Register* (69 DCR 129915), as well as on the OZ’s public hearing calendar on the OZ’s website. (Ex. 16).

**THE PROPERTY**

6. The Property is located in the northwest quadrant of the District and consists of approximately 14,000 square feet of land area (approximately 0.32 acres).
7. The square within which the Property is located is bounded by Madison Street to the north, Longfellow Street to the south, Georgia Avenue to the east, and 9th Street to the west.
8. The Property is surrounded by a mixture of residential and mixed-retail uses. The Emery Heights Community Center and the Emery Heights Park are located north of the Property. Light commercial uses, such as an AutoZone Auto Parts and Dollar Tree store are located west of the Property on Georgia Avenue. The Bright Woods Gardens Co-Op and single family residences are located to the south and to the east of the Property, respectively.
9. The Property is presently improved with a religious use and is currently the Berean Baptist Church. (Ex. 3).
10. The properties located to the northwest of the Property, north of the 9th Street centerline along Georgia Avenue, are zoned MU-7B. The properties located east of the Property, along Georgia Avenue, are zoned MU-4. The properties generally located to the north, south, and east of the Property are zoned RF-1.

**CURRENT ZONING**

11. The Property is in the RF-1 zone. The RF-1 zone is intended to provide for areas predominantly developed with row houses on small lots within which no more than two dwelling units are permitted. Subtitle E § 300.1.
12. As a matter of right, the RF-1 zone requires/permits:
  - Two dwelling units to be located within the principal structure or one dwelling unit to be located in the principal structure and one in an accessory structure. Subtitle E § 302.1.
  - The maximum permitted height of residential buildings or structures and any additions thereto not including the penthouse or the rooftop structure, cannot exceed 35 feet and three stories. Subtitle E § 303.1.

- The maximum permitted building height for a place of worship, not including the penthouse or rooftop structure, cannot exceed 60 feet and three stories. Subtitle E § 303.4.
- Depending on the use, the maximum permitted lot occupancy is 40%–60%. Subtitle E § 304.1.
- Residential buildings in the RF-1 zone must have a front yard setback which is similar to the existing front setbacks of structures on the same side of the street in the block where the building is proposed. Subtitle E § 305.1.
- A minimum rear yard of 20 feet. Subtitle E § 306.1.

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

**Equity and the Comprehensive Plan**

13. 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.
14. 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.
15. 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 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.
16. 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”)**

17. 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.
18. 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.
19. The CP’s GPM designates the Property as a Neighborhood Conservation Area. The CP defines Neighborhood Conservation Areas as:

*Neighborhood Conservation areas have little vacant or underutilized land. They are generally residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. 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. Neighborhood Conservation Areas that are designated “PDR” on the Future Land Use Map are expected to be retained with the mix of industrial, office, and retail uses they have historically provided. CP § 225.4.*

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

20. 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.
21. The CP’s FLUM designates the Property as Moderate Density Residential. The CP defines Moderate Density Residential as:

*“[The Moderate Density Residential] . . . designation is used to define neighborhoods generally, but not exclusively, suited for row houses as well as low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings. In some neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). Density in Moderate Density Residential areas is typically calculated either as the number of dwelling units per minimum lot area, or as a FAR up to 1.8, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The R-3, RF, and **RA-2** Zone Districts are consistent with the Moderate Density*

*Residential category, and other zones may also apply. See CP § 227.11 (emphasis added).*

### **Rock Creek East Area Element**

22. The Property falls within the Rock Creek East Area Element. The Rock Creek East Area Element calls for:
- The strengthening of “the neighborhoods of the Rock Creek East Planning Area while providing new housing opportunities for a range of incomes and household sizes.” CP § 2208.2;
  - “Renovations, additions, and new construction in the area’s low-density neighborhoods [to] respect the scale and densities of adjacent properties, provide new housing opportunities, and preserve parklike qualities, such as dense tree cover and open space.” CP § 2208.3;
  - The encouragement and the “retention of existing public housing units within the Rock Creek East Planning Area, along with other measures to increase housing choices and improve housing affordability for area residents. This should include the production of new housing for a mix of incomes and household sizes. . . . A particular emphasis should be placed on providing affordable housing for older adults and families.” CP § 2208.7; and
  - The integration of sustainable “strategies at the site and project level in new developments in the Rock Creek East Planning Area.” CP § 2208.16.

## **II. THE APPLICATION**

### **PROPOSED ZONING**

23. The Application proposes to rezone the Property from the RF-1 zone to the RA-2 zone. (Ex. 2–3I). The Application asserts that the Property’s existing RF-1 zone is inconsistent with the CP, particularly because the RF-1 zone is intended to provide for areas predominantly developed with row houses on small lots within which no more than two dwelling units are permitted and the FLUM designates the Property as Moderate Density Residential. (Ex. 3).
24. The RA-2 zone is intended to provide for areas developed with predominately moderate-density residential uses. Subtitle F § 300.3.
25. As a matter of right, the RA-2 zone permits/requires:
- A maximum Floor Area Ratio (“FAR”) of 1.8 (2.16 with IZ). Subtitle F § 302.1.
  - A maximum building height of 50 feet. Subtitle F § 303.1.
  - A maximum penthouse height of 12 feet and 15 feet for penthouse mechanical space. Subtitle F § 303.2. The penthouse may be two stories, but the second story can only be used for penthouse mechanical space. *Id.*
  - A 60% maximum lot occupancy. Subtitle F § 304.1.
  - A minimum rear yard equal to 4 inches per 1 foot of principal building height, but not less than 15 feet. Subtitle F § 305.1
  - If provided, a 4-foot minimum side yard. Subtitle F § 306.2(b).

- If provided, a 5-foot minimum side yard (11-G DCMR § 406.1)
26. A Zoning Map Amendment of the Property to the RA-2 zone would permit enhanced development standards that would facilitate the redevelopment of the Property with additional residential uses as anticipated by the FLUM.

**APPLICANT'S JUSTIFICATION OF RELIEF**

**Not Inconsistent with the CP**

27. The Applicant asserted that the Map Amendment is not inconsistent with the CP, including the Property's designations on the GPM and the FLUM, and advances the objectives and recommendations of the Rock Creek East 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***

28. The Applicant asserted that the Map Amendment is not inconsistent with the GPM because:
- As the Framework Element of the CP implies, the Neighborhood Conservation Area designation is not intended to stifle development opportunities. Conversely, new development is welcome so long as it supports the existing neighborhood character and addresses city-wide priorities.
  - The existing RF-1 zoning constrains potential development opportunities at the Property, whereas the proposed RA-2 zone has the capability of supporting additional density and enhanced development standards, ultimately strengthening the neighborhood. For example, the proposed RA-2 zone would permit the construction of a new residential building, including affordable housing, which would address critical District-wide housing needs.
- Ex. 3.

***FLUM***

29. The Applicant asserted that the Map Amendment is not inconsistent with the FLUM because:
- The Property's FLUM designation, Moderate Density Residential, expressly states the RA-2 zone is consistent with the category;
  - The RA-2 zone permits a maximum density of 1.8 (2.16 with IZ), which falls within the FAR contemplated by the Moderate Density Residential FLUM category, which specifies a density of up to 1.8, with greater density being possible when complying with IZ or when approved through a Planned Unit Development;
  - The Moderate Density Residential designation is used to define neighborhoods generally, but not exclusively, suited for row houses as well as low-rise garden apartment complexes; and

- The Moderate Density Residential designation also applies to areas characterized by a mix of single-family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings.

Ex. 3.

### ***Rock Creek East Area Element***

30. The Applicant asserted that the Map Amendment advances a number of planning objectives of the Rock Creek East Area Element by enhancing the Property's development potential and by furthering strategic development and economic vitality within the surrounding area

Ex. 3.

### ***Housing Element***

31. The Applicant asserted that the Map Amendment is not inconsistent with the policies of the Housing Element because the Map Amendment will provide a substantial increase in the permitted density for residential uses, ultimately expanding the District's housing and affordable housing supply. Additionally, the Applicant asserted that the Map Amendment would provide future multifamily housing at the Property that could be devoted to seniors or other underserved populations, thus providing more housing choices for disadvantaged persons, and creating more opportunities for District residents to remain in their preferred neighborhood and maintain their connections to the District. Finally, the Applicant asserted that the Map Amendment directly aligns with the goals and policies advanced by the Housing Element, which states faith-based institutions should be coordinated with to meet affordable housing needs, because the proposed Map Amendment would allow a faith-based institution to construct affordable housing on its property.

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 the Property, will permit the development of additional housing and affordable housing, will allow the Property to accommodate a modest increase in density and a more diverse housing type, and would facilitate the use of a semi-public building for continued use, including residential uses.

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 enable a new residential development at the Property that is likely to involve streetscape improvements, and has the potential to result in a development that stabilizes the streetscape with an improved pedestrian network.

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, the District’s storm water management regulations, and the Sustainable DC Plan.

### ***Racial Equity***

35. The Application noted that equity is conveyed throughout the CP where priorities of affordable housing, displacement, and access to opportunity are discussed. In light of the guidance provided by relevant CP policies the Applicant asserted that the Map Amendment would not be inconsistent with the CP when evaluate through a racial equity lens. In support of its assertion, the Applicant evaluated the Map Amendment’s consistency with the CP through a racial equity lens by applying the Commission’s Racial Equity Tool.<sup>1</sup> Ex. 3, Ex. 14.

36. The Applicant provided an assessment of how the Map Amendment is not inconsistent with the CP when evaluated through a racial equity lens in its CP Evaluation, in subsequent filings, and through testimony at the public hearing. OP concurred with the Applicant and/or made similar findings in its reports. Ex. 3, Ex. 12, Ex. 14, Ex. 25.

37. The Applicant provided the following information about the community and its outreach:

- The Applicant identified the following as key historical attributes which helped shape and define the community impacted by the Map Amendment:
  - i. Brightwood was a rural enclave for African American landowners.
  - ii. Displacement occurred as developers demolished African American neighborhoods to construct housing for whites only beginning in the 1930s.
  - iii. The Property is surrounded by neighborhoods subjected to racial covenants, although the Property did not have one.
  - iv. “White flight” in the 1950s resulted in lack of community investment.
- The Applicant made a concerted effort to understand the community’s priorities.
- Prior to January 1, 2023, the Property was located within the boundaries of Advisory Neighborhood Commission (“ANC”) 4B. The Applicant met with representatives of ANC 4B on the following occasions:

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<sup>1</sup> The Commission released the first iteration of its Racial Equity Tool (“Tool”) in April, 2022. In doing so, the Commission committed to revise the Tool based on feedback received after holding a roundtable concerning the Tool in September, 2022. On February 3, 2023, the Commission released a revised Tool, indicating that it was immediately applicable to development projects. Most of the Applicant’s racial equity analysis had already been provided in its CP Evaluation (Ex. 3). However, in light of the new section concerning community engagement and outreach that was added to the Tool, the Applicant’s Pre-hearing Statement addressed questions regarding community outreach and anticipated impacts of the proposed zoning action. Ex. 14.

- i. The Applicant presented the Application to ANC 4B on September 28, 2022;
  - ii. The Applicant presented the Application to ANC 4B's Housing Justice Committee on October 5, 2022; and
  - iii. The Applicant again presented the Application to ANC 4B on October 24, 2022. Subsequently, ANC 4B issued a Resolution of Support. *See* Ex. 11, 14.
- As of January 1, 2023, the Property is located within the boundaries of ANC 4D. The Applicant met with representatives of ANC 4D on the following occasions:
  - i. The Applicant presented the Application to ANC 4D on February 15, 2023;
  - ii. The Applicant presented the Application to the ANC 4D Executive Committee on March 1, 2023; and
  - iii. The Applicant again presented the Application to ANC 4D on March 15, 2023. Subsequently, ANC 4D issued a Resolution of Support. *See* Ex. 14; *see also* Ex. 20.
- Additionally, the Applicant hosted an open-house at the Property on Sunday, December 18, 2022, and the Applicant hosted a congregational meeting at the Property on March 27, 2022. *See* Ex. 14; *see also* Ex. 29.
- Applying the Tool's racial equity themes, the Applicant asserted the Map Amendment would have the following impacts and/or outcomes:
  - i. Not result in negative outcomes with respect to direct displacement because of the following:
    - 1. No physical displacement of residents; and
    - 2. Increase in residential density.
  - ii. Result in positive changes with respect to housing because the Project would:
    - 1. Increase the Property's potential housing capabilities; and
    - 2. Increase the Property's required IZ+ set-aside requirement.
  - iii. Result in positive changes to the physical environment because the Map Amendment would:
    - 1. Improve stormwater infrastructure; and
    - 2. Improve roadway circulation on the Property.
  - iv. Increase access to opportunity because the Map Amendment would:
    - 1. Provide access to transit accessibility, including Metro and bus routes;
    - 2. Provide access to regional employment opportunities; and
    - 3. Provide access to recreation facilities, open space, and neighborhood-serving retail services.

38. Based on the foregoing and based on the Applicant's filings, the Applicant asserted, and OP agreed, the proposed Map Amendment would result in positive outcomes for all existing and future District residents, and therefore, the Application is not inconsistent with the CP when evaluated through a racial equity lens.

***Potential Inconsistencies with the CP***

39. The Applicant conducted a CP evaluation of the Application through a racial equity lens and determined that the Applications 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, housing, transportation, environmental sustainability, economic development, and urban design.  
Ex. 3.

***Public Hearing Testimony***

40. At the public hearing on June 1, 2023, 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
  - Pastor Robert Childs, Berean Baptist Church.
- Ex. 30.

**III. RESPONSES TO THE APPLICATION**

**OP REPORTS AND TESTIMONY**

41. OP submitted a report, dated February 27, 2023, 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. 12)
- **GPM** – The proposed RA-2 zone would be consistent with the Property’s FLUM designation and the guidance of the CP policies. Further, the Framework Element of the CP states that Neighborhood Conservation Areas are generally residential in character and that the designation is not intended to preclude development, especially the development of more housing, and that the RA-2 zone primarily allows residential uses (though some community facilities are allowed) and would permit larger residential uses compared to the RF-1 zone, which could help address the District’s city-wide housing needs.
  - **FLUM** – The map amendment to RA-2 is consistent with the FLUM designation. Further, the RA-2 zone would permit moderate-density residential development with a maximum FAR of 1.8 and up to 2.16 for the provision of IZ units, and the proposed zone would allow for a range of residential uses, including single-family homes, flats, and multi-story apartment houses. Further, the Moderate Density Residential FLUM designation applies to areas characterized by a mix of single-family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings.

- **Rock Creek East Area Element** – The Rock Creek East Area Element calls for directing growth, including housing and affordable housing along Georgia Avenue, NW, which the Property is in proximity to. Additionally, the area element calls for the development of new housing along Georgia Avenue, N.W. with particular emphasis for affordable housing for older adults and families.
  - **Land Use Element** – The Map Amendment would permit moderate density residential uses, such as low- to mid-rise apartment houses, both of which are not permitted by the existing RF-1 zone. Overall, the RA-2 zone would allow for substantially more housing to be built on the Property, both affordable and market-rate, and would allow for a greater variety of different housing sizes and types. Additionally, the Map Amendment would support new opportunities for varied housing, with a substantial affordable housing requirement that can help advance racial equity and opportunity.
  - **Transportation Element** – The Property is located approximately 388 feet from the 70 Metrobus line and approximately 1,000 feet from the 79 Metrobus line, which provides faster limited-stop service. The Map Amendment would also support the District’s goals of providing more housing, including affordable housing, in proximity to safe, affordable, and reliable transportation regardless of a person’s age, race, income, geography, or physical ability.
  - **Housing Element** – The Map Amendment would require IZ Plus for any future residential development, which would help the District towards its goals of ensuring that one-third of the new housing built from 2018 to 2030 be affordable to persons earning 80 percent or less of the MFI. The Map Amendment would require an IZ Plus set-aside requirement that would also support mixed-income housing by encouraging affordable housing. Additionally, the Map Amendment would help the District achieve its goal of achieving a minimum 15 percent affordable housing units in each planning area by 2050.
  - **Environmental Protection Element** – The Map Amendment would result in a residential development which would will incorporate energy efficient systems, therefore reducing energy use and providing alternative energy ultimately contributing to the District’s energy efficiency goals. Additionally, the redevelopment of the Property could result in new landscaping and environmentally friendly enhancements to the abutting streetscape. Finally, any future development will be required to comply with the Green Building Act and the District’s storm water management regulations, and will be consistent with the Sustainable DC Plan.
42. OP submitted a hearing report, dated May 18, 2023, that largely reiterated the OP Setdown Report’s conclusions, and recommended approval of the Map Amendment.  
Ex. 25

43. At the public hearing, OP reiterated its support for the Application as detailed in its reports.

#### **DDOT REPORT**

44. DDOT submitted a report dated May 22, 2023 (the “DDOT Report”) stating that “DDOT has no objection to the approval of the requested Map Amendment.” Ex. 24.
45. DDOT did not provide testimony at the public hearing.

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

46. ANC 4B submitted a letter in Resolution in Support of the Application, dated October 24, 2022 (the “ANC 4B Report”), stating at its properly noticed public meeting of October 24, 2022, at which a quorum was present, the ANC voted to support the Application. Ex. 11.
47. ANC 4D submitted a letter in Resolution in Support of the Application, dated March 23, 2023 (the “ANC 4D Report”), stating at its properly noticed public meeting of March 15, 2023, at which a quorum was present, the ANC voted to support the Application. Ex. 20.

#### **PERSONS IN OPPOSITION**

48. Letters raising questions about the impact of the Application on on-street parking were submitted by Graham Button and Maria Padilla. Ex. 21, 22.

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

49. The Commission referred the Application to the National Capital Planning Commission (“NCPC”) on [REDACTED], 2023, for the 30-day review period required by § 492(b)(2) of the District Charter. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(b)(2); D.C. Official Code 6-641.05)). (Ex. 40).
50. On [REDACTED], 2023, 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. [REDACTED].

#### **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. The Commission concludes the Application advances the purposes of the Zoning Act. The Commission found the Applicant's testimony compelling 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. 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.
5. The Commission concludes, based on the filings and testimony of the Applicant and OP, that the Map Amendment from the RF-1 zone to the RA-2 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.
6. 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**

7. 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 help the District achieve its goal of achieving a minimum of 15 percent affordable housing units in each planning area by 2050. FF. 40.; and
  - The Map Amendment would support new opportunities for varied housing, with a substantial affordable housing requirement that would help advance racial equity and opportunity. FF. 40.

## **GPM**

8. 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 residential uses along this section of Georgia Avenue; and
  - The Map Amendment will support additional residential uses which will help address the District's city-wide housing needs. FF 40.

## **FLUM**

9. The Commission concludes that the Map Amendment is not inconsistent with the Property's Moderate Density Residential FLUM designation because:
- The Property's FLUM designation, Moderate Density Residential, expressly states the RA-2 zone is consistent with the designation;
  - The densities permitted within the RA-2 zone are within the FAR contemplated by the Moderate Density Residential FLUM category; and
  - The Moderate Density Residential FLUM designation applies to areas characterized by a mix of single-family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings. FF 40.

## **Rock Creek East Area Element**

10. The Commission concludes that the Map Amendment furthers the policies of the Rock Creek East Area Element because the Map Amendment will provide enhanced residential opportunities, which will ultimately result in new housing along Georgia Avenue. FF 40.

## **Land Use Element**

11. The Commission concludes that the Map Amendment furthers the Land Use Element because:
- The Map Amendment would permit moderate density residential uses, such as low- to mid-rise apartment houses, both of which are not permitted by the existing RF-1 zone;
  - The Map Amendment would allow for substantially more housing to be built on the Property, both affordable and market-rate, and would allow for a greater variety of different housing sizes and types; and
  - The Map Amendment would support new opportunities for varied housing, with a substantial affordable housing requirement that can help advance racial equity and opportunity. FF 40.

## **Transportation Element**

12. The Commission concludes that the Map Amendment furthers the Transportation Element as it will facilitate a new residential development that is likely to involve

streetscape improvements and would also support the District’s goals of providing more housing, including affordable housing, in proximity to safe, affordable, and reliable transportation regardless of a person’s age, race, income, geography, or physical ability. FF 40.

### **Housing Element**

13. The Commission concludes that the Map Amendment furthers the Housing Element because it will require IZ Plus for any future residential development, which would help the District towards its goals of ensuring that one-third of the new housing built from 2018 to 2030 is affordable to persons earning 80 percent or less of the MFI. FF 40.

### **Environmental Protection Element**

14. 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 40.

### **GREAT WEIGHT TO THE RECOMMENDATIONS OF OP**

15. The Commission must give “great weight” to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).
16. The Commission concludes that OP’s reports, which provided an in-depth analysis of the Map Amendment, 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 the 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**

17. 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)).

18. The ANC 4B Report and the ANC 4D Report expressed the ANCs’ recommendation of support for the Map Amendment. The Commission concurs with the ANCs’ recommendations. Neither report expressed any issues or concerns with the Application. Accordingly, there is nothing to give “great weight” to. FF 45, 46.

**DECISION**

In consideration of the record for Z.C. Case No. 22-34 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
2991	77	RF-1 to RA-2

**Proposed Action**

**Vote (June 1, 2023): 4-0-1**

(Joseph S. Imamura, Peter G. May, Anthony J. Hood, Robert E. Miller to **APPROVE**).

**Final Action**

**Vote (July 13, 2023): 4-0-1**

(Joseph S. Imamura, Peter G. May, Anthony J. Hood, Robert E. Miller to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 22-34 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.