

**BEFORE THE DISTRICT OF COLUMBIA
ZONING COMMISSION**

**STATEMENT IN SUPPORT OF
AN APPLICATION FOR A ZONING MAP AMENDMENT
FROM THE RA-1 ZONE DISTRICT TO THE
MU-8 ZONE DISTRICT**

**SQUARE 5914
PORTION OF LOT 806**

CONGRESS PARK COMMUNITY PARTNERS, LLC

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I. INTRODUCTION

Congress Park Community Partners, LLC (the “**Applicant**”), as authorized by the Office of the D.C. Deputy Mayor for Planning and Economic Development (“**DMPED**”), submits this statement in support for an amendment to the Zoning Map of the District of Columbia (the “**Zoning Map**”) pursuant to 11-X DCMR § 500.1 and 11-Z DCMR §§ 201.2(e) and 304 of the 2016 Zoning Regulations of the District of Columbia (the “**Zoning Regulations**”). More specifically, the Applicant is seeking to rezone the eastern portion of the property located at 1351 Alabama Avenue, SE (eastern portion of Lot 806 in Square 5914), as more particularly described below, from the RA-1 zone to the MU-8 zone (the “**Application**”).

As required pursuant to 11-X DCMR § 500.1, the requested Zoning Map amendment is not inconsistent with the Comprehensive Plan (the “**Comp Plan**”) and with other adopted public policies and active programs. Further, consistent with the purposes of the Zoning Act, the requested rezoning will create conditions that are favorable to public health, safety, welfare, and convenience as it will facilitate the redevelopment of the site with a new, transit-oriented residential development containing approximately 200 affordable units ranging between 30% - 80% MFI, and ground-floor retail and day care uses.

II. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The area proposed to be rezoned encompasses the eastern portion of Lot 806 in Square 5914 (“**Lot 806**”). A Surveyor’s Plat of existing Lot 806 is attached as Exhibit A. Currently, Lot 806 is owned by the District of Columbia, and is the site of the former Malcolm X Elementary School campus. Generally, Lot 806 is currently improved with the 110,000 square foot school building, a field, basketball courts, a playground, and a parking lot. The school was closed in 2013 and is now the home of the District Department of Parks and Recreation Opportunity Center, a District Department of Human Services hypothermia center, and various community-based organizations.

The portion of Lot 806 proposed to be rezoned is depicted on the plat and accompanying legal description attached as Exhibit B (the “**Property**”). The Property is unimproved and contains approximately 46,165 square feet of land area (approximately 1.06 acres) and is bounded by Alabama Avenue, SE to the north, Savannah Street, SE to the south, Congress Street, SE to the east, and the former school building to the west.¹

The Property is located in the Congress Heights neighborhood of Ward 8. The area surrounding the Property contains a collection of commercial, residential, institutional, and government uses. As shown in Exhibit C, to the northwest, across Alabama Avenue, is the historic Saint Elizabeths East Campus, including the recently completed Entertainment and Sports Arena and Residences at St. Elizabeths East, and St. Elizabeths Hospital. Directly north of the Property are cemetery and church uses, as well as some moderate-density residential use. To the northeast is moderate-density residential uses. To the south, west, and immediate east are moderate-density residential uses. The Shops at Park Village, a retail center containing a Giant grocery store and a number of other retail, service, and eating and drinking establishment uses is also located approximately 0.15 miles to the east of the Property. Other notable uses within proximity to the

¹ The District of Columbia is currently pursuing a subdivision to establish the Property as a separate record lot.

Property include Turner Elementary School (approximately 0.3 miles east), Malcolm X Elementary School (approximately 0.2 miles south), and Oxon Run Park (approximately 0.2 miles south). THE ARC (Town Hall Education arts Recreation Campus), a state-of-the-art community facility offering access to high-quality educational, health, cultural, recreational, and social service programs, is located approximately 0.4 miles southeast of the Property. The Congress Heights Metrorail station is located only approximately 450 feet west of the Property.

Notably, an active Planned Unit Development (“PUD”) is located at the Metrorail station. Initially approved in 2015, the PUD project consists of a mixed-use building containing ground-floor retail with office and residential uses above. *See* Z.C. Order No. 13-08 (*dated* May 11, 2015, *effective* June 5, 2015)². Overall, the approved PUD contains approximately 447,588 square feet of gross floor area (“GFA”) for a total floor area ratio (“FAR”) of 5.06. As approved by the Commission, the approved PUD contains approximately 25,209 GFA of retail, 226,695 GFA of office, and 195,684 GFA of residential (205 – 215 dwelling units). The PUD has an approved height of 90 feet. As part of its approval of the PUD, the Commission approved a PUD-related map amendment to rezone the PUD site to C-3-B, which is the ZR58 equivalent of the MU-8 zone proposed for the Property under ZR16.

III. MALCOLM X ELEMENTARY CAMPUS REQUEST FOR PROPOSALS

On July 30, 2020, DMPED, on behalf of the District of Columbia, released a Request for Proposals (the “RFP”) for the redevelopment of the Property through a long-term ground lease. An excerpt from the RFP is attached as Exhibit D. Referred to as an “EquityRFP,” the RFP emphasizes Mayor Bowser’s equity goals by giving priority to respondents that maximized the inclusion of racial and ethnic minorities or other persons that are members of historically disadvantaged groups, particularly in leadership positions.

Overall, responses to the RFP were required to reflect the important value of the Property to the surrounding community and embody certain specified characteristics, including, but not limited to:

- Maximize affordable housing;
- Maximize equity ownership and majority control opportunities for Disadvantaged Business Enterprises;
- Uses that are compatible with and leverage surrounding neighborhood development;
- Responsiveness to community and stakeholder preferences;
- A transit-oriented development (“TOD”);
- Opportunities for teacher and/or educator housing.

The RFP sets forth a number of District goals and requirements that proposed developments are expected to help achieve. As related to zoning, some of the stated goals include:

² The validity of Z.C. Order No. 13-08 was extended pursuant to Z.C. Order No. 13-08A, which extended the construction start date for the project to June 5, 2020. The validity period was automatically extended by six months per Subtitle Z §§ 702.1-702.2, to expire on December 5, 2020. Pursuant to Z.C. Order No. 13-08(1), the validity of the approved PUD was extended to December 5, 2021, by administrative action of the Director of the Office of Zoning pursuant to Subtitle Z § 705.9.

- Maximizing density allowable on the Site;
- Support for mixed-use, transit-oriented development;
- Maximizing affordability and including opportunities for teacher and/or educator housing;
- Compatibility with neighborhood character while accommodating necessary uses;
- Providing retail that serves the neighborhood and broader areas; and
- Support for workforce development centers.

On April 20, 2021, DMPED selected the Applicant for the development of the Property (<https://thedcline.org/2021/04/20/press-release-bowser-administration-selects-development-team-for-malcolm-x-equityrfp-targeted-for-teacher-housing/>). Consistent with the goals, requirements, and equity focus of the RFP, the Applicant’s team is led by three organizations that are based in Ward 8, including two District Certified Business Enterprises. Further, as currently contemplated the Applicant’s proposal includes a mixed-use project containing approximately 120 affordable dwelling units devoted to households at the 30%, 50%, 60%, and 80% MFI income levels, with a high percentage of units having three bedrooms. On the ground-floor, approximately 9,500 square feet of gross floor area will be devoted to an early learning center and neighborhood serving retail and service uses. The Applicant has also committed to make office space available for Advisory Neighborhood Commission (“ANC”) 8E at no cost.

As discussed below, the proposal to rezone the Property from RA-1 to MU-8 will facilitate the construction of this important mixed-use, affordable project and the delivery of several other community benefits and improvements.

IV. EXISTING AND PROPOSED ZONING

A. Existing Zoning

As indicated above, the Property is presently zoned RA-1 (Exhibit E). The purpose of the RA-1 zone is to provide for areas predominantly developed with low- to moderate-density development, including detached dwellings, row houses, and low-rise apartments. *See* 11-F DCMR § 300.2.

The maximum density in the RA-1 zone district is 0.9 FAR (1.08 FAR with Inclusionary Zoning (“IZ”). 11-F DCMR § 302.1. The maximum permitted height in the RA-1 zone is 40 feet and three stories. 11-F DCMR § 303.1. The maximum permitted penthouse height in the RA-1 zone is 12 feet and one story. 11-F DCMR § 303.1. The maximum lot occupancy in the RA-1 zone is 40%. 11-F DCMR § 304.1.

B. Proposed Zoning

The Applicant requests a Zoning Map amendment, pursuant to 11-Z DCMR § 201.2(e), to rezone the Property to the MU-8 zone district (Exhibit F). The purposes of Mixed Use (MU) zones are to, among other things:

- Provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale throughout the city;
- Ensure that infill development is compatible with the prevailing development pattern within the zone and surrounding areas; and
- Preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities.

See 11-G DCMR § 100.3(f).

Specifically, the MU-8 zone is intended to permit medium-density, mixed-use development with a focus on employment in or near, among other locations, arterial streets and at rapid transit stops. See 11-G DCMR § 400.7

The maximum density in the MU-8 zone district is 5.0 FAR (6.0 FAR for IZ developments), of which no more than 4.0 FAR may be devoted to non-residential uses. 11-G DCMR § 402.1. The maximum permitted height in the MU-8 zone is 70 feet with no limit on the number of stories. 11-G DCMR § 403.1. The maximum permitted penthouse height in the MU-8 zone is 20 feet and one story, with a second story permitted for penthouse mechanical space. 11-G DCMR § 403.3. The maximum lot occupancy for residential uses is 100%. 11-G DCMR § 404.1.

C. Effect of the Proposed Map Amendment

As described in detail below, the requested Zoning Map amendment from RA-1 to the MU-8 zone is not inconsistent with the Comp Plan and is consistent with the purposes of the Zoning Act. Specifically, the proposed rezoning will:

1. Establish zoning on the Property that is not inconsistent with the Comp Plan, as required under the Home Rule Charter;
2. Establish zoning on the Property that will allow a new mixed use development containing ground floor retail, day care, and residential uses as supported by the Property’s Comp Plan Future Land Use Map (“FLUM”) designation;
3. Permit uses on the Property that are currently not permitted or unnecessarily limited in allowable density, and facilitate the redevelopment of an underutilized site located in close proximity to Metrorail consistent with Property’s Comp Plan Generalized Policy Map (“GPM”) designation as a Neighborhood Enhancement Area and proximity to an Enhanced/New Neighborhood Center.

V. STANDARDS APPLICABLE TO APPLICATION FOR ZONING MAP AMENDMENT

The requested Zoning Map amendment is submitted as a contested case pursuant to 11-Z DCMR § 202.1(e). Pursuant to the Zoning Act of 1938, approved June 20, 1938, as amended ((52 Stat. 797; D.C. Official Code § 6-641.01 *et seq.* (2012 Repl.)) (the “Zoning Act”), there are a number of criteria that must be applied by the Zoning Commission in adopting and amending the Zoning Regulations and Zoning Map. The Zoning Act states that the Zoning Regulations are designed 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” The Zoning Act further provides that:

“[z]oning 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 in 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 of population 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.” D.C. Code § 6-641.02.

VI. EVALUATION OF PROPOSED MAP AMENDMENT AND COMPLIANCE WITH STATUTORY STANDARDS

A. Comprehensive Plan

The rezoning of the Property to the MU-8 zone is not inconsistent with the policies and goals of the Comp Plan, including the FLUM and GPM. The Comp Plan guides the District’s development, both broadly and in detail, through maps and policies that address the physical development of the District. 10A DCMR § 103.2. The Comp Plan also addresses social and economic issues that affect and are linked to the physical development of the city and the well-being of its citizens. The Comp Plan allows the District to ensure that its resources are used wisely and efficiently and that public investment is focused in the areas where it is needed most. 10A DCMR § 100.14. The Comp Plan is not intended to be a substitute for more detailed plans nor dictate what other plans must cover. Rather, it is the one document that bridges all topics and is cross cutting in its focus. The Comp Plan provides the “big picture” of how change will be managed in the years ahead and, thus, is intended to be interpreted broadly, with implementation accomplished through agency strategic plans, operational plans, long-range plans on specific topics, and focused plans for small areas of the city. 10A DCMR § 103.5.

Pursuant to the Home Rule Charter, zoning shall not be inconsistent with the Comp Plan. D.C. Code §6-641.02. As stated in the Framework Element, “[i]n its decision-making, the [Commission] must make a finding of not inconsistent with the [Comp Plan]. To do so, the [Commission] must consider the many competing, and sometimes conflicting, policies of the [Comp Plan], along with the various uses, development standards and requirements of the zone districts. It is the responsibility of the [Commission] to consider and balance those policies relevant and material to the individual case before it in its decision-making, and clearly explain its decision-making rationale.” 10A DCMR § 224.8. The Framework Element further states that “the zoning of any given area should be guided by the FLUM, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements.” 10A DCMR §

226.1(d). Thus, to approve an application the Commission must evaluate the consistencies and inconsistencies of the requested rezoning with the Comp Plan GPM, FLUM, and various Citywide and Area Element policies and make an overall determination as to whether the request is “not inconsistent” with the Comp Plan when read as a whole. In the event the Zoning Map amendment is inconsistent with one or more Comp Plan policies, this does not mean the Commission must disapprove the application.

As noted above, the Comp Plan is a broad policy framework that is intended to be interpreted broadly. Thus, to the extent there are inconsistencies, the Commission simply must acknowledge said inconsistencies and explain how they are outweighed by other Comp Plan policies and/or competing considerations. The D.C. Court of Appeals (the “Court”) has upheld this interpretation of the Comp Plan and the manner in which the Commission shall carry out its review relative to the Comp Plan. The Court has stated:

The Comp Plan is a “broad framework intended to guide the future land use planning decisions for the District.” *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011). Thus, “[e]ven if a proposal conflicts with one or more individual policies associated with the [Comp] Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the [Comp] Plan as a whole.” *Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comp Plan reflects numerous “occasionally competing policies and goals,” and, “[e]xcept where specifically provided, the [Comp] Plan is not binding.” *Id.* at 1167, 1168. Thus, “the Commission may balance competing priorities” in determining whether a proposal would be inconsistent with the Comp Plan as a whole. *D.C. Library Renaissance Project/West End Library Advisory Grp. v. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013). “If the Commission approves a [proposal] that is inconsistent with one or more policies reflected in the [Comp] Plan, the Commission must recognize these policies and explain [why] they are outweighed by other, competing considerations.” *Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016).

As detailed below, in this instance the proposed rezoning of the Property to MU-8 is not inconsistent with the policies and goals of the Comp Plan, including the FLUM and GPM, when read as a whole.

A primary focus of the Comp Plan is racial equity. Indeed, the importance of equity to District residents was made abundantly clear when the Office of Planning conducted its DC Values survey in Spring 2019. In addition to equity, District residents also expressed the importance of other high-level values such as accessibility, diversity, livability, opportunity, prosperity, resilience, and safety. When choosing equity, residents expressed concerns about rising costs and inequitable access to opportunities for housing, businesses, employment, and other necessities. Overall, livability, equity, and safety were considered the most important values. 10A DCMR § 107.17 – 107.22.

As stated in the Framework Element, equity is both an outcome and a process. 10A DCMR § 213.6. Equity exists where all people share equal rights, access, choice, opportunities, and outcomes, regardless of characteristics such as race, class, or gender. It is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities. An important factor to advancing racial equity is to acknowledge that equity is not the same as equality. “As an outcome, the District achieves racial equity when race no longer determines one’s socioeconomic outcomes; when everyone has what they need to thrive, no matter where they live or their socioeconomic status; and when racial divides no longer exist between people of color and their white counterparts. As a process, we apply a racial equity lens when those most impacted by structural racism are meaningfully involved in the creation and implementation of the institutional policies and practices that impact their lives, particularly people of color.” 10A DCMR § 213.9 For its part, the Commission shall apply a racial equity lens when reviewing zoning requests against the relevant standard of review set forth in the Zoning Act and/or Zoning Regulations. In this case, the Commission shall evaluate the requested Zoning Map amendment through a racial equity lens to make its determination as to whether the requested rezoning is not inconsistent with the Comp Plan as a whole.

In its supplemental report in Z.C. Case No. 20-24 (Barry Farm map amendment), the Office of Planning stated “[t]he direction to consider equity as part of its [Comp Plan] consistency analysis indicates that the equity analysis is intended to be based on the policies of the Comp Plan and part of the Commission’s consideration of whether a proposed zoning action is “not inconsistent” with the Comp Plan, rather than a separate determination about a zoning action’s equitable impact. And as is the case whenever the Commission considers Comp Plan consistency, the scope of the review and Comp Plan policies that apply will depend on the nature of the proposed zoning action.” Equity is conveyed throughout the Comp Plan, particularly in the context of zoning, where certain priorities stand out, including affordable housing, displacement, and access to opportunity. To help guide the Commission in applying a racial equity lens to its decision making, the Implementation Element states that “[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 in the District.” 10A DCMR § 2501.6.

The following sections of this statement reflect the Applicant’s thorough evaluation of the proposed Zoning Map amendment’s overall consistency with the Comp Plan, including the GPM, FLUM, Citywide Elements, and the Far Southeast/Southwest Planning Area Element. Given the wide range of topics addressed in the Comp Plan, certain Citywide Elements may have little to no applicability to requests for rezoning. Such is the case for this requested Zoning Map amendment. Notwithstanding, in conducting its Comp Plan evaluation the Applicant has thoroughly reviewed the goals and policies of every Comp Plan element and has determined that, individually and as a whole, the proposed Zoning Map amendment is not inconsistent with the elements of the Comp Plan. For those Citywide Elements that are more directly applicable to the Applicant’s request, a brief narrative is provided below explaining the basis for the Applicant’s determination that the proposed Zoning Map amendment is not inconsistent with that particular element. Finally, in accordance with the guidance provided by the Court, the Applicant’s evaluation also includes a specific assessment of potential Comp Plan inconsistencies. As discussed below, to the extent the requested Zoning Map amendment is actually inconsistent with a small number of individual

Comp Plan policies, such inconsistencies are outweighed by other Citywide and Far Southeast and Southwest Comp Plan policies relating to: (i) land use; (ii) housing; (iii) transportation; and (iv) the goals of the RFP that support maximizing density, affordable housing, and neighborhood services and amenities.

1. Generalized Policy Map

The purpose of the GPM is to categorize how different parts of the District may change between 2005 and 2025. It highlights areas where more detailed policies are necessary, both within the Comp Plan and in follow-up plans, to manage this change. 10A DCMR § 225.1. The GPM is intended to “guide land use decision-making in conjunction with the Comp Plan text, the FLUM, and other Comp Plan maps. Boundaries on the map are to be interpreted in concert with these other sources as well as the context of each location. 10A DCMR § 225.2.

As indicated on Exhibit G, the GPM designates the Property as a Neighborhood Enhancement Area. The Comp Plan’s Framework Element describes Neighborhood Enhancement Areas as follows:

“Neighborhood Enhancement Areas are neighborhoods with substantial amounts of vacant and underutilized land. They include areas that are primarily residential in character, as well as mixed-use and industrial areas. Many of these areas are characterized by a patchwork of existing homes and individual vacant lots, some privately owned and others owned by the public sector or non-profit developers. These areas present opportunities for compatible infill development, including new single-family homes, townhomes, other density housing types, mixed-use buildings, and, where appropriate, light industrial facilities. Land uses that reflect the historical mixture and diversity of each community and promote inclusivity should be encouraged.” 10A DCMR § 225.7.

The guiding philosophy in Neighborhood Enhancement Areas is to ensure that new development responds to the existing character, natural features, and existing/planned infrastructure capacity. 10A DCMR § 225.7. New housing should be encouraged to improve the neighborhood and must be consistent with the land-use designation on the Future Land Use Map and with Comp Plan policies. Overall neighborhood character should be protected or enhanced as development takes place. New development in these areas should support neighborhood and city-wide housing needs, reduce crime and blight, and attract complementary new uses and services that better serve the needs of existing and future residents. 10A DCMR § 225.8.

The Property is also in close proximity to the “Enhanced / New Neighborhood [Commercial] Center” envisioned at the Congress Heights Metrorail station. AS described in the Framework Element, Neighborhood Commercial Centers are intended to meet the day-to-day needs of residents and workers in the adjacent neighborhoods. The area served by a Neighborhood Commercial Center is usually less than one mile. Typical uses include, among others, convenience stores, branch banks, restaurants, and basic services, such as childcare. Office space for small businesses also may be found in such locations. Many buildings have upper-story residential uses.

11-A DCMR § 225.15. New development and redevelopment within Neighborhood Commercial Centers must be managed to conserve the economic viability of these areas while allowing additional development that complements existing uses, including residential. 11-A DCMR § 225.16.

The proposed Zoning Map amendment is not inconsistent with the policy objectives of the Neighborhood Enhancement Area and Neighborhood [Commercial] Center GPM designations. Consistent with the policy intent of a Neighborhood Enhancement Area, the proposed map amendment will make effective use of an underutilized site located in close proximity to Metrorail and other neighborhood serving amenities. It will also facilitate the redevelopment of the Property with a new mixed-use development that will bring additional housing to the neighborhood, as well as neighborhood-serving retail and child care uses. As discussed below, the proposed rezoning is not inconsistent with the Property's "Local Public Facilities" FLUM designation and with Comp Plan policies. As described in the Framework Element, rezonings of sites that are designated as Local Public Facilities on the FLUM should be comparable in density and height to those in the vicinity.

The proposed MU-8 zone permits a maximum density and height of 5.0 FAR (6.0 FAR w/ IZ) and 70 feet, respectively. The Property is surrounded by a varied development pattern. To the north is a cemetery. To the east and south, across Congress Street and Savannah Street, respectively, are existing, moderate-scale apartment buildings that are zoned RA-1, generally contain 3 stories, and are set back from the street. Congress Street has a width of approximately 70 feet and Savannah Street has a width of approximately 50 feet, thus development on the Property under the proposed MU-8 zone should not cause adverse impacts on these existing residential uses. Further, as discussed above there is an approved PUD to the west, on the opposite side of the former school building, that has an approved height of 90 feet. The existing pattern and scale of development adjacent to the approved PUD are similar to what surrounds the Property, if not lower in height and density. As discussed further below, the proposal's consistency with the GPM is further justified by the overall consistency with the Comp Plan's citywide and area policies. Of particular note is the proposal's consistency with Comp Plan policies relating to land use, housing, transit-oriented development, and mixed-use development around the Congress Heights Metro Station.

2. Future Land Use Map

The FLUM shows the general character and distribution of recommended and planned uses across the city, and, along with the GPM, is intended to provide generalized guidance on whether areas are designated for conservation, enhancement, or change. 10A DCMR §§ 200.5 and 224.4. The land use category descriptions on the FLUM describe the general character of development in each area, citing typical Floor Area Ratios as appropriate. However, the granting of density bonuses (for example, through Planned Unit Developments or Inclusionary Zoning) may result in density that exceeds the typical ranges cited. 10A DCMR § 228.1(c).

The Comp Plan does not require that each block "strictly correspond" with the general description of the associated land use designation on the FLUM. See Z.C. Order No. 08-15, Finding of Fact No. 74(a). Rather, similar to the GPM, the "[FLUM] is not a zoning map. Whereas

zoning maps are parcel-specific, and establish detailed requirements and development standards for setbacks, height, use, parking, and other attributes, the [FLUM] is intended to be “soft-edged,” does not follow parcel boundaries, and its categories do not specify allowable uses or development standards. By definition, the [FLUM] is to be interpreted broadly and the land use categories identify desired objectives.” 10A DCMR § 228.1(a). Decisions on requests for rezoning shall be guided by the [FLUM] read in conjunction with the text of the Comp Plan (Citywide and Area Elements) as well as Small Area Plans pertaining to the area proposed for rezoning. Id. at § 2504.5.

As shown on Exhibit H, the FLUM designates the Subject Property as Local Public Facilities, reflecting the Property’s prior institutional use as part of the former Malcolm X Elementary School campus. The Local Public Facilities designation includes the following:

“...land and facilities occupied and used by the District of Columbia government or other local government agencies (such as WMATA), excluding parks and open space. Uses include public schools including charter schools, public hospitals, government office complexes, and similar local government activities. Other non-governmental facilities may be co-located on site. While included in this category, local public facilities smaller than one acre – including some of the District’s libraries, police and fire stations, and similar uses – may not appear on the map due to scale. Zoning designations vary depending on surrounding uses.” 10A DCMR § 227.17.

Unlike the residential and commercial FLUM designations, the Local Public Facilities designation does not provide general guidance on density or zones that are considered consistent. Rather, as stated above, the description of the Local Public Facility designation stipulates that zoning varies depending on surrounding uses. However, the Comp Plan does provide general guidance on zoning when sites designated as Local Public Facilities are redeveloped with other uses. Specifically, the Framework Element states that “if a change in use occurs on these sites in the future (for example, a school becomes surplus or is redeveloped), the new designations should be comparable in density or intensity to those in the vicinity, unless otherwise stated in the Comprehensive Plan Area Elements or an approved Campus Plan. Emphasis added. 10A DCMR § 228.1(h). See also Z.C. Order Nos. 17-27, 16-11, 06-31, 11-02/11-02A, and 11-10, where the Zoning Commission applied the standard of 10A DCMR § 228.1(h) by comparing the proposed site density to the surrounding neighborhood context and FLUM designations in approving a standalone Zoning Map amendment and PUDs with related Zoning Map amendments for properties designated Local Public Facilities on the FLUM..

The proposed Zoning Map amendment is not inconsistent with the FLUM. As indicated above, matter-of-right development under the proposed MU-8 zone will be compatible with the existing context around the Property. As a matter-of-right, the MU-8 zone permits a maximum height of 70 feet. Within that permitted height, the Applicant is intending to construct a 6-story, mixed-use building containing retail, child care, and residential uses. A development of this size and intensity will not adversely impact uses in the vicinity due to the separation provided by adjacent streets and the additional setbacks of adjacent developments. In addition, the proposed MU-8 zone is appropriate given the Mixed Use (Medium Density Commercial / Medium Density Residential) designation of the area to the immediate west and the Property’s proximity to Metrorail. The adjacent FLUM designation could easily support even greater height and density than what is permitted under the MU-8 zone. This can be seen in the approved PUD located to the

west. Notwithstanding, the proposed MU-8 zone strikes a reasonable balance between achieving the goals of the RFP – including maximizing density and affordable housing and promoting transit-oriented development, with ensuring compatibility within the surrounding development pattern.

3. Far Southeast / Southwest Area Element

The Subject Property is located within the Far Southeast and Southwest Area Element of the Comp Plan. The Far Southwest and Southwest Area is comprised of 19th century row houses in Historic Anacostia as well as brand new communities like Henson Ridge and Wheeler Creek. Its housing ranges from single family homes in neighborhoods like Congress Heights, to garden apartments in neighborhoods like Washington Highlands and Fort Stanton, to high-rise apartments such as the Vista at Wyngates and Capitol Plaza II. 10A DCMR § 1800.2.

Based on land availability, recent development activity, planning policies, and regional growth trends, significant growth is expected during the next 20 years within the Far Southeast and Southwest Planning Area. 10A DCMR § 1806.1. It is estimated that this growth will increase households in the area by approximately 38% by 2045. *Id.* To accommodate this growth, it is assumed that new dwelling units will be constructed on vacant and underused sites, such as the Property. The community has recognized that there are opportunities for increased density within the Planning Area. However, higher density should be concentrated around the Metrorail and in neighborhood commercial centers. Beyond these areas, residents have expressed the opinion that deteriorating apartment complexes should be replaced with less dense housing over time. 10A DCMR § 1807.3.

The growth expected in the Planning Area has potential to bring positive progress toward addressing some of the area’s planning and development priorities that were identified during the 2006 Comp Plan cycle. Some of these priorities have remained the constant, others have evolved since the last major Comp Plan update. Some of the area’s planning and development priorities that are most relevant to the proposed Zoning Map amendment include:

- More high-quality housing options, especially affordable housing;
- Increased density around Metrorail stations that could provide opportunities for older adults, households without cars, younger renters, and other;
- An improved educational system, including additional facilities to provide job training to help alleviate unemployment, under-employment, and poverty; and
- More retail services.

The continued need to address the specific priorities listed above is reflected in Census data recent surveys conducted by the Office of Planning within the Congress Heights Area. As stated above, access to affordable housing is perhaps the most important element of achieving racial equity. The demand for affordable housing in the Far Southeast and Southwest Planning Area currently outpaces supply, resulting in many residents being housing cost burdened. According to the 2018 American Community Survey, approximately 55% of Congress Heights residents spend over 35% of their income on housing. As stated above, the link between land use and transportation is critical to achieving the District’s planning goals, and to advancing racial equity. Therefore, given the high percentage of Ward 8 residents that rely upon public transit to commute, it is

important that opportunities for new affordable housing near transit be maximized, and that affordable housing developments be co-located with other neighborhood amenities and services.

Consistent with the above-describe priorities and needs expressed by residents, the proposed Zoning Map amendment will enable new multifamily residential development at a height and density that is consistent with the RFP, takes advantage of transit proximity, and is appropriate in relation to surrounding development (FSS-1.1.1, FSS-1.1.4, FSS-2.4.1). Further, the proposed MU-8 zone will allow for future development on the Property to also include new retail and service uses that can help address neighborhood needs for greater shopping, eating and drinking, office, and child care uses (FSS-1.1.6).

The Project advances the following Far Southeast / Southwest Area Element policies:

FSS-1.1: Guiding Growth and Neighborhood Conservation

- FSS-1.1.1: Directing Growth
- FSS-1.1.4: Infill Housing Development
- FSS-1.1.6: Retail Development
- FSS-1.1.9: Minority/Small Disadvantaged Business Development
- FSS-1.1.10: Workforce Development Centers

The Property is also within the Congress Heights Metro Station Policy Focus Area. 10A DCMR § 1810.3. The proposed Zoning Map amendment would also help advance FSS-2.4.1: Congress Heights Metro Station Mixed-Use, which encourages development of the Congress Heights Metro station site and its vicinity to promote new economic development in a manner that is cognizant of the adjacent lower-density neighborhoods.

4. Land Use Element

The Land Use Element is the cornerstone of the Comp Plan. It establishes the basic policies guiding the physical form of the District, and provides direction on a range of development, preservation, and land use compatibility issues. The element describes the range of considerations involved in accommodating an array of land uses within Washington, D.C. 10A DCMR § 300.1. Through its policies and actions, the Land Use Element addresses the numerous, challenging land use issues that are present in the District, including, among others:

- Providing adequate housing, particularly affordable housing;
- Conserving, creating, and maintaining inclusive neighborhoods, while allowing new growth that fosters equity, including racial equity, and accessibility;
- Enhancing neighborhood commercial districts and centers;
- Balancing competing demands for finite land resources;
- Directing growth and new development to achieve economic vitality and creating jobs while minimizing adverse impacts on residential areas and open spaces; and
- Promoting transit-accessible, sustainable development.

10A DCMR § 300.2.

The need to address these issues in the District has become even more pressing in light of the COVID-19 pandemic and increasingly severe weather patterns that challenge the District's resiliency.

More than any other part of the Comp Plan, the Land Use Element lays out the policies through which growth and change occur. The Land Use Element integrates and balances competing policies of all the other District Elements. 10A DCMR § 300.3. The proposed Implementation Element further recognizes the "overlapping nature" of the [Comp Plan] elements, stating that "an element may be tempered by one or more of the other elements," and further states that "because the Land Use Element integrates the policies of all other District Elements, it should be given greater weight than the other elements." 10A DCMR § 2504.6.

As related to the subject application, the policies and actions of the Land Use Element all aim to utilize land resources efficiently to achieve the following goals:

- Meet long-term neighborhood, District-wide, and regional needs;
- Protect the health, safety, and welfare of District residents and businesses;
- To address past and current inequalities disproportionately impacting communities of color;
- Sustain, restore, and improve the affordability and equity of all neighborhoods; and
- Provide for additional housing and employment opportunities.

10A DCMR § 302.1.

For the reasons discussed below, the requested Zoning Map amendment will help achieve the above-described goals through its consistency with several Land Use Element policies. Upon evaluation of the Land Use Element policies and actions, the Applicant finds the proposed rezoning to be not inconsistent with the Land Use Element overall, and specifically with the policies listed below.

The proposed map amendment will facilitate redevelopment of the Property with a new, mixed-use development that will help anchor the Neighborhood Commercial Center envisioned on the GPM around the Congress Heights Metrorail Station (LU-1.4.1, LU-2.4.1, LU-2.4.2). The mixed-use development contemplated by the Applicant, as proposed in its response to the District's RFP for a portion of former Malcolm X Elementary School Campus, will provide new housing opportunities at a wide range of affordable income levels, including households that rely heavily on public transit to commute and fulfill their day-to-day needs (LU-1.4.2 - LU-1.4.4, LU-2.1.12). This is particularly notable considering that in the five year period between 2014 - 2018, over 19% of Ward 8 households have a commute time of 60 minutes or more, the highest in the city, with approximately 38% of Ward 8 households relying upon public transit to get to work.³ It will also retail and day care uses, which are identified in the Comp Plan as lacking in this area of the city. Further, the redevelopment of the Property will build upon other existing and planned developments around the Congress Heights Metrorail Station and along the Alabama Avenue

³ U.S. Census Bureau American Community Survey

corridor at a height and density that promotes transit usage and respects the character, scale, and integrity of the surrounding context (LU-1.4.5, LU-2.1.1, LU-2.1.3).

The Project advances the following Land Use Element policies:

LU-1.4: Transit-Oriented and Corridor Development

- LU-1.4.1: Station Areas as Neighborhood Centers
- LU-1.4.2: Development Around Metrorail Stations
- LU-1.4.4: Affordable Rental and For-Sale Multi-family Housing Near Metrorail Stations
- LU-1.4.5: Development Along Corridors

LU-2.1: A District of Neighborhoods

- LU-2.1.1: Variety of Neighborhood Types
- LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods
- LU-2.1.12: Reuse of Public Buildings

LU-2.4: Neighborhood Commercial Districts and Centers

- LU-2.4.1: Promotion of Commercial Center
- LU-2.4.2: Hierarchy of Commercial Centers

5. Transportation Element

The Transportation Element provides policies and actions that are devoted to maintaining and improving the District’s transportation system and enhancing the travel choices available to District residents, visitors, and workers. These transportation-related policies are integrally related to other Comprehensive Plan policies that address land use, urban design, and environmental protection. The close interplay between these policy areas is necessary to improving safety, mobility, and accessibility in the District. 10A DCMR § 400.1. A well-balanced transportation is integral to the District’s efforts to sustain and enhance resident quality of life. Such a system requires integrating land use and transportation where concerted efforts are made to both provide an efficient, multi-modal transportation system and locate land uses in a way that maximizes the potential of said transportation system.

The overarching goal for transportation in the District is to create a safe, sustainable, equitable, efficient, and multi-modal transportation system that meets the access and mobility needs of District residents, workers, and visitors. 10A DCMR § 401.1. An important component to achieving this goal is to closely coordinate land use and transportation decisions. The balance between housing and jobs plays a clear role in travel patterns. Generally, when homes and jobs are located close to transit, quality of life is improved and the demands on transportation infrastructure are reduced. The Comp Plan recommends that future efforts take these factors into account to ensure that households with varying incomes and communities of color have equitable access to housing and jobs via safe and efficient transportation options.

The Applicant has conducted a review of the proposed Zoning Map amendment against the proposed Transportation Element policies and actions, which did not reveal any potential inconsistencies. Overall, the proposal will help achieve the District’s overarching transportation

goals and is not inconsistent with the Transportation Element policies and actions. Consistent with the RFP, the map amendment will facilitate transit-oriented development immediately adjacent to the Congress Heights Metrorail Station and along the priority bus routes that serve the Alabama Avenue corridor (T-1.1.4). In addition, the map amendment will advance equitable access to transportation and ridership potential given the Property's proximity to public transit and the levels of housing affordability that will come from the Applicant's development agreement with the District (T-1.1.5 and T-1.1.7).

The Project advances the following Transportation Element policies:

T-1.1: Land Use - Transportation Coordination

- T-1.1.4: Transit-Oriented Development
- T-1.1.5: Joint Development
- T-1.1.7: Equitable Transportation Access

6. Housing Element

The Housing Element describes the importance of housing to neighborhood quality in the District, and the importance of providing housing opportunities for all segments of the population throughout the city. 10A DCMR § 500.1. The District continues to face significant demand for more housing, and in particular affordable housing across a range of income levels. Other critical housing issues that the District is facing include furthering fair housing opportunities, especially in high-cost areas; fostering housing production to improve affordability; promoting more housing near transit; restoring or demolishing vacant or underused properties; and maintaining healthy homes for residents. 10A DCMR § 500.2.

The overarching housing goal of the proposed Housing Element is to develop and maintain new residential units to achieve a total of 36,000 new units by 2025 that provide a safe, decent, accessible, and affordable supply of housing for all current and future residents of the District. 10A DCMR § 501.1. To achieve this target, the District must maintain a high rate of housing production at all income levels, with a range of housing types, in all part of the District. While equity is conveyed throughout the Comp Plan, access and availability to quality affordable housing is arguably the most important issue when it comes to racial equity. The Comp Plan recognizes that without increased housing the imbalance between supply and demand will drive up housing prices in a way that creates challenges for many residents, particularly low-income residents. However, the District's housing crisis cannot be successfully addressed by solely focusing on housing supply and demand. Rather, issues related equitable distribution of affordable housing and ensuring new affordable housing has equitable access to transit and amenities are other important factors that need consideration.

The proposed Zoning Map amendment to rezone the Property to MU-8 is not inconsistent with the policies of the Housing Element, and in particular those listed below. Consistent with the goals and requirements of the RFP, the map amendment will greatly assist the District in meeting its affordable housing goals by increasing density on a portion of a District-owned site that is underused (H-1.1.3, H-1.2.1, H-1.2.4, H-1.4.G). This is further supported given the Property's location near the new Neighborhood Commercial Center envisioned on the GPM at the Congress

Heights Metrorail Station, its proximity to transit, and its proximity to other neighborhood amenities at the Shops at Park Village and THE ARC (H-1.1.4). The map amendment will also facilitate housing for larger households since, as stated above, a high percentage of the dwelling units included in the Applicant's development proposal to the District include three bedrooms (H-1.3.1). Finally, the proposal to rezone the Property to MU-8 supports a "whole neighborhood approach" to planning and development. Specifically, by allowing greater-density, mixed-use development on the Property, residents of the neighborhood will have access to the retail, day care, and other uses and services that are part of the Applicant's proposal to the District. The future residents on the Property will also have access to these uses and services, and be able to take advantage of other existing retail (including a grocery store), services, open spaces, and transportation in the area.

The Project substantially advances the following Housing Element policies:

H-1.1: Expanding Housing Supply

- H-1.1.3: Balanced Growth
- H-1.1.4: Mixed Use Development

H-1.2: Ensuring Housing Affordability

- H-1.2.1: Low- and Moderate-Income Housing Production as a Civic Priority
- H-1.2.4: Housing Affordability on Publicly Owned Sites

H-1.3: Diversity of Housing Types

- H-1.3.1: Housing for Larger Households

H-1.4: Housing and Neighborhood Revitalization

- H-1.4.6: Whole Neighborhood Approach
- H-1.4.G: Co-Location of Housing with Public Facilities

7. Economic Development Element

The Economic Development Element addresses the future of Washington, DC's economy and the creation of economic opportunity for current and future residents. 10A DCMR § 700.1. It seeks to address critical economic development issues such as, among others, ensuring prosperity is equitably shared across race and geography, growing and diversifying the District's economy, increasing job opportunities and workforce development, and expanding opportunities for small and local businesses. 10A DCMR § 700.2.

The Comp Plan's overarching economic development goal is to drive inclusive economic expansion and resilience by growing the economy and reducing employment disparities across race, geography, and educational attainment status. 10A DCMR § 701.1. The proposed map amendment will help the District achieve its economic development goals by allowing mixed-use development on the Property that will increase the neighborhood's access to neighborhood serving uses and amenities (ED-2.2.1). More specifically, the proposed map amendment will facilitate the Applicant's efforts to advance its development proposal - which includes new retail and day care uses - that was selected by the District in accordance with the RFP. Further, the proposal will

support equitable access to quality retail and day care services in Ward 8, which are well-known to be lacking in east of the river neighborhoods. And will also help promote the establishment of a new Neighborhood Commercial Center around the Congress Heights Metrorail Station as envisioned in the Comp Plan (ED-3.3.1).

The Project substantially advances the following Economic Development Element policies:

ED-2.2: The Retail Economy

- ED-2.2.1: Expanding the Retail Section

ED-3.1: Strengthening Retail Districts

- ED-3.3.1: Neighborhood Commercial Vitality

8. Urban Design Element

The Urban Design Element addresses the District’s physical design and visual qualities. It describes ways in which different aspects of the District’s landscape, especially its buildings, streets, and open spaces, work together to define impressions of the city and its neighborhoods. The defining urban design qualities of the District derive from the historic Plan of Washington, and the unique characteristics of the city’s many neighborhoods. As the District continues to support growth to address housing and economic development needs, several important urban design challenges must be considered. These include strengthening neighborhood quality of life while accommodating growth and change, and providing compatible infill development and appropriate transitions between varying uses and densities. 10A DCMR § 900.1 & 900.2.

As demonstrated throughout this Comp Plan evaluation, urban design objectives are interwoven through several proposed Comp Plan Elements. The overarching goal of the Urban Design Element is to enhance the beauty, equity, and livability of Washington, DC by reinforcing its historic design legacy and the identity of its neighborhoods and centers, integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and functions of streets and public spaces. 10A DCMR § 901.1. The proposed rezoning of the Property will help achieve this goal. Overall, the Applicant finds the Project to be not inconsistent with the policies and actions of the proposed Urban Design Element, and in particular those listed below.

The proposed rezoning to MU-8 will support the establishment of a Neighborhood Commercial Center at the Congress Heights Metrorail Station, as depicted on the GPM, by allowing mixed-use development at a greater density than is currently permitted under the existing RA-1 zoning (UD-2.2.3). Promotion of this new, transit accessible commercial center through the map amendment will allow the Applicant to redevelop the Property with a mix of affordable housing, retail, and child care uses in a compact, walkable manner that complements other existing and planned uses nearby. Though the map amendment will allow an increase in height and density, redevelopment of the Property under MU-8 zone parameters will not overwhelm or negatively contrast with the scale and pattern of adjacent and nearby development. This is due to the setbacks

provided on adjacent sites and the separation provided by the streets surrounding the Property. (UD-2.2.4, UD-2.2.5)

The proposed Zoning Map amendment specifically advances the following Urban Design Element policies:

UD-2.2: Designing for Vibrant Neighborhoods

- UD-2.2.3: Neighborhood Mixed-Use Centers
- UD-2.2.4: Transitions in Building Intensity
- UD-2.2.5: Infill Development

9. Educational Facilities Element

The Educational Facilities Element addresses the location, planning, use, and design of the District’s educational facilities and campuses. It includes policies and actions related to early childhood development facilities, public primary and secondary District of Columbia Public Schools (DCPS), public charter schools, private schools, and higher educational facilities, including public and private colleges and universities. 10A DCMR § 1200.1. The Element focuses on the efficient use of school property and the relationship between schools and surrounding communities.

The overarching goal of the Educational Facilities Element is to provide facilities that accommodate population growth and its geographic distribution and inspire excellence in learning; create a safe and healthy environment for students; and help each individual achieve their fullest potential while helping to build and strengthen local communities. 10A DCMR § 1201.1. The proposed rezoning of the Property will help achieve this goal, and overall is not inconsistent with the policies and actions of the Educational Facilities Element.

The Educational Facilities Element encourages new and expanded child development facilities and uses in all areas so that residents have equitable access to affordable, quality child development facilities. As stated above, the Applicant’s development proposal that was recently selected by the District will include space allocated for a new child day care use that will help serve the needs of the Congress Heights neighborhood and larger Ward 8 (EDU-4.1.2, EDU-4.1.3)

The proposed Zoning Map amendment advances the following Educational Facilities Element policies:

EDU-4.1: Child Development Facilities

- EDU-4.1.2: Expanding Allowable Spaces for Child Development Facilities
- EDU-4.1.3: Child Development Facilities

10. Analysis of Potential Comprehensive Plan Inconsistencies

The foregoing Comp Plan analysis thoroughly demonstrates the numerous ways in which the proposed Zoning Map amendment aligns with the policies and goals of the Comp Plan, including the FLUM and GPM. However, as established by the Court, it is not sufficient to simply

identify the policies that would be advanced when evaluating a proposal for consistency with the Comprehensive Plan. Rather, because of the overlap within and between the elements the evaluation must also recognize where there may be potential inconsistencies. Indeed, since first being adopted by the D.C. Council, the Comp Plan has always recognized that there is intentional overlap between its individual components (elements) and that it is intended to be a policy framework that is to be interpreted broadly and provide guidance to all executive and legislative decision making. For example, the first Comp Plan adopted in 1984 stated “[t]he primary dynamic of the District elements of the Plan are the overlapping of its elements’ goals. This overlapping is intentional.” (Section 102, District of Columbia Comprehensive Plan Act of 1984). The current Implementation Element reflects the same language: “[r]ecognize the overlapping nature of the [Comp Plan] elements as they are interpreted and applied. An element may be tempered by one or more of the other elements.” 10A DCMR § 2504.6. The Court has also recognized this overlap, and reiterates that “[e]ven if a proposal conflicts with one or more individual policies associated with the [Comp] Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the [Comp] Plan as a whole.” *Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). In the event there are inconsistencies, an explanation must be provided as to why said inconsistencies are outweighed by the advancement of other policies and considerations.

Consistent with the guidance provided in the Implementation Element, the Applicant conducted a thorough Comp Plan evaluation using a racial equity lens and, as detailed throughout this statement, finds the proposed Zoning Map amendment not inconsistent with the Comp Plan when read as a whole. In conducting its evaluation, the Applicant was careful to identify any instances where the proposal may be viewed as being inconsistent with certain Comp Plan policies. The result being that while the Applicant did identify a few policies where the map amendment may be viewed as inconsistent, these potential inconsistencies are outweighed by the proposal’s overwhelming consistency with the GPM and other competing Comp Plan policies relating to land use, housing, transit oriented development, and economic development.

One potential inconsistency involves the policies of the Far Southeast and Southwest Area Element. Specifically, policies FSS-1.1.1 (Directing Growth) and FSS-2.4.1 (Congress Heights Metro Station Mixed-Use) both promote increased density and mixed-use development around Metrorail Stations, including the Congress Heights Metrorail Station, particularly to help meet the demand for more market-rate and affordable housing, greater retail and service uses, and employment growth. However, both of these policies state that any increase in zoning or density shall only be made available through the PUD process to include commensurate benefits for the neighborhood in terms of education and job opportunities, new and affordable housing for homeownership, improved urban design, and public infrastructure improvements.” 10A DCMR 1808.2.

Although the Applicant is seeking approval of a map amendment instead of a PUD, the proposed map amendment is consistent with the intent of these two policies given the requirements the Applicant must meet under the RFP (mixed-use, transit-oriented development that is compatible with the neighborhood, maximizes affordable housing, and provides neighborhood-serving retail). The combined value of the future redevelopment of the Property and these additional RFP requirements certainly balance the additional development incentives obtained through the map amendment. Notwithstanding, to the extent the proposed map

amendment is viewed as inconsistent with these two policies, the Commission may still approve the rezoning. As stated above, the Comp Plan and the Court state that the Commission may approve a zoning request even if it conflicts with one or more Comp Plan policies. The same holds true even if a Comp Plan policy is worded in mandatory terms. “[t]he Commission can approve a PUD that is inconsistent with one or more such provisions if the provisions at issue are worded in mandatory terms, only if the Commission (1) concludes that disregarding one such provision is necessary to comply with one or more other such provisions and (2) explains why it is deciding to favor one such provision over the other such provision.’ (*Barry Farm Tenants and Allies Association v. Zoning Commission*, No. 15-AA-1000 (D.C. 2018) citing *Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016)). In this instance, policies FSS-1.1.1 and FSS-2.4.1 are outweighed by the proposal’s consistency with Land Use, Housing and Transportation Element policies relating to development of affordable housing near Metrorail, equitable access to transportation, and locating housing on public-owned sites and together with public facilities (LU-1.4.4, T-1.1.7, H-1.2.4, H-1.4.G).

Other potential inconsistencies relate to the height and density permitted in the proposed MU-8 zone compared to the scale of development in the immediate neighborhood, and the Comp Plan’s recommendations for transitions in building intensity and infill development. For example, the Urban Design Element encourages gradual design transitions and avoidance of overpowering contrasts in scale and height as infill development occurs (UD-2.2.4, UD-2.2.5). As discussed above, characteristics of the context surrounding the Property support a determination that the proposed map amendment is not inconsistent with these particular policies. This includes the separation between the Property and the existing residential uses to the east and south provided by surrounding streets and setbacks on the adjacent properties. This separation will effectively provide a gradual design transition between the MU-8 zone proposed for the Property and the adjacent RA-1 zoned areas. In addition, there is a PUD with an approved height of 90 feet to the west of the Property that provides precedent for great height and density on the block, especially given the proximity to Metrorail. Notwithstanding, to the extent there is a degree of inconsistency, the map amendment’s consistency with numerous other Land Use and Housing Element policies far outweigh any inconsistency that may arise from the above-mentioned Urban Design Element policies. Finally, the Applicant has closely coordinated with the community on its development plan, including presentation of its conceptual plan, and has received the support of ANC 8E (Exhibit I).

B. Health, Safety, and General Welfare

The proposed Zoning Map amendment will further the public health, safety, and general welfare of the District of Columbia. The requested rezoning to the MU-8 zone will allow the Property to be put to more productive use that addresses specific District and neighborhood needs relating to housing, access to quality retail, and availability of convenient child care services. The Zoning Map amendment will protect the health and safety of District residents by allowing for future redevelopment of the Property at a height and density that is not inconsistent with the Comp Plan, including the FLUM and GPM; appropriate for a neighborhood commercial center near Metrorail; and is compatible with the scale and development pattern of the surrounding neighborhood. The Zoning Map amendment will also promote the general welfare through: (i) new affordable housing; (ii) increasing equitable access to much needed neighborhood retail and

service uses; and (iii) new employment opportunities that will result from the Applicant's development proposal and the other programs that it has committed to offer.

C. No Adverse Consequences

The Zoning Map amendment will not result in adverse consequences. Rather, the requested rezoning will contribute several positive and important benefits as it will facilitate the redevelopment of a portion of an underutilized, District-owned property with a new mixed-use development - containing affordable housing, retail, and day care uses – in a burgeoning Neighborhood Commercial Center near Metrorail. Redevelopment in accordance with the proposed MU-8 zone will improve the Property's utilization without causing a detriment to the neighborhood. Instead, the proposal will enhance the quality of the neighborhood by facilitating greater affordable housing, access to transit, neighborhood retail and day care services, and other community enhancements. The Zoning Map amendment will not generate any negative external effects, but will instead promote the efficient use of high-value land in a manner that will enhance affordable housing supply and quality of life in the District.

D. Proposed MU-8 Zone Would Create Favorable Conditions

As described above, the proposed Zoning Map amendment will advance a number of policies embodied in the various elements of the Comp Plan, and will satisfy the requirements of the RFP relating to affordable housing at a range of income levels, increased density and transit-oriented development, neighborhood compatibility, and the provision of retail and services that serve the neighborhood. Overall, the rezoning will allow the future redevelopment of the Property in a manner that increases site utilization without compromising public facilities and neighborhood character.

VII. ANC SUPPORT OF APPLICATION

The Applicant has coordinated with the community and ANC 8E on the proposed map amendment. At its meeting on June 22, 2021, ANC 8E voted unanimously to support the proposed Zoning Map amendment (Exhibit E). In its letter of support, ANC 8E acknowledges that the intended redevelopment of the Property will add residences “without making the building too large or out of place in the neighborhood.” The ANC further states that the map amendment “will further facilitate the implementation of broad public policy and the District's Comprehensive Plan.

VIII. CONCLUSION

For all of the reasons stated herein, the Applicant submits that the proposed rezoning of the Property from the RA-1 to the MU-8 zone meets all of the requirements for an amendment to the 2016 Zoning Map. The proposed Zoning Map amendment is not inconsistent with the Comp Plan and will further each of the specific objectives set forth in the Zoning Act. Accordingly, the Applicant respectfully requests that the Commission schedule a public hearing on this application and grant the requested Zoning Map amendment.

Respectfully submitted,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "Kyrus L. Freeman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kyrus L. Freeman