

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 20-09
Z.C. CASE NO. 20-09
Wagner, LLC
(Consolidated Planned Unit Development and Related Map Amendment
@ Square 5740, Lot 337)
October 29, 2020

Pursuant to notice, at its October 29, 2020 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) deliberated on an application (the “Application”) from Wagner, LLC (the “Applicant”), that requested the following relief under 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 Lot 337 in Square 5740, with a street address of 2419 25th Street, S.E. (the “PUD Site”) in the R-3 zone to authorize the construction of a new multi-family residential building on the PUD Site:

- An area variance pursuant to Subtitle X, Chapter 10, § 301.1 from the minimum PUD land area of 43,560 square feet to accommodate the PUD Site’s 19,601 square feet; and
- A Consolidated Planned Unit Development (“PUD”) pursuant to Subtitle X, Chapter 3, for the PUD Site; with
 - A PUD-related amendment of the Zoning Map pursuant to Subtitle X § 300.4 for the PUD Site to the RA-2 zone; and
 - PUD flexibility pursuant to Subtitle X § 303 from:
 - Subtitle C § 901.1’s required 30-foot loading berth and 20-foot service delivery space to authorize only the 20-foot delivery space; and
 - Subtitle C § 711.6’s minimum 20-foot width for driveways to authorize a 12-foot wide driveway.

The Commission considered the Application pursuant to Subtitles X and Z. For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. The following are automatically parties in this proceeding pursuant to Subtitle Z § 403.5:
 - The Applicant; and
 - Advisory Neighborhood Commission (“ANC”) 8B, in which district the PUD Site is located and so an “affected ANC” pursuant to Subtitle Z § 101.8.

2. The Commission received no requests for party status.

NOTICE

3. The Office of Zoning published notice of the September 24, 2020 public hearing, in the June 26, 2020, *D.C. Register* (67 DCR 007856) as well as through the calendar on OZ's website (Exhibit ["Ex.,"] 16, 17).

THE PUD SITE

4. The PUD Site is a rectangular shaped lot consisting of approximately 19,601 square feet of land area (Ex. 3).
5. The PUD Site is currently vacant (Ex. 3).
6. The PUD Site is located in the Skyland neighborhood and is bounded:
 - To the north – by Wagner Street, S.E.;
 - To the east – by 25th Street, S.E.; and
 - To the south and west - by private property (Ex. 3).
7. The PUD Site is generally surrounded by a mix of residential, commercial, and institutional uses, including:
 - To the north and west - single-family attached homes with the Skyland Apartment garden apartments farther to the north;
 - To the east - Stanton Elementary School directly across 25th Street, S.E.; and
 - To the south and southwest - The Transitional Care Center Capitol City rehabilitation facility (the "Rehabilitation Facility") and several churches and low-rise apartment houses farther to the south (Ex. 3).
8. The PUD Site is located near multiple transportation options including:
 - The Naylor Road Metrorail station which services the green line located approximately 0.9 miles from the PUD Site; and
 - Multiple Metrobus routes (including the W2, W3, W4, W6, 30S, V7, 32, A32, 34, 92, and A32 routes) directly adjacent to the Site, with bus stops for all routes located within 0.1 mile of the Site (Ex. 3).

Current Zoning

9. The PUD Site is currently in the R-3 zone, the intent of which is "to permit attached rowhouses on small lots" (Subtitle D § 300.7).
10. The properties surrounding the PUD Site are zoned as follows:
 - To the north – R-3 zone;
 - To the east – RA-1 zone and further east, MU-7 zone (shopping center and Skyland PUD); and
 - To the south and west – RA-1 zone (Ex. 3).

Comprehensive Plan (Title 10A DCMR, the “CP”)

Generalized Policy Map (the “GPM”)

11. The CP’s GPM designates the PUD Site in a Neighborhood Conservation Area, which the CP’s Framework Element defines Neighborhood Conservation Areas as “generally residential in character” with development to maintain the diversity of land uses and building types, be compatible with the existing scale, natural features, and character of the area, and at densities guided by the CP’s Future Land Use Map (“FLUM”) and CP policies. Development which addresses city-wide housing needs is encouraged in these areas (CP §§ 225.4-225.5).

Future Land Use Map (the “FLUM”)

12. The FLUM designates the PUD Site in the Local Public Facilities and Institutional uses categories, which the CP’s Framework Element describes as:
 - **“Local Public Facilities:** This designation includes land and facilities occupied and used by the District of Columbia government or other local government agencies (such as WMATA), excluding parks and open space. Uses include public schools including charter schools, public hospitals, government office complexes, and similar local government activities. Because of the map scale, local public facilities smaller than one acre—including some of the District’s libraries, police and fire stations, and similar uses—may not appear on the Map. Zoning designations vary depending on surrounding uses” (CP § 227.17); and
 - **“Institutional:** This designation includes land and facilities occupied and used by colleges and universities, large private schools, hospitals, religious organizations, and similar institutions. Smaller institutional uses such as churches are generally not mapped, unless they are located on sites that are several acres in size. Zoning designations vary depending on surrounding uses” (CP § 227.18).
13. The CP’s Framework Element provides that the FLUM “does not show density or intensity on institutional and local public sites. If a change in use occurs on these sites in the future (for example, a school becomes surplus or is redeveloped), the new designations should be generally comparable in density or intensity to those in the vicinity, unless otherwise stated in the Comprehensive Plan Area Elements or an approved Campus Plan” (CP § 228(h)).
14. The FLUM designates the areas surrounding the PUD Site for “Moderate Density Residential” uses, which the CP’s Framework Element describes as:
 - **“Moderate Density Residential:** This designation is used to define neighborhoods generally, but not exclusively, suited for row houses as well as low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings. In some 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). Density in Moderate Density Residential areas is typically calculated either as the number of dwelling units per minimum lot area, or as a FAR up to 1.8, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development, The R- 3,

RF, and RA-2 Zone Districts are consistent with the Moderate Density Residential category, and other zones may also apply” (CP § 227.6).

Area Element

15. The PUD Site is subject to the Far Southeast/Southwest Area Element (CP §§ 1800-1809.8), which prioritizes infill housing development on vacant sites (CP § 1808.5), amongst other priorities.

II. THE APPLICATION

16. The Application proposes to construct a new five story apartment building (the “Project”), with:
 - A maximum height of 55 feet;
 - Approximately 50,733 square feet of gross floor area (“GFA”)¹;
 - 67 residential units, 100% of which will be dedicated to seniors with incomes not exceeding 60% of the Median Family Income (“MFI”);
 - An approximate overall 2.59 FAR (the maximum FAR permitted for a PUD in the RA-2 zone);
 - A lot occupancy of 53%;
 - Five surface parking spaces consisting of four standard spaces and one car-share space; and
 - One service/delivery loading space located at the rear of the PUD Site and accessed from Wagner Street, S.E. (Ex. 3).

RELIEF REQUESTED

17. The Application requested an area variance pursuant to Subtitle X §§ 1000.1, 1001.3, and 1002 from Subtitle X § 301.1’s minimum PUD 1 acre (43,560 square feet) of land area for the RA-1 zone to accommodate the PUD Site’s 19,601 square feet of land area.
18. The Application requested the following PUD flexibility pursuant to Subtitle X § 303:
 - Rezoning the PUD Site (the “Map Amendment”) pursuant to Subtitle X §§ 300.4 and 303.12 from the current R-3 zone to the RA-2 zone, which is intended to provide for areas developed with predominantly moderate-density residential uses, with following changes:

	Current R-3 zone	Proposed RA-2 zone
Height	40 feet (ft.) and three stories	50 ft.; 60 ft. (PUD)
Density (FAR)	N/A	1.8; 2.16 (IZ); 2.59 (PUD);
Lot Occupancy	60% row dwellings & places of worship 40% all other structures	60%
Yards	Rear Yard: 20 feet minimum	Rear Yard: 4 inches per 1 foot of height but not less than 15 feet

¹ The Project includes 54,518 square feet of total floor area, which includes residential units located in the cellar.

Permitted Uses	Residential, limited small scale non-residential use (child care, health care facilities, etc.) institutional/religious (Subtitle U §§ 201-202)	Residential, Commercial and others (Subtitle U §§ 401, 410)
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- PUD flexibility from Subtitle C § 901.1’s required 30-foot loading berth and 20-foot service delivery space to authorize only the 20-foot delivery space; and
- PUD flexibility from Subtitle C § 711.6’s minimum 20-foot width for driveways within 20 feet of a street line to allow a 12-foot wide driveway along Wagner Street, S.E.

19. The Application requested that the Commission authorize design flexibility from the final plans submitted with the Application consistent with the design flexibility that the Commission has granted in recent cases, including the flexibility to alter the number of residential units to plus or minus 10% (*i.e.* 60-74 units) (Ex. 3).

APPLICANT’S SUBMISSIONS & TESTIMONY

20. The Applicant submitted a June 6, 2020 (Ex. 13-14F, the “Prehearing Submission”) filing, that included the following:

- Updated landscape and civil plans incorporating additional canopy trees into the design of the Project;
- A revised zoning analysis (Ex. 14A at Sheet G11) showing the approximate sizes of the residential units by type; and
- Confirmation that there are no proposed FLUM or GPM amendments that would affect the Project.

21. The Applicant submitted an August 25, 2020 Transportation Statement (Ex. 19, the “Transportation Statement”), that assessed the transportation impacts of the Project and concluded that:

- The Project would generate seven morning and nine afternoon peak hour vehicular trips and would have no adverse impacts on the surrounding roadway network;
- The Application’s requested PUD flexibility to provide a 12-foot-wide driveway curb cut would not create any adverse impacts given:
 - The small number of vehicle parking spaces;
 - The provision of a single service/delivery space to accommodate loading; and
 - The limited number of cars expected to access the PUD Site on a daily basis;
- The Application’s requested flexibility to only provide a 20-foot loading space would adequately accommodate the loading needs for building residents, including move-ins and move-outs, daily deliveries, and building maintenance needs, and would result in a better overall site design; and
- The Application’s proposed Traffic Demand Management Plan (“TDMP”) and Loading Management Plan (“LMP”) would sufficiently mitigate any other transportation related impacts of the Project.

22. The Applicant submitted a September 4, 2020 filing (Ex. 20, the “Supplemental Prehearing Submission”), that included:

- Updated Architectural Plans and Elevations showing the proposed curb extension, the additional outdoor patio and roof deck spaces, windows in the lower level residential amenity space, and additional shade trees in the parking area;

- Updates to the proffered public benefits and amenities including:
 - Removal of the proffered environmental benefits at the direction of OP;
 - Addition of the curb extension as requested by DDOT; and
 - Additional financial contributions benefiting ANC 8B;
 - Responses to comments raised by OP, DDOT, DOEE, the Department of Housing and Community Development, and the Department on Aging and Community Living; and
 - A signed copy of the Applicant’s Community Benefits Agreement (“CBA”) with ANC 8B.
23. At the September 24, 2020 public hearing, the Applicant:
- Presented the Application, supported by the testimony of:
 - Stephanie Farrell of Torti Gallas Urban, accepted by the Commission as an expert in architecture;
 - Nicole White of Symmetra Design, accepted by the Commission as an expert in transportation planning;
 - Shane Dettman of Holland & Knight LLP, accepted by the Commission as an expert in zoning and land use planning; and
 - Craig Atkins of Wiles Mensch also testified regarding the Project’s proposed bioretention facilities and strategy for addressing stormwater runoff; and
 - Confirmed its agreement to each of the conditions raised in the DDOT Report.
24. In response to the Commission’s request at the September 24, 2020, public hearing, the Applicant submitted an October 15, 2020 filing (Ex. 30, the “Post Hearing Submission”) that provided:
- Updated Architectural Plans and Elevations showing a revised building entrance design, additional details on the fiber cement panel material, and confirmation that power would be provided in the bicycle storage room for electric bicycles;
 - Confirmation that the Project would not provide additional solar panels above the green roof areas due to the cost implications;
 - A parking study demonstrating the current utilization of on-street parking surrounding the PUD Site; and
 - Responses to testimony provided at the public hearing and in written comments in opposition to the Project.

JUSTIFICATION FOR RELIEF

Area Variance from Minimum PUD Land Area

25. The Application asserted that it met the requirements of Subtitle X §§ 1000-1002 for an area variance from Subtitle X § 301.1’s minimum 43,560 square foot land area for a PUD to authorize a PUD for the 19,601 square feet of the PUD Site (approximately 2,179 square feet less than the 50% waiver authorized by Subtitle X § 301.2) as follows:
- ***Exceptional Condition*** - There is no opportunity to increase the size of the PUD Site because the PUD Site was subdivided in 2004 from the much larger property that is occupied by the Rehabilitation Facility, which immediately abuts the PUD Site to the south, while the PUD Site is bounded on the north and east by Wagner and 25th Streets, S.E.;

- ***Practical Difficulty*** - As a result of the Applicant's inability to increase the size of the PUD Site, if the minimum land area requirements were strictly applied the Applicant would be forced to abandon the Application;
- ***No Substantial Detriment to the Public Good*** - The requested area variance from the PUD minimum land area requirement would not cause substantial detriment to the public good because the Application will provide approximately 67 units of new senior affordable housing in a transit accessible location that is in close proximity to amenities; and
- ***No Substantial Impairment of the Zoning Regulations*** - The requested area variance would not result in any substantial impairment of the Zoning Regulations or maps because the Application is fully consistent with the PUD standards as described above, and the Project would comply with the development standards of the PUD Site's proposed RA-2 zone (Ex. 3).

Consolidated PUD

26. The Application proffered the following benefits and amenities:

- **Urban Design, Architecture and Superior Landscaping** -
 - Contextual building and site design;
 - Extensive use of façade articulation, projections, balconies and high quality materials;
 - Landscape improvements in the public space along 25th and Wagner Streets; and
 - Inclusion of sustainable stormwater measures including ground level bioretention, green roof, and permeable pavement;
- **Site Planning and Land Utilization** - the PUD Site is designed to relate it to the surrounding development and includes streetscape improvements;
- **Housing and Senior Housing** - 67 new housing units (50,733 square feet of GFA) all dedicated to senior housing;
- **Affordable Housing** -
 - 100% of the residential GFA will be set aside as affordable units for seniors at 60% MFI for the initial minimum 40 year affordability period; and
 - After the initial affordability period, a minimum 12% of the residential GFA will be set aside at 60% MFI for the life of the project;
- **Transportation Infrastructure Beyond that Needed to Mitigate any Potential Adverse Impacts of the Application** - Per DDOT's request, the Applicant will install a curb extension (bulb-out) at the corner of 25th and Wagner Streets, S.E., to facilitate easier pedestrian movements; and
- **Uses of Special Value to the Neighborhood** – Prior to the issuance of the final certificate of occupancy for the Project the Applicant shall -
 - Purchase a minimum of \$20,000 worth of laptops and deliver them to ANC 8B for distribution within ANC 8B boundaries for the 2020-2021 academic year for use in distance learning by local students;
 - Donate \$7,000 to Families on the Rise to fund mental health services for youth in ANC 8B; and
 - Donate \$5,000 to the Gerald Project to fund programming to assist with services for youth in ANC 8B impacted by gun violence (Ex. 3, 20).

27. The Project's design responds to and emphasizes the residential character of the surrounding neighborhood while creating a more defined street edge along both 25th and Wagner Streets, S.E., that helps to complete the urban fabric because:
- The Project's massing includes articulations and a series of step downs that relate to the scale of adjacent residential buildings and responds to the significant grade change across the PUD Site; and
 - The traditional architectural design emphasizes a strong base, middle, and top and relates to the existing mix of both residential and institutional uses. At the main corner, the building consists of four stories of brick masonry with a top floor in fiber cement panel. Bay windows, corner articulation, a recessed entrance, and a projecting canopy create an inviting entrance (Ex. 3).
28. The Project features landscaping improvements at the street level to create an active and pedestrian-friendly environment along the Site's two street frontages including:
- A new sidewalk along Wagner Street that will be constructed to connect to the existing sidewalk on 25th Street;
 - Appropriately sized street trees and ornamental plantings, including shrubs, perennials, and lawn areas, will be planted along the street frontages to enhance views of the building, soften and frame the building facades, and improve the pedestrian experience;
 - A welcoming entry area to the Project will be provided at the northeast corner of the Site, and three shade trees will be located toward the northwest corner of the Site to screen views of the building from Wagner Street and adjacent properties; and
 - Additional screening of the parking lot will be provided by a mixture of tall, dense evergreen species, with plantings around the shade trees and evergreens including perennials and groundcovers to further enhance the PUD Site's aesthetics (Ex. 3).

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

29. The Application asserted that the Application is not inconsistent with the CP, when reviewed as a whole, or with any other adopted public policies or active programs related to the PUD Site, for the reasons discussed below.
30. The Application is not inconsistent with the GPM's Neighborhood Conservation Area designation of the PUD Site because:
- The surrounding area includes a diverse mix of land uses, building types and heights and the Project would be developed in a manner that is compatible with these existing development patterns;
 - The affordable senior housing project would fit in with the residential character of the neighborhood and would not create any stark changes in density compared to existing densities of surrounding properties; and
 - The Project would help to address citywide housing needs, particularly the need for senior affordable housing (Ex. 3D, 24).
31. The Application is not inconsistent with the FLUM's Mixed-Use Institutional and Local Public Facilities designations of the PUD Site because:

- The FLUM “does not show density or intensity on institutional and local public sites” and zoning designations “vary depending on surrounding uses” (CP §§ 227.6, 227.17, and 228.1(h));
 - The PUD Site is largely surrounded by the Moderate Density Residential FLUM designation and the proposed RA-2 zone is specifically identified with being consistent with this FLUM designation; and
 - The Project will comply with the development standards for a PUD in the RA-2 zone and will be consistent with the scale and pattern of the surrounding development including the residential areas to the north and west and the institutional uses to the south and east (Ex. 3D).
32. The Application asserted that it is not inconsistent with the Far Southeast/Southwest Area Element because the Application would develop the PUD Site with increased residential density, near transit routes that would cater to the needs of area seniors and would further other identified Area Element policies (Ex. 3D).
33. The Application asserted that it is consistent with many of the guiding principles of the Comprehensive Plan including Managing Growth and Change, Creating Successful Neighborhoods, Connecting the City, and Building Green and Healthy Communities (Ex. 3D).
34. The Application asserted that it is not inconsistent with the CP’s Land Use Element because the Project will:
- Foster development of a long term vacant site located near major transit corridors;
 - Increase the housing supply in the area while still respecting the character and scale of the surrounding development; and
 - Further other identified Land Use Element policies (Ex. 3D).
35. The Application asserted that it is not inconsistent with the CP’s Transportation Element because the Project:
- Allows for the redevelopment of the PUD Site with housing near priority MetroBus corridors, thereby providing the residents with greater access to transit and reducing the need for personal vehicles;
 - Includes a number of improvements to the pedestrian and bicycle network; and
 - Would further other identified Transportation Element policies (Ex. 3D).
36. The Application asserted that it is not inconsistent with the CP’s Housing Element because the Project will:
- Develop the PUD Site with 67 units of all affordable, senior housing; and
 - Further other identified Housing Element policies (Ex. 3D).
37. The Application asserted that it is not inconsistent with the CP’s Environmental Protection Element because the Project:
- Incorporates sustainable design features including significant landscaping, green roofs, energy efficient building systems and materials, and alternative energy sources;

- Will be designed to meet Enterprise Green Community Standards at a level that is equivalent to the Silver certification under the current LEED standards; and
 - Would further other identified Environmental Protection Element policies (Ex. 3D).
38. The Application asserted that it is not inconsistent with the CP's Urban Design Element because the Project will:
- Be consistent with the development standards of the proposed RA-2 zone, and the surrounding development context;
 - Provide a transition between the larger scale rehabilitation facility to the southwest and the lower density single-family homes to the north and west;
 - Incorporate a number of streetscape improvements and landscape buffers; and
 - Further other identified Urban Design Element policies (Ex. 3D).
39. The Application asserted that it is not inconsistent with the CP's Infrastructure Element because the Project will:
- Coordinate with the applicable public utilities and District agencies on necessary upgrades to the water infrastructure;
 - Provide for improvements to wastewater and stormwater management; and
 - Further other identified Infrastructure Element policies (Ex. 3D).
40. The Application asserted that it furthers Mayor's Order 2019-036 (the "Mayor's Order"), which called for the creation of 36,000 new residential units by 2025, including new housing that is 10% affordable to seniors.

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

41. The Application asserted that the Project will not result in any unacceptable impacts and will instead have mostly favorable impacts on the surrounding area because:
- The Project will not create any unacceptable transportation impacts incapable of being mitigated because:
 - The Project is anticipated to only generate seven vehicular trips during the morning peak hours and nine vehicular trips during the afternoon peak hours and so DDOT did not require a Comprehensive Transportation Review ("CTR") study or Traffic Impact Analysis ("TIA");
 - DDOT did not request any additions or modifications to the Applicant's proposed TDMP or LMP; and
 - The Applicant proposed to install a new curb extension at the corner of 25th and Wagner Streets, which will have a favorable impact on pedestrian safety and convenience and which the Applicant proffered as a public benefit because it was not required as mitigation by DDOT;
 - The Project will provide new all-affordable senior housing at an amount and subsidy level that is significantly greater than the minimums required by the IZ regulations; and
 - The Project's design relates to the surrounding architectural context and includes sustainable landscape design and streetscape improvements that will enhance the pedestrian experience and beautify the public realm.

Requested PUD Flexibility Balanced Against Public Benefits (Subtitle X § 304.4(c))

42. The Application asserted that the Map Amendment for the PUD Site to the RA-2 zone, with the additional density it authorizes, will:
- Permit the development of the PUD Site with a moderate density, apartment house use;
 - Not be inconsistent with either the GPM or FLUM designations;
 - Allow the development of the PUD Site to be compatible with the mix of uses in the surrounding area, particularly the nearby residential areas; and
 - Allow the Project to provide affordable, senior housing which will help support and advance the housing policies of the CP and the Mayor's Order (Ex. 3).
43. The Application asserted that it met the standards for PUD flexibility from Subtitle C § 901.1's required 30-foot loading berth to authorize providing only the required 20-foot service/delivery space because:
- The one 20-foot service/delivery space will adequately accommodate all of the loading needs for the Project, since it will be devoted entirely to seniors, who are unlikely to need larger 30-foot trucks for move-ins and move-outs;
 - The service/delivery space will be able to accommodate trucks making daily deliveries to the PUD Site (UPS, Fed-Ex) and will also be able to accommodate vehicles used for building maintenance; and
 - Not providing the 30-foot berth or platform will allow the Applicant to devote a greater amount of the Site's land area to landscaping and pervious surfaces (Ex. 3).
44. The Application asserted that it met the standards for PUD flexibility from Subtitle C § 711.6's required 20-foot wide driveway to permit a 12-foot wide driveway is justified because:
- The requested flexibility from the minimum driveway width requirement is unlikely to create adverse impacts because of the Project's small number of vehicle parking spaces, a single service/delivery loading space, and the limited number of cars expected to be accessing the PUD Site on a daily basis;
 - Widening the curb cut would adversely impact the ability to preserve existing landscaping and incorporate new landscaping both on public and private property; and
 - The narrower driveway width will create safer sidewalk and walking conditions for pedestrians (Ex. 3).

III. RESPONSES TO THE APPLICATION

OP

45. OP submitted a May 21, 2020 report (Ex. 10, the "OP Setdown Report"), that:
- Concluded that the Application was not inconsistent with the CP because the Application:
 - Is not inconsistent with the GPM's Neighborhood Conservation Area designation because developing the currently vacant PUD Site with a residential use would be compatible with the surrounding area's mix of uses;
 - Is not inconsistent with the FLUM's Local Public Facility/Institutional designation because the density in these areas is informed by surrounding FLUM designations

- and the proposed RA-2 zone would be consistent with the surrounding Moderate-Density Residential FLUM designations;
 - Is consistent with the Far Southeast/Southwest Area Element’s policy encouraging infill housing development; and
 - Would significantly further the CP’s Land Use, Transportation, Housing, and Environmental Protection elements;
 - Concluded that the Applicant’s proffered benefits were acceptable with the exception of the environmental and sustainability benefits. OP noted that while the Project included several sustainable features, these features did not rise to the level of public benefits; and
 - Therefore, recommended that the Commission set the Application down for a public hearing.
46. OP submitted a September 9, 2020 report (Ex. 21, the “OP Hearing Report”), that:
- Reiterated the OP Setdown Report’s conclusions that the Application would not be inconsistent with the CP;
 - Concluded that the Application had demonstrated that it satisfied the requirements for area variance relief from the minimum required PUD lot area;
 - Noted that OP and DDOT both supported the Application’s requested PUD flexibility from the loading and driveway width requirements as well as the Map Amendment;
 - Concluded that the Application’s proffered benefits and amenities were commensurate with the requested PUD flexibility; and
 - Therefore, recommended that the Commission approve the Application.
47. At the September 24, 2020 public hearing, OP testified in support of the Application.

DDOT

48. DDOT submitted a September 15, 2020, (Ex. 22, the “DDOT Report”) stating that DDOT:
- Concluded that:
 - The trips expected to be generated by the Project are expected to have a minimal impact on the transportation network;
 - The PUD Site is proximate to several transit options and a well-connected pedestrian network; and
 - The Applicant’s proposed TDMP was sufficiently robust to minimize auto travel and support non-auto travel; and
 - Therefore, DDOT had no objection to approval of the Application subject to the following conditions:
 - Fund and construct pedestrian network improvements in the immediate vicinity of the site to encourage walking; and
 - Implement the proposed TDMP and LMP, for the life of the project, unless otherwise noted in DDOT’s report (Ex. 22 at 6-7, 9-11).
49. At the September 24, 2020, public hearing, DDOT testified:

- That although the DDOT Report had incorrectly stated that the Project had six parking spaces, the Application’s proposed five spaces are compliant with the minimum parking requirements for the Project; and
- In support of the Application including the PUD flexibility requested as part of the Application.

ANC 8B

50. The Applicant submitted a copy of an ANC 8B resolution (Ex. 20C, the “ANC Report”) stating that at its duly noticed July 21, 2020 public meeting, with a quorum of commissioners present, ANC 8B voted to:
- Note that the Applicant had entered into a CBA with the ANC;
 - Express the following issues and concerns:
 - The need to improve the currently vacant PUD Site; and
 - The Project’s design and relationship to adjacent properties;
 - Conclude that the Project satisfactorily addressed these concerns by:
 - Significantly improving the vacant PUD Site with a much-needed amenity for the neighborhood including streetscape improvements; and
 - Appropriately designing the building’s height and density the PUD Site’s corner location and providing sufficient separation and landscape to buffer the Project from adjacent properties; and
 - Therefore, vote to support the Application.
51. ANC 8B Chair Keeon Johnson submitted an October 19, 2020² response (the “ANC Chair’s Response”), to Mr. Watson’s letter in opposition (see below) stating:
- ANC 8B had given proper notice of the ANC’s July 21, 2020, public meeting as required under the ANC Act;
 - ANC rules and regulations permit the Chair to sign on behalf of the ANC as long as there was a quorum and the vote was properly taken at a properly noticed public meeting; and
 - Concluded that the ANC continues to support the Project (Ex. 31).

PERSONS IN OPPOSITION

52. Mr. Leonard Watson, Sr., owner of 2437 Wagner Street, S.E., that abutted the western portion of the PUD Site’s northern property line, submitted a letter (Ex. 25) opposing the Application because:
- Senior housing should not be constructed adjacent to a nursing home during the COVID-19 pandemic;
 - The increase in parking area needed to accommodate the Project will be a problem for the community;
 - There has not been one community meeting scheduled to date on the Project;
 - There has not been a traffic or environmental impact study done for the Project; and
 - There are other senior buildings in the community, which already has its fair share of senior housing.

² On October 21, 2020, Ms. Johnson submitted a corrected version of the letter on ANC 8B letterhead (Ex. 31A).

53. Mr. Watson submitted an October 13, 2020 letter (Ex. 29), that:
- Stated his continued opposition to the Application because:
 - ANC 8B failed to provide adequate public notice of its consideration of the project;
 - The ANC resolution in support of the project was signed only by the Chair;
 - The CBA was deficient because it failed to provide the votes and approval of the participating ANC 8B Commissioners;
 - The Chair and another ANC Commissioner had conflicts of interest because of their close ties to the two organizations designated to receive money from the Applicant which had not been disclosed;
 - The Gerald Project, one of the organizations proposed to receive a monetary contribution as a PUD benefit, is not registered as being able to conduct business in the District;
 - The Applicant already donated 55 laptops to the ANC Chair, and Mr. Watson alleges they were not distributed to students within ANC SMD’s 8B01, 8B02, or 8B03;
 - The Applicant had not yet donated funds to the named organizations; and
 - Named community members did not support the Application as documented by a petition submitted by Mr. Watson; and
 - Requested that the Commission not take final action to approve the Application and refer the matter to the Director of ANC Commissions, the D.C. Auditor, and the D.C. Board of Ethics and Government Accountability for investigation.

CONCLUSIONS OF LAW

COMPLIANCE WITH PUD ELIGIBILITY STANDARDS

Variance - Minimum One Acre Land Area (Subtitle X § 301.1)

1. The Commission concludes that the Application’s request for an area variance from Subtitle X § 301.1’s minimum one acre of land area is a precondition to the Commission’s review of the proposed PUD and so is reviewed separately from the Application’s requests for PUD flexibility.
2. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(3) (2018 Repl.); see also Subtitle X § 1000.1) authorizes the Commission to grant variances from the requirements of the Zoning Regulations where:
 - *“By reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,*
 - *The strict application of any zoning regulation “would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property,” and*
 - *Granting the requested variance would not cause:*
 - *“[S]ubstantial detriment to the public good” and*
 - *Substantial impairment to “the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.”*

3. Subtitle X § 1001 distinguishes between use and area variances,³ with use variances limited to three specific categories:
 - Uses not permitted as a matter of right or by a special exception;
 - Uses expressly prohibited; or
 - A prohibited expansion of a nonconforming use. (Subtitle X § 1001.4)
4. The area variance category is instead “open ended” and broadly encompasses deviations from requirements “that affect[s] the size, location, and placement of buildings and other structures ...” and those that are a “precondition to a matter of right use” amongst other examples. (Subtitle X § 1001.3(a) and (f); *NRG, LLC v. D.C. Bd. Of Zoning Adjustment*, 195 A.3d 35, 61 (D.C. 2018).)
5. An applicant for an area variance must prove that an extraordinary condition of the property would result in “peculiar and exceptional practical difficulties” by demonstrating first that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. (*Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990); Subtitle X § 1002.1(a).)
6. “[B]ecause of the nature of the respective types of variances and their effects on the zone plan the higher ‘undue hardship’ standard applies to requests for use variances while the lower ‘practical difficulty’ standard applies to area variances” (*Gilmartin*, 579 A.2d at 1170).
7. The Commission concludes that the variance requested by the Application is properly an area variance as Subtitle X § 301.1 is not a use restriction but instead governs the size and location of buildings through the PUD process.
8. Based on the case record and the Findings of Fact, the Commission concludes that the Application satisfied the area variance standards for relief from Subtitle X § 301.1’s minimum one acre, or 43,560 square feet, of land area for a PUD in the RA-1 zone:
 - The PUD Site is affected by a confluence of factors including the fact that it was subdivided in 2004 from the much larger property that is occupied by the Rehabilitation Facility, and is bounded to the north and east by Wagner Street and 25th Street, respectively;
 - These constraints make it impossible for the Applicant to increase the size of the PUD Site in order to meet the minimum land area requirement for a PUD in the RA-2 zone; and
 - As a result, if the minimum land area requirements were strictly applied the Applicant would be forced to abandon the PUD application.

³ The Zoning Commission adopted definitions of use and area variances into the Zoning Regulations in 2013 in Z.C. Case No. 12-11; prior to that time these categories had been defined by case law. OP’s setdown report for Z.C. Case No. 12-11 stated that “use variance treatment is only appropriate when an applicant seeks to establish a use that is not permitted at all within a zone district, as opposed to a use that is permitted, but restricted or conditioned in some way.” (Z.C. Case No. 12-11, Ex. 1 at 14).

9. Pursuant to the authority granted by the Zoning Act (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.
10. 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:
 - *Results in a project superior to what would result from the matter-of-right standards;*
 - *Offers a commendable number or quality of meaningful public benefits; and*
 - *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
11. 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:
 - *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - *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*
 - *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.*
12. Pursuant to Subtitle X § 304.4(a), the Commission shall find that the proposed development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site. The purposes of the Comprehensive Plan are six-fold:
 - 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 (D.C. Code §1-245(b)).*

13. 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 Project/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).)

CONSISTENCY WITH THE CP AND PUBLIC POLICIES (Subtitle X § 304.4(a))

14. Based on the case record and the Findings of Fact, the Commission concludes that Application is not inconsistent with the CP, when considered in its entirety, because the Application will further the following CP map designations and policies.
15. The Commission concludes that the Application is not inconsistent with the GPM’s Neighborhood Conservation Area designation for the PUD Site, but will instead further this GPM designation, because:
- The PUD Site is presently vacant and therefore underutilized considering its location in a mixed-use area with ample public transportation options;
 - The Project will help address citywide housing needs, specifically the need for senior affordable housing, while respecting the residential character of the neighborhood while not creating any stark changes in density compared to surrounding properties; and
 - There is a diversity of land uses and building types within the immediate area, and the Project is designed in a manner that is compatible with these existing development patterns and will respect the surrounding scale, natural features, and character of the neighborhood.

16. The Commission concludes that the Project is not inconsistent with the FLUM's Mixed Use Institutional and Local Public Facilities designation for the PUD Site because:
 - The PUD Site's current R-3 zoning is inconsistent with the Moderate Density Residential FLUM designation of the surrounding area and the existing mix of surrounding uses;
 - Although the Project's proposed density of 2.59 FAR is greater than the guidance provided in the FLUM's description of Moderate Density Residential, additional density is permitted through the PUD process;
 - The Project will be consistent with the development standards for a PUD in the RA-2 zone, which is a zone specifically identified as being consistent with the surrounding Moderate Density Residential FLUM designation (CP § 227.6.); and
 - The Commission believes that to the degree that the Application may be inconsistent with the FLUM, it is outweighed by the Application's furtherance of other CP elements, particularly housing and affordable housing.
17. The Commission concludes that the Application is not inconsistent with the CP's Far Southeast/Southwest Area Element because the Application will facilitate the development of the PUD Site with infill residential development that provides affordable housing options for seniors in an area proximate to transit and commercial hubs.
18. The Commission concludes that the Application furthers the CP's Land Use, Transportation, Housing; Environmental Protection, Urban Design, and Infrastructure Elements because the Application will:
 - Develop a long term vacant property with all affordable, senior housing consistent with the scale and mixed of surrounding uses;
 - Provide residential development in a transit rich area and include a number of transportation related improvements including bicycle parking and storage, and pedestrian and public space improvements;
 - Provide approximately 67 new, affordable residential units dedicated for seniors;
 - Incorporate several sustainable features including landscape and streetscape improvements, green roofs, and designing the Project to Enterprise Green Community Standards at a level equivalent to LEED Silver;
 - Be designed to provide a transition from the larger scale, institutional building to the south of the PUD Site and the lower density residential areas to the north and west; and
 - Result in improvements to the existing water, wastewater and stormwater infrastructure serving the PUD Site.

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

19. Based on the case record and the Findings of Fact above, the Commission concludes that the Application will not result in any unacceptable impacts that are not capable of being mitigated or outweighed by the Application's proffered public benefits as detailed below.
20. The Commission concludes that most of the Project's impacts will be positive because:
 - The Project will provide new affordable senior housing at an amount and subsidy level that is significantly greater than the minimum required by the IZ regulations;

- The Project design relates to the surrounding architectural context and considers the variety of nearby uses; and
- The Project includes sustainable landscape design and streetscape improvements that will enhance the pedestrian experience and improve the public realm.

21. With regard to the contested issues raised in written testimony and during the public hearing, the Commission concludes as follows:

- **Senior Housing at the PUD Site:** the Commission concludes that provision of senior housing on the PUD Site will not result in any adverse impacts because there is a critical need for both senior housing and affordable senior housing in the District and developing senior housing is consistent with many goals and objectives of the CP;
- **Building Height:** the Commission concludes that the Project’s proposed height of 55 feet is appropriate for the PUD Site, as specifically supported by the ANC Report, because:
 - 55 feet is below the 60 foot maximum height permitted for a PUD in the RA-2 zone; and
 - The Project is oriented at the corner of 25th and Wagner Streets away from the closest residential homes with the proposed building massing and landscaping designed to further minimize the Project’s impacts on the surrounding area;
- **Transportation and Parking:** the Commission concludes that the Project will not result in any adverse impacts to transportation or parking that cannot be mitigated because:
 - The DDOT Report corroborates the Applicant’s Transportation Statement’s conclusion that the Project will result in only minimal impacts on the transportation network and neighboring properties;
 - Transportation impacts will be outweighed by the Application’s significant public space improvements, including new sidewalks and a new curb extension at the intersection of 25th and Wagner Streets, S.E.; and
 - Any potential transportation impacts will be sufficiently mitigated by the Applicant’s TDMP and LMP;
- **Environmental Impacts:** The Commission concludes that the Project will not result in any undue environmental impacts because:
 - The Applicant met with DOEE and responded to its comments in its Supplemental Prehearing Submission. The Applicant will be required to work with DOEE as it moves forward with permitting the Project; and
 - The assessment of a Project’s environmental impacts does not conclude with the Commission. Rather there is an entirely separate set of regulatory requirements under the Environmental Act and implementing regulations that require the evaluation of potential environmental impacts before the issuance of a building permit. Further, the D.C. Court of Appeals has held that “implementation” of a zoning approval occurs when construction actually begins. *See Foggy Bottom Ass’n v. D.C. Bd. Of Zoning Adjustment*, 791 A.2d 64, 73 (D.C. 2002)). Thus, the Applicant will be required to complete an Environmental Impact Screening Form (“EISF”) when submitting its building permit application, which will be reviewed by various District agencies. To the extent that a reviewing agency identifies impacts that exceed established thresholds, the Applicant will be required to work with that agency to avoid,

minimize, and/or mitigate such impacts to the extent necessary before the Project is implemented; and

- **Community Engagement:** With respect to community engagement, the Commission concludes that the Applicant:
 - Presented the Project to the affected ANC 8B twice and received the ANC’s support of the Project;
 - Made substantial efforts to contact the residents of 2437 Wagner Street, S.E., prior to and following submission of the Application but was ultimately unsuccessful; and
 - Complied with all notice requirements for the PUD, including mailing a Notice of Intent to owners of property within 200 feet of the PUD Site, which included the Watson property, copying Mr. Watson, Jr. on all filings to the case record in his capacity as SMD for the PUD Site, and posting and maintaining the PUD Site with notice of the public hearing.

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

22. The Commission concludes that the Application’s public benefits outweigh the requested zoning flexibility, as well as any potential adverse impacts that are not capable of being mitigated, as discussed below:

- **Urban Design, Architecture and Superior Landscaping** - The Commission concludes that the Project’s urban design, architecture, and landscaping, for the reasons advanced by the Applicant and OP, qualify as superior public benefits that will improve the surrounding neighborhood to a significantly greater extent than would likely result from matter-of-right development;
- **Site Planning and Land Utilization** – The Commission concludes that the Project’s site planning and land utilization qualifies as a public benefit because:
 - It replaces a vacant and underutilized property with a new residential development; and
 - The Project will be compatible with the scale and character of surrounding development and includes numerous public space improvements;
- **Housing, Affordable and Senior Housing** - The Commission concludes that the Project will provide superior housing and affordable housing benefits because:
 - The CP’s Framework Element explicitly identifies new affordable housing above and beyond the existing legal requirements is a “high-priority” public benefit (CP § 224.9);
 - The project will provide 67 new housing units, 100% of which will be set aside as affordable units for seniors at 60% MFI for the initial minimum 40 year affordability period; and
 - After the initial affordability period, a minimum 12% of the residential GFA will be set aside at 60% MFI for the life of the project;
- **Transportation Infrastructure** – The Commission concludes that the Project will provide transportation benefits, beyond any mitigation measures required to address potential adverse impacts by installing a curb extension (bulb-out) at the corner of 25th and Wagner Streets to facilitate easier pedestrian movements; and
- **Uses of Special Value to the Neighborhood** – The Commission concludes that the Applicant’s proposed contributions constitute uses of special value to the neighborhood:

- Purchase a minimum of \$20,000 worth of laptops for distribution within ANC 8B boundaries for the 2020-2021 academic year for use in distance learning by local students;
- Donation of \$7,000 to Families on the Rise to fund mental health services for youth in ANC 8B; and
- Donation of \$5,000 to the Gerald Project to fund programming to assist with services for youth in ANC 8B impacted by gun violence.

“GREAT WEIGHT” TO RECOMMENDATIONS OF OP

23. The Commission is required to give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990. (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8.) (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
24. The Commission finds the OP Report’s analysis of the Application persuasive, particularly OP’s conclusions that:
- The Application is not inconsistent with the CP as a whole;
 - The Application’s request for flexibility from the required PUD land areas should be treated as a variance and not as a PUD development incentive, and that the Applicant had satisfactorily met the variance standards; and
 - Therefore concurs with OP’s recommendations to approve the Application.

“GREAT WEIGHT” TO WRITTEN REPORT OF THE ANC

25. 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).)
26. The Commission finds the ANC Report’s concerns with the need to redevelop the vacant PUD Site and the design of the Project and its interaction with surrounding properties persuasive and concurs with the ANC Report’s conclusions that the Project addresses these concerns with an appropriately-sized building that significantly improves the current vacant PUD Site and with the ANC Report’s support for the Application.
27. The Commission does not find Mr. Watson’s objections to the Application persuasive because:
- The Commission credits the ANC Chair Responses that the ANC followed appropriate procedures; and

- The conditions of this order will ensure that the Applicant’s financial contributions will reach their intended recipients.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application, subject to the following guidelines, conditions, and standards (where compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in **bold and underlined text**), for:

- An area variance pursuant to Subtitle X, Chapter 10, from Subtitle X § 301.1’s minimum PUD 43,560 square feet of land area to accommodate the PUD Site’s 19,601 square feet; and
- A Consolidated PUD for the PUD Site; with
 - A PUD-related amendment of the Zoning Map for the PUD Site to the RA-2 zone; and
 - PUD flexibility from:
 - Subtitle C § 901.1’s required 30-foot loading berth and 20-foot service delivery space to authorize only the 20-foot delivery space; and
 - Subtitle C § 711.6’s minimum 20-foot width for driveways to authorize a 12-foot wide driveway,

A. **PROJECT DEVELOPMENT**

1. The PUD Site shall be developed in accordance with:
 - The Architectural Plans prepared by Torti Gallas Urban, dated October 15, 2020, and marked as Exhibit 30A of the record (the “Approved Plans”), including the landscaping and streetscape improvements shown on Sheets A02, C03, L01, L03 and L04 of the Plans; and
 - As modified by the guidelines, conditions, and standards herein.
2. The Applicant shall have design flexibility from the Plans as follows:
 - Number of Units - To provide a range in the number of residential units to plus or minus 10% (i.e. 60-74 units);
 - Interior Components - To vary the location and design of all interior components, including amenities, partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;
 - Parking and Loading - To make refinements to the surface parking and loading configuration, including the layout, number of parking spaces, and/or other elements, so long as the number of parking spaces does not decrease below the minimum level required by the Zoning Regulations and the number and size of loading facilities provided does not decrease below that approved by this Order;
 - Exterior Materials - To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the approved Plans;

- Exterior Details - To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the approved Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, windows, and skylights;
 - Signage - To vary the color, font, and message of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved Plans;
 - Streetscape Design - To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division; and
 - Sustainable Features - To vary the approved sustainable features of the Project, provided the total number of Enterprise Green Communities points achievable for the Project does not decrease below the minimum required for the Enterprise Green Communities standards specified by the Order.
3. In accordance with the Approved Plans, the Project shall have
- A maximum building height of 55 feet;
 - A maximum density of 2.59 FAR;
 - Approximately 50,733 square feet of GFA devoted to residential use;
 - Approximately 67 residential units, plus or minus 10%; and
 - Five on-site parking spaces.

B. CERTIFICATE OF OCCUPANCY REQUIREMENTS

1. Prior to the issuance of the first certificate of occupancy for the Project, the Applicant shall demonstrate to the Zoning Administrator that it has:
- Designed the Project to achieve the equivalent of a minimum of 60 points under the 2015 Enterprise Green Communities standards;
 - Submitted an executed Certified Business Enterprise (“CBE”) agreement to D.C. Department of Small and Local Business Development (“DSLBD”) that requires the Applicant to comply with all applicable CBE subcontracting requirements related to the Project. This condition applies only if Low Income Housing Tax Credit (“LIHTC”) financing is provided for the Project;
 - Installed a curb extension (bulb-out) at the corner of 25th and Wagner Streets, S.E., consistent with the curb extension shown on Sheets C03 and L01 of the Plans, subject to any modifications required to obtain DDOT’s approval during public space permitting; and
 - Done the following, and that the identified items and services have been or are being provided:
 - Purchased a minimum of \$20,000 of new laptops that have cameras and come with or are able to install Microsoft Office, and provided evidence that such laptops were delivered to ANC 8B for distribution to students for the 2020-2021 academic year;
 - Donated \$7,000 to Families on the Rise to fund programming to provide mental health services for youth in ANC 8B; and

- Donated \$5,000 to The Gerald Project to fund programming to assist with services for youth in ANC 8B impacted by gun violence.

2. **Following the issuance of a certificate of occupancy for the Project**, the Transportation Coordinator shall submit:

- To the Office of Zoning for inclusion in the IZIS case record of the case documentation from DCRA summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator); and
- A letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order

C. **REQUIREMENTS FOR THE LIFE OF THE APPROVED PUD**

1. **For the life of the Approved PUD**, the Applicant shall dedicate a minimum of approximately 50,733 square feet of GFA to residential use, as follows:

- **For the first 40 years of the Project**, the Applicant shall dedicate a minimum of approximately 50,733 square feet of GFA as senior housing;
- The Applicant shall provide affordable housing as set forth in the following chart, subject to the subsequent paragraphs of this condition:

Residential Type	Income Type	Gross Floor Area / 100% of total	Number of Units	Affordable Control Period	Affordable Unit Type
Total Affordable Non-IZ	Up to 60% MFI	50,733 sf (100%)	67	40 years	Rental
IZ	Up to 60% MFI	6,088 sf (12%)	8	41+ years	Rental

- Each control period shall commence **upon the issuance of the first certificate of occupancy for the Project**;
- The chart assumes that the Applicant will be granted an exemption from the requirements of the IZ program of Subtitle C, Chapter 10, during the 40-year period of Low Income Housing Tax Credit (“LIHTC”) financing for the Project, pursuant to Subtitle C § 1001.6 (“IZ Exemption”), although the Commission takes no position as to whether the IZ Exemption should be granted;
- Should the IZ Exemption be granted, the affordable housing requirements of this condition shall be stated in the covenant required by Subtitle C § 1001.6(a)(4); and
- Should the IZ Exemption be denied, the Applicant shall provide 6,088 square feet of affordable housing (12%) affordable to households earning up to 60% of MFI. The Applicant shall record the covenant required by the Inclusionary Zoning Act as to 12% of the residential GFA of the Project and shall execute the monitoring and enforcement documents required by Subtitle X § 311.6.

2. **For the life of the Approved PUD**, the Applicant shall implement the Transportation Demand Management Plan as is set forth below:

- Identify Transportation Coordinator for the planning, construction, and operations phases of development. The Transportation Coordinator will act as points of contact with DDOT, goDCgo, and Zoning Enforcement;
 - Provide Transportation Coordinators' 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;
 - Transportation Coordinator 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 property website and in any internal building communications;
 - Transportation Coordinator will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;
 - Provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, Capital Bikeshare ("CaBi") coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map;
 - Provide residents who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future;
 - Transportation Coordinator will subscribe to goDCgo's residential newsletter;
 - Post all TDM commitments on website, publicize availability, and allow the public to see what commitments have been promised;
 - Provide a free SmarTrip card to every new resident and a complimentary CaBi coupon good for one ride; and
 - Provide 22 long-term bicycle spaces that shall be provided free of charge to residents and meet the short- and long-term bicycle parking requirements of the Zoning Regulations.
3. **For the life of the Approved PUD**, the Applicant shall implement the Loading Management Plan as is set forth below:
- The property manager will be responsible for coordinating with tenants to schedule deliveries and move-ins/move-outs, and will work with the community and neighbors to resolve any conflicts should they arise;
 - A lease provision will require all tenants to use only the service delivery space for all deliveries and move-in and moveout activities;
 - The maximum size for on-site delivery vehicles is 20 feet in length;
 - Residents utilizing moving trucks greater than 20 feet in length shall be required to obtain "Emergency, No Parking" signs for Wagner Street, S.E., during the duration of the move. The fees for this service will be paid by the resident. The property manager will schedule move-ins/move-outs using the service delivery space such that the loading capacity is not exceeded;
 - In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when the service space will be

available so as to not compromise safety or impede operations on Wagner Street, S.E., or 25th Street, S.E.; and

- Trash/recycle will be stored in the building, and then rolled out from the trash room to be collected on Wagner Street, S.E.

D. VALIDITY

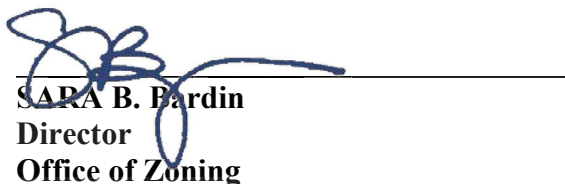
1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the General Counsel of the Office of Zoning and the Zoning Administrator, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. 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.

VOTE (October 29, 2020): 5-0-0 (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Michael G. Turnbull, and Peter G. May to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 20-09 shall become final and effective upon publication in the *D.C. Register*; that is, on October 29, 2021.



ANTHONY HOOD
Chairman
Zoning Commission



SARA B. Bardin
Director
Office of Zoning

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