

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 22-29**  
**Z.C. Case No. 22-29**  
**JT EB Land Fund, LP**  
**(Consolidated Planned Unit Development and Related Map Amendment**  
**@ Square 274 [1250 U Street, N.W.]**  
**June 29, 2023**

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on March 16, 2023, to consider the application (the “Application”) of JT EB Land Fund, LP (the “Applicant”) regarding property located at 1250 U Street, N.W. (Square 274, Lots 57-61, 133, 138, 804-820, and a portion of a public alley to be closed) (collectively, the “PUD Site”). The Applicant proposed to redevelop the PUD Site with two components:

- A new mixed-use building containing residential, lodging, and retail/service uses (the “U Street Building”); and
- 15 for-sale, three-bedroom townhomes (the “Townhomes” and together with the U Street Building, the “Project”).

To enable the Project, the Application requested the following relief under the Zoning Regulations of the District of Columbia (Title 11 of the District of Columbia Municipal Regulations (“DCMR” or “Zoning Regulations”), to which all subsequent citations refer unless otherwise specified):

- An area variance pursuant to Subtitle X, Chapter 10, from Subtitle X § 301.1, which requires a minimum PUD land area requirement of two acres (87,120 square feet) to accommodate the land area of the PUD Site as it applies to the RF-1 zoned portion of the PUD Site;
- A consolidated planned unit development (“PUD”), pursuant to Subtitle X, Chapter 3, and Subtitle Z, Chapter 3; and
- A PUD-related Zoning Map amendment from the ARTS-1 to the ARTS-4 zone for the ARTS-1 zoned portion of the PUD Site.

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z. For the reasons stated below, the Commission **APPROVES** the Application.

## **FINDINGS OF FACT**

### **I. BACKGROUND**

#### **PARTIES**

1. The Applicant is an entity affiliated with EastBanc, Inc., which is a multinational private real estate company, and was authorized to file and process the Application on behalf of the various owners of the PUD Site. (Exhibit [“Ex.”] 3B.)
2. Advisory Neighborhood Commission (“ANC”) 1B, in which the PUD Site is located, is an “affected ANC” pursuant to Subtitle Z § 101.8.
3. The Applicant and ANC 1B are automatically parties in this proceeding pursuant to Subtitle Z § 403.5.
4. The Commission received three requests for party status in opposition to the Application, and specifically from the following persons:
  - Michael Schwartz and Aisha Macedo, residents of 13<sup>th</sup> Street, N.W.; (Ex. 35-35A.)
  - James Potepa, resident of T Street, N.W.; and (Ex. 36-36A.)
  - Jenny Prime, resident of 13<sup>th</sup> Street, N.W. Unit A (Ex. 37.)
5. As a preliminary matter during the March 16, 2023 public hearing, the Commission considered the individual party status requests and consolidated them into one party in opposition (hereinafter referred to as “SPP” for “Schwartz, Potepa, and Prime”). All three requests were filed after the deadline established for party status requests by Subtitle Z § 404.4. The Commission waived the rule to allow the late requests for party status.

#### **NOTICE**

6. The Office of Zoning (“OZ”) sent notice of the March 16, 2023, public hearing in accordance with Subtitle Z § 402.1 to:
  - Authorized counsel for the Applicant;
  - The affected ANC 1B;
  - The former chair of ANC 1B;<sup>1</sup>
  - The Office of the ANCs;
  - The Office of Planning (“OP”);
  - The District Department of Transportation (“DDOT”);

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<sup>1</sup> New ANC and Single Member District (“SMD”) boundaries became effective on January 1, 2023. The PUD Site remained within the boundaries of ANC 1B but was relocated from SMD 1B12 to SMD 1B08.

- The Department of Consumer and Regulatory Affairs (“DCRA”)<sup>2</sup>;
  - The Office of Zoning Legal Division (“OZLD”);
  - The District Department of Environment (“DOEE”);
  - Councilmember Brianne K. Nadeau, the Ward 1 Councilmember in whose district the PUD Site is located;
  - The Chairman and At-Large Members of the D.C. Council;
  - The owners of the property located within 200 feet of the PUD Site.
- (Ex. 20-21.)
7. OZ published notice of the public hearing in the January 20, 2023 *District of Columbia Register* (70 DCR 693; Ex. 19.), as well as on the calendar on OZ’s website.
  8. The Applicant submitted evidence that it mailed written notice of intent to file the application to the affected ANC and to owners of all property within two hundred feet of the perimeter of the PUD Site in accordance with Subtitle Z §§ 300.7-9. (Ex. 3J.) The Applicant submitted evidence that it had posted notice of the public hearing on the PUD Site in accordance with Subtitle Z § 402.9 and maintained said notice in accordance with Subtitle Z § 402.10. (Ex. 24-24A4, 34.)

**THE PUD SITE**

9. The PUD Site is located in the northwest quadrant of the District at 1250 U Street, N.W., and is bounded by U Street to the north, private property and a 10-foot wide public alley to the east, a 15.25-foot wide public alley to the south, and 13th Street and a 10-foot wide public alley to the west. (Ex. 3.)
10. The PUD Site is located within the Greater U Street Historic District (the “U Street HD”). (Ex. 3, 3K.)
11. The overall PUD Site is bifurcated by an existing 15.25-foot wide east-west public alley and can be described as having two principal sub-sites, referred to herein as the “U Street Parcel” and the “Townhome Parcel.” (Ex. 3.)

**U Street Parcel**

12. One principal sub-site comprises the northern portion of the PUD Site and is hereinafter referred to as the “U Street Parcel.” The U Street Parcel is located at the corner of 13th and U Streets, NW, and sits directly above the west entrance of the U Street/African American Civil War Memorial/Cardozo Metrorail station (the “U Street Metro”). The U Street Parcel contains approximately 21,213 square feet of land area.
13. The U Street Parcel is presently improved with a four-story office building and two rowhome structures facing 13<sup>th</sup> Street that are contributing to the U Street HD (the “Historic

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<sup>2</sup> As of October 1, 2022, pursuant to the Department of Buildings Establishment Act of 2020, D.C. Law 23-269 (effective April 5, 2021), the building permit and development review duties previously vested with DCRA were transferred to the newly created Department of Buildings (“DOB”).

Rowhomes”). The Historic Rowhomes, located at 1931 and 1933 13<sup>th</sup> Street, N.W., were constructed in 1889, but were little more than burned out shells when they were internally combined and incorporated into a redevelopment in the 1990s, prior to the designation of the U Street HD.

14. Due to the location of the PUD Site above the U Street Metro station, the Washington Metropolitan Area Transit Authority (“WMATA”) is entitled to below- and above-grade easements on the U Street Parcel for the location, operation, maintenance, repair, and construction of Metro facilities (the “WMATA Easements”). The below-grade easements are for utility infrastructure, and the above-grade easements are for escalators, elevators, and vents. The WMATA Easements encumber approximately 20% of the U Street Parcel’s land area and occupy approximately 69% of its northern frontage facing U Street.

### **Townhome Parcel**

15. The other principal sub-site comprises the southern portion of the PUD Site and is hereinafter referred to as the “Townhome Parcel.” The Townhome Parcel is internal to the square, includes the portion of the public alley to be closed, and presently contains approximately 17,325 square feet of land area. The Townhome Parcel is currently a collection of vacant lots.
16. The existing alley to be closed within the Townhome Parcel corresponds to a portion of an H-shaped mid-block alley of historical significance that is known as Temperance Avenue. The alley dwellings originally constructed adjacent to Temperance Avenue were first developed during the Civil War when escaped slaves fled to the city and needed a place to live. The simple homes were built to house these unskilled workers and their families and lacked modern amenities such as electricity or indoor plumbing. By 1953, the alley dwellings facing Temperance Avenue were razed and all former residents were forced to find new homes.

### **PUD Site Land Area**

17. To enable the Project, the Applicant has an application pending with the Office of the Surveyor (S.O. 21-06612) that seeks to close a portion of the public alley that runs north-south between Lots 804-820 and Lots 57-61 and corresponds to the historic Temperance Avenue. As part of that application, the Applicant proposes to dedicate approximately 1,397 square feet of land area to widen a portion of the westernmost public alley in the square and a portion of the east-west alley that separates the U Street Parcel and the Townhome Parcel.
18. As a result of the proposed alley closure and land dedications, the total land area of the PUD Site is 37,021 square feet.

### **Surrounding Area**

19. The PUD Site is located at the southeast corner of 13<sup>th</sup> and U Streets, N.W., which is the epicenter of a thriving residential and commercial neighborhood in northwest Washington, DC. U Street is the neighborhood’s primary east-west corridor, offering a variety of retail storefronts, service and institutional establishments, bars and restaurants, small businesses,

grocery stores, night clubs, and other entertainment venues. Along with the adjacent 14<sup>th</sup> Street corridor, the immediate area contains a mix of 19<sup>th</sup> century residential rowhomes and newer, higher density residential multi-family buildings with ground floor retail.

20. The surrounding neighborhood is historically and culturally significant, originally home to a prominent African American community comprised of fraternal organizations, theaters, and jazz clubs, founded with the help of many important leaders in the civil rights movement, law, education, music, arts, and humanities. (Ex. 3, 3K.)
21. The PUD Site is located in a mixed-use and walkable location, with neighborhood serving retail and service establishments located in extremely close proximity.
22. The PUD Site is well served by public transit. It is located above the west entrance to the U Street Metro station, which provides service to the green and yellow Metrorail lines. A number of Metrobus routes also run near the PUD Site along U and 14<sup>th</sup> Streets, including the 52, 54, 59, 90, 92, 96 and X3 lines.
23. The PUD Site is located in close proximity to multiple Capital Bikeshare stations, including four stations located within two blocks of the PUD Site (at the intersections of 13<sup>th</sup> and U Streets, 12<sup>th</sup> and U Streets, 10<sup>th</sup> and U Streets, and 14<sup>th</sup> and V Streets). Dedicated on-street east-west bicycle lanes are located on T, V, and W Streets, N.W., and dedicated on-street north-south bicycle lanes are located on 11<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Streets.
24. A number of public parks and recreational facilities are located near the PUD Site. Harrison Recreation Center is located a block to the northwest (0.2 miles); Meridian Hill/Malcolm X Park is located slightly farther to the northwest (0.4 miles); and Cardozo Playground and Shaw Recreation Center, which includes a dog park and outdoor skateboard park, is approximately a 10-minute walk to the southeast (0.5 miles). Banneker Recreation Center and the Watha T. Daniel/Shaw DC Public Library are also located less than a mile from the PUD Site.

### **Current Zoning**

25. The PUD Site is currently split-zoned ARTS-1 and RF-1.
26. The U Street Parcel is zoned Mixed-Use Uptown ARTS-1.
27. The purposes of the ARTS zones are to, among other things: (i) encourage a pedestrian scale of development, a mixture of building uses, adaptive reuse of older buildings, strengthened design character, public safety, and 18 hour activity; (ii) require uses that encourage pedestrian activity, especially retail, entertainment, and residential uses; (iii) expand the area's housing supply in a variety of rent and price ranges; (iv) expand business and job opportunities, and encourage development of residential and commercial buildings; and (v) encourage adaptive reuse of older buildings in the area and an attractive combination of new and old buildings. (11-K DCMR § 800.1.)

28. The ARTS-1 zone is specifically intended to permit moderate-density, mixed use development. (11-K DCMR § 800.2.)
29. The ARTS-1 zone includes the following development standards:
  - Density: A maximum overall density of 2.5 floor area ratio (“FAR”) and 3.0 FAR as an Inclusionary Zoning (“IZ”) development, and a maximum non-residential density of 1.5 FAR. (11-K DCMR § 801.1.) Additional bonus density is permitted for the development of certain preferred uses pursuant to 11-K DCMR § 802;
  - Height: A maximum building height of 50 feet; (11-K DCMR § 803.1.)
  - Lot Occupancy: A maximum lot occupancy of 60% and 75% with IZ for residential use; and (11-K DCMR § 804.1.)
  - Inclusionary Zoning: An IZ development, other than an IZ Plus development, that does not employ Type I construction must set aside: (a) the greater of 10% of the residential gross floor area (“GFA”), excluding penthouse habitable space, or 75% of the bonus density utilized; and (b) an area equal to 10% of the penthouse habitable space as described in Subtitle C § 1507.2. (11-C DCMR § 1003.1.)
30. The Townhome Parcel is zoned RF-1.
31. The RF zones provide for areas developed primarily with row dwellings and are intended to, among other things: (i) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; and (ii) allow for limited compatible non-residential uses. (11-E DCMR §§ 101.1, 100.3.)
32. The RF-1 zone is specifically intended to provide for areas predominantly developed with row houses on small lots within which no more than two dwelling units are permitted. (11-E DCMR § 300.1.)
33. The RF-1 zone includes the following development standards:
  - Lot Width: Minimum lot width of 18 feet for a row dwelling or flat and 30 feet for a semi-detached dwelling. (11-E DCMR § 201.1.) For a mandatory IZ development, a minimum lot width of 16 feet if granted as a special exception; (11-DCMR § 201.3.)
  - Lot Area: Minimum lot area of 1,800 square feet for a row dwelling or flat and 3,000 square feet for a semi-detached dwelling. 11-E DCMR § 201.1. For a mandatory IZ development, a minimum lot area of 1,500 square feet; (11-E DCMR § 201.2.)
  - Density: Maximum of two dwelling units within a principal structure, or one each in the principal structure and an accessory structure; (11-E DCMR § 302.1.)
  - Building Height: Maximum building height of 35 feet and three stories. New construction of three or more immediately adjoining residential row dwellings or flats, built concurrently on separate record lots, shall be permitted with a maximum building height of 40 feet and three stories; and (11-E DCMR §§ 303.1, 303.2.)
  - Inclusionary Zoning: An IZ development, other than an IZ Plus development, that does not employ Type I construction must set aside: (a) the greater of 10% of the residential GFA, excluding penthouse habitable space, or 75% of the bonus density utilized; and



(b) an area equal to 10% of the penthouse habitable space as described in Subtitle C § 1507.2. (11-C DCMR § 1003.1.)

**Comprehensive Plan (Title 10-A DCMR, the “CP” or “Comp Plan”)**

34. The CP’s Generalized Policy Map (“GPM”) designates the U Street Parcel as a “Main Street Mixed Use Corridor”: (Ex. 3, 3H.)
- The CP’s Framework Element states that “[t]hese are traditional commercial business corridors with a concentration of older storefronts along the street. The area served can vary from one neighborhood (e.g., 14th Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper-story residential or office uses. Some corridors are underutilized, with capacity for redevelopment. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment.” (§ 225.14.)
35. The CP’s GPM designates the Townhome Parcel as a “Neighborhood Conservation Area”: (Ex. 3, 3H.)
- The CP’s Framework Element states that “Neighborhood Conservation areas have little vacant or underutilized land. They are generally residential in character. 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 opportunities are anticipated, and these can support conservation of neighborhood character where guided by Comprehensive Plan policies and the Future Land Use Map”; and (§ 225.4.)
  - The Framework Element further states that “[t]he guiding philosophy for 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 and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the FLUM and CP 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.” (§ 225.5.)
36. The CP’s Future Land Use Map (“FLUM”) designates the U Street Parcel as Mixed Use (Medium Density Residential / Medium Density Commercial): (Ex. 3, 3G.)
- According to the CP’s Framework Element, the Mixed Use designation “indicates areas where the mixing of two or more land uses is especially encouraged” and applies in various circumstances, such as “[c]ommercial corridors or districts which may not contain substantial amounts of housing today, but where more housing is desired in the future”, as well as “[d]evelopment that includes residential uses, particularly affordable

- housing, and residentially compatible industrial uses, typically achieved through a [PUD] or in a zone district that allows such a mix of uses.” (§ 227.20.)
- 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. The CP Area Elements may also provide detail on the specific uses envisioned. (§ 227.21.)
  - The Medium Density Residential 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 [IZ] or when approved through a [PUD].” (§ 227.7.)
  - The Medium Density Commercial “designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Moderate Density Commercial areas. Retail, office, and service businesses are the predominant uses, although residential uses are common. Areas with this designation generally draw from a citywide market area. Buildings are larger and/or taller than those in Moderate Density Commercial areas. Density typically ranges between a FAR of 4.0 and 6.0, with greater density possible when complying with [IZ] or when approved through a [PUD].” (§ 227.12.)
37. The FLUM designates the Townhome Parcel as Moderate Density Residential: (Ex. 3, 3G.)
- According to the CP’s Framework Element, the Moderate Density Residential designation is “used to define neighborhoods generally, but not exclusively, suited for row houses as well as low-rise garden complexes.” A density of up to 1.8 FAR is considered appropriate, although greater density may be possible when complying with IZ or when approved through a PUD. (§ 227.6.)
38. The CP’s Mid-City Area Element, which applies to the PUD Site, includes the following development priorities:
- Policies under the Mid-City Area Element are intended, in part, to “[r]etain and reinforce the historic character of Mid-City neighborhoods, particularly its mix of row houses, apartment houses, as well as historic districts, and walkable neighborhood shopping districts”; (§ 2008.2; MC-1.1.1: Neighborhood Conservation.)
  - The Mid-City Area Element encourages the stimulation of “high-quality, transit-oriented development” around the U Street Metro and “[o]pportunities for new mixed-income housing developments that provide a greater mix of affordability... [and] neighborhood retail...should be supported”; (§ 2008.3; MC-1.1.2: Directing Growth.)
  - The Mid-City Area Element promotes “redevelopment of vacant lots” but notes that “[i]nfill development should be compatible in scale and character with adjacent uses and encourage more housing opportunities”; (§ 2008.4; MC-1.1.3: Infill and Rehabilitation.)
  - The Mid-City Area Element provides that “[z]oning and policy in Mid-City’s row house neighborhoods should seek to maintain and augment the mix of large and small



- unit sizes and opportunities for both homeownership and renting”; (§ 2008.6; MC-1.1.5: Conservation of Row House Neighborhoods.)
  - The Mid-City Area Element encourages “preservation of the housing located within Mid-City’s commercially zoned areas” and “commercial uses that do not adversely impact the established residential uses”; (§ 2008.7; MC-1.1.6: Mixed-Use Districts.)
  - The Mid-City Area Element looks to “provide alternatives to automobile use—including transit and innovative personal transportation options—for existing and new residents to reduce the need for auto ownership, particularly where parking and traffic problems exist”; (§ 2008.9; MC-1.1.8: Multimodal Connections.)
  - The Mid-City Area Element calls for maintaining “the cultural diversity of Mid-City by encouraging housing and business opportunities for all residents”; (§ 2009.1; MC-1.2.1: Cultural Diversity.)
  - The Mid-City Area Element encourages opportunities for public art at appropriate locations, such as nodes and connections to Metrorail stations; and (§ 2009.5; MC-1.2.5: Public Art.)
  - The Mid-City Area Element calls for the protection of historic resources, with particular attention to neighborhoods that are at risk for inappropriate redevelopment. (§ 2009.7; MC-1.2.7: Mid-City Historic Resources.)
39. The CP’s Mid-City Area Element places the PUD Site in the U Street, N.W./Uptown Focus Area, which includes the following development priorities:
- Ensure that development is designed to make the most of its proximity to the U Street Metro Station, respect the integrity of historic resources, provide new affordable and mixed-income housing opportunities, and transition as seamlessly as possible to the residential neighborhoods nearby; (§ 2013.7; MC-2.3.3: Uptown Design Considerations.)
  - Promote cultural tourism initiatives, public art, signage, and other improvements that recognize the Black historic and cultural heritage of the Uptown District and bring economic development opportunities to local residents and businesses; and (§ 2013.8; MC-2.3.4: Cultural Tourism.)
  - Encourage the development of shared parking facilities and better manage existing parking resources. (§ 2013.9; MC-2.3.3: Multimodal Management.)

**Small Area Plan**

40. The PUD Site is subject to the objectives and recommendations of the DUKE Development Framework for a Cultural Designation District within Washington, DC’s Greater Shaw/U Street (the “DUKE Small Area Plan (“SAP”)), which:
- Provides guidance on revitalizing the transit accessible Shaw/U Street neighborhood, as well as to achieve a cohesive and inclusive district which meets the community and District goals; (SAP at p. 4.)
  - Places the PUD Site just within the boundary of the Lincoln Common Sub-District; and (SAP at p. 13.)
  - Refers to the U Street Parcel as an “other developable site” and makes three specific recommendations (SAP at p. 31):
    - Make the U Street Metro Plaza more pedestrian friendly and safe;

- Use public art and a distinctive Metro escalator canopy to enhance the public space in front of the U Street Metro station and new office building; and
- Encourage use of the public space for a farmers’ market, pushcarts or other activity to enliven the area.

## **II. THE APPLICATION**

### **THE PROJECT**

41. The Application, as amended, proposes to redevelop the PUD Site with a new mixed-use development (the U Street Building) that incorporates a new pedestrian-focused entrance to the U Street Metro station, significant new housing and affordable housing, hotel rooms for visitors to the District, and neighborhood-serving retail. The Application also proposes the construction of the Townhomes along Temperance Avenue, which is the existing north-south public alley to be closed.
  
42. Overall, the Project will have approximately 190,190 square feet of total GFA, which amounts to a blended density of 5.14 FAR across the entire PUD Site.
  
43. The U Street Building will be constructed on the U Street Parcel and will provide:
  - Approximately 160,930 square feet of GFA;
  - An additional 9,905 square feet of penthouse habitable space devoted to residential units and amenity space;
  - A maximum building height of 96.8 feet;
  - A total density of 7.59 FAR, as measured over the U Street Parcel;
  - A residential density of 5.62 FAR, generating approximately 131 units with the following bedroom mix:
    - Approximately 48 studio units (37% of the overall unit mix);
    - Approximately 75 one-bedroom units (57% of the overall unit mix); and
    - Approximately 8 two-bedroom units (6% of the overall units mix);
  - Approximately 6,780 square feet devoted to ground floor retail/commercial use;
  - Approximately 35,000 square feet devoted to lodging use;
  - Approximately 17 IZ units, generated as follows:
    - An allocation of no less than 15% of the residential GFA for IZ units reserved for households with a maximum Median Family Income (“MFI”) not exceeding 60%; and
    - An allocation of no less than 12% of the penthouse habitable space for IZ units reserved for households with a maximum MFI not exceeding 50%;
  - No vehicle parking spaces;
  - Approximately 53 long term and approximately 12 short term bicycle parking spaces; and
  - Various outdoor amenities including courtyard spaces, amenity terraces, penthouse recreational space, and areas of extensive and intensive green roof planting.
  
44. Notably, the Application included a request for flexibility to convert some or all of the fourth floor of the U Street Building from residential use to lodging use should the demand

for lodging use increase in the future. The Application confirmed that if the fourth floor is converted to lodging use, the total number of units would be reduced by approximately 18 units, but the overall unit mix would remain generally the same. (Ex. 3.)

45. The Townhomes and the redevelopment of the Townhome Parcel and will provide:
- Approximately 29,260 square feet of GFA, entirely devoted to residential use;
  - A maximum height of 30 feet and three stories;
  - A total density of 1.85 FAR, as measured over the Townhome Parcel;
  - Fifteen for-sale, three-bedroom townhome units;
  - Floor plans that include living, kitchen, and dining areas on the first floor, with the upper floors designed to accommodate three bedrooms and space for family/living rooms;
  - An allocation of two Townhomes as IZ units reserved for households with a maximum MFI not exceeding 80%;
  - The conversion of Temperance Avenue into a landscaped, pedestrianized walkway open to the public, lined with landscaping and sustainable features; and
  - No vehicle parking spaces.

#### **RELIEF REQUESTED**

##### **Minimum PUD Land Area**

46. The minimum land area for a PUD in the RF-1 zone is two acres (87,120 square feet). Pursuant to Subtitle X § 301.2, the Commission may waive up to 50% of the minimum PUD land area requirement in the RF-1 zone, which would allow for a PUD land area of one acre (43,560 square feet). To accommodate the PUD Site's 37,021 square feet of land area, the Application requested that the Commission (i) waive 50% of the minimum PUD land area; and (ii) grant flexibility and/or an area variance from the remainder, which is 6,539 square feet less than the minimum required after the 50% reduction is taken.

##### **Related Map Amendment**

47. The Application requested the Commission approve a Consolidated PUD with a related Zoning Map amendment to rezone the U Street Parcel from the ARTS-1 zone to the ARTS-4 zone. (Ex. 3.)
48. As a result of this map amendment, the Project can achieve the additional height and density on the U Street Parcel as follows:
- Height: 96.8 feet proposed on the U Street Parcel; gain of 46.8 feet when compared to matter-of-right height permitted under existing zoning (maximum 50 feet); and
  - Density: 7.59 FAR proposed on the U Street Parcel; gain of 4.59 FAR when compared to matter-of-right density permitted under existing zoning, excluding bonus density permitted with preferred uses under Subtitle K § 802 (maximum 2.5 FAR and 3.0 FAR with IZ). (Ex. 32.)

##### **Zoning Flexibility**

49. The Application, as amended, requested additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1.

50. With respect to the U Street Building, the Application requested the following PUD-related zoning flexibility:

- Maximum Lot Occupancy: Maximum lot occupancy of 80% is permitted pursuant to Subtitle K § 804.1, whereas 100% is proposed under the rules of calculation for lot occupancy. However, no single floor is constructed at 100%, and significant additional setbacks and courts are provided throughout the building;
- Minimum Rear Yard: Minimum rear yard of 20.7 feet is required pursuant to Subtitle K § 805.1, whereas a minimum rear yard of 7.625 feet is being provided;
- Minimum Closed Court Width and Area: Minimum closed court width of 12 to 16.4 feet and closed court area of 288 to 450 square feet are required for “Closed Court 3” pursuant to Subtitle K § 807.1 (*see* Sheet 26 of Ex. 28A2), whereas a minimum width of 10 feet and a minimum area of 266 square feet are provided;
- Minimum Setback Abutting RF Zone: A 45-degree setback beginning at 65 feet is required pursuant to Subtitle K § 803.4, which is not being provided for a portion of the building;
- U Street Frontage Requirements: Pursuant to Subtitle K § 810.1, each new building fronting U Street must be designed and built so that not less than 75% of the streetwall to a height of not less than 15 feet is constructed to the street lot line (the “Streetwall Requirement”), and that not less than 50% of the surface area of the streetwall that fronts U Street is designed to display windows and to entrances to commercial uses (the “Surface Area Requirement”). However, only 17.6% (37.3 feet) of the U Street Building’s front façade can be constructed in accordance with the Streetwall Requirement, and only 13.4% (28.5 feet) of the ground level surface area of the U Street Building can satisfy the Surface Area Requirement;
- Linear Frontage of Eating and Drinking Establishments: No more than 50% of the linear feet of the U Street frontage in Square 274 may be devoted to eating and drinking establishments pursuant to Subtitle K § 811.9. The Applicant asserted that as of the date of filing the Application, less than 50 linear feet of the U Street frontage in Square 274 was devoted to eating and drinking establishments. The Applicant requested flexibility from Subtitle K § 811.9 out of an abundance of caution and to allow for greater than 50% in the future; and
- Minimum Parking: A minimum of 33 vehicle parking spaces are required pursuant to Subtitle C § 701.5, whereas zero spaces are being provided.

(Ex. 3, Ex. 28, 28A2.)

51. With respect to the Townhomes, the Application requested the following PUD-related zoning flexibility:

- Maximum Lot Occupancy: Maximum lot occupancy of 60% is permitted pursuant to Subtitle E § 304.1, whereas a maximum of 66% to 81.5% is proposed;
- Density - Lot Dimensions: Minimum lot width of 18 feet and minimum lot area of 1,500 square feet are required for an IZ development in the RF-1 zone pursuant to Subtitle E § 201.4. However, lot dimensions of 14.3 feet to 20 feet (lot width) and 948 square feet to 1,171 square feet (lot area) are provided;

- Minimum Side Yard: Minimum side yard of five feet is required pursuant to Subtitle E § 207.2, whereas the southernmost Townhome has a side yard of two and one-half feet.
- Minimum Rear Yard: Minimum rear yard of 20 feet is required pursuant to Subtitle E § 306.1, whereas the proposed rear yards of the Townhomes range from eight feet to 20.5 feet; and
- Minimum Parking: One parking space is required for each Townhome (15 total) pursuant to Subtitle C § 701.5, whereas zero parking spaces are being provided. (Ex. 3, Ex. 28, 28A2.)

### **Design Flexibility**

52. The Application requested the Commission approve design flexibility to vary certain elements in the Application’s final plans as approved by the Commission and still comply with the requirement of Subtitle X § 311.2 and Subtitle Z § 702.8 to construct the Project in complete compliance with the final plans, specifically relating to the following:

- Number of dwelling units;
- Number and mix of IZ units;
- Number of lodging rooms/keys;
- Fourth floor conversion from residential to lodging use;
- Types of uses designated as “retail” on the approved plans;
- Interior components;
- Exterior materials;
- Exterior details;
- Exterior courtyards and rooftop elements;
- Building projections;
- Signage;
- Streetscape design;
- U Street Metro Plaza design; and
- Sustainable features.

(Ex. 3.)

### **APPLICANT’S SUBMISSIONS AND TESTIMONY**

53. On August 19, 2022, the Applicant filed its original Application and initially proffered the following benefits and amenities in connection with the consolidated PUD:

- Superior urban design and architecture; (Subtitle X § 305.5(a).)
- Superior landscaping, or creation or preservation of open spaces; (Subtitle X 305.5(b).)
- Site planning and efficient and economical land utilization; (Subtitle X § 305.5(c).)
- Commemorative works or public art; (Subtitle X § 305.5(d).)
- Historic preservation of private or public structures, places, or parks; (Subtitle X § 305.5(e).)
- Housing; (Subtitle X § 305.5(f).)
- Affordable housing; (Subtitle X § 305.5(g).)
- Employment and training opportunities; (Subtitle X § 305.5(h).)
- Environmental and sustainable benefits; (Subtitle X § 305.5(k).)
- Streetscape plans; (Subtitle X § 305.5(l).)

- Transportation infrastructure; (Subtitle X § 305.5(o).)
- Mass transit improvements; (Subtitle X § 305.5(p).)
- Uses of special value to the neighborhood or the District of Columbia as a whole ; and (Subtitle X § 305.5(q).)
- Other public benefits and project amenities and other ways in which the proposed PUD substantially advances the major themes and other policies and objectives of any of the elements of the CP. (Subtitle X § 305.5(r).)

(Ex. 1-3L.)

54. The Commission voted to set down the Application for a public hearing at its November 10, 2022, public meeting. At that meeting, the Commission requested additional information pertaining to the Application’s consistency with the CP FLUM and potential inconsistencies with the CP; the affordable housing benefit; and the design approach for the Townhomes, among other things.

55. Following the Commission’s November 10, 2022, public meeting, the Applicant filed a prehearing submission on December 21, 2022, which responded to the Commission’s questions and comments and included the following:

- A supplemental evaluation of how the Application was not inconsistent with the FLUM, and an analysis of the potential CP inconsistencies;
- Further details as to how the Applicant’s affordable housing proffer advances the CP’s racial equity themes and objectives;
- Additional information and justifications for the design of the Townhomes, including a summary of the feedback received from the Historic Preservation Office (“HPO”) and the review process with the Historic Preservation Review Board (“HPRB”), which ultimately led to concept approval;
- Further analysis of potential impacts to residential uses surrounding the PUD Site, including solar studies to demonstrate potential impacts to light and air;
- Additional justifications in support of the requested zoning flexibility from Subtitle K § 803.4, which requires that a building in the ARTS-4 zone provide a 45 degree setback from an abutting RF-1 zone starting at 65 feet in height;
- An updated list of proffered public benefits and amenities with corresponding details;
- Updates regarding the Applicant’s community outreach and meeting history since filing the initial Application;
- ANC 1B’s resolution in support of the Applicant’s alley closing application pending with the Office of the Surveyor (S.O. 21-06612) related to the Project;
- Information and exhibits to satisfy the supplemental filing requirements of Subtitle Z § 401, including expert resumes for:
  - Mark Gilliland, FAIA, the Project’s architect;
  - William Zeid, PE, the Project’s traffic consultant;
  - Brandice Elliott, the Project’s urban planner;
  - Tim Bragan, the Project’s landscape architect; and
  - Michael Szynal, the Project’s civil engineer.

(Ex. 16-17H.)



56. On February 13, 2023, the Applicant submitted a Comprehensive Transportation Review (“CTR”) prepared by Gorove/Slade regarding the Project at the PUD Site, which concluded that, due to the Project’s low vehicular trip generation, it is not expected to have a detrimental impact on the surrounding transportation network, surrounding parking, or the surrounding alley network. (Ex. 26-26A2.)
57. On February 24, 2023, the Applicant submitted a supplemental prehearing submission that included the following:
- A complete set of updated architectural plans and elevations<sup>3</sup>;
  - IZ unit location plans;
  - A supplemental CP and racial equity evaluation, offered in light of the updated Racial Equity Tool released by the Zoning Commission on February 3, 2023;
  - A further updated list of proffered public benefits and amenities with corresponding details; and
  - Updates regarding the Applicant’s outreach to ANC 1B and the surrounding community.
- (Ex. 28-28E.)

### **Testimony**

58. At the March 16, 2023, public hearing (the “Public Hearing”), the Applicant presented the Application, including the testimony of four witnesses:
- Hope Richardson, Applicant’s representative, EastBanc, Inc.;
  - Mark Gilliland, Project Architect, Shalom Baranes Associates;
  - William Zeid, Traffic Engineer, Gorove-Slade Associates, Inc.; and
  - Brandice Elliott, Urban Planner, Holland & Knight LLP. (Transcript of March 16, 2023, Public Hearing [“Hrg. Tr.”] p. 22-55.)

### **Post-Hearing Submissions**

59. On April 3, 2023, the Applicant submitted a post-hearing submission (Ex. 66 – 66E, the “First Post-Hearing Submission”.) that included the following information to address the Commission’s requests made at the March 16, 2023, public hearing:
- The Applicant’s responses to assertions put forth by the Office of the Attorney General (“OAG”) regarding the application of IZ Plus to determine the value of the proffered affordable housing benefit;
  - Further justifications for the proposed 30-foot, three story height of the Townhomes, including an assessment of alternative Townhome layouts and updated solar studies;

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<sup>3</sup> Initially, the Applicant proposed to maintain portions of the PUD Site as private property with non-exclusive alley easements. However, following discussions with DDOT, the Applicant proposed to formally dedicate portions of the PUD Site as public space having the effect of widening the public alleys adjacent to the Townhomes. The updated architectural plans at Ex. 28A1-28A5 show the PUD Site’s revised lot line and resulted in the following changes to the initial application: (1) reducing the land area of the PUD Site from 38,538 square feet to 37,021 square feet; (2) reducing the proposed lot area and increasing the proposed lot occupancy for 11 of the 15 individual townhomes; and eliminating the need for side yard relief for the northernmost townhome.

- Further explanation regarding the appropriateness of the Townhomes and the proposed development of the Townhome Parcel, as compared to prior redevelopment efforts for the Townhome Parcel (specifically, BZA Case No. 16927, which was denied in 2003);
  - Additional information regarding the constraints limiting the buildable area on the U Street Parcel, particularly the WMATA Easements;
  - Written rebuttal to the issues and concerns raised during the Public Hearing by SPP and witnesses in opposition to the Application; and
  - Updates regarding the Applicant’s outreach and negotiations with SPP following the March 16, 2023, public hearing.
60. On April 10, 2023, the Applicant submitted a draft order with cover letter. (Ex. 69, 69A.)
61. On April 27, 2023, the Applicant submitted a second post-hearing submission (the “Second Post-Hearing Submission”) that proposed the following additional safety measures to improve the overall experience for residents and pedestrians using the alley system in response to the concerns expressed by the Commission at its April 13, 2023 public meeting: (Ex. 72-72A.)
- Speed humps in the north-south and east-west portions of the public alley system;
  - Vehicular bollards and detectable warning strip(s) on the PUD Site at the intersections of the pedestrian mews and the east-west public alleys to visually distinguish private property (pedestrian only) and public alley (with vehicles);
  - Blind spot mirrors at alley intersections;
  - Pedestrian-scaled lighting in the mews and in the north-south alley;
  - A widened crosswalk connecting the U Street Building and the Townhomes;
  - Multi-directional dome cameras to monitor activity within the alleys and in Temperance Avenue; and
  - Wayfinding and pedestrian safety signage, specifically:
    - Wayfinding blade signs at the north and south ends of Temperance Avenue, and potentially on the façade of the historic rowhome on 13<sup>th</sup> Street, which will encourage pedestrians to use the pedestrian-only mews rather than the surrounding alleys. A drawing showing the approximate location, size, and character of the proposed blade signs is in the record at Ex. 72A, p. 3;
    - Signs(s) on 13<sup>th</sup> Street announcing location of Temperance Avenue; and
    - Sign(s) in the east-west and north-south alleys to indicate the presence of pedestrians. A new rendering showing the character and massing of the pedestrian-only Temperance Avenue, including several of the safety mitigation measures described above, is in the record at Ex. 72A, p. 4.
62. On May 18, 2023, the Applicant submitted its cover letter and initial list of final proffers and draft conditions. (Ex. 76, 76A.)
63. On June 1, 2023, the Applicant submitted its final revised list of proffers and draft conditions. (Ex. 77.)

## APPLICANT'S JUSTIFICATIONS FOR RELIEF

### Area Variance from the Minimum PUD Land Area

64. The Applicant asserted that it met the requirements of Subtitle X § 1002.1(a) for an area variance from Subtitle X § 301.1's minimum land area requirement of two acres (87,120 square feet) for a PUD in the RF-1 zone, to authorize a PUD in an RF-1 zone for the 37,021 square feet of the PUD Site (approximately 6,539 square feet less than the 50% waiver authorized by Subtitle X § 301.2.) as follows:

- **Exceptional Condition** – The PUD Site is uniquely challenged, and any future development of the PUD Site must account for various conditions that are particular to this location. The existing WMATA Easements limit the buildable area at the front along U Street and push the footprint of the U Street Building toward the rear. The Townhome Parcel is constrained by abutting public alleys that are necessary for access and circulation within the square, and any future development must account for the historical significance of Temperance Avenue. Thus, there is no opportunity to increase the size of the Townhome Parcel in order to meet the minimum land area requirement for a PUD in the RF-1 zone, even after applying the 50% waiver afforded under 11-X DCMR § 301.2;
- **Practical Difficulty** – As a result of the Applicant's inability to increase the size of the PUD Site, if the minimum land area requirements were strictly applied the Applicant would be forced to abandon the PUD application as it relates to the Townhome Parcel, thus surrendering an opportunity to provide additional housing in the District, including affordable housing, and housing with three-bedroom units, as well as other associated benefits to the surrounding community;
- **No Substantial Detriment to the Public Good** – The requested area variance from the PUD minimum land area requirement applicable to the RF-1 zone would not cause substantial detriment to the public good because the Application proposes to develop the Townhome Parcel with 15 for-sale Townhomes, including two affordable three-bedroom units, in a transit accessible location that is in close proximity to various amenities and neighborhood-serving retail along the U Street Corridor. The Townhome development will not cause any substantial impact on light or air to surrounding homes and will not create any adverse traffic impacts that cannot be mitigated; and
- **No Substantial Impairment of the Zoning Regulations** – The requested area variance would not result in any substantial impairment of the Zoning Regulations or maps because the Application is fully consistent with the PUD standards of Subtitle X §§ 303 and 304 and with the purposes and intent of the PUD process.

(Ex. 3, 28, 66.)

65. The Applicant presented additional justifications for relief from the minimum PUD land area requirements for the RF-1 zone in its Statement in Support, as supplemented in its Supplemental Prehearing Submission and Post-Hearing Submission. (Ex. 3, 28, 66.)

### Consistent with the CP and Public Policies (Subtitle X § 304.4(a))

66. The Applicant asserted the Application complied with Subtitle X § 304.4 because the Application is not inconsistent with the CP as a whole, including, its maps and policies,

and other public policies, as set forth in Findings of Fact (“FF”) Nos. 67-98 below. (Ex. 3I, 17, 28, 28C, 39A4, 66.)

***Framework Element***

67. The Project is not inconsistent with the U Street Parcel’s Main Street Mixed Use Corridor designation on the GPM, as the U Street Building is designed is designed to “support transit use and enhance the pedestrian environment.” (CP § 225.14.) The ground floor of the U Street Building will enliven the abutting public space adjacent to the U Street Metro, specifically with the implementation of glass storefronts, new lighting, and an overhang that will protect Metro riders from precipitation. With the integration of ground floor retail, the U Street Building will add visual interest to the block, attracting new patrons and visitors to this prominent location. The proposed use mix within the U Street Building will “foster economic and housing opportunities” that are needed along U Street and at the PUD Site in particular. On a broader scale, the Project will enhance the U Street corridor as a whole as it will attract an influx of residents, retail patrons, and hotel guests who will contribute further to the vitality of the U Street corridor, which has great cultural and historical significance.
68. The Project is not inconsistent with the Townhome Parcel’s Neighborhood Conservation Area designation on the GPM. As the Framework Element states, the Neighborhood Conservation Area designation is “not intended to preclude development.” (CP § 225.5.) This is particularly true in this case where the Townhome Parcel, which is currently vacant and underutilized, will be redeveloped with 15 for-sale townhome units, two of which will be set aside for households earning up to 80% of the MFI. Not only will the Project address city-wide housing needs, but the proposed design and scale of the Townhomes will be compatible with the surrounding context. The character of the Townhome Parcel is heavily informed by the surrounding rowhomes to the west, south, and east of the PUD Site, and their design has been reviewed and approved in concept by the HPRB. The proposed layout, coupled with the pedestrianized walkway, recreates the historic Temperance Avenue and retains the neighborhood character that surrounds the Townhome Parcel.
69. The Project is not inconsistent with the FLUM’s Mixed Use (Medium Density Residential/Medium Density Commercial) designation that applies to the U Street Parcel because:
- The “Mixed Use” designation is found in areas where two or more uses are encouraged and is generally assigned to commercial corridors or districts that may not contain substantial amounts of housing but where more housing is desired in the future. It is also assigned to development that includes residential uses, particularly affordable housing, and residentially compatible industrial uses, typically achieved through a PUD or in a zone district that allows such a mix of uses; (CP § 227.20.)
  - Typically, the general intensity of development within a given Mixed Use area is determined by the specific mix of uses shown on the FLUM. (CP § 227.21.) In this case, the FLUM itself does not indicate a preference for residential or commercial use on the U Street Parcel; yet a reasonable assumption can be made that the CP generally favors a contextually sensitive mix of uses, including diverse housing options and

ground floor retail that is capable of activating the abutting public space, particularly because of:

- Mid-City Area Element policies that encourage “high-quality, transit-oriented development” around the U Street Metro that support opportunities for new mixed-income housing and neighborhood retail yet ensure the compatibility of infill development; (CP §§ 2008.3 and 2008.4.)
- Policies for the U Street, N.W./Uptown Policy Focus Area that emphasize the “vibrancy” of U Street and call for “measures to retain and foster diverse businesses and culture” within the surround area; and (CP §§ 2013.2, 2013.5.)
- DUKE Plan supports redeveloping the U Street Parcel in a manner that “make[s] the [U Street] plaza more pedestrian friendly and safe” and encourages the use of public space to enliven the surrounding neighborhood; (DUKE Plan at p. 31.)
- The individual FLUM categories comprising the “Mixed Use” designation provide further insight regarding the density that would be appropriate for the U Street Parcel;
- The Medium Density Commercial category cites the MU-8 and the MU-10 zones as being consistent, which permit a maximum PUD density of up to 7.2 FAR and 8.64 FAR, respectively;
- The related map amendment of the U Street Parcel from the ARTS-1 to the ARTS-4 zone is not inconsistent because the ARTS-4 zone is intended to permit medium- to high-density, mixed-use development, with a balance of uses conducive to a higher quality of life and environment for residents, businesses, employees, and institutions; (Subtitle K § 800.5.)
- The ARTS-4 zone is therefore not inconsistent with the CP given the proposed development program, which simply cannot be accommodated by the existing ARTS-1 zoning that permits a maximum overall density of 2.5 FAR (3.0 FAR with IZ) and a building height of 50 feet. The proposed U Street Building will have a total density of 7.59 FAR, of which 1.97 FAR will be devoted to nonresidential use, and a maximum height of 96.8 feet. This amount of density and height is acceptable given that the Medium Density Commercial category cites the MU-8 and the MU-10 zones as being consistent;
- The proposed density and height of the U Street Building better aligns with the District’s goals for the U Street Parcel, particularly CP policies relating to the redevelopment of U Street between 6th and 12th Streets and the DUKE Plan’s vision of creating a destination-oriented mixed-use development program along U Street; and
- The U Street Parcel is currently improved with an underutilized, four-story office building that does not maximize the PUD Site’s transit-oriented location, nor effectively contributes to the “vibrancy” of the U Street Corridor as encouraged by relevant policies of the CP, whereas the Project and related map amendment to ARTS-4 will better align the U Street Parcel with its Mixed Use (Medium Density Residential/Medium Density Commercial) designation on the FLUM.

70. The Project is not inconsistent with the FLUM’s Moderate Density Residential designation that applies to the Townhome Parcel because:



- The Moderate Density Residential designation is applied to areas characterized by a mix of single-family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings; (CP § 227.6.)
- Density in Moderate Density Residential areas is typically calculated either as the number of dwelling units per minimum lot area, or as a FAR up to 1.8, although greater density maybe possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development; (CP § 227.6.)
- The R-3, RF, and RA-2 Zone Districts are consistent with the Moderate Density Residential Category, and other zones may also apply; (CP § 227.6.)
- The Townhome Parcel, which is currently vacant, will be developed with 15 for-sale townhomes that will be 30 feet and three stories in height, ensuring compatibility with the surrounding context;
- The proposed density of the Townhomes will amount to 1.85 FAR, based on the land area of the Townhome Parcel; and
- The scale and design of the Townhomes will complement the surrounding neighborhood that has long been characterized by moderate density residential use, including other immediately adjacent townhomes.

71. The Applicant provided further justifications in support of the Project’s consistency with the CP’s Framework Element in its CP Evaluation, in subsequent filings, and through testimony at the public hearing. (Ex. 3, 3I, 17, 39A4, 66.)

***Mid-City Area Element***

72. The Project is not inconsistent with the CP’s Mid-City Area Element because the Project will revitalize a prominent, transit-oriented location with a new mixed-use development that incorporates significant new housing, including affordable housing, a new lodging use, and new ground-floor retail capable of activating and strengthening the U Street corridor. The Project promotes growth in a location of the Planning Area where it is sensible and desired by the District. The PUD Site is adjacent to Metrorail, the U Street corridor, and is in close proximity to other properties that offer neighborhood-serving uses. Further, the design of the Project is context-sensitive, concentrating density and a diverse mix of uses toward U Street, and maintaining a moderate-scale townhome component at the rear of the PUD Site that ensures compatibility with adjacent uses and creates more and diverse housing opportunities. Finally, the Project is designed to encourage multimodal travel and lower dependency on vehicular use. The lack of vehicle parking, coupled with the various streetscape improvements and proximity to multiple forms of public transportation, will foster the pedestrian-oriented environment that is envisioned for the Mid-City planning area. (MC-1.1.1, MC-1.1.2. MC-1.1.3. MC-1.1.4. MC-1.1.5, MC-1.1.6, MC-1.1.7, MC-1.1.8, MC-1.2.1.)

73. The Applicant provided justifications in support of the Project’s consistency with the Mid-City Area Element in its CP Evaluation, in subsequent filings, and through testimony at the public hearing. (Ex. 3I, 39A4.)



### ***U Street NW/Uptown Focus Area***

74. The Project reflects the type of development that aligns with the objectives for the U Street, N.W./Uptown Focus Area. The Project is intended to maximize the PUD Site's proximity to the U Street Metro, as it discourages automobile use by providing zero on-site parking spaces and fosters an enhanced environment for pedestrians and cyclists through new streetscape and landscape improvements. The proposed design also respects the integrity of surrounding historic resources by retaining the exterior features of the Historic Rowhomes along 13th Street and integrating them into the design and program of the U Street Building. Further, the Project will support cultural tourism initiatives, particularly with its lodging component, and acknowledge the historical significance of the area through commemorative artwork. (MC-2.3.3, MC-2.3.4, MC-2.3.5.)
75. The Applicant provided justifications in support of the Project's consistency with the U Street, N.W./Uptown Focus Area in its CP Evaluation, in subsequent filings, and through testimony at the public hearing. (Ex. 3I, 39A4.)

### ***Citywide Elements***

76. The Project is not inconsistent with the CP's Land Use Element because the Project is a pedestrian-oriented, infill development that will provide new multi-family and family-sized housing, including substantial affordable housing at a range of income levels, in a high opportunity area in close proximity to transit. The Project maximizes its locational advantages and provides a mix of uses that are appropriate for each portion of the PUD Site given applicable CP policies and objectives. The proposed mix of uses and the ground floor design of the U Street Building results in a high-quality, signature building that will activate the public realm around the U Street Metro entrance. The retail and lodging uses in particular will activate the U Street corridor in a manner that current improvements on the PUD Site are incapable of doing. The architectural design, scale, and layout of the Townhomes will complement the established character of the area and retain the configuration of historic Temperance Avenue. Accordingly, the entirety of the PUD Site is severely underutilized, and the Project will facilitate a more efficient and effective use of the PUD Site that provides access and creates new opportunities for all District residents. (LU-1.4.1, LU-1.4.2, LU-1.4.3, LU-1.4.5, LU-1.4.6, LU-1.4.8, LU-1.4.B, LU-1.4.C, LU-1.5.1, LU-1.5.2, LU-2.1.1, LU-2.1.3, LU-2.1.4, LU-2.1.7, LU-2.1.8, LU-2.1.10, LU-2.1.13, LU-2.2.2, LU-2.2.4, LU-2.3.2, LU-2.1.3, 2.3.4, LU-2.4.5, LU-2.4.11.)
77. The Project is not inconsistent with the CP's Transportation Element because the Project will establish a new transit-oriented development directly adjacent to the U Street Metro station. The Project is designed to enhance pedestrian connections and promote the use of public transit, particularly because no vehicle parking will be provided. Various improvements, such as the installation of special paving, are intended to communicate the pedestrian-oriented nature of the Project. A distinguishing element of the Project is that it involves the redesign and construction of the U Street Metro entrance located at the southeast corner of the intersection of U and 13<sup>th</sup> Streets. The proposed improvements will not only elevate the aesthetic appeal of the entrance but will create a more comfortable space where transit riders, pedestrians, and residents of the Project are likely to gather and interact. The conversion of the closed alley into a pedestrianized walkway, in addition to

the proposed land dedications, will improve circulation within the square and foster an enhanced experience for pedestrians and cyclists. (T-1.1.2, T-1.1.4, T-1.1.7, T-1.1.8, T-1.1.B, T-1.2.1, T-1.2.3, T-1.4.1, T-2.1.4, T-2.2.1, T-2.3.3, T-2.3.5, T-2.3.B, T-2.4.1, T-2.4.2, T-2.4.B, T-3.1.1, T-3.3.4, T-3.3.7.)

78. The Project is not inconsistent with the CP's Housing Element because it creates a mixed-use development with mixed-income housing, including a substantial affordable housing component. The U Street Building will provide approximately 131 new multifamily units in a high-priority area near public transit. These multifamily units will be distributed among studio, one-bedroom, and two-bedroom unit types. Importantly, 15% of the residential GFA will be set aside as IZ units at 60% of the MFI; and 12% of the penthouse floor area will be set aside as IZ units at 50% of the MFI. The Project also includes the construction of 15 for-sale townhome units on the Townhome Parcel. Each of the three-story townhomes will consist of three bedrooms, and thus can realistically accommodate family-sized households. Moreover, the Applicant will set aside two of the for-sale Townhomes as affordable units, which amounts to approximately 13.33% of the residential GFA of the Townhome Parcel. These two Townhomes will be set aside for households earning up to 80% of the MFI, consistent with IZ requirements for for-sale units. In light of the foregoing, the Project will advance many of the District's housing and affordable housing goals set forth in the Housing Element, and will help to address citywide housing needs at an underutilized and appropriate location. (H-1.1.2, H-1.1.3, H-1.1.4, H-1.1.5, H-1.1.8, H-1.1.9, H-1.2.1, H-1.2.3, H-1.2.7, H-1.2.9, H-1.2.11, H-1.3.1, H-1.3.2, H-1.4.6, H-1.6.1.)
79. The Project is not inconsistent with the CP's Environmental Protection Element by achieving the equivalent of LEED Gold under LEED v.4 for Building Design and Construction for the U Street Building and the equivalent of LEED Gold under LEED v.4.1 for Building Design and Construction: Homes Single Family Update for the Townhomes. The Project will also integrate various sustainability measures, including green roofs, landscaping improvements, pervious paving, and street trees that will add tree canopy, provide shade, improve air quality, provide urban habitat, and add aesthetic value. The Project will also include electric bicycle facilities and all-electric appliances and incorporate enhanced indoor air quality strategies. Furthermore, by providing zero on-site parking spaces, the Project will help to reduce air pollution, and further reduce reliance on automobiles in the District. (E-1.1.2, E-1.1.5, E-2.1.2, E-2.1.3, E-2.1.4, E-2.1.5, E-3.2.3, E-3.2.5, E-3.2.7, E-4.1.1, E-4.1.2, E-4.1.3, E-4.2.1, E-5.1.5.)
80. The Project is not inconsistent with the CP's Economic Development Element because the U Street Building contains approximately 6,780 square feet devoted to retail and service uses on the ground floor surrounding the U Street Metro entrance, with lodging and residential uses on the floors above. In light of this development program, the Project will create economic opportunities for current and future District residents consistent with the policies and goals of the Economic Development Element. The new retail spaces will create unique shopping experiences around the U Street Metro, including opportunities for new, potentially locally owned, neighborhood serving uses. The proposed lodging use has the potential to provide new employment opportunities and diversify the economy along the U Street corridor. Furthermore, the inclusion of a hotel component also advances the

District's goals that seek to gain a competitive edge and call for growing the hospitality industry, as it can accommodate additional visitors to U Street – one of the most celebrated cultural and entertainment hubs of the District – and nearby attractions. (ED-1.1.2, ED-1.1.3, ED-1.1.6, ED-2.2.1, ED-2.2.3, ED-2.2.5, ED-2.2.9, ED-2.2.9, ED-2.3.1, ED-2.3.4, ED-2.3.9, ED-3.1.1, ED-4.2.1.)

81. The Project is not inconsistent with the CP's Parks, Recreation, and Open Space Element because the Project will result in the complete redesign of the U Street Metro, which design maintains some developable land area open to the public as an effort to expand the public realm and create a safer, more comfortable space for public interactions. In addition to enhance the U Street Metro entrance, the Project will integrate open spaces throughout the PUD Site, such as the pedestrianized walkway along Temperance Avenue that will be accessible and open to the public. (PROS-1.2.2, PROS-4.3.1, PROS-4.3.2, PROS-4.3.3, PROS-4.3.4, PROS-4.3.5.)
82. The Project is not inconsistent with the CP's Urban Design Element because it reflects a quality design that integrates design elements to achieve compatibility with the surrounding context. The design of the U Street Building overcomes the many challenges posed by the existing below- and above-grade WMATA Easements. The cantilever design is a functional solution that allows for engaging ground floors and enhances the visual appeal of the PUD Site. In addition, the U Street Building integrates a variety of stepbacks, articulation, and material changes to avoid a "superblock" aesthetic and counterbalance areas of the building that cannot strictly comply with the Zoning Regulations. The design of the Townhomes strongly aligns with the District policy that promotes the use of historic alleyway systems in ways that can provide additional housing, support community life, and control vehicular access. The height and scale of the Townhomes also properly responds to and complements the surrounding residential uses. (UD-1.1.8, UD-2.1.1, UD-2.1.2, UD-2.1.3, UD-2.1.6, UD-2.1.7, UD-2.2.1, UD-2.2.2, UD-2.2.3, UD-2.2.4, UD-2.2.5, UD-2.4.1, UD-3.2.1, UD-3.2.2, UD-3.2.4, UD-3.2.5, UD-3.3.1, UD-3.3.4, UD-3.3.5, UD-4.1.2, UD-4.1.4, UD-4.1.7, UD-4.2.1, UD-4.2.2, UD-4.2.3, UD-4.2.4, UD-4.2.6, UD-4.3.4).
83. The Project is not inconsistent with the CP's Historic Preservation Element because the design has been informed by input from HPO and undergone an extensive review process with HPRB. The Project is designed to preserve the important historic features of the U Street HD while simultaneously providing a new infill development that will have the effect of transforming and modernizing the U Street Metro entrance. The proposed design and layout of the Townhomes will also pay homage to the historic significance of Temperance Avenue, which was once lined with alley dwellings over a century ago. (HP-1.6.3, HP-1.6.4, HP-2.2.5, HP-2.5.2, HP-2.5.3, HP-2.5.4, HP-2.5.5, HP-2.5.6, HP-3.2.4, HP-3.2.D.)
84. The Project is not inconsistent with the CP's Arts and Culture Element because the development program accommodates an influx of residents and visitors that will contribute to the vitality of the U Street corridor and support the various entertainment establishments in proximity to the PUD Site. As a public benefit, the Applicant also proposes to commission the design, fabrication, and installation of public art that will acknowledge the

cultural identity of the U Street neighborhood and the historical significance of Temperance Avenue. (AC-2.1.1, AC-2.2.3, AC-2.2.6.)

85. The Applicant provided its justifications in support of the Project's consistency with the Citywide Elements in its CP Evaluation and subsequent filings. (Ex. 3I, 39A4.)
86. To the extent the Project is inconsistent with any CP policies, and specifically policies ED-2.1.4 (Diversified Office Options), ED-2.1.6 (Local-Serving Office Space), ED-2.1.7 (Lower-Cost and Flexible Office Space), ED-3.2.6 (Commercial Displacement), LU-2.1.4 (Rehabilitation Before Demolition), and LU-2.2.7 (Alley Use), such inconsistencies are far outweighed by the Project's advancement of numerous CP policies under the Mid-City Area Element and the Citywide elements, and other competing considerations that strongly weigh in favor of transitioning the PUD Site away from solely non-residential uses and vacant land toward a mixed-use development with an emphasis on residential use. In addition, the Project will provide a variety of significant public benefits to the surrounding neighborhood and the District as a whole, including affordable housing and improvements that will enhance the safety and aesthetic appeal of the U Street Metro entrance.
87. The Applicant provided its assessment of the Project's potential inconsistency with certain CP policies in its CP Evaluation, in subsequent filings, and through testimony at the public hearing. (Ex. 3I, 39A4, 66.)

#### ***DUKE SAP***

88. The Project is not inconsistent with the DUKE SAP because it advances each of the recommendations that are applicable to the U Street Parcel and properly balances the goals of historic preservation with transit-oriented development. The related rezoning of the U Street Parcel to the ARTS-4 zone will accommodate increased density at a highly accessible and high-opportunity location, thus enhancing residential and economic opportunities and contributing to the vitality of the U Street corridor overall.
89. The Applicant provided its justifications in support of the Project's consistency with the DUKE SAP in its CP Evaluation, in subsequent filings, and through testimony at the public hearing. (Ex. 3I, 39A4.)

#### ***Other Public Policies***

90. The Project advances DC's Comeback Plan (the "Comeback Plan"), a five-year economic development strategy focused on retaining and growing DC's tax base, supporting vitality, strengthening neighborhoods, and supporting economic mobility of District residents. The Project will advance several tiers of the Comeback Plan's goal to retain current residents by providing a variety of housing types that appeal to residents with different family sizes and housing needs, and by providing a mix of market rate and affordable units that will advance diversity and equity within the District.
91. The Project advances the Mayor's Order 2019-036 on affordable housing which sets a goal of creating 36,000 new housing units by 2025, including 12,000 affordable housing units, by introducing approximately 131 multifamily units in the U Street Building, including

approximately 17 affordable units, and 15 townhome units, including two affordable units. By providing approximately 19 affordable units, the Project will account for approximately two percent of the affordable housing production goal for the Mid-City Planning Area (1,010 units by 2025), which, according to the Comeback Plan, is projected to be exceeded. The Project's affordable housing units will also be reserved at varying levels of MFI, helping to establish a true mixed-income community.

92. The Applicant provided justifications in support of the Project's advancement of other adopted public policies and active programs related to the PUD Site in its CP Evaluation, in subsequent filings, and through testimony at the public hearing. (Ex. 3I, 39A4.)

### ***Racial Equity***

93. The Application noted that equity is conveyed throughout the CP where priorities of affordable housing, preventing displacement, and access to opportunity are distinguished. In light of the guidance provided by relevant CP policies the Applicant asserted that the Project and related Zoning Map amendment to the ARTS-4 zone would not be inconsistent with the CP when evaluated through a racial equity lens. In support of its assertion, the Applicant evaluated the Project's consistency with the CP through a racial equity lens by applying the Commission's Revised Racial Equity Tool.<sup>4</sup> (Ex. 3I, 28C, 39A4.)
94. The Applicant provided an assessment of how the Project is not inconsistent with the CP when evaluated through a racial equity lens in its CP Evaluation, in subsequent filings (including its Supplemental Comp Plan and Racial Equity Analysis), and through testimony at the public hearing. (Ex. 3I, 28C, 39A4.)
95. The Applicant provided the following information about the community and its outreach:
- The PUD Site is centrally located in the U Street HD and is fundamental to the neighborhood in general, as it sits directly above the west entrance of the U Street Metro station. As such, the PUD Site is a focal point of the neighborhood and a hub of activity;
  - Citing to HPO's *Greater U Street Historic District Brochure*, the Applicant accounted the "profound and varied" history of the U Street HD, and detailed how by 1930, U Street had become the African American community's main boulevard, known nationally as "Black Broadway;"
  - The Applicant identified the following as current challenges facing the community as a result of past or present discrimination:
    - Increased housing costs;
    - Displacement of long-time residents;
    - Loss of community identity and cultural heritage; and
    - Unequal access to education and job opportunities;

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<sup>4</sup> The Commission released the first iteration of its Racial Equity Tool ("Tool") in April 2022. In doing so, the Commission committed to revise the Tool based on feedback received after holding a roundtable concerning the Tool in September 2022. On February 3, 2023, the Commission released a revised Tool, indicating that it was immediately applicable to development projects. Most of the Applicant's racial equity analysis had already been provided in its CP Evaluation (Ex. 3I.) However, in light of the new section concerning community outreach and engagement that was added to the Tool, the Applicant's Supplemental CP Evaluation addressed new questions regarding community outreach and anticipated impacts of the proposed zoning action. (Ex. 28C.)



- The Applicant has made a concerted effort to understand the community’s priorities and encouraged members to provide input on desired public benefits and amenities; and
  - The Applicant conducted significant outreach to the community, attending approximately 58 meetings with the ANC 1B Zoning, Preservation, and Development Committee, the ANC 1B SMD representative, the U Street Neighborhood Association (“USNA”), immediate residential property owners and tenants, and other community stakeholders regarding development of the PUD Site.
- (Ex. 28C, 39A4.)

96. The Applicant asserted that the expected goals of the proposed zoning action are as follows:
- Approve a consolidated PUD and related amendment to the Zoning Map that would facilitate new housing, including affordable housing, lodging, and ground floor retail at an underutilized, transit-oriented site that could not be constructed as a matter of right;
  - Permit the following development program for the U Street Building:
    - Approximately 131 new multifamily units;
    - A minimum set aside of 15% of the total residential GFA as affordable housing at the 60% MFI level;
    - A minimum set aside of 12% of the habitable penthouse space as affordable housing at the 50% MFI level;
    - Approximately 6,780 square feet of GFA for ground-floor retail; and
    - Approximately 35,000 square feet of GFA devoted to lodging;
  - Permit the following development program for the Townhomes:
    - 15 for-sale townhome units, each consisting of three bedrooms; and
    - Two for-sale townhome units to be set aside at the 80% MFI level; and
  - Deliver a comprehensive public benefits and amenities package including, but not limited to: housing and affordable housing, superior architectural and landscape design and site planning, transportation infrastructure and streetscape plans including the redesign of the west entrance to the U Street Metro station, public art, employment and training opportunities, historic preservation, streetscape improvements, sustainability measures, and uses of special value to the neighborhood.
97. Applying the Tool’s racial equity themes, the Applicant asserted the proposed zoning action would have the following impacts and/or outcomes:
- Not result in negative outcomes with respect to direct displacement because of the following:
    - No physical displacement of residents;
    - Existing commercial tenants include a government agency (Department of General Services), which has relocation plans, and national chains/franchises and a hostel tenant that have been notified that their leases will be ending according to the proper notice periods and protocols;
    - Limited or no economic displacement due to affordable housing proffer and varying levels of affordability; and



- No cultural displacement or lost sense of shared neighborhood identity due to installation of commemorative work/public art to educate the public on the historical significance of the U Street HD and Temperance Avenue, and public space improvements to facilitate more opportunity for community interaction among residents, visitors, patrons, and hotel guests;
- Result in positive changes with respect to housing because the Project would:
  - Generate approximately 131 new multifamily dwelling units consisting of new market rate and dedicated affordable units;
  - Generate 15 for-sale townhome units consisting of 13 market rate and two dedicated affordable units;
  - Introduce approximately 19 new affordable housing units overall; and
  - Provide new housing that can accommodate family-sized households, with all 15 Townhomes consisting of three bedrooms, and eight multifamily units in the U Street Building consisting of two-bedrooms;
- Result in positive changes to the physical environment because the Project would:
  - Involve public space improvements, including significant enhancements to the U Street Metro plaza and converting the closed alley into a pedestrianized walkway accessible to the public;
  - Involve infrastructure improvements, including land dedications that will improve circulation within the square and prioritize a pedestrian-oriented environment; and
  - Involve streetscape changes, including the widening and realignment of the sidewalk along 13th Street and providing new landscaping, street trees, and lighting that will enhance safety and encourage transit use;
- Result in positive changes to the environment because the Project would:
  - Enable the construction of a LEED Gold project; and
  - Include the installation of various sustainable features (e.g., green roofs, electric bicycle facilities, all-electric appliances in residential units, and stormwater management improvements);
- Result in positive changes to arts and culture because the Project would:
  - Attract an influx of residents, retail patrons, and hotel guests that will strengthen U Street as a preeminent cultural and entertainment destination; and
  - Provide commemorative works and/or art pieces that will promote culture identity and traditions;
- Increase access to opportunity because the Project would:
  - Redevelop a site that is adjacent to the U Street Metro and is in close proximity to other public transit options;
  - Generate entry-level and other employment opportunities via ground-floor retail and the Project's lodging component;
  - Accommodate new neighborhood-serving retail/service uses;
  - Redevelop a site that is in close proximity to other neighborhood-serving entertainment and restaurant establishments along the U Street corridor; and
  - Redevelop a site that is in close proximity to several public parks, recreation centers, and libraries.

98. Based on the themes of the Commission’s Tool addressed above , the Applicant asserted that the proposed zoning action would result in positive outcomes , and therefore, the Application is not inconsistent with the CP when evaluated through a racial equity lens. (Ex. 3, 3I, 28C, 39A4.)

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

99. The Applicant asserted that the Application complied with Subtitle X § 304.4(b), which requires that a PUD may not result in any unacceptable impacts on the surrounding area but instead shall be found to be favorable, capable of being mitigated, or acceptable given the quality of the public benefits because the Project:

- Would have a favorable land use impact by:
  - Transforming an underutilized site improved with a four-story office building on the U Street Parcel and vacant land on the Townhome Parcel into a transit-oriented, mixed-use development consisting of new housing and affordable housing;
  - Resulting in a more efficient and economical use of land with a mix of uses that better align with relevant CP policies and objectives;
  - Providing new lodging near Metrorail and cultural points of interest;
  - Helping to achieve greater compatibility with surrounding residential uses and mixed uses along the U Street corridor; and
  - Providing new neighborhood-serving amenities;
- Would have transportation and mobility impacts that are favorable or capable of being mitigated because:
  - The proposed development would not have a detrimental impact on the surrounding transportation network, as fully analyzed in the Applicant’s CTR report;
  - The Project does not include on-site parking, which will encourage residents, visitors, and patrons of the Project to utilize existing forms of public transportation that are readily available;
  - The Applicant proposes a list of transportation demand management (“TDM”) strategies suitable for the Project and any resulting impacts;
  - The existing public alley to be closed is not needed for street or alley purposes and its closure will foster a more pedestrian-oriented environment within and around the square;
  - On-site loading activity will occur with head-in/head-out maneuvers; and
  - The proposed streetscape improvements, including sidewalk improvements along 13<sup>th</sup> Street, will increase safety and enhance the pedestrian environment;
- Would have a favorable housing impact by:
  - Providing approximately 131 new residential units in the U Street Building, where no housing is currently provided;
  - Setting aside a minimum of 15% of the residential GFA for affordable housing at the 60% MFI level, and 12% of the penthouse floor area for affordable housing at the 50% MFI level;
  - Providing 15 for-sale Townhomes on the Townhome Parcel, where no housing is currently provided;
  - Setting aside two three-bedroom Townhome units for affordable housing at the 80% MFI level;

- Not involving the demolition of existing housing or displacement of existing residents; and
- Increasing safety within the square by developing the Townhome Parcel and complementing the neighborhood character south of U Street.
- Would have impacts to the environment that are favorable or acceptable given the quality of public benefits because the Project would:
  - Achieve a LEED Gold design for the U Street Building and the Townhomes;
  - Implement various sustainability measures including green roofs, EV charging stations, and electric appliances within residential units;
  - Improve stormwater management within the PUD Site;
  - Improve air quality by not providing any on-site vehicle parking and thus limiting automobile dependency; and
  - Overall, replace an outdated office building and vacant lot with a sustainable mixed-use developed that is adjacent to public transit;
- Would have impacts on economic development that are favorable by:
  - Redeveloping an underutilized and partially vacant site in a mixed-use, walkable, transit-oriented location that is well positioned to contribute to the vitality of the U Street corridor;
  - Providing approximately 6,780 square feet of GFA of neighborhood-serving retail;
  - Providing approximately 35,000 square feet of GFA devoted to lodging use;
  - Accommodating an influx of residents, hotel guests, and patrons that will support the Project's new businesses and existing establishments in the surrounding neighborhood; and
  - Generating increased tax revenues to the District government from retail sales and residential occupancy;
- Would have impacts on urban design that are favorable or acceptable given the quality of public benefits and amenities because the Project:
  - Is a high-quality, context-sensitive design that focuses density on the U Street Parcel;
  - Utilizes a cantilever structure to avoid infringing upon the existing WMATA Easements;
  - Will create a pedestrian-oriented, mixed-use development;
  - Will provide significant enhancements to the streetscape and the public realm;
  - Will promote safety for pedestrians, cyclists, and the overall community by facilitating improved circulation within the square, redesigning the U Street Metro entrance, and realigning and widening the sidewalk on 13<sup>th</sup> Street; and
  - Proposes a height and scale for the Townhomes that is compatible with existing rowhomes and has minimal impacts to light on adjacent residences;
- Would have impacts on parks, recreation, and open space that are favorable or acceptable given the quality of public benefits because the Project:
  - Incorporates improvements to the abutting public space above the U Street Metro that will facilitate community engagement and safe interaction;
  - Involves the reactivation of Temperance Avenue, which will become a pedestrianized pathway open to the public;
  - Includes rooftop amenities for residents; and

- Is within walking distance of several parks, offering accessible opportunities for outdoor recreation and activity;
  - Would have favorable impacts on arts and culture because:
    - The Applicant proffers the installation of two new public art pieces, with one located in the U Street Metro plaza and the other located in Temperance Avenue; and
    - With its lodging component, the Project can accommodate an influx of visitors to the various theaters, entertainment establishments, and other cultural landmarks located along the U Street corridor;
  - Would have a favorable impact on historic preservation because:
    - The Project has undergone HPRB review and is designed to be compatible with the U Street HD;
    - The development of the Townhome Parcel with 15 Townhomes acknowledges and reimagines the historic row dwelling character that used to define Temperance Avenue; and
    - The Project retains and incorporates portions of the Historic Rowhomes along 13<sup>th</sup> Street;
  - Would have impacts on community services and facilities that would be favorable or acceptable given the quality of public benefits and amenities because the Project:
    - Will have no adverse impacts to publicly-owned land or community services and facilities;
    - Involves improvements to the U Street Metro entrance as an associated public benefit; and
    - Involves improvements to the play area at the Harrison Recreation Center as an associated public benefit;
  - Would have impacts on education facilities that would be favorable because the Project:
    - Will not adversely impact operations at nearby educational facilities, including Garrison Elementary School and the Cardozo Education Campus; and
    - Enhances walkability for students at nearby schools; and
  - Would have impacts on infrastructure and safety that are favorable or capable of being mitigated because the Project will:
    - Redesign the U Street Metro Plaza as an associated public benefit;
    - Utilize a cantilever structure that allows for construction over the existing WMATA Easements;
    - Improve traffic circulation within the square;
    - Improve the pedestrian experience and enhance pedestrian safety by realigning and widening the portion of 13<sup>th</sup> Street abutting and south of the PUD Site;
    - Improve the streetscape and the public realm with new landscaping and pedestrian-oriented improvements; and
    - Upgrade utility infrastructure during permitting, as necessary.
- (Ex. 3, 17, 26A1-26A2, 39A1-39A4, 66, 66B1-66E.

**Requested Zoning Flexibility (To Be Balanced Against Public Benefits (Subtitle X §§ 304.3 and 304.4(c))**

100. The Applicant asserted that the Application complied with Subtitle X §§ 304.3 and 304.4(c), which, when read in conjunction, require the Commission to judge, balance, and reconcile the relative value of the public benefits and project amenities offered with the degree of development incentives requested.

***Minimum PUD Land Area: RF-1 Zone***

101. To measure compliance with the PUD minimum land area requirement, the total land area comprising the PUD Site may be applied to each portion of the PUD Site. In this case, the PUD Site is approximately 37,021 square feet in land area, or 0.85 acres. Based upon this land area, the 15,000 square foot minimum land area requirement for the U Street Parcel (ARTS-4) is satisfied. However, the two-acre minimum land area requirement for the Townhome Parcel (RF-1) is not met.

102. The Applicant asserted that a 50% waiver of the PUD minimum land area requirement, as it relates to the RF-1 zone, is warranted pursuant to Subtitle X § 301.2 because:

- The Project is of exceptional merit due to its design compatibility with the U Street HD, which was granted concept approval by HPRB;
- The Project is of exceptional merit due the Applicant's comprehensive public benefits and amenities package;
- The Project is in the best interest of the District of Columbia because it will transform an underutilized commercial site into a vibrant, transit-oriented destination with new housing, including affordable housing, and provide an appropriate mix of non-residential uses;
- The Project is in the best interest of the District of Columbia because it will develop the currently vacant and severely underutilized Townhome Parcel with 15 for-sale Townhomes, including two affordable Townhomes, that can accommodate family-sized households; and
- The Project advances the relevant policies and recommendations of the DUKE SAP. (Ex. 3.)

103. After applying the 50% waiver to the two-acre minimum land area required for a PUD in the RF-1 zone, the PUD Site is approximately 6,539 square feet (0.15 acre) short of 43,560 square feet (1 acre). The Applicant asserted that flexibility from the PUD minimum land requirement of Subtitle X § 301.1 is justified because:

- Without the requested flexibility, the Applicant would be unable to proceed with the Application;
- A proposal to rezone the Townhome Parcel would eliminate the certainty provided by the PUD process;
- An early proposal to rezone the Townhome Parcel, which would have permitted a smaller PUD minimum land area, was not desired based on discussions with the immediately surrounding community and the affected ANC; and
- The PUD process is the desirable mechanism to facilitate redevelopment of the Townhome Parcel, and the PUD Site overall, especially in light of the CP's emphasis

on equitable development and achieving outcomes that can benefit all District residents.  
(Ex. 3, 28, 66.)

104. The Applicant further asserted that it met the requirements for an area variance, under Subtitle X § 1002.1(a), from the minimum land area requirement for a PUD in the RF-1 zone for the 6,539 square feet less than the 50% waiver will allow because of the PUD Site's unique conditions particular to its location. (See full discussion in Finding of Fact ["FF"] No. 64 above.)

### ***Map Amendment***

105. The requested map amendment of the U Street Parcel from ARTS-1 to ARTS-4 will bring the U Street Parcel into greater compliance with the CP, will be compatible with the surrounding context, and is necessary for the PUD Site to be developed under a zone district that will allow for the provision of substantial housing, including affordable housing, and a mix of uses that are appropriate for the U Street Parcel's location along the U Street corridor. (Ex. 3, 17, 39A4.)

### ***Technical Flexibility***

106. The requested technical flexibility for the U Street Building (*see* FF No. 50) is justified for the following reasons:
- Maximum Lot Occupancy (ARTS-4 zone; Subtitle K § 804.1):
    - Due to the large area that must be carved out and not built upon for the WMATA easements, the U Street Building exceeds the permitted lot occupancy; and
    - The U Street Building's design incorporates a variety of setbacks to alleviate the noncompliance, including providing open space at the ground level around the WMATA Easements, establishing significant setbacks above the Historic Rowhomes, and establishing additional courts and setbacks at the upper levels to provide adequate light and air to building residents and hotel guests;
  - Minimum Rear Yard (ARTS-4 zone; Subtitle K § 805.1):
    - Flexibility from the rear yard depth requirement is sought to overcome the challenges presented by the WMATA easements that push the bulk of the U Street Building towards the back of the U Street Parcel; and
    - It is undesirable for a compliant rear yard setback to be provided, as doing so would compromise the amount of GFA devoted to the residential, lodging, and retail uses within the building;
  - Minimum Closed Court Width and Area (ARTS-4 zone; Subtitle K § 807.1):
    - The design of the U Street Building can only accommodate a width of 10 feet and an area of 266 square feet for Closed Court 3;
    - A compliant design cannot be achieved for Closed Court 3 while also providing an efficient and functional residential floor plan layout; and
    - Other setbacks and openings are integrated to provide adequate light and air for building residents and add visual interest at the back of the building;



- Minimum Setback Abutting RF Zone (ARTS-4 zone; Subtitle K § 803.4):
  - Existing WMATA Easements, which cover approximately 20% of the U Street Parcel, significantly decrease the amount of buildable area that would otherwise be available at the front of the U Street Parcel and pushes the bulk of U Street Building toward the rear;
  - Additional space is provided at the front of the U Street Building to create a user-friendly Metro entrance experience for the public;
  - The U Street Building incorporates substantial setbacks above the Historic Rowhomes along 13<sup>th</sup> Street;
  - In addition to the specific setbacks provided to accommodate the U Street Metro station and the Historic Rowhomes, there are also a variety of setbacks on all sides of the U Street Building (e.g., upper floor setbacks on the front and side as requested by HPRB; courts);
  - The majority of the abutting RF-1 zoned property is the Townhome Parcel that is part of the overall Application and/or the WMATA chiller plant;
  - The U Street Building will not cast shadows to the south, and is designed to minimize impacts to light and air; and
  - Flexibility from minimum setback requirement will help maximize housing and affordable housing floor area, consistent with District planning objectives;
- U Street Frontage Requirements (ARTS-4 zone; Subtitle K § 810.1):
  - U Street Building cannot comply with the 75% Streetwall or 50% Surface Area Requirement due to the existing WMATA Easements at the front of the U Street Parcel; and
  - As an alternative to strict compliance, the Project involves the construction of a pedestrian-orientated, well lit, and welcoming public Metro Plaza that will generate desirable street-level activity;
- Linear Frontage of Eating and Drinking Establishments (ARTS-4 zone; Subtitle K § 811.9):
  - To the extent it necessary in the future, and out of an abundance of caution, the Applicant requested this flexibility to accommodate any amount of eating and drinking establishment on the ground floor of the U Street Building in the future; and
  - Flexibility would allow opportunities to maximize commercial activity surrounding the U Street Metro entrance; and
- Minimum Parking (Subtitle C § 701.5):
  - Given the PUD Site's accessibility and adjacency to public transit, the U Street Building does not have any vehicle parking;
  - There are no viable areas on the U Street Parcel where vehicle parking could be accommodated, including below-grade parking due to the presence of the U Street Metro station; and
  - Flexibility is appropriate to encourage use of alternative forms of transportation and discourage automobile dependency.

(Ex. 3, 17, 28, 28A2, 39A4, 66.)

107. The requested technical flexibility for the Townhomes (*see* FF No. 51.) is justified for the following reasons:

- Maximum Lot Occupancy (Subtitle E § 304.1.):
  - The lots comprising the Townhome Parcel are particularly narrow and constrained due to their internal location within the square and limited east-west lot depth that is established by existing property line boundaries;
  - Historic considerations, including the importance of recreating Temperance Avenue and matching the scale of the surrounding rowhome structures, make strict compliance undesirable;
  - Reconfiguration to achieve compliance would encroach upon the pedestrianized walkway and result in the elimination of entire Townhomes; and
  - Strict compliance would limit the practicality of family-sized units and feasible floor plans with three bedrooms;
- Density - Lot Dimensions (Subtitle E § 201.4.):
  - Dimensions of lots are constrained by historical considerations and efforts to recreate the alley dwelling character that once defined Temperance Avenue; and
  - North-south dimensions of Townhomes are set by width increments that are intended to mimic the surrounding rowhome context fronting 12<sup>th</sup> and 13<sup>th</sup> Streets;
- Minimum Side Yard (Subtitle E § 207.):
  - Southernmost townhome unit has a two and one-half foot side yard to provide space for additional plantings and greenery to accentuate neighborhood character of Townhome component of Project; and
  - Southernmost townhome abuts an alley, so no adverse impacts;
- Minimum Rear Yard (Subtitle E § 306.1.):
  - Shallow depth of Townhome lots makes compliance difficult to achieve, and is practically not possible as it would severely limit buildable area and residential living space; and
  - Recreation of Temperance Avenue's historic alley dwelling layout would not be possible if compliant rear yards are provided; and
- Minimum Parking (Subtitle C § 701.5.):
  - No vehicle parking is provided to maximize the Townhome Parcel's transit-oriented location; and
  - Additional vehicular traffic is undesirable given the increased pedestrian activity that is likely to result from the reactivation of Temperance Avenue and the influx of residents, hotel guests, and patrons resulting from the proposed redevelopment of the U Street Parcel.

(Ex. 3, 17, 28, 28A2, 39A4, 66, 66C.)

### ***Public Benefits and Amenities***

108. The final Application proffered the following categories of public benefits and amenities as defined by Subtitle X § 305:

- **Superior Urban Design and Architecture (Subtitle X § 305.5(a).):**
  - The U Street Building and the Townhomes are designed to achieve maximum compatibility with the surrounding context and the character of the U Street HD. The Project's height and density are focused in the U Street Building, which is

- consistent with applicable Comp Plan objectives and is appropriate given the PUD Site's location along U Street;
- The U Street Building's cantilever design creatively overcomes the challenges presented by the WMATA Easements and adds visual interest to a prominent intersection. The Project integrates a variety of additional architectural techniques, including stepbacks, articulation, and a rich palette of varying exterior finish materials to prevent a "superblock" aesthetic and achieve compatibility with the diverse architectural typology of the surrounding context. Despite the limited buildable area at the front of the U Street Parcel, the ground-floor design effectively enlivens the abutting public space and Metro Plaza to encourage continuous activity. The U Street Building's incorporation of the Historic Rowhomes on 13<sup>th</sup> Street and the setback of the new construction above further strengthens the building's compatibility with the U Street HD; and
  - The same level of detailed attention was given to the Townhome component of the Project. As determined by the HPRB, the Townhome design achieves compatibility with the U Street HD and complements the surrounding residential scale and character of the neighborhood. The proposed height, width, and building materials are informed by surrounding rowhomes and historical considerations. The proposed design also recalls the historical significance of Temperance Avenue for residential use by orienting the Townhomes so that they will recreate the alley dwelling character of this location and properly acknowledge the importance of the residences that once stood in their place;
  - **Superior Landscaping, or Creation or Preservation of Open Spaces (Subtitle X 305.5(b).):**
    - The proposed landscape improvements and open space will foster a pedestrian-friendly and hospitable environment within and surrounding the PUD Site. The landscape design along 13<sup>th</sup> and U Streets and within Temperance Avenue includes trees, planters and new plantings, benches and seating areas, and special paving. Comfortable open spaces will facilitate opportunities for community engagement and outdoor relaxation. The inviting Metro Plaza will preserve and significantly improve the existing open space surrounding the Metro entrance to encourage pedestrian activity and appropriate uses. Temperance Avenue will become a pedestrianized open space that is accessible to the public, thus converting a car-oriented space into one that is dedicated to pedestrian and community use. A variety of landscaping improvements will be implemented to beautify this pathway and accentuate its residential character;
  - **Site Planning and Efficient and Economical Land Utilization (Subtitle X § 305.5(c).):**
    - The Project will transform an underutilized, transit-oriented site with residential, retail, and lodging uses, and provide major improvements to the pedestrian experience. Doing so constitutes a significant benefit because collectively such improvements will enhance safety, result in aesthetic upgrades to the community, encourage transit use, and provide a new mix of uses that are compatible with the surrounding mixed-use neighborhood and consistent with many of the goals of the Comp Plan;

- The current and foreseeable demand for existing office space is low, and therefore the existing older office building on the U Street Parcel does not constitute the most efficient and effective use of this land. In contrast, the proposed new U Street Building will provide a new mix of uses that are more aligned with current and future demand for the mixed-use, walkable, and transit-oriented location. The proposed ground-floor retail and streetscape improvements will significantly enliven the experience around the U Street Metro entrance. The proposed lodging use will accommodate an influx of guests that can enjoy immediate access to one of the more important cultural and entertainment hubs of the District. And most critically, the residential component will provide approximately 131 new multifamily units, including affordable units, that continue to be in high demand, particularly in such an important mixed-use location. In addition to this improved utilization, the U Street Building will improve the aesthetic quality and functionality of the intersection and bring new vitality to the surrounding neighborhood. As it relates to the PUD-related Zoning Map amendment for the U Street Parcel specifically, the proposed ARTS-4 zone will allow for greater density and site utilization in a manner that is not inconsistent with the Comp Plan;
- Given that the Townhome Parcel is currently vacant, the proposed Townhome development also constitutes a significant increase in land utilization. The proposed construction of 15 for-sale townhomes, two of which will be set aside as affordable, maximizes an opportunity to increase the District's housing supply. The proposed closure of the central north-south alley will not adversely impact circulation and will allow for the creation of a pedestrianized pathway that will remain open to the public and beautifully landscaped. Thus, the associated site planning results in a significant benefit to the community; and
- Accordingly, the PUD will result in much more efficient and economical uses of the PUD Site, introducing a new mix of residential and non-residential uses that better align with the District's planning objectives;
- **Commemorative Works or Public Art (Subtitle X § 305.5(d).):**
  - The Applicant will commission the design, fabrication, and installation of two public art pieces, with one located in the Metro Plaza and one located in the public alley. The art will represent the history of U Street and Black Broadway and will provide an interpretive education on the historical significance Temperance Avenue; and
  - In commissioning the public art, the Applicant will lead a design solicitation process by establishing two panels of local public art professionals to help review and select the artists and the public art pieces. The advisory panels will provide guidance and mentorship to the ultimately selected artists to ensure their success with the projects. The advisory panels will be comprised of the Applicant and individuals from the D.C. Commission on the Arts and Humanities, Howard University Department of Art and/or Architecture, the WMATA Art In Transit Program, the U Street Neighborhood Association, and/or local curators and historians. The Applicant will then issue a Request for Proposals (“RFP”) for each art piece, with solicitation responses to be submitted directly to the advisory panels. Accordingly, the selection of each artist and art piece will be fully vetted by public

art professionals to ensure that the best products are produced to celebrate the neighborhood and its history;

- **Historic preservation of private or public structures, places, or parks (Subtitle X § 305.5(e).):**
  - The Project preserves historic structures and recreates elements of historical significance. Specifically, the Applicant will preserve and incorporate portions of the two Historic Rowhomes fronting 13<sup>th</sup> Street into the design and program of the U Street Building. The U Street Building has also been designed such that no new construction is provided above the Rowhomes, thus respecting and highlighting their importance along the street; and
  - In addition, redevelopment of the Townhome Parcel pays homage to the historic Temperance Avenue that was once lined with row dwellings that were integral to the city's character. The Townhomes have been designed at a height, scale, and massing that are consistent with the existing historic row dwellings in the immediately surrounding neighborhood;
- **Housing (Subtitle X § 305.5(f).):**
  - The Project results in the creation of new housing consistent with the goals of the Zoning Regulations, the Comp Plan, and the FLUM;
  - The U Street Building will provide approximately 131 new dwelling units, distributed among studios, one-bedroom, and two-bedroom units. This amount of new housing exceeds what would have been provided through matter of right development under the U Street Parcel's current ARTS-1 zoning. Assuming a matter of right development that provides 0.5 FAR for non-residential use, the U Street Parcel could be developed with 2.5 FAR devoted to residential use, or 53,032 square feet of residential GFA. In contrast, the U Street Parcel will be developed with approximately 120,540 square feet of residential GFA (including projections) as part of the PUD. Thus, the proposed Project results in a 67,508 square foot increase in housing on the U Street Parcel when compared to a matter of right development. Stated differently, the proposed PUD and related Zoning Map amendment of the U Street Parcel to ARTS-4 will result in a 127% increase in housing;
  - The Townhome portion of the Project also provides housing that exceeds what would have been provided through matter of right development. As a matter of right, the Townhome Parcel would be developed under the RF-1 alley lot regulations, which would allow for approximately 23,210 square feet of development on the Townhome Parcel (see Ex. 66A.). In contrast, the Townhome Parcel will be developed with approximately 29,260 square feet of residential GFA. Thus, the proposed Townhomes result in approximately 6,050 square feet more housing than permitted as a matter of right (a 26% increase); and
  - The proposed Project also provides units with three or more bedrooms. All 15 of the for-sale Townhomes will consist of three bedrooms so that the proposed Project can accommodate family-sized households;
- **Affordable Housing (Subtitle X § 305.5(g).):**
  - The Applicant will set aside 15% of the residential GFA within the U Street Building for affordable housing. This is more affordable housing than could be



achieved through matter of right development under existing zoning on the U Street Parcel;

- As matter of right, and assuming 0.5 FAR of non-residential use, an IZ development under the existing ARTS-1 zone would provide approximately 7,955 square feet of residential GFA devoted to IZ units at 60% of the MFI (75% of bonus density utilized) on the U Street Parcel. In contrast, approximately 18,081 square feet of residential GFA will be devoted to IZ units at 60% of the MFI (15% of the residential GFA, including projections) in the U Street Building. This amounts to approximately 10,126 square feet more residential GFA devoted to IZ units at 60% of the MFI than would be required through matter of right IZ development on the U Street Parcel. Stated differently, the proposed PUD will result in a 127% increase in affordable housing at 60% of the MFI;
- In addition, the Applicant will set aside 12% of the penthouse habitable space to IZ units within the U Street Building, for households earning up to 50% MFI. This is more affordable housing generated by the penthouse than could be achieved through matter of right development under existing zoning;
  - As a matter of right, and assuming the same square footage of habitable penthouse space as proposed in the PUD, a minimum of 10% of the penthouse habitable space (approximately 559 square feet) would be required to be set aside for IZ units in the U Street Building for households earning up to 50% of the MFI. In contrast, the PUD will set aside 12% (approximately 671 square feet) of the penthouse habitable space for IZ units within the U Street Building for households earning up to 50% MFI. This results in approximately 112 square feet more residential GFA devoted to IZ units at 50% MFI than would be required as a matter of right IZ development. Stated differently, the proposed PUD will result in a 20% increase in affordable housing at 50% of the MFI;
- In addition, the Applicant will set aside more affordable housing in the Townhomes than would be achieved through matter of right development. As stated above, a matter of right development on the Townhome Parcel could achieve approximately 23,210 square feet of GFA, of which 10% or 2,321 square feet of GFA would be required to be devoted to IZ units at 80% of the MFI (assuming for-sale townhomes). In contrast, approximately 3,901 square feet of GFA will be devoted to IZ units at 80% of the MFI in the Townhomes. This amounts to approximately 1,580 square feet more residential GFA devoted to IZ units than would be required through matter of right development (a 68% increase); (*see* Ex. 66A.)
- **Employment and Training Opportunities (Subtitle X § 305.5(h)):**
  - The U Street Building will consist of approximately 6,780 square feet of retail use and approximately 35,000 square feet of lodging use. Thus, the Project will generate immediate employment and training opportunities for District residents following construction. Various employment and training opportunities provided within the Project will also be highly accessible to District residents living throughout the city, given the PUD Site's transit-oriented location. In addition, the Applicant will enter into a First Source Employment Agreement with the Department of Employee Services, consistent with the First Source Employment



Agreement Act of 1984, to ensure that District residents are given priority for new jobs created by municipal financing and development programs;

- **Environmental and sustainable benefits (Subtitle X § 305.5(k).):**
  - The Project is designed to integrate a host of sustainable features that will benefit residents, the immediate community, and the District as a whole. The U Street Building will be designed to achieve the equivalent of LEED Gold under LEED v.4 for Building Design and Construction and the Townhomes will be designed to achieve the equivalent of LEED Gold under LEED v.4.1 for Building Design and Construction: Homes Single Family Update for the Townhomes; and (*See Ex. 28A2, Sheets 31-32.*)
  - The Project also incorporates a holistic and integrative sustainability approach overall. Sustainable design and programmatic elements include green roofs, on-site stormwater management techniques, and the provision of electric bicycle facilities and all-electric appliances within the residential units. The Project provides zero on-site parking spaces, is located directly on top of a Metro station, and provides more bicycle parking spaces than required by zoning, including spaces for cargo bicycles, which will further reduce reliance on automobiles and help shift the mode share from automobiles to public transportation and bicycle use.
- **Streetscape Plans (Subtitle X § 305.5(l).):**
  - The Project will establish a pedestrian-focused streetscape environment adjacent to the U Street Metro entrance by incorporating a variety of improvements that will enhance pedestrian connections, increase safety, and leverage the PUD Site's corner location on a prominent corridor. The proposed improvements will complement the energy and activity of the U Street Metro station. Specific improvements to the abutting streetscape are highlighted below:
    - *Special Paving* - Subject to approval by DDOT, special paving will be installed in portions of the public alleys surrounding the PUD Site to notify vehicles of potential pedestrian crossings; and
    - *13<sup>th</sup> Street Sidewalk Extension* - The Applicant will widen and make significant improvements to the sidewalk on the east side of 13<sup>th</sup> Street abutting the PUD Site and to the south of the PUD Site. Currently, the sidewalk has a width of between approximately 26.5 feet and approximately 33 feet along 13<sup>th</sup> Street in this location. The Applicant will rebuild the sidewalk such that it has a consistent width of approximately 33 feet abutting (to the west of) the PUD Site for approximately 115 linear feet, and to the south of the PUD Site for approximately 95 linear feet. (*See Ex. 28A1, Sheet 16 and Ex. 28A3, Sheet 52.*) Doing so will bring these portions of the sidewalk into compliance with DDOT standards, improve pedestrian safety and walkability in the immediate area, and “right-size” 13<sup>th</sup> Street by prioritizing new sidewalk infrastructure for pedestrians over vehicular traffic lanes;
  - All public space improvements will be subject to review and approval by DDOT.
- **Transportation Infrastructure Beyond that Needed to Mitigate any Potential Adverse Impacts (Subtitle X § 305.5(o).):**
  - In connection with the Applicant’s alley closing application that seeks to close the portion of the north-south alley within the Townhome Parcel, the Applicant also proposes to dedicate portions of the Townhome Parcel to DDOT as public space,

which will expand the width of the two surrounding public alleys. Specifically, the Applicant proposes to dedicate (i) a 6-foot-wide strip of land along the alley to the west of the Townhome Parcel, thus increasing the alley's width from 10 feet to 16 feet; and (ii) a 4.75-foot wide strip of land along the alley to the north of the Townhome Parcel (along Townhome "Lot A"), thus increasing the alley's width from 15.25 feet to 20 feet. The proposed dedications will create additional opportunities to enhance the pedestrian experience and improve circulation within the square, specifically bringing the alley to the west of the Townhome Parcel into compliance with DDOT guidance for a two-way alley. All public space improvements will be subject to review and approval by DDOT; and

- As discussed in the Conclusions of Law, the Commission does not believe this is a public benefit and instead concludes that it is a mitigation of potential adverse effects of the Project;
- **Mass transit improvements (Subtitle X § 305.5(p).):**
  - A distinguished element of the Project is that it involves the redesign and construction of the U Street Metro entrance by creating a bright, open, inviting, and safe new Metro Plaza. The proposed improvements will not only enhance the aesthetic appeal of the entrance but will also create a more comfortable space where transit riders, pedestrians, retail patrons, and Project residents and guests are likely to gather and interact. Paving materials and lighting will be upgraded within the Metro Plaza, and the retail and building lobby facades that embrace the space will incorporate glass storefronts that allow for additional "eyes and ears" on the street in this publicly accessible space. All improvements to the Metro Plaza will be subject to review and approval by WMATA and, where applicable, DDOT.
- **Uses of Special Value to the Neighborhood or the District of Columbia as a Whole (Subtitle X § 305.5(q).):**
  - WMATA Chiller Plant – In coordination with WMATA, the Applicant will improve exterior portions of the WMATA chiller plant, including but not limited to upgrading the perimeter fencing, installing new intake louvers to reduce noise around the cooling towers, and constructing new gates;
  - Planter Bed – The Applicant will install a publicly accessible 300-square foot planter bed at the southeast portion of Temperance Avenue for gardening and educational purposes;
  - U Street Main Street/District Bridges – The Applicant will contribute a total of \$30,000 to U Street Main Street/District Bridges (or a similar organization if District Bridges no longer exists), a non-profit organization that works to enrich neighborhood vitality by bridging community engagement and economic development, to fund a U Street Safety Pilot Program that will station a Metropolitan Police Department (MPD) Officer(s) and a D.C. Peace Team advocate(s) on U Street on Friday and Saturday nights for a short-term initial test period;
  - Trash-Compacting Trash Cans – The Applicant proposes will fund and install two trash-compacting trash cans on the 1200 block of U Street, NW, as an effort to improve cleanliness and the aesthetic appeal of the immediate neighborhood;
  - Harrison Recreation Center – The Applicant will fund and/or deliver the work necessary to resurface the play area at the Harrison Recreation Center;

- Hope and a Home – The Applicant will contribute \$15,000 to Hope and a Home (or a similar organization if Hope and a Home no longer exists), a District non-profit organization that empowers low-income families with children to create stable homes and break the poverty cycle. The funding will be used to cover one month’s worth of food delivery to families in need; and
- Helping Individual Prostitutes Survive (“HIPS”) – The Applicant will contribute \$10,000 to Helping Individual Prostitutes Survive (“HIPS”) (or a similar organization if HIPS no longer exists), a non-profit organization that promotes the health, rights, and dignity of individuals and communities impacted by sexual exchange and/or drug use. The funding will be used for NARCAN training in the U Street area to help individuals recognize the signs of opioid overdose and administer the overdose reversal drug.
- **Other Public Benefits and Project Amenities and Other Ways in which the Proposed PUD Substantially Advances the Major Themes and Other Policies and Objectives of Any of the Elements of the CP (Subtitle X § 305.5(r)):**
  - The CP emphasizes the historical nature of the U Street corridor and the desire for the surrounding neighborhood to serve as the "cultural hub" of the District. Similarly, the DUKE SAP states that the District’s investment in the Shaw-Howard University and U Street Metro stations "has helped to increase access between the metropolitan region to this historic district and intersection of historic neighborhoods. The District's investment has not been realized fully, as epitomized by the underutilization of key land and buildings abutting and within close proximity to these stations."; and (See DUKE SAP at p. 5.)
  - The proposed redevelopment of the severely underutilized commercial site with a higher-density, mixed-use, and mixed-income project will substantially advance many of the major goals of the CP and the major themes of the DUKE Plan. The Project will make the U Street Metro plaza a safer and more hospitable environment for pedestrians and visitors to the U Street corridor, thus encouraging transit use and public interaction. In addition, the Project will incorporate commemorative work and/or art pieces that will honor the historical significance of Temperance Avenue and communicate the importance of the U Street HD. Such amenities will serve as tremendous benefits to the public and align with District policies that are directly applicable to the PUD Site.

(Ex. 3, 17, 17E, 28D.)

### **III. RESPONSES TO THE APPLICATION**

**OP**

109. OP submitted a November 8, 2022, report (the “OP Setdown Report”.)<sup>5</sup> recommending that the Commission set down the Application for a public hearing based on OP’s conclusion that the Project would not be inconsistent with the CP. (Ex. 13.)

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<sup>5</sup> The OP Setdown Report referred to in this Order superseded a prior version dated October 31, 2022. (Ex. 12.)

110. The OP Setdown Report concluded that, on balance, the Project is not inconsistent with the CP Elements and Maps, the Mid-City Area Element, and the DUKE SAP, and recommended setdown of the Application for the following reasons, among others:
- That OP found the Applicant’s initial submissions and extensive discussions with OP and the community sufficient to set down the Application for a public hearing;
  - There are factors concerning the PUD Site that impact overall development of the PUD Site, including:
    - Its location above the U Street Metro station and the existing WMATA Easements needed for operation, maintenance, repair, and construction of Metro facilities;
    - The presence of the Historic Rowhomes along 13th Street, where the façade must be retained at a depth of 20 feet as approved by HPRB; and
    - The proposed closure of the alley (Temperance Avenue) to facilitate redevelopment of the Townhome Parcel;
  - The ARTS-4 zone is appropriate given the proposed redevelopment of the U Street Parcel, which would not be permitted under the ARTS-1 zone;
  - The proposed housing both in the U Street Building and the Townhomes has the potential of increasing the total supply of housing units in the Mid-City Planning Area, which could help alleviate the pressure on housing costs overall;
  - The PUD would provide more affordable housing than matter of right development and a PUD under the ARTS-1 zone and at levels of affordability at and below 80% MFI, and the Project would provide 3-bedroom units in the townhomes;
  - When analyzed against CP equity policies, the Project satisfies the key indicators of equitable development, including preventing displacement (physical, economic, and cultural), providing family-sized three-bedroom units, transportation, employment, education/health/wellness, environmental, and access to amenities;
  - The proposed PUD would further CP policies under the Land Use, Transportation, Housing, Historic Preservation, Economic Development, and Urban Design Elements. The proposed medium density mixed-use development consisting of ground floor retail, hotel, and residential uses would have a height, FAR, and design compatible with existing surrounding buildings; would incorporate the Metro entrance as part of the development to recreate a vibrant transit hub along a transit accessible corridor; would include new market rate and affordable housing; would provide access to amenities and create business and employment opportunities; and would provide a modern aesthetic design with passive recreational spaces that complement and preserve historic elements significant to the location. (Land Use: LU-1.4.6 (Development Along Corridors); Action LU-1.4.8 (Zoning Around Transit); LU-1.2.2 (Mix of Uses on Large Sites); LU-1.3.2 (Development Around Metrorail Stations); LU-2.1.10 (Multi-Family Neighborhoods); Transportation: T-1.1.7 (Equitable Transportation Access); T-1.1.8 (Minimize Off-Street Parking); Action T-2.3.B (Bicycle Facilities); T-2.4.1 (Pedestrian Network); T-2.4.2 (Pedestrian Safety); Housing: H-1.1.1 (Private Sector Support); H-1.1.3 (Balanced Growth); H-1.1.4 (Mixed-Use Development); H-1.1.9 (Housing for Families); H-1.2.2 (Production Targets); Historic Preservation: HP-2.1.1 (The Plan of the City of Washington); HP-2.1.2 (Spatial and Landscape Character of L’Enfant Plan Streets); HP-2.5.2 (Adaptation of Historic Properties for Current Use); HP-1.6.3 (Enhancing the District’s Historic Character); HP-2.1.4 (Enhancing Washington, DC’s

- Urban Design Legacy); HP-2.5.3 (Compatible Development); Economic Development: ED-2.2.9 (Clustered Retail at Transit Cluster); ED-2.1.5 (Infill and Renovation); ED-2.2.4 (Support Local Entrepreneurs); ED-2.3.3 (Amenities Beyond the Mall); ED-2.3.4 (Lodging and Accommodation); ED-2.3.9 (Hospitality Workforce Development); Urban Design: UD-2.2.5 (Infill Development); UD-2.4.1 (Inclusive and Diverse Neighborhood Spaces); UD-3.1.1 (Freely Accessible Public Space); UD-3.1.3 (Public Spaces for Cultural Expression); UD-3.1.5 (Sidewalk Culture); UD-3.2.1 (Buildings that Enable Social Interaction); UD-3.3.1 (Neighborhood Meeting Places); UD-3.3.3 (Plazas for Diverse Uses); UD-4.1.2 (Design Excellence); UD-4.2.2 (Engaging Ground Floors); UD-4.2.4 (Creating Engaging Facades); UD-4.2.6 (Active Facades); UD-4.3.5 (Building Projections that Promote Interaction).);
- The Project is not inconsistent with the policies of the Mid-City Area Element because it would help mitigate concerns regarding affordable housing expressed by the community, aims to revitalize a transit-oriented location with a new mixed-use development, and emphasizes the value and importance of Mid-City’s row house neighborhoods as an essential part of the fabric of the local community. (MC-1.1.1 (Neighborhood Conservation); MC-1.1.2 (Directing Growth); MC-1.1.3 (Infill and Rehabilitation); MC-1.1.5 (Conservation of Row House Neighborhoods); MC-1.1.6 (Mixed-Use Districts); MC-1.2.5 (Public Art); MC-2.3.4 (Cultural Tourism); MC-2.3.2 (Uptown Subareas); MC-2.3.6 (Small Business Retention));
  - The Project would be consistent with the DUKE Plan because it proposes to provide new ground-floor retail, hotel use, and residential units to enliven the U Street Metro Plaza; and
  - While there may be potential inconsistencies with ED-2.1.4 (Diversified Office Options), ED-2.1.6 (Local-Serving Office Space), LU-2.1.4 (Rehabilitation Before Demolition), and LU-2.2.7 (Alley Use), the proposed PUD advances other policies in the CP that, on balance, support approved density to permit more mixed-use and housing, including affordable housing, at transit on the assembled parcels comprising the PUD Site.
- (Ex. 13.)

111. The OP Setdown Report did not include any requests for additional information from the Applicant. (Ex. 13.)
112. OP submitted a March 6, 2023, report (Ex. 32, the “OP Hearing Report” and, together with the OP Setdown Report, the “OP Reports”.) which recommended that the Commission approve the Application. The OP Hearing Report largely reiterated the conclusions made in the OP Setdown Report and made the following findings, among others:
- The Project, on balance, is not inconsistent with the CP Elements and Maps, the Mid-City Area Element, and the DUKE SAP;
  - When viewed through a racial equity lens, using the Commission’s Revised Racial Equity Tool, the Project furthers racial equity policies of the CP Citywide Elements and the Mid-City Area Element because the Project would permit more mixed-use and housing, including affordable housing, at transit. The Commission’s Revised Racial Equity Tool requires OP’s racial equity analysis to utilize disaggregated race and



ethnicity data for the Planning Area affected by the Project; OP's analysis observed the following data for the Mid-City Planning Area and made the following conclusions regarding the Project:

- The median household income is \$113,534 in the Planning Area while the District-wide median is \$93,547;
- The median home value in the Planning Area is \$758,021 (2020);
- The Planning Area has a 10.6% poverty rate with the Black and Native American population at 26.5% and 31.5%, respectively;
- The Planning Area has a 4.4% unemployment rate with the Black and Native American population at 11% and 14.6% respectively, compared to Whites at 2%;
- The poverty rate and unemployment rate combined indicate that the Project could have a positive impact because it would add to the employment base in the area;
- The proposed increase in housing options, including apartments and townhome units with the provision of IZ units at 15% of the residential GFA, could help to reduce the housing cost burden for lower-income households and create opportunity for them to live in a high-opportunity neighborhood; and
- The Planning Area is projected to exceed the Mayor's affordable housing production goal of 1010 units by 2025 as the Planning Area has produced 788 units since 2015.
- The Applicant's Prehearing and Supplemental Submissions (Ex. 16-17H, 28-28E.) provided the information requested by the Commission at the November 10, 2022, public meeting;
- OP supported all of the Applicant's requests for flexibility, including:
  - The related map amendment from the ARTS-1 to the ARTS-4 zone for the U Street Parcel;
  - The minimum land area requirement applicable to a PUD in the RF-1 zone;
    - OP stated that this a project of exceptional merit, is located outside of the Central Business Area, and therefore meets the housing threshold to qualify for waiver relief under Subtitle X, § 301.2;
  - All requests for zoning flexibility relevant to the U Street Building and the Townhome Parcel;
  - All requests for design flexibility, subject to the condition that the flexibility to increase lodging or reduce residential use on the fourth floor of the U Street Building be conditioned to not reduce the IZ proffer, specifically:
    - For the purposes of calculating the 15% IZ proffer, the fourth floor shall be considered residential regardless of use;
- Weighed against the Project's benefits, the impacts of the Applicant's requested zoning flexibility are outweighed by the Project's benefits of providing both market rate and affordable housing, a revitalized Metro frontage, and a reimagined and livable Temperance Avenue, in recognition of the cultural history of the U Street corridor and the immediate area;
- Since vacant office space has increased post pandemic due to telework, the current/former uses on the PUD Site would not be profitable for either the District's revenue base or for local tenants who may wish to benefit from newer retail spaces in a desirable and accessible location for customers;



- From a racial equity standpoint, the provision of a tourism/hospitality-based use (e.g., the hotel) would improve opportunities to lower income workers in the District, given the Applicant's proffer to enter into a First Source Agreement with the Department of Employment Services to ensure District residents are given priority for new jobs; and
- The proposed development would be consistent with the District's strategies to further fair housing and increase access to opportunities by creating affordable housing, jobs during construction and operation, new hotel rooms and retail space for the U Street corridor. Specifically, the proposed development would support approximately 1,700 jobs in the proposed hotel, retail, residential, as well as over 3,700 construction jobs over a two-year construction period.

(Ex. 32.)

113. At the March 16, 2023, public hearing, OP testified in support of the Application and reiterated the findings in the OP Reports. OP also restated its conclusion that, on balance, the proposed mixed-use development would not be inconsistent with the CP when evaluated through a racial equity lens. (Hrg. Tr. at pp. 122-137.)
114. On April 11, 2023, OP submitted a supplemental report with IZ calculations for the Project. (Ex. 71.) pursuant to the Commission's request at the March 16, 2023, hearing that OP provide the IZ Plus calculation for this project if it were solely a map amendment. OP's supplemental report notes that IZ Plus was designed to only apply to standalone map amendments and not intended to be used as a floor or as a general tool to evaluate an affordable housing proffer in isolation of other PUD benefits; and the Zoning Regulations explicitly exclude applying IZ Plus to PUD's (see Subtitle X § 502.2). With respect to the U Street parcel, OP's report concludes: "The proposed ARTS-4 residential GFA of the U Street parcel devoted to IZ represents 18,081 sf which is 10,126 sf more IZ than required as a matter-of-right- under the ARTS-1 zone (18,081 sf - 7,955 sf),<sup>6</sup> an increase of 127%. This could represent an approximately 10 more units than a matter of right (at 1,000 sf/unit) for the U Street Parcel." With respect to the alley (Townhome) parcels, OP concluded that the residential GFA devoted to IZ is 3,901 sf, which is more than the 2,321 square feet required as a matter-of-right for the alley parcels.

### **DOEE**

115. DOEE provided comments as an attachment to the OP Hearing Report that recognized and commended the Applicant's commitment to designing the Project, including the Townhomes, at the LEED v4 Gold level, as doing so would offer the greatest benefits for future residential tenants. DOEE encouraged the Applicant to continue to look at additional environmental and sustainable benefits as the Project moves forward. (Ex. 32 at pp. 45-46.)

### **DDOT**

116. DDOT filed a March 3, 2023, report (Ex. 31, the "DDOT Report".) that assessed the potential impacts of the proposed Project on the District's transportation network and, as

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<sup>6</sup> Note: The PUD does not take advantage of any PUD-related bonus density, and instead is only granted preferred use bonus density, which does not add to the IZ set aside requirement. (Subtitle K §§ 802.4, 809.1.)

necessary, proposed mitigations that would be commensurate with the Project. The DDOT Report concluded that DDOT had no objection to the approval of the Application, provided that this Order includes the following conditions:

- Implement the TDM plan as proposed in the January 30, 2023, CTR (Ex. 26A.), for the life of the Project, unless otherwise noted in the DDOT Report;
- Dedicate right-of-way to the District for the two alley expansion areas at the rear of the PUD Site, subject to DDOT approval, and that these areas will be constructed to DDOT standards and will be inspected by DDOT prior to acceptance of the alley widenings;
- Include language in this Order allowing for flexibility of both private and public space design of the area on the south side of U Street where vaults are currently located because DDOT, the Applicant, and WMATA are currently coordinating on the future sizes and locations of the vaults; and
- Include language in this Order to allow flexibility in design of the area in the southeast corner of the existing alley (Temperance Avenue) that is proposed to remain open.

117. At the March 16, 2023, public hearing, DDOT testified in support of the Application and reiterated the conclusions made in the DDOT Report. DDOT stated that it had considered the hotel's traffic in its analysis. DDOT also confirmed that the Applicant had accepted DDOT's proposed conditions. (Hrg. Tr. at pp. 118-122.)

#### OAG

118. The Equitable Land Use Section of OAG filed a PowerPoint that opposed the PUD on the basis that the Applicant's affordable housing proffer was inadequate, and the PUD's public benefits package must include more affordable housing proportionate to the additional PUD density of the Project. OAG stated that IZ and IZ Plus establish a metric for assessing the relative value of a PUD application's affordable housing proffer vis-a-vis its requested bonus density. OAG alleged that the Applicant's proposed dedication of public space to widen the alley, the WMATA chiller plant improvements, the alley planter, and alley paving should not be considered public benefits of the Project. OAG also alleged that the PUD's public benefits were insufficient to outweigh the development incentives being requested (the "First OAG Filing"). (Ex. 33-33A.)

119. OAG filed a subsequent statement and accompanying PowerPoint presentation further asserting that the Applicant's affordable housing proffer and the other proffered benefits associated with the Project are insufficient to satisfy the PUD balancing test pursuant to Subtitle X § 304.3, that the PUD proffers relating to public art, the WMATA chiller plant, the alley planter, LEED, and alley paving should not be considered public benefits of the Project, citing Subtitle X, § 305.2, and additional affordable housing is required to justify the requested PUD bonus density. (Ex. 44-44B and, together with the First OAG Filing the "OAG Filings.") OAG concluded that the Commission should decline to approve the PUD unless the Applicant agrees to provide at least 5 additional affordable units in the U Street Building and 4 additional affordable units in the Townhomes.

120. At the March 16, 2023, public hearing, OAG testified in opposition to the Application and reiterated the arguments made in the OAG Filings. (Hrg. Tr. at pp. 100-118.)

## ANC

121. ANC 1B submitted the following reports:
- Resolution dated December 6, 2022 (the “First ANC Report”), stating that at its duly noticed public meeting on December 1, 2022, with a quorum present, the ANC voted to submit a resolution in support of the Application; and (Ex. 14.)
  - Resolution dated February 24, 2023 (the “Second ANC Report” and, together with the First ANC Report, the “ANC 1B Reports”.) stating that at its duly noticed public meeting on January 5, 2023, with a quorum present, the ANC voted to submit a resolution in support of the Application. (Ex. 29.)
122. Both ANC 1B Reports indicated that the ANC’s support was conditioned on the delivery of certain public benefits the ANC valued at approximately \$650,000 in total, categorized as follows:
- Commemorative Works or Public Art- \$200K;
  - Transportation Infrastructure- \$200K;
  - WMATA Chiller- \$100K;
  - Public Garden- \$50K;
  - Safety and Community Engagement- \$30K;
  - Trash Management- \$20K;
  - Harrison Rec Center- \$25K; and
  - Community Organization Support- \$25K.
123. On May 8, 2023, the ANC 1B Chair also submitted a response to the Applicant’s Second Post-Hearing Statement. (Ex. 74.) It stated that she believes the Applicant has addressed the concerns about pedestrian and safety access. Specifically, the inclusion of small alcoves and greenery for pedestrians navigating the alley to move away from vehicles; the inclusion of speed bumps, signage, and mirrors create a safer environment for drivers to see any pedestrians turning the corner and safe pedestrian crossing; and since the alley in the middle will be closed for vehicular traffic the problem of illegal parking should be alleviated.

## Persons in Support

124. A letter in support of the Application was submitted to the record from:
- Emily Davis (Ex. 60.); and
  - Adam Twardowski. (Ex. 65.)

## SPP Party in Opposition

125. The Commission received three individual requests for party status in opposition to the Application and consolidated said requests to establish one party in opposition to the Application (*see* FF 4.) In its filings, members of SPP generally raised the following issues and concerns with the Application:
- Loss of light, air, property values, and privacy due to the height and construction of the proposed Townhomes that are 30 feet and three stories in height on the Townhome Parcel because of its location proximate to the homes of the members of SPP;

- Adverse impacts to alley circulation and surrounding traffic network;
  - Adverse impacts to pedestrian safety caused by the increase in alley traffic; and
  - Adverse impacts to health and living environment, caused by the proximity of the Townhomes to their homes, and the resulting increase in noise, traffic, and construction.
126. At the March 16, 2023, public hearing, Jenny Prime testified on behalf of SPP and argued that the Commission should deny the Application because:
- The configuration of the PUD Site was not appropriate;
  - The flexibility and development incentives being requested outweighed the proffered public benefits and amenities;
  - The impacts to light and air could not be mitigated and were unacceptable given the public benefits and amenities;
  - The proposed townhouses would overly burden the alley, create an unsafe alley system, increase pedestrian traffic in the alley, and cause adverse effects on neighbors because of proximity and shadows; and
  - The proposed development of the Townhome Parcel was inconsistent with certain policies of the CP's Land Use Element.
- (See Hrg. Tr. at pp. 158-171.)
127. On April 10, 2023, the SPP Group submitted a letter describing the results of its meeting with Applicant (Ex. 68.) SPP stated that it suggested the following changes to the Project to the Applicant as a compromise:
- Restrict the height of the alley dwellings to 20 feet (two stories), as is the current limit of an alley lot in an RF-1 zone;
  - Increase alley width along the 13<sup>th</sup> street side by at least two feet (for a total width of at least 18 feet);
  - Provide more greenspace. The planter box along the southern portion of the property is not even sufficient for side yard zoning rules and is too small to be a meaningful benefit to the community. We suggest that a courtyard be made and dedicated to the community; and
  - If no compromise, SPP requested that the Commission deny the PUD.
128. On May 4, 2023, the SPP Party submitted a response to Applicant's Post-Hearing statement. (Ex. 73.) It states that the SPP party does not believe the alley is safe for pedestrians unless it includes additional open and green space, includes a pedestrian friendly walkway parallel to 13th Street between the proposed alley dwellings and row homes, and/or a reduction of the height of the alley dwellings.

### **Persons in Opposition**

129. Letters or testimony in opposition to the Application were submitted to the record from the following:
- Sara Mack; (Ex. 42.)
  - Aaron Lewis, president of the U Street Neighborhood Association; (Ex. 43.)
  - M. David Goldstein; (Ex. 45.)

- Pat McPherson, U Street Neighbors; (Ex. 46.)
- Aisha Macedo; (Ex. 49.)
- Michael Schwartz; (Ex. 50.)
- Aaron Busch; (Ex. 52.)
- Lynn Kim; (Ex. 53.)
- Barbara A. Coleman; (Ex. 54.)
- Gary Hyde; (Ex. 55.)
- Ankit Aggarwal; (Ex. 56.)
- Manush Hristov; (Ex. 62.)
- Ann Benefield; and (Ex. 63)
- David Shuey. (Ex. 64.)

The letters and testimony in opposition raised the following issues regarding the Application:

- The height and density of the proposed U Street Building and the height of the proposed Townhomes are too intense for this location and will obstruct views and harm historic character;
- The lack of onsite parking will increase traffic and parking demand in the area;
- The proposed hotel use/temporary housing will increase crime;
- The proposed benefits and amenities are insufficient and not commensurate with the requested relief. The benefits and amenities should be enhanced to include more green space and more affordable housing;
- The proposal will increase the District’s racial wealth income gap, displace small businesses, and therefore does not advance CP policies with the goals of:
  - Integration of Vulnerable Populations and Residents with Disabilities; (Policy H-4.1.1)
  - Increasing the Permanent Supportive Housing Supply; (Policy H-4.2.3)
  - Low- and Moderate-Income Housing; (Policy H-1.2.1)
  - Data Management; and (10A DCMR § 507.7)
  - Small Business Retention. (MC-2.3.6)
- The proposal is inconsistent with the following CP Land Use Element policies: LU-1.5 (Infill Neighborhood Development); LU-2.2.7 (Alley Use); and LU-2.4.11 (Hotel Impacts).

130. At the March 16, 2023, public hearing, the following persons testified in opposition to the Application:

- Calvin Moore, who owns a home on 13<sup>th</sup> Street adjacent to the Project. Mr. Moore indicated that he believed that because the townhouses were located on alley lots, the Applicant was under-representing the amount of relief that is required. He also testified that he was concerned about potential adverse effects caused by increased alley traffic, and shadows from the proposed alley townhouses; (Hrg. Tr. at pp. 174-177.)
- Aaron Lewis, resident of 13<sup>th</sup> Street, N.W. (Hrg. Tr. at pp. 177-182.) Mr. Lewis testified that he believed the application did not meet the PUD minimum land area requirement. He further testified that he would like to see more affordable housing in the Project, and that he believed the Project should include additional green space. He raised the issue of the forced displacement of alley dwelling residents of the PUD Site in the

1950s by the Washington Housing Authority, and that he believed it raised a racial equity issue given what he characterized as the insufficient amount of affordable housing in the Project;

- David Goldstein, resident of 12<sup>th</sup> Place. (Hrg. Tr. at pp. 182-186.) Mr. Goldstein testified about what he viewed as a flawed historic preservation review process, his belief that the Project was incompatible with the historic district, and that he believed the proposed U Street Building was too large and should include additional setbacks to preserve viewsheds of the Lincoln Theater; and
- Shira Davidson, resident of 14<sup>th</sup> Street five blocks from the site. (Hrg. Tr. at pp. 186-189.) She testified that she believed the Project was providing insufficient benefits and amenities in the areas of affordable housing, community development, and economic justice.

### **Undeclared Persons**

131. Letters or testimony that were undeclared about the Application were submitted to the record from the following:
- Adam Eisgrau; (Ex. 51.)
  - Kelly Breakey; (Ex. 57.)
  - Kirk McDonald; (Ex. 58.)
  - Jeannine H. Turenne; (Ex. 59.)
  - Max Winer; and (Ex. 61.)
  - Stephanie Waters. (Ex. 67.)
132. At the March 16, 2023, public hearing, Patrick Forey, resident of 13<sup>th</sup> Street, N.W. offered testimony regarding the Application. He was not opposed to the Project but was concerned about the requested flexibility to permit no vehicle parking. (Hrg. Tr. at pp. 197-200.)

### **NCPC referral and report**

133. On May 12, 2023, the Commission referred the application to NCPC for the 30-day review and comment period required by § 492(b)(2) of the District Charter. (Ex. 75.)
134. On June 2, 2023, NCPC filed a letter stating that pursuant to delegated authority, NCPC's Executive Director found that the proposal is not inconsistent with the Comprehensive Plan for the National Capital and would not adversely impact federal interests. (Ex. 78.)

## **IV. CONTESTED ISSUES**

135. OAG, OP, SPP, individuals in opposition to the Application, and the Commission, raised several issues and concerns with the Application through written comments and/or testimony at the March 16, 2023, public hearing, and at the April 13, 2023, and May 11, 2023 public meetings, which are categorized and summarized in the Findings of Fact below.



## **PUD Eligibility Standards**

136. **PUD Site Configuration and Land Area:** SPP and persons in opposition to the Application asserted that the U Street Parcel and the Townhome Parcel should not be considered together under one consolidated Application and that the Application could not be approved because the RF-1 zoned portion of the PUD is less than the minimum permitted land area under Subtitle X § 301.1.: (Ex. 35, 36, 37, 68, 73; Hrg. Tr. at 158-171.)
- **Applicant’s Response:** In its Post-Hearing Submission, the Applicant countered these assertions as follows:
    - The Site’s configuration complies with Subtitle X § 301.5, which provides that all property included in a PUD in the ARTS-4 and RF-1 zones shall be contiguous, except that the property may be separated only by public streets, alleys, or rights-of-way; and the U Street Parcel and the Townhome Parcel are separated by an existing east-west public alley; and
    - The Applicant had requested flexibility from the minimum PUD land area requirement – or in the alternative, a variance – and the Application satisfies the applicable standards.
- (See also Applicant’s additional filings addressing the PUD Site configuration and land area at Ex. 3, 3I, 17, 28, 28C, 39.)

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

137. **Townhome Parcel FLUM Consistency:** Opposition argued that the Townhome development would be inconsistent with the CP’s FLUM which designates the Townhome Parcel as Moderate Density Residential: (Ex. 68; Hrg. Tr. at pp. 144.)
- **Applicant’s Response:** In its Post-Hearing Submission, the Applicant restated its justifications in prior filings regarding how the Project is not inconsistent with the Townhome Parcel’s Moderate Density Residential FLUM designation, and specifically reiterated:
    - The Moderate Density Residential designation specifically identifies the RF-1 zone as being a compatible zone;
    - Based on the land area of the Townhome Parcel, the proposed density of the Townhomes is approximately 1.85 FAR; and
    - The design compatibility of the Townhomes and that the Townhomes have received concept approval from the HPRB.
- (Ex. 66; see also Applicant’s additional filings addressing the Townhome Parcels’ consistency with the FLUM at Ex. 3, 3I, 17, and 28, 28C, 39.)
138. **Other Alleged CP Inconsistencies:** Various opposition letters filed in the case record alleged that the PUD was inconsistent with certain policies of the CP, and during the March 16, 2023, public hearing, SPP cited to three specific policies under the Land Use Element in support of its argument that the PUD was inconsistent with the CP. (Ex. 46, 49-50, 68, 73; Hrg. Tr. at pp. 140, 162-163.) In addition, the Commission also raised the issue of whether the Project was inconsistent with the language in the GPM that states that new development in a Neighborhood Conservation Area should be “modest in scale.” (Hrg. Tr. at pp. 74-75.) The Office of Planning also stated there were several potential

inconsistencies with Comprehensive Plan policies in its setdown report, but concluded they were outweighed by other Comprehensive Plan policies.

- Applicant's Response: In its Post-Hearing Submission (Ex. 66.), the Applicant directly addressed the following alleged CP inconsistencies, as summarized below:
  - *LU-1.5: Neighborhood Infill Development*: Since the alley dwellings lining Temperance Avenue were removed, the Townhome Parcel has been vacant and underutilized, thus its redevelopment with 15 for-sale townhomes, two of which will be affordable, is desirable and not inconsistent with this policy, particularly since the Townhome design was thoroughly reviewed by HPRB;
  - *LU-2.2.7: Alley Use*: The Applicant acknowledged there may be a potential inconsistency with this policy (see Ex. 3I, pp. 39-40.) but asserted that the proposed closure of the alley is not inconsistent with LU-2.2.7 because the alley is not presently relied upon for street and alley purposes, and will be converted into a pedestrianized walkway, which is more desirable in light of CP policies that encourage walkability and sustainability; and
  - *LU-2.4.11: Hotel Impacts*: The Applicant referenced testimony provided by its traffic expert during the March 16, 2023, public hearing, which explained why the proposed lodging component would not generate the same extent of traffic or activity associated with larger hotels. (see Hrg. Tr. at pp. 40-43, 60-61, 92-93.)
- The Applicant addressed the GPM issue raised by the Commission in an attachment to its initial submission;
  - The Applicant stated the proposed design and scale of the Townhomes will be compatible with the surrounding context because, “[t]he character of the Townhome Parcel, ... is primarily informed by the surrounding rowhomes to the west, south, and east of the PUD Site. Accordingly, all of the Townhomes will be 30 feet and three stories in height. The three-story design employs complementary townhouse widths (ranging from 14.3’ – 22.3’) and a vertical emphasis that includes bay windows. The proposed layout also serves to create a more residential feel, as the Townhomes will flank a new, pedestrianized walkway. (Ex. 3I.)
- The Office of Planning stated there may be potential inconsistencies with ED-2.1.4 (Diversified Office Options), ED-2.1.6 (Local-Serving Office Space), LU-2.1.4 (Rehabilitation Before Demolition), and LU-2.2.7 (Alley Use), but concluded that the proposed PUD advanced other policies in the CP that, on balance, support approved density to permit more mixed-use and housing, including affordable housing, at transit on the assembled parcels comprising the PUD Site; and (Ex. 13.)
- The U Street Neighbors alleged the Project will increase the District’s racial wealth income gap, displace small businesses, and does not advance CP policies with the goals of:
  - Integration of Vulnerable Populations and Residents with Disabilities; (Policy H-4.1.1)
  - Increasing the Permanent Supportive Housing Supply; (Policy H-4.2.3)
  - Low- and Moderate-Income Housing; (Policy H-1.2.1)
  - Data Management; and (10A DCMR § 507.7)
  - Small Business Retention. (MC-2.3.6). (Ex. 46.)

## **Potential adverse impacts**

139. **Height of Townhomes**: SPP and other persons in opposition to the Application raised issues with the proposed design of the Townhomes and alleged that the proposed height of 30 feet and three stories was inappropriate for the Townhome Parcel and would be incompatible with the surrounding rowhomes. SPP asserted that construction of the Townhomes on the Townhome Parcel would result in unacceptable impacts to the light and air available to their residences along 13<sup>th</sup> Street, N.W. (Ex. 35, 36, 37, 68, 73; Hrg. Tr. at 158-171.)

- **Applicant's Response**: In its Post-Hearing Submission, the Applicant provided further justifications for the proposed height of the Townhomes and explained the impacts to the Project if the Townhomes were reduced from three stories to two stories in height, pointing to supporting exhibits and assessing alternative layouts, and specifically stating the following:
  - If the Townhomes on the west side of Temperance Avenue were reduced to two stories, then in order to fit three bedrooms, other spaces and features important to the functionality and marketability of the homes would be eliminated or severely weakened. The Applicant studied four alternative layout scenarios, all of which result in inferior plans, reduce the number of Townhomes altogether, and/or reduce the number of bedrooms in the Townhomes from three to two;
  - A reduction to two stories and the resultant impacts to the Townhomes proposed by the Applicant would be inconsistent with the CP and the District's policy goals of providing housing and affordable housing for families in mixed-use infill development sites; and
  - Based on the Townhome Studies provided, it is infeasible to construct two-story, three-bedroom townhomes given the configuration of the site, the historic character of the surrounding area, the need to preserve Temperance Avenue as a publicly accessible space; and the need to comply with the District's focus on prioritizing housing and affordable housing.

(Ex. 66, 66C.)

140. **Unacceptable Impacts to Light and Air**: SPP asserted that construction of the Townhomes on the Townhome Parcel would result in unacceptable impacts to the light and air available to their residences along 13<sup>th</sup> Street, N.W. (Ex. 35, 36, 37, 68, 73; Hrg. Tr. at 158-171.)

- **Applicant's Response**: In its Post-Hearing Submission, and as specifically requested by the Commission, the Applicant provided updated solar studies that included additional timeframes to better
- the impact of the proposed Townhomes on SPP's properties.<sup>7</sup> The updated solar studies indicate:

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<sup>7</sup> Jennifer Prime resides at 13<sup>th</sup> Street, N.W., Unit A, which is the second rowhome south of the east-west alley that bifurcates the PUD Site and is a condo unit occupying the basement and first floor levels only. Michael Schwartz and Aisha Macedo live at 13<sup>th</sup> Street, N.W., which is the fourth rowhome south of the east-west alley that bifurcates

- The proposed Townhomes, as compared to two-story townhomes, have no impact on direct sunlight into Ms. Prime’s home at any time of day or year studied other than the 8:30 a.m. timeframe at the winter solstice and the 8:00 a.m. and 8:30 a.m. timeframes at the vernal equinox, which impact Ms. Prime’s ground floor only. The basement level is affected solely at 9:00 a.m. at the vernal equinox due to the extensive upper-level decking that already blocks the sun;
- The proposed Townhomes, as compared to two-story townhomes, have no impact on direct sunlight into the Schwartz/Macedo home other than the 7:30 a.m., 8:00 a.m., and 8:30 a.m. timeframes at the winter solstice and vernal equinox, which is slightly greater than the impact on the Prime home since the Schwartz/Macedo home extends to the upper floors. However, the impact occurs at 7:30 a.m. at the second level only, then gradually travels down to the ground level;
- The overall impact of the proposed development on the SPP residences is minimal and occurs only during a very limited timeframe for a portion of the year; and
- It is well settled in the District of Columbia that a property owner is not entitled to view, light, or air across another person’s property without an express easement (citing to *Hefazi v. Stiglitz* 862 A.2d 901, 911 (D.C. 2004.); *citing also to* Z.C. Order No. 11-03, Finding of Fact No. 91.).

(Ex. 66, 66B.)

141. **Adverse impacts to living environment, caused by the proximity of the Townhomes to their homes, and the resulting loss of privacy, property values, and increase in noise, traffic, and construction:**

SPP asserted that construction and height of the Townhomes on the Townhome Parcel would result in unacceptable impacts in terms of loss of privacy, property values, and increase noise and traffic in the alley directly behind their residences along 13<sup>th</sup> Street, N.W. (Ex. 35, 36, 37, 68, 73; Hrg. Tr. at 158-171.)

- Applicant’s response: The Applicant did not directly respond to these issues, focusing instead on the height, shadow, and transportation impacts:
  - Prior to the hearing, the Applicant did respond to the Commission’s request that it address the potential impacts created by the Project on the existing surrounding rowhomes addressing the height, shadow and transportation impacts; and (Ex. 17.)
  - The Applicant also considered design alternatives and discussed the various tradeoffs involved if the heights of the townhouses were reduced. (Ex. 66.)

142. **Commission concerns about hotel use and traffic demand:** During the April 13, 2023 public hearing, the Commission expressed concerns about the proposed hotel use and traffic demand caused by the use:

- Applicant’s Response: At the hearing, the Applicant responded to this issue as follows:
  - Hotel operators are willing to consider the space that lacks parking because they expect their customers to be heavily reliant on rideshare and Metro;
  - The size of the hotel use is limited to 60 rooms;
  - The trip generation estimates for the Project included the hotel use;

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the PUD Site and is a single-family unit occupying the basement level and three levels above. James Potepa Lives at T Street, N.W., and so is not affected by shadows from the Project. (See FF No. 4.)

- The number of deliveries for the hotel is much more limited because the hotel space does not include a banquet area, or restaurant;
- The building contains adequate on-site loading for the anticipated demand; and
- They expected hotel guests to be heavily dependent on ridesharing and public transit given the location.

(Hearing Tr. at pp. 60-61, 92-93.)

143. **Adverse impacts to pedestrian safety caused by the changes in alley traffic resulting from the Project:**

SPP asserted that construction of the Townhomes on the Townhome Parcel would result in unacceptable impacts by overly burdening the alley, create an unsafe alley system, increase pedestrian traffic in the alley. (Ex. 35, 36, 37, 68, 73; Hrg. Tr. at 158-171.) At the April 13, 2023 public meeting, the Commission decided not to move forward with proposed action because Commissioner Hood had concerns about unsafe alley conditions, particularly with respect to pedestrian safety given that vehicles will also use the alley. The Commission asked the Applicant to work on enhanced traffic safety mitigations for the alley; suggesting landscaping solutions, if possible (4/13/23 Meeting Tr. at pp. 25-40).

- **Applicant's Response:** In its Second Post-Hearing Submission, the Applicant responded to this issue as follows:
  - the Applicant proposes the following additional safety measures to improve the overall experience for residents and pedestrians using the alley system:
    - Speed humps in the north-south and east-west portions of the public alley system;
    - Vehicular bollards and detectable warning strip(s) on the PUD Site at the intersections of the pedestrian mews and the east-west public alleys to visually distinguish private property (pedestrian only) and public alley (with vehicles);
    - Blind spot mirrors at alley intersections;
    - Pedestrian-scaled lighting in the mews and in the north-south alley;
    - A widened crosswalk connecting the U Street Building and the Townhomes;
    - Multi-directional dome cameras to monitor activity within the alleys and in Temperance Avenue; and
    - Wayfinding and pedestrian safety signage, specifically:
      - Wayfinding blade signs at the north and south ends of Temperance Avenue, and potentially on the façade of the historic rowhome on 13th Street, which will encourage pedestrians to use the pedestrian-only mews rather than the surrounding alleys. A drawing showing the approximate location, size, and character of the proposed blade signs is in the record; and (Ex. 72A, p. 3.)
      - Signs(s) on 13<sup>th</sup> Street announcing location of Temperance Avenue; and
      - Sign(s) in the east-west and north-south alleys to indicate the presence of pedestrians. A new rendering showing the character and massing of the pedestrian-only Temperance Avenue, including several of the safety mitigation measures described above is in the record. (Ex. 72A, p. 4.)

144. **Increased traffic and demand for vehicular parking:** An undeclared person asserted that the Project would result in unacceptable impacts by increasing traffic and demand for on street vehicular parking:



- Applicant’s response: In its pre-hearing submissions, the Applicant emphasized the Project’s transit accessibility, stating that the Project is intended to maximize the PUD Site’s proximity to the U Street Metro, by discouraging automobile use by providing zero on-site parking spaces and fostering an enhanced environment for pedestrians and cyclists through new streetscape and landscape improvements. (Ex. 3, 17.)

145. **Compatibility of the U Street Building’s height and density with the historic district and preserving views of the Lincoln Theater**: A person in opposition asserted that the U Street Building would be incompatible with the historic district unless it was reduced in size and included additional setbacks:

- Applicant’s response: In its pre-hearing statement, the Applicant provided information and justifications for the design of the Project, including a summary of the feedback received from the Historic Preservation Office (“HPO”) and the review process with the Historic Preservation Review Board (“HPRB”), which ultimately led to concept approval, that convinced the Commission the Project was compatible with the historic district; and (Ex. 3L, 17.)
- It is well settled in the District of Columbia that a property owner is not entitled to view, light, or air across another person’s property without an express easement. (Citing to *Hefazi v. Stiglitz*, 862 A.2d 901, 911 (D.C. 2004.); *citing also to* Z.C. Order No. 11-03, Finding of Fact No. 91.)

146. **Project will increase the District’s racial wealth income gap, displace small business, and increase crime**: Persons in opposition alleged the proposed Project will increase crime, displace small business, and increase crime. (See FF 127.)

### **Evaluating the Public Benefits and PUD Balancing**

147. **Application of IZ Plus and IZ Standards and whether the PUD proffers qualify as public benefits**: OAG asserted that IZ Plus and IZ standards should be utilized in order to determine whether the Applicant’s affordable housing proffer is adequate. OAG alleged the alley widening, design-related PUD proffers, and the PUD proffers relating to public art, the WMATA chiller plant, the alley planter, LEED, and alley paving should not be considered public benefits of the Project, citing Subtitle X, § 305.2. OAG also alleged the public benefits package was insufficient to outweigh the development incentives and flexibility being requested, and that this insufficiency could be cured by increasing the affordable housing proffer: (Ex. 33-33A, 44-44B; Hrg. Tr. at pp. 100-118.)

- Applicant’s Response: In its Post-Hearing Submission, the Applicant provided an extensive analysis countering OAG’s assertion and provided calculations in support of its rebuttal, specifically stating the following:
  - The IZ Plus and the IZ formulas are not the standards under which the Commission is tasked with evaluating the PUD, and the Commission should not apply these incorrect standards unless or until the Zoning Regulations are changed;
  - From a practical perspective, potential applicants would be completely disincentivized from filing a PUD with a Zoning Map amendment if IZ Plus was



the applicable legal standard, and OAG’s assertion undermines the purpose and intent of the PUD process;

- OAG’s mistaken position on this issue has an impact that goes beyond the Application and creates confusion despite the clarity of the Zoning Regulations;
- As it relates to the application of IZ Plus to the U Street Parcel, the Zoning Regulations specifically state that IZ Plus “shall not apply to a map amendment that is related to a PUD application” (citing to Subtitle X § 502.2(a)), and that the correct standard for evaluating IZ as a public benefit within a PUD is the “extent it exceeds what would have been required through matter-of-right development under existing zoning” (citing to Subtitle X § 305.5(g)(1));
- As it relates to applying the IZ formula to the Townhomes, the correct standard for evaluating IZ as a public benefit within a PUD is the extent to which IZ “exceeds what would have been required through matter-of-right development under existing zoning.” (citing to Subtitle X § 305.5(g)(1));
- The Zoning Regulations do not require a specific amount of affordable housing for a PUD, and instead enumerate 18 different types of public benefits that are defined as “superior features... that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter of right provisions of [the Zoning Regulations].” (Citing to Subtitle X § 305.2.) The entirety of an applicant’s public benefits package must be weighed against the associated project’s development incentives and potential adverse impacts;
- If OAG asserts that, as a policy matter, this or any other PUD should solely focus a public benefits package on affordable housing, then OAG should submit a text amendment to revise Subtitle X § 305.5 to expressly deprioritize or eliminate the 17 other types of public benefits listed;
- OAG is undermining the District’s goal of being an equitable and inclusive city, as the Applicant’s public benefits package was specifically informed by its outreach to the surrounding community; and
- Notwithstanding the Applicant’s assertions that the IZ Plus and the IZ formula are not applicable to the Application, OAG’s math is erroneous and relied upon assumptions that are inconsistent with the Zoning Regulations.

(Ex. 66, 66A.)

148. **Land Dedication and Resulting Widening of Alley to 16 Feet Should Not Be Considered a Public Benefit:** During the March 16, 2023, OAG, SPP, and other opponents took issue with the proposed land dedication to widen the westernmost alley in the square to 16 feet and stated that such widening should not be considered a public benefit because it is needed to mitigate any potential adverse impacts. OAG cited Subtitle X. §305.9: (Ex. 33A; Hrg. Tr. at pp. 107-113, 176-177, 199-200.)

- **Applicant’s Response:** In its Post-Hearing Submission, the Applicant responded to this issue as follows:
  - While it has consistently been DDOT’s guidance that 16 feet is the appropriate width for two-way vehicular alley circulation, there is no law, regulation, or even formal policy in the District that requires a certain width for public alleys;

- In this case, DDOT has not indicated that increasing the width of the alley to 16 feet is required to mitigate any potential adverse impacts created by the PUD, and therefore the dedication constitutes a benefit in accordance with Subtitle X § 305.5(o); and
- Because the current configuration of the westernmost alley is not restricted in any direction and presently operates as a two-way alley, the proposed land dedication functions as an expansion/widening of the existing condition, not a conversion that creates new traffic patterns.

(Ex. 66.)

149. **OAG contended that the PUD proffers relating to public art, the WMATA chiller plant, the alley planter, LEED, and alley paving should not be considered public benefits of the Project, citing Subtitle X, § 305.2.** OAG’s submission stated that the Applicant had not provided sufficient evidence that these benefits would exceed what would be provided as a matter of right. (Ex. 44.)

## CONCLUSIONS OF LAW

### COMPLIANCE WITH PUD ELIGIBILITY STANDARDS

#### *Variance – Minimum Two Acre Land Area for RF-1 Zone (Subtitle X § 301.1)*

1. The Commission concludes that the Application’s request for an area variance from Subtitle X § 301.1’s requirement to provide a minimum PUD land area of two acres in the RF-1 zone is a precondition to the Commission’s review of the proposed PUD in the RF-1 zone, and so is reviewed separately from the Application’s requests for PUD flexibility.<sup>8</sup>
2. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(3) (2018 Repl.) and Subtitle X §§ 1000.1 and .3 authorize the Commission to grant variances from the requirements of the Zoning Regulations where:
  - *“By reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,”*
  - *The strict application of any zoning regulation “would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property,” and*

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<sup>8</sup> The Applicant requested relief from the minimum PUD land area requirement as a 50% waiver pursuant to Subtitle X, § 301.2 from the minimum PUD land area in the RF-1 zone (87,120 sf or 2 acres), which would allow for a PUD land area of 43,560 sf or 1 acre. However, the PUD site is 37,021 sf, which is 6,539 sf less than the minimum required after the 50% waiver reduction is taken. For the remaining, 6,539 sf, the Applicant requested an area variance, or in the alternative PUD flexibility relief. (See FF Nos. 46, 64, 103). The Commission wants to be clear that it is granting all of the minimum PUD land area relief as a variance, and none of the relief as PUD flexibility relief. The Commission further notes that the Office of Planning supported the request for relief as a 50% waiver pursuant to Subtitle X, § 301.2, which permits a reduction in the PUD minimum land area for a Project of exceptional merit located outside of the Central Employment Area that provides over a certain housing threshold. The Commission does not believe this Application qualifies under Subtitle X, § 301.2 for all of the relief needed because the Application proposes a minimum land area of 37,021 sf and that provision would only authorize a minimum land area of 43,560 sf.

- *Granting the requested variance would not cause:*
    - *[S]ubstantial detriment to the public good” and*
    - *Substantial impairment to the “intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.”*
3. Subtitle X § 1001 distinguishes between use and area variances with use variances<sup>9</sup> limited to three specific categories:
    - Uses not permitted as a matter of right or by a special exception;
    - Uses expressly prohibited; or
    - A prohibited expansion of a nonconforming use. (Subtitle X § 1001.4.)
  4. The area variance category is instead “open ended” and broadly encompasses deviations from requirements “that affect[s] the size, location, and placement of buildings and other structures ...” and those that are a “precondition to a matter of right use” amongst other examples. (Subtitle X § 1001.3(a) and (f); *NRG, LLC v. D.C. Bd. Of Zoning Adjustment*, 195 A.3d 35, 61 (D.C. 2018).)
  5. An applicant for an area variance must prove that an extraordinary condition of the property would result in “peculiar and exceptional practical difficulties” by demonstrating first that compliance with the area restriction would be unnecessarily burdensome; and second, that the practical difficulties are unique to the particular property. (*Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990); Subtitle X § 1002.1(a).)
  6. “[B]ecause of the nature of the respective types of variances and their effects on the zone plan the higher ‘undue hardship’ standard applies to requests for use variances while the lower ‘practical difficulty’ standard applies to area variances” (*Gilmartin*, 579 A.2d at 1170).
  7. The Commission concludes that the variance requested by the Application is properly an area variance, as Subtitle X § 301.1 is not a use restriction, but instead governs the size and location of buildings through the PUD process.
  8. Based on the case record and the Findings of Fact herein, the Commission concludes that the Application satisfies the area variance standards for relief from the PUD land area requirements of Subtitle X § 301.1 for the RF-1 zone:
    - The PUD Site is affected by a confluence of factors and challenges, including the existing WMATA Easements that limit the buildable area on the U Street Parcel and the tightly constrained Townhome Parcel, where any future development must account for Temperance Avenue and ensure compatibility with the density and scale of surrounding rowhomes;

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<sup>9</sup> The Commission adopted definitions of use and area variances into the Zoning Regulations in 2013 in Z.C. Case No. 12-11; prior to that time these categories had been defined by case law. OP’s setdown report for Z.C. Case No. 12-11 stated that “use variance treatment is only appropriate when an applicant seeks to establish a use that is not permitted at all within a zone district, as opposed to a use that is permitted, but restricted or conditioned in some way.” (Z.C. Case No. 12-11, Ex. 1 at 14.)

- These constraints make it impossible for the Applicant to increase the size of the PUD Site in order to meet the minimum land area for a PUD in the RF-1 zone;
- As a result, if the minimum land area requirements were strictly applied, the Applicant would be forced to abandon the PUD application for the RF-1 zoned portion of the PUD Site, which proffers several public benefits and amenities that will benefit the surrounding neighborhood and the District as a whole; and
- The Commission further concludes there is no substantial detriment to the public good or impairment of the Zoning Regulations for several reasons, including that the relief will result in the development of 15 for-sale Townhomes, including two affordable three-bedroom units, and because the parcel is directly adjacent to the higher intensity zoning that fronts on U Street. The Commission also concurs with the Office of Planning that this a project of exceptional merit, is located outside of the Central Business Area, and meets the housing threshold to qualify for relief under Subtitle X, §301.2, which influences its decision that the variance does not impair the intent of the Zoning Regulations, notwithstanding the fact that the Application requires additional area relief beyond what is authorized under that provision.

(FF No. 59, 64-65, 102-103, 111.)

**PUD AND PUD-RELATED MAP AMENDMENT REVIEW**

***Authority***

9. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a Consolidated PUD consistent with the requirements of Subtitle X, Chapter 3 and Subtitle Z § 300, and a PUD-related map amendment pursuant to Subtitle X § 303.12.

***Purpose, Flexibility, and Evaluation Standards***

10. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
  - (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.*
11. Pursuant to Subtitle X § 303.11:
 

*“The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission.”*
12. Pursuant to Subtitle X § 303.12:
 

*“A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD.”*

13. 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 of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case;”*
- and must find that the proposed development:
- (a) Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
  - (b) Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
  - (c) Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
14. Pursuant to Subtitle X §§ 305.2, 305.3, 305.4, and 305.12, the PUD’s benefits and amenities must *“benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions”*, in majority part *“relate to the geographic area of the Advisory Neighborhood Commission in which the application is proposed”* and *“meet the following criteria: (a) Benefits shall be tangible and quantifiable items; (b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) Benefits may primarily benefit a particular neighborhood or area of the city or service a critical city-wide need; and (d) Monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.”* Moreover, a PUD *“may qualify for approval by being particularly strong in only one (1) or a few categories [of public benefits], but must be acceptable in all proffered categories and superior in many.”*
15. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP’s purposes as:
- (a) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
  - (b) to guide executive and legislative decisions on matters affecting the District and its citizens; and*
  - (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.*



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

“The Comprehensive Plan is a ‘broad framework intended to guide the future land use planning decisions for the District. *Wisconsin-Newark Neighborhood Coal. V. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). ‘[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.’ *Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous ‘occasionally competing policies and goals,’ and, ‘[e]xcept where specifically provided, the Plan is not binding.’ *Id.* At 1167, 1168 (internal quotation marks omitted). Thus ‘the Commission may balance competing priorities’ in determining whether a PUD is consistent with the Comprehensive Plan as a whole.’ (*D.C. Library Renaissance Building/West End Library Advisory Grp. V. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013).) ‘[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.’” (*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016).)

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

17. Based on the case record and the Findings of Fact above, the Commission concludes that the Project, including the PUD and related Zoning Map amendment, is not inconsistent with the Comprehensive Plan and with other public policies and active programs related to the Property. In reaching this conclusion, the Commission balanced several competing policies:

- (a) The Commission concludes the Application is consistent with the Comprehensive Plan policies cited by the Applicant and OP, and recited in this Order at FF 67-98, 108-113. The Commission found the Project was particularly strong because it advanced the following policies:
- The Project advances policies of the U Street Parcel’s Main Street Mixed Use Corridor designation on the GPM, as the U Street Building is designed is designed to “support transit use and enhance the pedestrian environment.” (CP § 225.14.) The ground floor of the U Street Building will enliven the abutting public space adjacent to the U Street Metro, specifically with the implementation of glass storefronts, new lighting, and an overhang that will protect Metro riders from precipitation; (FF 67.)
  - The Project’s medium density mixed-use development consisting of ground floor retail, hotel, and residential uses advances several policies of the Citywide Elements and the Mid-City Area Element because its height, FAR, and design



are compatible with the surrounding area, it would incorporate the Metro entrance as part of the development to recreate a vibrant transit hub at this location, it would create business and employment opportunities, and it would provide passive recreational spaces to complement and preserve historic elements significant to this location; (FF 72, 76-84, 109.)

- The Project advances policies of the CP's Land Use Element because the Project is a pedestrian-oriented, infill development that will provide new multi-family and family-sized housing, including affordable housing at a range of income levels, in a high opportunity area in close proximity to transit. The Project maximizes its locational advantages and provides a mix of uses that are appropriate for each portion of the PUD Site given applicable CP policies and objectives. The proposed mix of uses and the ground floor design of the U Street Building results in a high-quality, signature building that will activate the public realm around the U Street Metro entrance. The retail and lodging uses will activate the U Street corridor in a manner that current improvements on the PUD Site are incapable of doing. The architectural design, scale, and layout of the Townhomes will complement the established character of the area and retain the configuration of historic Temperance Avenue. The entirety of the PUD Site is severely underutilized, and the Project will facilitate a more efficient and effective use of the PUD Site that provides access and creates new opportunities for District residents; (FF 76, 109.)
- The Project advances policies of the CP's Housing Element because it creates a mixed-use development with mixed-income housing, including affordable housing. The U Street Building will provide approximately 131 new multifamily units in a high-opportunity area near public transit. These multifamily units will be distributed among studio, one-bedroom, and two-bedroom unit types. Importantly, 15% of the residential GFA will be set aside as IZ units at 60% of the MFI; and 12% of the penthouse floor area will be set aside as IZ units at 50% of the MFI. The Project also includes the construction of 15 for-sale townhome units on the Townhome Parcel. Each of the three-story townhomes will consist of three bedrooms, and thus can realistically accommodate family-sized households. Moreover, the Applicant will set aside two of the for-sale Townhomes as affordable units, which amounts to approximately 13.33% of the residential GFA of the Townhome Parcel. These two Townhomes will be set aside for households earning up to 80% of the MFI, consistent with IZ requirements for for-sale units. In light of the foregoing, the Project will advance many of the District's housing and affordable housing goals set forth in the Housing Element, and will help to address citywide housing needs at an underutilized and appropriate location; (FF 78, 109.)
- The Project advances policies of the DUKE SAP by transforming an underutilized and partially vacant site that is adjacent to the U Street Metro station into a viable mixed-use community, including ground-floor retail and

lodging uses, which furthers the DUKE SAP's goal to promote increased density in appropriate areas and support the economic growth and dynamism of the U Street corridor; and (FF Nos. 88-89, 109.)

- The Project will further the housing goals of the Mayor's Order 2019-036 by introducing approximately 131 multifamily units in the U Street Building, including approximately 17 affordable units, and 15 townhome units, including 2 affordable units. (FF No. 91.)

(b) The Commission carefully considered whether the Application is inconsistent with the text of the Comprehensive Plan and other policies cited by SPP. SPP cited four specific policies under the Land Use Element in support of its argument that the PUD was inconsistent with the Comprehensive Plan, namely LU-1.5.1, LU-1.5.2, LU-2.2.7, and LU-2.4.11. The Commission will address each below:

- LU-1.5: Neighborhood Infill Development
  - LU-1.5.1: Infill Development. *Encourage infill development on vacant land within Washington, DC, particularly in areas where there are vacant lots that create gaps in the urban fabric and detract from the character of a commercial or residential street. Such development should reflect high-quality design, complement the established character of the area and should not create sharp changes in the physical development pattern; and (CP § 308.6.)*
  - LU-1.5.2: Long-Term Vacant Sites. *Facilitate the reuse of vacant lots that have historically been difficult to develop due to infrastructure or access problems, inadequate lot dimensions, fragmented or absentee ownership, or other constraints. Explore lot consolidation, acquisition, and other measures that would address these constraints; (CP § 308.7.)*

The Commission concludes the Project is not inconsistent with these two policies that encourage compatible infill development and the reuse of vacant lots that have historically been difficult to develop for the following reasons. Since the alley dwellings lining Temperance Avenue were removed, the Townhome Parcel has been vacant and underutilized for a very long time. Its redevelopment with 15 for-sale townhomes, two of which will be affordable, will expand the District's housing supply around public transit and the diverse array of commercial establishments and amenities along the U Street corridor. The Townhomes have undergone a thorough review by HPRB and have received concept approval. Moreover, the architectural design, scale, and layout of the Townhomes will complement the established character of the area. As such, the Townhomes serve to preserve the historic fabric of the neighborhood. In light of the foregoing, the Townhomes reflect an appropriate type of infill development, particularly given the Townhome Parcel's location that is accessible to pedestrians and within a high-opportunity area. The Commission does not believe the Townhomes constitute a "sharp change" to the development pattern; (FF 76-78, 99.)

- LU-2.2.7: Alley Use. *Discourage the conversion of alleys into private yards or developable land when the alleys are part of the historic fabric of the*

*neighborhood and would otherwise continue to perform their intended functions, such as access to rear garages and service areas for trash collection. Support the greening of residential alleys where feasible to enhance sustainability and stormwater management. Encourage potential activation of commercial alleys in business districts through art, programming, and events where not in conflict with the intended function of the alley network; (CP § 311.8)*

The Commission concludes that the Project is inconsistent with this policy because the Project includes the closure of currently existing alleys in the square; (FF 15-16, 99.)

- LU-2.4.11: *Hotel Impacts. Manage the impacts of hotels on surrounding areas, particularly in the Near Northwest neighborhoods where large hotels adjoin residential neighborhoods. Provisions to manage truck movement and deliveries, overflow parking, motor coach parking, and other impacts associated with hotel activities should be developed and enforced; (CP § 313.19.)*

The Commission concludes the proposed lodging use in the U Street Building is not inconsistent with this policy. The lodging use is not large, consisting of approximately 35,000 sq. ft. of lodging use and 60 rooms. The likely customers of the lodging use will be reliant on ride sharing and Metro. During the public hearing, the Applicant’s traffic expert explained why the surrounding neighborhood would not be overwhelmed with hotel-related traffic, specifically noting the lack of a banquet hall or similar restaurant component. Thus, the proposed lodging use will not generate the same level of service/food truck deliveries that are commonly associated with larger hotels. The building provides adequate on-site loading for the anticipated demand; (FF 43, 115-116.)

- (c) The Commission also considered whether the Project was consistent with the Comprehensive Plan’s FLUM and GPM guidance for the Property, and the potential inconsistency of the Townhouse Parcel with the Neighborhood Conservation Area designation on the GPM. The Commission concludes the Project is generally consistent with the guidance of FLUM and GPM maps, despite some minor potential inconsistencies which are discussed below:

- FLUM
  - The CP’s Future Land Use Map (“FLUM”) designates the U Street Parcel as Mixed Use (Medium Density Residential / Medium Density Commercial); (FF 36.)
  - The Medium Density Commercial “designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Moderate Density Commercial areas. Retail, office, and service businesses are the predominant uses, although residential uses are common. Areas with

this designation generally draw from a citywide market area. Buildings are larger and/or taller than those in Moderate Density Commercial areas. Density typically ranges between a FAR of 4.0 and 6.0, with greater density possible when complying with [IZ] or when approved through a [PUD]”; (CP § 227.12.)

- The Medium Density Residential 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 [IZ] or when approved through a [PUD]”; (CP § 227.7.)
- The U Street Building portion of the Project (7.59 FAR) exceeds the guideline for both the Medium Density Commercial (6.0 FAR) and Medium Density Residential (4.0 FAR) designations. However, both guidelines acknowledge that “greater densities may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development” and both apply in this situation;
- The related map amendment of the U Street Parcel from the ARTS-1 to the ARTS-4 zone is not inconsistent with the FLUM designations because the ARTS-4 zone is intended to permit medium- to high-density, mixed-use development, with a balance of uses conducive to a higher quality of life and environment for residents, businesses, employees, and institutions. The proposed density and height of the U Street Building aligns with the District’s goals for the U Street Parcel, particularly CP policies relating to the redevelopment of U Street between 6th and 12th Streets and the DUKE Plan’s vision of creating a destination-oriented mixed-use development program along U Street; (FF 29, 48, 69.)
- The CP’s Future Land Use Map (“FLUM”) designates the Townhouse Parcel as Moderate Density Residential;
- The Moderate Density Residential designation is “used to define neighborhoods generally, but not exclusively, suited for row houses as well as low-rise garden complexes.” A density of up to 1.8 FAR is considered appropriate, although greater density may be possible when complying with IZ or when approved through a PUD; (CP § 227.6.)
- The Townhome Parcel, which is currently vacant, will be developed with 15 for-sale townhomes. The proposed density of the Townhomes will amount to 1.85 FAR, which slightly exceeds the density limit of 1.8 FAR contemplated by the Moderate Density Residential FLUM category. However, the category acknowledges that “greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development” and both apply in this situation;
- The Commission concludes that the Project is not inconsistent with the FLUM guidance for the PUD Site when read together as a whole. The Commission acknowledges that the density exceeds the guidelines

established by the FLUM, but it remains consistent with the designations because it complies with Inclusionary Zoning, is approved through a Planned Unit Development, contains uses that are consistent with the FLUM guidance, and advances important Comprehensive Plan policies that are identified above in Conclusion 16(a); (FF Nos. 36-37, 43-45, 69-70, 136.)

- GPM

- The CP’s Generalized Policy Map (“GPM”) designates the U Street Parcel as a “Main Street Mixed Use Corridor”; (FF 34.)
- The CP’s Framework Element states that “[t]hese are traditional commercial business corridors with a concentration of older storefronts along the street. The area served can vary from one neighborhood (e.g., 14th Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper-story residential or office uses. Some corridors are underutilized, with capacity for redevelopment. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment”; (§ 225.14.)
- The Commission concludes that Project is consistent with the U Street Parcel’s Main Street Mixed Use Corridor designation on the GPM, because it believes the U Street Building will “support transit use and enhance the pedestrian environment.” (CP § 225.14.) The ground floor of the U Street Building will enliven the abutting public space adjacent to the U Street Metro, specifically with the implementation of glass storefronts, new lighting, and an overhang that will protect Metro riders from precipitation. With the integration of ground floor retail, the U Street Building will add visual interest to the block, attracting new patrons and visitors to this prominent location. The proposed use mix within the U Street Building will “foster economic and housing opportunities” that are needed along U Street and at the PUD Site in particular. On a broader scale, the Project will enhance the U Street corridor as a whole as it will attract an influx of residents, retail patrons, and hotel guests who will contribute further to the vitality of the U Street corridor, which has great cultural and historical significance; (FF 67.)
- The CP’s Generalized Policy Map (“GPM”) designates the Townhouse Parcel as a “Neighborhood Conservation Area”; (FF 35.)
- The CP’s Framework Element states that, “Neighborhood Conservation Areas have little vacant or underutilized land. They are generally residential in character. 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 opportunities are anticipated, and



- these can support conservation of neighborhood character where guided by Comprehensive Plan policies and the Future Land Use Map”; (CP § 225.4.)
- The Framework Element further states that “[t]he guiding philosophy for 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 and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the FLUM and CP 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”; (CP § 225.5.)
  - The Commission considered whether there was a potential inconsistency with the Neighborhood Conservation Area designation on the GPM for the Townhouse Parcel because it states that “when change occurs, it will typically be modest in scale” and this is arguably not modest in scale;
  - The Commission concludes that to the Application is potentially inconsistent with this provision because its proposed increase in scale is not modest. The Project places a row of the Townhouses directly behind a row of existing townhouses, which is an increase in density from the typical pattern of townhouse development in the neighborhood, the FAR of the Townhouse Parcel exceeds the FLUM guideline, and the height of the Townhouses exceeds what is permitted under the Zoning Regulations governing alley dwellings; and
  - However, the Commission notes that this is a close call, and the Project is fully consistent with the other provisions of the Neighborhood Conservation Area designation, namely: the proposed development of row houses is explicitly called for in the designation, the design of the Townhouses and surrounding spaces is thoughtful and attractive, the Project supports the preservation of neighborhood character, and the Project advances the other Comprehensive Plan policies discussed in Conclusion of Law 16(a); (FF Nos. 35, 68.)
- (d) OP identified several potential CP inconsistencies in its Setdown Report, namely ED-2.1.4 (Diversified Office Options), ED-2.1.6 (Local-Serving Office Space), LU-2.1.4 (Rehabilitation Before Demolition), and LU-2.2.7 (Alley Use). However, OP’s Setdown Report concluded that the proposed PUD advances other policies in the CP that, on balance, support approved density to permit more mixed-use and housing, including affordable housing, at transit on the assembled parcels comprising the PUD Site; (FF 109.)

The Commission disagrees with OP and concludes the Project is not inconsistent with LU-2.1.4, which states, “Rehabilitation Before Demolition. In redeveloping



areas characterized by vacant, abandoned, and underused older buildings, generally encourage rehabilitation and adaptive reuse of architecturally or historically significant existing buildings rather than demolition.” (CP § 310.11.)

The Commission reaches this conclusion because it does not believe the office building currently on the PUD Site is architecturally or historically significant, and the Project includes the preservation of the Historic Rowhomes. (FF 13, 74.)

The Commission agrees with OP that the Project is potentially inconsistent with the remaining policies, one of which LU-2.2.7, was also cited by the SPP opposition party and discussed in section (b) above.

The Commission further agrees with OP that the proposed PUD advances other policies in the CP that on balance support more mixed-use and housing, including affordable housing, at transit rich locations such as the PUD Site. In addition, the Commission also agrees with the OP conclusion that since the pandemic, vacant office space has increased, and is less valuable as a result; (FF 109, 111.)

- (e) The Commission concludes that the policies cited by the U Street Neighbors in their submission at Ex. 46<sup>10</sup> are aspirational goals, and not requirements that must be satisfied for every Project, or even this one. The CP includes many overlapping policy goals that apply to this Property, and the Commission recognizes that it is not possible for a single Project to advance all of the CP policies that apply to it. The Commission therefore concludes that while the Project does not significantly advance the listed goals, it does not consider the Project to be inconsistent with the cited policies.; (FF 128, 136.)
- (f) The Commission concludes that the ways in which the Project advances the CP policies discussed in section (a), far outweigh the inconsistencies and potential inconsistencies with the CP policies discussed in sections (b), (c), (d), and (e) above; and
- (g) Pursuant to CP §§ 2501.4-2501.6, 2501.8, the Commission is tasked with evaluating the Application’s consistency with the Comprehensive Plan through a racial equity lens. The Comprehensive Plan Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (CP § 213.6.)

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<sup>10</sup> The U Street Neighbors alleged the Project will increase the District’s racial wealth income gap, displace small businesses, and does not advance CP policies with the goals of:

- Integration of Vulnerable Populations and Residents with Disabilities (Policy H-4.1.1.)
  - Increasing the Permanent Supportive Housing Supply; (Policy H-4.2.3)
  - Low- and Moderate-Income Housing; (Policy H-1.2.1)
  - Data Management; and (10A DCMR § 507.7)
  - Small Business Retention. (MC-2.3.6). (Ex. 46.)

Further, “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development, and employment opportunities.” (CP § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (CP § 213.9.) In addition, CP § 2501.8 suggests to prepare and implement tools to use as a part of the Commission’s evaluation process. Consistent with Comprehensive Plan guidance, the Commission utilizes a Racial Equity Analysis Tool in evaluating zoning actions through a racial equity lens; the Commission released a revised Tool on February 3, 2023<sup>11</sup>. The revised Tool requires submissions from applicants and the Office of Planning analyzing the zoning action’s consistency with the Citywide and Area Elements of the Comprehensive Plan, and Small Area Plans, if applicable (Part 1); a submission from applicants including information about their community outreach and engagement efforts regarding the zoning action (Part 2); and a submission from the Office of Planning including disaggregated race and ethnicity data for the Planning Area affected by the zoning action (Part 3).

The Commission concludes that the Project is not inconsistent with the Comprehensive Plan overall when evaluated through a racial equity lens. The Commission reaches this conclusion based on the case record, which includes:

- The Applicant and OP’s racial equity analysis submissions, required by Part 1 of the Commission’s revised Racial Equity Tool;
- The Applicant’s community outreach and engagement submission, required by Part 2 of the Tool; and
- The disaggregated race and ethnicity data for the Mid-City Planning Area provided by OP, required by Part 3 of the Tool. (FF 55, 57, 93-98, 111.)

The Commission concludes that the racial equity analyses provided by the Applicant and OP address the components of the Commission’s Racial Equity Tool.

The Commission further concludes that the Project will further Comprehensive Plan policies related to racial equity. The primary way in which the Project furthers these policies is because it provides much needed housing, including affordable housing, at an underutilized, transit-oriented site. The Project will not displace any

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<sup>11</sup> The Commission released the first iteration of its Racial Equity Tool (“Tool”) in April 2022. In doing so, the Commission committed to revise the Tool based on feedback received after holding a roundtable concerning the Tool in September 2022. On February 3, 2023, the Commission released a revised Tool, indicating that it was immediately applicable to development projects. The hearing on this case occurred on March 16, 2023, and the Commission applied the revised Tool to this case.

existing residents. The Project includes commemorative work/public art to educate the public on the historical significance of the U Street HD and Temperance Avenue. The Project includes public space improvements to facilitate more opportunity for community interaction among residents, visitors, patrons, and hotel guests. The Project will increase access to opportunity by generating employment opportunities in its retail and lodging components.

The Commission is satisfied with the community outreach and engagement performed by the Applicant, and notes that the Applicant attended approximately 58 meetings with various community stakeholders and developed the community benefits package based in part on the feedback the Applicant received as a result of its outreach efforts. The Commission notes the Applicant's community outreach and engagement submission's discussion of the historical significance of the U Street HD as "Black Broadway." The Commission further notes the Applicant's acknowledgment that discrimination has impacted this community resulting in increased housing costs, displacement of longtime residents, loss of community identity and cultural heritage, and unequal education and employment access. (FF 95.)

Moreover, the Commission notes that the disaggregated race and ethnicity data for the Mid City Planning Area provided by OP showed rising housing costs and higher poverty and unemployment rates among Blacks and Native Americans in the area. (FF 111.) The Commission is encouraged that the Project could increase the employment base in the area and will increase housing options overall, which could help to decrease the housing cost burden to lower-income households in the area.

Finally, one opponent, Aaron Z. Lewis, testified that there was forced displacement of alley dwelling residents on the Site in the 1950s, and argued that therefore the Project did not do enough to advance racial equity. The Commission acknowledges the forced displacement of alley dwelling residents. However, for purposes of its racial equity evaluation, the Commission finds no reciprocal connection between the forced displacement of alley residents on the site in the 1950s and the degree to which the Project should advance racial equity goals and policies of the CP. Given that the alley dwellings were vacated so long ago, no displacement of existing residents on the site will occur as a result of the Project. (FF 95-97, 128.)

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

18. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts, and that any potential adverse impacts are favorable, capable of being mitigated, or are acceptable given the quality of the Project's proffered public benefits.

A number of potential adverse effects were identified in the record: (a) adverse impacts related to the development and location of the Townhomes; (b) adverse impacts related to traffic, pedestrian safety, and parking demand; (c) alleged incompatibility with the historic

district and Lincoln Theater; (d) alleged increase in the racial wealth gap; (e) alleged displacement of small business; and (f) an alleged increase in crime. The Commission considered all of them and concludes as follows:

- (a) The first group are related to the development and location of the Townhomes so the Commission will discuss them together. They are the height of the Townhomes, the impact of the Townhomes on light, air, to neighboring residences, and the adverse impacts to living environment, and the resulting loss of privacy, property values, and increase in noise, traffic, and construction, caused by the proximity of the Townhomes to neighboring homes; (FF 138-140.)

The Commission concludes these are all adverse impacts of the Project.

However, the Commission considered the Applicant's responses to these issues and concludes the impacts do not rise to an unacceptable level. The Commission concludes the impacts are acceptable given the Project's public benefits;

- (b) The second set of adverse impacts are the traffic generation, pedestrian safety issues, and parking demand created by the Project; (FF 141-143.)

The Commission concludes these are also adverse impacts of the Project. The Commission considered the mitigations proposed by the Applicant and concludes they are sufficient to prevent unacceptable impacts created by the Project. The Commission concludes there will nonetheless be adverse impacts felt by neighboring residents and to pedestrians using the alley. The Commission concludes these impacts are acceptable given the Project's public benefits;

- (c) A third alleged potential adverse impact was incompatibility of the Project with the Historic District and Lincoln Theater because of the height and bulk of the U Street Building; (FF 144.)

The Commission concludes the Project would have a favorable impact on historic preservation.

The Project has undergone HPRB review and is designed to be compatible with the U Street HD. The development of the Townhome Parcel with 15 Townhomes acknowledges and reimagines the historic row dwelling character that used to define Temperance Avenue; and the Project retains and incorporates portions of the Historic Rowhomes along 13<sup>th</sup> Street. (FF 99.)

The Commission believes that the height and bulk of the U Street Building is appropriate for the Site.

The Commission therefore concludes that the alleged incompatibility with historic resources is not an adverse impact of the Project.

To the extent that views of the Lincoln Theater are obstructed, the Commission concludes that this is acceptable given the public benefits of the Project;

- (d) A fourth alleged adverse impact was increasing the District's racial wealth income gap; (FF 128, 145.)

The Commission does not believe that the opponent's provided sufficient evidence to show that the Project would increase the District's racial wealth income gap.

The Applicant provided evidence showing that the Project would mitigate the gap due to the Project's affordable housing proffer and varying levels of affordability, additional housing in the form of approximately 131 new multifamily dwelling units consisting of new market rate and dedicated affordable units; 15 for-sale townhome units consisting of 13 market rate and two dedicated affordable units; introducing approximately 19 new affordable housing units overall; (FF 96-97.)

- (e) A fifth alleged adverse impact was displacing small businesses; (FF 128, 145.)

The Commission does not believe the opponents provided sufficient evidence to show the Project would displace small businesses.

The Applicant provided evidence that the Project would not directly displace any small businesses because existing commercial tenants include a government agency (Department of General Services), which has relocation plans, and national chains/franchises and a hostel tenant that have been notified that their leases will be ending according to the proper notice periods and protocols. The Applicant provided evidence that there will be limited or no economic displacement of residents due to affordable housing proffer and varying levels of affordability, and no cultural displacement or lost sense of shared neighborhood identity due to installation of commemorative work/public art to educate the public on the historical significance of the U Street HD and Temperance Avenue, and public space improvements to facilitate more opportunity for community interaction among residents, visitors, patrons, and hotel guests; and (FF 97.)

- (f) A final alleged adverse impact is an alleged increase in crime; (FF 128, 145.)

The Commission does not believe the opponents provided sufficient evidence to show the Project would increase crime.

The Applicant provided evidence that the Project would enhance the aesthetic appeal of the Metro entrance but will also create a more comfortable space where transit riders, pedestrians, retail patrons, and Project residents and guests are likely to gather and interact. Paving materials and lighting will be upgraded within the Metro Plaza, and the retail and building lobby facades that embrace the space will incorporate glass storefronts that allow for additional "eyes and ears" on the street in this publicly accessible space. Temperance Avenue will become a pedestrianized open space that is accessible to the public, thus converting a car-



oriented space into one that is dedicated to pedestrian and community use. (FF 107.)

**EVALUATING THE PUBLIC BENEFITS (SUBTITLE X §§ 304.4(c) AND 305)**

19. The Commission concludes that the Project includes specific public benefits and amenities that are not inconsistent with the Comprehensive Plan or other policies relevant to the PUD Site pursuant to Subtitle X §§ 304.4(c), and 305. The Commission evaluated the benefits proffered by the Applicant and concludes as follows.

- (a) The Commission believes the Application has particularly strong proffered public benefits in the areas of:
  - i. Superior Urban Design and Architecture. The U Street Building’s cantilever design creatively overcomes the challenges presented by the WMATA Easements and adds visual interest to a prominent intersection. The Project integrates a variety of additional architectural techniques, including stepbacks, articulation, and a rich palette of varying exterior finish materials to prevent a “superblock” aesthetic and achieve compatibility with the diverse architectural typology of the surrounding context. Despite the limited buildable area at the front of the U Street Parcel, the ground-floor design effectively enlivens the abutting public space and Metro Plaza to encourage continuous activity. The U Street Building’s incorporation of the Historic Rowhomes on 13<sup>th</sup> Street and the setback of the new construction above further strengthens the building’s compatibility with the U Street HD;
  - ii. Site Planning and Efficient and Economical Land Utilization. The Project will transform an underutilized, transit-oriented site with residential, retail, and lodging uses, and provide major improvements to the pedestrian experience. Doing so constitutes a significant benefit because collectively such improvements will enhance safety, result in aesthetic upgrades to the community, encourage transit use, and provide a new mix of uses that are compatible with the surrounding mixed-use neighborhood and consistent with many of the goals of the Comp Plan. The current and foreseeable demand for existing office space is low, and therefore the existing older office building on the U Street Parcel does not constitute the most efficient and effective use of this land. In contrast, the proposed new U Street Building will provide a new mix of uses that are more aligned with current and future demand for the mixed-use, walkable, and transit-oriented location. The proposed ground-floor retail and streetscape improvements will significantly enliven the experience around the U Street Metro entrance. The proposed lodging use will accommodate an influx of guests that can enjoy immediate access to one of the more important cultural and entertainment hubs of the District. And most critically, the residential component will provide approximately 131 new multifamily units,

including affordable units, that continue to be in high demand, particularly in such an important mixed-use location. Given that the Townhome Parcel is currently vacant, the proposed Townhome development also constitutes a significant increase in land utilization. The proposed construction of 15 for-sale townhomes, two of which will be set aside as affordable, maximizes an opportunity to increase the District's housing supply;

- iii. Housing. The U Street Building will provide approximately 131 new dwelling units, distributed among studios, one-bedroom, and two-bedroom units. This amount of new housing exceeds what would have been provided through matter of right development under the U Street Parcel's current ARTS-1 zoning. The proposed Project also provides units with three or more bedrooms. All 15 of the for-sale Townhomes will consist of three bedrooms so that the proposed Project can accommodate family-sized households;
  - iv. Affordable Housing. The Applicant will set aside 15% of the residential GFA within the U Street Building for affordable housing. This is more affordable housing than could be achieved through matter of right development under existing zoning on the U Street Parcel. In addition, the Applicant will set aside 12% of the penthouse habitable space to IZ units within the U Street Building, for households earning up to 50% MFI. This is more affordable housing generated by the penthouse than could be achieved through matter of right development under existing zoning. In addition, the Applicant will set aside more affordable housing in the Townhomes than would be achieved through matter of right development;
  - v. Environmental and sustainable benefits. The U Street Building will be designed to achieve the equivalent of LEED Gold under LEED v.4 for Building Design and Construction and the Townhomes will be designed to achieve the equivalent of LEED Gold under LEED v.4.1 for Building Design and Construction: Homes Single Family Update for the Townhomes; and
  - vi. Mass transit improvements. A distinguished element of the Project is that it involves the redesign and construction of the U Street Metro entrance by creating a bright, open, inviting, and safe new Metro Plaza. The proposed improvements will not only enhance the aesthetic appeal of the entrance but will also create a more comfortable space where transit riders, pedestrians, retail patrons, and Project residents and guests are likely to gather and interact. (FF 107.)
- (b) The Commission concurs with the recommendation of OP that the impacts of the Applicant's requested zoning flexibility are outweighed by the Project's benefits of providing both market rate and affordable housing, a revitalized Metro frontage,

and a reimagined and livable Temperance Avenue, in recognition of the cultural history of the U Street corridor and the immediate area; (FF 111.)

- (c) OAG, SPP, and other opponents contended that the land dedication and the resulting widening of the alley should not be considered a public benefit because it is necessary to mitigate potential adverse effects of the Project and therefore does not qualify as a public benefit pursuant to Subtitle X, § 305.9. (FF 146.) The Commission agrees that the changes to the alley are necessary to mitigate a potential adverse impact related to traffic and pedestrian safety, and therefore did not consider them to be a public benefit of the Project;
- (d) OAG contended that the PUD proffers relating to public art, the WMATA chiller plant, the alley planter, LEED, and alley paving should not be considered public benefits of the Project, citing Subtitle X, § 305.2. (FF 117-119, 147-148.) The Commission concludes all those listed in FF No. 107 are public benefits and amenities, except for the land dedication and the resulting widening of the alley discussed immediately above. The Commission concludes that the proffers benefit the surrounding neighborhood to a significantly greater extent than would likely result from development of the site under the matter of right provisions of the Zoning Regulations, and therefore meet the Subtitle X, § 305.2 standard;
- (e) The Commission considered the argument made by OAG that the Project's affordable housing proffer is inadequate and should not count as a public benefit because it is less than the amount that would be required if the Application was brought as a standalone map amendment subject to the IZ Plus requirements of the Zoning Regulations, and not as a PUD related map amendment. (FF 117-119, 146.) More specifically, that IZ and IZ Plus establish a metric for assessing the relative value of a PUD application's affordable housing proffer vis-a-vis its requested bonus density; therefore, the Commission should deny the PUD unless the Applicant increases the affordable housing proffer by five additional units in the U Street Building and four additional units in the Townhomes;

The Commission rejects OAG's argument and instead concludes that the affordable housing provided in the Project is adequate and is a public benefit.

The Zoning Regulations are very clear that IZ Plus is not the relevant standard for a PUD. The IZ Plus regulations specifically state that IZ Plus, "shall not apply to a map amendment that is related to a PUD application". 11-X DCMR § 502.2(a). The Commission made this intentional policy choice when it wrote the IZ Plus regulations because it recognizes that PUDs are different from map amendments. The Commission wants to encourage the wider range of benefits that flow from PUDs, which can be more closely tailored to the needs of the particular site, and receive a higher level of community input. Accordingly, the Commission concludes that OAG incorrectly applied the IZ Plus standard in determining

whether the proffered affordable housing was adequate and should be considered a public benefit under the PUD.

The correct analysis for determining whether affordable housing can be considered a public benefit under a PUD is whether the affordable housing exceeds the amount that would be required through matter-of-right development under existing zoning. 11-X DCMR § 305.5(g)(1). The Commission concludes that the affordable housing proffer proposed for the Project exceeds the amount that would have been required through matter-of-right development under the existing zoning.

The Commission agrees with the Applicant's analysis that the amount of IZ square footage proposed in this Project exceeds the amount that would have been required through a matter-of-right development under the existing zoning on both the U Street Parcel and the Townhomes for the reasons set forth in FF 107, namely:

- The Applicant will set aside 15% of the residential GFA within the U Street Building for affordable housing. This is more affordable housing than could be achieved through matter of right development under existing zoning on the U Street Parcel;
  - As matter of right, and assuming 0.5 FAR of non-residential use, an IZ development under the existing ARTS-1 zone would provide approximately 7,955 square feet of residential GFA devoted to IZ units at 60% of the MFI (75% of bonus density utilized) on the U Street Parcel. In contrast, approximately 18,081 square feet of residential GFA will be devoted to IZ units at 60% of the MFI (15% of the residential GFA, including projections) in the U Street Building. This amounts to approximately 10,126 square feet more residential GFA devoted to IZ units at 60% of the MFI than would be required through matter of right IZ development on the U Street Parcel;
- In addition, the Applicant will set aside 12% of the penthouse habitable space to IZ units within the U Street Building, for households earning up to 50% MFI. This is more affordable housing generated by the penthouse than could be achieved through matter of right development under existing zoning;
  - As a matter of right, and assuming the same square footage of habitable penthouse space as proposed in the PUD, a minimum of 10% of the penthouse habitable space (approximately 559 square feet) would be required to be set aside for IZ units in the U Street Building for households earning up to 50% of the MFI. In contrast, the PUD will set aside 12% (approximately 671 square feet) of the penthouse habitable space for IZ units within the U Street Building for households earning up to 50% MFI. This results in approximately 112 square feet more residential GFA devoted to IZ units at 50% MFI than would be required as a matter of right IZ development.
- In addition, the Applicant will set aside more affordable housing in the Townhomes than would be achieved through matter of right development. As stated above, a matter of right development on the Townhome Parcel could achieve approximately 23,210 square feet of GFA, of which 10% or 2,321 square feet of GFA would be required to be devoted to IZ units at 80% of the

MFI (assuming for-sale townhomes). In contrast, approximately 3,901 square feet of GFA will be devoted to IZ units at 80% of the MFI in the Townhomes. This amounts to approximately 1,580 square feet more residential GFA devoted to IZ units than would be required through matter of right development (a 68% increase); and (See also FF 113.)

- (f) Several opponents alleged that the benefits and amenities should be enhanced to include additional affordable housing and green space; (FF 128.)

The Commission concludes that the proffered affordable housing is sufficient to justify approval of the PUD. The Commission further concludes that while the Project does not include significant green space, the proffered public benefits of the Project in other areas are so strong in other areas that approval is justified.

**JUDGING, BALANCING, AND RECONCILING THE BENEFITS, DEVELOPMENT INCENTIVES, AND POTENTIAL ADVERSE EFFECTS (SUBTITLE X, § 304.3.)**

- 20. Based on the case record, the Findings of Fact, and the Conclusions of Law above, the Commission concludes that the Application satisfies the PUD balancing test under Subtitle X § 304.3 because it concludes the Application’s public benefits sufficiently outweigh the requested zoning and design flexibility as well as any potential adverse impacts that are not capable of being mitigated:

- (a) The Commission concludes that the Applicant’s proffered public benefits and amenities (which include superior urban design and architecture, superior landscaping and open spaces, site planning and efficient and economical land utilization, commemorative works and public art, historic preservation, housing and affordable housing, employment and training opportunities, environmental and sustainable benefits, streetscape plans, mass transit improvements, uses of special value to the neighborhood and the District of Columbia as a whole) collectively advance the major themes and objectives of the CP and the DUKE SAP, and are commendable. The Commission’s analysis of the public benefits is above at Concl. of Law 19;
- (b) OAG alleged that the public benefits package was insufficient to meet the balancing test because (1) the land dedication and the resulting widening of the alley should not be considered a public benefit; (2) the PUD proffers relating to public art, the WMATA chiller plant, the alley planter, LEED and alley paving should not be considered public benefits of the Project, and (3) the Project’s affordable housing proffer is inadequate and should not count as a public benefit because it is less than the amount required if the Application was brought as a standalone map amendment subject to the IZ Plus requirements of the Zoning Regulations. (FF Nos. 117-119.) For the reasons discussed above, the Commission agreed with OAG on the first issue and did not count the land dedication and alley widening as a public benefit, but disagreed about two and three. Therefore, the Commission counted the public art, the WMATA chiller plant, the alley planter, LEED, and alley paving as public



benefits, as well as the affordable housing proffer. (Concl. of Law 19.) Accordingly, the Commission took this into consideration when weighing the value of the benefits and amenities of the PUD. The Commission further considered the zoning flexibility listed at FF Nos. 46-52<sup>12</sup>, and the potential adverse impacts as it evaluated them above; (Concl. of Law 18.)

- (c) The Commission concludes that the Applicant’s proposed amendment of the Zoning Map to rezone the U Street Parcel from ARTS-1 to ARTS-4 is appropriate because:
- The Map Amendment is not inconsistent with the CP; and
  - The PUD Site, particularly the U Street Parcel, is underutilized given that it is currently improved with a commercial office building adjacent to transit, and the Map Amendment will allow the U Street Parcel to be developed as a mixed-use building at a density and height that can produce substantial new housing, including affordable housing, as well as ground floor retail and lodging use, all of which are more compatible with the surrounding area and more appropriate for this location.
- (FF Nos. 12-13, 29, 34-36, 40-44, 47-48, 66-98, 104.)
- (d) The Commission concludes that the requested zoning flexibility for the U Street Building, specifically to permit the proposed lot occupancy, rear yard, closed court width and area, setback abutting the RF-1 zone, building frontage, linear frontage of eating and drinking establishments, and vehicle parking, is outweighed by the proffered benefits and amenities resulting from the Project; (FF Nos. 49-50, 107.)
- (e) The Commission concludes that the requested zoning flexibility for the Townhomes, specifically to permit the proposed lot occupancy, density (lot dimensions), side yard, rear yard, and vehicle parking, is outweighed by the proffered benefits and amenities resulting from the Project; (FF Nos. 51, 107.)
- (f) The Commission concludes that the requested design flexibility is appropriate for the Project and is balanced by the proffered benefits and amenities resulting from the Project; and (FF Nos. 52, 107.)
- (g) The Commission’s analysis of the potential adverse effects/impacts of the Project is at Concl. of Law 18.

**GREAT WEIGHT TO RECOMMENDATIONS OF OP**

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

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<sup>12</sup> As discussed in Concl. of Law 1-8, the Commission granted the PUD land area relief separately as a variance.

22. The Commission finds OP’s analysis of the Application, its conclusion that the Application satisfies the PUD evaluation requirements and is not inconsistent with the CP, and its recommendation to approve the Application persuasive and concurs with this judgment. (FF Nos. 108-113.)

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

23. 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 (emphasis added). 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).)
24. The Commission gives great weight to the recommendation of the ANC 1B Reports, which did not raise any issues or concerns with the Application. The ANC Reports asserted that the ANC’s support was contingent on the delivery of the public benefits enumerated in the two reports, which are included as conditions of this order and were valued by the ANC at approximately \$650,000 in total. (FF 120-122.)

**DECISION**

In consideration of the record and the Findings of Fact and Conclusions of Law contained in this Order, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application, subject to the following guidelines, conditions and standards for:

- An area variance pursuant to Subtitle X, Chapter 10, from Subtitle X § 301.1, which requires a minimum PUD land area requirement of two acres (87,120 square feet) to accommodate the land area of the PUD Site as it applies to the RF-1 zoned portion of the PUD Site; and
- A consolidated PUD for the PUD Site; with:
  - A PUD-related Zoning Map amendment from the ARTS-1 zone to the ARTS-4 zone for the ARTS-1 zoned portion of the PUD Site; and
  - PUD flexibility from:
    - *U Street Parcel (ARTS-4 Zone)*:
      - Maximum Lot Occupancy; (Subtitle K § 804.1)
      - Minimum Rear Yard; (Subtitle K § 805.1)
      - Minimum Closed Court Width and Area; (Subtitle K § 807.1)
      - Minimum Setback Abutting an RF Zone; (Subtitle K § 803.4)
      - U Street Frontage Requirements; (Subtitle K § 810.1)
      - Linear Frontage of Eating and Drinking Establishments; and (Subtitle K § 811.9)

- Minimum Parking. (Subtitle C § 701.5)
- *Townhome Parcel (RF-1 Zone):*
  - Maximum Lot Occupancy; (Subtitle E § 304.1)
  - Density - Lot Dimensions; (Subtitle E § 201.4)
  - Minimum Side Yard; (Subtitle E § 207.2)
  - Minimum Rear Yard; and (Subtitle E § 306.1)
  - Minimum Parking. (Subtitle C § 701.5)

## A. PROJECT DEVELOPMENT

1. The PUD Site shall be developed and constructed in accordance with the Architectural and Landscape Drawings prepared by Shalom Baranes Associates and MKSK, dated February 24, 2023, and marked as Ex. 28A1-28A5 of the record (the “Approved Plans”), as modified by the guidelines, conditions, and standards herein.
2. As set forth in the Approved Plans, the U Street Building shall have a maximum height of 96.8 feet, and a maximum total density of 7.59 FAR, and the Townhomes shall have a maximum height of 30 feet and three stories, and the Townhome Parcel shall have a maximum density of 1.85 FAR.
3. As set forth in the Approved Plans, the PUD shall include the following uses:
  - Approximately 119,140 square feet of GFA devoted to residential use in the U Street Building, plus additional square footage in the penthouse devoted to habitable space including residential units;
  - Approximately 6,780 square feet of GFA devoted to retail and service uses in the U Street Building;
  - Approximately 35,000 square feet of GFA devoted to lodging use in the U Street Building; and
  - Approximately 29,260 square feet of GFA devoted to residential use in the Townhomes.
4. The Applicant shall have PUD design flexibility from the Approved Plans as follows:
  - Number of Dwelling Units. To provide a range in the number of residential units in the U Street Building of plus or minus 10%, with additional reductions permitted should the fourth floor be converted from residential to lodging use;
  - Number and Mix of IZ Units. To vary the number and mix of IZ units in the U Street Building if the total number of dwelling units in the U Street Building changes within the range of flexibility permitted, so long as the total square footage reserved for IZ units in the U Street Building (15% of the residential GFA and 12% of the penthouse floor area, as set forth in Decision No. B.4 is not reduced; provided that the location and proportionate mix of the IZ units will substantially conform to the layout shown on the approved plans;

- Number of Lodging Rooms/Keys. To provide a range in the number of hotel rooms/keys for the lodging component within U Street Building of plus or minus 10%, with additional rooms/keys permitted should the fourth floor be converted from residential to lodging use;
- Increase in Lodging Use/Reduction in Residential Use. To convert some or all of the fourth floor of the building from residential use to lodging use, so long as for purposes of calculating 15% of the overall residential GFA of the U Street Building, the fourth floor shall be considered residential regardless of use (i.e., regardless of future conversion to lodging);
- Retail Use Types. To vary the types of uses designated as “retail” use on the approved Plans to include the following use categories: (i) Retail (11-B DCMR § 200.2(bb)); (ii) Services, General (11-B DCMR § 200.2(cc)); (iii) Services, Financial (11-B DCMR § 200.2(dd)); (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(i)); (v) Medical Care (11-B DCMR § 200.2(u)); and (vi) Arts, Design, and Creation (11-B DCMR § 200.2(e));
- Interior Components. To vary the location and design of all interior components, including amenities, partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, and to vary the layout and exact size of the retail space, provided that the variations do not materially change the exterior configuration of the building;
- Exterior Materials. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Approved Plans;
- Exterior Details. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the Approved Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, windows, and skylights;
- Exterior Courtyards and Rooftop. To vary the configuration and layout of the exterior courtyards and rooftops, including the provision of a rooftop pool, so long as the courtyards and rooftops continue to function in the manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained;
- Building Projections. To make refinements to the proposed building projections in order to comply with the requirements of Chapter 32 of the District of Columbia Building Code Supplement (Title 12, DCMR), and approval by the DDOT Public Space Division;
- Signage. To vary the color, font, and message of the building signage, provided that the maximum overall dimensions and signage materials are generally compliant with the D.C. signage regulations;
- Streetscape Design. To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
- U Street Metro Plaza Design. To vary the location, attributes, and general design of elements within the Metro Plaza to comply with the requirements of, and any future approvals required by WMATA;

- Private and Public Space Design. To vary the private and public space design of the area on the south side of U Street, NW, where vaults are currently located, to allow future coordination between the Applicant, DDOT, and WMATA;
- Temperance Avenue Design. To vary the design of the area within the southeast corner of Temperance Avenue – i.e., the portion of the existing north-south alley that is proposed to remain open; and
- Sustainable Features. To vary the approved sustainable features of the Project, including the final layout of the landscape elements, provided the total number of LEED points achievable for the Project does not decrease below the minimum required for the LEED standards specified by the order.

**B. BENEFITS AND AMENITIES**

1. Commemorative Works or Public Art.

a. **Prior to the issuance of the final residential certificate of occupancy (“COO”) for the U Street Building**, the Applicant shall demonstrate to the Zoning Administrator that it has done the following:

- Established two panels of local public art professionals comprised of individuals from the D.C. Commission on the Arts and Humanities, Howard University Department of Art and/or Architecture, the WMATA Art In Transit Program, the U Street Neighborhood Association, and/or local curators and historians;
- Issued an RFP for one art piece to be located in the Metro Plaza and one art piece to be located in the public alley, with responses to be submitted directly to the advisory panels; and
- Worked with the advisory panels to select an artist for each art piece and to help guide and mentor the selected artist to ensure success with their projects; and

b. **Prior to the issuance of the final residential COO for the U Street Building**, the Applicant shall demonstrate to the Zoning Administrator that both art pieces have been fully designed, fabricated, and installed.

2. Historic Preservation of Private or Public Structures, Places, or Parks.

a. **Prior to the issuance of the final residential COO for the U Street Building**, the Applicant shall demonstrate to the Zoning Administrator that it has (i) preserved and incorporated portions of the two Historic Rowhomes into the design and program of the U Street Building, consistent with the design and program shown on the Approved Plans; and (ii) constructed the Townhomes at a height, scale, and massing that are compatible with surrounding historic row dwellings as shown on the Approved Plans; and



3. Housing.
- a. **For the life of the Project**, the Applicant shall dedicate approximately 119,140 square feet of GFA to residential use in the U Street Building, subject to the flexibility granted to convert the fourth floor to lodging use, and approximately 29,260 square feet of residential GFA in the Townhomes; and
- b. **For the life of the Project**, the Applicant shall provide 15 three-bedroom units.
4. Affordable Housing. The Applicant shall provide the affordable housing for the Project in accordance with this condition.
- a. **For the life of the Project**, the affordable housing shall be administered by the D.C. Department of Housing and Community Development through the IZ program. The affordable housing shall comply with all development standards, tenancy regulations, and implementation requirements for IZ units as set forth in 11-C DCMR, Chapter 10 and 14 DCMR, Chapter 22;
- b. **For the life of the Project**, the Applicant shall provide the affordable housing as set forth in the following charts:

HOUSING AND AFFORDABLE HOUSING FOR THE U STREET BUILDING				
Residential Unit Type	Residential GFA	# of Units	Affordable Control Period	Affordable Unit Type
Total	120,540 sf GFA (including projections) plus 5,590 sf penthouse habitable space devoted to residential units. = 126,130 sf total	131	Life of the Project	Rental
Market Rate	101,788 sf GFA (84.4% of resid. GFA) <sup>13</sup> plus 5,590 sf penthouse = 107,378 sf total	114	Life of the Project	Rental
IZ at 60% MFI	0	0	NA	NA
IZ at 60% MFI	18,081 sf GFA (15% of resid. GFA)	16	Life of the Project	Rental
IZ at 50% MFI	671 sf GFA (12% of penthouse sf)	1	Life of the Project	Rental
IZ Total	18,752 sf GFA	17	Life of the Project	Rental

<sup>13</sup> Slightly less than 85% is shown because of the 671 sf of GFA being provided in the base building at 50% MFI but which is generated by the penthouse.

<b>HOUSING AND AFFORDABLE HOUSING FOR THE TOWNHOMES</b>				
<b>Residential Unit Type</b>	<b>Residential GFA</b>	<b># of Units</b>	<b>Affordable Control Period</b>	<b>Affordable Unit Type</b>
Total	29,260 sf GFA	15	Life of the Project	For Sale
Market Rate	25,359 sf GFA (86.66%)	13	Life of the Project	For Sale
IZ at 80% MFI	3,901 sf GFA (13.33%)	2	Life of the Project	For Sale
IZ at 60% MFI	0	0	NA	NA
IZ at 50% MFI	0	0	NA	NA
IZ Total	3,901 sf GFA	2	Life of the Project	For Sale

- c. **For the life of the Project**, the Applicant shall provide 15 three-bedroom units, of which two three-bedroom units shall be IZ units at 80% of the MFI; and
  - d. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this condition.
5. **Employment and Training Opportunities.**
- a. **For the life of the Project**, the Applicant shall provide approximately 6,780 square feet of retail use and approximately 35,000 square feet of lodging use in the U Street Building; and
  - b. **Prior to the issuance of the final residential COO for the U Street Building**, the Applicant shall demonstrate to the Zoning Administrator that it has executed and submitted a First Source Employment Agreement to DOES, consistent with the First Source Employment Agreement Act of 1984.
6. **Environmental and Sustainable Benefits.** The Applicant shall provide the environmental and sustainable benefits for the Project in accordance with this condition.
- a. **The Applicant shall submit with its building permit application for the U Street Building** a checklist evidencing that the U Street Building has been designed to achieve the equivalent of LEED Gold under LEED v.4 for Building Design and Construction;
  - b. **The Applicant shall submit with its building permit application for the Townhomes** a checklist evidencing that the Townhomes have been

designed to achieve the equivalent of LEED Gold under LEED v.4.1 for Building Design and Construction: Homes Single Family Update for the Townhomes; and

- c. **Prior to the issuance of the final residential COO for the U Street Building**, the Applicant shall demonstrate to the Zoning Administrator that it has incorporated the following into the design of the Project:
- Green roofs;
  - Stormwater management;
  - Outlets to accommodate a minimum of six electric bicycles;
  - All electric appliances in residential units;
  - No on-site vehicular parking; and
  - A total of 53 long-term bicycle parking spaces, including three cargo bicycle parking spaces, and 12 short-term bicycle parking spaces.

7. Streetscape Plans.

- a. **Prior to the issuance of the final residential COO for the U Street Building**, the Applicant shall demonstrate to the Zoning Administrator that it has:
- i. Installed special paving within portions of the public alleys, subject to DDOT approval; and
  - ii. Widened the portion of the sidewalk located on the east side of 13th Street, NW, abutting and to the south of the PUD Site, as shown on Sheet 16 of the Approved Plans, and subject to DDOT approval.

8. Mass Transit Improvements.

- a. **Prior to the issuance of the final residential COO for the U Street Building**, the Applicant shall demonstrate to the Zoning Administrator that it has reconstructed the Metro Plaza as shown on the Approved Plans, subject to review and approval by WMATA and, where applicable, DDOT.

9. Uses of Special Value to the Neighborhood or the District of Columbia as a Whole.

- a. **Prior to the issuance of the final residential certificate of occupancy for the U Street Building**, the Applicant shall demonstrate to the Zoning Administrator that it has done the following:
- i. Made exterior improvements to the WMATA chiller plant, including paving, upgrading the perimeter fencing, installing new intake louvers, and constructing new gates, all subject to WMATA approval;
  - ii. Installed a publicly-accessible 300-square foot planter bed at the southeast portion of Temperance Avenue, subject to DDOT approval;

- iii. Contributed \$30,000 to U Street Main Street/District Bridges to fund a U Street Safety Pilot Program that will station an MPD Officer(s) and a D.C. Peace Team advocate(s) on U Street on Friday and Saturday nights for a short-term initial test period, and shall provide evidence that these services have been or are being provided;
- iv. Funded and installed two trash-compacting trash cans on the 1200 block of U Street, NW, subject to DDOT approval;
- v. Resurfaced the play area at the Harrison Recreation Center;
- vi. Contributed \$15,000 to Hope and a Home (or a similar organization if Hope and a Home no longer exists) to provide one months' worth of food delivery to families in need, and shall provide evidence that the food delivery has been or is being provided; and
- vii. Contributed \$10,000 to HIPS (or a similar organization if HIPS no longer exists) for NARCAN training in the U Street area to help individuals recognize the signs of opioid overdose and administer the overdose reversal drug, and shall provide evidence that this training has been or is being provided.

10. Other Public Benefits and Project Amenities.

- a. **For the life of the Project**, the Applicant shall ensure that the Project provides the uses and programs described herein and shown on the Approved Plans, and provides the public benefits and project amenities as proffered herein.

C. **TRANSPORTATION RELATED MITIGATIONS AND TRANSPORTATION DEMAND MANAGEMENT**

- 1. **Prior to the issuance of the final residential COO for the U Street Building**, the Applicant shall demonstrate to the Zoning Administrator that it has dedicated to DDOT: (i) a 6-foot wide strip of land along the alley to the west of the Townhome Parcel, thus increasing the alley's width from 10 feet to 16 feet in this location; and (ii) 4.75-foot wide strip of land along the alley to the north of the Townhome Parcel, thus increasing the alley's width from 15.25 feet to 20 feet in this location.
- 2. **During the operation of the Project (unless otherwise noted)**, the Applicant shall provide the following TDM measures for the overall Project:
  - a. 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 and will provide their contact information to goDCgo;

- b. Transportation Coordinator will conduct an annual commuter survey of building employees and residents on-site, and report TDM activities and data collection efforts to goDCgo once per year;
- c. Transportation Coordinator will develop, distribute, and market various transportation alternatives and options to residents, employees, customers, and guests, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website(s) and in any internal building newsletters or communications;
- d. Transportation Coordinator will subscribe to goDCgo's residential newsletter and hospitality newsletter and receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan;
- e. Transportation Coordinator will demonstrate to goDCgo that the hotel and any tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law to participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future such as the Parking Cash-Out Law;
- f. Post "getting here" information in a visible and prominent location on the hotel and retail websites with a focus on non-automotive travel modes. Also, links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for customers and guests discouraging parking on-street in Residential Permit Parking (RPP) zones;
- g. Provide residents and employees 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 (MWCOC) or other comparable service if MWCOC does not offer this in the future;
- h. Offer a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident or employee;
- i. Provide at least 53 long-term and 12 short-term bicycle parking spaces;
- j. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids' bikes, with a minimum 5% of spaces (three spaces for this Project) be designed for longer cargo/tandem bikes (10 feet by three feet), a minimum of 10% of spaces (six spaces for this Project) will be designed to have access to an electrical outlet for the



charging of electric bikes and scooters, and a minimum of 50% of spaces (27 spaces for this Project) will be placed horizontally on the floor. There will be no fee to the residents or employees for usage of the bicycle storage room and strollers will be permitted to be stored in the bicycle storage room;

- k. A bicycle repair station will be provided in one of the bicycle storage rooms;
- l. Following the issuance of a Certificate of Occupancy for the Project, the Transportation Coordinator will submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case;
- m. Following the issuance of a Certificate of Occupancy for the Project, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final Certificate of Occupancy for the Project) summarizing continued substantial compliance with the transportation and TDM conditions in the Order, unless no longer applicable as confirmed by DDOT. If such letter is not submitted on a timely basis, the building shall have sixty (60) days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter; and
- n. The Applicant will fund and construct a curb extension and/or striping and bollards at the southeast corner of the intersection of 13<sup>th</sup> Street and U Street, N.W., as well as expand the sidewalk on the east side of 13<sup>th</sup> Street between Wallach Street and U Street, N.W. The Applicant will coordinate with DDOT on design and construction.

3. **During the operation of the Project (unless otherwise noted)**, the Applicant shall provide the following TDM measures for specifically the residential portion of the Project:

- a. 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);
- b. Post all transportation and TDM commitments on building website, publicize availability, and allow the public to see what has been promised; and

- c. The Applicant will continue to coordinate with DDOT to remove RPP eligibility for the Project in an effort to ensure future Project residents will not be eligible to obtain an RPP permit.
4. **During the operation of the Project (unless otherwise noted)**, the Applicant shall provide the following TDM measures for specifically the hotel/lodging portion the Project:
- a. Front office and customer-facing staff will be provided training by goDCgo (either in-person or webinar) to learn of the non-automotive options for traveling to the property;
  - b. Provide guests with goDCgo’s Get Around Guide by making it available on the property website and in printed format for front office or customer-facing staff;
  - c. Hotel will participate in the Capital Bikeshare Corporate Membership program and offer discounted annual memberships to employees;
  - d. Provide comprehensive transportation information and directions on hotel website, including promoting the use of nonautomotive modes of transportation and links to website for goDCgo, Capital Bikeshare, DC Circulator, and the Washington Metropolitan Area Transit Authority (WMATA); and
  - e. Provide brochures with information on non-automotive options for traveling to the property available at all times in a visible location in the lobby.
5. **Prior to the issuance of the final residential COO for the U Street Building**, the Applicant shall demonstrate to the Zoning Administrator that it has worked with DDOT to select appropriate traffic calming and safety measures within the alley network surrounding the PUD Site, including consideration of those proposed at Ex. 72A of the record. The exact type, placement, and quantity of traffic calming and pedestrian safety measures in public space are subject to DDOT review and approval during the public space permitting process.

**D. VALIDITY AND MISCELLANEOUS**

- 1. No building permit shall be issued for the Project 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 Zoning Division, Department of Buildings (the “PUD Covenant”). The PUD 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.
4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

**Proposed Action**

**Vote (May 11, 2023): 4-0-1**

(Anthony J. Hood, Robert E. Miller, Joseph S. Imamura, Ph.D. and Peter G. May] to approve, 3<sup>rd</sup> Mayoral Appointment seat vacant).

**Final Action**

**Vote (June 29, 2023, 2023): 4-0-1**

(Anthony J. Hood, Robert E. Miller, Joseph S. Imamura, Ph.D. and Peter G. May] to APPROVE, 3<sup>rd</sup> Mayoral Appointment seat vacant).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 22-29 shall become final and effective upon publication in the *D.C. Register*; that is, on March 22, 2024.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

  
ANTHONY HOOD  
CHAIRMAN  
ZONING COMMISSION

  
SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING

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