

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 19-02

Z.C Case No. 19-02

**Milestone East Capitol 2, LLC, Milestone East Capitol 3, LLC,
Milestone East Capitol 4, LLC, Milestone East Capitol 5, LLC
(Map Amendment @ Square 5411, Lot 802, Square 5412, Lot 801,
Square 5413, Lot 802, Square 5413N, Lot 801)**

September 9, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on July 22, 2019 to consider an application for a map amendment (the “Application”) submitted by Milestone East Capitol 2, LLC, Milestone East Capitol 3, LLC, Milestone East Capitol 4, LLC, and Milestone East Capitol 5, LLC (collectively, the “Applicant”) pursuant to Subtitle X, Chapter 4 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”) (the “Zoning Regulations,” to which all references are made unless otherwise specified), to amend the Zoning Map from the RA-1 zone to the RA-2 zone for Lot 802 in Square 5411, Lot 801 in Square 5412, Lot 802 in Square 5413, and Lot 801 in Square 5413N (collectively, the “Property”). For the reasons set forth below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

Notice of Contested Case

1. On November 20, 2018, the Applicant mailed a notice of intent to file the Map Amendment application to all property owners within 200 feet of the Property, as well as Advisory Neighborhood Commission (“ANC”) 7F. Accordingly, the Applicant satisfied the notice requirements of 11-Z DCMR §§ 304.5, 304.6. (Exhibit [“Ex.”] 4.)
2. At its February 25, 2019 public meeting, the Commission set the case down as a contested case scheduled for a public hearing on July 22, 2019. (Ex. 16.)
3. Pursuant to the contested case requirements of Subtitle Z § 402, notice of the July 22, 2019 public hearing was provided to all property owners within 200 feet of the Property as well as to ANC 7F on May 28, 2019. 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 May 31, 2019. (Ex. 19, 20.)

Parties

4. The only party other than the Applicant, was ANC 7F, the “affected” ANC pursuant to Subtitle Z § 101.8.

The Property

5. The Property consists of Lot 802 in Square 5411, Lot 801 in Square 5412, Lot 802 in Square 5413, and Lot 801 in Square 5413N.
6. The Property is currently improved with the Meadow Green Courts Apartments (“Meadow Green”), an existing apartment community of 461 units in 53 buildings on five contiguous squares or blocks and comprising approximately 12 acres.
7. The Property is located at the intersection of Minnesota Avenue and East Capitol Street, S.E. within the Fort Dupont Park neighborhood. The two streets that bisect the four squares, A Street (which runs east-west) and 35th Street (which runs north-south), are 50 feet and 60 feet in width, respectively.
8. The portion of Meadow Green that is the subject of this map amendment consists of 520,216 square feet of land area currently configured as four separate squares and is situated south of East Capitol Street, west of Minnesota Avenue, north of B Street, and east of 34th Street.

Current Zoning

9. The Property is currently zoned RA-1. The RA-1 zone is intended to provide for areas predominantly developed with low- to moderate-density development, including detached dwellings, rowhouses, and low-rise apartments. The RA-1 zone does not permit new multi-family residential development as a matter of right. (Subtitle F § 300.2.)
10. As a matter of right, the RA-1 zone permits:
 - a. A maximum density of 0.9 floor area ratio (“FAR”); (Subtitle F § 302.1.)
 - b. A maximum height of 40 feet, with a maximum of three stories; and (Subtitle F § 303.1.)
 - c. A maximum lot occupancy of 40%. (Subtitle F § 304.1.)
11. Square 5414, located directly west across 34th Street (34th Street is 90 feet wide), is improved with two-story homes and is zone R-3 zone. Further west are CSX railroad tracks in the PDR-1 zone.
12. Squares 5418 and 5419 are located directly south across B Street (B Street is 90 feet wide), are split-zoned R-3/RA-1, and are improved with two-story homes and two-story apartment buildings. Square 5410, located on the other side of Minnesota Avenue, is split-zoned R-3/RA-1.
13. To the north of the Property is East Capitol Street (160 feet wide), and the properties located on the other side of East Capitol Street are zoned MU-4.

Comprehensive Plan

14. The Property is designated on the Comprehensive Plan Future Land Use Map (“FLUM”) as “Moderate Density Residential.” (Ex. 6D.)

15. According to the Comprehensive Plan Framework Element, a “Moderate Density Residential” designation on the FLUM is assigned to:

...the 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).

(10A DCMR § 225.4; Ex. 14.)

16. Both the current RA-1 and proposed RA-2 zones¹ are specifically included as zones within the definition of the “Moderate Density Residential” land use category. (10A DCMR § 225.4.)

17. The Property is located on the Comprehensive Plan Generalized Policy Map (“GPM”) within an area designated as a Neighborhood Conservation Area. (Ex. 6E.)

18. The Comprehensive Plan Framework Element describes the purpose of Neighborhood Conservation Areas as:

- a. To conserve and enhance established neighborhoods;
- b. Limited development and redevelopment opportunities do exist within these areas but they are small in scale;
- c. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area; and
- d. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map.

(10 A DCMR § 223.4-5.)

19. The Property is also subject to the Comprehensive Plan’s Far Northeast & Southeast Area Element. The planning and development priorities for this area include the “[r]enovation and rehabilitation of the housing stock,” including the preservation of affordable units in existing housing complexes as they are renovated or replaced order to

¹ Formerly the R-5-A and R-5-B Zone Districts prior to the 2016 Zoning Regulations.

provide multi-family housing that “...better meets community needs.” (10A DCMR § 1707.2.) [This paragraph did fully reflect the passage it was referencing.]

The Application

20. The Application requests to rezone the Property to the RA-2 zone. The RA-2 zone is intended to provide for areas developed with predominantly moderate-density residential. (Subtitle F § 300.3.)
21. As a matter of right, the RA-2 zone permits:
 - a. A maximum density of 1.8 FAR (2.16 FAR with an additional 20% IZ Bonus density); (Subtitle F § 302.1; Subtitle C § 1002.3.)
 - b. A maximum height of 50 feet, with no limit on number of stories; and (Subtitle F § 303.1.)
 - c. A maximum lot occupancy of 60%. (Subtitle F § 304.1.)
22. When compared with the current RA-1 zoning, the Application would result in:
 - a. A 0.9 increase in FAR;
 - b. A 10-foot increase in height; and
 - c. A 20% increase in lot occupancy.

Office of Planning Report

23. By report dated February 15, 2019, and through testimony at the public meeting held on February 25, 2019, the Office of Planning (“OP”) recommended that the Commission set down the case for a public hearing, as the requested map amendment was not inconsistent with the Comprehensive Plan. (Ex. 14.)
24. On July 12, 2019, the OP submitted a report recommending approval of the map amendment request stating that the map amendment would not be inconsistent with the Comprehensive Plan. (Ex. 27).

District Department of Transportation Report

25. On July 9, 2019, the District Department of Transportation (“DDOT”) submitted a report expressing no objection to the map amendment request. (Ex. 26.) The DDOT report noted that the Applicant had submitted a Comprehensive Transportation Review (“CTR”) and a Traffic Demand Management (“TDM”) Plan. Based on the review of the CTR and TDM Plan, the DDOT report concluded that the proposed map amendment would not result in a significant impact on the District’s transportation network if developed with the most intense, future matter-of-right uses.

ANC Report

26. On January 17, 2019, ANC 7F submitted a resolution in support of the requested map amendment. (Ex. 17B.) The ANC report indicated that at a properly noticed meeting, and with a quorum present, the ANC 7F voted in support of the Applicant’s request to rezone the Property from RA-1 to RA-2.

Persons in Support

27. Councilmember Vincent Gray submitted a letter in support. (Ex. 15.)

Persons in Opposition

28. No letters in opposition were submitted to the record.

Hearing of July 22, 2019

29. At the public hearing, OP testified in support of the map amendment request. (Transcript of July 22, 2019 Hearing [“Tr.”] at 11.)
30. Ms. Carol Fletcher, Commissioner for ANC Single-Member District 7F06, testified in support on behalf of the ANC. (Tr. at 13-14.)
31. Two individuals, Sister Muhammad and Ms. Martina Simms, testified in opposition to the Application. Ms. Muhammad and Ms. Simms both raised concerns regarding the impacts of the proposed map amendment on the surrounding community including increased population; impacts on District infrastructure, local schools, police, and traffic; and construction concerns. (Tr. at 16-33.)
32. In response to the opposition testimony, OP testified that the map amendment would not be inconsistent with the Comprehensive Plan. OP noted that the FLUM designated the Property for moderate-density residential use and that both the current RA-1 and the proposed RA-2 zones were included in this category. OP also noted that the Application had been reviewed by several District agencies and that any and all comments had been incorporated into the OP report. (Tr. at 33-34, 37-40.)
33. **NCPC Referral and Report**
By a letter dated August 26, 2019, the National Capitol Planning Commission (“NCPC”) concluded that the Application qualified for Exception No. 12 in Chapter 8 of NCPC’s submission guidelines and is exempt from NCPC review. (Ex. 33.)

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 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 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.

(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 Comprehensive Plan. § 492(b)(1) of the District of Columbia Home Rule Act: D.C. Official Code § 6-641.02. Subtitle X § 500.3 incorporates this intent to the Zoning Regulations by requiring that map amendments be “...not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.”
4. Based upon the following analysis of the Comprehensive Plan, the Applicant’s exhibits in the record, the reports and testimony of DDOT, OP, and ANC 7F, 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 Comprehensive Plan and therefore complies with D.C. Official Code § 6-641.02 and Subtitle X § 500.3.

Not Inconsistent with the Comprehensive Plan and Adopted Public Policies

5. The Commission concludes that approval of the requested map amendment is not inconsistent with the Comprehensive Plan because the requested map amendment furthers the goals of the Comprehensive Plan and promotes orderly development in conformity with the Zone Plan as embodied in the Zoning Regulations and Map. 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 FLUM

6. The Commission concludes that the proposed map amendment would be consistent with the FLUM which designates the Property as “Moderate Density Residential.” The Commission notes that the RA-2 is specifically included in the FLUM as a “Moderate Density Residential” zone.
7. The Commission notes that the proposed RA-2 zoning would allow the matter-of-right development of multi-family housing, without major increases to the permitted height or density requirements.

Consistent with the GPM

8. The Commission concludes that the map amendment will allow for the conservation of the existing residential character of the surrounding neighborhood, while still permitting limited development and redevelopment opportunities.

Land Use Element

9. The Commission concludes that the map amendment will encourage the development and redevelopment of the housing stock, including affordable units while maintaining the existing moderate-density residential character of the surrounding area. The Commission notes that the map amendment will allow for the replacement of older housing complexes with new units that better serve the needs of the community.

Housing Element

10. The Commission concludes that the requested map amendment will help create new housing and will allow for the replacement and rehabilitation of outdated housing stock with new units, better designed to serve the District's housing needs.

Far Northeast & Southeast Area Element

11. The Commission concludes that the map amendment will promote the objectives and policies of the area element by encouraging the replacement of "deteriorated multi-family housing with new housing". The Commission finds that the map amendment will allow matter-of-right construction of multi-family units to replace the outdated housing stock in the area.

Contested Issues

12. The Commission concludes that the issues raised by the persons in opposition during the public hearing were adequately addressed by the Application and by the agency reports in the record. The Commission finds the DDOT Report, which reviewed the Applicant's CTR and concluded that the proposed map amendment would not have a substantial impact on the District's transportation network, persuasive in rebutting these criticisms. The Commission similarly found persuasive OP's testimony that the project was properly reviewed by all necessary District agencies and that the proposed amendment would not be inconsistent with the Comprehensive Plan.

"Great Weight" to the ANC Report

13. The Commission is required to give "great weight" to the issues and concerns of the affected ANC expressed in its written report. (§ 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 this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. 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).)
14. The Commission finds the ANC report persuasive in recommending support for the Application and concurs with that recommendation.

“Great Weight” to the Recommendations of OP

15. The Commission is also required to give great weight to the recommendations of OP. (D.C. Official Code § 6-623.04 and Subtitle Z § 405.8.)
16. The Commission gives OP’s recommendation to approve the rezoning great weight, concurs with OP’s recommendation, and incorporates herein OP’s findings.

DECISION

At the conclusion of its July 22, 2019 public hearing, upon the motion of Commissioner Shapiro, as seconded by Vice Chairman Miller, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the Application by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Michael G. Turnbull to approve; Peter G. May not present, not voting).

At its public meeting on September 9, 2019, in consideration of the record and the Findings of Fact and Conclusions of Law herein, upon the motion of Commissioner Shapiro, as seconded by Vice Chairman Miller, the Zoning Commission for the District of Columbia took **FINAL ACTION** to **APPROVE** the Application by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Michael G. Turnbull to approve; Peter G. May, not having participated, not voting).

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

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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