

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 20-12

Z.C. Case No. 20-12

Westminster Presbyterian, Westminster Community Partners,  
Bozzuto Development Company, and Bozzuto Homes, Inc.  
(Consolidated Planned Unit Development and Related Zoning Map Amendment  
at 400 I Street, S.W. (Square 499, Lot 52))  
December 16, 2021

Pursuant to notice, at its public meeting on December 16, 2021, the Zoning Commission for the District of Columbia (the “Commission”) considered a request from Westminster Presbyterian Church, Westminster Community Partners, Bozzuto Development Company, and Bozzuto Homes, Inc. (collectively, the “Applicant”) for a consolidated planned unit development (“PUD”) and Zoning Map amendment to construct a new mixed-use building that includes a new Westminster Presbyterian Church (the “Church”) and approximately 222 new residential units (the “Application”) at 400 I Street, S.W. (Square 499, Lot 52) (the “PUD Site”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitles X and Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations,” to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**I. BACKGROUND**

**NOTICE**

1. The Office of Zoning (“OZ”) published notice of the initially scheduled April 12, 2021 public hearing in the *D.C. Register* on February 5, 2021 (68 DCR 1611) as well as through the calendar on OZ’s website. (Exhibit [“Ex.”] 16, 17.)
2. The April 21, 2021 public hearing was continued to June 14, 2021 (Ex. 36 and Ex. 37), and continued again to October 4, 2021. (See June 14, 2021 Transcript [“Tr.”] at p. 12. The Commission continued the hearing dates to allow amendments to the Comprehensive Plan that were pending before the Council to become effective.

**PARTIES**

3. The following are automatically parties in the proceeding pursuant to Subtitle Z § 403.5:

- The Applicant<sup>1</sup>; and  
Advisory Neighborhood Commission ("ANC") 6D, in which district the PUD Site is located and so an "affected ANC" pursuant to Subtitle Z § 101.8.
4. The Commission received no requests for party status.

#### **THE PUD SITE**

5. The PUD Site is located at 400 I Street, S.W. and is known as Lot 52 in Square 499. The PUD Site is rectangular in shape and is located on the south side of I Street, S.W., close to the intersection of 4th and I Streets, S.W. (Ex. 3.)
6. The PUD Site is bounded by I Street, S.W. to the north, Makemie Place, S.W. to the west, and an undeveloped L-shaped lot owned by the District to the east and south. (the "District Lot"). Fourth Street, S.W. is directly to the east of the District Lot. (*Id.*)
7. As shown on the Surveyor's Plat (Ex. 3A), the PUD Site has approximately 30,375 square feet of land area. (*Id.*)
8. The PUD Site is presently improved with the Westminster Presbyterian Church building, which was originally constructed circa 1965, and with associated surface parking. (*Id.*)

#### **Current Zoning**

9. As shown on the Zoning Map, the PUD Site is zoned R-3. (Ex. 3, 3B.)
10. The purpose of the R-3 zone is to allow for row dwellings, while including areas within which row dwellings are mingled with detached dwellings, semi-detached dwellings, and groups of three or more row dwellings. (Subtitle D § 300.6.) The R-3 zone permits detached, semi-detached, and row dwellings as a matter-of-right residential use. (Subtitle U § 201.1(a)(3).)
11. Matter-of-right development in the R-3 zone requires a minimum lot width of 20 to 40 feet and a minimum lot area of between 1,600 to 4,000 square feet, depending on the type of residential dwelling and whether it is subject to Inclusionary Zoning ("IZ"). (Subtitle D §§ 302.1, 302.3.) The maximum building height permitted in the R-3 zone is 40 feet and three stories. (Subtitle D § 303.1.) The maximum lot occupancy in the R-3 zone is 60% for row dwellings and places of worship and 40% for all other structures. (Subtitle D § 304.1.) (Ex. 3.)
12. The Site is the only remaining property in a R-3 zone from the original Square 499 and the block. The majority of the area to the south of the Site is subject to previously-approved PUDs and Zoning Map amendments to Mixed-Use (MU) zones. Properties located directly to the north, east, and west of the Site are also located in Mixed-Use (MU), Residential (R), or Residential Apartment (RA) zones. (Ex. 3.)

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<sup>1</sup> Westminster Church owns the Property and authorized Bozzuto to represent the Church as co-applicants. (Ex. 3I.)

### **Comprehensive Plan (“CP”) Designations**

13. The PUD Site is located within a Neighborhood Conservation Area on the Comprehensive Plan's Generalized Policy Map (the "GPM").
14. According to the Framework Element<sup>2</sup>, Neighborhood Conservation Areas: “have little vacant or underutilized land. They are generally residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. Where change occurs, it will typically be modest in scale and will consist primarily of infill housing, public facilities, and institutional uses. Major changes in density over current (2017) conditions are not expected but some new development and reuse opportunities are anticipated, and these can support conservation of neighborhood character where guided by Comprehensive Plan policies and the Future Land Use Map. Neighborhood Conservation Areas that are designated “PDR” on the Future Land Use Map are expected to be retained with the mix of industrial, office, and retail uses they have historically provided. The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs. Limited development and redevelopment opportunities do exist within these areas. The diversity of land uses and building types in these areas should be maintained and new development, redevelopment, and alterations should be compatible with the existing scale, natural features, and character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map and Comprehensive Plan policies. Approaches to managing context-sensitive growth in Neighborhood Conservation Areas may vary based on neighborhood socio-economic and development characteristics. In areas with access to opportunities, services, and amenities, more levels of housing affordability should be accommodated. Areas facing housing insecurity (see § 206.4) and displacement should emphasize preserving affordable housing and enhancing neighborhood services, amenities, and access to opportunities. (10-A DCMR §§ 225.4, 225.5.)
15. The PUD Site is designated as Mixed-Use (Low-Density Commercial / Medium-Density Residential) on the Comprehensive Plan Future Land Use Map ("FLUM")<sup>3</sup>.
16. Mixed-Use Categories. The Future Land Use Map indicates areas where the mixing of two or more land uses is especially encouraged. The particular combination of uses desired in a given area is depicted in striped patterns, with stripe colors corresponding to the categories defined on the previous pages. A Mixed-Use Future Land Use Map designation

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<sup>2</sup> The Comprehensive Plan Amendment Act of 2017 amended the framework element, and was effective August 27, 2020 as D.C. Law 23-217. At the time of setback on July 27, 2020, the D.C. Council amendments to the framework element were not yet effective. The amendment changed the language in the GPM regarding Neighborhood Conservation Areas to expressly not preclude development where development addresses city-wide housing needs.

<sup>3</sup> At the time of setback, the initially scheduled hearing, and the first rescheduled hearing, the PUD Site was designated as Moderate-Density Residential on the FLUM. The Comprehensive Plan Amendment Act of 2020 amended the text of the Comprehensive Plan and its Future Land Use Map, and was effective on August 21, 2021 as D.C. Law 24-20. It changed the Site's designation on the FLUM to Mixed Use (Low-Density Commercial/ Medium-Density Residential).

should not be confused with the Mixed-Use (MU) zoning districts, although they frequently apply to the same area or parcel of land. The Mixed-Use Category generally applies in the following circumstances: (a) Established, pedestrian-oriented commercial areas that also include substantial amounts of housing, typically on the upper stories of buildings with ground-floor retail or office uses; (b) Commercial corridors or districts which may not contain substantial amounts of housing today, but where more housing is desired in the future. The pattern envisioned for such areas is typically one of pedestrian-oriented streets, with ground-floor retail or office uses and upper story housing; (c) Large sites (generally greater than 10 acres in size), where opportunities for multiple uses exist but a plan dictating the precise location of these uses has yet to be prepared; and (d) Development that includes residential uses, particularly affordable housing, and residentially compatible industrial uses, typically achieved through a Planned Unit Development or in a zone district that allows such a mix of uses. (10-A DCMR § 227.20.)

17. The general density and intensity of development within a given Mixed-Use area is determined by the specific mix of uses shown. If the desired outcome is to emphasize one use over the other (for example, ground-floor retail with three stories of housing above), the Future Land Use Map may note the dominant use by showing it at a slightly higher density than the other use in the mix (in this case, Moderate-Density Residential/Low-Density Commercial). The Comprehensive Plan Area Elements may also provide detail on the specific mix of uses envisioned. (10-A DCMR § 227.21)
18. Low-Density Commercial. This designation is used to define shopping and service areas that are generally lower in scale and intensity. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts that draw from a broader market area. Their common feature is that they are comprised primarily of commercial and mixed-use buildings that range in density generally up to a FAR of 2.5, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-3 and MU-4 zones are consistent with the Low-Density category, and other zones may also apply. (10-A DCMR § 227.10.)
19. Medium-Density Residential. This designation is used to define neighborhoods or areas generally, but not exclusively, suited for mid-rise apartment buildings. The Medium-Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. Pockets of low and moderate-density housing may exist within these areas. Density typically ranges from 1.8 to 4.0 FAR, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The RA-3 zone is consistent with the Medium-Density Residential category, and other zones may also apply. (10-A DCMR § 227.7.)
20. The PUD Site is within the Lower Anacostia Waterfront/Near Southwest area element (Ex. 3.)
21. The PUD Site is within the Southwest Neighborhood Plan. (Ex. 3.)

## II. THE APPLICATION

### THE PROJECT

22. The Application proposes to construct a new mixed-use building (the “Project”) with:
- A maximum building height of 90 feet;
  - Approximately 214,338 square feet of gross floor area ("GFA");
  - An approximate overall 7.06 FAR;
  - Approximately 18,513 square feet devoted to new facilities for the Church;
  - 99 residential units located in the western tower of the Project (the “West Tower”);
  - 123 residential units located in the eastern tower of the Project (the “East Tower”) that will be devoted to senior affordable housing reserved for households earning up to 50% and 60% of the median family income (“MFI”) for the first 40 years of the Project; and
  - A single-level of below-grade parking with approximately 60 parking spaces.
23. The East Tower is located on the east side of the Site with its main entrance located in the center of the building’s I Street frontage. The East Tower is comprised of approximately 123 residential units (including four penthouse units) and residential amenity space on the ground floor. In total, the East Tower has approximately 102,236 square feet of residential GFA, plus approximately 5,446 square feet of penthouse habitable space, of which approximately 2,404 square feet is devoted to residential units. (Ex. 3, pp. 14-16.)
24. The West Tower is located in the west portion of the building with its main pedestrian entrance located on the west side of the building’s I Street frontage. The West Tower is comprised of approximately 99 residential units (including four penthouse units) and residential amenity space on the ground floor. In total, the West Tower has approximately 90,000 square feet of residential GFA, plus approximately 5,258 square feet of penthouse habitable space, of which approximately 3,301 square feet is devoted to residential units. (*Id.*)
25. The Church component of the Project is located on the ground floor of the East Tower with its main entrance located on the east side of the building’s I Street frontage. As shown on Sheet A1.1 of the Plans, the Church will include a large assembly/congregation space, a kitchen and dining area, conference rooms, offices, and a community gallery and art space. Approximately 18,513 square feet of GFA will be devoted to the Church. In addition to religious services, the space dedicated to the Church will house music programs, community meetings, art and music rooms, and a prepared food/teaching kitchen. Attendees to the various events hosted by the Church will be able to park in the on-site parking spaces dedicated to the Church. All of these ancillary events and uses are integral to the Church’s mission. (*Id.*)
26. The primary entrance to the Church will be located at the Project’s most prominent corner and established as the cornerstone of the Project. (*Id.*)

27. The Church, East Tower, and West Tower are all connected at the ground level. The three uses have separate entrances and lobbies but share back-of-house service corridors, loading facilities, and long-term bicycle parking spaces. The East and West Towers are separated above the ground level by an open court with a green roof. (*Id.*)
28. The building has one level of below-grade parking that includes approximately 60 parking spaces and additional long-term bicycle parking. Vehicular access to the parking garage is provided from a curb cut on Makemie Place. One 30-foot loading berth and one 20-foot service/delivery space are provided in compliance with the minimum zoning requirements on the ground level of the building, also accessed from Makemie Place adjacent to the garage entrance. (*Id.*)

#### **APPLICANT'S SUBMISSIONS & TESTIMONY**

29. On May 22, 2020, the Applicant submitted its Application that also included:
  - Architectural Plans and Elevations; and
  - A Comprehensive Plan and Small Area Plan analysis.
30. The Applicant submitted a January 14, 2021 filing with responses to both the Commission and the Office of Planning (“OP”) comments (the "Prehearing Submission"), that included the following: (Ex. 14-15M.)
  - Additional information in support of the proposed affordable housing plan;
  - A list of Church programs that will be continued or expanded, and the duration of each commitment, as a part of the Project;
  - Additional information in support of the requested penthouse, lot occupancy, and rear yard relief;
  - A letter from Westminster Presbyterian Church that describes the importance of the Project's design to the Church's mission and the Church's use of the building;
  - A Comprehensive Plan and Small Area Plan analysis; and
  - Letters of Support from two D.C. Councilmembers and three organizations.
31. The Applicant submitted a March 12, 2021 Transportation Statement (the "Transportation Statement"), that assessed the transportation impacts of the Project and concluded that: (Ex. 21.)
  - The redevelopment is forecasted to generate a net increase of 25 vehicular trips during the AM, 29 vehicular trips during the PM peak, and 5 vehicular trips during the Sunday peak hours. The projected vehicle trip generations are minimal and would not have any adverse impacts on the roadway network;
  - The multi-modal network, including the pedestrian, bicycle, and transit facilities surrounding the development sufficiently connect residents and church attendees to local and regional destinations in the District, Maryland, and Virginia area;
  - The project will provide 60 vehicle parking spaces, as well as two Electric Vehicle (EV) charging spaces. The project will meet total parking requirements and is

consistent with ZR-16's minimum parking ratios. DDOT has reviewed and concurs with the proposed parking;

- The project will also meet the bicycle parking requirements by providing 74 long-term bicycle parking spaces and 20 short-term bicycle parking spaces;
- The Applicant has committed to a Loading Management Plan (LMP) to minimize undesirable impacts to pedestrians and to building tenants, reduce conflicts between truck traffic using the loading facilities and other street users, and ensure smooth operation of the loading facilities. The plan may be adjusted as necessary to address the specific loading challenges with the project; and
- The Applicant has committed to Transportation Demand Management (TDM) measures to minimize traffic and parking impacts. The TDM plan is consistent with DDOT's guidance for residential TDM strategies.

32. The Applicant submitted a March 23, 2021 filing that included Updated Architectural Plans and Elevations that incorporate revisions to the Project based on comments from the Commission at the July 27, 2020 setdown meeting and by OP in its setdown report dated July 17, 2020. (Ex. 11, 23.)

33. The Applicant submitted a September 14, 2021 filing (the "Applicant's Supplemental Pre-hearing Statement"), that included: (Ex. 46.)

- An updated analysis as to how the application is not inconsistent with the Comprehensive Plan, as recently adopted by the D.C. Council pursuant to D.C. Law L23-0217 (Comprehensive Plan Amendment Act of 2017) and D.C. Act A24-0110 (Comprehensive Plan Amendment Act of 2020), including the Future Land Use and Generalized Policy Maps;
- Updated affordable housing sheets, a unit layout drawing, and bicycle lane precedent images;
- Responses to the specific comments and requests for information from OP in its hearing report; and (Ex. 26.)
- Responses to each of the specific comments and concerns raised by ANC 6D in its resolution dated April 5, 2021, and copies of email correspondence efforts with ANC 6D; (Ex. 28.)

34. At the October 4, 2021 public hearing, the Applicant:

- Presented the Application, supported by the testimony of:
  - Rev. Ruth Hamilton, on behalf of the Westminster Presbyterian Church
  - Jeff Kayce, on behalf of Bozzuto Development Company/Bozzuto Homes
  - Joel Patterson, on behalf of Dantes Partners; Iffat Afsana, AIA, LEED AP BD+C, of KGD Architecture, accepted by the Commission as an expert in architecture; and
  - Shane Dettman of Holland & Knight LLP, accepted by the Commission as an expert in zoning and land use planning;

- Confirmed its agreement to the Transportation Demand Management (“TDM”), Loading Management Plan (“LMP”) and tree preservation plan conditions in the DDOTs reports; and (Ex. 27, 42.)
  - Confirmed its agreement to the condition in OP's Second Supplemental Report to include the proportion and distribution of Inclusionary Zoning (“IZ”) units that would have been required in the West Tower under Subtitle C § 1001.6, if the West Tower is delivered as a rental property. (Ex. 47.)
35. In response to the Commission's request at the October 4, 2021 public hearing, the Applicant submitted an October 15, 2021 filing (the "Applicant's Post Hearing Submission") that provided:
- Updated Architectural Plan and Elevation sheets that included more details regarding the color palette for the East Tower, the proposed panels at the base of the Project, and more details regarding the light feature on the East Tower;
  - Confirmation that the Applicant agrees with the racial equity analysis included in OP's Second Supplemental Report, a citation to the Applicant's racial equity analysis, and a letter from the Church that describes the Church's long-standing commitment to racial equity and inclusion;
  - Supplemental analysis addressing whether the Project is not inconsistent with the Comprehensive Plan even if the Commission deemed it inconsistent with the FLUM;
  - Justification for the proposed LEED level of certification (LEED Silver v4) and description of why the Project does not include solar panels; and
  - A copy of the Fair Housing Act Technical Requirements Accessibility Guidelines. (Ex. 46A, 52.)
36. In response to the Commission's request at the October 4, 2021 public hearing that the Applicant and ANC 6D meet subsequent to the public hearing to discuss the issues identified by ANC 6D in its testimony and written reports, the Applicant and ANC 6D met on multiple dates. To inform the Commission on the result of these meetings, the Applicant submitted an October 22, 2021 filing (the “Applicant's Second Post Hearing Submission”) that provided:
- Confirmation that the Applicant and ANC 6D agree on the following:
    - The 123 units in the East Tower and the 99 units in the West Tower will be entirely new housing stock in Southwest; neither will be proffered as Build First units for Greenleaf seniors, families or other current residents; and units within the Project will be separate and apart from any other units that the Applicants may develop in Southwest;
    - All components of the Project, including the affordable units in the East Tower and the market units in the West Tower, will be constructed concurrently and if not concurrent, the East Tower will be constructed first; and
    - The senior housing portion of the East Tower will be operated separately from the Church (e.g., separate ownership and utilities);
  - Confirmation that the Applicant has agreed to the following conditions:



- A DDOT condition regarding a tree preservation plan; and
- An ANC 6D condition regarding a curbside management plan subject to DDOT approval;
- Confirmation that the in-unit senior accommodations of the East Tower will be designed to meet federal and local accessibility requirements/guidelines;
- A discussion of the ANC 6D’s request to add a second common laundry facility in addition to the single laundry facility proposed and the Applicant’s rationale for maintaining the proposal to provide a single laundry facility as consistent with other recently constructed and existing senior buildings in the District;
- Confirmation that the Applicant and ANC 6D continue to disagree on the following:
  - The Applicant’s proposal that the East Tower would no longer be 100% affordable after year 40 (LIHTC period expiration) and would then be subject to minimum IZ set aside requirements which could displace existing residents due to rent increases; and
  - The Applicant’s inclusion of the proposed light feature on the East Tower of the Project; and
- A copy of the Applicant’s Draft Findings of Fact and Conclusions of Law.  
(Ex. 54.)

37. In response to the Commission’s request at the October 28, 2021 public meeting where the Commission considered the Application and took proposed action, the Applicant submitted a November 18, 2021 filing (the “Applicant’s Supplemental Post Hearing Submission”) that provided:

- A rendering of the proposed light tower element at night;
- A response regarding restricting the use of the light tower element to certain hours;
- An analysis of the detrimental effects of including two-bedroom units in the East Tower of the Project; and
- A confirmation of the legal restrictions that would prohibit residents in the East Tower from being displaced upon the expiration of the 40-year LIHTC term.  
(Ex. 56)

**PUD BALANCING TEST**

**PUBLIC BENEFITS**

38. The Application proffered the following as the benefits and amenities of the Project:

- (a) Superior Urban Design, Architecture, and Superior Landscaping including:
  - 1) The Project has been carefully designed to relate to the neighborhood context, including surrounding building heights and densities;
  - 2) The use of balconies and bay windows;
  - 3) The building design includes significant façade articulation, bay window projections, and high-quality materials;

- 4) The public space adjacent to the Site will be enhanced with new paving, street trees, landscaping, and widening of sidewalk along Makemie Place; and
- 5) The Project also includes landscaping within the courtyard and at the roof levels.

(Subtitle X § 305.5(a), (b).)

(b) Site Planning and Efficient and Economical Land Utilization; Streetscape Plans and Implementation, including:

- 1) Establishing a new mixed-income community with a variety of unit types and at varying income levels to accommodate a wide range of District residents;
- 2) Incorporating the Church back into the Site's development program allows the long-established religious institution to continue to serve the surrounding community;
- 3) Replacement of existing underutilized site (elimination of surface parking lot);
- 4) Creation of a pedestrian-friendly streetscape which includes new public space improvements including planter beds, bicycle racks, scored concrete paving, and ADA-compliant sidewalks;
- 5) Providing bulb outs at the corner of Makemie Place and I Street and mid-block on Makemie Place to create shorter walking distances for pedestrians crossing Makemie Place; and
- 6) All public space improvements will be subject to final review and approval by the DDOT Public Space Committee.

(Subtitle X § 305.5(c), (1).)

(c) Housing that Exceeds the Amount Required through Matter-of-Right Development under Existing Zoning, including:

- 1) Creation of new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, the SW Plan, the Mayor's Housing Report, and the Mayor's Order;
- 2) Replacement of an underutilized site with approximately 222 new residential units and approximately 197,941 square feet of residential GFA. Approximately 54,675 square feet of residential GFA could be developed on the Site as a matter of right, based on the R-3 development standards;
- 3) The Project's unit mix includes studio, 1-bedroom, 1-bedroom with den, and 2-bedroom units to accommodate a wide range of District residents; and
- 4) Approximately 123 units (approximately 52.9% of the Project's residential GFA and penthouse floor area) will be dedicated as senior affordable housing (in the East Tower).

(Subtitle X § 305.5(f))

(d) Affordable Housing that Exceeds the Amount Required through Matter-of-Right Development Under Existing Zoning as follows:

- 1) The Project will significantly exceed the amount of affordable housing that would be required at the Site through matter-of-right development under the existing R-3 zoning;
  - 2) As a matter of right, the IZ set aside of the Project would be approximately 5,468 square feet (approximately 10% of the maximum permitted residential GFA of 54,675 in the R-3 zone); and
  - 3) As proposed, for the first 40 years of the life of the building, the Applicant will dedicate approximately 102,761 square feet of GFA and penthouse area to affordable housing (approximately 52.9% of the residential GFA and penthouse floor area). The affordable units will be provided at 60% of the MFI, except that an area equal to 8% of the building's total penthouse habitable space will be provided at 50% of the MFI. After year 40, the building will include at least the minimum amount of affordable housing required by the Inclusionary Zoning regulations; and (Subtitle X § 305.5(g).)
- (e) Uses of Special Value to the Neighborhood and the District of Columbia as a Whole as follows:
- 1) The Project will replace the existing Westminster Church building, originally constructed circa 1965, with the new mixed-use building that includes approximately 18,513 square feet of GFA dedicated to new state-of-the-art church and community-serving facilities; and
  - 2) Prior to the issuance of a certificate of occupancy for the Project, the Applicant shall submit to the Zoning Administrator a letter addressed to each designated beneficiary listed below offering the benefit listed:
    - (A) SW Public Housing Resident Councils - For the life of the project, the free use of designated church spaces, as available, for Council meetings and events;
    - (B) Government of the District of Columbia - For the life of the project, the free use of designated church spaces, as available, for meetings and events;
    - (C) Narcotics Anonymous - For the life of the project, the free use of designated church spaces, as available, for its meetings;
    - (D) Southwest Catering Company - For the life of the project, the free use of designated church spaces, as available, for its community-based catering job training program for DC residents;
    - (E) Southwest Renaissance Development Corporation (a nonprofit) - For the life of the project, the free use of designated church spaces, as available, for its "Jazz Night in D.C." and "Blue Monday Blues," multicultural, multi-racial, multi-generational preservation projects serving thousands of D.C. residents and supporting hundreds of D.C.-based jazz and blues artists;
    - (F) TransPride Festival - For the life of the project, the free use of designated church spaces, as available, for at least one event per year; and

- (G) Seated Yoga Program - For the life of the project, the free use of designated church spaces, as available, for its weekly health and fitness programs for seniors.

(Subtitle X § 305.5 (q))

**RELIEF REQUESTED**

39. The Application requested the following PUD flexibility pursuant to Subtitle X § 303:

- Rezoning the PUD Site pursuant to Subtitle X §§ 300.4 and 303.12 from the current R-3 zone to the MU-2 zone ("Map Amendment");
- Flexibility for penthouse walls of unequal height and number of penthouse heights; (Subtitle C § 1500.9.)
- Flexibility from the lot occupancy requirements; (Subtitle G § 304.1.)
- Flexibility from the rear yard requirements; and (Subtitle G § 305.1.)
- Flexibility from the Inclusionary Zoning ("IZ") requirements for concentration of unit tenure. (Subtitle C § 1005.5.)

40. The Application requested that the Commission authorize the following design flexibility from the final plans submitted with the Application:

- To provide a range in the number of residential units to plus or minus 10%;
- 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, and to vary the layout and exact size of the Church facilities, provided that the variations do not materially change the exterior configuration of the building, and to vary the layout and exact square footage of the Church;
- To make refinements to the garage 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;
- 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;
- 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;
- To vary the number and mix of affordable units if the total number of dwelling units changes within the range of flexibility requested, provided that the location and proportionate mix of the affordable units will substantially conform to the layout shown on the approved Plans;
- 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;
- To vary the approved sustainable features of the Project, including the final layout of the landscape elements, provided the total number of LEED and/or Enterprise Green

Communities points achievable for the Project does not decrease below the minimum required for the LEED and/or Enterprise Green Communities standards specified by the order; and

- To vary the color, font, message, and logo of the approved signage, provided that (i) permanent digital and neon signage shall not be permitted on the exterior of the project; (ii) the maximum overall dimensions and signage materials are consistent with the signage on the plans approved by the order; and (iii) the signage is compliant with the DC signage regulations.

#### **POTENTIAL ADVERSE IMPACTS AND PROPOSED MITIGATIONS**

41. The Applicant asserted the following with respect to the potential adverse impacts of the Project and mitigations it proposed to mitigate those impacts:

- (a) The Project will not result in any unacceptable impacts on the surrounding area or on the operation of city services and facilities, and will instead have a favorable impact on the surrounding area. The Project will benefit the neighborhood with the addition of new housing, including affordable senior housing. Moreover, the Project has been designed to relate to the surrounding architectural context and consider the variety of nearby uses. The Project includes sustainable landscape design and streetscape improvements that will enhance the pedestrian experience and beautify the public realm;
- (b) The Applicant evaluated the potential impacts of the Project as it relates to land use, transportation, housing, environmental protection, economic development, parks, recreation and open space, urban design, historic preservation, educational facilities, infrastructure, and community services, and found that for each topic area the potential impacts would be favorable or capable of being mitigated;
- (c) The potential transportation impacts of the Project were specifically analyzed in the Applicant's Transportation Statement, which was prepared in coordination with and reviewed by DDOT. (Ex. 21.) The Transportation Statement found that the Project will not have any adverse impacts on the roadway network;
- (d) In order to mitigate any adverse impacts caused by loading activities at the Project, the Applicant agreed to implement a Loading Management Plan and a curbside management plan for the life of the Project; and
- (e) In order to mitigate any potential adverse impacts to trees regarding Special-sized trees and one Heritage tree on the DGS property adjacent to the project site, the Applicant agreed that: "Prior to issuance of a building permit for the project, the Applicant will submit, receive approval from UFD, and implement a tree preservation plan for the Heritage Tree on the adjacent DGS site and other on-site or adjacent non-hazardous Special Trees and street trees, as determined appropriate by Urban Forestry Division." (See DDOT report, Ex. 42).

**REQUESTED PUD FLEXIBILITY BALANCED AGAINST PUBLIC BENEFITS**

42. The Application asserted that the Map Amendment for the PUD Site to the MU-2, with the additional density it authorizes, will:
- Permit the development of the PUD Site with a mixed-use development;
  - Not be inconsistent with either the GPM or FLUM designations;
  - Allow the development of the PUD Site to be comparable with the mix of uses in the surrounding area; and
  - Allow the Project to provide more housing, including affordable housing, than could be provided as a matter-of-right under the existing R3 zone.
43. The Application asserted that it met the standard for PUD flexibility for penthouse walls of unequal height and number of penthouse heights because:
- Although the stair tower's enclosing walls are not a uniform height, the penthouse has been designed to minimize its visibility from all directions and meet the setback requirement. If the Applicant maintained the 8-foot height for the entirety of the structure, it would not meet the setback requirement and would be more visible;
  - The Applicant notes that amendments to the text of the penthouse regulations are currently being reviewed by the Commission in Z.C. Case No. 14-13E. If approved, the uniform height requirement would be removed for enclosing walls of stairwells providing access to a roof, and rooftop access stairwells would not be required to be setback from an open court. See Z.C. Case No. 14-13E, proposed Subtitle C, Section 1503.4(d) and 1505.1(a);<sup>4</sup>
  - Although multiple penthouse heights are proposed, every portion of the penthouse will be setback a minimum of 1:1 from the exterior walls of the building;
  - Providing multiple penthouse heights is necessary to ensure that the mechanical screen wall meets the setback requirement. Increasing the wall's height to match the 11.5 foot tall habitable space (and thus meet the requirement to provide a maximum of three penthouse heights) would make the screen wall more visible and would not meet setback requirement; and
  - Granting relief from Subtitle C § 1500.9 will result in a design that is more consistent with the goal of the penthouse regulations to minimize visibility as much as possible.
44. The Application asserted that it met the standard for PUD flexibility from the lot occupancy requirements because:
- The ground floor of the building has to be designed to accommodate three distinct uses: (i) the market rate residential uses and associated amenity spaces, including building entries, lobby, mail room, trash facilities, and mechanical spaces, among others; (ii) the affordable residential uses and associated amenity spaces, including building entries,

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<sup>4</sup> At the time of the Commission's final vote in this case on December 16, 2021, enclosing walls of stairways providing access to a roof were required to be uniform in height and rooftop access stairwells were required to be setback from an open court. The referenced amendments removing these requirements in Z.C. Case No. 14-13E did not become effective until December 24, 2021.

- lobby, mail room, leasing office, trash facilities, and mechanical spaces, among others; and (iii) the Church uses and its associated facilities, including building entries, offices and conference rooms, assembly room, dining and kitchen/serving facilities, and gallery space and art studios, among others. Due to the combination of these distinct uses, as opposed to a more traditional building with a single or potentially two uses, the overall Project needs to occupy a greater extent of the ground floor area, thus resulting in non-compliance with the minimum lot occupancy requirements;
- Despite exceeding the maximum permitted lot occupancy at the ground level, the Project includes a large interior courtyard, has significant step-backs on the upper floors, has open space between the towers, and will have less FAR than is permitted for a PUD in the MU-2 zone;
  - The Project will not overcrowd the Site or create any adverse impacts; and
  - The Site is surrounded by public streets to the north and west and a large unimproved parcel of District-owned land to the east and south, which results in unimpeded light and air surrounding the Site.
45. The Application asserted that it met the standard for PUD flexibility from the rear yard requirements because:
- The ground floor of the building has to be designed to accommodate a variety of uses. Due to the combination of these distinct uses, as opposed to a more traditional building with a single or potentially two uses, the overall Project needs to occupy a greater extent of the ground floor area, thus resulting in non-compliance with the minimum rear yard depth requirements;
  - The building is surrounded by public streets on two sides such that the Project will not overcrowd the Site or create any adverse impacts as a result of the lack of a rear yard;
  - The Project includes a large interior court that will provide additional light, air, and ventilation. The Project also includes roof decks which provide outdoor areas for residents;
  - The Southwest Duck Pond is located to the immediate west of the Site; and
  - In addition, the unimproved and irregularly-shaped District-owned site is located at the rear of the Site, which provides approximately 45 feet of open space between the rear wall of the Project and the closest property to the south.
46. In this case, for the first 40 years of the Project, the Project will be exempt from the requirements of the IZ program of Subtitle C, Chapter 10 pursuant to Subtitle C § 1001.6 (a) ("IZ Exemption") since the Applicant anticipates being "subject to a mandatory affordable housing requirement that exceeds the requirements of this chapter as a result of District law or financial subsidies funded in whole or in part by the Federal or District Government and administered and/or monitored by the Department of Housing and Community Development (DHCD), the District of Columbia Housing Finance Agency (DCHFA), or the District of Columbia Housing Authority (DCHA)." This assumes that the DCRA will grant the exemption.
47. If the units in the West Tower are delivered as rental units, then:

- (a) For the life of the Project, the West Tower shall dedicate a minimum of eight percent (approx. 7,200 square feet) of the residential GFA in the West Tower as affordable housing for households earning up to 60% MFI and shall dedicate within the West Tower a minimum of eight percent (approx. 265 square feet) of the penthouse habitable space as affordable housing for households earning up to 50% MFI. The affordable housing required as a result of the penthouse habitable space is not required to be located within the penthouse;
- (b) For the first 40 years of the Project, the East Tower shall dedicate 100% (approx. 102,236 square feet) of the residential GFA in the East Tower as affordable housing for households earning up to 60% MFI and shall dedicate within the East Tower a minimum of eight percent (approx. 525 square feet) of the penthouse habitable space as affordable housing for households earning up to 50% MFI. The affordable housing required as a result of the penthouse habitable space is not required to be located within the penthouse; and
- (c) For the remaining life of the Project, the East Tower shall dedicate a minimum of eight percent (approx. 8,179 square feet) of the residential GFA in the East Tower as affordable housing for households earning up to 60% MFI and shall dedicate within the East Tower a minimum of eight percent (approx. 192 square feet) of the penthouse habitable space as affordable housing for households earning up to 50% MFI. The affordable housing required as a result of the penthouse habitable space is not required to be located within the penthouse.

48. If the units in the West Tower are delivered as for-sale units, then:

- (a) For the life of the Project, the West Tower is not required to include any affordable housing;
- (b) For the first 40 years of the Project, the East Tower shall dedicate 100% (approx. 102,236 square feet) of the residential GFA in the East Tower as affordable housing for households earning up to 60% MFI and shall dedicate within the East Tower a minimum of eight percent (approx. 525 square feet) of the penthouse habitable space as affordable housing for households earning up to 50% MFI. The affordable housing required as a result of the penthouse habitable space is not required to be located within the penthouse; and
- (c) For the remaining life of the Project, the East Tower shall dedicate in the East Tower a minimum of 15% (approx. 15,379 square feet) of the total residential GFA of the Project as affordable housing for households earning up to 60% MFI and shall dedicate within the East Tower a minimum of eight percent (approx. 457 square feet) of the total penthouse habitable space of the Project as affordable housing for households earning up to 50% MFI. The affordable housing required as a result of the penthouse habitable space is not required to be located within the penthouse.



49. If the scenario outlined in Finding of Fact (“FF”) 47 occurs, relief from Subtitle C, § 1005.5 is not necessary because there would be no concentration of IZ unit tenure as IZ units would be located in the West Tower for the life of the project and in the East Tower after year 40.
50. However, if the scenario outlined in FF 48 occurs, in year 41 and beyond relief would be necessary from Subtitle C, § 1005.5 since all of the IZ units would be located in the East Tower.
51. The Application asserted that it met the standard for PUD flexibility from the Inclusionary Zoning Requirements for Concentration of Unit Tenure because:
  - Under either scenario, the Project will have affordable housing for the life of the Project;
  - The Applicant’s affordable housing proffer is to dedicate 102,761 square feet of residential gross floor area (“GFA”) in the overall single building. This proffer amounts to approximately 52.9% of the project’s total residential GFA, provided in 123 affordable housing units;
  - The Applicant is providing significantly more affordable housing than would otherwise be required for the Project for the first 40 years;
  - The Project will always have an affordable component, with at least 102,761 square feet affordable for years 1-40 and at least 15,836 square feet affordable for year 41 and beyond;
  - The project will always, at least, meet the minimum IZ requirement; and
  - After year 40, existing residents in the senior tower will not be displaced if the building ownership accepts market rate tenants above the IZ requirement.

**Consistency with the Comprehensive Plan and Public Policies**

52. The Application asserted the Project was not inconsistent with the Comprehensive Plan, including its maps and policies, and that it furthers many of its elements as set forth below.
53. As shown on the GPM, the Site is located within a Neighborhood Conservation Area. This designation encompasses the entire Southwest neighborhood with the exception of the Southwest Waterfront (Wharf) and the Southwest Town Center along 4th Street, which are designated as Regional Center and Neighborhood Commercial Center, respectively. According to the Framework Element, areas within a Neighborhood Conservation Area designation “have little vacant or underutilized land and are generally residential in character.” (10-A DCMR § 225.4.)
54. The Framework Element further provides that “[m]ajor changes in density over current (2017) conditions are not expected [within a Neighborhood Conservation Area] but some new development and reuse opportunities are anticipated, and these can support conservation of neighborhood character where guided by [Comp Plan] policies and the [FLUM].” (10-A DCMR § 225.4.)

55. “The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs...The diversity of land uses and building types in these areas should be maintained and new development, redevelopment, and alterations should be compatible with the existing scale, natural features, and character of each area...Densities in Neighborhood Conservation Areas are guided by the [FLUM] and [Comp Plan] policies.” (10-A DCMR § 225.5.)
56. As the Framework Element states, the Neighborhood Conservation Area designation is not intended to preclude development. It is also not intended to be interpreted as requiring conservation of existing development on a particular site or only permitting small scale development. Perhaps most importantly, the Neighborhood Conservation Area designation is not intended to be interpreted the same way across the District. Rather, the Neighborhood Conservation Area designation is intended to maintain “the diversity of land uses and building types” of a particular area.
57. Overall, the diverse development pattern of the Southwest neighborhood that the GPM aims to maintain is reflective of the mid-century planning ideals that permeated throughout Southwest in the 1940s-1950s. For the Project, the diversity of land uses in the Southwest neighborhood predominately includes moderate- to high-density residential interspersed with cultural, institutional, and park uses and concentrated nodes of high-density mixed-use development (Southwest Town Center and the Wharf) and local public facilities (Southwest Government Cluster). As to building types, the Southwest neighborhood is predominately characterized by rowhouses and high-rise residential buildings (townhomes and towers) with high-density residential and office buildings concentrated at the Southwest Town Center and the Wharf.
58. The Project is not inconsistent with the Site’s designations on the GPM as a Neighborhood Conservation Area as it is compatible with the diversity of land uses and building types found in the surrounding area, as well as with the scale and character of the neighborhood, both existing and as envisioned in the SW Plan. The Project consists of a medium-density mixed-use development that is not inconsistent with the FLUM, consistent with recommendations in the Southwest Neighborhood Plan, and compatible with the scale, pattern, and character of the surrounding context. Further, consistent with the guiding philosophy in Neighborhood Conservation Areas the Project will help address citywide housing needs on a Site that is in close proximity to Metrorail and numerous neighborhood services and amenities.
59. The FLUM designates the Site as Mixed-Use (Low-Density Commercial/Medium-Density Residential). The “Mixed-Use” designation is assigned to areas where two or more uses are encouraged, and is generally assigned to established, pedestrian-oriented commercial areas that also include substantial amounts of housing, typically on the upper stories of buildings with ground-floor retail or office uses, among others. (10-A DCMR § 227.20(a).)
60. Typically, the general density and intensity of development within a given Mixed-Use area is determined by the specific mix of uses shown on the FLUM. If the desired outcome is

to emphasize one use over the other, the FLUM may note the dominant use by showing it at a slightly higher density than the other use in the mix. The Comprehensive Plan Area Elements may also provide detail on the specific mix of uses envisioned. (10-A DCMR § 227.21.) Applying this to the mixed-use FLUM designation for the Site suggests that the District envisions medium-density mixed-use development with an emphasis on residential use.

61. The Project, including the PUD-related map amendment to the MU-2 zone, are not inconsistent with the Comp Plan as a whole, including the GPM and FLUM. The Site is situated in a transitional location along the I Street, S.W. corridor. To the south, the area contains several high-density buildings with heights ranging between 94 and 130 feet that were constructed pursuant to approved PUDs (e.g. Z.C. Order No. 02-38 et seq., Z.C. Order No. 05-38, et seq. and Z.C. Order No. 12-14, et seq.). To the north, across I Street, S.W., a portion of the area has been designated as medium-density. The remaining area is characterized primarily by residential development consisting of moderate-density rowhomes and multi-family apartments interspersed with a scattering of taller, high-density residential towers that are surrounded by areas of open space.
62. The proposed MU-2 zone is an appropriate zone given the FLUM designations for the Site, its transitional location, and scale and pattern of surrounding development. This is particularly true within the context of a PUD where the potential impacts of the Project can be mitigated or determined to be acceptable through an evaluation of the Project's design and public benefits.
63. The Project's height, density, and design are not inconsistent with the Site's Mixed-Use (Medium-Density Residential / Low-Density Commercial) FLUM designation for the following reasons:
  - (a) The Zoning Regulations specifically describe the MU-2 zone as being intended to permit "medium-density areas predominately developed with residential buildings but also permitting non-residential buildings." Emphasis added; and (Subtitle G § 300.3.);
  - (b) The purposes of the MU-2 zone are to: "(a) act as a buffer between adjoining non-residential and residential areas, and to ensure that new development is compatible in use, scale, and design with the transitional function of this zone, and (b) preserve and protect areas adjacent to non-residential uses or zones that contain a mix of row houses, apartments, offices, and institutions at a medium to high density, including buildings of historic and architectural merit." Emphasis added. (Subtitle G § 300.1.)
64. Consistent with the purposes of the MU-2 zone, the Project's density and height will provide an appropriate buffer between the adjoining non-residential and residential areas at a compatible scale to the surrounding context, and will serve to protect the diverse development pattern of nearby residential uses from non-residential encroachment. The MU-2 zone is specifically described in the Zoning Regulations as being a transitional zone

that is suitable for medium-density areas predominately developed with residential buildings. Given the surrounding context, this is the ideal zone for the Site and for accommodating the proposed mix of residential and institutional uses in the Project.

65. The Site's Mixed-Use (Medium-Density Residential / Low-Density Commercial) FLUM designation contemplates density typically ranging from 1.8 – 4.0 FAR, whilst acknowledging that greater density may be possible when complying with Inclusionary Zoning or when approved through a PUD. (10-A DCMR §§ 227.10, 227.7.) The Project is a PUD and will have a maximum density 7.06 FAR, of which approximately 0.60 FAR will be devoted to non-residential use. Though inconsistent with the FLUM's preferred density range of 1.8 – 4.0 FAR, the Project will be consistent with the FLUM's preference for residential use on the Site as 90% of the Project is devoted to residential use. Furthermore, in addition to being a PUD the Project will be consistent with the MU-2 matter-of-right height and density parameters. Specifically, as a matter-of-right the MU-2 zone permits up to 6.0 FAR (7.2 FAR with IZ), of which 3.5 FAR may be devoted to non-residential uses. Regarding height, the MU-2 zone permits a maximum building height of 90 feet, not including penthouse. The Project will have a maximum height of 90 feet, not including the penthouse.
66. Moreover, the Project's height and density are consistent with the diverse development pattern of the surrounding area. The proposed building height will establish an appropriate transition between the 130 foot high-density commercial buildings to the south and the residential buildings to the north, which range from 3 to 9 stories. With respect to use, the vast majority of the Project is devoted to residential use. The only non-residential use within the Project are the new facilities for Westminster Presbyterian Church, which are valued by the community and compatible with the institutional and residential uses found to the north.
67. The Project also fits within the varied development pattern along the I Street, S.W. corridor, where taller multi-family buildings exist alongside three-story townhomes. Existing development at the west end of the corridor consists of medium- to high-density residential towers, including the recently redeveloped Riverside Baptist Church, an approved PUD containing a new two-story church and 90 foot residential tower (Z.C. Order No. 15-05). To the east of Riverside Baptist Church are 9- and 10-story residential buildings that are adjacent to moderate-density two- and three-story townhomes and apartment buildings. The townhomes are located more than 350 feet from the Site. East of the townhomes is the former Southeastern University site, which is approved for a 48-foot mixed-use development containing residential and arts, design, and creation uses. See Z.C. Order No. 17- 21. Developments to the east of the Site are also varied in height and density. Along the north side of I Street, buildings closest to the Site are 9 and 6 stories, with lower heights further east approximately 500 feet away. Along the south side of I Street are the Christ United Methodist Church site, and the Greenleaf public housing site which is planned to be redeveloped at a greater height and density in the future.
68. The Project's mix of uses is not inconsistent with the FLUM, despite the Project's lack of traditional commercial uses. Consistent with the intent of the Site's Mixed-Use FLUM

designation, the Project is indeed a mixed-use development containing residential and institutional uses. Although the Project does not contain traditional [neighborhood-serving] commercial uses, many of the community-serving programs offered by the Church will effectively serve the southwest community similar to traditional commercial uses. In fact, given the Site's close proximity to the retail and service uses at the Southwest Town Center, the community may be better served by the Church's community programs as opposed to traditional commercial uses.

69. Notwithstanding the above, to the extent the Commission determines that the Project density is inconsistent with the FLUM, this does not prevent the Commission from concluding that the Project is not inconsistent with the Comp Plan overall, when read as a whole and upon balancing any competing policies and considerations.
70. The D.C. Court of Appeals have provided clear guidance on this very issue, stating:

[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) (brackets and internal quotation marks omitted).)

71. Based on the guidance of the Court, to the extent the Commission finds the proposed PUD inconsistent with the FLUM, such inconsistency is far outweighed by the Project's consistency with the GPM, and numerous Comp Plan policies related to the following:
- (a) Lower Anacostia Waterfront/Near Southwest Area Element
- 1) The Project is not inconsistent with the policies set forth in the Lower Anacostia Waterfront/Near Southwest Area Element, and in particular those listed below. The Project will redevelop the Site with a new mixed-use development that incorporates significant new housing, including affordable senior housing, and the community-serving Westminster Presbyterian Church use. (AW-2.5.1, AW-2.5.4, AW-2.5.11.) The Project will contribute new housing and improved community/cultural space within

- Westminster Presbyterian Church to the 4th Street, S.W. Town Center, the commercial heart of the Southwest neighborhood; (AW-2.5.1, AW-2.5.8.)
- 2) The Project will help maintain Southwest as a model of equity and inclusion by providing substantial new housing, including dedicated affordable senior housing, which supports this Element's goal of encouraging affordable and equitable access to housing with a range of housing types to support every segment of the population, including older adults. (AW-2.5.4, AW-2.5.11.) In doing so, the Project also includes market-rate housing, which is consistent with this Element's goal of providing a mix of affordable and market rate residential units to best serve the community's needs. In addition, the Project is fully consistent with the policies and goals set forth in the Southwest Neighborhood Plan; and (AW-2.5.2.)
  - 3) The Project advances the following Lower Anacostia Waterfront/Near Southwest Area Element, Southwest Neighborhood Policy Focus Area policies:
    - AW-2.5: Southwest Neighborhood
      - AW-2.5.1: 4<sup>th</sup> Street, S.W. as a Thriving Town Center
      - AW-2.5.2: Southwest Neighborhood Plan
      - AW-2.5.4: An Equitable and Inclusive Southwest Neighborhood
      - AW-2.5.8: Southwest Arts and Culture
      - AW-2.5.11: Affordable and Family-Sized Housing in Southwest

(b) Land Use Element

- 1) The Project is not inconsistent with the Land Use Element. The Project exemplifies the principles of transit-oriented development. The Site is located directly adjacent to the Waterfront Metrorail station, is served by several major bus routes and bike routes, and is otherwise conveniently located near numerous other alternative forms of transportation; (LU-1.4.1, LU-1.4.2, LU-1.4.B.)
- 2) Development of the Site utilizes the Metrorail station as an anchor for economic and civic development, and is located so as to reduce automobile congestion, improve air quality, increase jobs, provide a range of services, enhance neighborhood stability, and create a stronger sense of place; (LU-2.1.3, LU-2.3.5, LU-2.3.6, LU-2.3.12.)
- 3) The Project has been designed to encourage transit use and help to enhance the safety, comfort, and convenience of passengers walking to the Metrorail station and to local Metrobus stops. The Project will incorporate active ground floor amenity uses and community space for the Church that will animate the street frontages, and will provide additional improvements that are proven to increase pedestrian safety such as new lighting, signage, and landscaping;
- 4) The Project is designed to improve the visual aesthetic of the Site and the neighborhood in general. Development of the Site will improve its existing condition, particularly because the Project will replace an existing underutilized site that is currently improved with a building in need of repairs and a surface parking lot. The Project will also incorporate new

streetscape and landscape elements to enhance the pedestrian experience and improve the visual quality of the surrounding area. The new streetscape will include substantial improvements such as new paving for sidewalks, lighting, landscaping, canopies above the building entrances, and short-term bicycle racks;

- 5) The Project balances the desire to increase housing supply in the area and expand neighborhood commerce, with the parallel goal of protecting the neighborhood character and restoring the environment. The Project satisfies these goals by providing a new residential community with different levels of affordability that will take advantage of the Site's mixed-use, transit-oriented location at a scale and density that is compatible with the existing neighborhood; (LU-1.4.2, LU-1.4.3, LU-2.1.3.)
- 6) Consistent with policies aimed at maintaining and expanding religious facilities as neighborhood anchors, the Project will include brand new facilities for the Church, which has been located on the Site for several decades. The Applicant is working with the Church, its community, the ANC, and other neighborhood stakeholders to ensure that the new Church facilities successfully address transportation needs, operation, and expansion of the Church, and fully maximize the Church's ability to maintain its position as an important neighborhood religious and cultural institution; and (LU-2.3.5, LU-2.3.6, LU-2.3.12.)
- 7) The Project advances the following Land Use Element policies:
  - LU-1.4: Transit-Oriented and Corridor Development
    - LU-1.4.1: Station Areas as Neighborhood Centers
    - LU-1.4.2: Development Around Metrorail Stations
    - LU-1.4.3: Housing Around Metrorail Stations
    - LU-1.4.4: Affordable Rental and For-Sale Multi-family Housing Near Metrorail Stations
    - LU-1.4.B: Zoning Around Transit
  - LU-2.1: A District of Neighborhoods
    - LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods
  - LU-2.3: Residential Land Use Compatibility
    - LU-2.3.4: Transitional and Buffer Zone Districts
    - LU-2.3.5: Institutional Uses
    - LU-2.3.6: Places of Worship and Other Religious Facilities
    - LU-2.3.12: Arts and Culture Uses in Neighborhoods

(c) Transportation Element

- 1) The Project will establish new transit-oriented development within one block of the Waterfront Metrorail station and in proximity to multiple other forms of public transportation and bicycle infrastructure; (T-1.1.8, T-2.6.1.)
- 2) The Project also includes various transit-oriented development-related improvements, including the construction of new mixed-uses along two major transportation corridors (4<sup>th</sup> and I Streets, S.W.), bicycle storage areas, and public space improvements, including new paving, lighting, landscaping, and bicycle racks; (T-2.3.1, T-2.4.1, T-2.4.2.)

- 3) The Applicant will also repave the streetscape surrounding the Site according to DDOT's standards, and will otherwise improve the public realm by making new landscape and lighting improvements to enhance the pedestrian experience and general safety of the surrounding area. Together, these physical improvements to the streetscape will improve bicycle and pedestrian safety in the area. In addition, all access to parking and loading for the Project is located on Makemie Place, S.W., which will minimize pedestrian and vehicular conflicts; (T-2.3.1, T-2.4.2.)
- 4) The Project will be located one block north of the Waterfront Metrorail station and in close proximity to numerous Metrobus routes, and will therefore be easily accessible for the senior residents of the Project, their visitors, and the congregants to the new Church facilities; (T-2.6.1, T-2.6.2.)
- 5) The Project will also include a strong TDM program that reduces the number of vehicle trips and miles traveled and increases the efficiency of the transportation system. As part of the TDM program the Applicant will unbundle the cost of parking from the cost of renting or purchasing a residential unit, which will help to discourage residents from buying or renting parking spaces; and (T-3.2.D.)
- 6) The Project advances the following Transportation Element policies:
  - T-1.1 Land Use: Transportation Coordination
    - T-1.1.4: Transit-Oriented Development
    - T-1.1.8: Minimize Off-Street Parking
  - T-2.3 Bicycle Access, Facilities, and Safety
    - T-2.3.1: Better Integration of Bicycle and Pedestrian Planning T-2.4 Pedestrian Access, Facilities, and Safety
    - T-2.4.1: Pedestrian Network · T-2.4.2: Pedestrian Safety
  - T-2.6 Addressing Accessibility for All Residents
    - T-2.6.1: Transportation Access
    - T-2.6.2: Transit Needs T-3.1.1: TDM Programs
    - T-3.2.D: Unbundle Parking Cost

(d) Housing Element

- 1) The Project helps meet the housing needs of present and future District residents at locations consistent with District land use and housing policies and objectives. The Project will include a significant number of new residential units, including affordable units reserved exclusively for seniors, which will result in a substantial contribution to the supply of District housing that is in close proximity to Metrorail stations, and to the District's goal of producing 36,000 new housing units by 2025; (H-1.1.2, H-1.1.3.)
- 2) The Project will develop the new housing on an underutilized property in a rapidly growing and changing mixed-use neighborhood. Housing provided on the Site will include market rate and affordable housing for seniors to ensure that a sufficient housing supply is provided for District residents at all income levels and stages of life; (H-1.2.1, H-1.2.11, H-4.3.2, H-4.3.3.)
- 3) The Project is also consistent with the goals of promoting mixed-use development, as it incorporates residential and institutional (church) uses



on the Site, which is located in a mixed-use neighborhood and adjacent to a Metrorail station;

- 4) A significant number of the new housing units included in the Project will be dedicated as affordable senior units in an amount that is significantly in excess of the amount otherwise required by IZ;
- 5) The Project will help achieve the District's affordable housing production targets, and will do so at a development site that will help to distribute mixed-income housing equitably across the District. In doing so, the Applicant will take advantage of the density bonus afforded by the IZ regulations; and (H-1.1.2, H-1.1.3, H-1.2.7.)
- 6) The Project substantially advances the following Housing Element policies:
  - H-1.1: Expanding Housing Supply
    - H-1.1.2: Production Incentives
    - H-1.1.3: Balanced Growth
    - H-1.1.5: Housing Quality
  - H-1.2: Ensuring Housing Affordability
    - H-1.2.1: Low- and Moderate-Income Housing Production as a Civic Priority
    - H-1.2.7: Density Bonuses for Affordable Housing
    - H-1.2.11 Inclusive Mixed-Income Neighborhoods
    - H-1.2.J: Affordable Housing and Nonprofit and Faith Based Institutions
  - H-1.3: Diversity of Housing Types
    - H-1.3.2: Tenure Diversity
  - H-2.1: Preservation of Affordable Housing
    - H-2.1.4: Avoiding Displacement
  - H-4.3: Meeting the Needs of Specific Groups
    - H-4.3.2: Housing Choice for Older Adults
    - H-4.3.3: Neighborhood-Based Housing for Older Adults

(e) Environmental Protection Element

- 1) The Project is not inconsistent with the policies of the Environmental Protection Element. As part of the Project the Applicant will reconstruct the streetscape adjacent to the Site, which will include new street trees that will add tree canopy, provide shade, improve air quality, provide urban habitat, and add aesthetic value; (E-2.1.2.)
- 2) The Project will incorporate significant landscaping, including sustainable landscaping practices, which will enhance and beautify the streetscape, reduce storm water runoff, and strengthen the character of the public realm; (E-2.1.3.)
- 3) The building includes a landscaped courtyard above the second level, landscaping on the roof terrace, and landscaping in the public space surrounding the Site. The Project will also incorporate green roofs and other natural elements that will enhance and beautify the streetscape, reduce storm water runoff, and strengthen the character of the public realm; (E-2.1.3.)

- 4) The Project will incorporate energy-efficient systems and methods for insulation, heating, and cooling, which will help to conserve natural resources and reduce energy costs for residents; and (E-3.2.7.)
- 5) The Project advances the following Environmental Protection Element policies:
  - E-2.1: Conserving and Expanding Washington, DC's Urban Forests
    - E-2.1.2: Tree Requirements in New Development
    - E-2.1.3: Sustainable Landscaping Practices
  - E-3.2: Conserving Energy and Reducing GHG Emissions
    - E-3.2.7: Energy-Efficient Building and Site Planning
  - E-4.1: Green Infrastructure
    - E-4.1.2: Using Landscaping and Green Roofs to Reduce Runoff

(f) Urban Design Element

- 1) The Project will help achieve the goals of the Urban Design Element through its thoughtful massing and quality materials that respond to the surrounding context and through improvements to adjacent public space; (UD-2.2.1, UD-2.2.2, UD-2.2.4.)
- 2) The design achieves a balance in responding to existing buildings in and around the Southwest Town Center while also presenting a new aesthetic that conveys the presence of Westminster Presbyterian Church and the importance of its mission and contributions to the community. The height and massing of the Project is responsive to the context to the north and south, as well as to the development pattern along the I Street corridor. Specifically, the proposed 90-foot height, two tower massing of the Project will establish an appropriate transition between the high-density Southwest Town Center to the south and the varied development pattern of residential and institutional uses north of I Street; (UD-2.2.4, UD-4.2.1.)
- 3) The articulation and materials of the building facades have been designed with consideration given to the surrounding context and attention to enhancing the human/pedestrian scale at street level; and (UD-2.2.4.)
- 4) The proposed Zoning Map amendment specifically advances the following Urban Design Element policies:
  - UD-2.2: Designing for Vibrant Neighborhoods
    - UD-2.2.1: Neighborhood Character and Identity
    - UD-2.2.2: Areas of Strong Architectural Character
    - UD-2.2.4: Transitions in Building Intensity
  - UD-2.4: Inclusive Community Spaces
    - UD-2.4.1: Inclusive and Diverse Neighborhood Spaces
  - UD-3.2: Designing the Active District
    - UD-3.2.2: Social and Community Meeting Spaces
  - UD-4.2: Designing Architecture for People
    - UD-4.2.1: Scale and Massing of Large Buildings
    - UD-4.2.4: Creating Engaging Façades

### III. RESPONSES TO THE APPLICATION

#### OP

72. OP submitted a July 17, 2020 report (the "OP Setdown Report") that stated the following:

- The Application is not inconsistent with the Comprehensive Plan, the Council-adopted Southwest Small Area Plan that is advisory to the Comprehensive Plan, and with the pattern of development between I and M Streets, S.W. that has been approved by the Zoning Commission in PUDs located near the PUD Site;
- The Application would be not inconsistent with the Comprehensive Plan. While there are aspects of the current Comprehensive Plan with which the proposal may not be consistent, the proposed public benefits of affordable housing and the retention of the community-oriented Westminster Church more than balance these inconsistencies;
- The Project would, on balance, also be not inconsistent with written elements of the Comprehensive Plan. The Land Use, Transportation, Housing, Urban Design and Lower Anacostia Waterfront/Near Southwest Area Element include policies and recommended actions with which the proposal is congruent;
- The benefits and amenities, particularly the affordable housing and the retention of the church and its programs, are sufficient for set down;
- Indicated that OP did not support the Applicant's request for flexibility from Subtitle C § 1005.5; and
- The OP report included a list of additional information needed from the Applicant after setdown in order to further evaluate the Application.

(Ex. 11.)

73. OP submitted an April 2, 2021 report (the "OP Hearing Report") that:

- Reiterated the OP Setdown Report's conclusions that the proposal would be not inconsistent with the Comprehensive Plan;
- Indicated that the Applicant demonstrated that it satisfied the requirements for the requested penthouse, lot occupancy, and rear yard flexibility;
- Continued to note that OP did not support the Applicant's request for flexibility from Subtitle C § 1005.5;
- Requested additional information from the Applicant prior to the hearing, including whether the Project can achieve LEED Gold v4 level, the feasibility of installing solar panels, and an arborist's assessment of the Project's impact on trees located south on District-owned land; and
- Recommended that the Commission approve the Application.

(Ex. 26.)

74. OP submitted an April 9, 2021 report (the "OP Supplemental Report") that indicated the Applicant should clarify how the project will meet IZ requirements after the end of the eastern (affordable) tower's financing-related control period during which the project would be exempted from IZ (Subtitle C § 1001.6). OP noted that at that time:

- The project should provide all of the square footage required by Subtitle C, § 1003 (i.e., ~15,836 s.f. by the Applicant's calculations); and
  - The IZ units should be distributed between the eastern and western towers to comply with Subtitle C § 1005.5 restrictions on the over-concentration of IZ units, unless the residential units in the western tower are ownership units, rather than rental units.
- (Ex. 31A.)

75. OP Submitted a September 28, 2021 report (the "OP Second Supplemental Report") that:

- Included an analysis of the Project's consistency with the newly revised and adopted 2020 Comprehensive Plan, including the new FLUM designation for the PUD Site;
- Concluded that Project is not inconsistent with the 2020 Comprehensive Plan, including the updated FLUM;
- Concluded that the Project is not inconsistent with the written elements of the Comprehensive Plan;
- Included a racial equity analysis of the Project, and determined that the Project would deliver several benefits that would advance racial equity; and
- Continued to recommend that the Commission approve the Application, subject to the following condition: If the West Tower is delivered as a rental property, it shall, at initial occupancy and thereafter, include the proportion and distribution of Inclusionary Zoning (IZ) units that would have been required in that tower had Subtitle C §1001.6 not temporarily exempted the project from delivering IZ units until the end of the financing-related IZ exemption period for the senior affordable housing in the East Tower.

(Ex. 47.)

76. With respect to the new FLUM designation for the PUD Site, the OP Second Supplemental Report stated:

- The 2020 Future Land Use Map (FLUM) indicates that the site is appropriate for a mix of Medium-Density Residential and Low-Density Commercial uses;
- The Medium-Density Residential category is defined in 10-A DCMR § 227.7 of the Framework Element as applying to neighborhoods *generally, but not exclusively, suited for mid-rise apartment buildings and may also apply to taller residential buildings surrounded by large areas of permanent open space* such as the Duck Pond to the west and the linear park to the south and the remaining portion of Town Square park to the east;
- The project's 7.06 FAR would exceed the density ranges the Framework element uses to illustrate the site's FLUM categories, but such greater density is permitted *when complying with Inclusionary Zoning or when approved through a Planned Unit Development*;
- Non-residential uses would not exceed 0.6 FAR, which would be not inconsistent with the Low-Density Commercial category;
- With respect to the requested MU-2 PUD-related map amendment, the Framework Element notes that:

Similarly, the land-use category definitions describe the general character of development in each area, citing typical Floor Area Ratios as appropriate. The granting of density bonuses (for example through Planned Unit Developments or Inclusionary Zoning) may result in density that exceed the typical ranges cited here. (10-A DCMR § 228.1c.). The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the Citywide Elements and the Area Elements; and (10-A DCMR § 228.1c.)

- The PUD and the requested zoning would be consistent with these elements.

77. With respect to the GPM designation for the PUD Site, the OP Second Supplemental Report stated the following:

- The Generalized Policy Map ... designates the site as part of a Neighborhood Conservation Area (NCA).
- It is immediately north of the Waterfront Metro area that has been designated as an Enhanced/New Multi-Neighborhood Center.
- *The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs. Limited development and redevelopment opportunities do exist within these areas, The diversity of land uses and building types in these areas should be maintained and new development, redevelopment, and alterations should be compatible with the existing scale, natural features, and character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map and Comprehensive Plan policies. Approaches to managing context-sensitive growth in Neighborhood Conservation Areas may vary based on neighborhood socio-economic and development characteristics. In areas with access to opportunities, services, and amenities, more levels of housing affordability should be accommodated.* (10-A DCMR § 225.5)
- Within the area bounded by 4th, 7th, G and M Streets, S.W., development south of I Street includes residential and office buildings ranging from 90 to 110 feet high and approved as PUDs. With one exception, development north of I Street has rowhouses or low-and mid-rise apartment buildings.
- The proposed project would be a 90-foot-high building south of I Street. That height would be transitional between the 110-foot height of the apartment building immediately to the south and both the 48-foot-tall apartment building approved for the corner of 6th and I Streets, S.W. and the townhouses north of that building.
- The proposed PUD would, thereby, be not inconsistent with the development pattern in the Neighborhood Conservation Area.

78. With respect to the written elements of the Comprehensive Plan the OP Second Supplemental Report states the following:

- The proposed project would, on balance, also be not inconsistent with written elements of the current Comprehensive Plan;

- The Land Use, Transportation, Housing, Urban Design and Lower Anacostia Waterfront/Near Southwest Area elements include policies and recommended actions with which the proposal is congruent;
- It would: be transit-oriented; retain the church as an important community anchor; provide new housing where now there is a surface parking lot behind the church; employ architectural and urban design generally using high-quality materials, varied massing and fenestration and attention to ground floor details and public benefits affecting pedestrians; enhance environmental and sustainability objectives through the various green elements that would be built into a project intended for LEED-Silver equivalency; and generally be consistent with policies supporting the Southwest Waterfront and its major streets; and
- The general furthering of policies relating to land use, senior and affordable housing, transportation and the retention of important neighborhood elements more than outweighs possible inconsistencies with aspects of housing policy relating to the uniform distribution of Inclusionary Zoning, and portions of the Comprehensive Plan's the design policies.

79. With respect to the racial equity analysis, the OP Second Supplemental Report stated the Project would deliver several benefits that would advance racial equity:

- Due to the socio-economic composition of the District in general, and the Southwest neighborhood in particular, the 123 units of affordable housing for seniors would almost certainly provide access to residential units for residents of color;
- The PUD would retain the Westminster Presbyterian church on its present site and provide additional space for its community outreach, social and cultural programs. The Church provides the following programs and services to all residents of the District:
  - Providing and subsidizing a community-based catering and food service training operation;
  - Supporting youth-oriented DC Court-ordered community service programs;
  - Housing and subsidizing a weekly domestic violence clinic and weekly Narcotics Anonymous meetings;
  - Hosting and subsidizing a harm-reduction program for at-risk residents who experience substance abuse;
  - Regularly providing free services for funerals, weddings, and other gatherings in the neighborhood; and
  - Making annual contributions to support Amidon-Bowen school programs.
- The First Source Employment Agreement would require that 51% of all new job hires and 31% of apprenticeship hours be for District residents. This agreement sets forth opportunity to accessing new jobs and apprenticeship for the District's Black residents, currently the largest racial group in the District; and (Ex. 46F.)
- The site currently has no housing. The requested PUD-related MU-2 map amendment would also enable the provision of more residential units on the Site than would the existing R-3 zoning, the senior housing in the East Tower would clearly be affordable, and at the macro level, the production of more housing decreases the upward pressure on overall housing prices.

80. At the October 4, 2021 public hearing, OP testified in support of the Application.

**DDOT**

81. DDOT submitted an April 2, 2021 report (the "DDOT Report") stating that DDOT: (Ex. 27.)

- Due to the site's low parking supply, low parking ratio, low weekday trip generation and the Applicant's commitment to implement a Transportation Demand Management (TDM) plan, DDOT determined the site met the "Low Impact Development Exemption" criteria from a Comprehensive Transportation Review (CTR) study and Traffic Impact Analysis (TIA), as outlined in the 2019 Guidance for Comprehensive Transportation Review;
- In lieu of a CTR with TIA, the Applicant provided a Transportation Statement, dated February 26, 2021; (Ex. 21.)
- The combined residential and church vehicle trips are anticipated to be 26 vehicles in the weekday morning peak hour and 53 vehicles in the evening peak hour. Church service on Sundays is anticipated to generate approximately 21 vehicle trips, as more than 2/3 of attendees are expected to travel by non-auto modes;
- With the limited number of parking spaces and Enhanced Tier TDM Plan, the projected vehicle trip generation is expected to be minimal and can be mitigated with the TDM Plan;
- DDOT finds the proposed TDM plan sufficient to encourage residents and church attendees to use nonautomotive means of travel;
- DDOT noted a number of items that would need to be addressed during the public space permitting process; and
- DDOT concluded that it has no objection to the approval of the Application with the following conditions included in the Final Zoning Order:
  - The Applicant will implement the Transportation Demand Management (TDM) Plan as proposed by the Applicant in the February 26, 2021 Transportation Statement, for the life of the project, unless otherwise noted, with the following minor revisions requested by DDOT: (Ex. 21.)
    - Note that two (2) proposed electric vehicle charging stations will be provided; and
    - Clarify the bulb-outs on Makemie Place, S.W. are subject to DDOT approval; and
  - The Applicant will implement the Loading Management Plan (LMP) as proposed by the Applicant in the February 26, 2021 Transportation Statement, for the life of the project, unless otherwise noted. (Ex. 21.)

82. DDOT submitted a June 8, 2021 report (the "DDOT Supplemental Report") stating that the Applicant has agreed to work with DDOT to hire an arborist to create a DDOT approved tree preservation plan. As such, DDOT continues to have no objection to the approval of the Application with the following additional condition:

- Prior to issuance of a building permit for the project, the Applicant will submit, receive approval from UFD, and implement a tree preservation plan for the Heritage Tree on the adjacent DGS site and other on-site or adjacent non-hazardous Special Trees and street trees, as determined appropriate by Urban Forestry Division.

(Ex. 42.)

83. At the October 4, 2021 public hearing, DDOT testified in support of the Application.

**ANC 6D**

84. ANC 6D submitted a June 16, 2020 report (the "ANC 6D Setdown Report") indicating that at a regularly scheduled and properly noticed public meeting on June 8, 2020 with a quorum being present, a quorum being four Commissioners, ANC 6D voted 6-0-1 to support the setting down the Application for a public hearing. (Ex. 10.)

85. ANC 6D submitted an April 5, 2021 report (the "ANC 6D Hearing Report") indicating that at a regularly scheduled and properly noticed Special Public Meeting held on March 30, 2021, with a quorum being present, a quorum being four Commissioners, ANC 6D voted 5-0-2 to oppose Z.C. Case 20-12. The ANC 6D Hearing Report listed the following issues and concerns:

- That the developer might eliminate or reduce the proffered benefit of net new affordable senior housing units by allowing one of the development partners to also include the same affordable senior housing units in the count for the 1:1 replacement required in the Greenleaf redevelopment project;
- That the safety of access to the new development will be compromised in light of DDOT's plan to install a bike lane along I Street;
- That the proffer of senior housing should include a requirement for the units to be designed and fitted out using best practices in senior units, e.g., easy door handles, wider doorways, etc.;
- The ANC would like to see some three-bedroom units added to the project;
- Concern about the signage lighting on the East Tower; and
- Concern about the welfare of the heritage trees on and adjacent to the site in the linear park to the south of the Project.

(Ex. 28.)

86. ANC 6D submitted an April 9, 2021 report (the "Clarification to ANC 6D Report") indicating that at a regularly scheduled and properly noticed Special Public Meeting on March 30, 2021, with a quorum being present, a quorum being 4 Commissioners, ANC 6D voted 7-0-0 to have Commissioner Andy Litsky represent and speak on behalf of ANC-6D at the Commission's public hearing on the Application. The report also clarified that the ANC's report at Ex. 28 inaccurately stated the vote on the motion to oppose Z.C. Case 20-12 as 5-0-2, and that the record should be corrected to read that the vote to oppose Z.C. Case No. 20-12 was 6-0-1. (Ex. 28A.)



87. The written testimony of ANC Commission Andy Litsky summarizing the ANC 6D Report is included in the record. (Ex. 35.)
88. The written testimony of ANC Commissioner Fredrica Kramer is included in the record. (Ex. 44, 48-48A.)
89. ANC 6D submitted an October 20, 2021 report (the "ANC 6D Post Hearing Report") indicating that at a duly noticed public meeting on October 18, 2021, with a quorum present, a quorum being four Commissioners, ANC 6D voted 6-0-0 to provide conditional approval for the Application. It listed the following conditions, which the Commission considers to be issues/concerns for purposes of giving great weight:
- Prior to the Final Order, the Application will be required to produce a complete analysis of options for maintaining affordability after the expiration of the Low-Income Housing Tax Credits. After expiration of LIHTC, current residents in the affordable units shall not be subject to an immediate rent increase to market rate. Rather, they shall be subject for the life of their residency to rent increases only as is usual and customary in other DC all-affordable housing properties. Further, senior affordable housing at below market rate within this project is proffered as the most significant community benefit in this PUD. ANC-6D expects that, after the expiration of LIHTC, continued affordability shall remain no less than double the 2021 IZ requirement of (8% -10%) and that shall continue for the life of the building;
  - The Final Order will require the completion of a curbside management plan prior to issuance of a building permit. The plan will be developed by DDOT in consultation with the Applicant, will ensure safe access and egress at building entrances, segregation, and management of bicycle traffic in the protected bike lanes that front the building, and will include the final decision for the placement of the no-parking entrances on I Street, S.W. or Makemie Place.  
ANC-6D opposes the current design of the light tower, which is non-functional and is solely a decorative embellishment. ANC-6D recognizes that, as such, it is inconsistent with the strong policy the Commission has embraced regarding other non-functional lighting in Southwest, Navy Yard and Buzzard Point. To embrace this 90-foot light tower would create a terrible precedent as when others come before our Commission. We ask that the Zoning Commission reject this tower; and
  - ANC 6D also requested that an illustrative model of specific in-unit senior accommodations, as well as consideration of a second common laundry facility in addition to the one facility on the third floor, be provided as part of the Final Order.
- (Ex. 53)
90. ANC 6D's Vice Chair Fredrica Kramer submitted a November 24, 2021 response letter (the "ANC 6D Response to Applicant's Supplemental Post-hearing Statement") largely reiterating the points made in the ANC 6D's report at Ex. 53, and noting that the comments in the letter would be endorsed by a formal vote at the ANC's regularly scheduled meeting on December 13, 2021. The letter restates the ANC's opposition to the design of the light tower as bad precedent; reiterates the ANC's curbside management plan condition of approval to ensure pedestrian safety at the building entrances and management of bicycle

traffic in protected lanes; states the ANC's dissatisfaction with the Applicant's analysis for options to maintain affordability after expiration of the LIHTC period which focuses on DC landlord tenant law; and reiterates the ANC's suggestion of imposing a condition to require no less than double current 2021 IZ set aside requirements for the life of the building after expiration of the LIHTC period. (Ex. 57.)

### OTHER RESPONSES

91. The record includes a number of letters in support of the application and one letter in opposition. The letter in opposition expressed the need for deeper affordability than 60% MFI and the need for two-bedroom senior units; expressed the need for curbside management, specifically senior pick-up and drop-off; and expressed the desire for IZ units located in the West Tower. (Ex. 13, 15G, 15H, 15I, 15J, 22, 25, 30, 33)

### CONCLUSIONS OF LAW

1. The Commission is authorized under the Zoning Act to approve a Consolidated PUD consistent with the requirements set forth in Subtitle X §§ 302, 304 & 309, 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 § 303.13:

*As part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards. Any such flexibility shall be considered the type of development flexibility against which the Zoning Commission shall weigh the benefits of the PUD.*
4. 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."*

The Commission must also 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.*
5. 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 §1-306.01(b)).*
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 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).)

7. “If there is substantial evidence to support the [Commission's] finding, then the mere existence of substantial evidence contrary to that finding does not allow this court to substitute its judgment for that of the [Commission].” (*Watergate E. Comm. Against Hotel Conversion to Co-op Apartments v. District of Columbia Zoning Comm’n*, 953 A.2d 1036, 1043 (D.C.2008) quoting *Brown v. District of Columbia Bd. of Zoning Adjustment*, 486 A.2d 37, 52 (D.C.1984) (en banc) (quotation omitted). See also, *St. Mary’s v DC ZC*, 174 A.3d 260, 270 (2017) “[t]he mere fact that petitioners presented contrary evidence ... is immaterial[;] [a]s the trier of fact, the [Commission] may credit the evidence upon which it relies to the detriment of conflicting evidence, and need not explain why it favored the evidence on one side over that on the other.” quoting, *Fleischman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 562 (D.C. 2011).”)

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

8. Based on the case record and the Findings of Fact above, the Commission concludes that the Project, including the PUD and related map amendment, is not inconsistent with the Comprehensive Plan and with other public policies and active programs.

**GPM**

9. 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:

- 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:
  - The Commission agrees with OP’s analysis that the Project is an appropriate transition from the taller apartment buildings to the south of the Site, and the smaller apartment buildings and rowhomes to the north; and
- The Project will help address citywide housing needs, specifically the need for senior affordable housing, while respecting the residential character of the neighborhood.

**FLUM**

10. The Commission concludes that the Project is not inconsistent with the FLUM’s Mixed-Use (Low-Density Commercial / Medium-Density Residential) designation for the PUD Site because:

- The Mixed-Use Category FLUM designation is applied to “[d]evelopment that includes residential uses, particularly affordable housing, ...typically achieved through a

Planned Unit Development or in a zone district that allows such a mix of uses;” (10-A DCMR 227.20.)

- The MU-2 zone is intended to permit medium-density areas predominantly developed with residential buildings but also permitting nonresidential buildings; (Subtitle G §300.3.)
- The MU-2 zone is a transitional zone intended to preserve and protect adjacent areas and permit new residential at a higher density than new office or institutional developments; (Subtitle G § 300.1.)
- The Project's density is consistent with MU-2 matter-of-right height and density; and (Subtitle G § 302.1-303.1.)
- The Project’s height and density are consistent with the development pattern of the surrounding southwest neighborhood, and specifically along the Eye Street corridor.

11. The Commission recognizes that the Project’s density (7.06 FAR) exceeds the recommended range on the FLUM (1.8 to 4.0), but concurs with OP’s analysis that it is appropriate to approve the Application for the following reasons:

- This type of increased density is explicitly contemplated in the framework element’s description of the medium-density residential category (10-A DCMR § 227.7, stating that greater density than the 1.8 to 4.0 range is permitted “when complying with Inclusionary Zoning or when approved through a Planned Unit Development”) because this Project complies with IZ, is approved through a PUD, and allows for a development with a greater amount of housing and affordable housing; and
- The Project furthers numerous written policies of the CP encouraging the development of housing and affordable housing, and the cumulative weight of this policy guidance outweighs the potential inconsistency.

### **CP District Elements**

12. The Commission concludes that the Application furthers the CP’s Land Use, Transportation, Housing; Environmental Protection, and Urban Design Elements because the Application will:

- Establish a new mixed-use and mixed-income building with a variety of unit types and at varying income levels to accommodate a range of District residents;
- Eliminate surface parking and replace the existing Westminster Church building, originally constructed circa 1965, with the new mixed-use building that includes approximately 18,513 square feet of GFA dedicated to new state-of-the art church and community-serving facilities;
- Create new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, the SW Plan, the Mayor’s Housing Report, and the Mayor’s Order;
- Deliver approximately 222 new residential units and approximately 197,941 square feet of residential GFA and penthouse floor area. In contrast, under the current R-3 zoning, only approximately 54,675 square feet of residential GFA could be developed on the Site as a matter of right;

- Deliver approximately 123 new units of senior affordable housing;
- 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; and
- Incorporate several sustainable features including landscape and streetscape improvements, and green roofs.

### **CP Area Element**

13. The Commission concludes that the Application is not inconsistent with the CP's Lower Anacostia Waterfront/Near Southwest Area Element because the Application will redevelop the Site with a new mixed-use development that incorporates significant new housing, including affordable senior housing, and the community-serving Westminster Presbyterian Church use. The Project also includes market-rate housing, which is consistent with this Element's goal of providing a mix of affordable and market rate residential units to best serve the community's needs.

### **Small Area Plan (SAP)**

14. The Commission concludes that the Project is not inconsistent with the Southwest Neighborhood Plan because:
- Both the Plan and Project call for Mixed-Use (Low-Density Commercial/Medium-Density Residential) development on the PUD Site; and
  - The Project implements a number of the design principles in the Plan, which recommends:
    - Encouraging a mix of building heights;
    - Enhance green space through landscaped perimeters and internal green or amenity spaces;
    - Incorporating sustainable building and site design;
    - Maintaining a mix of affordable and market-rate housing that better serves community needs; and
    - Building on and market existing cultural assets and institutions to reinforce the concept of an arts and cultural destination.

### **Racial Equity**

15. The Commission considered the policy included in the recently enacted CP amendments “for the Zoning Commission to evaluate all actions through a racial equity lens as part of its Comprehensive Plan consistency analysis. (10-A DCMR § 2501.8.<sup>5</sup>)

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<sup>5</sup> The full text of the regulation provides:

Prepare and implement tools, including training, to assist District agencies in evaluating and implementing the Comprehensive Plan's policies and actions through an equity, particularly a racial equity lens. This includes tools to use as part of the development review process, preparation of plans, zoning code updates, and preparation of the capital improvement program, that considers how to apply an equity analysis in these processes, including any information needed. This shall specifically include a process for the Zoning

16. The Commission notes many data points referenced throughout the Comprehensive Plan Housing Element stating the significant disparities in housing need, access, and opportunity when Black and Hispanic District residents are compared to whites. (10-A DCMR § 500.1-518.19.)
17. The Commission concurs with the conclusions in the OP Second Supplemental Report stating the Project would deliver several benefits that would advance racial equity:
- Due to the socio-economic composition of the District in general, and the Southwest neighborhood in particular, the 123 units of affordable housing for seniors would almost certainly provide access to residential units for residents of color;
  - The PUD would retain the Westminster Presbyterian church on its present site and provide additional space for its community outreach, social and cultural programs. The Church provides the following programs and services that all residents of the District:
    - Providing and subsidizing a community-based catering and food service training operation;
    - Supporting youth-oriented DC Court-ordered community service programs;
    - Housing and subsidizing a weekly domestic violence clinic and weekly Narcotics Anonymous meetings;
    - Hosting and subsidizing a harm-reduction program for at-risk residents who experience substance abuse;
    - Regularly providing free services for funerals, weddings, and other gatherings in the neighborhood; and
    - Making annual contributions to support Amidon-Bowen school programs;
  - The First Source Employment Agreement would require that 51% of all new job hires and 31% of apprenticeship hours be for District residents. This agreement sets forth opportunity to accessing new jobs and apprenticeship for the District’s Black residents, currently the largest racial group in the District; and (Ex. 46F.)
  - The site currently has no housing. The requested PUD-related MU-2 map amendment would also enable the provision of more residential units on the site than would the existing R-3 zoning, the senior housing in the East Tower would clearly be affordable, and at the macro level, the production of more housing decreases the upward pressure on overall housing prices.
18. The OP Second Supplemental Report did state that OP had one concern related to the racial equity, which was the absence of IZ in the West Tower if it was developed as a rental apartments rather than for-sale units. OP therefore recommended a condition requiring the provision of IZ units in the West Tower if developed as rental apartments , and it has been

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Commission to evaluate all actions through a racial equity lens as part of its Comprehensive Plan consistency analysis. (10-A DCMR § 2501.8)

The Commission acknowledges that a formal “tool” has not yet been developed. The Commission therefore used the evidence in the record regarding the Project’s impact on racial equity issues subsumed within the Comprehensive Plan policies and the recommendations of the Office of Planning in its Second Supplemental Report as the basis for its analysis.

included as a condition of this Order. See Findings of Fact 47 and 48 for details on the IZ units in both scenarios, i.e., West Tower developed as rental apartments or as for-sale units.

19. The Commission therefore concludes that the Project is not inconsistent with the Comprehensive Plan when “viewed through a racial equity lens.”

**PUD-RELATED MAP AMENDMENT**

20. The Commission concludes that the Application’s proposed PUD-related map amendment to rezone the Property from the R-3 to the MU-2 Zone District is appropriate for the reasons discussed above and because:

- The PUD-related Map Amendment is not inconsistent with the Comprehensive Plan; and
- The PUD-related Map Amendment will allow the Property to be developed with a project that includes affordable housing and market rate housing, while also providing other valuable public benefits, in a manner that advances the purposes of the Zoning Act and the public good.

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

21. The Commission finds that the Project will not result in any unacceptable project impacts, and that any potential impacts will be favorable, capable of being mitigated, or acceptable given the quality of public benefits provided by the Application.

22. The Commission concludes that the Project will have many favorable impacts by providing new housing, including affordable senior housing, at an amount that is significantly greater than what could be built as a matter of right on the site. The Project design relates to the surrounding architectural context and considers the variety of nearby uses. The Project includes sustainable landscape design and streetscape improvements that will enhance the pedestrian experience and improve the public realm. The Project also facilitates the Westminster Church remaining on the Site.

23. The Commission concludes the Project will have the following impacts that are capable of being mitigated:

- Traffic and parking demand:
  - The increased density of the Project will lead to additional traffic and parking demand; and
  - The Commission concludes this will be adequately mitigated by the traffic demand management plan and loading management plan that have been included as conditions of this Order.
- Curbside Management:
  - ANC 6D raised concerns about safe ingress and egress at building entrances and management of bicycle traffic;



- The Applicant agreed to ANC 6D’s curbside management plan addressing these issues, and this Order contains the curbside management plan, subject to DDOT approval, as a condition; and
- The Commission concludes this is adequate to mitigate the potential adverse effects raised by the ANC;
- Tree preservation issue:
  - ANC 6D raised a concern about the welfare of the heritage trees on or adjacent to the Site;
  - DDOT addressed this issue in its supplemental report, and this Order contains a condition requiring compliance with the tree preservation plan that was developed collaboratively by the Applicant and DDOT to address this concern; and
  - The Commission concludes this is adequate to mitigate the potential adverse effect.
- Concentration of IZ in western tower:
  - The Office of Planning raised an objection to the Applicant’s request to concentrate the affordable housing provided in the Project in the East Tower;
  - This Order includes a condition, recommended by OP, to mitigate the potential adverse effect of this issue, which would require affordable housing to also be provided in the West Tower if it is developed as rental apartments;
  - The Commission concludes that this is adequate to mitigate the potential adverse effect under the circumstances; and
  - The Commission further concludes that the potential adverse effects of the concentration of the affordable units in the East Tower are outweighed by the value of the abundance of affordable housing included in the Project; and
- Double counting the affordable housing proffer in the Project and the future Greenleaf redevelopment:
  - ANC 6D raised the concern that potentially the affordable housing provided in this Project would be used to satisfy the affordable housing needs of the redevelopment of the Greenleaf;
  - The Applicant testified at the hearing that it did not intend the affordable housing units in this Project to satisfy this purpose, but that it had limited control over who chose to reside in the Project;
  - This Order contains a condition stating explicitly that the affordable housing units in this Project will not be proffered as Build First Units for the Greenleaf redevelopment, and the Commission concludes that this is adequate to mitigate this concern;
  - The Commission believes that individual PUDs should be judged on their own merits, so is somewhat uncomfortable with including this condition in this Order since it applies more directly to the future development of the Greenleaf property, which is not the subject of this Application; and
  - However, the Applicant volunteered to include the condition in the Order in this case in good faith in response to the ANC’s concern, and the Commission sees no harm in including it here, even if it is not binding on a different property owner.

24. The Commission concludes the project will have the following adverse effects that are acceptable given the public benefits of the project:

- Additional density of the Project:
  - Although not explicitly raised by a party in this case, the Commission recognizes that the additional height and density of the Project will create potential adverse impacts related to the access of neighboring properties to light and air, and on public services by the greater numbers of residents who will eventually occupy this Project; and
  - The Commission concludes these impacts are acceptable given the public benefits of the Project; and
- East Tower lighting feature:
  - ANC 6D expressed concern about the light feature on the East Tower;
  - In response, the Applicant submitted further information about the brightness of the lighting of the feature;
  - Given the relatively low brightness of the feature, the Commission believes the impact will be small;
  - The Commission has included a condition in this Order requiring the Applicant to abide by its statements regarding the brightness of the lighting;
  - The Commission also concludes that the light feature will have a positive impact as a way to announce the presence of the church, which must also be considered when weighing the overall impact of the feature; and
  - Considering all this, the Commission concludes that the feature will have some potential adverse effects, but that these potentially adverse effects are small, are at least partially if not completely mitigated by the condition, and are acceptable given the public benefits of the Project.

**PUBLIC BENEFITS (SUBTITLE X § 304.4(c))**

25. The Commission concludes that the Application demonstrated the Project will have numerous valuable public benefits and project amenities that are not inconsistent with the Comprehensive Plan, including the following:
- 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 an underutilized property with a new mixed-use development; includes public space improvements, and the Project will be compatible with the scale and character of surrounding development;
  - Housing, Affordable Housing, and Senior Housing - The Commission concludes that the Project will provide housing and affordable housing benefits because the Project will have affordable housing for the life of the Project. The Project will include 102,761 square feet of affordable housing for 40 years, which is approximately 52.9% of the project's total residential GFA and results in 123 affordable housing units. The Project

- is providing significantly more affordable housing than would otherwise be required for the Project for the first 40 years and more affordable housing than would be provided if the PUD Site were developed as a matter-of-right. Finally, the Project will always have an affordable component, with at least 102,761 square feet affordable for years 1-40 and at least 15,836 square feet affordable for year 41 and beyond;
- Transportation Infrastructure – The Commission concludes that the Project will provide transportation benefits, beyond any mitigation measures required to address potential adverse impacts by widening the sidewalk along Makemie Place; and
  - Uses of Special Value to the Neighborhood – The Commission concludes that rebuilding of space for the Westminster Church, the programs offered by Westminster Church, and the use of Westminster Church's facilities by outside groups constitute uses of special value to the neighborhood.

**JUDGE, BALANCE AND RECONCILE THE VALUE OF THE PUBLIC BENEFITS, AGAINST THE DEVELOPMENT INCENTIVES AND ANY POTENTIAL ADVERSE EFFECT (SUBTITLE X § 304.3)**

26. The Commission considered the Project's public benefits, the requested development incentives and any potential adverse effects, and concludes that the Application warrants approval.

**GREAT WEIGHT TO RECOMMENDATIONS OF OP**

27. 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).
28. The Commission carefully considered the OP Reports and testimony in this case and concludes that OP's analysis of the Project's consistency with the Comprehensive Plan, racial equity analysis, potential impacts, and proffered benefits is persuasive. Accordingly, the Commission concurs with OP's recommendation to grant the Application. This Order contains the condition regarding IZ in the West Tower recommended by OP in its Second Supplemental Report.

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

29. 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).)

30. The Commission carefully considered the issues and concerns raised in the three ANC 6D reports: (Ex. 10, 28, and 53.)

- (a) The ANC 6D Setdown Report did not list any issues or concerns; (Ex. 10.)
- (b) The ANC 6D Hearing Report listed the following issues and concerns. The Commission's response to each one follows the issue/concern: (Ex. 28.)

- 1) That the developer might eliminate or reduce the proffered benefit of net new affordable senior housing units by allowing one of the development partners to also include the same affordable senior housing units in the count for the 1:1 replacement required in the Greenleaf redevelopment project.

Commission response. In its pre-hearing submission and at the hearing, the Applicant provided assurances that it would not use the affordable housing units in the Project in the unit count for the replacement housing in the Greenleaf redevelopment project, which is not a part of this application. The Applicant further stated however, that it must follow all applicable fair housing laws, which would likely prohibit it from restricting the ability of current Greenleaf residents from moving into the Project. As a compromise, the Applicant offered a proposed condition in this Order that would state that the affordable units in this Project would be separate and apart from the replacement units for Greenleaf, with the caveat that it would follow all applicable fair housing laws. The Commission believes this is a reasonable compromise under the circumstances, and has included the condition in this Order; (Ex. 46.)

- 2) That the safety of access to the new development will be compromised in light of DDOT's plan to install a bike lane along I Street.

Commission response. The Applicant agreed to submit a curbside management plan, developed in coordination with DDOT to address this concern. This is a condition of this Order. The Commission believes this is adequate to address this concern;

- 3) That the proffer of senior housing should require more than just allocating the units to seniors, it should also include a requirement for the units to be designed and fitted out using best practices in senior units, e.g., easy door handles, wider doorways, etc.

Commission response. At the hearing, the Applicant addressed this issue by stating that its development partner for the senior component was an experienced developer of senior residential projects and intended to include the kinds of features the ANC mentioned in the hearing report. In its post-hearing submission, the Applicant also provided an example attachment of the Fair Housing Act Technical Requirements Accessibility Guidelines

from another project. The Commission concludes that this assurance was adequate to address this concern; (Ex. 52.)

- 4) The ANC would like to see some three-bedroom (family-sized) units added to the project.

Commission response. At the hearing the Commission asked the Applicant to respond as to whether it would be possible to add larger units than the studio and one-bedroom units that were included in the Project. The Applicant did so in its supplemental post-hearing submission, stating that including two-bedroom units would result in a 1:1 reduction in the total number of affordable units in the Project, as well as require a substantial redesign of the Project. The Commission accepts this response, and recognizes the trade-offs that are involved, and believes that notwithstanding the lack of family-sized units in the Project, it has such substantial public benefits in the areas of housing, and affordable housing that approval is justified; (Ex. 56.)

- 5) The ANC is concerned about the signage lighting on the East Tower.

Commission response. The Commission requested additional information about the light tower from the Applicant. The Applicant responded in its post-hearing submission with additional information about the feature, including that the vertical element is a translucent glazing system with an ambient glow from light fixtures, and that the light level of the fixture is 5 FC<sup>6</sup>, which is a relatively low level compared to the other examples provided of other nearby features, such as light level of residential living space (20 FC), or typical building entrance vestibules (10-15). In a subsequent filing made at the Commission's request, the Applicant also provided a rendering showing the feature at night. Given this explanation, the Commission believes the adverse impact of the fixture will be limited and acceptable under the circumstances; and (Ex. 52, 52A.)

- 6) The ANC is concerned about the welfare of the heritage trees on and adjacent to the site.

Commission response. The Applicant responded that it met with a DDOT arborist and discussed a plan to address this concern. DDOT submitted a report recommending the plan, and this Order includes compliance with the plan as a condition. The Commission believes this has addressed this concern. (Ex. 42, 46.)

- (c) The ANC 6D Post Hearing Report stated the following were conditions to its support for the Application. The Commission treated these conditions as though

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<sup>6</sup> In a previous submission, the Applicant stated the light level would be 5-10 FC. (Ex. 46)

they were issues and/or concerns. The Commission's response to each one follows the issue/concern: (Ex. 53.)

- 1) Prior to the Final Order, the Application will be required to produce a complete analysis of options for maintaining affordability after the expiration of the Low-Income Housing Tax Credits. After expiration of LIHTC, current residents in the affordable units shall not be subject to an immediate rent increase to market rate. Rather, they shall be subject for the life of their residency to rent increases only as is usual and customary in other DC all-affordable housing properties. Further, senior affordable housing at below market rate within this project is proffered as the most significant community benefit in this PUD. ANC-6D expects that, after the expiration of LIHTC, continued affordability shall remain no less than double the 2021 IZ requirement of (8% -10%) and that shall continue for the life of the building.

Commission response. The Commission asked the Applicant to consider the issue of what will happen to the tenants at the expiration of the 40-year LIHTC term. The Applicant responded in a supplemental post-hearing submission that stated essentially, the protections are limited to those provided to all tenants under D.C. landlord and tenant law. The Commission believes that this a potential issue, but that it is not a potential adverse effect of the Project, because it will comply with all applicable D.C. Laws and regulations, and provides substantial affordable housing in excess of what is required. The Commission believes that 40 years is such a long time that attempting to anticipate the future housing needs of residents and address them now is not worthwhile, particularly in light of the fact that the development of affordable housing is such an acute need at the present. The Commission believes the proffered public benefits are sufficient to justify approval. (Ex. 56.)

- 2) The Final Order will require the completion of a curbside management plan prior to issuance of a building permit. The plan will be developed by DDOT in consultation with the Applicant, will ensure safe access and egress at building entrances, segregation, and management of bicycle traffic in the protected bike lanes that front the building, and will include the final decision for the placement of the no-parking entrances on I Street, S.W. or Makemie Place.

Commission response. This Order contains a condition requiring the development of a curbside management plan prior to the issuance of a certificate of occupancy. The Commission believes this is adequate to address the ANC's concerns about pedestrian safety.

- 3) ANC 6D opposes the current design of the light tower, which is non-functional and is solely a decorative embellishment. ANC 6D recognizes

that, as such, it is inconsistent with the strong policy the ANC has embraced regarding other non-functional lighting in Southwest, Navy Yard and Buzzard Point. To embrace this 90-foot light tower would create a terrible precedent as when others come before our Commission. We ask that the Commission reject this tower.

Commission response. The Commission reviews each application based upon the specific facts and merits of the case before the Commission. As such, the Commission concludes that approval of the light feature in this Application does not jeopardize or otherwise restrict our ability to review light features proposed in any other application that comes before the Zoning Commission. With respect to the light feature in this case, the Zoning Commission finds the information included in the Application's Post-Hearing Submission to be persuasive regarding the amount of light that will be generated by the light feature (i.e., 5 foot candles), that the amount of light emitted by the light feature will not adversely impact the immediately surrounding uses, and that the amount of light generated by the light feature will be generally consistent with the light levels generated within the surrounding neighborhood. The Commission has included a condition in this Order requiring compliance with these limits and requiring that the lighting be controlled and dimmed from inside the building on a time clock. The Commission believes this is adequate to address the ANC's concerns about the light tower. (Ex. 52.)

- 4) ANC 6D also requested that an illustrative model of specific in-unit senior accommodations, as well as consideration of a second common laundry facility in addition to the one facility on the third floor, be provided as part of the Final Order.

Commission response. The Commission was satisfied with the Applicant's response at the hearing that it would provide adequate senior accommodations and laundry facilities in the Project with one facility along with the further explanation for one facility provided in the Applicant's second post-hearing submission (Ex. 54).

## DECISION

In consideration of the case record, and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission **ORDERS APPROVAL** of the Application for:

- A consolidated PUD;
- A PUD-related map amendment from the R-3 zone to the MU-2 zone;
- Flexibility for penthouse walls of unequal height and number of penthouse heights; (Subtitle C § 1500.9.)
- Flexibility from the lot occupancy requirements; (Subtitle G § 304.1.)
- Flexibility from the rear yard requirements; and (Subtitle G § 305.1.)

- Flexibility from the IZ requirements for concentration of unit tenure. (Subtitle C § 1005.5.)

The Commission also grants the design flexibility from the final plans listed in condition A2 below.

This approval is subject to the following guidelines, conditions, and standards. Whenever compliance is required prior to, on or during a certain time, the timing of the obligation is noted in bold and underlined text.

## **A. PROJECT DEVELOPMENT**

1. The PUD Site shall be developed in accordance with the Architectural Plans and Elevations prepared by KGD Architecture, dated March 23, 2021, included in the record at Ex. 23A1-23A10, and the Updated Architectural Plans and Elevations sheets, dated October 15, 2021, included in the record at Ex. 52A (collectively the “Approved Plans”), as modified by the guidelines, conditions, and standards herein.
2. The Applicant shall have design flexibility from the Approved Plans as follows:
  - (a) To provide a range in the number of residential units to plus or minus 10%;
  - (b) 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, and to vary the layout and exact size of the Church facilities, provided that the variations do not materially change the exterior configuration of the building, and to vary the layout and exact square footage of the Church, provided the square footage reserved for the Church does not decrease by more than 10%;
  - (c) To make refinements to the garage 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 spaces (i.e. plus or minus six spaces, with an upper limit of 66 spaces and a lower limit of 54 spaces);
  - (d) 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;
  - (e) 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;



- (f) To vary the number and mix of affordable units if the total number of dwelling units changes within the range of flexibility requested, provided that the location and proportionate mix of the affordable units will substantially conform to the layout shown on the approved Plans;
- (g) 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;
- (h) To vary the approved sustainable features of the Project, including the final layout of the landscape elements, provided the total number of LEED and/or Enterprise Green Communities points achievable for the Project does not decrease below the minimum required for the LEED and/or Enterprise Green Communities standards specified by the order; and
- (i) To vary the color, font, message, and logo of the approved signage, provided that (a) permanent digital and neon signage shall not be permitted on the exterior of the project; (b) the maximum overall dimensions and signage materials are consistent with the signage on the plans approved by the order; and (c) the signage is compliant with the DC signage regulations.

3. The Project shall have:

- (a) A maximum building height of 90 feet;
- (b) A maximum density of 7.06 FAR;
- (c) Approximately 214,338 square feet of gross floor area;
- (d) Approximately 18,513 square feet devoted to new facilities for the Church;
- (e) Ninety-nine residential units located in the western tower of the Project;
- (f) One hundred twenty-three residential units located in the eastern tower of the Project; and
- (g) Approximately 60 below-grade parking spaces.

4. The Applicant intends that all components of the Project, including the East and West Towers, will be constructed concurrently as a whole. However, if all components of the Project cannot be constructed entirely concurrently, the East Tower (which includes the church and senior housing) must be completed first.

5. **Prior to issuance of a building permit for the Project**, the Applicant will submit, receive approval from the Urban Forestry Division (UFD), and implement a tree preservation plan for the Heritage Tree on the adjacent Department of General Services (DGS) site and other

on-site or adjacent non-hazardous Special Trees and street trees, as determined appropriate by Urban Forestry Division.

6. **For the life of the Project**, the 123 units in the East Tower and the 99 units in the West Tower will be entirely new housing stock in Southwest; neither will be proffered as Build First units for Greenleaf seniors, families or other current residents; and units within the Project will be separate and apart from any other units that the Applicants may develop in Southwest. However, this provision should not be constructed in any way to allow or require the Applicant to violate any Fair Housing Act, anti-discrimination, tenant protections, or other Federal or District laws regarding the use and occupancy of residential buildings, such as the acceptance of vouchers.
7. **For the life of the Project**, the senior portion of the East Tower will be separate from and operated separately from the Westminster Presbyterian Church. This shall include the following:
  - The residential units and church component shall have separate ownership;
  - The residential units and Church component shall have separate utilities; and
  - The residential units shall have separate elevator access, and the resident key card will only access the residential floors of the East Tower.

## **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:
  - (a) Designed the East Tower of the Project to achieve the equivalent of a minimum of 45 points under the 2020 Enterprise Green Communities Standards;
  - (b) Designed the West Tower of the Project to achieve the equivalent of a minimum of 50 points under the LEEDv4 for BD+C: New Construction and Major Renovation standards;
  - (c) Submitted an executed Certified Business Enterprise ("CBE") agreement to D. C. Department of Small and Local Business Development that requires the Applicant to comply with all applicable CBE subcontracting requirements related to the East Tower of the Project;
  - (d) Submitted to the D.C. Department of Employment Services a signed First Source Employment Agreement ("FSEA") consistent with the First Source Employment Agreement Act of 1984 and consistent with the form of agreement included as Ex. 46F in the record of this case;
  - (e) Installed the public space improvements included in the Approved Plans, including the widening of Makemie Place adjacent to the PUD Site, subject to any modifications required to obtain DDOT's approval during public space permitting;

- (f) Submitted to DDOT a proposed curbside management plan, which plan shall include design features and specifications to ensure safe access and egress at building entrances, mitigation measures within DDOT's proposed protected bike lane to ensure that cyclists slow down as they pass the PUD Site, and the proposed placement of any no-parking entrances on I Street or Makemie Place. The final design of the curbside management is subject to DDOT approval; and
- (g) Submit to the Zoning Administrator a letter addressed to each designated beneficiary listed below offering the benefit listed:
  - 1) SW Public Housing Resident Councils - **For the life of the project**, the free use of designated church spaces, as available, for Council meetings and events;
  - 2) Government of the District of Columbia - **For the life of the project**, the free use of designated church spaces, as available, for meetings and events;
  - 3) Narcotics Anonymous - **For the life of the project**, the free use of designated church spaces, as available, for its meetings;
  - 4) Southwest Catering Company - **For the life of the project**, the free use of designated church spaces, as available, for its community-based catering job training program for DC residents;
  - 5) Southwest Renaissance Development Corporation (a nonprofit) - **For the life of the project**, the free use of designated church spaces, as available, for its "Jazz Night in D.C." and "Blue Monday Blues," multicultural, multi-racial, multi-generational preservation projects serving thousands of D.C. residents and supporting hundreds of D.C.-based jazz and blues artists;
  - 6) TransPride Festival - **For the life of the project**, the free use of designated church spaces, as available, for at least one event per year; and
  - 7) Seated Yoga Program - **For the life of the project**, the free use of designated church spaces, as available, for its weekly health and fitness programs for seniors.
- 2. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has, subject to DDOT approval, installed bulb-out(s) on Makemie Place, S.W. to reduce the distance for pedestrians crossing Makemie Place, S.W.

### C. REQUIREMENTS FOR THE LIFE OF THE PROJECT

- 1. **For the life of the Project**, the Applicant shall dedicate approximately 192,236 square feet of GFA to residential use, as follows.

2. If the units in the West Tower are delivered as rental units, then:
  - (a) **For the life of the Project**, the West Tower shall dedicate a minimum of eight percent (approx. 7,200 square feet) of the residential GFA in the West Tower as affordable housing for households earning up to 60% MFI and shall dedicate within the West Tower a minimum of eight percent (approx. 265 square feet) of the penthouse habitable space as affordable housing for households earning up to 50% MFI. The affordable housing required as a result of the penthouse habitable space is not required to be located within the penthouse;
  - (b) **For the first 40 years of the Project**, the East Tower shall dedicate 100% (approx. 102,236 square feet) of the residential GFA in the East Tower as affordable housing for households earning up to 60% MFI and shall dedicate within the East Tower a minimum of 8% (approx. 525 square feet) of the penthouse habitable space as affordable housing for households earning up to 50% MFI. The affordable housing required as a result of the penthouse habitable space is not required to be located within the penthouse; and
  - (c) **For the remaining life of the Project**, the East Tower shall dedicate a minimum of 8% (approx. 8,179 square feet) of the residential GFA in the East Tower as affordable housing for households earning up to 60% MFI and shall dedicate within the East Tower a minimum of 8% (approx. 192 square feet) of the penthouse habitable space as affordable housing for households earning up to 50% MFI. The affordable housing required as a result of the penthouse habitable space is not required to be located within the penthouse.
3. If the units in the West Tower are delivered as for-sale units, then:
  - (a) **For the life of the Project**, the West Tower is not required to include any affordable housing;
  - (b) **For the first 40 years of the Project**, the East Tower shall dedicate 100% (approx. 102,236 square feet) of the residential GFA in the East Tower as affordable housing for households earning up to 60% MFI and shall dedicate within the East Tower a minimum of eight percent (approx. 525 square feet) of the penthouse habitable space as affordable housing for households earning up to 50% MFI. The affordable housing required as a result of the penthouse habitable space is not required to be located within the penthouse; and
  - (c) **For the remaining life of the Project**, the East Tower shall dedicate in the East Tower a minimum of 15% (approx. 15,379 square feet) of the total residential GFA of the Project as affordable housing for households earning up to 60% MFI and shall dedicate within the East Tower a minimum of eight percent (approx. 457 square feet) of the total penthouse habitable space of the Project as affordable housing for

households earning up to 50% MFI. The affordable housing required as a result of the penthouse habitable space is not required to be located within the penthouse.

4. The control period for the West Tower shall commence upon the issuance of the first certificate of occupancy for the West Tower. The control period for the East Tower shall commence upon the issuance of the first certificate of occupancy for the East Tower.
5. The affordable housing described in Condition C.2 and C.3 above assumes that the Applicant will be granted an exemption from the requirements of the IZ program of Subtitle C, Chapter 10 for the first 40-year period 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;
  - (a) 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
  - (b) Should the IZ Exemption be denied, the Applicant shall provide a minimum of eight percent of the residential GFA of the Project as affordable to households earning up to 60% of MFI. The Applicant shall record the covenant required by the Inclusionary Zoning Act as to a minimum of 8% of the residential GFA of the Project and shall execute the monitoring and enforcement documents required by Subtitle X § 311.6.
6. **For the life of the Project**, the Applicant shall implement the Transportation Demand Management Plan as set forth below:
  - (a) Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile;
  - (b) Identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement;
  - (c) Provide Transportation Coordinators’ contact information to goDCgo, and report TDM activities and data collection efforts to goDCgo once per year;
  - (d) Transportation Coordinators 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 newsletters or communications;
  - (e) Transportation Coordinators will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;

- (f) 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, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing [info@godcgo.com](mailto:info@godcgo.com);
- (g) 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;
- (h) Transportation Coordinator will subscribe to goDCgo's residential newsletter;
- (i) Post all TDM commitments on website, publicize availability, and allow the public to see what commitments have been promised;
- (j) Provide a FREE SmarTrip card to every new resident and a complimentary Capital Bikeshare coupon good for one ride;
- (k) Meet ZR16 short- and long-term bicycle parking requirements. Long-term bicycle space will be provided free of charge to residents. Provide a minimum of 11 residential plus 8 church short-term spaces, and 74 residential plus 2 church long-term spaces;
- (l) Install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, carsharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
- (m) Offer an annual CaBi membership to each unit for the first year after the building opens;
- (n) Provide a bicycle repair station in each long-term bicycle parking storage room;
- (o) Provide a total of five collapsible shopping carts to encourage residents to walk to the grocery shopping and run errands; and
- (p) Provide two electric vehicle charging stations.

7. **For the life of the Project**, the Applicant shall implement the Loading Management Plan as is set forth below:

- (a) 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;
- (b) Reverse maneuvers will be required to access the loading berth; therefore, an on-site manager will be provided to ensure safety while exiting the loading berth;
- (c) All tenants will be provided with information regarding loading dock restrictions, rules, and suggested truck routes at lease signing;
- (d) All residential tenants will be required to schedule move ins/outs;
- (e) The maximum size for on-site delivery vehicles is 30 feet in length; and
- (f) If an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when the loading berth would be available.

8. **For the life of the Project**, the Church shall make space available as follows:

- (a) SW Public Housing Resident Councils - the free use of designated church spaces, as available, for Council meetings and events;
- (b) Government of the District of Columbia - the free use of designated church spaces, as available, for meetings and events;
- (c) Narcotics Anonymous - the free use of designated church spaces, as available, for its meetings;
- (d) Southwest Catering Company - the free use of designated church spaces, as available, for its community-based catering job training program for DC residents;
- (e) Southwest Renaissance Development Corporation (a nonprofit) - the free use of designated church spaces, as available, for its "Jazz Night in D.C." and "Blue Monday Blues," multicultural, multi-racial, multi-generational preservation projects serving thousands of D.C. residents and supporting hundreds of D.C.-based jazz and blues artists;
- (f) TransPride Festival - the free use of designated church spaces, as available, for at least one event per year; and
- (g) Seated Yoga Program - the free use of designated church spaces, as available, for its weekly health and fitness programs for seniors.

9. **For the life of the Project**, the Applicant shall limit the light tower element as follows:

- (a) The light tower element shall be constructed as shown on Sheets A-11.2 - A-11.5 of the Plans;
- (b) The vertical element shall be a translucent glazing system with an ambient glow with minimal light fixtures at very low light levels (approximately 5 FC);
- (c) The light fixtures shall be located behind and fully enclosed within the translucent glass system. The translucent glass will diffuse and soften the light;
- (d) The light fixtures shall be evenly spaced within the enclosure to disperse even illumination; and
- (e) The lighting shall be controlled and dimmed from inside the building, and will be on a time clock to be turned on/off at scheduled times.


#### **D. MISCELLANEOUS**


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 Office of Zoning Legal Division, and the 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.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action

**VOTE (December 16, 2021): 4-0-1** (Chairman Anthony J. Hood, Vice Chairman Robert E. Miller, Peter G. May, and Peter A. Shapiro, to **APPROVE**, Joseph Imamura not voting, having not participated).



In accordance with the provisions of Subtitle Z § 604.9, this Order No. 20-12 shall become final and effective upon publication in the *D.C. Register*; that is, on June 10, 2022.

  
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**ANTHONY HOOD**  
Chairman  
Zoning Commission

  
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**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.