

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 19-16**  
**Z.C. Case No. 19-16**  
**MCF WALP Phase 1, LLC**  
**(Consolidated Planned Unit Development @ Square 481)**  
**April 27, 2020**

At its properly noticed January 16, 2020 public hearing, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) from MCF WALP Phase 1, LLC (the “Applicant”) that requested approval of a consolidated planned unit development (“PUD”) to construct a new multi-family residential building in Lot 23 in Square 481 at 1200 5<sup>th</sup> Street, N.W. (the “Property”).

The Commission considered the Application pursuant to Subtitles X and Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), Zoning Regulations of 2016, to which all citations to regulations herein are made unless otherwise specified). For the reasons stated below, the Commission hereby **APPROVES** the Application.

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

**PARTIES**

1. In addition to the Applicant, Advisory Neighborhood Commission (“ANC”) 6E, the “affected ANC” pursuant to Subtitle Z § 101.8, was automatically a party pursuant to Subtitle Z § 403.5.
2. The Metropolitan Community Church of DC (“MCCDC”) submitted a December 24, 2019 request for Party Status in opposition to the PUD application, but it withdrew that request on January 15, 2020. (Exhibit [“Ex.”] 24, 24A.)
3. The Commission received no other requests for party status.

**NOTICE**

4. On August 7, 2019, the Office of Zoning (“OZ”) sent notice of the public hearing to: (Ex. 15, 15A.)
  - ANC 6E;
  - ANC Single Member District 6E03;
  - Office of Planning (“OP”);
  - District Department of Transportation (“DDOT”);

- Department of Consumer and Regulatory Affairs (“DCRA”);
  - District Department of Energy and Environment (“DOEE”);
  - District of Columbia Housing Authority (“DCHA”) Relocation Committee;
  - DC Councilmember Allen and the At-Large DC Councilmembers; and
  - All property owners owning property within 200 feet of the Property.
5. OZ also published notice of the January 16, 2020 public hearing in the October 25, 2019 *D.C. Register* as well as through the calendar on OZ’s website. (66 DCR 13369.)

**THE PROPERTY**

6. The Property consists of approximately 92,394 square feet of land area on a single record lot comprising an entire city block. (Ex. 2.)
7. The Property is currently improved with:
- Sixty-three vacant garden apartment-style rental units constructed in the late 1960s and early 1970s, which are slated for demolition; and
  - Approximately an acre of surface parking exclusively serving the residential units.
8. The Property is bounded by N, M, 5<sup>th</sup>, and 6<sup>th</sup> Streets, N.W., and is located at the boundary of the Shaw and Mount Vernon Square neighborhoods.
9. The Mount Vernon Square Historic District includes the blocks immediately to the east and south of the Property, but not the Property itself.
10. The blocks immediately surrounding the Property contain primarily residential, religious-affiliated, and low-density commercial land uses:
- North of the Property are a pair of two- to three-story residential buildings and the Miles Memorial CME Church (“Miles Memorial”);
  - East of the Property are rowhouses, the Kingdom Hall of Jehovah’s Witnesses, MCCDC, and two corner stores;
  - South of the Property are rowhouses; and
  - West of the Property are a mix of garden apartment-style units and associated surface parking, First Rising Mt. Zion Baptist Church (“First Rising”) and the United House of Prayer for All People, with the Convention Center and the associated commercial corridor located one block further west along 7<sup>th</sup> Street, N.W. (Ex. 2.)
11. The Property is located near multiple transportation options:
- The Mt. Vernon Sq./7<sup>th</sup> Street/Convention Center Metrorail Station is located one block away;
  - Metrobus route 70 has stops along 7<sup>th</sup> Street, N.W., one block to the west of the Property;
  - A Capital BikeShare station is located at 7<sup>th</sup> and M Streets, N.W.; and
  - 5<sup>th</sup> Street, N.W. has a dedicated bicycle lane running north-south and east-west bicycle lanes are provided on Q and R Streets, N.W. (Ex. 2.)

## **ZONING**

12. The Property is currently in the RA-2 zone, which is intended to provide for “areas developed with predominantly moderate-density residential” uses. (Subtitle F § 300.3.)
13. The RA-2 zone has the following development standards:
  - A maximum height of 50 feet with no limit on stories, with 60 feet permitted for a PUD; (Subtitle F § 303.1, Subtitle X § 303.7.)
  - A maximum penthouse height of 12 feet, with 15 feet permitted for mechanical space; (Subtitle F § 303.2.);
  - A maximum floor area ratio (“FAR”) of 1.8, with 2.16 FAR permitted for developments with inclusionary zoning (“IZ”), and 2.59 FAR permitted for a PUD (Subtitle F §§ 302.1, 302.3; Subtitle X § 303.4) that could be increased by five percent (to 2.72) per Subtitle § 303.10(b)); and
  - A maximum lot occupancy of 60%. (Subtitle F § 304.1.)
14. The blocks surrounding the Property are all in the RA-2 zone except for the north and east, which are in the RF-1 zone.

## **COMPREHENSIVE PLAN (Title 10A DCMR, the “CP”)**

### **Generalized Policy Map (the “GPM”)**

15. The CP’s GPM designates the Property in a Neighborhood Enhancement Area, which the CP describes as:

*... primarily residential in character.... These areas present opportunities for compatible small-scale infill development, including new single-family homes, townhomes, and other density housing types. Land uses that reflect the historical mixture and diversity of each community should be encouraged. The guiding philosophy in Neighborhood Enhancement Areas is to ensure that new development “fits-in” and responds to the existing character, natural features, and existing/planned infrastructure capacity. New housing should be encouraged to improve the neighborhood and must be consistent with the land use designation on the Future Land Use Map. The unique and special qualities of each area should be maintained and conserved, and overall neighborhood character should be protected as development takes place. (CP § 223.7.)*

### **Future Land Use Map (the “FLUM”)**

16. The FLUM designates the Property for Moderate-Density Residential which the CP describes as:

*...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 [now the RA-2 zone] and other zones may also apply in some locations. (CP § 225.4.)*

### **Area Element**

17. The Property is subject to the CP's Near Northwest Area Element, which encompasses the area directly north and west of central Washington and includes a diverse mix of development given its proximity to downtown areas and transportation options. (CP § 2100.) The Near Northwest Area Element notes the following as planning priorities:
- *“Improved public safety, a strong economy, and rising confidence in the real estate market have fueled demand for housing across the area...Economic diversity must be protected, and programs to retain and add affordable housing are urgently needed.”* (CP § 2107.1(a).)
  - *“Maintaining the quality and scale of development continues to be a top priority for the community. Residents expressed the opinion that new infill development should avoid creating monotonous or repetitive building designs, and strive for a mix of building types and scales.”* (CP § 2107.1(c).)

### **Small Area Plan**

18. The Property is subject to the Convention Center Area Small Area Plan (the “SAP”) and within the SAP’s “Transit Oriented Housing” sub-area. The SAP encourages:
- “[M]ixed-income residential development with underground parking on surface parking lots adjacent to Metro stations”;
  - “[R]enewal of project-based Section 8 contracts; alternatively, redevelop with equivalent/increased number of affordable residential units”;
  - “[A]dditional new construction of mixed-income housing at and near Metro stations that are compatible with adjacent residential areas”; and
  - “Infill developments built to property line on street frontage with open space oriented to the interior of the block.”

## **II. APPLICATION**

### **APPLICANT’S SUBMISSIONS**

19. In addition to its testimony at the public hearing, the Applicant submitted a total of six filings to the record in support of the Application:
- The August 2, 2019, initial application; (Ex. 1-2G9.)
  - An October 9, 2019, prehearing statement (the “First Prehearing Statement”); (Ex. 13-13G2.)
  - A December 2, 2019, CTR prepared by Gorove Slade (the “CTR”); (Ex. 21-21A.)
  - A December 20, 2019, supplemental prehearing statement (the “Second Prehearing Statement”); (Ex. 23-23D.)
  - A January 26, 2020, PowerPoint slide show presented at the public hearing (the “PowerPoint”); (Ex. 65A.)
  - A February 3, 2020, post-hearing submission (the “Post-Hearing Submission - Response to Commission and UFD Report”); and (Ex. 72-72G.)

- A March 23, 2020, second post-hearing submission (the “Second Post-Hearing Submission - Meeting with the Churches”). (Ex. 78.)
20. The Application proposes to redevelop the Property with a new, all residential building providing 360 apartments, on-site parking, and various resident amenity spaces (the “Building”). (Ex. 2.)
21. The Building is proposed to have:
- A maximum height of 50 feet (three to four stories) plus a habitable penthouse (within maximum height permitted in the RA-2 zone);
  - Approximately 246,222 square feet of gross floor area (“GFA”) for an overall FAR of approximately 2.66 (0.07 over the FAR permitted for a PUD in the RA-2 zone); and
  - A lot occupancy of 81.7% (21.7% over the lot occupancy permitted in the RA-2 zone).
22. The Building is composed of two residential wings, each centered around a closed court, joined by a connection that is recessed from the lot lines on 5<sup>th</sup> and 6<sup>th</sup> Streets, N.W. by open courts that break down the apparent scale of the block-long Building, which responds to the surrounding neighborhood context as follows:
- The three-story north wing that corresponds to the two-story rowhouses to the east of the Property and to the two-to-three-story residences and the two-story church immediately to the north;
  - The four-story south wing that reflects the greater height of the row houses to the south of the Property and the United House of Prayer at the southern end of block to the west; and
  - The two-story connection housing the Building’s residential support and amenity areas, flanked by:
    - The larger eastern court, landscaped to serve as the terminus of Ridge Street, N.W., and to correspond to the greater number of street trees and the lower-density residential character to the east of the Property; and
    - The shallower western court, designed to signal the Building’s western side as the primary pedestrian entrance and create a more urban condition consistent with the increasing density of the neighborhood moving west toward 7<sup>th</sup> Street, N.W. and the Convention Center area.
23. Both wings include:
- Double-loaded corridors that provide efficient overall floorplates accommodating a mix of unit sizes, ranging from studios to three-bedrooms;
  - Independent stair and elevator cores that optimize the distance for each unit to internal vertical circulation;
  - Direct street access for many of the exterior units on the lower level of the Building; and
  - Direct access to terraces along the interior courts for certain interior units on the lower level of the Building.
24. The Building’s residential program includes:

- A relatively even distribution of studio, junior one-bedroom, one-bedroom, junior two-bedroom, two-bedroom, and three-bedroom units, with no unit type comprising more than one third of the units and family-sized units (two- and three-bedroom units) comprising approximately 25% of the units; and
  - An area equal to 12% of the total GFA devoted to residential use, including enclosed projections in public space, the residential portions of the cellars, and the habitable penthouse space (in total, approximately 41,153 gross square feet) will be reserved for IZ units for the life of the Building, with the approximately 4,280 square feet of GFA resulting from the non-communal penthouse habitable space provided for households earning no more than 50% of the Median Family Income (“MFI”) with the remainder set aside for households earning no more than 60% MFI.
25. The Building’s materials and detailing are intended to reflect the surrounding neighborhood architectural conditions and details:
- The Building’s masonry façade continues the predominant use of masonry on residential buildings in the Shaw neighborhood;
  - The south elevation has seven bay elements that correspond to an approximately equal number on the historic rowhouses on the south side of M Street, N.W.; and
  - The north elevation has only four total bays, three of which are clustered opposite the existing rowhouses on the north side of N Street, N.W. It is comparatively less articulated and more modern to correspond to the modern-style church on the north side of N Street, N.W.
- (Ex. 2, 65A1.)
26. The Building features landscaping improvements at the street level, in the courts, and on the rooftop areas of the building:
- The street-level landscape improvements are intended to enhance the pedestrian experience and preserve existing street trees;
  - The two open courts on either side of the connective bar introduce ornamental landscaping, and with the eastern court, providing a water feature, tall shade trees, and a small lawn elevated above street level;
  - The interior courts will be open to building residents for passive recreation and include trees and a mix of hardscape and landscape;
  - The northern court is expected to be the more active and playful courtyard with outdoor games, grills, and various seating areas; and
  - The southern court is intended to be much more tranquil, with abundant plantings and a small area appropriate for outdoor yoga. (Ex. 2.)
27. The Building will achieve LEED-Silver v4 (the functional equivalent of LEED Gold 2009) certification from the United States Green Building Council (“USGBC”), with the sustainable design features including:
- Energy modeling for the residential portion of the Building in order to optimize energy use and implement a number of efficiency strategies;
  - Incorporation of environmentally preferred design materials;

- Inclusion of green roof and rooftop bio-retention that will help satisfy the Green Area Ratio (“GAR”) and stormwater regulatory requirements;
  - Approximately 1,382 square feet of rooftop solar panels; and
  - Three electric vehicle charging stations and power outlets for e-bicycles in the Building’s garage. (Ex. 2.)
28. The Building will include the following transportation and loading improvements:
- Approximately 103 vehicle parking spaces in a one-level below-grade parking garage - 40 more spaces than required by the Zoning Regulations – which results in a ratio of 0.3 spaces per unit;
  - Long- and short-term bicycle parking, in the garage and in the public space surrounding the Building;
  - Numerous pedestrian entrances along the Building’s 5<sup>th</sup>, 6<sup>th</sup>, and M Streets, N.W., façades in order to generate pedestrian activity and create a strong relationship between the building and public space;
  - Parking garage access and loading for the north wing provided from N Street, N.W., opposite a church (rather than opposite any existing residences), in the same approximate location as the existing curb cut;
  - Loading for the southern wing of the Building from 5<sup>th</sup> Street, N.W., opposite the existing commercial uses, rather than opposite any existing residences; and
  - Individual loading facilities for each residential wing which are large enough to accommodate all necessary vehicle turns.
29. The Application requested the design flexibility approved by the Commission in recent PUD cases from the requirement to build in complete compliance with the final plans approved by the Commission. (Ex. 2, 76.)

**RELIEF REQUESTED**

**PUD Development Incentives**

30. The Application requested the following flexibility from zoning requirements in order to attain the desired amount of residential density pursuant to the PUD and IZ bonuses while remaining within the matter-of-right height limit:
- To increase the maximum lot occupancy to 81.7% from the 60% limit of Subtitle F § 304.1; and
  - To increase the maximum FAR to 2.66, using slightly more than half of the 5% increase permitted by Subtitle X § 303.10(b) above the 2.59 FAR limit allowed for an IZ development in the RA-2 zone per Subtitle F § 302.3 including the 20% bonus PUD density permitted by Subtitle X §§ 303.3 and 303.4.

**JUSTIFICATION FOR RELIEF**

**Consistency with the Comprehensive Plan and Public Policies (Subtitle X § 304.4(a))**

31. The Application asserted that the Building is not inconsistent with the CP when reviewed as a whole and is not inconsistent with any other adopted public policies or active programs related to the subject site, including the SAP and Mayor’s Housing Order, for the reasons discussed below. (Ex. 2F.)

***GPM***

32. The Building is not inconsistent with the Property’s Neighborhood Enhancement Area designation because the Building:
- “Fits-in” with, and responds to, the existing character of the surrounding area;
  - Is exclusively residential in character, and will replace outdated market-rate housing stock with new, mixed-income housing;
  - Qualifies as one of the “other density housing types” permitted by the GPM; and
  - Will “attract complementary new uses and services” to serve the needs of the Building’s increased number of new housing residents, with these new uses and services also serving the surrounding community.

***FLUM***

33. The Building is not inconsistent with the Property’s Moderate-Density Residential designation because:
- The existing RA-2 zone designation is “expressly contemplated” in the Moderate-Density Residential category; and
  - The three-to-four story Building qualifies as a “low-rise apartment building” within the meaning of the FLUM.

***Near Northwest Area Element***

34. The Application would further this element by revitalizing a currently underdeveloped block in the eastern side of the planning area with a new mixed-income residential building, with access to mass transit and both the downtown core and lower-density residential neighborhoods in the near Northwest, in addition to furthering multiple specified Near Northwest Area Element policies.

***Land Use Element***

35. The Application would further this element by redeveloping an underutilized property near major commercial corridors and a Metrorail station with a mixed-income residential building that would revitalize the area while respecting the character of the surrounding lower density development, in addition to furthering multiple specified Land Use Element policies.

***Transportation Element***

36. The Application would further this Element by redeveloping a property in a transit-oriented location in a pedestrian and bike friendly way that would minimize impacts to the surrounding street network, in addition to furthering multiple specified Transportation Element policies.

***Housing Element***

37. The Application would further this element by providing a significant amount of market-rate and permanently affordable housing in a downtown adjacent neighborhood with ready access to transit, including more affordable housing units than could be

provided in a matter of right development, in addition to furthering multiple specified Housing Element policies.

***Environmental Protection Element***

38. The Application would further this element by redeveloping the Property with a building that incorporates multiple sustainable elements in both the building and in the surrounding public space, in addition to furthering multiple specified Environmental Protection policies.

***Parks, Recreation, and Open Space Element***

39. The Application would further this element by including open public spaces in the design of the Building in order to enliven the streetscape and provide space for passive and active recreational activities, in addition to furthering multiple specified Parks, Recreation, and Open Space Element policies.

***Urban Design Element***

40. The Application furthers this element by using high quality architectural elements and materials to construct an attractive and engaging building, particularly at the street level; by employing variations in height, architecture, and articulation to harmonize with the existing development pattern of the Shaw neighborhood and facilitate the density transition between Downtown areas and Shaw, in addition to furthering multiple specified Urban Design policies.

***Other CP Elements***

41. The Application asserted that the Building would also advance specific policies in the CP's Economic Development, Community Service and Facilities, Educational Facilities, Infrastructure, and Arts and Culture Elements. (Ex. 2F.)

***SAP***

42. The Building will advance the SAP's general goals because:

- It will create a mixed-income residential development with approximately 41,153 square feet of affordable units on a site where none currently exist;
- It does not propose to change the existing zoning but rather respects the existing patterns of development, including existing open spaces;
- It will advance the specific goals of the "Transit Oriented Housing" sub-area of the SAP by redeveloping the existing site with surface parking with a mixed-income development with underground parking near a Metrorail station; and
- It advances a number of the design recommendations of the SAP sub-area including providing prominent building entrances, animating the street through projections and openings, and use of high quality design materials. (Ex. 2F, 13D.)

***Mayor's Housing Order***

43. The Building furthers the goal of Mayor's Order 2019-036 to create 36,000 new residential units by 2025 by:

- Providing one percent of that goal (360 units), a significant contribution from a single site;
- Providing the units as part of a transit-oriented, contextually-designed, and mixed-income development;
- Providing permanent affordable housing units equivalent to 12% of the residential GFA that will be essential to achieving the Mayor’s housing objectives. (Ex. 2, 2F.)

**No Unacceptable Project Impacts on the Surrounding Area (Subtitle X § 304.4(b))**

***Zoning and Land Use Impacts***

44. The Application will create no unacceptable zoning or land use impacts because:
- The Application maintains the Property’s existing RA-2 zoning that is consistent with the Property’s CP designations and compatible with the zoning for surrounding Shaw neighborhood;
  - The Building’s multifamily residential use fulfills the RA-2 zone’s purpose for areas developed with predominantly moderate-density residential uses and is appropriate given the Property’s proximity to transit, major commercial corridors, and other surrounding multifamily residential uses; and
  - The Building’s design and the Application’s public benefits, in particular the amount of new mixed-income housing, mitigate or outweigh any potential adverse impacts arising from the Building’s land uses. (Ex. 2.)

***Transportation Impacts***

45. The Building will not create any unacceptable transportation impacts, as further discussed below in the CTR (Finding of Fact [“FF”] 64), because:
- The Building’s vehicular traffic impacts are strongly mitigated by its nearby transit options including, the Mt. Vernon Sq./7<sup>th</sup> St./Convention Center Metrorail station, a Metrobus stop, and a Capital Bikeshare station, all of which are approximately one block away;
  - The Property has a WalkScore of 95, a TransitScore of 97 (indicating “daily errands do not require a car”), and a BikeScore of 92 (indicating “excellent bike lanes”); and
  - The Building contains approximately 103 below-grade vehicle parking spaces, long-term bicycle spaces in a dedicated storage room, and short-term bicycle spaces provided in public space. (Ex. 2.)

***Housing Market Impacts***

46. The Building will not cause any unacceptable impacts, but instead will have a positive impact on the housing market because:
- The Building creates new, high quality, transit-accessible housing units on an underutilized parcel;
  - The creation of new housing units helps buffer increasing housing costs, by increasing the supply of housing stock;
  - The Property is currently vacant so there will be no adverse impacts in terms of displacing current residents of the Property; and

- The inclusion of permanently affordable units helps address the District’s ongoing affordable housing shortage in an inclusive, mixed-income community.<sup>1</sup> (Ex. 2.)

***Environmental Impacts***

47. The Building will not cause any unacceptable environmental impacts, but instead will have favorable impacts because the Building:
- Is designed to the LEED-Silver v4 design standards;
  - Utilizes environmentally preferred materials;
  - Provides 1,382 square feet of rooftop solar panels;
  - Proposes bio-retention basin planters, green roofs, and permeable pavement are designed to meet or exceed DOEE stormwater management retention and detention requirements; and
  - Is designed to retain all storm water from a 1.2-inch rainfall event. (Ex. 2.)

***Parks/Recreation Centers/Library Services/Emergency and Health Services***

48. The Building will not result in any unacceptable impacts on District facilities and services, such as parks, recreation centers, public libraries, and emergency and health services because:
- The Building includes four court spaces, pool, and numerous terraces and balconies, which provide sufficient outdoor and recreation spaces to mitigate any potential adverse effects on nearby public outdoor spaces or District recreation centers; and
  - Nearby library branches include Northwest One and Watha T. Daniel, both of which have been renovated or constructed in recent years and will be able to handle the increase in residents. (Ex. 2.)

***Open Space, Urban Design and Massing Impacts***

49. The Building will not have unacceptable impacts, but instead will have favorable impacts on open space, urban design, and massing because the Building:
- Removes the existing surface parking lot and replaces it with a high quality building and usable open space;
  - Creates a strong presence along M, N, 5<sup>th</sup> and 6<sup>th</sup> Streets, N.W., largely avoiding blank walls, relocating all parking below grade, providing high quality landscaping and streetscaping, and creating a pedestrian-first condition; and
  - Serves as a keystone linking the emerging projects elsewhere in the neighborhood and serving as a transitional development between the lower-density areas to the east and the higher-density development surrounding the Convention Center to the west. (Ex. 2.)

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<sup>1</sup> “In short, mitigation of the potential displacement of low-income residents through gentrification and market pressures is taken into account in the Zoning Commission’s IZ regulations” and “the proposed PUD’s compatibility with the [Area Element] development policy and with the [Small Area Plan] enable us to discern the agency’s path: a recognition that the pressures of gentrification are inevitable, but can be mitigated through IZ and through the types of programs discussed in [the Small Area Plan], rather than avoided by having underutilized property remain as it is.” (*Cole v. District of Columbia Zoning Comm’n.*, No. 17-AA-360 (D.C. Jun. 27, 2019).)

### ***Design and Aesthetic Impacts***

50. The Building will not have unacceptable impacts, but instead will have favorable design and architecture impacts because:
- The contemporary building replaces tired and dated garden apartments and is emblematic of new investment without appearing out of place among the mix of historical, mid-century, and faith-oriented buildings surrounding the site; and
  - The Building's landscaping and public realm detailing will help create a sense of place in the neighborhood. (Ex. 2.)

### ***Economic Impacts***

51. The Building will not have unacceptable impacts, but instead will have favorable economic impacts on the neighborhood, and the District more generally, through the introduction of a new residential use that contributes patrons for the existing businesses and increased tax revenue effects for the District. (Ex. 2.)

### ***Public Schools***

52. The Building will not cause unacceptable impacts on District schools given the size of the Building, its mix and type of units, and the capacity for the District's nearby schools to take on additional students:
- DCPS data shows that all nearby neighborhood public schools are below capacity; and
  - Several private and charter schools near the Building offer educational options to residents who may seek alternatives to the neighborhood public schools. (Ex. 2.)

### ***Utility Demand***

53. The Building will not result in any unacceptable impacts to utility demand in the surrounding area because the Building's:
- Electrical needs will be provided by the Potomac Electric Power Company in accordance with its usual terms and conditions of service in compliance with the D.C. Energy Code;
  - Solid waste and recycling output will be collected regularly by a private trash collection contractor; and
  - Water and sanitary sewer needs will be met by the existing District water and sanitary systems or through upgrades coordinated with DC Water during the building permitting process. (Ex. 2.)

### ***Historic District Impacts***

54. The Application will not create unacceptable impacts on the Mount Vernon Historic District located immediately east and south of the Property because the Building:
- Has an overall height and density that are sympathetic to the existing historic structures and the Building is only one story taller than a cluster of contributing structures along 5<sup>th</sup> and M Streets, N.W.;
  - Avoids placing any vehicular entrances opposite historic structures; and

- Features a primarily brick façade, the predominant cladding in the historic district, along with bay-like articulation patterns along both its M and 5<sup>th</sup> Streets, N.W., together making façades that match the scale and rhythm of the existing historic bays. (Ex. 2.).

***Cultural and Public Safety Impacts***

55. The Building will have favorable impacts on the culture of the surrounding area and on public safety because:
- The infilling of the currently vacant property helps complete the neighborhood and signifies investment and stewardship of the neighborhood; and
  - The design of the Building adds street activity, promotes “eyes on the street,” adds quality lighting, and makes other improvements all of which have positive effects on crime deterrence. (Ex. 2.)

***Construction-Period Impacts***

56. The Building’s construction-period impacts will be mitigated because:
- The Applicant has experience successfully completing construction projects in infill locations while ensuring minimal disturbance to any neighbors;
  - There are no existing occupied residential units on the Property and all nearby residential properties are separated from the Property by public streets;
  - During excavation and construction, erosion on the Property will be controlled in accordance with District law and will be managed so as to not adversely affect neighboring properties, the environment, or District services and facilities; and
  - The Applicant submitted a Construction Management Plan into the record and compliance with the Construction Management Plan is a condition of approval of this application. (Ex. 2.)

***Requested Zoning Flexibility (To Be Balanced Against Public Benefits (Subtitle X § 304.4(c)))  
Increased Lot Occupancy***

57. The Application asserts that this flexibility is needed to:
- Allow the Building to balance its housing production goals while respecting the prevailing building heights on surrounding blocks by permitting a shorter building that is spread out over a greater portion of the Property in order to provide the maximum number of residential units; and
  - Incorporate the feedback received from ANC 6E and neighbors that a three- to four-story building (i.e., up to 50 feet) would be acceptable, but a 60-foot building would be too tall.

***Increased FAR (Subtitle X § 303.10(b))***

58. The Application asserts that this flexibility is essential to the successful function and design of the Building because:
- Without the additional FAR, the Building would require either a setback from one side or an expansion of a court that would likely result in losing an entire “stack” of units, given the need to maintain units of a minimum size and with usable dimensions; and

- The additional requested density allows the Building to be constructed to a logical floorplate and to maintain levels of efficiency on each floor that are necessary for the Building to function successfully. (Ex. 2.)

### **Public Benefits**

#### ***Superior urban design, architecture, and landscaping per Subtitle X § 305.5(a) and (b)***

59. The Application asserts that the Building’s urban design, architecture, landscaping, and provision of open space are superior public benefits because:
- The bifurcation of the massing into two wings breaks down the apparent scale of the building, and the articulation carries forward the existing rhythms and overall “feel” of the existing rowhouses;
  - The open court on 5<sup>th</sup> Street, N.W., is an attractive and appropriate terminus for Ridge Street, N.W.;
  - The Building’s urban design addresses the surrounding streets by creating strong street walls which “enclose” the pedestrian space;
  - The Building’s ground-floor design, including direct street access from certain units, integrates it into the surrounding residential context;
  - The Building’s differentiated massing, articulation, and design responds to its context on all sides, while its high quality materials and finishes create a cohesive design; and
  - The Building’s landscape and site improvements create a range of vegetation and outdoor spaces that “green” the Property while also providing functional services to building residents.

#### ***Site planning, and efficient and economical land utilization per Subtitle X § 305.5(c)***

60. The Application asserts that the site plan proposed for the Building provides efficient land utilization benefits as follows:
- The Building introduces an increased number of residential units, including permanent affordable units, on a now-vacant lot located near transit and major commercial corridors;
  - The Building’s 2.66 FAR is an efficient and economic utilization of the Property, and increases the efficient and economical use of land in the Shaw neighborhood as a whole, given the proximity to transit options, commercial corridors near the Convention Center, and prevailing densities nearby; and
  - The Building proposes an efficient land utilization strategy with respect to parking by locating parking below grade.

#### ***Housing and affordable housing per Subtitle X § 305.5(f) and (g)***

61. The Building includes three specific types of housing-related public benefits:
- Approximately 52,000 additional square feet of GFA dedicated to residential and accessory uses above the matter-of-right GFA permitted in the RA-2 zone; (Subtitle X § 305.5(f)(1.))
  - 18 units will be three-bedroom units; and (Subtitle X § 305.5(f)(3).)
  - The Building will reserve 12% of its gross residential square footage for permanently affordable housing units representing a 20% increase in affordable housing above the matter-of-right requirements. (Subtitle X § 305.5(g).)

***Environmental and sustainable benefits per Subtitle X § 305.5(k)***

62. The Building includes the following environmental benefits:
- The Building has been designed to exceed environmental design standards at the LEED Silver v4 level (i.e., equivalent of LEED Gold 2009);
  - The Building will use environmentally-preferred materials;
  - The incorporation of a green roof and rooftop bio-retention; and
  - 1,382 square feet of rooftop photovoltaic solar panels.

**First Prehearing Statement**

63. The First Prehearing Statement responded to OP Setdown Report (FF 74-75) and the Commission's comments at the public meeting, at which the Commission set the Application down for a public hearing including:
- Details on the parameters of the affordable housing proffer; (Ex. 13A.)
  - Additional information regarding the environmental features and benefits; (Ex. 13B.)
  - A materials exhibit, including revised façade materials; (Ex. 13C.)
  - Revised courtyard design; (Ex. 13C.)
  - A further analysis of the Building's consistency with the SAP's Design Guidelines; (Ex. 13D.)
  - Further analysis of the Building's consistency with the CP and additional explanation as to how the Building's requested development incentives are balanced by the proffered benefits; (Ex. 13E.)
  - An update as to public outreach efforts; and
  - Resumes and outlines of testimony for the Applicant's expert witnesses. (Ex. 13F.)

**CTR**

64. The Applicant's CTR concluded that the Building would not have a detrimental impact on the surrounding transportation network due to the incorporation of positive design elements including:
- The Property's proximity to transit and existing bicycle infrastructure;
  - The inclusion of secure long-term bicycle parking and short-term bicycle parking spaces that meet or exceed zoning requirements;
  - The creation of new pedestrian sidewalks that meet or exceed DDOT and ADA requirements, this includes a curb extension and crosswalk connecting the site with Ridge Street, N.W.;
  - A parking ratio that is within DDOT's guidelines, meaning that the parking supply will meet the practical needs of the site while not promoting vehicles as a mode of transportation; and
  - A Transportation Demand Management ("TDM") plan that includes the following elements to reduce the demand of single-occupancy, private vehicles during peak period travel times or shifts single-occupancy vehicular demand to off-peak periods:
    - Unbundling of residential parking costs;
    - Appointment of a TDM Coordinator (who will receive TDM training from goDCgo) as a point of contact with DDOT, goDCgo, and the Zoning Administrator;

- The TDM Coordinator will provide information to goDCgo annually and will conduct an annual commuter survey of employees on site;
- Provide 121 long-term bicycle parking spaces and bicycle storage rooms that will accommodate non-traditional sized bikes;
- The Applicant will post all TDM commitments on the Building’s website and will publicize the commitments; and
- The Applicant will provide all new residents welcome packets with information on transportation options, including the Metrorail pocket guide, brochures of local bus lines, carpool and vanpool information, Guaranteed Ride Home brochure, and the most recent DC Bike Map. (Ex. 21A.)

## Second Prehearing Statement

65. The Second Prehearing Statement included:

- Additional responses to the comments of OP (FF 75) and the Commission at the public meeting in which it set down the Application for a public hearing as well as responses to the comments from DHCD, DC Water, DOEE, DHCD, DDOT, and DDOT’s Urban Forestry Division (“UFD”) received at OP’s Interagency Meeting; (FF 78; Ex. 23C.)
- A unit summary for the Building that detailed the MFI levels by apartment type, the unit type breakdown for both IZ and market-rate units, and a comparison between the number and unit types in the existing building and that which is proposed for the Building; and (Ex. 23C, 23A2.)
- The Applicant’s initial community benefits package, created with significant input from ANC 6E and community stakeholders, which consisted of the following financial contributions:
  - **\$75,000 to the Greater Washington Community Foundation** – to be used by The Partnership to End Homelessness Grantmaking Fund (“Partnership Fund”) to provide support for nonprofit providers in DC to help obtain and maintain permanent housing and reduce the amount of time spent in the homeless services system;
  - **\$20,000 to New Endeavors for Women** – for the purchase of computer equipment and funding of supportive programs for women and families in the transitional housing program located at 611 N Street, N.W. The supportive programs include; transportation subsidies, tuition assistance, and transitional housing supplies for clients;
  - **\$30,000 to Shaw Main Streets** – in support of the Shaw Main Street Clean & Safe Team, which hires, trains, and employs citizens to maintain the public space along the 7<sup>th</sup> and 9<sup>th</sup> Street, N.W., commercial corridors. Funds will be used to pay for salaries, benefits, uniforms, equipment, and supplies for crew members;
  - **\$15,000 to the Kennedy Recreation Center** – for the purchase of new computers, furniture, equipment, and supplies for the technology lab for the Kennedy Recreation Center;
  - **\$15,000 to Boolean Girl** – to provide one year of funding of Boolean Girl’s operations at the Kennedy Recreation Center. Boolean Girl provides a curriculum, equipment, materials, and instructors to teach coding to disadvantaged children. The program can serve 75 children over the course of one year, and participants will be recruited from the Shaw neighborhood;

- **\$20,000 to DC Public Library Foundation** – for the benefit of Shaw Watha T. Daniel Neighborhood Library to support improvements to the children’s section including furniture, supplies, and children’s educational programming; and
- **\$30,000 to the Mount Vernon Triangle Community Improvement District**– to support the Mount Vernon Triangle Clean Team’s hiring of one additional Clean Team Ambassador.

**Public Hearing Testimony**

66. The Applicant presented the following witnesses at the January 16, 2020, public hearing:
- Mr. Jamie Weinbaum, Executive Vice President of Mid-City Financial Corporation;
  - Ms. Sarah Alexander as an expert in architecture; and
  - Mr. Robert Schiesel as an expert in transportation analysis and engineering. (January 16, 2020, Public Hearing Transcript [“Tr.”] at 8-9.)
67. Ms. Alexander testified to the Building’s design elements as follows:
- The Building actively sought to “reknit” the Property into the surrounding neighborhood by extending the north and south wings to the property lines and incorporating bays, pavilions, and balconies to match and complement the surrounding residential development;
  - The height of the Building had been deliberately kept below the PUD maximum in order to respect the heights of the adjacent buildings and the wishes of the community; (Tr. at 19-23.)
  - The plans had been revised to respond to the Commission’s comments at setdown, including the following: changing the color palette of the building, darkening the upper panels from white to dark gray and the windows from white to dark grey; and providing elevations of the internal courtyards; and
  - The majority of the additional density requested for the Building resulted from:
    - Ample exterior balconies (included per the Zoning Administrator’s interpretation that these be included in the calculation of gross floor area) provided throughout the Building (approximately 5,400 square feet of the 6,700 square feet of additional density) both as a residential amenity and as design feature; and
    - The provision of separate loading facilities (designed for front-in and front-out truck turning maneuvers) for each residential wing accounting for approximately 4,500 square feet of gross floor area, which are essential to making the loading work at grade with minimal impacts to the surrounding neighborhood streets. (Tr. at 11-12, 19-23, 30-31.)
68. The Applicant responded to the DDOT Report and Testimony (FF 82-83) by incorporating all recommended additions to the TDM Plan with the limitation to DDOT’s proposed free SmarTrip card and complimentary Capital Bikeshare coupon good for one free ride be limited to the first resident of each dwelling unit at initial lease-up. (Ex. 65A2; Tr. at 24-25).
69. The Applicant also provided testimony regarding the Building’s housing program and affordable housing proffer as follows:

- In response to DHCD’s recommendation of a 15% IZ proffer, the Applicant stated it believed the 12% IZ set aside was commensurate with approvals of other similar PUDs and appropriate given the minimal requested flexibility and the public benefits package that was sufficient to satisfy the PUD balancing test without the additional IZ; (Tr. at 13-14.);
- The Applicant studied the ability to increase the IZ proffer and had determined that a 12% IZ set aside was the maximum amount that the Building could sustain economically;
- The Applicant reiterated that the Building provides nearly 12,000 square feet of IZ above the amount required in a matter-of-right building that utilizes the IZ bonus density; and (Tr. at 50-51.)
- The 360-unit Building will provide a full one percent of the Mayor’s goal of producing 36,000 new housing units by 2025 while maintaining the matter-of-right height, but seeking the additional residential density allowed through the PUD process in order to provide more market-rate and affordable housing. (Tr. at 15-18.)

70. In response to questions from the Commission regarding the relocation of the tenants that formerly occupied the 63 units on the Property, Mr. Weinbaum noted that:

- The Applicant stopped leasing the 63 existing units three years earlier, and that the tenants subsequently moved to other parts of the District or other parts of Washington Apartments, which includes two other parcels near the Property; and
- The Applicant had covered the costs of the moves for tenants relocating to the other, renovated units in the other Washington Apartments buildings. (Tr. at 34-35.)

#### **First Post-Hearing Submission – Response to Commission and UFD Report**

71. The First Post-Hearing Submission addressed the Commission’s requests for additional information at the public hearing as follows:

- ***Vents on the Building’s Front Bay Projections*** – The Applicant removed the vents that were initially proposed on the front bay projections and agreed not to locate any vents through the façade’s white metal panels. The venting instead will be located internally through the residential units;
- ***Location of the IZ Units*** – The Applicant revised the locations of the IZ units so that only one unit is located near a loading dock. This unit will be a three-bedroom unit that mainly fronts on 5<sup>th</sup> Street, N.W and is a prominent corner unit;
- ***Views of the Building in the Winter Months*** – The Applicant provided views of the Building in the winter months when the street trees do not have any leaves;
- ***Appearance and Treatment of the Interior Courts*** – The Applicant added the following façade enhancements to the interior courts, although it noted that landscaping remained the primary focus of the interior courts, particularly the south courtyard:
  - Addition of trim and banding to the façades;
  - Incorporation of different accent shades of the façade color; and
  - Variation of the material types provided on the façades of the interior courts;
- ***Updated Construction Management Plan*** – The Applicant submitted an updated Construction Management Plan requiring the Applicant to commence all repairs within

60 days of the Applicant and the Adjacent Owner agreeing upon any necessary and appropriate repairs;

- **Proposed Unit Count Flexibility** – The Applicant revised its request for design flexibility from the approved plans for the number of units:

*“To provide a range in the number of residential units in the Building of plus or minus five percent (5%) relative to the number depicted in the Final Plans, with no reduction in the number of three-bedroom units (18) and maintaining the percentage range of units noted on page G05 of the Final Plans[;]”and*

- **Potential Parking Impacts** - Gorove Slade Associates submitted an additional technical memorandum (the “Parking Memorandum”) analyzing the sufficiency of the parking provided in the Building and information regarding RPP restrictions immediately adjacent to the Property, which noted that:

- The Building’s proposed 103 parking spaces exceeds the 61 parking spaces required by the Zoning Regulations;
- The Park Right DC Tool created by DDOT to help determine residential parking demand estimates the number of utilized parking spaces for the Building to be in a range of 72-115, and the 103 on-site parking spaces falls within this range;
- The existing RPP restrictions on the streets around the Property do not include restrictions on Sunday so that preventing residents of the Building from seeking RPP would not address parking concerns raised by members of the Churches (FF 95); and
- The Applicant’s final request for design flexibility for the number of parking spaces reads as follows:

*“To make refinements to the approved parking configuration, including layout and number of parking spaces of plus or minus ten percent (10%), provided the number of parking spaces maintains a ratio of no more than 0.3 spaces per residential unit.”*

72. The Applicant’s First Post-Hearing Submission responded to the issues raised in the UFD Report as follows: (FF 85; Ex. 22.)

- The Applicant met with UFD representatives for a second site visit on January 9, 2020, to review the street trees referenced in the UFD Report;
- The Applicant agreed to prepare and submit a tree preservation plan as part of its public space permitting process; and
- The Applicant agreed that it would need to obtain permits for the removal of any Special Trees on both public and private property.

### **Second Post-Hearing Submission – Meeting with the Churches**

73. The Second Post-Hearing Submission detailed the Applicant’s second meeting with representatives of First Rising and Miles Memorial (together, the “Churches”) on March 17, 2020:

- The Applicant proposed several accommodations to address the Churches’ concerns regarding parking including covering the cost of off-site parking for the Churches, use of on-site parking on the Property prior to the start of construction, and financial contributions to help the Churches cover alternative transportation services;

- The Churches’ counter proposal requested 40 permanent parking spaces in the Building for use by the Churches and an increase of the affordable housing proffer to dedicate 22% of the units as permanently affordable with rents capped at 20% MFI;
- The Applicant stated that it was unable to accommodate the Churches’ proposals and noted that:
  - While the Applicant was sympathetic to the Churches’ concerns regarding parking, that the CTR, Parking Memorandum, and DDOT Report had all concluded that the Building would not result in any adverse parking impacts and the Applicant was only required to mitigate potential parking impacts resulting from the Building; and
  - That the affordable housing proffer suggested by the Churches was not financially feasible for the Applicant without significant government subsidies; and
- The Applicant concluded that it had been unable to come to a final agreement with the Churches on their current concerns but would continue to work with them throughout the construction process.

### III. RESPONSES TO THE APPLICATION

#### OP REPORTS AND TESTIMONY

##### **OP Setdown Report**

74. OP submitted a September 13, 2019, report (the “OP Setdown Report”) recommending that the Commission set down the Application for a public hearing based on OP’s determination that: (Ex. 11.)

*On balance, the proposed PUD would not be inconsistent with the Comprehensive Plan. The policies cited in this report complement and support redevelopment of an underutilized site with a new apartment building without displacing existing residents. The proposed project would be an improvement over the existing building, including architectural design, sustainability, and open green space. The proposed building would increase density at the site to provide more housing within the scale, density and design context of the existing neighborhood;”* and respond to specific CP aspects as follows:

- **GPM** – The Building is consistent with the GPM’s emphasis on context-appropriate, residential infill development, particularly given the amount of proposed affordable housing which OP concluded would be a benefit to the surrounding neighborhood;
- **FLUM** - the Building is mostly consistent with the requirements of the RA-2 zone which permits moderate-density development, and that the increased height and density would allow the Building to “provide an appropriate buffer between the medium density residential uses west of 6<sup>th</sup> Street and the moderate density residential uses to the east;”
- **Near Northwest Element** – The Building would contribute to the community’s positive physical identity, provide significant green open space on the Property, and improve the public realm around the Property; and

- **Citywide Elements** – The Building is consistent with, and furthers, individual policies of the Land Use; Transportation; Housing; Environmental Protection; Parks, Recreation and Open Space; and Urban Design Elements.
75. The OP Setdown Report requested that the Applicant submit the following additional information prior to the public hearing:
- The parameters of the affordable housing component, including the anticipated MFI level for apartment type and the bedroom count of apartments in the existing building compared to the proposed building; and
  - Additional information regarding the benefits and amenities including environmental and sustainable benefits and superior landscaping or creation of preservation of open spaces.
76. The Applicant responded to the OP Setdown Report’s requests for additional information in its Prehearing Statements. (FF 63, 65.)

### **OP Hearing Report**

77. OP submitted a January 6, 2020, report ( the “OP Hearing Report”) recommending that the Commission approve the Application provided that (Ex. 25.)
- The Application’s requested design flexibility be limited as follows:
    - Flexibility in the number of residential units only for the number of studios and one-bedroom units; and
    - Flexibility in the number of parking spaces only to provide less parking; and
  - The Applicant submitted prior to final action:
    - Additional information about how the requested additional density is essential to the successful functioning of the Building; and
    - Additional information on the timing of the payments of the proffers and how those contributions are consistent with § X § 305.3(d).
78. The OP Hearing Report included comments from DC Water, DOEE, DHCD, DDOT, and UFD on the Application made at a December 10, 2019, interagency meeting with the Applicant and noted OP’s support for DHCD’s recommendation that the Applicant increase the affordable housing commitment from 12% dedicated IZ units to 15% dedicated IZ units.
79. The Applicant responded to the comments of DHCD, DC Water, and DOEE in its Second Pre-Hearing Statement and to OP’s requests for additional information in its Prehearing Statements, Testimony, and the First Post-Hearing Submission. (FF 63, 65, 66-67, 71; Ex. 13, 23, 72;Tr. 2 at 11-12, 30-31, 50-51.)

### **OP Public Hearing Testimony**

80. OP testified that it supported the Application and rested on the record, but requested the ability to file a post-hearing comment on the Applicant’s request for design flexibility from the approved plans for the number of residential units provided in the Building. (Tr. at 61.)

### **OP Post Hearing Report**

81. OP submitted a February 5, 2020, report (the “OP Post Hearing Report”) opposing the Applicant’s request for design flexibility for the number of residential units unless it was limited to studios and one-bedroom units and so did not change the number of two- and three-bedroom units shown on the approved plans. (Ex. 75.)

### **DDOT REPORTS AND TESTIMONY**

#### **DDOT Report**

82. DDOT filed a January 6, 2020, report (the “DDOT Report”) that analyzed the Building’s site design, the travel assumptions of the CTR, the sufficiency of the provided parking and loading, and the proposed transportation mitigations. (Ex. 26.) The DDOT Report concluded:
- The proposed 103 vehicle parking spaces provided in the Building exceed the 61 spaces required by the Zoning Regulations;
  - The proposed parking supply also falls within DDOT’s preferred maximum parking ratio (less than 0.30 space per residential unit) for sites within a quarter mile of a Metrorail station;
  - The CTR did not identify any traffic impacts at study area intersections, therefore no additional mitigation beyond a TDM Plan is required; and
  - The TDM Plan, in conjunction with a low parking ratio and close proximity to a Metrorail station, is mostly sufficient to encourage usage of non-auto modes, but DDOT requested the TDM Plan be supplemented by adding the following elements:
    - Provide a free SmarTrip card to every new resident and a complimentary Capital Bikeshare coupon good for one ride;
    - Long-Term bicycle parking spaces will be provided free of charge to residents
    - Following the issuance of a Certificate of Occupancy for the Building, the Transportation Coordinator shall submit documentation used to summarize compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS record of the case; and
    - Following the issuance of a certificate of occupancy for the Building, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo for every five years (as measured from the final certificate of occupancy for the Building) summarizing compliance with the transportation and TDM conditions in the Order (Ex. 26).

#### **DDOT Public Hearing Testimony**

83. At the public hearing, DDOT testified that:
- It had conducted a thorough review of the site plans and the CTR and that it concurred with that there would not be any impacts to roadway operations that would necessitate mitigations at intersections in the vicinity of the Building; and
  - It was very supportive of the Building due to the number of positive transportation design elements including a low parking ratio and a robust TDM Plan. (TR. at 61-61.)

84. The Applicant addressed the DDOT Report and Testimony in the Applicant’s Testimony. (FF 68.)

**OTHER AGENCIES**

**Urban Forestry Division (DDOT) Report**

85. UFD submitted a December 17, 2019, report (the “UFD Report”) stating that: (Ex. 22.)
- The Ward Arborist met on-site with representatives of the Applicant on June 11, 2019, to assess the existing street trees on 5<sup>th</sup>, 6<sup>th</sup>, M, and N Streets, N.W.;
  - UFD recommended that the Applicant conduct a second walk-through with UFD to confirm which street trees are to be removed and which street trees are to be preserved;
  - UFD requested the Applicant prepare a Tree Preservation Plan for the street trees; and
  - UFD will require tree removal permits prior to the removal of special trees on private property.
86. The Applicant addressed the UFD Report in the First Post-Hearing Submission. (FF 72.)
87. Since the Application did not include a map amendment, no referral to the National Capital Planning Commission was required. (Subtitle Z §§ 603.1(b), 603.4(a).)
88. No other agency filed written comments or testified in response to the Application.

**ANC 6E REPORT AND TESTIMONY**

89. ANC 6E submitted a December 31, 2019, resolution ( the “ANC Report”), stating that at a duly noticed December 19, 2019, public meeting with a quorum present, the ANC voted to support the Application because it addressed the following issues and concerns of the ANC: (Ex. 47.)
- The negative effects of the current vacant state of the Property;
  - The Building’s:
    - Lower size – 50 feet instead of the 60 feet permitted;
    - Additional affordable housing;
    - Mix of unit sizes;
    - All residential uses with no retail uses;
    - Parking access – located off of N Street, N.W., with the egress moved from M to 5<sup>th</sup> Street, N.W.; and
    - Courtyard accessible to the public; and
  - The Application’s proffered financial contributions for neighborhood community entities and services. (FF 65; Ex. 23.)
90. Anthony Brown, Chairman of the ANC 6E Development and Zoning Committee (the “ANC Zoning Committee”), along with Bob Williams, a member of the ANC Zoning Committee, testified in support that:
- The Building had been successfully integrated into the neighborhood by limiting the building height to 50 feet, the successful architectural treatment of the building; and

- The ANC Zoning Committee concluded that the 103 parking spaces provided in the Building would be sufficient due to the site’s proximity to the Mount Vernon Metro Station, one block away. (Tr. at 67-74.)

**PERSONS IN SUPPORT**

91. The Commission received approximately 34 letters in support of the Building including:
- Letters from members of the public supporting the Building’s design, the appropriateness of its size and scale, its incorporation into the surrounding neighborhood, the IZ component, and the Applicant’s efforts to respond to community input; and (Ex. 28-46, 49-61, 63-64.)
  - A letter from Ward 6 Councilmember Charles Allen in support of the Building’s creation of housing and affordable housing on a transit-oriented site and the incorporation of high quality architecture – including a green roof and solar panels – on a site that currently includes outdated buildings and a surface parking lot. (Ex. 27.)
92. Seven individuals testified in support, noting the need to improve the current appearance of the Property and that the Building will improve the surrounding area. (Tr. at 65-74.)

**PERSONS IN OPPOSITION**

93. ANC 6E04 Commissioner Richelle Nigro testified in opposition, in her individual capacity and not on behalf of the ANC, to express her constituents’ concerns that the Building:
- Is too large for the neighborhood; and
  - Will cause traffic and parking impacts.
- However, Commissioner Nigro noted that she looked forward to working with the Applicant on issues related to the TDM and Construction Management Plans as the Building progresses. (Ex. 67; Tr. at 83-85.)
94. Five other individuals testified in opposition raising concerns regarding the amount of affordable housing, displacement, the sufficiency of the parking, and the impacts of the Building on the nearby churches. (Tr. at 76-85.).

**The Churches**

95. Pastor Oran Young of First Rising and Pastor Juliano A. Andujo of Miles Memorial testified in opposition on behalf of their congregations about the Building’s impacts on the Churches:
- Pastor Young raised the following concerns:
    - The Building does not include enough parking;
    - The location of construction staging and parking;
    - That 10% or 15% affordable housing set asides are not enough; and
    - The Building will result in infrastructure problems – such as backflow – for other properties; and (Tr. at 76-77.)
  - Pastor Andujo raised the following concerns:
    - The relocation of former tenants of the existing buildings on the Property;
    - The overall racial integration of the neighborhood;
    - The levels of affordability provided in the Building; and

- Parking and construction impacts. (Tr. at 77-79.)
96. The Churches submitted letters after the public hearing, describing the results of the January 22, 2020, meeting held with the Applicant’s representatives and noting:
- Potential construction issues, the affordable housing proffer, displacement concerns, infrastructure issues, the Building’s scale, and parking had all been discussed;
  - The Applicant offered to provide parking spaces for the Pastors in another development, to provide a total of 30 spaces (15 per church) in a nearby parking lot for use on Sundays through 2022, and \$200 per week in transportation funding through 2022;
  - The Applicant did not agree to the Churches’ requests to provide 50 additional on-site parking spaces, provide underground parking under Miles Memorial, and reduce the size of the Building; and
  - Pastors Young and Andujo ultimately decided that none of the Applicant’s suggestions provided adequate long-term solutions and decided not to meet further. (Ex. 73-74.)
97. The Churches submitted additional letters following their March 17, 2020, meeting with the Applicant noting that:
- The Churches and the Applicant had been unable to reach a final agreement on the issues of concern; and
  - The Applicant’s proposals did not provide long-term solutions to the Churches’ concerns regarding parking and affordable housing. (Ex. 79-79A.)

### CONCLUSIONS OF LAW

1. Pursuant to the authority granted by the Zoning Act of 1938 (approved June 20, 1938; 52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a Consolidated PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 300.
2. Pursuant to Subtitle X § 300.1, 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.*
3. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application, the Commission must:

*“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.”*

and must 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.*

4. A PUD's proposed public benefits must comply with Subtitle X § 305.12:

*“A project may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many.”*

5. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP's purposes as:

- (a) *To define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
- (b) *To guide executive and legislative decisions on matters affecting the District and its citizens;*
- (c) *To promote economic growth and jobs for District residents;*
- (d) *To guide private and public development in order to achieve District and community goals;*
- (e) *To maintain and enhance the natural and architectural assets of the District; and*
- (f) *To assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*

6. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)) (the “McMillan PUD”). In its decision affirming the Commission's approval of the McMillan PUD, the Court stated the following:

The Comprehensive Plan is a ‘broad framework intended to guide the future land use planning decisions for the District. *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). ‘[E]ven if a proposal conflicts with one or more individual policies associated with the

Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.’ *Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous ‘occasionally competing policies and goals,’ and, ‘[e]xcept where specifically provided, the Plan is not binding.’ *Id.* at 1167, 1168 (internal quotation marks omitted). Thus ‘the Commission may balance competing priorities’ in determining whether a PUD is consistent with the Comprehensive Plan as a whole.’ *D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013). ‘[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations. (*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016) (internal quotation marks and references omitted).)

#### **COMPLIANCE WITH PUD ELIGIBILITY STANDARDS**

7. The Commission concludes that the Application meets the minimum 15,000 square feet of land area for a PUD in the MU-4 zone because the Property consists of approximately 92,394 square feet of land area. (Subtitle X § 301.1.)

#### **CONSISTENCY WITH THE CP AND PUBLIC POLICIES (SUBTITLE X § 304.4(A))**

8. The Commission concludes that the Building is not inconsistent with the CP, when considered in its entirety, because the Building will further the following CP map designations and elements.

#### **GPM**

9. The Commission concludes that the Application is not inconsistent with the Property’s Neighborhood Enhancement Area designation, but instead will further this GPM designation for the reasons advanced by the Applicant and OP, and specifically because:
  - The Building’s residential use will “fit in” with the residential character of the surrounding neighborhood; and
  - The Building responds to the “existing character, natural features, and existing/planned infrastructure capacity” of the surrounding area by configuring the Building’s massing and height to respond to the surrounding row dwellings, places of worship and nearby historic district. (FF 22, 25-26, 32, 40, 50, 54.)

#### **FLUM**

10. The Commission concludes that the Application is not inconsistent with the Property’s designation for Moderate Density Residential uses for the reasons advanced by the Applicant and OP and specifically because:
  - The FLUM designation specifically includes the current RA-2 zone, which the Application will maintain, as a potentially compatible zone;

- The Building conforms to the development standards of the RA-2 zone except for the requested zoning flexibility for increased lot occupancy and FAR needed for the Building to successfully function and to accommodate the desires of the ANC and community to keep the Building within the 50-foot matter-of-right height for the RA-2 zone while still providing the residential GFA; and
- Although the Moderate-Density Residential designation focuses on slightly lower-density development than that contemplated by the Application, the increase in density will allow the Building to serve as a transitional development between the higher density development surrounding the Convention Center to the west and the lower density residential areas to the east. (FF 16, 21-22, 33, 40, 49.)

### **Near Northwest Area Element**

11. The Commission concludes that the Building is not inconsistent with the Near Northwest Area Element for the reasons advanced by the Applicant and OP and specifically because the Building:
- Will develop an underutilized site in the eastern side of the planning area which has a greater need for reinvestment and redevelopment;
  - Will provide new affordable and market rate housing in the Shaw neighborhood on an underutilized site;
  - Will help serve as a transitional development between the higher density development near the Convention Center and the lower residential areas farther east; and
  - Has been designed as an infill development that respects the surrounding character and scale of residential development and seeks to complement it. (FF 22, 24-25,34, 44, 49-50.)

### **Citywide Elements**

12. The Commission concludes that the Application furthers the Land Use, Transportation, Housing, Environmental, Parks, Recreation and Open Space, and Urban Design Elements for the reasons advanced by the Applicant and OP and specifically because the Building:
- Will redevelop an underutilized property near major commercial corridors and a Metrorail station with a mixed-income residential Building that would revitalize the area while still respecting the character of the surrounding lower-density development;
  - Capitalizes on its proximity to multiple transit options, is designed to enhance pedestrian and bicycle facilities and safety, and provides all on-site parking in a below-grade garage;
  - Will provide approximately 360 new, high quality housing units with 12% being permanent affordable at 50% and 60% MFI;
  - Utilizes environmentally sustainable materials and features including green roofs, rooftop solar panels, sustainable landscaping, and has been designed to achieve LEED-Silver v4 certification;
  - Incorporates open and closed courts to provide both public and private accessible open space; and
  - Utilizes variations in height, massing, and other architectural elements to correspond to the surrounding development and architectural patterns of the Shaw neighborhood and

provide a transition from areas of higher-density to lower-density residential neighborhoods. (FF 35-41.)

### **SAP**

13. The Commission concludes that the Building is not inconsistent with the SAP for the reasons advanced by the Applicant and OP and specifically because the Building:
- Will advance the specific goals of the “Transit Oriented Housing” sub-area by redeveloping the existing, underutilized site that includes surface parking with a new mixed-income development, including underground parking, near a Metrorail station; and
  - Advances a number of the design recommendations of the SAP sub-area including providing prominent building entrances, animating the street through projections and openings, and use of high quality design materials. (FF 42.)

### **Mayor’s Housing Order**

14. The Commission concludes that the Building will further the housing goals of Mayor’s Order 2019-036 by providing one percent of that goal on a single site. (FF 24, 43.)

### **POTENTIAL ADVERSE IMPACTS – HOW MITIGATED OR OUTWEIGHED (SUBTITLE X § 304.4(B))**

15. The Commission concludes that the Building will not result in any unacceptable impacts that are not capable of being mitigated or outweighed by the Building’s proffered public benefits as detailed below.

### **Scale of the Building**

16. The Commission concludes that the Building will not result in any unacceptable impacts, even though it is somewhat larger in scale than most of the immediately surrounding buildings, for the reasons advanced by the Applicant and OP and specifically because:
- The Building has been designed to remain below the 50-foot matter-of-right height limit in the RA-2 zone (and below the 63-foot height allowed for a PUD in the RA-2 zone per Subtitle X §§ 303.7 and 303.10) in direct response to feedback received from the ANC and surrounding community;
  - The Building’s use of bays, façade configuration that mirrors surrounding buildings, and the incorporation of two open courts serve to break down and mitigate the scale of the Building and render it more compatible with the surrounding development;
  - The individual heights of the two residential wings differ in order to better match the height of the surrounding buildings with the north wing being only three stories, and the south wing being four stories; and
  - The testimony in support from OP, ANC 6E, and numerous members of the public that emphasized the Building’s compatibility with the surrounding neighborhood and the importance of the increased density and scale to allow for additional housing to be constructed on the Property. (FF 22, 25, 49-50, 51, 67, 74, 89-90.)

### **Housing and Displacement**

17. The Commission concludes that the Building will not result in any unacceptable impacts with regards to housing or displacement for the reasons advanced by the Applicant and OP and specifically because:
- The Applicant began the process of ending the leasing of the existing 63 market-rate units on the Property well in advance of the filing of the Application;
  - The Applicant covered the moving costs for former tenants that relocated to the other Washington Apartments buildings in close proximity to the Property; and
  - The Building's new housing, both affordable and market rate, outweighs any potential additional displacement impacts in the surrounding neighborhood. (FF 24, 37, 46, 69-70.)

### **Parking and Loading**

18. The Commission concludes that the Building will not result in any unacceptable parking and loading impacts for the reasons advanced by the Applicant and OP and specifically because:
- The CTR, Parking Memorandum, and the DDOT Report all concluded that the amount of parking provided in the Building is greater than what is required by the zoning regulations and sufficient to meet the demands of the Building at a ratio of no more than 0.3 parking spaces per residential unit (including the design flexibility from the number of parking spaces shown in the approved plans);
  - The Building's central location and access to multiple transit options including Metrorail, Metrobus, and significant bicycle infrastructure reduce the need for residents of the Building to have personal vehicles; and
  - The Building's loading facilities are designed to allow all loading activities to take place on the Property without impacting the parking or traffic on the adjacent streets. (FF 28, 36, 45, 64, 68, 71, 82.)
19. With regard to the Churches' parking concerns, the Commission concludes that the Building will not result in unacceptable parking impacts for the reasons advanced by the Applicant and OP and specifically because:
- The technical analyses of the Building's transportation impacts (CTR, Parking Memorandum, and DDOT Report and Testimony (FF 64, 71, 82, 83)) did not identify any parking impacts that would require mitigations;
  - The Building provides more than the required parking, especially as it is located in an area of the District well served by multiple transit options; and
  - The Building is designed to ensure that site circulation and loading activities will not negatively impact the surrounding residential and religious uses.

### **Construction Impacts**

20. The Commission concludes that the Applicant's Construction Management Plan, as amended in response to the Commission's comments, and included as a condition of approval of this Order, will mitigate the potential construction related impacts on surrounding property owners. (FF 56, 71.)

**PUD FLEXIBILITY BALANCED AGAINST PUBLIC BENEFITS (SUBTITLE X § 304.4(C))**

21. The Commission concludes that the Application's requested zoning flexibility is outweighed by the Application's proposed public benefits as discussed below.

**Requested Flexibility**

***Increased Lot Occupancy***

22. The Commission concludes that the Applicant's requested 21.7% increase in lot occupancy to 81.7% is appropriate given the reduction in height to accommodate the concerns of the neighborhood, and to render the Building more compatible with the height of the surrounding buildings. As discussed below, the Commission also concludes that the flexibility is balanced by the proffered benefits and amenities. (FF 57, 67.)

***Increased Density***

23. The Commission concludes that the Application has satisfied the requirements of Subtitle X § 303.10(b), which authorizes a five percent increase in FAR if the applicant demonstrates that the increased density is essential to the successful functioning of the Building and consistent with the purpose and PUD evaluation standards, to allow an approximately 2.7% increase in FAR, because:

- The extra density allows the Applicant to provide balconies for certain units;
- The extra density permits loading facilities in each wing which are large enough to accommodate all loading activities without impacting street traffic;
- The extra density allows the Building to maximize its residential GFA while remaining within the matter-of-right height limits prescribed by the RA-2 zone and requested by the ANC and community; and
- Without the additional density the Applicant would be required to eliminate a "stack" of residential units given the double-loaded design of the residential wings. (FF 58, 67.)

**Public Benefits**

24. The Commission concludes that the Application satisfies the balancing test required in Subtitle X § 304.3 because it provides a high level of public benefits and amenities sufficient to balance out the requested zoning flexibility from the density and lot occupancy limits, as well as to outweigh any potential adverse impacts that are not capable of being mitigated, for the reasons advanced by the Applicant and OP, and as further specifically addressed below.

***Housing and Affordable Housing***

25. The Commission concludes that the Building will provide superior housing and affordable housing benefits because:

- The Building will provide approximately 360 new dwelling units and will advance the Mayor's housing goals by creating approximately one percent of the target of 36,000 new housing units;
- The housing provided by the Building will be high quality and located near multiple transit options and key commercial corridors;
- The Building will contain 20% more affordable housing GFA than would otherwise be required under matter-of-right development on the Property resulting in approximately

41 dedicated affordable housing units devoted to households earning up to 50% and 60% of the MFI; and

- The Applicant has provided sufficient evidence that 12% is the highest percentage of affordable housing that the Building can economically sustain. (FF 24, 43, 61, 63, 69.)

### ***Environmental and Sustainability***

26. The Commission concludes that the Building will provide the following meaningful environmental benefits, as recognized by DOEE and OP:

- Achieve LEED-Silver v4 Certification;
- Provide 1,382 square feet of rooftop solar panels;
- Provide green roof features and rooftop bioretention features; and
- Provide electric charging facilities for vehicles and bicycles. (FF 27, 47, 62, 74.)

### ***Urban Design, Architecture, and Landscaping***

27. The Commission concludes that the Building's urban design, architecture, and landscaping, for the reasons advanced by the Applicant and OP, qualify as public benefits that will improve the surrounding neighborhood to a significantly greater extent than would likely result from matter-of-right development. (FF 59, 67, 74.)

### ***Site Planning and Efficient Land Utilization***

28. The Commission concludes that the Building's site planning and land utilization qualifies as a public benefit because:

- It replaces a vacant and underutilized property with a new, multi-family, mixed-income building;
- The Property is located close to transit options and the downtown business and commercial districts; and
- It replaces a surface level parking lot with below-grade parking and off-street loading. (FF 60, 74.)

### **GREAT WEIGHT TO RECOMMENDATIONS OF OP**

29. The Commission must give "great weight" to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8 (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

30. The Commission concludes that the OP Reports, which provided an in-depth analysis of the Application, are persuasive and concurs with:

- OP's recommendations to approve the Application; and (FF 77, 80.)
- OP's recommendation that the Application's requested flexibility from the number of residential units be limited to only studios and one-bedroom units and adopts OP's recommended language as a condition of this Order. (FF 77, 81.)

31. The Commission notes OP's support for DHCD's suggestion that the Applicant consider increasing its IZ proffer to 15% but finds that neither agency included this proposed increase as a condition of support for the Application. (FF 78.) The Commission concludes

that the Applicant has provided sufficient evidence that the 12%. IZ proffer is the maximum that the Building can support and that the proffer is sufficient to qualify as a public benefit when considered against the flexibility requested by the Application.

### **GREAT WEIGHT TO WRITTEN REPORT OF THE ANC**

32. 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).)
33. The Commission finds persuasive the ANC Report’s concerns with the Property’s current vacant status, the Building’s lower size, affordable housing contribution, unit mix, all-residential uses, parking access, and publicly accessible courtyard, and that the zoning flexibility and potential adverse impacts are outweighed by the Application’s public benefits including the Application’s financial support of neighborhood-serving entities. The Commission therefore concurs with the ANC Report’s support of the Application that indicates that the Application has satisfactorily addressed the ANC’s concerns, as confirmed by the testimony of the ANC’s representatives. (FF 89, 90.)

### **DECISION**

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a Consolidated PUD subject to the following guidelines, conditions, and standards:

#### **A. BUILDING DEVELOPMENT**

1. The Building and landscaping (the “Approved PUD”) shall be constructed as modified by the guidelines, conditions, and standards herein in accordance with:
  - The plans prepared by Torti Gallas and Studio 39, dated December 20, 2019 (Ex. 23A1-23A9); and
  - As modified in the post-hearing submission dated February 3, 2020 (Ex. 72A, 72B, 72D) including the revised IZ Unit Location Plan and Courtyard Design Plans (Ex. 72B, 72D) (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, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the Building as shown on the Approved Plans;
- b. To vary the final selection of the colors of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction, without reducing the quality of the materials, provided such colors are within the color ranges shown on the Approved Plans; and to make minor refinements to exterior details, dimensions and locations, including curtain wall mullions and spandrels, window frames and mullions, glass types, belt courses, sills, bases, cornices, balconies, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or to address the structural, mechanical, design, or operational needs of the building uses or systems;
- c. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the Building as shown on the Approved Plans; examples of exterior details include, without limitation, doorways, canopies, railings, and skylights;
- d. To provide a range in the number of residential units in the Building of plus or minus five percent relative to the number depicted on the Approved Plans, subject to the housing requirements of Condition No. E.2. with no reduction in the number of two- and three-bedroom units (101) and maintaining the percentage range of unit sizes noted on page G05 of the Approved Plans and maintaining no less than the number of IZ units and percentage of unit mix shown in the column "IZ Required" on page of the Table on page G10;
- e. To make refinements to the approved parking configuration, including layout and number of parking spaces of plus or minus 10%, provided the number of parking spaces maintains a ratio of no more than 0.3 spaces per residential unit;
- f. To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Approved Plans do not change;
- g. To vary the design of the public space surrounding the Property and/or the selection of plantings in the landscape plan depending on seasonal availability within the range and quality as proposed in the Approved Plans or otherwise in order to satisfy any permitting requirements of DC Water,

DDOT, DOEE, DCRA, or other applicable regulatory bodies and/or service to the Property from utilities;

- h. To vary the amount, location and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the Building achieves a minimum GAR required by the Zoning Regulations and provides a minimum of approximately 1,380 square feet of roof area containing solar panels and related equipment;
  - i. To vary the approved sustainable features of the Building, provided the total number of LEED points achievable for the Building does not decrease below the minimum required for the LEED standard specified by the order;
  - j. To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Approved Plans and remain compliant with all applicable penthouse dimensional requirements of the Zoning Regulations; and
  - k. To vary the final design and layout of the indoor and outdoor amenity and plaza spaces to reflect their final design and programming and to accommodate special events and programming needs of those areas from time to time.
3. In accordance with the Approved Plans, the Approved PUD shall have:
- a. A maximum building height of 50 feet (not including penthouse);
  - b. Approximately 214,094 square feet of GFA devoted to residential use, and additional GFA devoted to parking, loading, and building service areas;
  - c. Flexibility to increase the FAR for the Building to a maximum of 2.66;
  - d. Flexibility from the lot occupancy requirements to occupy 81.7% of the lot;
  - e. Approximately 360 residential units with 12% designated for Inclusionary Zoning; and
  - f. Approximately 103 on-site parking spaces.

**B. VALIDITY**

1. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.
2. No building permit shall be issued for the Building until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA (the “PUD Covenant”). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of OZ.

**C. BUILDING PERMIT REQUIREMENTS – Prior to the issuance of a building permit for the Building, the Applicant shall demonstrate to the Zoning Administrator that:**

1. The building permit application indicates that the Building has been designed to achieve at least the minimum number of points necessary to achieve Silver certification under the USGBC’s LEED v.4 standards.
2. The Applicant shall construct the Building in accordance with the provisions of the Construction Management Plan included as Exhibit 72E.

**D. CERTIFICATE OF OCCUPANCY REQUIREMENTS – Prior to the issuance of a certificate of occupancy for the Building, the Applicant shall demonstrate to the Zoning Administrator the following:**

1. ***LEED*** –
  - a. The Building has been registered with the USGBC to commence the LEED certification process by furnishing a copy of its LEED-certification application to the Zoning Administrator; and
  - b. The updated status of its LEED Certification, including all credits obtained, and demonstrating that it is reasonable likely to achieve certification within two years.
2. ***Sustainability*** –
  - a. The solar panel systems and associated equipment installed on the Building by the Applicant occupy approximately 1,380 square feet of roof area;
  - b. The Applicant has installed three electric vehicle charging stations within the garage that can accommodate a minimum of six vehicles at any given time; and

- c. The Applicant has installed at least five electrical outlets in the long-term bicycle storage to supply power to electric bicycles.
3. ***Financial contributions*** – the Applicant has made the following financial contributions:
- a. \$75,000.00 to the Greater Washington Community Foundation – to be used by The Partnership to End Homelessness Grantmaking Fund (“Partnership Fund”). The Partnership Fund awards grants to nonprofits working with individuals, youth, and families experiencing homelessness. Specific grants are made to nonprofits for the following purposes: (1) to fill funding gaps to assist people exiting homelessness to obtain and maintain stable housing; (2) to support the development of innovative homelessness services solutions that can be evaluated and potentially scaled; (3) to help providers address emerging needs in homelessness services and to support targeted services to address those needs; (4) to support service providers and developers in helping people to access permanent housing and increase the supply of affordable housing; and (5) to support advocacy efforts focused on strengthening policies that impact housing and homelessness and/or increase public funding. The Partnership Fund shall be in operation at the time of the issuance of the Certificate of Occupancy for the Building;
- b. \$20,000.00 to New Endeavors for Women – for the purchase of computer equipment and funding of supportive programs for women and families in the transitional housing program located at 611 N Street, N.W. The supportive programs include; transportation subsidies, tuition assistance, and transitional housing supplies for clients. Programs funded shall be in operation at the time of the issuance of the Certificate of Occupancy for the Building;
- c. \$30,000.00 to Shaw Main Streets – in support of the Shaw Main Street Clean & Safe Team, which hires, trains, and employs returning citizens to maintain the public space along the 7<sup>th</sup> and 9<sup>th</sup> commercial corridors. Funds will be used to pay for salaries, benefits, uniforms, equipment, and supplies for crew members. Programs funded shall be in operation at the time of the issuance of the Certificate of Occupancy for the Building;
- d. \$15,000.00 to the Kennedy Recreation Center – for the purchase of new computers, furniture, equipment, and supplies for the technology lab for the Kennedy Recreation Center. Programs funded shall be in operation at the time of the issuance of the Certificate of Occupancy for the Building;
- e. \$15,000.00 to Boolean Girl – which will provide one year of funding of the nonprofit organization Boolean Girl’s operations at the Kennedy Recreation Center. Boolean Girl provides a curriculum, equipment, materials and

instructors to teach coding to disadvantaged children. Participants will be recruited from the Shaw neighborhood. Programs funded shall be in operation at the time of the issuance of the Certificate of Occupancy for the Building;

- f. \$20,000.00 to DC Public Library Foundation (for the benefit of Shaw Watha T. Daniel Neighborhood Library) – to support improvements to the children’s section and children’s programming at the Shaw Watha T. Daniel Library, including furniture, supplies, and children’s educational programming. Programs funded shall be in operation at the time of Certificate of Occupancy for the Building; and
- g. \$30,000.00 to the Mount Vernon Triangle Community Improvement District – to support the Mount Vernon Triangle Clean Team’s hiring of one additional Clean Team Ambassador. Programs funded shall be in operation at the time of Certificate of Occupancy for the Building.

**E. REQUIREMENTS FOR THE LIFE OF THE BUILDING – For the life of the Building**, the Applicant shall perform the following:

- 1. ***Sustainability*** – maintain the solar panels and electric vehicle accommodations described in Condition No. D.2.
- 2. ***Housing*** – provide housing in excess of a matter-of-right development of the Property, including affordable housing as set forth in the following chart and in accordance with the location and proportional mix of units (by bedroom count) as shown on Sheet G10 of the Approved Plans, subject to design flexibility granted by the Commission in Condition No. A.2, provided that:
  - a. The affordable housing shall be no less than 12% of the total of the residential GFA, cellar floor area dedicated to dwelling units, enclosed building projections that extend into public space, and habitable penthouse space as determined by the Zoning Administrator at permit issuance;
  - b. The Building shall provide no fewer than 18 three-bedroom units; and
  - c. The covenant required by the Inclusionary Zoning Implementation Amendment Act of 2006 (D.C. Law 16-275, as amended; D.C. Official Code §§ 6-1041.05(a)(2) (2012 Repl.)) shall include a provision or provisions requiring compliance with this Condition E.2.

Residential Unit Type	Total Residential Gross Floor Area (“GFA”)	Units	Reserved for households earning equal to or less than:	Affordability Control Period	Tenure (rental or sale)
<b>Total</b>	246,222 square feet (sf) of GFA	360	N/A	N/A	N/A
<b>Penthouse</b>	35,644 sf	N/A	N/A	N/A	N/A
<b>Market Rate</b>	261,652 sf of GFA	319	N/A	N/A	N/A
<b>Affordable Housing</b>	4,280 sf of GFA (12% of non-communal penthouse habitable space)	3	50% MFI	Life of Building	Rental
	36,873 sf of GFA (12% of residential GFA + 12% of cellar dwelling unit floor area + 12% of residential projection area)	38	60% MFI	Life of Building	Rental

3. **Transportation Demand Management (“TDM”)** – implement the following TDM program:
- a. The Applicant will unbundle the cost of residential parking from the cost of lease of each unit and charge a minimum rate based on the average market rate within a quarter mile of the Property;
  - b. The Applicant will identify Transportation Coordinator(s) for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement. The Transportation Coordinator(s) will subscribe to goDCgo’s residential newsletter. The Transportation Coordinator(s) will receive TDM training from goDCgo to learn about the TDM conditions for this Building and available options for implementing the TDM plan;
  - c. The Transportation Coordinator(s) will provide their contact information to goDCgo, conduct an annual commuter survey of employees on site, and report TDM activities and data collection efforts to goDCgo once per year;
  - d. The Transportation Coordinator(s) will develop, distribute, and market various transportation alternatives and options to the residents, including promoting transportation events (i.e. Bike to Work Day, National Walking Day, Car Free Day) on the Building’s website and in any internal building newsletters or communications;
  - e. The Applicant will provide welcome packets to all new residents that will, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map.

The Applicant will provide one free SmarTrip Card and one complimentary Capital Bikeshare coupon with the initial lease up of each unit;

- f. Brochures can be ordered from DDOT's goDCgo program by emailing;
- g. The Applicant will provide residents who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future;
- h. The Applicant will post all TDM commitments on the Building's website, publicize availability, and allow the public to see what commitments have been promised;
- i. The Applicant will satisfy the Zoning Regulations by providing 121 long-term bicycle parking spaces in the Building garage;
- j. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kid's bikes. The long-term bicycle space will be provided free of charge to residents; and
- k. The Applicant shall submit to the Office of Zoning for inclusion in the record for this proceeding, documentation summarizing compliance with the preceding TDM commitments, as applicable, upon the issuance of the first Certificate of Occupancy for the Building and shall, every five years thereafter, submit to the Zoning Administrator, DDOT, and goDCgo, a letter summarizing compliance with the transportation and TDM Conditions of this Order, as applicable.

**VOTE (April 27, 2020): 4-1-0** (Peter G. May, Peter A. Shapiro, Robert E. Miller, and Michael G. Turnbull to **APPROVE**; Anthony J. Hood opposed)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 19-16 shall become final and effective upon publication in the *D.C. Register*; that is, on January 8, 2021.

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

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

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS THE D.C. HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (THE "ACT").

THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE 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. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.