

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**Z.C. ORDER NO. 06-10D**  
**Z.C. Case No. 06-10D**  
**The Morris and Gwendolyn Cafritz Foundation**  
**(Modification to First-Stage PUD and Approval of Second-Stage PUD**  
**Art Place at Fort Totten – Block B @ Squares 3765 and 3767)**  
**June 10, 2019**

Pursuant to notice, at its April 4, 2019 public hearing, the Zoning Commission for the District of Columbia (the “Commission”) considered an application of The Morris and Gwendolyn Cafritz Foundation (the “Applicant”) for second-stage approval of a planned unit development (“PUD”) and modification of an approved first-stage PUD (the “Application”) approved by Z.C. Order No. 06-10, as modified by Z.C. Order Nos. 06-10A and 06-10C<sup>1</sup> (collectively, the “Overall PUD Order”) for Square 3765, Lots 1-4 and 7-9 and Square 3767, Lots 3-4 (the “Block B Site”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the “Zoning Regulations”], to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**Notice**

1. On February 8, 2019, the Office of Zoning (“OZ”) sent notice of the public hearing to: (Exhibit [“Ex.”] 18.)
  - The affected Advisory Neighborhood Commissions (“ANC”) 5A and 4B;
  - The affected ANC Single Member Districts (“SMD”) 5A08 and 4B09;
  - The Office of Planning (“OP”);
  - The District Department of Transportation (“DDOT”);
  - The Department of Energy and the Environment (“DOEE”);
  - The D.C. Housing Authority (“DCHA”);
  - The Council of the District of Columbia (“DC Council”); and
  - Property owners within 200 feet of the Property.

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<sup>1</sup> Z.C. Case No. 06-10A was a modification to shift the grocery store use from Building A to Building B; Z.C. Case No. 06-10B was filed as a modification but was subsequently withdrawn; and Z.C. Case No. 06-10C reduced the amount of parking provided in Building A.

2. OZ also published notice of the April 4, 2019 public hearing in the *D.C. Register* on February 15, 2019, as well as through the calendar on OZ’s website. (Ex. 14.)

### **Parties**

3. In addition to the Applicant, ANCs 5A and 4B were automatically parties in this proceeding as the “affected ANC” pursuant to Subtitle Z § 101.8. ANC 4B did not participate in this case. (Ex. 28.)
4. On March 19, 2019, the Lamond-Riggs Citizens Association (“LRCA”) filed a request for party status in support of the Application. (Ex. 23.)
5. At the Public Hearing, the Commission voted to accept LRCA as a party in support. (Transcript of the April 4, 2019 Public Hearing (“4/4/19 Tr.”) at 7-8.)

### **The Block B Site**

6. The Block B Site has an area of approximately 222,541 square feet (5.18 acres) and is comprised of:
  - a. Lots 1, 2, 3, 4, 7, 8, and 9 in Square 3765;
  - b. Lots 3 and 4 in Square 3767;
  - c. The closed portion of 4<sup>th</sup> Street, N.E. between Ingraham and Kennedy Streets, N.E.<sup>2</sup>; and
  - d. A parallel 16-foot alley running between Kennedy and Ingraham Streets, N.E. (Ex. 2, 44A.)
7. The Block B Site is currently occupied by low-rise multi-family residential apartment buildings that are part of the Riggs Plaza Apartment complex. (Ex. 2.)
8. Immediately south of the Block B Site is the Modern, a residential apartment building that was approved as a consolidated PUD pursuant to the Overall PUD Order.
9. West of the Block B Site is a multi-family apartment building, north and east of the Block B Site opposite South Dakota Avenue, N.E. are detached houses as well as the Lamond Riggs Neighborhood Library, and north of the Block B Site is the headquarters of Food and Friends. (Ex. 2.)
10. The Block B Site is located only several hundred feet from the Red, Green, and Yellow line Fort Totten Metrorail stop. (Ex. 2.)
11. The Comprehensive Plan’s (Title 10A of the DCMR, the “CP”) Generalized Policy Map (“GPM”) designates the Block B Site as Housing Opportunity Area and the Future Land

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<sup>2</sup> The portion of 4<sup>th</sup> Street was closed effective January 29, 2020. (Subdivision Book 216 at 179.)

Use Map (“FLUM”) designates the site for a mix of Medium-Density Residential and Medium-Density Commercial.

### **First-Stage Approval**

12. Pursuant to the Overall PUD Order, the Commission approved the consolidated and first-stage PUD application for Art Place at Fort Totten (the “Overall PUD”).
13. The Overall PUD Order also granted a PUD-related map amendment to a combination of the C-2-B and FT/C-2-B<sup>3</sup> Zone Districts (currently the MU-5A zone) for the following properties (collectively, the “Overall PUD Site”):
  - a. All lots in Square 3765;
  - b. Lots 1-4, and 800 in Square 3766;
  - c. Lots 1-5, and 806 in Square 3767;
  - d. Lots 1-2 in Square 3768; and
  - e. All lots in Square 3769.
14. In the Overall PUD Order, the Commission concluded that the proposal for the Overall PUD, was not inconsistent with the CP and other adopted policies of the District, that it proposed sufficient mitigations and would not result in any unacceptable impacts, and that the requested development incentives were balanced by the proffered public benefits.
15. The Overall PUD Order also granted the following flexibility as development incentives:
  - a. Relief from the penthouse setback requirements for multiple roof structures; and
  - b. Relief from the side yard requirements for the west side of Building A.
16. The Commission also granted design flexibility from the final plans approved by the Overall PUD Order.
17. The Overall PUD Order approved the Overall PUD to be developed with four buildings (A through D) to be developed in stages.
18. The Overall PUD Order established that the Block B Site was to be developed in the C-2-B Zone (MU-5A) with a building containing a mix of residential, grocery, and museum uses (“Building B” or the “Project”) as follows: (Ex. 44.)
  - a. A three-story building not to exceed 60 feet in height;
  - b. A maximum lot occupancy of approximately 76%;

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<sup>3</sup> The FT/C-2-B Zone District is subject to the provisions of the C-2-B Zone District, and the FT Overlay of the 1958 Zoning Regulations and has no zone equivalent in the Zoning Regulations.

- c. A floor area ratio (“FAR”) of 2.09;
- d. A total gross floor area (“GFA”) not to exceed 456,000 square feet, all of which would be for non-residential uses including: (Overall PUD Order, Condition No. 7(b).)
  - i. Approximately 144,000 square feet of anchor retail and supporting retail uses;
  - ii. 59,000 square feet of grocery store use;
  - iii. An approximately 47,000 square foot children’s museum; and
  - iv. Recreational and meeting space for resident and community seniors; and
- e. Contain approximately 1,100 parking spaces. (Overall PUD Order, Condition No. 7(b).)

**The Application**

19. On September 4, 2019, the Applicant submitted the Application for a modification of the first-stage PUD and second-stage PUD approval for Block B in order to construct Building B.

**Modifications to First-Stage Approval**

20. The Application:
- a. Proposed to modify the building design for Building B and to shift uses and density from other buildings in the Overall PUD and to modify the related conditions of the Overall PUD Order accordingly;
  - b. Did not request any additional zoning relief from what was approved by the Overall PUD Order<sup>4</sup>;
  - c. Noted that the requested modifications would not result in any changes to the approved heights and density of the Overall PUD that would require new analysis of the CP; and
  - d. Did not propose to modify any of the proffered public benefits.
21. In order to accommodate the shift in uses and building design within the overall Block B site, certain development standards have been adjusted as follows: (Exhibit 44A4 at Sheets 39-40.)

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<sup>4</sup> The Applicant did request rear yard relief for a portion of the Residential Building in its Pre-Hearing Statement. (Ex. 11.) However, the Applicant subsequently revised its plans and withdrew the request in its 20-Day Statement. (Ex. 22.)

Development Standard	Building A		Building B		Building C		Building D		Total	
	Approved	Proposed	Approved	Proposed	Approved	Proposed	Approved	Proposed	Approved	Proposed
Total GFA (sf)	780,201	780,201	456,000	549,996 (+93,996)	520,000	279,408 (-240,592)	238,000	384,596 (+146,596)	1,994,201	1,994,201 (same)
Residential Units (Market Rate)	379*	379	0	239 (+239)	379	0 (-379)	0	140 (+140)	758	758 (same)
Affordable Units	141	141	0	30 (+30)	30	0 (-30)	0	0	171	171 (same)
FAR	3.64	3.64	2.09	2.47 (+0.38)	3.46	1.81 (-1.65)	3.25	5.93 (+2.68)	3.04	3.04 (same)
Max Height (ft)	74	74	60	80 (+20)	90	90	90	90	90	90 (same)
Parking	601	601	1,100	750 (-350)	420	390 (-30)	160	160	2,281	1,900 (-381)

\*Z.C. Order No. 06-10 granted the Applicant flexibility in the total number of residential units for Building A between 510 and 550, provided that the Applicant maintain the 141 affordable units.

22. The Project complies with the general parameters established for the site in the Overall PUD Order but differs from the specific development plans for the Block B Site. Therefore, the Applicant seeks the following modifications to the First Stage PUD:
- a. In addition to the uses contemplated in the Overall PUD Order, the Application proposes the addition of residential uses to the Block B Site in addition to the Family Entertainment Zone (the “FEZ”), as well as retail and museum space, and reduced grocery store space; (Ex. 2.)
  - b. The residential portion will include approximately 275,117 square feet of GFA, resulting in approximately 239 market-rate units due to a relocation of residential GFA from Building C to Buildings B and D;
  - c. The residential portion will also include 30 of the residential units that will be reserved for artists and will be offered at 60% of AMI. The artist units will be interspersed throughout the east and west residential buildings (but will not be located in the top two floors of the west residential building or the top floor of the east residential building). This will bring the total number of income-restricted units in the Overall PUD to 171 units in compliance with the Overall PUD Order; (Ex. 11, 43, 44A.)
  - d. In order to facilitate the tenant relocation process for the existing tenants of the Riggs Plaza Apartments, the residential portion will include one of the existing Riggs Plaza Apartment buildings which will remain and be incorporated into the Project; and (Ex. 44.)

- e. Rather than a single large building occupying the entire Block B Site, the Project has been redesigned to maintain the closed portion of 4<sup>th</sup> Street, N.E., as pedestrian and flex space with residential and mixed-use structures created to the east and west. This modified design creates a more open, light, and active environment on the Block B Site and the adjacent public streets. (Ex. 2.)
23. The Applicant noted that these proposed modifications are consistent with the development, policy objectives, impacts, planning objectives, character, and appropriateness of the Overall PUD and were undertaken to accelerate the delivery of residential units and following detailed evaluation of the Project’s site plan, architecture, landscaping, and transportation, as well as current market conditions. (Ex. 25.)
24. The Block B Site contain of a mixed-use building, with two primary components – the FEZ, and a residential building (the “Residential Building”, with the FEZ, the “Project”).
25. The FEZ fronts on South Dakota Avenue, N.E., and contains:
- a. Retail space;
  - b. Theater/interactive space;
  - c. Gala/events space;
  - d. Cultural space - including Meow Wolf (an innovative arts collective) and the Explore! Children’s Museum;
  - e. A food hall;
  - f. An Aldi grocery store;
  - g. Artist maker space; and
  - h. Residential uses.

(Ex. 2, 11, 33.)

26. The Residential Building will be located on the west side of the closed portion of 4<sup>th</sup> Street, N.E. and will contain two towers connected by an amenity terrace, ground-floor retail uses, and artist/studio maker spaces. The east and west residential buildings will be connected by a pedestrian bridge over the closed portion of 4<sup>th</sup> Street, N.E. Multiple outdoor plazas and a pedestrian-oriented outdoor area will be located on a portion the closed portion of 4<sup>th</sup> Street, N.E., as well as along South Dakota Avenue, N.E. and Ingraham and Kennedy Streets, N.E. (Ex. 44A.)
27. The Project will have varying heights with the FEZ reaching a maximum height of 77 feet, 6 inches, and the Residential Building towers reaching a maximum height of 80 feet. (Ex. 44A.)

28. The southwest tower of the west residential building will contain approximately 70 units, the northwest tower of the west residential building will contain approximately 110 units, and the east residential building will contain approximately 90 units for a total of approximately 269 residential units.
29. The Project was initially proposed to include 930 parking spaces, reduced from 1,100 in the Overall PUD Order. However, in response to comments from DDOT, the Applicant reduced this number to 750 parking spaces (subject to plus or minus five percent design flexibility) across a garage level, ground floor, and mezzanine level. The parking areas will be accessible from Kennedy Street N.E. and Ingraham Street N.E. The Applicant requested that it be provided the design flexibility from the final plans to raise or lower the number of parking spaces by plus or minus five percent. (Ex. 44A and 54.)

### Second-Stage PUD

30. As discussed above, the Application finalized the design of Building B and surrounding spaces part of the first-stage modification.
31. Building B now contains numerous public gathering spaces. The closed portion of 4<sup>th</sup> Street, N.E. will become a flexible pedestrian zone that will be bounded by trees and include street furniture, landscaping, and café zones. The pedestrian zone and the service and loading areas will be separated by the pedestrian bridge connecting the east and west residential buildings. (Ex. 22, 44A.)
32. Building B also includes the HUB Plaza located on the corner of South Dakota Avenue N.E. and Ingraham Street N.E., which will function as a gathering area for arriving and departing groups; the Central Plaza, containing a splash fountain and built-in seating; Art Place Plaza, which is the gateway to the food hall and the flexible pedestrian zone; and Kennedy Plaza, which is located along Kennedy Street and may host markets or outdoor events. An outdoor dog run will also be located along Kennedy Street. (Ex. 22, 44A.)
33. In addition to the various plazas, Building B will include ground-floor artist studio/maker space, located along the east residential building and the northwest tower of the west residential building, which will be curated by a third-party group. (Ex. 11, 44A.)
34. Consistent with the first-stage approval, as modified, the loading for Building B will continue to be accessed through Kennedy Street and along a portion of the closed portion of 4<sup>th</sup> Street, N.E., and loading for the residential towers will be accessed from Kennedy Street, N.E. and the public alley behind the residential towers. (Ex. 44A.)

### PUD Timeline

35. As required by Condition No. 25 of Z.C. Order No. 06-10, the Applicant also proposed timing for the filing of the second-stage PUD applications for the development of Blocks C and D.

36. The Applicant noted that it intends to start construction of the Project during the first quarter of 2020 and the project will take approximately 30 months to build. The project is expected to be completed during the Fourth Quarter of 2022. All elements of the Project, the residential component and The HUB (Meow Wolf, Explore! Children’s Museum, Aldi) component will be constructed at the same time.
37. The Applicant will file a second-stage PUD application for either Block C or Block D by December 31, 2024, which is expected to be two years after Block B is open and operating.
38. The second-stage PUD application for the final development parcel included in the Overall PUD will occur by December 31, 2030.
39. The Applicant asserted that such time periods are appropriate in order to allow each development parcel to be constructed and have a period of operation prior to the beginning of the next round of development of the Overall PUD. The Applicant also noted that it anticipates that Block C will include non-residential uses and Block D will include residential uses. However, the Applicant requested flexibility to modify the ultimate mix of uses on these blocks at the time each of the second-stage PUD applications are filed. (Ex. 2, 22.)

#### Applicant’s Submissions

40. The Applicant submitted five main submissions to the record in support of the Application in addition to its Public Hearing testimony:
  - a. A pre-hearing statement dated January 25, 2019 (the “Pre-Hearing Statement”); (Ex. 11-11I.)
  - b. A Comprehensive Transportation Review dated March 5, 2019 (the “CTR”); (Ex. 19-20A2.)
  - c. A supplemental statement dated March 15, 2019 (the “20-Day Statement”); (Ex. 22-22C.)
  - d. A second supplemental statement dated April 4, 2019, responding to requests from OP and DDOT for additional information. (the “Second Supplemental Statement”); and (Ex. 31-34.)
  - e. A post-hearing statement dated May 2, 2019 (the “Post-Hearing Statement”). (Ex. 44-44H.)

#### **Pre-Hearing Statement**

41. The Pre-Hearing Statement responded to the issues raised in the OP Setdown Report by providing the following:



- a. A request for zoning flexibility from the rear yard requirements for a portion of the western residential building; (Ex. 11B4A at Sheet 30.)
- b. Modifications to the FEZ design, as well as information regarding its intended programing and potential impacts;
- c. Updated plans showing modifications to the massing of the residential buildings, introduction of new amenity and artist studio space, and modifications to the parking and loading access;
- d. Design details regarding façade materials, the retail frontage on South Dakota Avenue, and the western façade of the seven-story western building;
- e. A statement that the Applicant would be providing a traffic impact study and demand management plans in advance of the public hearing;
- f. A breakdown, by count, of residential unit types and clarification of projected residential totals for the entire PUD if Phase B modifications area approved; and
- g. Details on requested zoning relief and design flexibility.

## **CTR**

42. The CTR concluded that the Project would result in approximately 250 a.m. peak-hour vehicle trips and 480 p.m. peak-hour vehicle trips. The CTR noted that other pipeline projects in the surrounding area would be expected to further increase the number of vehicle trips upon their completion.
43. The CTR concluded that the parking and loading spaces provided by the Project were sufficient and in compliance with the zoning requirements.
44. The CTR also noted the Overall PUD Site’s proximity to the Fort Totten Metro Station and alternate means of transit as being beneficial to reducing vehicular traffic connected to the site.
45. The CTR recommended the following improvements and mitigations for the Project:
  - a. The design and installation of a full traffic signal at the intersection of South Dakota Avenue and Kennedy Streets;
  - b. The inclusion of separated left and through-right lanes at the intersection of South Dakota Avenue and Kennedy Streets;
  - c. Implementation of a transportation demand management (“TDM”) plan; and
  - d. Implementation of a loading management plan.

## **20-Day Statement**

46. The 20-Day Statement responded to issues raised by OP and included:
- a. Revised architectural plans for the Residential Buildings, including a modification to the Residential Building removing the need for rear yard relief; (Ex. 22A6 at Sheet 30.)
  - b. Revised plans and materials for the six major public areas of the Project;
  - c. An update on the grocery and retail tenants, including that the Applicant had signed a lease with Aldi for the grocery store space;
  - d. Additional information on the selection process for the artist residential and workspace;
  - e. An update on the Applicant's outreach to the community including the Affected ANCs and LRCA. The Applicant noted that in response to some of the specific concerns it was providing:
    - i. A construction management plan; and (Ex. 22B.)
    - ii. A set of security policies and procedures for the Project; and (Ex. 22C.)
  - f. An update on the phasing and timing of the outstanding phases of the Overall PUD.

## **Second Supplemental Statement**

47. The Second Supplemental Statement responded to specific questions raised in the OP Hearing Report by providing the following:
- a. A summary of proposed transportation mitigations; (Ex. 31.)
  - b. An analysis of the impacts of the reduced parking supply; (Ex. 32.)
  - c. A list of all proffered benefits and amenities; (Ex. 33.)
  - d. Clarification of overall lot occupancy and FAR with and without public streets and alleys, distinguishing between those that would remain open and those proposed for closure;
  - e. Clarification of proposed square footages and FARs of particular uses, noting the size of particular uses both with and without space that does not count towards FAR;
  - f. Clarification that while the Applicant will seek LEED-Gold Certification for the Overall PUD, it is not seeking it for the Project specifically;

- g. Submission of additional illustrations of the relationship between Building A and the proposed Building B, particularly a ground level view from the closed portion of 4<sup>th</sup> Street, N.E., to Building A;
- h. Submission of larger-scale drawings of façade details;
- i. Submission of diagrams showing the distribution of residential unit types throughout the east and west wings of Building B;
- j. The addition of balconies to residential elements;
- k. Amenities focused on project residents;
- l. Clarification that there was no plan to relocate the dog run after the future realignment of Kennedy Street;
- m. Confirmation that approximately 55% of the retail spaces for Block A have been leased, as well as a description of the tenant uses;
- n. Additional detail about wayfinding elements for pedestrians and emergency vehicles; and
- o. Confirmation that the Applicant did not anticipate providing any solar panels in the Project in order to satisfy the GAR and stormwater requirements through green roofs.

### **Applicant's Public Hearing Testimony**

- 48. At the April 4, 2019 Public Hearing, the Commission accepted Matthew Bell as an expert in the field of architecture, Ben Wood as an expert in the field of architecture, and Barbara Mosier as an expert in the field of traffic engineering. The Applicant provided testimony from these experts, as well as from Jane Lipton Cafritz, a director of The Morris and Gwendolyn Cafritz Foundation. (4/4/19 Tr. at 9-10.)
- 49. The Applicant presented evidence and testimony that it engaged in significant outreach to the surrounding community prior to the public hearing. The Project reflects the extensive engagement with the surrounding community. The Applicant and its development team met with and presented the Project to ANC 5A08, ANC 4B, ANC 5A, the LRCA, the LRCA Development Task Force, Queens Chapel Civic Association, and the Executive Director of the South Dakota Avenue Riggs Road Main Streets organization. (Ex.22; 4/4/19 Tr. 15-17.)
- 50. The Applicant responded to a question from the Commission that it has designed the Project to be accessible to seniors, including providing access points that avoid stairs or steps. The Project will feature many public gathering spaces, including along the pedestrian-oriented portion of 4<sup>th</sup> Street, N.E., which will be open to all, including seniors. (4/4/19 Tr. at 71.)

51. At the close of the hearing, the Commission asked the Applicant for further information responding to questions from the Commission, OP, DDOT, the LRCA, Ms. Grimstead, Mr. Baker, and Casey Trees. (4/4/19 Tr. at 145.)

### **Post-Hearing Statement**

52. The Post-Hearing Statement addressed the comments from the Commission, OP, DDOT, the LRCA, Casey Trees, Ms. Grimstead, and Mr. Baker as further discussed below.

### ***Responses to the Commission***

53. In response to the Commission's comments related to the architectural details of the Residential Building and FEZ structures, the Applicant:
- a. Modified the color palette of the residential building and updated the residential building façades to include a refined material palette. The Applicant stated that the updated material palette presents the ensemble as coordinated in color and materials but is also designed so that the supporting residential buildings along Ingraham and Kennedy Streets, N.E., and the closed portion of 4<sup>th</sup> Street, N.E., provide the proper backdrop for the FEZ, resulting in an authentic and varied streetscape; (Ex.44, 44A.)
  - b. Provided an updated materials list, depicting the proposed materials the Applicant intends to use for Block B, including materials showing the range of colors that are under consideration for certain façades for which the exact material has not yet been determined; (Ex. 44, 44A.)
  - c. Provided updated plans showing balconies on three sides of the south tower and the north tower on the closed portion of 4<sup>th</sup> Street, N.E., which are strategically located to provide interesting relief to the façades and suggest a more vertical proportion to each of the residential elevations. The Applicant also redesigned the pedestrian bridge to include a simpler form of a box truss; (Ex. 44, 44A.)
  - d. Provided enhanced renderings and views of the seven-sided structure in front of FEZ hub, and a view of Building A from the pedestrian/flex portion of the closed portion of 4th Street, N.E., in response to the Commission's requests; (Ex.44A.)
  - e. Refined the exterior appearance of the FEZ Building to reflect the various uses that will occur inside. Specifically, the Applicant removed several of the angled façade embellishments, as well as the kinetic façade and the tri-vision panels; (Ex. 44-44A.)
  - f. Proposed a series of design guidelines for ground-floor retail tenants to enable the retail tenants to display brand-specific design elements while maintaining overall design cohesion throughout the ground-floor façade and retail spaces; (Ex. 44, 44A.)

- g. Confirmed that solar panels can be installed on the roofs of the building without significant detrimental impact to the project's ability to satisfy GAR and stormwater management requirements. The Applicant requested that the Commission provide the Applicant flexibility to include solar panels on the roof of the building if it is economically feasible. The Applicant noted that if solar panels are provided, they will be set-back from all building walls at a 1:1 ratio to minimize any appearance from adjacent public spaces; (Ex. 44, 44A.)
- h. Noted that the retail offerings, including the food hall, will also be open to visitors of all ages and that the Children's Museum is intended to welcome all families, including grandparents visiting with grandchildren. Additionally, Meow Wolf will have a reduced entrance fee for seniors; (Ex. 33, 44.)
- i. Committed to offering a Neighborhood Appreciation Day on a quarterly basis, during which the Explore! Children's Museum will offer discounted admission of 25% off of then-prevailing ticket prices for residents of Ward 4 and Ward 5. The Applicant also noted that Meow Wolf will establish separate admissions prices for adults, children, and seniors/military members and will provide a discounted admission fee for District residents of 15% less than the admissions fees charged for similar non-District residents; (Ex. 33, 44.)
- j. Plans to provide the LRCA, ANC 5A, and ANC 4B with regular updates as to the status of the retail plans and food hall development at Block B. As the food hall development progresses, the Applicant plans to provide the LRCA, ANC 5A, and ANC 4B with detailed information regarding the leasing and tenant selection process for the food hall. The Applicant will also make presentations, as appropriate, at ANC and LRCA meetings to further explain the tenant selection process to interested retailers for the food hall; (Ex. 44.)
- k. Provided information detailing that the Applicant will enter into a contract with an arts organization that will interview and select the artists for the studio and maker spaces. The Applicant stated that it will rent these spaces to artists at a dollar/sf net monthly lease rate not to exceed 50% of the average dollar/sf net monthly lease rate charged to the other retail tenants in Block B; (Ex. 33, 44.)
- l. Confirmed that the artist affordable units will be distributed throughout the residential building in Block B (but not on the upper two floors) at a ratio of unit types that is consistent with the market-rate unit types; (Ex. 44.)
- m. Agreed to lower the affordability level of the 30 artist units from 80% MFI to 60% MFI. The Applicant additionally noted that the principal benefits and amenities of this case are the arts and cultural uses that are provided in the FEZ building and the artist studio/maker spaces, which can only be achieved through significant financial subsidy from the Applicant; (Ex. 44.)
- n. Committed to increasing the amount of money loaded onto SmarTrip cards provided to residents to \$20.00; (Ex. 44, 44D.)

- o. Provided the LEED certification information for Block A; (Ex. 44, 44B.)
- p. Provided a detailed explanation of how the development of Block B is compatible with the FLUM and underlying zoning of the first-stage PUD approval; and (See further discussion in Finding of Fact [“FF”] No. 102.)
- q. Committed to relocating the dog run in the development of Block C or Block D to accommodate the realignment of Kennedy Street, as requested by the Commission. (Ex. 44.)

### ***Responses to OP***

- 54. The Applicant responded to the two issues raised by OP at the Hearing as follows:
  - a. The residential component of the Overall PUD that is not subject to IZ is based on the total number of units, 950, approved by Commission under the Overall PUD Order; and
  - b. Confirmed that the residential amenities provided in Block A will be available to residents of Block B. (Ex. 34.)

### ***Responses to DDOT***

- 55. The Applicant responded to the three issues raised by the DDOT Report at the Hearing and in its Post-Hearing Statement as follows: (FF 24.)
  - a. At the public hearing, the Applicant committed to removal of the crosswalk and associated curb tamps across South Dakota at Jefferson Street;
  - b. The preliminary signal warrant study included in the Applicant’s CTR indicates that a traffic signal would likely be warranted at the intersection of Ingraham Street and South Dakota Avenue upon full buildout of the Project. The Applicant intends to submit a full signal warrant study, and if found to be warranted, design and fund the construction of a full traffic signal concurrent with the construction of the Project. If the traffic signal is not warranted, then the traffic impact of the Project concluded based on the traffic analysis would not have been realized, and a commitment to the mitigation measure would not be required; and (Ex. 44C.)
  - c. In its Post-Hearing Statement, the Applicant evaluated the costs necessary to create the pedestrian sidewalk and bike trail connection at 3<sup>rd</sup> Street, N.E. (which is located outside of the Block B development), and provided a plan showing a new concrete six-foot-wide DDOT standard sidewalk as well as an eight-wide wide asphalt bike lane and a preliminary analysis, showing that the approximate cost of these improvements would be a minimum of \$50,000. The Applicant noted that it is committed to creating a safe and accessible circulation path for both pedestrians and vehicles as part of the Block B development and is making substantial improvements to the pedestrian infrastructure on the Block B site and immediately adjacent to the site. However, the Applicant believes that upgrading

the pedestrian path on 3<sup>rd</sup> Street, N.E., falls outside the scope of the Block B development and does not believe that it is a required mitigation in order for the Commission to approve this project. (Ex. 44A, 44E, 44F.)

***Responses to LCRA***

56. With regard to LCRA's comments, the Applicant responded by:

- a. Confirming that a no-parking sign will be installed behind the crosswalk at the pathway through Block A (closed portion of 4<sup>th</sup> Street, N.E.) and Galloway Street, N.E., and the Applicant committed to including monitoring of the bus and pick-up/drop-off areas as part of the loading manager's responsibilities;
- b. Committing to completing the design and funding the construction of a full traffic signal on South Dakota Avenue, N.E. and Ingraham Street, N.E., subject to DDOT approval and concurrent with construction of the Project, consistent with requests of community organizations;
- c. Committing to improving any existing traffic signal poles that will be impacted by the Project, to investigate various traffic calming and pedestrian crossing improvements on Ingraham Street, N.E. during the public space approval process, and to improve the site frontage along South Dakota Avenue, consistent with the frontage along Block A; (Ex. 44C.)
- d. Committing to installing pedestrian-oriented lighting for all pedestrian areas, sidewalks, and the closed portion of 4<sup>th</sup> Street, N.E., and removed the kinetic façade from the FEZ design; (Ex. 44, 44A.)
- e. Noting that its TDM plan will provide a move-in kit to new residents that includes a carshare membership at a value of \$85.00 and two spaces will be designated in the garage for car-sharing vehicles. Additionally, the Applicant will provide new residents with a SmarTrip card preloaded with \$20.00; (Ex. 44D.)
- f. Providing a Proposed Security Policies and Procedures at APFT, which addresses security policies and restrictions for the Project including surveillance measures, generous lighting, motion sensor lighting, night vision cameras, and coordination with the Metropolitan Police Department ("MPD"). Additionally, the Applicant has committed to provide pet waste bags and receptacles in the proposed dog park to reduce trash; (Ex. 22C, 44.)
- g. Providing a robust construction management plan ("CMP") which addresses construction debris, trash, pest control, truck routing, and sidewalk closure in accordance with the LRCA requests; (Ex. 44G.)
- h. Committing to monitor inlets during construction to ensure that they are not blocked and will not increase flooding problems and the Applicant's CMP notes that the Applicant will work with DCRA to maintain temporary stormwater

management systems throughout the construction of the Project so as to avoid any adverse water impacts to the adjacent neighborhood. Furthermore, the development of the Project will include robust landscaping features that are complementary to those in Block A; (Ex. 44A, 44G.)

- i. Committing to continue to regularly engage with the LRCA and the ANCs to facilitate coordination of input from residents. The Applicant will make information on retail plans available at the Lamond Riggs library for individuals without computer access and will continue to engage with the LRCA and the ANC to hear community feedback on the retail plans; (Ex. 44.)
- j. As discussed in FF 53 above, both the Explore! Children’s Museum and Meow Wolf will provide discounted admission to residents of Ward 4 and Ward 5, and to District residents, respectively;
- k. As discussed in FF 31 above, Block B will introduce several public gathering spaces, particularly along the closed portion of 4<sup>th</sup> Street, N.E., pedestrian/flex area, that will be open to visitors of all ages. Block B will also include a variety of retail offerings and a food hall that will appeal to adults and seniors;
- l. Committing to continue to abide by the terms of the First Source Employment Agreement that were followed during the development of Block A. Furthermore, the grocery store operator will hold at least three monthly hiring open houses in the four months prior to the opening of the Aldi store. The open houses will provide local job candidates with information about employment opportunities with the grocery store operator; (Ex. 33, 44.)
- m. Noting that as part of the relocation process for Riggs Plaza residents, the Applicant has relocated all but four of the original Riggs Plaza tenants. The Applicant will continue to work with the few remaining Riggs Plaza tenants to ensure a smooth and respectful relocation; (Ex. 44.)
- n. Noting that the charter school is expected to begin operations in the fall of 2020; (Ex. 44.)
- o. Noting that the Overall PUD Order approved an affordable housing requirement of 171 affordable housing units. Block A included 141 affordable units and the remaining 30 affordable units originally to be provided in Block C will be provided in Block B. Upon the delivery of the Block B residential units, the affordable units in Block A and Block B will fulfill the affordable housing requirement set forth in the approved first-stage PUD order. As discussed above, the Applicant is maintaining one of the Riggs Plaza Apartment buildings as part of the tenant relocation plan and the artist units will be offered at 60% AMI for 20 years from the issuance of the first Certificate of Occupancy in Block B. As discussed further below, the Applicant does not believe that IZ requirements should apply to the residential units in Block B. However, the Applicant noted



that if the Commission determined that the IZ requirements do apply, it requests flexibility from those requirements; (Ex. 46.)

- p. Noting that, to the extent that additional housing units above the 950 approved in the Overall PUD Order are provided in future phases, such additional housing will be subject to IZ; and (Ex. 44.)
  - q. Noting that shared library parking is not appropriate for Block B because the Lamond-Riggs library is an institution that primarily serves its immediately surrounding neighbourhood. Due to the close proximity to its primary patrons' residences, library patrons may walk or bike to the library. The Applicant further noted that it would be difficult for the Applicant and the library to develop and coordinate a parking validation system. Furthermore, the Applicant stated its concern that commuters using the Fort Totten Metrorail station will utilize the parking at Block B as commuter parking and stop by the library simply for validation at the end of the day, placing a significant burden on library staff to manage a parking validation system. (Ex. 44.)
57. In response to LRCA's post-hearing submission, the Applicant agreed to continue to explore the possibility of shared or validated parking for the library in a post-hearing submission. (Ex. 47, 54.)

### ***Response to Casey Trees***

58. The Post-Hearing Statement addressed Mr. Balog and Casey Trees' comments as follows: (Ex. 44, 44H.)
- a. Protection of Seven Existing Trees. The Applicant noted that six of the seven trees identified by Casey Trees are in the proposed excavation area of Block B and therefore cannot be preserved. However, the Applicant will preserve one of these seven trees. While this tree will be preserved during the construction of Block B, the future realignment of Kennedy Street, N.E., will require the removal of this tree;
  - b. Protection of Three Trees along Perimeter and One Tree beside the Residential Building. The Applicant noted that one of the trees identified by Casey Trees along the perimeter of the Art Place building no longer exists. The two other trees identified along the perimeter of the future Art Place building cannot be preserved as they are located within the limits of the project's excavation and disturbance area. The tree identified on the north side of the residential building can be preserved. While this tree will be preserved during the construction of Block B, the future realignment of Kennedy Street, N.E. will require the removal of this tree; and
  - c. Adopt a 3:1 Planting Ratio. The Applicant noted that as Block B is an urban project, the ability to introduce new plantings is limited and a 3:1 planting ratio cannot be met. However, Block B is designed as an environmentally sensitive

project, including its proximity to mass transit, provision of bikeshare facilities, and robust landscaping and planting plans. Block B will fulfill the Green Area Ratio requirements as well as the applicable stormwater management requirements.

### ***Responses to Public Testimony***

59. The Post-Hearing Statement addressed Ms. Grimstead's requests by noting that maintenance of traffic plans are required to be reviewed and approved by DDOT prior to construction impacts to public streets and that the projects identified by Ms. Grimstead will be required to submit Maintenance of Traffic plans for their respective construction schedules. The Applicant committed to work with DDOT to coordinate the Maintenance of Traffic plans for the adjacent developments to the extent possible, pending a formalized timeline of building for the various projects. (Ex. 44C.)
60. The Post-Hearing Statement addressed Mr. Baker's requests as follows:
- a. Shared and Validated Parking: The Applicant stated that it does not believe that shared library parking is appropriate for the Project as stated above but agreed to explore the possibility of shared or validated parking; (FF 51.)
  - b. Bicycle Parking: The Applicant will provide the amount of bicycle parking required by the Zoning Regulations. The Applicant wants to ensure that space is used optimally and efficiently at Art Place at Fort Totten and that excess bicycle storage does not go unused. Currently, at Block A, 232 long-term bicycle storage spaces are offered, but only approximately 75 are regularly used. There are 18 retail bicycle storage spaces offered in Block A, and they are also rarely used and often empty; and (Ex. 44.)
  - c. Traffic Signal: As noted in Finding of Fact 48.b, the Applicant will fund a signal warrant study for the intersection at Ingraham Street, N.E. and South Dakota Avenue, N.E., upon full buildout of the Project. The Applicant will also design and fund the construction of a full traffic signal if warranted. (Ex. 44C.).

### **Responses to the Application**

#### **OP Reports**

61. OP submitted a total of three reports regarding the Application:
- a. A report dated November 9, 2018 recommending that the Commission set down the Application for a public hearing (the "OP Setdown Report"); (Ex. 10.)
  - b. A hearing report dated March 25, 2019 recommending approval of the Application (the "OP Hearing Report"); and (Ex. 25.)

- c. A post-hearing report dated May 20, 2019 (the “OP Post-Hearing Report”). (Ex. 53.)

### **The OP Setdown Report**

62. The OP Setdown Report concluded that the Commission’s prior determination in the Overall PUD Order that the Overall PUD is not inconsistent with the Comprehensive Plan is not affected by any subsequent changes to the Comprehensive Plan. OP also noted that the Property is identified by the Generalized Policy Map as a Housing Opportunity Area and the addition of a residential component to Block B is consistent with this designation. OP further concluded that the FAR of 2.55<sup>5</sup> proposed at the time of the report is not inconsistent with the Property’s FLUM designation.
63. The OP Setdown Report requested additional information from the Applicant related to the Application.
64. The Applicant responded to the questions raised in the OP Setdown Report in its Pre-hearing Statement and 20-Day Statement. (FF 41, 46.)

### **The OP Hearing Report**

65. The OP Hearing Report recommended approval of Application. OP noted the Applicant worked closely with OP throughout the application process on the Project’s design and the Applicant had significantly improved the Project’s massing, building elements, proposed facades, landscape architecture, design of public spaces, and publicly accessible private outdoor spaces.
66. The OP Hearing Report also discussed the two main benefits of the Application: the shift of residential units from Block C to Block B, including the retention of the existing Riggs Plaza Apartments and the Applicant’s proffer of a First Source Agreement. OP encouraged the Applicant to implement policies and procedures to promote hiring and training of neighborhood residents for on-site jobs and to encourage leasing to neighborhood-serving retail establishments. As discussed further herein (FF 56(1)), the grocery store operator will hold at least three monthly hiring open houses in the four months prior to the opening of the Aldi store. (FF 56(1).) The open houses will provide local job candidates with information about employment opportunities with the grocery store operator.
67. OP noted that it had referred the application to several agencies, including:
  - a. DDOT;
  - b. DOEE;

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<sup>5</sup> The Applicant further reduced the FAR since the date of the OP Hearing Report to 2.47.

- c. DC Public Libraries (“DCPL”);
  - d. MPD; and
  - e. Department of Housing and Community Development (“DHCD”).
68. The OP Hearing Report stated that:
- a. DDOT recommended several changes that the Applicant has accepted, including the elimination of the curb cut and garage entry previously proposed on South Dakota Avenue;
  - b. The Applicant worked closely with DOEE on sustainability and stormwater plans;
  - c. DCPL has no objection to the Project and will not be filing a separate report; and
  - d. MPD will not be filing a separate report.
69. The OP Report noted that DCHD raised the following issues:
- a. That additional information was needed regarding:
    - i. The subsidy and terms for the artist housing and any application that may be filed for related funding; and
    - ii. The relocation plans for remaining Riggs Plaza Apartment residents; and
  - b. That IZ should apply to the residential units that would be relocated from Block C to Block B and that the change in use from the approved first-stage PUD warrants the proffering of additional IZ units.
70. The OP Report also requested additional information from the Applicant related to the Application.
71. The Applicant responded specifically to each item raised by OP in its Second Supplemental Statement, as well as during the Applicant’s presentation at the public hearing and the Applicant’s Post-Hearing Statement. (Ex. 34, 44, 47.)

**OP’s Public Hearing Testimony**

72. At the Public Hearing, OP recommended that the Commission approve the Project but requested three pieces of additional information from the Applicant. (4/4/19 Tr. at 102.)

**The OP Post-Hearing Report**

73. The OP Post-Hearing Report responded to the Commission’s two requests made at its May 20, 2019 public meeting, specifically OP stated that:

- a. The FLUM designates the site as appropriate for medium-density residential/medium-density commercial uses; and
- b. DDOT's standard for electric vehicle charging stations is one station for every 50 parking spaces, and that accordingly, for the proposed 750 spaces in Building B, 15 charging stations would be required to meet DDOT standards. It stated that the Applicant agreed that it will specify the number of charging stations that will be required to meet LEED ND standards, and that if this number is smaller than the number required by DDOT Standards, the Applicant will meet the DDOT standard.

#### DDOT Reports

74. DDOT submitted a total of three reports regarding the Application:
  - a. A report dated March 25, 2019 (the "DDOT Report"); (Ex. 24.)
  - b. A supplemental report dated May 17, 2019 (the "Supplemental DDOT Report"; and (Ex. 50.)
  - c. A second supplemental report dated May 28, 2019 (the "Final DDOT Report"). (Ex. 55.)

#### **The DDOT Report**

75. The DDOT Report stated that it had no objection to the approval of the second-stage PUD Application, subject to certain revisions and conditions. The DDOT Report noted that it found the Applicant's proposed LMP to be sufficient and that the preliminary public space plans are generally consistent with DDOT standards. (Ex. 24.)

#### **The Supplemental DDOT Report**

76. The Supplemental DDOT Report listed the mitigations that DDOT recommended to be included in the final order in the case, and stated that there were several mitigations that the Applicant did not accept, including:
  - a. Funding a possible traffic signal at the intersection of South Dakota Avenue and Ingraham Street, N.E., if a warrant study showed that it should be constructed two years after the full buildout of the project;
  - b. Improvements to the pedestrian infrastructure at the intersection of Hamilton Street, Ingraham Street and the public alley; and
  - c. Pedestrian and bicycle improvements on 3<sup>rd</sup> Street, N.E.

## **DDOT Public Hearing Testimony**

77. DDOT also stated that some elements of the Project do not meet DDOT standards, including vaults in public space and a noncontinuous row of trees on South Dakota Avenue.
78. DDOT additionally noted that the Applicant did not concur with two of DDOT's revisions to the TDM plan, but that given the reduction in parking, DDOT finds the TDM plan to be sufficient as proposed by the Applicant. (4/4/19 Tr. at 106.)
79. In its Post-Hearing Statement, the Applicant proposed to improve the site frontage along South Dakota Avenue consistent with the frontage on Block A. (Ex. 44C.)

## **The Final DDOT Report**

80. The Final DDOT Report stated that DDOT and the Applicant had come to an agreement about the proposed mitigations, described them, and requested that they be included as conditions of this Order.
81. DDOT testified that the Applicant did not accept the following proposed mitigations: (4/4/19 Tr. 105-107.)
  - a. Dedication of funds that would have been applied to a full signal at South Dakota Avenue, N.E., and Ingraham Street, N.E., if the full signal is ultimately not warranted;
  - b. Improvement of pedestrian infrastructure at the intersection of Hamilton Street, N.E., Ingraham Street, N.E., the public alley, and on 3<sup>rd</sup> Street, N.E.; and
  - c. Removal of the crosswalk and associated curb ramps across South Dakota at Jefferson Street, N.E.

## ANC 5A

82. ANC 5A submitted a report stating that at its duly noticed and regularly scheduled meeting on March 27, 2019, with a quorum present, ANC 5A approved a resolution in support of the project (the "ANC Report"), noting specifically: (Ex. 28.)
  - a. The ANC was supportive of the overall mix of uses for the Block B development, particularly the Aldi grocery store;
  - b. The ANC believes that the Applicant has addressed concerns about traffic, parking, pedestrian travel, stormwater and infrastructure, and security at the site; and
  - c. The ANC found the Applicant to be responsive to questions and comments from the community.

## LCRA

83. LRCA testified in support of the Project but made several comments regarding the development of the Project, and requested additional information including:
- a. More information on traffic and transportation issues, including parking signage, traffic signals, pick up/drop off zones, crosswalks, and pedestrian improvements;
  - b. Details regarding construction management, including, debris, pest control, truck routing, and sidewalk closures;
  - c. Pedestrian-oriented lighting and the formerly proposed kinetic façade;
  - d. Opportunities for carsharing services and SmarTrip cards for residents;
  - e. Proposed security and trash cleanup measures;
  - f. Details regarding flooding control and landscaping;
  - g. Appropriate retail offerings and solicitation of community feedback on retail tenants;
  - h. Admission discounts for offerings at the FEZ;
  - i. Seniors accessibility;
  - j. Neighborhood-based hiring;
  - k. Relocation of remaining Riggs Plaza residents;
  - l. Proposed use of existing warehouse buildings;
  - m. Affordable housing; and
  - n. Shared parking. (Tr. 116-130; Ex. 37.)
84. LRCA submitted a post-hearing response to the Applicant's proffered public benefits and draft conditions which generally supported the Applicant's proffers but requested that it consider the possibility of shared parking with the Lamond-Riggs neighborhood library. (Ex. 47.) The Applicant responded that they would continue to explore options (FF 56.)
85. LRCA submitted a second post-hearing response to the Applicant's submission. (Ex. 56.) It stated that LRCA supported the installation of a traffic signal at South Dakota and Ingraham Streets, N.E., supported the pedestrian and bicycle infrastructure improvements associated with the Project, and that LRCA appreciated the Applicant's agreement to work with LRCA to explore the potential for shared or validated parking in the Project for visitors to the library.

## Additional Responses

86. The South Dakota Avenue/Riggs Road Main Streets program submitted a letter of support for the Project. The letter noted that the South Dakota Avenue/Riggs Road Main Streets program believes the Project will be an exciting addition to the Ft. Totten and Lamond Riggs neighborhoods and will help foster and encourage a dynamic and vibrant streetscape along South Dakota Avenue and that the proposed mix of uses – including the arts, a museum, retail, and a grocery store – will help create a signature destination for the community. (Ex. 27.)
87. At the public hearing, Deborah Grimstead and Gavin Baker testified as persons in support of the Application: (Tr. 132-137.)
- a. Ms. Grimstead testified in support of the Project but asked that the Applicant consider the combined effects of the development of Block B, the Lamond-Riggs library, and a nearby townhome development on transportation connectivity; and (Tr. 132-134.)
  - b. Mr. Baker requested that the Applicant explore using shared parking, particularly with respect to the Lamond-Riggs library, and provide validated parking in Block B for visitors to the Lamond-Riggs library. Mr. Baker also requested that the Applicant provide a 1:1 ratio of bedrooms to long-term bicycle parking in the residential portion of Block B and address the traffic signal at Ingraham Street, N.E. and South Dakota Avenue, N.E. (4/4/19 Tr. At 134-137.)
88. The Commission received testimony from Spenser Balog, a representative of Casey Trees. In his testimony, Mr. Balog requested that the Applicant:
- a. Protect seven of the existing street trees along the closed portion of 4<sup>th</sup> Street, N.E.:
  - b. Protect three trees that are on the perimeter of the future Art Place building and one tree beside the residential buildings on the west side; and
  - c. Adopt a 3:1 planting ratio
89. The Applicant responded to Ms. Grimstead, Mr. Baker and Casey Trees in its Post-Hearing Submission discussed above at FF 58-60.

## **CONCLUSIONS OF LAW**

1. The Applicant requested approval, pursuant to Subtitle X, Chapter 3 and Subtitle Z, Chapter 7, of a second-stage PUD and related first-stage PUD modifications. The Commission is authorized under the Zoning Act to approve a second-stage PUD and PUD modifications consistent with the requirements set forth in Subtitle X §§ 302, 304, and 309 and Subtitle Z § 704.



2. *The purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:*
  - a. *Results in a project superior to what would result from the matter-of-right standards;*
  - b. *Offers a commendable number or quality of meaningful public benefits; and*
  - c. *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*

(Subtitle X § 300.1.)

3. In evaluating a PUD, the Commission shall find that the proposed development:
  - a. *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
  - b. *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
  - c. *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*

(Subtitle X § 304.4)

### **First-Stage Modifications**

4. Pursuant to Subtitle X § 302.2(a), when considering a two-stage PUD:

*“the first-stage application involves general review of the site’s suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with the Comprehensive Plan, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project...” (emphases added.)*

5. *The scope of the hearing conducted pursuant to this section shall limited to the impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision. (Subtitle Z § 704.4.)*
6. While the Application proposes changes to the heights, density and permitted uses of individual building, it does so by shifting these elements from other buildings within the

Overall PUD Site. As a result, there is no change to approved heights or density of the Overall PUD which the Commission determined was not inconsistent with the CP in the Overall PUD Order. (FF 14.)

7. The Application also proposes to change the use mix for Building B by:
  - a. Adding residential uses, including affordable units;
  - b. Increasing the cultural and art spaces; and
  - c. Reducing the size of the grocery store and children's museum uses.
8. Regarding the addition of residential uses to Building B, the Application simply proposed to move residential units from later phases to Building B. The Commission concurs with the analysis of OP and considers the provision of housing – both affordable and market-rate – in earlier phases of the overall development of the Overall PUD as a benefit and also notes that the Project will facilitate the relocation of existing residents by maintaining the existing Riggs Place Apartments.
9. With regards to the changes in the other uses, the Commission finds that the reduction in the size of the grocery and museum uses are a result of the Applicant's desire to incorporate residential uses in Building B, and to increase the amount of other culture and arts-centric spaces including maker space and Meow Wolf, and therefore the mix of uses continues to be a benefit of the Overall PUD.
10. The Commission also concludes that the modifications proposed by the Application will not result in a significant change to the potential adverse impacts of the Overall PUD as contemplated in the Overall PUD Order. In particular, the Commission notes that the development standards for the Overall PUD remain largely unchanged. The one area that has changed is the reduction in the amount of parking being provided on site which the Commission, in concurrence with DDOT, finds to be a benefit.
11. The Commission notes that the Application does not seek any additional flexibility from what was approved by the Overall PUD Order. The Commission concludes that there have been minor changes to the public benefits in terms of the proposed uses, but the Commission concludes that this is primarily due to the shift of uses between buildings in the Overall PUD and the Applicant's desire to provide more residential units in earlier phases and therefore concludes that there is no change to the balancing test.

Requested Flexibility Balanced by Public Benefits (Subtitle X § 304.3.)

12. The Commission notes that the Public Benefits continue to benefit the surrounding neighborhood and the District as a whole to a significantly greater extent than would a matter-of-right development and readily satisfy the Public Benefit Criteria. In particular the Commission notes that the Project will now provide 239 units of market-rate housing, and 30 affordable units. The Commission also notes that the inclusion of residential uses

in the Project allows the Applicant to retain the existing Riggs Plaza Apartments and facilitate the relocation of the existing residents.

#### Affordable Housing Requirement

13. The Commission finds that the Overall PUD Order approved the Overall PUD with a total of 171 affordable units. (Order No. 06-10, FF 47.a and Condition No. 8.) As noted above, Block A provided 141 affordable units and the Project will provide an additional 30, thereby meeting the requirements of the Overall PUD Order. The Commission concludes that should future phases of the Overall PUD provide additional residential units in excess of the 950 approved by the Overall PUD Order, that those units will be subject to the IZ regulations applicable at the time of application.

#### Second-Stage PUD

14. Pursuant to Subtitle X § 302.2(b):  
*“the second-stage application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and this title”* (emphases added.)

#### Consistency with First Stage Approval (Subtitle X § 302.2.)

15. *If the Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Zoning Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Zoning Commission's decision.* (Subtitle X § 309.2.)
16. The Commission has found that the Application is in accordance with the Zoning Purposes, the PUD process, and the Overall PUD Order, as modified by this Order. Accordingly, the Commission concludes that it must approve the Application subject to the Conditions of this Order.

#### Potential Adverse Impacts - How Mitigated or Outweighed (Subtitle X §§ 304.3 and 304.4(b).)

17. The Commission concludes that the potential adverse impacts specific to Building B are either being mitigated or outweighed by the public benefits.
18. The Commission finds that the Project has been designed to avoid potential adverse effects of the second-stage PUD development of Building B. The Commission finds that while the Project will result in some, predominantly traffic-related, impacts — the Applicant’s mitigation efforts and the proffered Public Benefits provide sufficient justification for the Project. Moreover, the Public Benefits generally accrue most significantly to the area immediately surrounding the Project. Therefore, those most likely to be adversely affected by the Project nonetheless also benefit from it.
19. The Commission finds that the Applicant responded fully to DDOT’s questions raised in the DDOT Report and at the public hearing and has provided satisfactory evidence to

support its responses. The agreed upon mitigations have been incorporated as conditions of this Order.

20. The Commission finds that the Applicant has fully and satisfactorily responded to Casey Trees' comments. The Applicant's responses are supported by substantial evidence in the record, including the Applicant's tree inventory and tree removal plans.

#### **“Great Weight” to the Recommendations of OP**

21. 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.) and Subtitle Z § 405.8; *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
22. OP confirmed that the Applicant responded completely to OP's questions at the public hearing and in its Post-Hearing Statement, specifically that the residential component of the Overall PUD not subject to IZ is based on the total number of units approved in the Overall PUD Order and that the amenities provided in Block A will be available to the residents of Block B.
23. The Commission finds persuasive OP's analysis and recommendation that the Commission approve the Application and therefore concurs in that judgment.

#### **“Great Weight” to the Written Report of the ANC**

24. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC 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).)
25. The Commission carefully considered the ANC 5A Report supporting approval of the Application, in particular the mix of uses to be provided by the Project. The Commission also concludes that the Applicant addressed the ANC Report's concerns regarding traffic, parking, stormwater and site impacts to ANC 5A's satisfaction and concurred in its recommendation of approval.

### **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 a second-stage PUD for and modification of a first-stage PUD for the Property for the mixed-use development described herein, subject to the Overall PUD Order and plans as modified by the following guidelines, conditions, and standards:

**A. First-Stage PUD Modifications**

1. Condition No. 7 of Z.C. Order No. 06-10, as modified by Z.C. Order No. 06-10A, is modified by revising (b)-(d) and adding (e) as follows (deleted text in **bold and strike through**; new text in **bold and underlined**):

7.b. Building B shall be constructed as ~~a three-story~~ buildings not to exceed ~~60~~ **80** feet in height and shall include approximately ~~144,000~~ **52,470** square feet of ~~anchor retail and supporting retail uses~~, ~~59,000~~ **9,267** square feet of grocery, an approximately ~~47,000~~ **26,070** square foot children's museum, **61,872 square feet of cultural uses, 80,308 square feet for Meow Wolf**, as well as ~~recreational and meeting space for resident and community seniors~~ **275,117 square feet of residential uses including 239 market rate residential units, and no fewer than 30 affordable artist housing units**, with a total gross floor area not to exceed ~~456,000~~ **549,996** square feet, **and a floor area ratio of 2.47 all of which would be for non-residential uses**. Building B shall have a maximum lot occupancy of approximately ~~76%~~ **62.9%** and contain approximately ~~1,100~~ **750** parking spaces;

7.c. Building C shall measure eight stories and a maximum height of 90 feet and contain approximately ~~400 residential units, including not fewer than 30 income restricted units~~ **279,408 square feet of educational uses**. This building shall have a total building density of approximately ~~3.46~~ **1.81** FAR (~~not to exceed 520,000 gross square feet) on its own site, all devoted to residential uses~~, and shall contain approximately ~~420~~ **390** parking spaces. Building C shall have a maximum lot occupancy of approximately 48%; ~~and~~

7.d. Building D shall have seven stories and a maximum height of 90 feet, with a total density of approximately ~~3.25~~ **5.93** FAR (not to exceed ~~238,000~~ **384,596** gross square feet) on its own site, all of which shall be devoted to ~~non-residential uses including rehearsal and support space for Washington-area performing arts institutions, with a reservation of approximately 20,000 square feet for a new branch library~~. Building D shall have a maximum lot occupancy of approximately 71%. Approximately 160 parking spaces shall be provided in Building D; ~~and~~

**7.e The Applicant shall have flexibility to modify the ultimate mix of residential and non-residential uses on Blocks C and D at the time the Second-Stage PUD applications are filed for each building.**

**B. Block B Development**

1. Building B will be developed in accordance with the architectural drawings submitted into the record as Exhibits 44A1-44A10, as modified by the guidelines, conditions, and standards herein (collectively, the "Approved Plans").
2. The Applicant shall have design flexibility from the Approved Plans in the following areas:
  - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
  - b. To vary final selection of the exterior colors and materials within the color ranges and general material types approved, based on availability at the time of construction;
  - c. To vary the final selection of landscaping materials utilized, based on availability and suitability at the time of construction;
  - d. To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
  - e. To provide solar panels on the roof of Building B if it is economically feasible, if solar panels are provided, they will be set back from all building walls at a ratio of 1:1 to minimize any appearance from adjacent public spaces;
  - f. To increase or decrease the number of parking spaces provided Building B within five percent of 750 parking spaces; and
  - g. To modify the ultimate mix of residential and non-residential uses on Blocks C and D at the time each of the second-stage PUD applications are filed.

**C. Transportation and Mobility Impact Mitigations**

1. **For the life of the Project**, the Applicant shall abide by the terms of the transportation demand management plan, which requires compliance with the following:

- a. The Applicant will work with DDOT to identify a space for a Capitol Bikeshare station on or near the site and provide funding for that station;
- b. A member of the property management team will be designated as the Transportation Management Coordinator (“TMC”). The TMC will be responsible for ensuring that information regarding transportation options is disseminated to retail and residential tenants of the building. The position may be part of other duties assigned to the individual. The contact information for the TMC will be provided to DDOT and goDCgo, and the TMC will work with them to promote sustainable and active transportation options to and from the site;
- c. The property management website will include information on and/or links to current transportation programs and services, such as:
  - Capital Bikeshare;
  - Car-sharing services;
  - Ride-hailing services (e.g. Lyft or Uber);
  - Transportation Apps (e.g. Metro, Citymapper, Spotcycle, Transit); and
  - The requirements of the transportation demand management plan.
- d. A move-in kit will be provided to each new resident **for the first 10 years of the development** containing:
  - A Get Around Guide highlighting local transportation options;
  - A one-year annual membership to Capital Bikeshare (\$85);
  - A carshare membership of equivalent value (\$85); and
  - A SmarTrip Card preloaded with \$20.00.
- e. The retailers and performing arts space tenants will work with DDOT and goDCgo to tailor and share transportation options to/from the site;
- f. The performing arts space tenant will share “Getting Here” information with attendees and guests ahead of any events and post the same information on the website;
- g. An electronic display will be provided in the residential lobby as well as the main cultural building lobby and will provide public transit information such as nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital BikeShare locations indicating the number of bicycles available at each location;
- h. Shower and changing facilities will be provided in the retail bike parking area building for employees who bike, walk, or jog to work;

- i. Convenient and covered secure bike parking facilities will be provided in accordance with the minimum required by the Zoning Regulations;
  - j. A bicycle repair station will be provided on the P1 level of the garage;
  - k. A sufficient number of electric car charging stations as required under LEED-ND standards will be provided in the garage;
  - l. The cost of parking spaces for tenants will be unbundled from leases and will be based on market rates, and spaces will not be leased to outside groups with exceptions for district services;
  - m. Two spaces will be designated in the garage for carsharing vehicles, and the applicant will work with regional carsharing companies to locate vehicles on this site if possible based on demand;
  - n. Two spaces will be designated in the garage for vanpooling spaces to be used by commuters who vanpool to the area for work;
  - o. Two annual transportation events will be held for residents, such as walking tours of local transportation options, a transportation fair, lobby events, and resident socials;
  - p. The TMC will monitor parking demands so as to minimize spillover parking in surrounding neighborhood; and
  - q. The TMC will monitor the use of the Capital Bikeshare and bicycle use around the Block B site to look for opportunities to implement elements of the moveDC plan, particularly with respect to bicycle infrastructure.
2. **For the life of the Project**, the Applicant shall abide by the terms of the loading management plan detailed in Exhibit 20A2 at pages 33-34, which requires compliance with the following:
- a. A loading dock manager will be designated by the building management (duties may be part of other duties assigned to the individual). He or she will coordinate with vendors and tenants to schedule deliveries and will coordinate with the community and neighbors to resolve any conflicts should they arise;
  - b. All tenants will be required to schedule deliveries that utilize the loading dock (any loading operation conducted using a truck 20' in length or larger) and all loading activities are required to occur at the loading docks;
  - c. The dock manager will schedule deliveries such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time



when a berth will be available so as not to compromise safety or impede street or intersection function;

- d. The dock manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic along the alley (except during those times when a truck is actively entering or exiting a loading berth);
- e. Trucks larger than a WB-50 will not be permitted to make deliveries to the residential loading docks. Trucks larger than a WB-67 will not be permitted to make deliveries to the commercial loading dock;
- f. Trucks using the loading docks will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT’s Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route Map ([godcgo.com/truckandbusmap](http://godcgo.com/truckandbusmap));
- g. The dock manager will be responsible for disseminating suggested truck routing maps to the building’s tenants and to drivers from delivery services that frequently utilize the development’s loading dock as well as notifying all drivers of any access or egress restrictions. The dock manager will also distribute materials as DDOT’s Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws. The dock manager will also post these documents and notices in a prominent location within the service areas; and
- h. An approximately 180-foot designated bus area is proposed on the west curb of South Dakota Street, N.E., midway between Ingraham and Kennedy Streets, N.E. This area will be monitored and programed by the loading dock manager of the building. The loading dock manager will be responsible for coordinating the different uses in the building and authorizing group sizes and arrival times for the bus area. Further, the loading dock manager will be responsible for disseminating information on the bus parking and loading area to potential visiting groups. In addition to the designated bus area, three PUDO zones are proposed. Buses would be able to perform pick-up drop-off operations at a PUDO zone and park off-site if desired;

3. **Prior to the issuance of the first certificate of occupancy for the Project (except as provided in (c)),** the Applicant shall, subject to approval by DDOT at permitting:

- a. Extend the northbound left-turn storage at Riggs Road and South Dakota Avenue at 550 feet of total storage length (including half of the lane taper distance);
- b. At South Dakota and Kennedy Streets, N.E., restripe the eastbound leg of Kennedy Street, N.E. approaching South Dakota Avenue, N.E. to provide two outbound lanes. The Applicant will work with DDOT through the permitting process to determine the appropriate lane widths and configuration;
- c. At South Dakota Avenue, N.E. and Ingraham Street, N.E., the Applicant will design and pay for the installation of a full traffic signal as an upgrade to the currently planned HAWK signal being installed at this location, if warranted. The Applicant proposes to perform a full signal warrant study for future total conditions upon zoning approval, and if warranted, design and fund installation of the signal in conjunction with construction of the project, subject to DDOT approval at permitting. **If the initial traffic signal warrant analysis (which is based on forecasted conditions) does not meet the standards for the installation of a traffic signal at the intersection of South Dakota Avenue, N.E., and Ingraham Street, N.E., the Applicant will submit a second traffic signal warrant analysis, which will be based on traffic counts after the full building of the Block B project, with the second stage PUD application for either Block C or Block D that is required to be filed with the Zoning Commission by December 31, 2024. If the second traffic signal warrant analysis meets the warrant standards, the Applicant will design and fund the installation of the signal during the processing of that second stage PUD application;**
- d. Improve pedestrian infrastructure at the intersection of Hamilton, Ingraham and the public alley to the southwest corner of the site. The Applicant will work with DDOT through the public space permitting process for the project to ensure that public space and other features within the public rights of way are designed and built to DDOT standards; and
- e. The Applicant will improve pedestrian infrastructure of 3<sup>rd</sup> Street, N.E. by providing a new concrete 6-foot wide standard sidewalk, as well as an 8-foot-wide asphalt bicycle lane, as shown on Exhibit 44E of the record.

**D. Construction:** The Applicant will abide by the terms of the Construction Management Plan submitted into the record as Exhibit 44G.

**E. Promotion of the Arts and Uses of Special Value to the Neighborhood or the District of Columbia as a Whole:**

1. **Prior to the issuance of a certificate of occupancy for the Meow Wolf space,** the Applicant will provide evidence to the Zoning Administrator that residents of the District of Columbia will be able to receive discounted entry fees that are 15% less than the admissions fees charged for similar non-DC residents. These discounted entry fees will be applicable for the life of the Project.
2. **Prior to the issuance of a certificate of occupancy for the Explore! Children's Museum space,** the Applicant will provide evidence to the Zoning Administrator that residents of Ward 4 and Ward 5 will receive discounted entry fees of 25% off then prevailing ticket prices on a quarterly basis. These discounted entry fees will be applicable for the life of the Project.
3. **Prior to the issuance of the certificate of occupancy for the residential building,** the Applicant will provide evidence to the Zoning Administrator that it has entered into a contract with a qualified arts organization that will interview and select the qualified artists for the artist studio and maker spaces.
4. **For the life of the Project,** the Applicant will rent the artist studio and maker spaces to artists at a dollar/sf net monthly lease rate not to exceed 50% of the average dollar/sf net monthly lease rate charged to the other retail tenants in the Project.

**F. Benefits and Amenities:**

1. *Affordable Housing.* **Prior to the issuance of a building permit for the residential portion of the Project,** the Applicant shall provide the Zoning Administrator with evidence that the recorded Affordable Housing Covenant for the entire PUD project has been amended to reserve the 30 artist housing units in Block B to households with incomes not exceeding 60% MFI. The period of affordability will be 20 years from the issuance of the first Certificate of Occupancy in Block B. Consistent with the affordable housing requirements of the First-Stage PUD Order, the 30 artist affordable units will be distributed vertically and horizontally through the residential building in Block B, but not on the upper two floors, at a ratio of unit types that are consistent with the market-rate unit types.

The Overall PUD Order's 929 maximum residential units (up to 520 in Block A and 409 in Block C, location modified by this Order) are vested and so not subject to IZ requirements, but any additional residential units shall be subject to the IZ regulations applicable at the time of the second-stage PUD application proposing the additional residential units.

2. *Sustainability.* **Prior to the issuance of the first certificate of occupancy for the Project,** the Applicant shall provide evidence to the satisfaction of DOEE and the Zoning Administrator that the entire PUD will be able to secure certification under the LEED ND rating system.

3. *Employment and Training Opportunities.*
  - a. **Prior to the issuance of the first building permit for the Project**, the Applicant shall provide evidence of the signed First Source Employment Agreement that was followed during the development of Block A; and
  - b. **Prior to the issuance of a certificate of occupancy for the grocery store space**, the Applicant (or the grocery store operator) will provide evidence to the Zoning Administrator that at least three monthly hiring open houses were held in the four months prior to the opening of the store. The open houses will provide local job candidates with information on employment opportunities with the grocery store operator.
4. *Mass Transit Improvements.* **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence to the Zoning Administrator that it has paid for the installation of a Capital Bikeshare Station on the site, or at a nearby location identified by DDOT.
5. *Superior Landscaping and Creation of Open Spaces.* **For the life of the Project**, the Applicant will maintain the plaza and pedestrian areas shown on the Plans, including the dog-run.
6. *Dog Run.* The Applicant will relocate the dog-run prior to the issuance of a Certificate of Occupancy for the development of Block D, in order to accommodate the realignment of Kennedy Street, N.E.

**G. Miscellaneous**

1. No building permit shall be issued for the Project until the Applicant has recorded a Notice of Modification of the PUD Covenant in the land records of the District of Columbia. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the Notice with the records of the Office of Zoning.
2. The approval for construction of the Project on Block B shall be valid for a period of two years from the effective date of this Order. Within such time, an application(s) must be filed for a building permit(s). Construction of the project must begin within three years of the effective date of this Order.
3. The Applicant shall file a second-stage PUD application for either Block C or Block D by **December 31, 2024**, and the second-stage PUD application for the other final development parcel included in the Overall PUD will occur by **December 31, 2030**.

**VOTE (June 10, 2019):**


**5-0-0**


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

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 06-10D shall become final and effective upon publication in the *D.C. Register*; that is, on March 20, 2020.

**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.