

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION Order NO. 21-01

Z.C. Case No. 21-01  
Office of Planning

(Zoning Map Amendment @ 501-513 Rhode Island Ave. NE - Parcels 131/216, 131/44)  
April 22, 2021

Pursuant to notice, at its April 22, 2021, public meeting, the Zoning Commission for the District of Columbia (the “**Commission**”) deliberated on an application (the “**Application**”) by the D.C. Office of Planning (the “**Applicant**”) for Parcels 131/44 & 131/216, the southeast corner of the intersection of 5<sup>th</sup> Street and Rhode Island Avenue, N.E., (the “**Property**”) requesting the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“**DCMR**”), Zoning Regulations of 2016, to which all references are made unless otherwise specified):

An amendment of the Zoning Map for the Property pursuant to Subtitle X § 500.1 from the PDR-2 zone to the MU-10 zone (the “**Map Amendment**”).

The Commission considered the Application as a contested case pursuant to Subtitle A § 210 and Subtitle Z, Chapter 4. For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**  
**I. BACKGROUND**

**PARTIES**

1. The following were automatically parties in this proceeding pursuant to Subtitle Z § 403.5:
  - The Applicant; and
  - Advisory Neighborhood Commission (“**ANC**”) 5E, in which district the Property is located and so an “affected ANC” pursuant to Subtitle Z § 101.8.
2. The Commission received no requests for party status.

**NOTICE**

3. On February 16, 2021, the Office of Zoning (“**OZ**”) sent notice of the April 22, 2021, public hearing (Exhibit [“**Ex.**”] 3-5) as required by Subtitle Z §§ 304.5 & 304.6 to:
  - ANC 5E;
  - ANC 5E03 Single Member District Commissioner, whose district includes the Property;
  - The Office of the ANCs;
  - The Office of Planning (“**OP**”);
  - The District Department of Transportation (“**DDOT**”);
  - The Councilmember for Ward 5, which includes the Property;

- The Chair and At-Large Councilmembers of the D.C. Council; and
  - The owners of property within 200 feet of the Property.
4. OZ published notice of the public hearing in the February 5, 2021, *D.C. Register* (68 DCR 1619) as well as on the calendar on OZ’s website. (Ex. 3 and 4.)

**THE PROPERTY**

5. The Property consists of approximately 30,574 square feet of land area at the southeast corner of the intersection of 5<sup>th</sup> Street and Rhode Island Avenue, N.E.
6. The Property is improved with the District’s Fire and Emergency Medical Services Department fire station facility, Engine Company Number 12, with:
- A 16,000 square foot building with an address of 2225 5<sup>th</sup> Street, N.E., with two curb cuts on 5<sup>th</sup> Street, N.E., for fire trucks to enter the station and an adjacent surface parking lot; and
  - A surface parking lot to the east of the station, with an address of 513 Rhode Island Avenue, N.E., accessed by a curb cut on Rhode Island Avenue, N.E.
7. The Property is bounded:
- To the north – for approximately 240 feet by Rhode Island Avenue, N.E., a designated “Great Street,” across which lies the former Rhode Island Avenue Shopping Center that is currently being redeveloped into a mixed-use development with approximately 1,500 new residential units;
  - To the east – by five properties fronting on Rhode Island Avenue, N.E., that are anticipated to be redeveloped with mixed-use development;
  - To the south – by:
    - Parcel 131/217<sup>1</sup> that runs east-west on the south side of all the properties along this block of Rhode Island Avenue, N.E.; and
    - Parcel 131/208 at 2215 5<sup>th</sup> Street, N.E., which is currently a storage facility; and
  - To the west - by 5<sup>th</sup> Street, N.E, for approximately 130 feet.
8. The surrounding area is zoned as follows:
- To the north and west (across Rhode Island Avenue and 5<sup>th</sup> Street, N.E.) - by the MU-7 zone; and
  - To the east and south – by the PDR-2 zone, although the five properties to the east are proposed to be rezoned to the MU-10 zone pursuant to Z.C. Case No. 20-23.
9. The Property is located one block from the Rhode Island Avenue Metrorail station.

**CURRENT ZONING**

10. The Property is currently in the PDR-2 zone, the intent of which is to “[p]ermit medium-density commercial and Production, Distribution, and Repair (“PDR”) activities

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<sup>1</sup> This parcel is also proposed for a rezoning to the MU-10 zone in Z.C. Case No. 20-23.

*employing a large workforce and requiring some heavy machinery under controls that minimize any adverse impacts on adjacent, more restrictive zones.” (Subtitle J § 200.2.)*

11. The PDR-2 zone does not allow for multi-family residential use and imposes the following limits for matter-of-right developments:
  - A maximum floor area ratio (“**FAR**”) of 3.0 (4.5 for certain uses) (Subtitle J § 202.1); and
  - A maximum height of 60 feet. (Subtitle J § 203.1.)

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

12. The CP’s Generalized Policy Map (the “**GPM**”) designates the Property as a Neighborhood Conservation Area, in which:
  - New development should be compatible with the existing scale, natural features, and character of the area;
  - Development that addresses city-wide housing needs is encouraged; and
  - Density is guided by the CP’s Future Land Use Map (“**FLUM**”) and CP policies. (CP §§ 225.4-225.5.)
13. The FLUM designates the Property for a mix of the following categories:
  - **High Density Residential** - characterized by high-rise apartment buildings, with density typically greater than a 4.0 FAR and greater density possible for an Inclusionary Zoning (“**IZ**”) development or Planned Unit Development (“**PUD**”); and
  - **Medium Density Commercial** - characterized by predominantly retail, office, and service uses, although residential uses are common, with density typically ranging between 4.0 and 6.0 FAR, although greater density is possible for IZ developments or PUDs. The CP specifies that this FLUM category is consistent with the MU-10 zone proposed for the Property by the Application. (CP §§ 227.8-227.13, 227.20.)
14. The CP’s Upper Northeast Area Element includes the Property in the Rhode Island Avenue Metro Station Policy Focus Area, in which development with medium to high density housing on upper stories over ground-floor retail is encouraged. (CP §§ 2415.2 and 2415.4.)
15. The Property is included in the Rhode Island Avenue “Diamond of the District” Small Area Action Plan (“**SAP**”), adopted by the D.C. Council on May 3, 2011, pursuant to PR 19-0019, which:
  - Guides “appropriate” redevelopment of underutilized commercial properties along the Rhode Island Avenue, N.E., corridor;
  - Promotes transit-oriented mixed-use development around the Rhode Island Avenue Metrorail Station;
  - Encourages new housing at significant density to generate foot traffic needed to sustain retail uses; and

- Specifically identifies the Property, as part of “Sub-Area 1 - Site B,” as needing to be rezoned from the current PDR-2 zone to enable more housing in a mixed-use development with a matter-of-right height of 90 feet and density of 6.0 FAR. (SAP at 4, 13-17.)

## II. THE APPLICATION

### PROPOSED ZONING

16. The Application proposed to rezone the property to the MU-10 zone, which:
- Is intended to:
    - *Permit medium- to high-density mixed-use development with a balance of uses conducive to a higher quality of life and environment for residents, businesses, employees, and institutions; and*
    - *Be applied to areas where a mixture of uses and building densities is intended to carry out elements of the Comprehensive Plan, small area plans, or framework plans, including goals in employment, population, transportation, housing, public facilities, and environmental quality (Subtitle G § 400.9); and*
  - Permits:
    - A maximum density of 6.0 FAR (7.2 with IZ), of which no more than 3.0 FAR may be for non-residential uses (Subtitle G § 402.1);
    - A maximum height of 90 feet (100 feet with IZ), not including a penthouse (Subtitle G § 403.1);
    - A maximum permitted occupancy of 75% for residential uses (80% with IZ), and 100% for non-residential uses (Subtitle G § 404.1);
    - A minimum rear yard of 2.5 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet (Subtitle G § 405.3); and
    - A minimum green area ratio of 0.2 (Subtitle G § 407.3). (Ex. 1.)

### JUSTIFICATION OF RELIEF

17. OP submitted a January 4, 2021, report (Ex. 2, “**OP Setdown Report**”) that:
- Justified the Application because:
    - The Property’s current PDR-2 zone is inconsistent with the Property’s FLUM designation to include a mix of high-density residential and medium-density commercial uses; and
    - The Map Amendment would correct this current inconsistency and make the Property consistent with the Property’s FLUM designation and would not be inconsistent with the CP and with other adopted public policies and active programs applicable to the Property, as detailed below; and
  - Recommended that the Commission set down the Application for a public hearing.

### **Not Inconsistent with the CP**

18. The Application asserted that the Map Amendment would not be inconsistent with the GPM’s Neighborhood Conservation area designation for the Property because the CP’s Framework Element specifies that the density anticipated in a Neighborhood Conservation

Area shall be guided by the FLUM, which calls for mixed high density residential and medium density commercial uses, and by other CP policies, which support the Map Amendment as detailed below.

19. The Application asserted that the Map Amendment would not be inconsistent with the FLUM's mixed High Density Residential/Medium Density Commercial designation for the Property because:
  - The FLUM designation specifically identified residential uses as appropriate for the Property, which are prohibited under the current PDR-2 zoning, but which would be allowed in the proposed MU-10 zoning;
  - The CP's Framework Element defines the High Density Residential as typically having densities above 4.0 FAR with greater density anticipated for IZ developments and PUDs;
  - The CP's Framework Element defines the Medium Density Commercial category as permitting densities of 4.0-6.0 FAR, with additional density anticipated for IZ developments and PUDs, and specifically identifies the MU-10 zone as being compatible with this FLUM designation; and
  - The CP's Framework Element states that a Mixed Use designation signals which use category is to be emphasized by the relative density assigned to each use category – in this case, providing for a higher residential density than the commercial density.
  
20. The Application asserted that the Map Amendment would further the Upper Northeast Area Element applicable to the Property because the Map Amendment will support the goals of the Area Element's Rhode Island Avenue Metro Station Area Policy Focus Area, which specifies that the area around the Rhode Island Avenue station is logical for future development with medium- to high-density housing, and ground-floor uses that enhance the pedestrian experience.
  
21. The Application asserted that the Map Amendment would further the Land Use Element because the Map Amendment would:
  - Facilitate the redevelopment of an underdeveloped property in a key location near a Metro station and transit corridors with a mix of uses, including housing and ground-level retail;
  - Not be inconsistent with the Element's guidance to limit the rezoning of industrially-zoned land because of the Property's proximity to a Metro station and the support in both the GPM and FLUM for a rezoning that would permit residential uses; and
  - Further a number of specific Land Use Element policies including:
    - *Development Around Metrorail Stations (Policy LU-1.3.2);*
    - *Housing Around Metrorail Stations (Policy LU-1.3.3);*
    - *Variety of Neighborhood Types (Policy LU-2.1.1);*
    - *Conserving, Enhancing, and Revitalizing Neighborhoods (Policy LU-2.1.3);*
    - *Promotion of Commercial Centers (Policy LU-2.4.1);* and

- *Rezoning of Industrial Areas. (Policy LU-3.1.4.)*
22. The Application asserted that the Map Amendment would further the Transportation Element because the Map Amendment would:
- Allow the possibility of future mixed-use development on a major District corridor, close to the Rhode Island Metrorail station; and
  - Support the CP’s overarching goal for transportation to “*create a safe, sustainable, efficient multi-modal transportation system that meets the access and mobility needs of District residents, the regional workforce, and visitors; supports local and regional economic prosperity; and enhances the quality of life for District residents.*” (CP § 401.1.)
23. The Application asserted that the Map Amendment would further the Housing Element because the Map Amendment would:
- Allow the possibility of future mixed-use development including housing and affordable housing; and
  - Further element policies including:
    - *Expanding Housing Supply (Policy H-1.1);*
    - *Balanced Growth (Policy H-1.1.3);*
    - *Mixed Use Development (Policy H-1.1.4);*
    - *Mixed Income Housing (Policy H-1.2.3);* and
    - *Housing Affordability on Publicly Owned Sites. (Policy H-1.2.4.)*
24. The Application asserted that the Map Amendment would further the Environmental Protection Element because the Map Amendment would:
- Improve the overall environmental quality of the Property compared to the existing conditions as any new development will need to comply with the D.C. Green Buildings Act, D.C. Green Construction Code and meet green area ratio and storm water management regulations; and
  - Support the CP’s overarching goals for environmental protection to “[p]rotect, restore, and enhance the natural and man-made environment in the District of Columbia, taking steps to improve environmental quality, prevent and reduce pollution, and conserve the values and functions of the District’s natural resources and ecosystems.” (CP § 601.1.)
25. The Application asserted that the Map Amendment would further the Urban Design Element because the Map Amendment would:
- Subject the Property to the MU-10 zone’s requirements to provide eight percent of the lot area (almost 10,000 square feet) as a public plaza. A large public plaza along with attractive new mixed-use buildings and streetscape improvements would be a significant improvement to this prominent and busy block; and

- Support the CP’s overarching urban design goal to “[e]nhance the beauty and livability of the city by protecting its historic design legacy, reinforcing the identity of its neighborhoods, harmoniously integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and security of streets and public spaces.” (CP § 901.1.)

26. The Application asserted that the Map Amendment would further the SAP because the Map Amendment would:

- Not be inconsistent with the recommendations in the SAP that support providing higher density, mixed-use development at the Property in the future, including residential uses not permitted in the current zone;
- Support the SAP’s general goals for the 4<sup>th</sup> to 10<sup>th</sup> Street, N.E., study area (“**SubArea 1**”) that encourages transit-oriented, medium- to high-density mixed-use development at those blocks; and
- Follow the SAP’s recommendation to rezone Site B of SubArea 1, which includes the Property, to allow for greater density and more housing with matter-of-right development up to 6.0 FAR and 90 feet in height as is permitted in the MU-10 zone, with additional height and density permitted for IZ developments.

### III. RESPONSES TO THE APPLICATION

#### OP

27. OP submitted an April 12, 2021, report (Ex. 10, “**OP Hearing Report**”) that reiterated:

- OP’s analysis that the Map Amendment is not inconsistent with the CP; and
- OP’s recommendation that the Commission approve the Application.

28. At the April 22, 2021, public hearing, OP testified that the Application would not be inconsistent with the CP and would allow for the future redevelopment of the site with residential uses, which would not be allowed under the current PDR zoning.

#### DDOT

29. DDOT submitted an April 12, 2021 report (Ex. 9, the “**DDOT Report**”) that concluded that:

- The proposed rezoning of the Property, if developed with the most intense matter-of-right uses, would not lead to a significant increase in the number of peak hour vehicle trips on the District’s transportation network; and
- DDOT therefore had no objection to the Application or Map Amendment.

#### ANC

30. ANC 5E did not provide a written report or oral testimony at the public hearing.

### DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT (“DMPED”)

31. DMPED, as the owner of the Property, submitted a letter (Ex. 11) and testified at the April 22, 2021, public hearing in support of the Map Amendment in order to permit medium- to high-density mixed-use development by right consistent with the FLUM’s designation for the Property.

### PUBLIC COMMENTS

32. George Chaffin, a nearby resident, filed a letter (Ex. 7) stating his support of the Map Amendment because it would encourage mixed-use development near the Metro station, including both retail uses needed for the surrounding neighborhood and residential uses with the maximum density needed to provide as much affordable housing as possible.
33. Daniel Agold, Vice President of the Eckington Civic Association, testified at the April 22, 2021, public hearing in support of the Map Amendment because it would encourage redevelopment with needed businesses, services, affordable houses and community spaces consistent with the FLUM’s designation for the Property, including potentially the location of a new District branch library. (Ex. 13.)

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

34. NCPC responded to the Commission’s referral of the Application 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 § 1-201 *et seq.*) with a May 26, 2021, report stating that NCPC had determined that the Application is exempt from NCPC review because the Map Amendment falls under Exception No. 12 in Chapter 8 of NCPC’s submission guidelines. (Ex. 18.)

### CONCLUSIONS OF LAW

1. The Zoning Act of 1938 (effective June 20, 1938, as amended, 52 Stat. 797, ch. 534; D.C. Official Code § 6-641.01 *et seq.* (2012 Repl.)) (the “**Zoning Act**”) authorizes the Commission to create zones within which the Commission may regulate the construction and use of property in order to “promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital” (§ 1 of the Zoning Act; D.C. Official Code § 6-641.01).
2. Section 2 of the Zoning Act (D.C. Official Code § 6-641.02) 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.”*

3. Pursuant to the Home Rule Charter, the District of Columbia Comprehensive Plan Act of 1989 (D.C. Law 8-129), and Subtitle A § 401.1, the Commission is charged with preparing, adopting, and subsequently amending the Zoning Regulations and Zoning Map in a means not inconsistent with the Comprehensive Plan.
4. Pursuant to Subtitle X § 500.3, the Zoning Commission shall find that map amendments are not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Property.
5. The Commission set down the Application as a contested case under Subtitle Z, Chapter 4, as a map amendment filed by the owner of a single property per Subtitle Z § 201.2(e).

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

6. Based on the case record and the Findings of Fact above, the Commission concludes that the Application’s proposed amendment of the Zoning Map from the current PDR-2 zone to the proposed MU-10 zone is not inconsistent with the CP, when considered in its entirety, because the Map Amendment will further the following CP maps and policies:
  - The GPM and FLUM by facilitating the redevelopment of the Property with mixed-use development with residential uses that will enhance the overall neighborhood;
  - The Upper Northeast Area Element by facilitating the mixed-use redevelopment of the Property;
  - The Land Use Element by facilitating the Property’s redevelopment with a mixed-use development proximate to major transit corridors and the Rhode Island Avenue Metro station, one of the examples specifically identified as an exception to the Land Use Element’s guidance to limit the rezoning of industrially-zoned land;
  - The Transportation Element by facilitating the redevelopment of the Property with new transit supporting mixed-use development proximate to transit corridors;
  - The Housing Element by facilitating the redevelopment of the Property with housing not permitted in the current zone district, which will advance the District’s housing and affordable housing goals by providing new multi-family housing,
  - The Environmental Protection Element by facilitating the redevelopment of the Property with new sustainable site features; and
  - The SAP by rezoning the Property to a zone that will permit mixed-use and residential uses as specifically contemplated by the SAP, as well as the FLUM and Upper Northeast Area Element.

**“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP**

- 7. The Commission must 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.)) and Subtitle Z § 405.8. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).
- 8. The Commission finds OP’s analysis of the Map Amendment and its conclusion that it is not inconsistent with the CP persuasive and concurs with OP’s recommendation to approve the Application.

**“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC**

- 9. The Commission must give “great weight” to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the “great weight” requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016). The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).
- 10. As ANC 5E did not file a written report in response to the Application, there is nothing to which the Commission can give “great weight.”

**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 to amend the Zoning Map as follows:

PARCELS	OLD ZONE	NEW ZONE
131/44 & 131/216	PDR-2	MU-10

**Proposed Action**

**Vote (April 22, 2021):**      **4-0-1** (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood, and Peter G. May to **APPROVE**; Peter A. Shapiro recused, not voting)

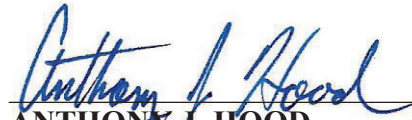
**Final Action**


**Vote (June 24, 2021)<sup>2</sup>: 4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to **APPROVE**; Peter A. Shapiro recused, not voting)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 21-01 shall become final and effective upon publication in the *D.C. Register*; that is on July 30, 2021.

**BY ORDER OF THE D.C. ZONING COMMISSION**

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

  
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**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.

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<sup>2</sup> At its June 24, 2021 public meeting, per Commissioner Shapiro’s request to recuse himself, the Commission first voted to rescind its June 10, 2021 vote, to approve final action in this case (5-0-0) and then to approve final action with Commissioner Shapiro recused.