

GOVERNMENT OF THE DISTRICT OF COLUMBIA



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 18-11

Z.C. Case No. 18-11

Riggs Road Center, LLC and Avissar Riggs Road, LLC  
(Map Amendment @ Square 3710)

March 11, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on February 7, 2019, to consider an application for a Zoning Map Amendment (the “Application”) submitted by Riggs Road Center, LLC and Avissar Riggs Road, LLC (collectively, the “Applicant”) pursuant to Subtitle X, Chapter 4 of Title 11 of the DCMR, (the Zoning Regulations of 2016, the “Zoning Regulations,” to which all references are made unless otherwise specified), to amend the Zone Map from the PDR-1 zone to the MU-4 zone for Lots 199, 848, and 849 in Square 3710 (the “Property”). For the reasons set forth below, the Commission hereby **APPROVES** the Application.

**FINDINGS OF FACT**

**Notice of Contested Case**

1. On May 11, 2018, prior to filing the Application, the Applicant mailed a notice of intent to file the Application to all property owners within 200 feet of the Property and Advisory Neighborhood Commission (“ANC”) 4B. (Exhibit [“Ex.”] 2E.)
2. The Applicant filed the Application as a contested case map amendment with the Commission on July 11, 2018. (Ex. 1, 2.) The Applicant submitted a checklist demonstrating that the Application satisfied the filing requirements of Subtitle Z § 304. (Ex. 2F.)
3. At its public meeting of October 22, 2018, the Commission set the case down for a public hearing based on the recommendation of the Office of Planning (“OP”). While the Application was originally filed as a contested case map amendment, it was mistakenly set down as a rulemaking case, although the public notice requirements for a contested case were followed. (Ex. 11, 15-17.)
4. Pursuant to the contested case requirements of Subtitle Z § 402, notice of the February 7, 2019 public hearing was provided to all property owners within 200 feet of the Property, as well as to ANC 4B on December 11, 2018. A description of the proposed map amendment and the notice of the public hearing for the Application were published in the *D.C. Register* on December 21, 2018. (Ex. 15-17.)

5. At the February 7, 2019 public hearing, the Secretary to the Commission acknowledged the error with the original setdown and clarified that the case was a contested case. (February 7, 2019 Hearing Transcript [“Tr.”] at 17.)

### **Parties**

6. The only party to the Z.C Case No. 18-11, other than the Applicant, was ANC 4B, the “affected” ANC pursuant to Subtitle Z § 101.8.

### **The Property**

7. The Property consists of approximately 84,649 square feet, or approximately 1.94 acres, of land area and is bounded by 3<sup>rd</sup> Street, N.E. to the east, commercial and industrial buildings to the north and south, and Metrorail and CSX tracks to the west. (Ex. 2.)
8. The Property is currently improved with industrial buildings. (Ex. 2.)

### **Current Zoning**

9. The Property is currently zoned PDR-1 zone. The PDR-1 is intended to permit moderate-density commercial and PDR activities employing a large workforce and requiring some heavy machinery under controls that minimize any adverse impacts on adjacent, more restrictive zones. (Subtitle J § 200.1.)
10. As a matter of right, the PDR-1 zone permits:
  - a. A maximum density of 3.5 floor area ratio (“FAR”) for unrestricted uses, with 2.0 FAR for restricted uses; (Subtitle J § 202.1.)
  - b. A maximum height of 50 feet; and (Subtitle J § 203.1.)
  - c. No limit on lot occupancy.
11. Square 3748, located directly east across 3<sup>rd</sup> Street, N.E., is zoned MU-4. (Ex. 2C.)
12. Squares 3705 and 3706, located to the west on the other side of the CSX and Metrorail tracks, are zoned R-1-B. (Ex. 2C.)

### **Comprehensive Plan (Title 10A of the DCMR, the “CP”)**

13. The Property is designated for Mixed Use: Moderate Density Residential and Moderate Density Commercial on the CP’s Future Land Use Map (the “FLUM”). (Ex. 2, 2C, 2D.)
14. The Mixed-Use designation on the FLUM indicates areas where the mixing of two or more land uses is encouraged. (CP § 225.18.)
15. According to the CP’s Framework Element (CP § 225.4), a “Moderate Density Residential” designation on the FLUM is assigned to:

[T]he District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, 2-4-unit buildings, row houses, and low-rise apartment buildings. In some of the older inner-city 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).

16. The CP's Framework Element (CP § 225.9) assigns the "Moderate Density Commercial" designation to:

...shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height.

17. The Property's current PDR-1 zoning is not a mixed-use zone and does not permit residential uses.
18. The Property is located on the CP's Generalized Policy Map (the "GPM") within an area designated as a Land Use Change Area. (Ex. 11.)
19. The CP's Framework Element describes Land Use Change Areas as areas "...where change to a different land use from what exists today is anticipated" and notes that "[m]any of these areas have the capacity to become mixed-use communities containing housing, retail shops, services, workplaces, parks and civic facilities." (CP § 223.9-12.)
20. The Property is also located within the Riggs Road and South Dakota Avenue Small Area Plan ("SAP"), which was developed by OP in partnership with the Lamond-Riggs Citizens Association and the Lamond-Riggs Development Task Force (the "Task Force") and was approved by the Council of the District of Columbia on March 3, 2009.
21. The Property is within an opportunity site identified in the SAP as the "Riggs Road North Industrial Site." The SAP specifically recommends a change in land use designation for the Riggs Road North Industrial Site, from PDR to moderate-density mixed-use. (Ex. 2. 2J1-2J3.)
22. The Property is also subject to the CP's Rock Creek East Element. The planning and development priorities for this area include effectively resolving the conflicts among existing residential, commercial and industrial uses, in some cases by "...phasing out industrial and 'heavy commercial' uses and replacing them with housing or mixed uses." (Ex. 2; CP § 2207.2(d).)

### **The Application**

23. The Application proposes to rezone the Property from the current PDR-1 zone to the MU-4 zone. The MU-4 zone is intended to: (Subtitle G § 400.3.)
  - a. Permit moderate-density mixed-use development;
  - b. Provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and
  - c. Be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate-bulk mixed-use centers.
24. As a matter of right, the MU-4 zone permits:
  - a. A maximum density of 2.5 FAR or 3.0 FAR for projects providing Inclusionary Zoning (“IZ”). The maximum non-residential FAR is 1.5; (Subtitle G § 402.1.)
  - b. A maximum height of 50 feet, with no limit on number of stories; and (Subtitle G § 403.1.)
  - c. A maximum lot occupancy of 60%, or 75% with IZ. (Subtitle G § 404.1.)
25. When compared with the current PDR-1 zoning, the Application would result in the following changes to the Property:
  - a. A decrease of 0.5 (for IZ) or 1.0 FAR;
  - b. No increase in height;
  - c. A 25% to 40% decrease in lot occupancy; and
  - d. Residential uses, including multi-family, as a matter-of-right use.

### **OP Report**

26. By its report dated October 10, 2018 (the “OP Setdown Report”), and through testimony at the public meeting held on October 22, 2018, OP recommended that the Commission set down the case for a public hearing, as the proposed map amendment was not inconsistent with the CP. (Ex. 11.)
27. On January 28, 2019, OP submitted a report recommending approval of the proposed map amendment stating that the map amendment would not be inconsistent with the CP (the “OP Final Report.”) (Ex. 19.)

### **District Department of Transportation Report**

28. On January 28, 2019 the District Department of Transportation (“DDOT”) submitted a report expressing no objection to the proposed map amendment (the “DDOT Report”). (Ex. 18.) The DDOT Report concluded that the proposed rezoning could lead to potential moderate impacts on the District’s transportation network if developed with the most intense matter-of-right uses.
29. The DDOT Report requested that the Applicant evaluate site access and traffic impacts to the roadway network during public space permitting once a specific development program is proposed.

### **ANC Report**

30. The Applicant presented the Application to ANC 4B at a meeting held on June 25, 2018. (Ex. 2F.)
31. At a duly noticed public meeting held on November 26, 2018, with a quorum present, the ANC voted in support of the Application and submitted a report in support. (Ex. 21.)

### **Persons in Support**

32. The Lamond-Riggs Citizens Association, Inc. submitted a letter stating qualified support for the Application, provided future development of the Property follow the opportunity site design guidelines in the SAP including: (Ex. 20.)
  - a. Provide adequate buffer between commercial, industrial, and residential land uses;
  - b. Create well defined and well illuminated pedestrian connections to the Metro and the Riggs Road/South Dakota Avenue intersection; and
  - c. Ensure that future development provides an appropriate transition in scale from the Metro overpass to Riggs Road/South Dakota Avenue intersection and adjacent areas.

### **Persons in Opposition**

33. No persons in opposition submitted written responses or testified at the public hearing.

### **Persons Undeclared**

34. Jerome Shelton submitted a letter on behalf of the D.C. Teachers’ Federal Credit Union (the “Credit Union”), which owns the adjacent property located at 5656 3<sup>rd</sup> Street, N.E. Mr. Shelton took no position on the proposed map amendment but expressed the Credit Union’s concerns on potential impacts of future development of the Property on the Credit Union’s property. (Ex. 23.)

### **Hearing of February 7, 2019**

35. At the hearing, OP testified and reiterated its support of the Application. (Tr. at 8.)

36. Mr. Shelton appeared on behalf of the Credit Union and noted its concerns about the impacts of future development on the Credit Union's property. (Tr. at 11-15.)
37. At the request of the Commission, the Applicant's counsel testified that the Applicant would reach out to Mr. Shelton following the hearing to discuss the Application and would include Mr. Shelton in community correspondence and outreach efforts going forward. (Tr. at 14.)

### **Post Hearing Submissions**

38. The Applicant submitted a written update committing to including Mr. Shelton, as well as ANC 4B and the Lamond-Riggs Citizens Association, Inc., in the Applicant's community outreach and correspondence regarding the redevelopment of the Property. (Ex. 26.)

### **CONCLUSIONS OF LAW**

1. The Commission's authority to amend the Zoning Map derives from the Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797. D.C. Official Code § 6-641.01, et seq.) ("Zoning Act").
2. Section 1 of the Zoning Act authorizes the Commission to regulate the uses 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." (D.C. Official Code § 6-641.01.) Section 2 further provides that:

...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 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 for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

(D.C. Official Code § 6-641.02.)

3. In amending the Zoning Map, the Commission is constrained by the limitation in the District Charter that the Zoning Map be "not inconsistent" with the CP (§ 492(b)(1) of the District of Columbia Home Rule Act). Subtitle X § 500.3 incorporates this intent to the Zoning Regulations by requiring that map amendments be "not inconsistent with the

Comprehensive Plan and with other adopted public policies and active programs related to the subject site.”

4. Based upon the following analysis of the CP, the Applicant’s exhibits in the record, and the reports and testimony of DDOT, OP, and ANC 4B, the Commission concludes that the Application is consistent with the purpose of the Zoning Act, and also concludes that the request is not inconsistent with the policies and maps of the CP and therefore complies with the Zoning Act and Subtitle X § 500.3.

**Not Inconsistent with the CP and Adopted Public Policies**

5. The Commission concludes that approval of the proposed map amendment is not inconsistent with the CP because the proposed map amendment furthers the goals of the CP and promotes orderly development in conformity with the Zone Plan as embodied in the Zoning Regulations and Map as discussed below. The Commission further concludes that the requested map amendment is in the best interest of the District of Columbia and will benefit the community in which the Property is located.

**Consistent with the CP’s FLUM**

6. The Commission finds that the current PDR-1 zoning is inconsistent with the FLUM designation because it is not a mixed-use zone that permits residential. The Commission concludes that the proposed map amendment would render the Property’s zoning consistent with the FLUM’s designation of the Property as Mixed Use: Moderate Density Residential and Moderate Density Commercial because the MU-4 permits moderate density, mixed-use development, including residential.
7. The Commission notes that the proposed MU-4 zoning would allow the matter-of-right development of multi-family housing, without major changes to the permitted height or density requirements. The Commission also notes that this would complement the existing mixed-use development in the MU-4 zone on the east side of 3<sup>rd</sup> Street, N.E.

**Consistent with the CP’s GPM**

8. The Commission concludes that the proposed map amendment is consistent with the GPM because it will allow for redevelopment of a previously industrial site with a mix of uses that will better complement the development in the surrounding residential and mixed-use zones.

**Consistent with the CP’s Rock Creek East Element**

9. The Commission concludes that the proposed map amendment will be consistent with the goals of the Rock Creek East Element because the proposed mixed-use designation will help resolve some of the “conflicts” between existing land uses. The proposed rezoning would also limit any increase in the intensity of uses that may not be compatible with the surrounding moderate-density residential and commercial uses.



#### Consistent with Additional CP Elements and Policies

11. The Commission also notes that the proposed map amendment is consistent with various policies of the CP's Land Use Element (Policies LU-1.3.3, LU-2.1.3, LU-2.4.6, and LU-3.1.4), and Housing Element (Policies H-1.1.1, H-1.1.2, and H-1.1.4).

#### Consistent with the SAP

10. The Commission finds that the proposed map amendment will be consistent with the SAP which specifically recommends a change in land use designation for the Property, from PDR to moderate-density mixed-use.

#### NCPC Referral and Report

11. On February 7, 2019, the Commission referred the Application to the National Capital Planning Commission ("NCPC") for review and comment pursuant to the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Section 1-201 *et seq.* (Ex. 24.)
12. By a letter dated February 25, 2019, the Director of NCPC's Urban Design and Plan Review stated that NCPC had determined that the Application was exempt from NCPC review. (Ex. 27.)

#### "Great Weight" to the Recommendations of OP

13. The Commission is required to give "great weight" to the recommendation 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.); Subtitle Y § 405.8); *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016.).
14. The Commission concludes that both the OP Setdown and Final Report, which provided an in-depth analysis of the proposed map amendment, are persuasive and concurs with OP's recommendation that the Property be rezoned, as discussed above.

#### "Great Weight" to the ANC Report

15. 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.); Subtitle Y § 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. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)



16. Accordingly, the Commission gives great weight to the written report of ANC 4B in this case and concurs in its recommendation of support for the Application.

### **DECISION**

In consideration of the record 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 for an amendment to the Zoning Map to change the zoning for Lots 199, 848, and 849 in Square 3710 from the PDR-1 zone to the MU-4 zone.

#### **Proposed Action**

**VOTE (February 7, 2019): 4-0-1**


(Peter A. Shapiro, Robert E. Miller, Anthony J. Hood, and Peter G. May to **APPROVE**; Michael G. Turnbull not present, not voting)

#### **Final Action**

**VOTE (March 11, 2019): 5-0-0**

(Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**)

In accordance with the provisions of Subtitle Z, § 604.9, this Order 18-11 shall become final and effective upon publication in the *D.C. Register*; that is on December 20, 2019.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.