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VIA IZIS

Zoning Commission for the
District of Columbia
441 4th Street, NW, Suite 210S
Washington, DC 20001

**Re: Z.C. Case No. 16-11
Consolidated PUD and Related Map Amendment @ Square 2890, Part of Lot 849
Applicant's Response to Issues Identified in Z.C. Order No. 16-11(1)**

Dear Members of the Commission:

On behalf of Park View Community Partners and the District of Columbia, together the “Applicant” in the above referenced case, we submit the following information pertaining to the issues identified in Z.C. Order No. 16-11(1), Procedural Order Reflecting the Zoning Commission’s Oral Request for Parties’ Responses to Court of Appeals’ Remand (the “Procedural Order”). The specific issues identified in the Procedural Order are in direct response to the issues identified as being in need of further proceedings by the opinion of the District of Columbia Court of Appeals (the “Court”) which vacated and remanded the Commission’s decision in Z.C. Order No. 16-11 – Consolidated Planned Unit Development and Related Map Amendment at Square 2890, part of Lot 849 (the “PUD Order”). Ryan Cummins, et al. v. D.C. Zoning Comm’n, (the “Opinion”) (Nos. 17-AA-554, 17-AA-555, and 17-AA-556, D.C. 2020). Specifically, the Court remanded the case for the Commission to:

1. Take into account that the 90-foot-high building protrudes into a Neighborhood Conservation Area;
2. Take into account that the areas adjacent to the western portion of the PUD are designated moderate-density residential, not medium-density residential;
3. Take into account that the 90-foot-high building and the 60-foot-high building are not generally consistent with, respectively, the medium-density-commercial and moderate-density-residential designations in the FLUM;
4. Either identify record support for the statement that the senior building “mimics many other apartment houses that have been built as infill developments in the area” or forgo reliance on that consideration;
5. Independently analyze and discuss whether the PUD is inconsistent with specific policies, or would have adverse effects, addressing matters that were timely identified before the Commission; and

6. Determine whether, in light of the Commission's conclusions on these issues, the Commission should grant or deny approval of the PUD, and explain the Commission's reasoning in granting or denying approval.

At its public meeting on June 29, 2020, the Commission discussed the manner in which it would address the outstanding issues enumerated in the Opinion. As set forth in the Procedural Order, to assist the Commission in responding to the Court's opinion, the Commission provided the parties in Z.C. Case No. 16-11 an opportunity to file responses to the Court's directives. Pursuant to the Procedural Order, any responses filed by the parties shall be limited to the specific issues raised in the Opinion and shall not raise other issues. Further, the responses shall be limited to the existing record in Z.C. Case No. 16-11, and shall not provide new evidence not already in the record. Finally, the Procedural Order expressly states that replies to another party's response will not be permitted.

- 1. Take into account that the 90-foot high building protrudes into a Neighborhood Conservation Area**

As depicted in the project plans, the western portion of the proposed 90-foot apartment building extends into the portion of the PUD Site designated as a Neighborhood Conservation Area ("NCA") on the Comprehensive Plan Generalized Policy Map ("GPM"). *See* Sheet A07 of Ex. 6A4, 35A3, 237A4. While this is clearly shown in the case record, the specific issue of the location of the apartment building relative to the boundary of the NCA was never raised by the opposition during the initial proceedings in this case.

While the Commission thoroughly analyzed the proposed project relative to the site's GPM designation, and found the project to be not inconsistent with the GPM, it did not expressly acknowledge in the PUD Order that a portion of the apartment building protruded into a NCA. In its Opinion, the Court described this lack of acknowledgement as a significant issue because the GPM states that new development in NCAs "should be compatible with the existing scale and architectural character of each area." The Court further stated that the Commission failed to analyze the consequences of the apartment building's protrusion into the NCA. As discussed below, although there was no express finding regarding the apartment building's location relative to NCA boundary depicted on the GPM, there is no reason to think that the Commission did not act in accordance with the interpretive guidance and policy intent of the GPM in considering the consequences of the apartment building's proximity to existing development in the NCA.

The GPM is not a zoning map, does not follow parcel boundaries, and, perhaps most relevant to this issue, its categories do not specify allowable uses or dimensional standards. Like the Future Land Use Map (the "FLUM"), the GPM is intended to be interpreted broadly. In fact, the GPM expressly states that the map represents a "generalized depiction" and that "boundaries shown should be interpreted as approximate and not precise delineations." (emphasis added)

Based on this guidance, it is clear that the boundaries depicted on the GPM are intended to provide generalized policy guidance rather than establish fixed lines and quantitative standards by which developments are to be approved or disapproved. Thus, as related to the PUD Site, the policy guidance provided by the GPM suggests that development within the portion of the PUD Site designated as Main Street Mixed Use Corridor along Georgia Avenue should transition to the lower-scale NCA to the west. The GPM leaves to the Commission the decisions about the manner in which this transition is accomplished, and more importantly the location at which this transition should occur.

Based upon the thorough written case record and the testimony provided at the public hearing, it is clear that the Commission addressed the relationship of the location of the 90-foot building and the surrounding neighborhood. The Applicant's initial application fully analyzed the apartment building for consistency with the standard of review for PUDs. *See* Ex. 6, 6A1, 6A4, 6A5, 6B, and 6E3. At setdown, the Commission specifically requested additional information from the Applicant and the Office of Planning ("OP") to "understand a little better how the 90-foot height of the apartment building would be not inconsistent with the Comp Plan designation." *Tr.* July 25, 2016, p. 101 at 23. The additional information requested by the Commission was provided by the Applicant and OP at Exhibits 35B and 43, respectively. The Applicant provided further analysis of the height and density of the project in its written submissions at Ex. 35B, 196, and 197.

Further analysis of the apartment building was provided at the public hearing by Sarah Alexander, the Applicant's expert in architecture, and Shane Dettman, the Applicant's expert in planning, land use, and zoning. This additional analysis included specific information regarding the separation between the apartment building and nearby row dwellings, as well as the results of a shadow study. *See Tr.* December 5 and 8, 2016, Ex. 233, and 244. The Commission specifically inquired at the public hearing about the proposed height of the project and its separation from existing row dwellings to the north and west. *See Tr.* December 5, 2016, p. 75 – 76. In regards to the issue concerning the protrusion into the NCA, the Commission commented on the extent to which the 90-foot apartment building would be located directly across from the two-story row dwellings on the north side of Irving Street. Specifically, a Commission member stated "[i]n this particular case, especially on Irving Street, I personally feel the massing is fitting in ... Going up the alley there's only about three homes past the alley that really face the 90-foot part of it. ... and then the senior housing at 60 feet, and you get another three homes facing that." *See Tr.* December 5, 2016, p. 106 at 6.

The Commission reviewed the overall height and density of the project, including the height of the 90-foot apartment building, as well as the potential impacts of the project on the nearby moderate-scale residential uses and existing development in the NCA. The PUD Order shows that while it erroneously referred to the areas adjacent to the western portion of the PUD Site as "Medium Density Residential," the Commission was well aware that the existing context in this area was comprised of moderate-density row dwellings. *See* PUD Order, Findings of Fact ("FoF") 61, 103, 104, 178(b) and (h), 196, and 197. Thus, it is clear the Commission was fully informed of the relationship of the 90-foot apartment building and the

two-story row homes to the north and west, and took this into consideration during its review of the project. As stated in the PUD Order, upon review the Commission found the project, including the apartment building, to be consistent with the surrounding neighborhood context. Finally, being fully cognizant of the GPM policy intent for the PUD Site, and the manner in which the GPM boundaries are to be interpreted, the Commission determined that development proposed on the northwest portion of the site (senior building) respects and maintains the existing scale and character of the surrounding neighborhood, and is consistent with the NCA designation on the GPM.

2. Take into account that the areas adjacent to the western portion of the PUD are designated moderate-density residential, not medium-density residential

In its Opinion, the Court states that “[i]n assessing whether the density and height of the buildings in the PUD are consistent with the Comprehensive Plan, the zoning in adjacent areas, and the character of the adjacent neighborhoods, the Commission repeatedly stated that the areas adjacent to the western portion of the site are designated on the FLUM as medium-density residential. It appears to be undisputed, however, that this was an error, and that in fact those areas are designated as moderate-density residential.”

The error asserted by the Court is demonstrably a scrivener’s error, not a substantive mistake, and that the error did not affect the analysis that the Commission rendered. The written record is clear that the areas adjacent to the western portion of the PUD Site are designated on the FLUM as Moderate Density Residential. *See* Ex. 6, 6A1 (Sheet G04), 6G, 14, 35A1 (Sheet G04), 35B, 43, 233, 234, 237A1 (Sheet G04). Notably, as stated on page 4 of Mr. Dettman’s written testimony (Ex. 233) “[t]he properties to the immediate north and west of the proposed R-5-B portion of the Subject Property is designated as Moderate Density Residential.” Mr. Dettman’s testimony at the public hearing is just as clear in establishing that the adjacent areas are designated Moderate Density Residential. For example, on rebuttal Mr. Dettman testified that “[t]he proposed R-5-B map amendment as well is consistent with the mixed-use designation along the corridor as well as in certain locations with the moderate density residential that exists to the north and to the west.” (emphasis added). *See* Tr. December 8, 2016, p. 13 at 12.

The PUD Site is designated as a Local Public Facility on the FLUM. As described in the Framework Element, “if a change in use occurs on these sites in the future (for example, a school becomes surplus or is redeveloped), the new designations should be comparable in density or intensity to those in the vicinity. 10A DCMR § 226(h). *See* Ex. 233. In this regard, OP and the Applicant submitted analyses describing how the proposed rezoning of the western portion of the PUD Site to R-5-B was comparable to the Moderate Density Residential designation of the adjacent areas. *See* Ex. 14, 35B, 43, and 233. As stated in OP’s hearing report, the Framework Element describes the Moderate Density Residential designation as follows:

“the District’s row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings. In some of the older inner city neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). The R-3, R-4, R-5-A zone districts are generally consistent with the Moderate Density Residential category; the R-5-B district and other zones may also apply in some locations.” (emphasis added).

As described above, the R-5-B zone is expressly stated as being generally consistent with the Moderate Density Residential FLUM category. As stated in the written testimony of Mr. Dettman, the height and density of the R-5-B portion of the project are consistent with the development parameters of the R-5-B zone, and generally consistent with the development pattern of the surrounding area. *See Ex. 233.* Therefore, although the Order incorrectly references Medium Density Residential in describing the area adjacent to the western portion of the PUD site, it is clear that the Applicant and OP correctly analyzed, and that the Commission was well aware, that the area adjacent to the western portion of the site was Moderate Density Residential.

3. Take into account that the 90-foot high building and the 60-foot high building are not generally consistent with, respectively, the medium-density-commercial and moderate-density-residential designations in the FLUM

In its Opinion, the Court found the Commission’s analysis of the project’s consistency with the FLUM to be unreasonable, based in part upon the Court’s own conclusion that “the FLUM designations of the surrounding areas weigh against the proposed PUD.” As such, the Court has asked on remand that the Commission “take into account that the ninety-foot-high building and the sixty-foot-high building are not generally consistent with, respectively, the medium-density-commercial [sic]¹ and moderate-density-residential designations in the FLUM.” As the record reflects, consistent with the manner in which the FLUM is intended to be interpreted and prior Court rulings, the height of the apartment building and senior building are not inconsistent with the FLUM.

In their written filings and oral testimony, the Applicant and OP demonstrated how the proposed C-2-B and R-5-B zones were not inconsistent with the FLUM. *See Ex. 14, 35B, 43, 233.* The Applicant also demonstrated how the heights of the proposed buildings were consistent with the relevant FLUM land use descriptions in the Framework Element, and compatible with the existing development pattern in the vicinity.

The FLUM does not show density or intensity on sites that are designated as a Local Public Facility. Rather, “if a change in use occurs on these sites in the future (for example, a

¹ We assume that when the Court wrote “medium-density-commercial,” it actually meant to refer to “moderate-density-commercial” in relation to the 90-foot apartment building’s consistency with the FLUM.

school becomes surplus or is redeveloped), the new designations should be comparable in density or intensity to those in the vicinity.” 10A DCMR § 226(h). The portion of the PUD Site proposed to be zoned C-2-B is not inconsistent with the areas to the north and east along Georgia Avenue that are designated as Mixed Use (Moderate Density Commercial / Medium Density Residential). *See* Ex. 6G, 14, 35B, 233. A Mixed Use designation is not intended to be interpreted according to its separate designations. Rather, the Mixed Use FLUM category provides a level of flexibility whereby “[t]he general density and intensity of development within a given Mixed Use area is determined by the specific mix of uses shown. 10A DCMR § 225.19. *See* Ex. 35B. A variety of zoning designations are used in Mixed Use areas, depending on the combination of uses, densities, and intensities. 10A DCMR § 225.21. The C-2-B zone is not inconsistent with the Mixed Use (Moderate Density Commercial / Medium Density Residential) designation, as it favors residential over nonresidential development by limiting the amount of nonresidential density that is permitted. *See* Ex. 237A1, Sheet G13. Further, the C-2-B zone is expressly stated in the Framework Element as corresponding to the Moderate Density Commercial land use category.

As discussed above, the areas adjacent to the western portion of the PUD Site are designated on the FLUM as Moderate Density Residential, as is the far southwestern corner of the PUD Site. The proposed R-5-B zoning on the western portion of the PUD Site is not inconsistent with the Moderate Density Residential designation. First, R-5-B zone is specifically cited in the Framework Element as being “generally consistent” with the Moderate Density Residential designation in some locations. As discussed below, the case record establishes that the PUD Site is an appropriate location for the R-5-B zone.

The proposed heights of the apartment building and senior building are not inconsistent with the Framework Element land use descriptions. As is well established in the case record and in countless other PUDs, the FLUM is not a zoning map, it does not follow parcel boundaries, and its categories do not specify allowable uses or dimensional standards. 10A DCMR § 226.1(a). “The land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. It should be noted that the granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here.” (emphasis added) 10A DCMR § 226.1(c). The Court has cited to this exact provision while acknowledging that greater height than what is stated in the Framework Element is possible through a PUD:

“The FLUM explicitly contemplates two ways in which more intensive development than is otherwise reflected in the FLUM may be permissible: (1) a larger development that as a whole is consistent with the FLUM designation may contain individual buildings with greater height or density; and (2) the PUD process may permit greater height or density.” *Friends of McMillan, et al v. D.C. Zoning Commission* (149 A.3d 1027 (D.C. 2016))

Based on the language of 10A DCMR § 226.1(c) cited above, the land use descriptions in the Framework Element clearly refer to the “typical” development pattern in an area under matter-of-right development. On rebuttal, Mr. Dettman testified to this fact. *See* Tr. December 8, 2016, p. 12 at 6. In considering a PUD, the Commission is authorized by the Framework Element to approve building heights that exceed the general guidance on height provided in the FLUM land use descriptions. It is that authority to which the Commission exercises when weighing the relationship between the 60- and 90-foot buildings on the one hand and the land use descriptions on the other.

The Court wrote that it found it difficult to reconcile the “five story” general guidance provided in the land use description for Moderate Density Commercial with the 90-foot height (eight stories plus mezzanine) of the proposed apartment building. As stated above, the five-story guidance is for typical, matter-of-right development, not development under a PUD. Thus, the appropriate reconciliation is between the five-story guidance and the C-2-B matter-of-right height of 65 feet (70 feet with Inclusionary Zoning). Indeed, considering typical clear ceiling heights and necessary interstitial mechanical space, a five-story apartment building with a height of 65- 70 feet is very common. Under a PUD, the maximum height permitted in the C-2-B zone is 90 feet, the height of the proposed apartment building. On the basis that the PUD process may permit greater height, the proposed height of the apartment building is not inconsistent with the Mixed Use (Moderate Density Commercial / Medium Density Residential) designation of the areas to the north and east along Georgia Avenue. While the height of the apartment building may exceed the “general” matter-of-right (“non-PUD”) height that is typical of Moderate Density Commercial areas, it is within the permitted PUD height of the C-2-B zone, a zone that is entirely appropriate for the particular Mixed Use designation found along the Georgia Avenue corridor. Furthermore, the proposed C-2-B zone and 90-foot height of the apartment building are consistent with several other approved PUDs in proximity to the PUD Site. *See* Ex. 35B, 237A, Sheet G02. *See also* Tr. December 8, 2016, p. 51 at 23.

Regarding the 60-foot height of the senior building, this too is not inconsistent with the Moderate Density Residential land use designation of the adjacent areas. As stated above, the R-5-B zone is described in the Framework Element as being generally consistent with the Moderate Density Residential designation in some locations. The description of Moderate Density Residential does not provide any general guidance on the height (stories) that is typical in this particular designation. *See* Ex. 14, 43. The other zones listed as being generally consistent in Moderate Density Residential areas (R-3, R-4, and R-5-A), all allow 40 feet as a matter of right. The R-5-B zone permits 50 feet as a matter of right. As discussed above, building heights under a PUD may exceed what is generally described in the FLUM land use descriptions. With this in mind, it is particularly notable that the permitted height under a PUD in the R-4 (the zoning of the adjacent areas) and R-5-A zones is 60 feet. This is the same exact height proposed for the senior building under the proposed R-5-B zoning of the western portion of the site.

The foregoing information addresses the Court's specific instruction for the Commission to address the height of the 90-foot apartment building and 60-foot senior building relative to the Moderate Density Commercial and Moderate Density Residential FLUM designations, respectively. However, not only are the heights of the proposed buildings consistent with the FLUM, they are also appropriate relative to the existing context in proximity to the PUD Site. The relationship between the proposed buildings and the surrounding context was thoroughly evaluated by the Applicant in its written submissions (Ex. 237A1, Sheet G02 – G03, 35B), as well as through testimony provided by Ms. Alexander, Mr. Dettman, and the ANC. *See* Tr. December 5, 2016, p. 35 -54, 75 – 77, 103 – 109, and Tr. December 8, 2016, p. 4 – 6, 10, 15 – 16, 46 – 47, 53.

Finally, the Commission has found substantial reasons for approving the PUD, including the need for sufficient housing for former Park Morton residents and the need for senior housing—both of which inform the heights and densities of these buildings. The Commission has before it the information regarding the development and the parameters needed to make this project feasible and sustainable. Thus, to the extent that there is a lingering "inconsistency" between the land use examples of densities and the designations here, the Commission has weighed that and has concluded to exercise its authority to approve the buildings.

4. Either identify record support for the statement that the senior building “mimics many other apartment houses that have been built as infill developments in the area” or forgo reliance on that consideration

The Opinion states that “the Commission’s order found that the senior building ‘mimics many other apartment houses that have been built as infill developments in the area.’” The Court did not disagree with this statement outright. Rather, it observed that neither the Commission nor the intervenor pointed to support in the record for this finding.

The finding made by the Commission regarding the senior building mimicking other apartment housing represents a single point from the Commission’s overall thorough analysis of the design of the senior building relative to the NCA designation and the existing context. Thus, the Commission’s conclusion regarding the senior building does not hinge on this single point, but rather rests on a full evaluation of the evidence in the record that is grounded in the standard of review under the Zoning Regulations and relevant case law.

The Commission first evaluated the proposed R-5-B zoning and senior building height for consistency with the GPM. *See* PUD Order, FoF 100 – 104. The Commission next evaluated the project for consistency with the surrounding context. *See* PUD Order, FoF 112 – 113. Finally, in directly addressing issues raised by the opposition the Commission made specific conclusions regarding the project’s density, scale, and building height. *See* PUD Order, CoL 196, 198, 200, 202-203. Of note, while the Commission concluded that the proposed density, scale, and building heights were not inconsistent with the Comprehensive Plan, the Commission also concluded that “even if this Commission found that the proposed

density, scale, and buildings were not consistent with the Comprehensive Plan, the Commission would still conclude that the overall Project is consistent with the Comprehensive Plan based on the numerous goals and policies that the Project's development program embodies and advances." *See* PUD Order, CoL 203.

Further, there is ample evidence in the record that the senior building mimics other apartment houses that have been built in the vicinity. *See* Ex. 237A1, Sheets G01 – G03, and 198, p. 5. In this context, the term "mimic" is intended to represent how the height, massing, and articulation of the senior building, and the project as a whole, relate to the adjacent context similar to how other apartment buildings relate to their respective contexts. The concurring/dissenting opinion correctly construes the Commission's use of the term "mimic" in relation to the senior building's relationship to its surroundings. Specifically, the concurring/dissenting states "...there are at least two already-constructed residential buildings in the vicinity of the PUD site that have a height similar to the proposed sixty-foot height of the planned senior building... Given these existing or proposed buildings on Georgia Avenue, the Commission could reasonably conclude that the PUD would entail development ...that is 'compatible with the existing scale and character' in the vicinity." (emphasis added). As the record reflects, the senior building and the project as a whole mimic many other projects that have been constructed / approved in the vicinity in the way that it transitions to the lower-scale Moderate Density Residential areas adjacent to the western portion of the PUD Site. Indeed, arguably the project, including the senior building, does a far better job of relating to the scale and architectural character of the context through the use of multiple buildings and building types that transition in height and are varied in their massing and articulation.

As discussed above, the project is not inconsistent with the policy guidance provided by the GPM that development on the portion of the PUD Site within the Main Street Mixed Use Corridor along Georgia Avenue should transition to the lower-scale NCA to the west. This would still be true if the senior building and apartment building were a single building for purposes of zoning. Further, the senior building is not inconsistent with the adjacent Moderate Density Residential areas because the height of the senior building is consistent with the FLUM, and its design and separation from nearby row houses make it compatible with the context.

5. Independently analyze and discuss whether the PUD is inconsistent with specific policies, or would have adverse effects, timely identified before the Commission

In its Opinion, the Court stated that the Commission "did not contain a single explicit acknowledgement that the PUD would have any adverse effect whatsoever, or would be in any way or to any degree contrary to any policy or goal of the Comprehensive Plan." The Court found this "difficult to understand."

Respectfully, this part of the Opinion seems to ask the Commission to identify more specifically the adverse effects by which the PUD and/or related mitigation measures will ameliorate, or to specifically itemize how a large project like this one changes the current

condition of the underutilized PUD Site. At one level, the issue identified by the Court can be addressed by listing the possible effects (changes) associated with the project and then identifying how the PUD and its associated conditions address those effects. For example, while currently there is little vehicular traffic generated by the PUD Site, the project will generate a greater amount of traffic that will be mitigated through the provision of sufficient parking, circulation improvements, and a robust Transportation Demand Management plan.

The PUD order thoroughly addresses the Comprehensive Plan policies for which the opposition claimed inconsistencies (*See* FoF 193 and 194(a) – 194(cc). In so doing, the Commission made specific determinations that, contrary to the opposition’s assertions, the project was not inconsistent with those particular policies. Consistent with the standard of review for a PUD, and with prior findings of the Court related to balancing competing Comprehensive Plan priorities, the Commission determined the project to be not inconsistent with the Comprehensive Plan as a whole. *See* FoF 203.

In regards to impacts, the PUD Order exhaustively addressed the adverse impacts asserted by the opposition, including impacts to light, air, privacy, neighborhood character, traffic, parking, noise, air pollution, water runoff, public services, property value, and population density (*See* FoF 195 – 226, 233). Again, consistent with the standard of review for a PUD, the Commission concluded that the potential impacts of the project on the surrounding area are not unacceptable.

Notwithstanding the above, to assist the Commission in addressing this particular issue the following table summarizes the information from the case record regarding specific Comprehensive Plan inconsistencies and potential adverse effects timely asserted by the opposition. The table also includes references to exhibits in the case record that address the project’s consistency with the Comprehensive Plan generally, as well as those specific policies where the opposition asserts inconsistency.

Comprehensive Plan Inconsistencies

Asserted Inconsistencies (Ex. 36, 171, 181, 220, 221)	Response Exhibits
UD-2.2.7: Infill Development	<ul style="list-style-type: none"> · Applicant’s Statement in Support (Ex. 6); · OP Setdown Report and OP Hearing Report (Ex. 14 and 43); · Applicant’s Supplemental Prehearing Statement Comprehensive Plan Analysis (Ex. 35B); · Applicant’s Response to Party Status Requests (Ex. 196 and 197);
UD-2.2.8: Large Site Development	
UD-2.2.9: Protection of Neighborhood Open Space	
E-4.1.3: Evaluating Development Impacts on Air Quality	
E-4.3.5: Noise and Land Use Compatibility	
E-4.5.C: Interagency Working Group	
E-4.8.2: Expanded Outreach to Disadvantaged Communities	

ED-3.2.1: Small Business Retention and Growth	<ul style="list-style-type: none"> · Applicant’s Rebuttal Testimony from Shane Dettman (Ex. 233); · Applicant’s Post-Hearing Submission (Ex. 237); · Applicant’s Draft Findings of Fact and Conclusions of Law (Ex. 240A); · Testimony provided at the public hearings (Transcripts from December 5 and 8, 2016).
ED-3.2.6: Commercial Displacement	
ED-3.2.7: Assistance to Displaced Businesses	
ED-3.2.A: Anti-Displacement Strategies	
ED-3.2.D: Small Business Needs Assessment	
ED-4.2.4: Neighborhood-Level Service Delivery	
ED-4.2.7: Living Wage jobs	
ED-4.2.12: Local Hiring Incentives	
CSF-1.1.1: Adequate Facilities	
CSF-1.1.2: Adequate Land	
CSF-1.2.2: Linking the Comp Plan and Capital Improvement Program	
CSF-1.2.6: Impact Fees	
IN-1.2.2: Ensuring Adequate Water Pressure	
IN-2.1.1: Improving Wastewater Collection	
IN-6.1.3: Developer Contributions	
H-1.1.3: Balanced Growth	
H-1.2.1: Affordable Housing Production as a Civic Priority	
H-1.2.7: Density Bonuses for Affordable Housing	
H-2.1.1: Protecting Affordable Rental Housing	
H-2.1.3: Avoiding Displacement	
H-2.1.4: Conversion of At-Risk Rentals to Affordable Units	
H-2.1.A: Rehabilitation Grants	
H-2.1.E: Affordable Set-Asides in Condo Conversions	
H-2.2.3: Tax Relief	
H-2.2.E: Program Assistance for Low and Moderate Income Owners	
MC-1.1.3: Infill and Rehabilitation	
MC-1.1.7: Protection of Affordable Housing	
MC-1.2.4: New Parks	

Asserted Adverse Effects

Asserted Adverse Effects (Ex. 20, 21, 36, 39, 40, 148, 149, 151-155, 156-163, 165-167, 170, 171, 181, 183-186, 187, 191, 220-223, 225-227-229)	Response Exhibits
Loss of light and air due proposed scale and height	<ul style="list-style-type: none"> · Applicant’s Statement in Support (Ex. 6); · Applicant’s Transportation Impact Study (Ex. 33); · DDOT Report (Ex. 44); · Applicant’s Response to Party Status Requests (Ex. 196 and 197); · Applicant’s Post-Hearing Submission (Ex. 237); · Letters in Support from DHCD, DOEE, FEMS, and DC Water (Ex. 237J – 237M); · Applicant’s Draft Findings of Fact and Conclusions of Law (Ex. 240A); · Testimony provided at the public hearings (Transcripts from December 5 and 8, 2016).
Reduction of public parking	
Increased traffic, and congestion	
Noise	
Crime and loitering	
Loss of privacy	
Air pollution	
Loss of open space	
Impact on property values	
Impact on public services	
Displacement	
Storm water runoff	
Impact on neighborhood character	
Impact on neighborhood architectural character	
Increase density	
Change to demographic character of surrounding area	
Impact on public transit service	

6. Determine whether, in light of the Commission’s conclusions on these issues, the Commission should grant or deny approval of the PUD, and explain the Commission’s reasoning in granting or denying approval.

Based on the foregoing responses to the Procedural Order and the entirety of the case record, the Commission should grant the PUD. As summarized below, the Applicant has met the standard of review necessary to obtain approval of the PUD.

Pursuant to 11-X DCMR § 304.3, in deciding a PUD application the Commission shall judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case. In order to approve 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.

The case record, including this response, overwhelmingly demonstrates that the project is not inconsistent with the Comprehensive Plan when read as a whole. The project is not inconsistent with the policy guidance provided by the GPM regarding the need to transition from the Main Street Mixed Use Corridor along Georgia Avenue to the lower-scale Neighborhood Conservation Area to the west. As discussed above, the project is also not inconsistent with the FLUM in the following ways: (i) the proposed C-2-B and R-5-B zones are expressly stated as being generally consistent with the FLUM designations of the areas that are adjacent to the PUD Site; (ii) the height and density of the project are consistent with the land use definitions in the Framework Element, including the guidelines stating that building heights under a PUD may exceed the typical heights (stories) cited in the land use descriptions; and (iii) the proposed heights of the apartment building and senior building are generally consistent with the surrounding context. The project is also not inconsistent with the Citywide and Mid-City Elements of the Comprehensive Plan.

The Applicant and OP evaluated the potential impacts of the project and both determined that the project will not result in unacceptable impacts. Rather, the potential impacts of the project will be favorable, capable of being mitigated, or acceptable given the quality of benefits and amenities provided. Some of the favorable impacts of the project include, but are not limited to, numerous public housing replacement units, a substantial amount of new affordable housing, circulation improvements, and new permanent open space.

Thank you for your continued consideration of this important project

Respectfully submitted,

Holland & Knight, LLP



Kyrus L. Freeman

PROOF OF SERVICE

I HEREBY CERTIFY that on August 6, 2020, a copy of the foregoing response to the Zoning Commission's Procedural Order in Z.C. Case No. 16-11 was served on the following via email:

Jennifer Steingasser
District of Columbia Office of Planning

Anna Chamberlin
District Department of transportation

Advisory Neighborhood Commission 1A

Rashida Brown, Advisory Neighborhood Commission 1A10

Advisory Neighborhood Commission 1B

Park Neighbors
c/o Tonya Williams and Austin Badger

Park Morton Resident Council

Holland & Knight, LLP

A handwritten signature in black ink, appearing to read "Kyrus L. Freeman", enclosed in a thin black rectangular border.

Kyrus L. Freeman