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June 1, 2009

Hand Delivered

Mr. Anthony Hood, Chairperson
D.C. Zoning Commission
Office of Zoning
441 4th Street N.W., Suite 210
Washington, DC 20001

**Re: Case No. 08-15: Friendship Shopping Center
Proposed Findings of Fact, Conclusions of Law, and Conditions of
Approval**

Dear Chairperson Hood and Members of the Commission:

Enclosed please find the Applicant's proposed Findings of Fact, Conclusions of Law, and Conditions of Approval.

Sincerely yours,

Phil Feola

David Avitabile

cc: Lucy Wildrick, Street-Works, LLC

ZONING COMMISSION
District of Columbia

CASE NO. 08-15
EXHIBIT NO. 260

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via hand delivery or electronic mail to the following:

Maxine Brown-Roberts
D.C. Office of Planning
2000 14th Street, NW, 4th Floor
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Cleveland Park Citizens Association
c/o George Idelson, President
3035 Newark Street, NW
Washington, DC 20008

Jeff Jennings
District Department of Transportation
2000 14th Street, NW, 6th Floor
Washington, DC 20009

3300 Idaho
c/o Thomas J. Haines
3315 Idaho Avenue, NW
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Anne Marie Bairstow, Chair, ANC 3C
2802 27th Street, NW
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Immediate Macomb Street Neighbors
c/o Frances A. Sclafani
3815 Macomb Street, NW
Washington, DC 20016

Advocates of Wisconsin Avenue
Renewal
c/o Jeffrey S. Davis
3409 Newark Street, NW
Washington, DC 20016

Wisconsin-Newark Neighborhood Coalition
c/o John O'Sullivan
3410 Newark Street, NW
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Ordway Street Neighbors Association
c/o David Isaacs
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**APPLICANT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
CONDITIONS OF APPROVAL**

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 08-15

**Z.C. Case No. 08-15 (Application by Friendship-Macomb SC Inc. – Consolidated Planned
Unit Development and Related Zoning Map Amendment)**

Pursuant to proper notice, the Zoning Commission for the District of Columbia held a public hearing on February 19, April 6, April 23, May 4, and May 20, 2009 to consider an application by Friendship-Macomb SC Inc. (the “**Applicant**”) for consolidated review and approval of a planned unit development (“**PUD**”) and related amendment to the Zoning Map of the District of Columbia from MW/C-1 and R-5-A to C-2-A for Square 1920, Lot 831 and Square 1920-N, Lots 1 and 2 (the “**Application**”). The Zoning Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. The Zoning Commission APPROVES the Application, subject to the conditions below.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. The project site consists of Square 1920, Lot 831 and Square 1920-N, Lots 1 and 2 (the “**Property**”) and is bounded by Wisconsin Avenue, NW on the east, Idaho Avenue, NW on the west, and property fronting Macomb Street, NW to the south.
2. On May 16, 2008, Friendship-Macomb SC Inc. (the “**Applicant**”) filed an application for a Consolidated Review and Approval of a Planned Unit Development (“**PUD**”) and related Zoning Map Amendment from MW/C-1 and R-5-A to C-2-A. Ex. 3. The Applicant supplemented the application with revised plans and drawings on July 21, 2008, which depicted, among other changes, a relocated entrance to the grocery loading area and improvements to the building design. Ex. 12.
3. During its meeting on July 28, 2008, the Zoning Commission unanimously voted to set down Case No. 08-15 for a hearing. Notice of the public hearing, including a description of the subject property and the proposed development, was published in the D.C. Register on [date], [] D.C. Reg. [], and was mailed to all property owners within 200 feet of the subject property and to Advisory Neighborhood Commission (“**ANC**”) 3C. See Ex. 30, 32.
4. On July 31, 2008, the Commission received a request for reconsideration of its vote to set down the case for public hearing. Ex. 14. On September 3, 2008, the Applicant filed a response to the request. Ex. 15. The Commission considered the correspondence at its September 8, 2008 public meeting and declined to reconsider its vote, since the matters raised in the correspondence would be more appropriately considered during the public hearing. Tr. Sept. 8, 2009 at 55.

5. The Application was further updated by pre-hearing submissions filed on October 27, 2008 and January 30, 2009 as well as the Applicant's presentations on its direct and rebuttal testimony. See Ex. 20, 46, 156, 164, 236, and 256.

6. As a preliminary matter, the Commission qualified the Applicant's master planner and architect, traffic engineer, civil engineer, noise consultant, and sustainability consultant as experts in their respective fields. Tr. Feb. 19 at 40.

7. Parties in this proceeding included the Applicant; ANC 3C; the Advocates for Wisconsin Avenue Renewal ("**AWARE**"), as a party in support; and five parties in opposition, including the Cleveland Park Citizens Association ("**CPCA**"), the Wisconsin-Newark Neighborhood Coalition ("**WNNC**"), the 3300 Idaho neighbors ("**Idaho Neighbors**"), the Ordway Street Neighbors Association ("**Ordway Neighbors**"), and the Immediate Macomb Street Neighbors ("**Macomb Neighbors**"). The Zoning Commission opened the public hearing on February 19, 2009 and closed the public hearing on May 20, 2009. During the public hearing, the Commission heard testimony and received evidence from the Applicant, ANC 3C, the parties in support and opposition, the D.C. Office of Planning ("**OP**"), and the District Department of Transportation ("**DDOT**"), as well as from persons and organizations in support of, and in opposition to, the Application.

8. As a preliminary matter, on July 24, 2008, WNNC filed a "memorandum of law" that argued the Commission lacked the authority to rezone the Property and remove it from the MW Overlay, and that the MW Overlay requires special exception review of a large-scale development by the D.C. Board of Zoning Adjustment ("**BZA**"). Ex. 13. WNNC filed a similar petition on September 24, 2008 that continued to argue that the Commission lacked the authority to review the application under the PUD regulations, and requested that the Commission refer the case to the D.C. Board of Zoning Adjustment. Ex. 16. The Applicant filed its opposition to the petition on October 16, 2008 and moved to dismiss the petition based on the Commission's clear jurisdiction under its established regulations. Ex. 17. WNNC filed additional correspondence on November 14, 2008 and January 12, 2009 reiterating these concerns. Ex. 23, 37. The Applicant filed a supplemental response to WNNC's legal arguments on January 26, 2009. Ex. 45. Based on the reasons set forth in the Conclusions of Law, the Commission denies WNNC's petition.

9. On April 23, the Idaho Neighbors filed a request to conduct further cross-examination of DDOT. Ex. 186. The Commission voted to deny the request, but offered the Idaho Neighbors an opportunity to respond in writing to the supplementary report. Tr. Apr. 23, 2009 at 9-10. The Idaho Neighbors filed its response on May 4, 2009. Ex. 214. In the response, the Idaho Neighbors requested an independent and comprehensive evaluation of the transportation issues surrounding the PUD. Given the evidence in the record regarding DDOT's discussions with the community and multiple submissions regarding the PUD, the Commission finds that DDOT has conducted a satisfactory independent evaluation of the transportation issues surrounding the PUD. See Ex. 184.

10. On May 19, 2009, WNNC filed a letter challenging the Commission's authority to adjust the amount and location of parking in a PUD. The Applicant filed its opposition to the memorandum on May 20, 2009. The Commission addresses the issue in its Conclusions of Law.

11. At the May 20, 2009 public hearing, the parties in opposition requested an opportunity to offer a sur-rebuttal to the Applicant's written rebuttal testimony. The Commission denied the request based on its established rules of procedure. Tr. May 20, 2009 at 97-98.

12. At a public meeting on _____, the Commission took proposed action by a vote of _____ to approve the Application in Case No. 08-15 with conditions.

13. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to the District of Columbia Home Rule Act. NCPC, by action dated _____, found the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.

14. The Commission took final action to approve the Application in Case No. 08-15 on _____ by a vote of _____.

Overview of the PUD Site

15. The Property consists of approximately 178,236 square feet of land area bounded by Wisconsin Avenue on the west, Idaho Avenue on the east, and adjacent property fronting Macomb Street to the south. Newark Street, NW runs east-west through the center of the site, dividing it into two parcels (the "North Parcel" and the "South Parcel"). Ground-floor retail space with second-story commercial uses above and a surface parking lot are located on the North Parcel. The North Parcel is located entirely in the MW/C-1 Zone District. The existing Giant supermarket, vacant retail space, and a large surface parking lot are located on the South Parcel. The South Parcel is located in the MW/C-1 and R-5-A Zone Districts, but the residentially-zoned portion of the South Parcel is used as the Giant's commercial parking lot and has been used as such since the 1950s. In addition, the grocery store and other retail uses on the South Parcel have historically, since the 1950s, used the residentially-zoned surface parking lot for commercial loading activities.

16. The Property is located in Ward 3 between the McLean Gardens development to the northwest and the Cleveland Park neighborhood to the east. Further to the south and east are the Cathedral Heights, Massachusetts Avenue Heights, Woodland-Normanstone Terrace, and Woodley Park neighborhoods. The Property is within the boundaries of ANC 3C.

17. Surrounding neighborhoods are characterized by a mixture of land uses, heights, and densities. Immediately to the south, fronting on Macomb Street, are a mixture of low-density commercial uses, a six-story apartment building, and low-density residential uses. Immediately to the northwest, across Idaho Avenue, are a police station, a five-story apartment building, and a nine-story residential building with ground-floor retail space. Immediately to the east, across Wisconsin Avenue, are a mixture of multi-story apartment buildings and low-density residential uses that vary from three to nine stories in height. See Tr. Feb. 19 at 54, Apr. 6 at 14-15.

18. The Future Land Use Map locates the Property in the Low-Density Commercial and the Low-Density Residential land use categories. Surrounding properties are located in a mixture of

categories, including: Low Density Residential and Low Density Commercial to the south, Local Public Facilities and Mixed-Use Medium Density Residential and Low Density Commercial to the west, and Moderate and Medium Density Residential to the east.

The PUD Project

19. The Applicant commissioned Street-Works LLC, an urban mixed-use developer and design consultant, to create a comprehensive plan for redeveloping the site. For over two years leading up to the filing of the application package, Street-Works developed and modified the project in response to community comments raised both at open public meetings and smaller forums with neighborhood representatives, including representatives of ANC 3C. See Ex. 156 at 10. Following the filing of the application package, the Applicant's team continued to meet with the community. Id. OP and DDOT also attended open community forums regarding the PUD. The Applicant also set up a website to keep the community up-to-date on development planning and solicit additional feedback.

20. The Project will replace the existing shopping center with a mixed-use development featuring a new grocery store and a balance of new residential and commercial uses. The Project consists of three components.

- On the North Parcel, the Applicant will construct a new five-story building containing ground-level retail uses and approximately 124 residential units above.
- On the South Parcel, the Applicant will construct the new grocery store, wrapped by a pair of two-story mixed-use buildings. Along Wisconsin Avenue, the Applicant will construct ground-floor retail space with a second story devoted to commercial "flex" space with neighborhood-oriented retail and office uses. Along Newark Street, the Applicant will construct ground-floor retail space with 14 residential units above
- Also on the South Parcel, along Idaho Avenue, the Applicant will construct eight three-story townhouses. Each townhouse will have two dedicated off-street parking spaces.

21. The Project will be phased, as detailed in Condition 16 of the Order.

22. The North Parcel parking garage will contain approximately 124 spaces. These spaces will be reserved for use by the residents of the North Parcel. The townhouses on the South Parcel will each contain 2 dedicated parking spaces. The South Parcel parking garage will contain approximately 395 parking spaces. These spaces will be used primarily by customers and employees of the Project's commercial components, but will also be available as parking for the residents of the PUD and their visitors as well as for limited use by the surrounding neighborhood for area commercial establishments and overnight parking. Both parking garages will be accessed from Newark Street.

23. The Project will contain three areas for loading activity.

- The North Parcel will contain a loading area located off Idaho Avenue with two loading berths.

- The primary South Parcel loading area will be located off Idaho Avenue and will contain four loading berths to accommodate grocery deliveries. The loading entrance is located approximately 140 feet from the southern property line, and the angled entrance of the loading area requires trucks to enter from and exit to the north on Idaho Avenue, away from the residential neighborhood to the south. The loading area has been designed to permit trucks to pull in front-first and at grade, turn around on the Applicant's property, and back into an internal, completely enclosed, loading berth.
- The secondary South Parcel loading area contains a loading berth for retail deliveries. This berth will be accessed off of Macomb Street via a 20-foot wide public alley and contains space to permit a truck to pull in front-first and then back into the loading area. On rebuttal, the Applicant agreed to construct a connection between the two loading areas on the South Parcel. Tr. May 20 at 12-13.

24. The Project includes a number of improvements to the streetscape. Specific features include creation of public gathering spaces, well-designed sidewalks with street trees of significant size around both blocks, inviting and active storefronts along each commercial street edge, well-located and carefully designed parking garages and vertical circulation cores, and clear separation of the major loading functions for vehicular and pedestrian pathways.

25. The total gross floor area included in the PUD is approximately 354,820 square feet for a total Floor Area Ratio ("FAR") of 1.99. The building height varies: the North Parcel building is approximately 61 feet, the South Parcel building is approximately 37 feet, and the townhouses are 40-43 feet tall (measured from the curb to the top of roof). The Project will have an overall lot occupancy of approximately 69%. The proposed project has a FAR that is significantly less than what is permitted under the proposed C-2-A and R-5-A zoning under the PUD guidelines (maximum blended FAR of 2.72).

Zoning Map Amendment

26. The Property is located in the MW/C-1 and R-5-A Zone Districts.¹ The maximum height allowed in the MW/C-1 Zone District is 40 feet and three stories, and the maximum FAR is 1.0. The maximum height permitted in the R-5-A Zone District is 40 feet, and the maximum FAR is 0.9. The zones surrounding the Property permit a mix of development. Immediately to the south are properties located in the MW/C-1, R-5-B, and R-1-B Zone Districts. To the northwest across Idaho Avenue is a police station which is also zoned R-5-A. Also immediately to the northwest across Idaho Avenue is a five-story office building and nine-story apartment building constructed under a PUD which rezoned the site to the C-2-B Zone District. To the east, across Wisconsin Avenue, are properties located in the R-5-A, R-5-B, and R-5-D Zone Districts.

¹ Approximately 83,603 square feet of land area on the South Parcel is currently zoned MW/C-1, and approximately 53,493 square feet of land area is zoned R-5-A.

27. The Applicant has requested a PUD-related Zoning Map amendment for the North Parcel and a portion of the South Parcel to the C-2-A Zone District², in order to permit the structures to reach the requested height and density. The maximum building height permitted in the C-2-A Zone District under the PUD guidelines is 65 feet, and the maximum FAR permitted is 3.0. The maximum height permitted in the R-5-A Zone District under the PUD guidelines is 60 feet, and the maximum FAR permitted is 1.0. It is necessary to rezone the Property to the C-2-A Zone to allow the Project to redevelop this neighborhood shopping center.

28. The map amendment request includes a request to remove the MW Overlay for purposes of the PUD. Removal of the MW Overlay is necessary to permit the mix of uses and densities needed to make the Property a vibrant urban neighborhood center. Under existing zoning, no additional eating establishments are likely to be permitted within the boundaries of the Property, due to a limitation on the number of linear feet devoted to such establishments. Absent the map amendment, the PUD would not be permitted to devote ground-floor commercial space to additional restaurants, prepared food shops (including ice cream shops, coffee shops, and sandwich shops), and fast food establishments.

PUD Evaluation Standards

29. The Applicant has requested approval to construct multiple buildings to a maximum height of approximately 61 feet and FAR of 1.99, which is within the PUD standards set forth in 11 DCMR § 2405, as well as a PUD-related Zoning Map amendment for the Property to the C-2-A Zone District. The Applicant has also requested flexibility from the lot occupancy, roof structure, parking, loading, and lot control regulations, as well as special exception approval for rowhouses in the R-5-A Zone District, as detailed in the Applicant's written submissions and the OP Report.

30. The Project will not cause unacceptable traffic impacts, as demonstrated by the Applicant's traffic studies and the testimony presented by the Applicant's traffic consultant, recognized by the Zoning Commission as an expert, during the public hearing. According to the Applicant's traffic consultant, the traffic impacts would be mitigated by certain measures the Applicant has agreed to implement. These mitigation measures include the implementation of additional signalization timing adjustments, the installation of a traffic signal at the intersection of Wisconsin Avenue and Idaho Avenue, and intersection improvements at Wisconsin Avenue and Idaho Avenue as well as at Idaho Avenue and Ordway Street. See Ex. 3, 20, 236; Tr. May 20 at 9.

31. As discussed in detail in Finding of Fact 59, the PUD contains sufficient parking space to meet the Applicant's estimated parking demand, and the vehicular traffic generated by the PUD will not impose unacceptable impacts due to parking.

² Approximately 111,720 square feet of the South Parcel will be zoned C-2-A, and approximately 25,388 square feet of land area will remain in the R-5-A Zone District.

32. The Applicant will implement and maintain a Transportation Management Plan (“TMP”). Under this TMP, the Applicant will provide initiatives, information, and incentives to promote the use of public transportation. Ex. 20. The Applicant also testified that the PUD Site features extensive public transportation access through the regional Metrobus system, which provides over 500 trips a day and connects the site to nearby Metrorail stations through downtown and crosstown service. See Ex. 236; Tr. May 4 (Applicant’s Rebuttal). The Applicant will also provide dedicated spaces for car-sharing services as well as bicycle parking spaces.

33. The Project will not generate unacceptable impacts due to truck traffic and loading activity. The Applicant provided detailed testimony that the proposed number and location of berths would accommodate the anticipated truck traffic. The Applicant also proposed a Truck Management Plan, which will require the use of the loading facilities by requiring all deliveries and trash disposal services to occur within the loading dock facilities only. In addition, the Applicant will provide a loading dock coordinator to help facilitate deliveries and trash disposal services, and will direct all deliveries and trash disposal services to use a recommended truck circulation route. The Applicant will direct commercial tenants to comply with the Truck Management Plan through a lease provision or similar mechanism. Finally, as discussed in detail in Findings of Fact 64 and 65, the Applicant’s architectural and transportation experts provided extensive testimony that the location and design of the loading berths as well as the anticipated volume of truck activity will not be unacceptable.

34. The Project will not generate adverse impacts due to noise. The Applicant’s noise consultant, who was recognized by the Commission as an expert, submitted a detailed report that concluded noise from the PUD, including noise from loading activity, would not be unacceptable.

35. The proposed uses in the Project will not generate adverse impacts. As the Applicant’s architectural expert testified on rebuttal, the proposed amount and proportion of grocery and other retail uses is consistent with established definitions of neighborhood shopping centers. Tr. May 20 at 19-20. Furthermore, the proposed PUD will not significantly increase the total amount of commercial density on the site; rather, the PUD primarily adjusts the proportion of grocery store to other neighborhood retail. Id at 29-31. Finally, the requested relief to locate a limited number of restaurants, prepared food shops, and fast food establishments on the Property was necessary to permit a mix of eating establishments typically found in a neighborhood shopping center. Id. at 31-32. The Applicant will limit the number of eating establishments and financial institutions each to 20% of the PUD’s linear commercial frontage, reserving over half of the PUD’s frontage for other neighborhood-serving uses.

36. As detailed in Applicant’s testimony and written submissions, the proposed PUD will provide the following project amenities and public benefits.

- a. Housing and Affordable Housing. The Project will create new housing opportunities consistent with the Zoning Regulations and Comprehensive Plan as well as District planning policies. The Project will create approximately 138 multi-family units and 8 townhouses, with approximately 16,480 square feet (10% of the residential gross floor area) set aside as affordable housing. Half of the affordable units will be set aside as low-income affordable housing (available to households earning less than

50% of the Area Median Income (“AMI”), and the other half of the affordable units will be set aside as moderate-income affordable housing (that is, households earning less than 80% of the AMI).

- b. Urban Design, Architecture, and Open Spaces. The Project includes many characteristics of exemplary urban design, including high-quality materials, contextually-appropriate design, and attention to all building facades (including side and rear elevations). In addition, the Project includes a number of urban design features intended to improve the pedestrian experience, including well-design sidewalks with street trees, special paving features along Newark Street, inviting and active storefronts, and clear separation of vehicular and pedestrian pathways. Finally, the Project will include a number of public spaces, including a tree-canopied public space on the north side of Newark Street, an enhanced pedestrian entrance to the Giant grocery store on the south side of Newark Street at its intersection with Wisconsin Avenue, and a public plaza at the intersection of Wisconsin Avenue and Idaho Avenue.
- d. Site Planning, and Efficient and Economical Land Uses. Currently, the Property features an existing suburban-style commercial center with large amounts of surface parking, outdoor loading activity, and multiple curb cuts that discourage pedestrian activity. The Project results in an attractive and well-planned pedestrian-oriented mixed-use development that enhances the site on all sides and represents a significant improvement over the existing underutilized and dated shopping center
 - a. Efficient and Safe Vehicular and Pedestrian Access. The Project will replace existing surface parking and loading with separate underground parking and internal loading facilities, and will reduce the number of curb cuts on the Property from eight to five, which will enhance pedestrian safety, channel vehicular access, and separate truck traffic from pedestrian and vehicular traffic. The Applicant will adhere to detailed Transportation and Truck Management Plans to manage the movements of trucks and other vehicles and minimize vehicular-pedestrian conflicts.
 - b. Uses of Special Value—Grocery Store and other Neighborhood Retail. The Applicant will provide a new 56,000 square foot supermarket, which will provide an expanded and modernized grocery store for the immediate neighborhood. As evidenced by the testimony of many of those both in support of and in opposition to the application, this represents a key amenity and benefit of the PUD. The Applicant will also provide approximately 80,000 square feet of new space for neighborhood-serving retail and commercial uses.
 - e. Uses of Special Value—Revenue for the District. The addition of approximately 146 residential units as well as revitalized and expanded retail space will result in the generation of significant additional tax revenues in the form of property, income, sales, use, and employment taxes for the District.
 - f. Uses of Special Value—Parking Spaces. The Applicant will set aside at least 30 parking spaces in the South Parcel garage during off-peak hours for neighborhood

restaurants and other retail uses. In addition, the Applicant will make available 30 spaces as overnight parking for community residents.

g. Uses of Special Value—Other Public Benefits.

- i. *Traffic Signal at Wisconsin and Idaho Streets.* The Applicant will contribute the full cost of the traffic engineering and construction costs of the signalization of the intersection of Wisconsin Avenue and Idaho Avenue in order to create a safe, signalized crossing across Wisconsin Avenue.
 - ii. *Intersection Reconstruction.* The Applicant will contribute the full cost of construction of improvements to the Wisconsin Avenue and Idaho Avenue intersection as well as construction of permanent traffic control improvements at the intersection of Idaho Avenue and Ordway Street.
- h. Environmental Benefits. The Applicant will design and construct the PUD to achieve the equivalent of a Silver standard on the Leadership in Energy and Environmental Design (“LEED”)-Neighborhood Development (“ND”) system. In addition, the Applicant will design and construct the North Parcel building to achieve the equivalent of a Silver standard on the LEED for Homes (Midrise) system or its equivalent. As described in the Applicant’s written submissions, the grocery store will, in particular, incorporate energy-efficient sustainable features.
- i. Employment and Training Opportunities. In order to further the District’s policies relating to the creation of employment and training opportunities, the Applicant will participate in a First Source Agreement with the District of Columbia Department of Employment Services.

Government Agency Reports

37. By report dated February 19, 2009, and by testimony at the public hearing on April 6, 2009, OP recommended approval of the PUD. See Ex. 104, 168. OP testified that the PUD would provide numerous benefits and amenities, including improved neighborhood-serving retail and office uses as well as a state-of-the-art supermarket, and concluded that the PUD would benefit the District and the neighborhood since it would considerably improve existing conditions. See Ex. 104 at 10-11, 20. OP also testified that its Historic Preservation Office was actively involved in advising the Applicant on the scale, arrangement, choice of materials, and other design features of the PUD based on its design expertise on neighborhood character, and the Applicant’s revised design, submitted in Exhibit 12, responds to many of their recommendations. Tr. Apr. 6 at 66, 129. OP testified that the traffic, parking, loading, environmental, and noise impacts of the PUD were not unacceptable. See Ex. 104 at 5-6, 8-9. OP also found that the proposed rezoning, removing the Property from the MW Overlay, was permitted under the Zoning Regulations, citing past precedent, and in any event found that the PUD was consistent with the Overlay. See Ex. 104 at 3, 10; Tr. Apr. 6 at 131. In light of the foregoing, OP concluded that the proffered benefits and amenities were acceptable given the flexibility requested in the application, and therefore OP recommended approval of the PUD and related Map Amendment. See Ex. 168 at 13; Tr. Apr. 6 at 18-19.

38. In its testimony, OP noted that the anticipated service area for the grocery store would be approximately one mile, based on the presence of multiple other grocery stores near a one-mile radius around the store. See Ex. 168 at 9; Tr. Apr. 6 at 13-14.³ OP also testified that the Project's scale is compatible with its location and surrounding development, and noted that the PUD Site is surrounded by multiple buildings ranging from 5 to 9 stories along Wisconsin Avenue, Idaho Avenue, and Macomb Street. Ex. 168 at 10; Tr. Apr. 6 at 14-16. OP testified that the proposed PUD constituted transit-oriented development based on its location along a premium transportation corridor with multiple bus lines serving the Property. Tr. Apr. 6 at 16-17. Finally, OP noted that the proposed C-2-A Zone District was specifically called out as a zone category that is consistent with the Property's Low Density Commercial Land Use category designation. Based on the foregoing testimony as well as a detailed written analysis of the PUD's conformance with numerous elements of the Comprehensive Plan, OP found that the PUD was not inconsistent with the Plan, including its Future Land Use Map and Generalized Policy Map designations. See Ex. 104 at 14-19; Ex. 168 at 2-9; Tr. Apr. 6 at 13.

39. DDOT, by reports dated February 11, 2009 and April 2, 2009, and by testimony at the public hearing on April 6, 2009, supported approval of the Project based on its analysis that any impacts would be mitigated by "ample measures" to be undertaken by the Applicant, including the management plans, traffic signal, traffic signal timing optimization measures, and intersection improvements. Ex. 146, 166. DDOT found that the proposed amount and location of loading was sufficient, and testified that shared loading facilities work well in mixed-use developments. See Tr. Apr. 6 at 93, 95-96, 98, 221-22. DDOT concluded that the proposed loading facilities, combined with the features of the Applicant's Truck Management Plan, would minimize the impact of loading and deliveries on the surrounding neighborhood. Ex. 146 at 2-3.⁴ DDOT also endorsed the conversion of Idaho Avenue into a two-way street in order to accommodate truck traffic. Id. at 2, 5. DDOT supported the proposed intersection improvements and traffic signal at Wisconsin Avenue and Idaho Avenue, and noted that the modifications that would direct traffic towards primary rather than local roadways. Id. at 3; Tr. Apr. 6 at 11-12. DDOT found that the installation of traffic calming measures in the neighborhood as a condition of the PUD was "premature" and not warranted based on existing conditions, but found that the Applicant's provision of an escrow account to fund future measures if they turned out to be necessary was a unique and positive feature. See id. at 3-4; Tr. Apr. 6 at 22; 26. DDOT found that the proposed amount of residential and commercial parking was more than sufficient, and endorsed the use of the South Parcel commercial parking facility as a shared parking resource for the PUD site. Id. at 4; Tr. Apr. 6 at 106-07, 114. DDOT found that the site was well-served by four bus lines and it was likely that some residents and patrons would choose not to drive. Tr. Apr. 6 at 114. DDOT concluded that the PUD would not impose a significant burden on the existing neighborhood street network. Id. at 5.

40. In a second supplemental report, DDOT indicated that it had independently reviewed the Applicant's transportation analysis for "reasonableness, policy conformance, and technical

³ DDOT also testified that patrons tend to shop at the grocery store closest to home. Tr. Apr. 6 at 261.

⁴ DDOT noted that the proposed Truck Management Plan was similar to a plan for another neighborhood grocery store that had proven to be successful in managing truck deliveries. Tr. Apr. 6 at 196.

sufficiency.” Ex. 184 at 1. In that report, DDOT also indicated that it had reviewed the truck estimates provided by Precision Systems, Inc. (“PSI”), a traffic expert retained by an opponent party, and did not find them credible. To the contrary, DDOT found that, based on the Applicant’s estimates and comparable local developments, the Applicant’s truck estimates were reasonable and, accordingly, the PUD would not impose significant adverse impacts due to truck traffic and loading activity. Id. at 2. DDOT also found that the proposed location of the grocery loading entrance on Idaho Avenue was reasonable because truck turn radii would allow for safer movements and trucks would encounter fewer impediments approaching the loading area. Id. at 3.

41. By report dated April 8, 2009, the D.C. Fire and EMS Department indicated that it had reviewed the site plan and had no objection to the PUD provided that construction complied with relevant building code regulations and laws. Ex. 172.

Advisory Neighborhood Commission Report

42. ANC 3C, by letter submitted February 6, 2009 and by testimony at the public hearing on April 23, 2009, indicated that at a regularly noticed and scheduled meeting on January 21, 2009, with a quorum present, the ANC approved a motion to approve the project by a unanimous vote, 9-0. The ANC indicated that it had considered the PUD application over the course of two monthly meetings, including a December meeting devoted exclusively to public comment, as well as at two public forms sponsored by OP and DDOT. See Tr. Apr. 23 at 12. In its report, the ANC stated that the Applicant had worked with community representatives, including ANC 3C, for over three years to solicit input and address concerns through multiple presentations, meetings, and conversations. The ANC also found that the PUD carried out the purposes of the Zoning Regulations and would result in a well-planned development that exceeded what would be achievable under matter-of-right standards. The ANC also found that the character, scale, mix of uses, and design of the PUD are appropriate given the surrounding context, that the height and density would not impose adverse impacts, and that the mix and intensity of uses were appropriate given the site location. The ANC found that the Map Amendment, height, density, and other flexibility was acceptable given the level of benefits and amenities provided in the project. The ANC’s recommendation included a series of conditions intended to address concerns raised by neighbors regarding loading, parking, retail space use, and other neighborhood impacts, which were detailed in its report. Ex. 69.

43. By letter submitted April 21, 2009 and by testimony at the public hearing on April 23, 2009, ANC 3C indicated that it had passed a second resolution at a regularly noticed and scheduled public meeting on April 20, 2009, with a quorum present, in order to clarify that its initial resolution did not intend to permit the MW Overlay to limit the proposed PUD. Ex. 180.

Parties and Persons in Support

44. AWARE submitted testimony and testified in support of the PUD as a party in support. See Ex. 86, 189, 190. AWARE testified that its members formed the organization as a representative for the “silent majority” of neighborhood residents in support of the PUD.

AWARE's representatives indicated that the organization had 175 residents in the immediate neighborhood surrounding the PUD as well as 400 other members who supported approval of the PUD. AWARE endorsed the new grocery store, neighborhood retail, housing and pedestrian-oriented site planning as amenities and benefits of the PUD, and testified that they believed it was likely that they and their neighbors would walk to the PUD site. Tr. Apr. 23 at 86-87. AWARE also endorsed the professional reviews conducted by OP and DDOT, as well as the multiple conditions proposed by ANC 3C and agreed to by the Applicant regarding parking, loading, truck traffic, and other impacts. AWARE also testified that a poll conducted by a neighborhood listserv indicated that 94% of poll takers supported the project.

45. District of Columbia Councilmember Mary Cheh, the Councilmember for Ward 3, testified in support of the PUD at the public hearing. Ex. 24. Councilmember Cheh testified that the smart growth development proposed in the PUD was important for the District's corridors, particularly within Ward 3, and reported that there was "broad-based support" for the Project among her constituents. Tr. Feb. 19 at 93, 94-95. Councilmember Cheh also endorsed the environmentally progressive nature of the PUD. Id. at 93. In addition, At-Large Councilmembers Kwame Brown (Chair of the Committee on Economic Development) and Michael Brown submitted letters in support of the PUD that endorsed the transit-oriented, smart growth development as well as the community-oriented planning of the project. Ex. 213, 240.

46. Neil Albert, the Deputy Mayor for Planning and Economic Development, submitted a letter in support of the PUD. In his letter, the Deputy Mayor endorsed the PUD as consistent with administration policy concentrating growth and investment along the city's prime commercial corridors, and recognized the proposed affordable housing as a significant amenity. Ex. 209.

47. Representatives of neighboring residents associations, condominiums, and cooperative buildings testified in support of the PUD. Supporters included Vaughn Place Condominium Association, a nine-story building located immediately across Idaho Avenue to the west, Chesterfield Cooperative, a 65-unit building across Wisconsin Avenue to the east, and the McLean Gardens Condominium Unit Owners Association, a 720-unit development located immediately west of the PUD site, as well as the Woodley Park Community Association, Massachusetts Heights Citizens Association, and Woodland Normanstone Neighborhood Association. These supporters cited the new grocery store and other retail, project design, community parking, and escrow account for traffic calming measures as benefits and amenities of the PUD. They also testified that many of their members were likely to walk to the PUD site. See Ex. 29 (Woodland Normanstone), 34 (McLean Gardens), 80 (Chesterfield Coop), 132 and 210 (Massachusetts Avenue Heights); Tr. Apr. 23 at 264-65.

48. Trudy Reeves, Commissioner for ANC 3C06, and Richard Rothblum, Commissioner for ANC 3C07, the two single-member districts in which the Property is located, testified in support of the PUD. See Ex. 192, 162. In addition, Joshua Hart, Commissioner for ANC 3C04 submitted a letter in support of the PUD. See Ex. 105.

49. Ellen McCarthy, former Director of the Office of Planning and a Ward 3 resident, testified in support of the PUD. Ms. McCarthy indicated that during her tenure as Director, she supervised the preparation and adoption of the current Comprehensive Plan, and testified that the

PUD was “almost the embodiment of what the Comprehensive Plan was trying to accomplish.” Tr. Apr. 23 at 259; Ex. 203. Ms. McCarthy testified that the proposed C-2-A zoning of the PUD was not inconsistent with the 2006 Comprehensive Plan’s Future Land Use Map designation, based on the language in the Plan and description of the C-2-A Zone District in the Regulations, which describes the C-2-A Zone District as intended to serve “low and medium density residential areas”. See Tr. Apr. 23 at 258, 268-70; Ex. 203. Ms. McCarthy also testified that the designation of the PUD Site as a Neighborhood Commercial Center on the Policy Map supported its redevelopment. Ms. McCarthy noted that provisions in the Rock Creek West Area Element, specifically directed at locations like the PUD Site, endorsed the combination and intensity of uses proposed in the PUD, including housing. Tr. Apr. 23 at 259, 260-61. Finally, Ms. McCarthy cited multiple provisions from the Land Use, Housing, Economic Development, and Urban Design Element that would be furthered by the PUD. Ex. 203.

50. Lindsley Williams, former D.C. Zoning Commissioner and current resident of Cleveland Park, submitted a letter in support of the PUD. Mr. Williams indicated that he participated in the adoption of the MW Overlay during his tenure as a Commissioner. In his letter, Mr. Williams observed that the removal of the MW Overlay would not be objectionable because (1) the Commission could retain whatever controls from the Overlay it finds appropriate as conditions of the PUD and (2) the Overlay has had limited success and has actually deterred commercial investment. Ex. 217.

51. Cheryl Cort, Executive Director of the Coalition for Smarter Growth, testified in support of the PUD. Ex. 199. In her testimony, Ms. Cort endorsed the grocery store, streetscape improvements, neighborhood retail, and housing opportunities as amenities for a project that was “modest in scale” but would still “create a vibrant neighborhood shopping district.” Ms. Cort provided evidence that 14% of workers in the census tract ride the bus, 17% ride Metro, and 10% walk to work, and that 25% of households do not own a single car. Tr. Apr. 23 at 163-64. Ms. Cort also requested that the Applicant increase the affordable housing set-aside to 10% of the Project, and the Applicant responded positively to this request.

52. Tad Baldwin testified in support of the PUD on behalf of Ward 3 Vision, a group of Ward 3 neighbors advocating positive, environmentally-responsible growth and development in Ward 3. Ex. 201. Mr. Baldwin indicated support for the project based on its provision of a livelier, more diverse urban experience, strengthened sense of community, and environmentally-responsible initiatives. Mr. Baldwin noted that the project would have a net reduction on vehicle miles traveled, because the project would encourage neighborhood patrons to (1) travel to the site instead of more distant grocery stores and commercial centers and (2) use alternative means of transportation to travel to the site.

53. Michael Palmiotto, a small business owner and commercial tenant of the PUD Site, submitted a letter in support of the PUD. Ex. 120.

54. In addition to the above, approximately 68 individuals, including residents of McLean Gardens, Cleveland Park, and other surrounding communities, wrote letters or testified in support of the Project at the public hearing, stating that the Project merited consideration and approval. Individuals testified in support of the project’s amenities and benefits, including the new grocery store and other neighborhood retail, new housing, and development of a pedestrian-

oriented shopping center. Individuals cited their participation in multiple public meetings on the PUD conducted by the Applicant, ANC, and city agencies, and noted the Applicant's willingness to modify the project in response to community concerns.

Parties and Persons in Opposition

Cleveland Park Citizens Association ("CPCA")

55. CPCA appeared as a party in opposition. Ex. 67. CPCA raised three objections to the PUD: the site's land use designation in the Comprehensive Plan, the rezoning of the Property out of the MW Overlay, and the alleged restrictions imposed by a 2002 agreement among CPCA, OP, and the Applicant. Ex. 220. CPCA requested that the Commission withhold its decision on the PUD pending resolution of issues related to the 2002 agreement. CPCA proffered Dorn McGrath as an expert in the field of planning, and Mr. McGrath was qualified by the Commission. Mr. McGrath alleged that the proposed PUD was not consistent with the with the site's low density commercial and neighborhood shopping center designations on the Future Land Use Map and Generalized Policy Map of the Comprehensive Plan. On cross-examination, CPCA conceded that only 32 of over 400 members had voted in favor of the Association's resolution to oppose the PUD.

56. The Commission finds that the 2002 agreement, which is a private memorandum of understanding tied to a prior development plan for the site, is irrelevant to the current proceedings. The Applicant, as a property owner, has filed a valid application for a consolidated PUD and Zoning Map amendment, and the Commission and the Office of Planning are obligated to consider the application under Chapters 24 and 30 of the Zoning Regulations. While the Commission's authority to interpret and administer the Zoning Regulations is broad, the Commission's jurisdiction is limited to the powers enumerated in the Zoning Act, *see* D.C. Code § 6-641.01 *et seq.*, and it lacks the authority to enforce a private document among parties. *Cf. Spring Valley Wesley Heights Citizens Ass'n v. D.C. Bd. Of Zoning Adjustment*, 644 A.2d 434, 436-37 (upholding BZA determination that it lacked authority to prohibit valid matter-of-right construction of law school, even if private agreement allegedly prohibited proposed law school location). Accordingly, the Commission concludes that it is not necessary to postpone its decision on the PUD based on the 2002 agreement. The other concerns of CPCA are addressed in Findings of Fact 78 - 80 and 85 - 91 as well as in the Conclusions of Law.

Wisconsin-Newark Neighborhood Coalition ("WNNC")

57. WNNC appeared as a party in opposition. Ex. 68. In addition to preliminary motions regarding the applicability of the Zoning Regulations, WNNC filed a lengthy written statement addressing the PUD's consistency with the Comprehensive Plan and the Zoning Regulations. Ex. 175. WNNC also presented testimony on the traffic and parking impacts of the PUD. Ex. 223-24, 226-27; *see also* Ex. 248.

- a. WNNC alleged that existing traffic patterns already generate unacceptable conditions on neighborhood streets, that the PUD would generate increased traffic on neighborhood streets, and that the Applicant's traffic studies were inconsistent with

other traffic data. WNNC also challenged the Applicant's assumptions regarding use of public transportation and other alternative means of transportation. Based on the foregoing, WNNC claimed that the PUD Regulations and Comprehensive Plan required the Applicant to provide traffic calming measures as a part of the PUD.

- b. WNNC alleged that the PUD failed to provide adequate parking to accommodate the grocery store and other retail, including potential new restaurants within the PUD. WNNC also alleged that the PUD would eliminate existing on-street parking. WNNC further alleged that the Applicant failed to accommodate parking demand generated by other uses in the area, including neighboring restaurants and a proposed residential development. WNNC recommended that the Applicant provide additional parking spaces, primarily to accommodate non-PUD patrons and residents.

Finally, WNNC proposed a series of significant modifications to the Project that it concluded would make the PUD "acceptable." Ex. 225.

58. The Commission credits the Applicant's traffic analyses, methodology, and conclusions, which were independently reviewed and approved by DDOT. The Commission does not find the traffic data prepared by Roadway Data Systems ("RDS") and cited by WNNC to be credible, and notes that RDS did not produce a formal written analysis or provide a representative at the hearing to present its findings and defend them upon cross-examination. The Commission also credits the testimony of the Applicant and DDOT that traffic calming mitigation is not likely to be needed as a result of the PUD.⁵ See Ex. 20. The Commission finds that the provision of an escrow account for potential traffic calming measures represents an effort by the Applicant and DDOT to guarantee their analyses are correct, and represents a laudable effort to provide the community with reassurance.

59. The Commission finds that the PUD will not generate unacceptable impacts due to parking.

- a. Residential Parking. The Project will provide one space per unit on the North Parcel, which is double the amount required under the Zoning Regulations and is consistent with the average auto ownership in the neighborhood. The Project will provide two spaces per unit for the townhouses and permit all residents of the South Parcel units to park in the South Parcel garage. Finally, guests and visitors of the residents of the PUD will be permitted to park in the South Parcel garage. As a result, the ample amount of residential parking will satisfy parking demand generated by the residential portion of the PUD, and ensure that PUD residents will not compete for on-street parking spaces.
- b. Commercial Parking. The Project will provide approximately 388 spaces for the commercial uses on the Property. The Applicant's traffic consultant testified that the amount of parking was consistent with both industry standards and parking ratios

⁵ WNNC's assertions regarding the alleged need for traffic calming are based on existing conditions and therefore are not caused by the PUD.

observed at existing stores in the Washington, DC urban area. See Ex. 20, 236; Tr. May 4 at 266. The Applicant's traffic consultant also testified that the Project would not reduce the on-street parking supply. Id.; see also Tr. May 4 at 266-67. The Applicant's architectural and traffic consultants, as well as DDOT, also testified that the location of the North Parcel's retail parking in the South Parcel garage would serve as a convenient and accessible parking location. Id. at 267; Tr. May 20 at 10-11; Tr. Apr. 6 at 241. As a result, customers of the PUD would be more likely to park in the garage rather than compete with existing residents for limited on-street parking spaces on neighborhood streets across Wisconsin Avenue. Accordingly, the amount and location of commercial parking will satisfy commercial parking demand generated by the commercial portion of the PUD and will not impose unacceptable impacts.

- c. Shared Parking. The Applicant and DDOT both testified regarding the importance of "shared parking" within a mixed-use development in accommodating the different generators of parking demand within the PUD. See Tr. Apr. 6 at 106-07, 241. The Commission agrees with the Applicant and DDOT that as a result of the mixed-use nature of the PUD, not all uses will generate peak demand at the same times. Peak demand for the grocery store and many of the neighborhood retail uses will occur during the daytime, while peak demand for residential visitors and restaurant patrons will occur during evening and nighttime hours.⁶ Accordingly, a strict cumulative assessment of parking demand is inappropriate, and would result in an oversupply of parking at the site.
- d. Transit Use. The Commission credits the Applicant's testimony as well as the testimony of Ms. Cort that the PUD Site is a transit-oriented site because of its location along a major multi-modal corridor that can reasonably expect substantial levels of travel other than private automobile, such as walking, public transportation, and bicycling. The Commission also credits the testimony of AWARE and other supporters that many of the patrons of the PUD will walk to the site. Therefore, the Commission finds that a significant number of trips are likely to occur by means other than private automobile, which will reduce the demand for parking at the site.⁷
- e. Neighborhood Parking Demand. The Commission finds that the Applicant is not responsible for mitigating or accommodating the existing perceived parking demand generated by nearby restaurants. The Applicant's current willingness to partially offset that demand with its existing surplus should not preclude the Applicant's right

⁶ The Commission also finds that the limited number of eating establishments permitted by the removal of the MW Overlay will not impose unacceptable impacts due to traffic, parking, and loading. These establishments represent a small percentage of the overall uses within the PUD and, furthermore, are not likely to consist entirely of full-service restaurants. The parking demand generated by the limited number of eating establishments on the PUD Site will be readily accommodated within the South Parcel Parking garage, particularly given when the peak demand for restaurants is likely to occur.

⁷ Notwithstanding the foregoing, the Commission notes that the Applicant's forecasted parking demand was conservative and did not assume a reduction in parking due to transit use.

to modify the use of its property. Moreover, the presence of such demand highlights the value of the Applicant's proffered 30 community parking spaces. The Commission credits the Applicant's testimony that it will continue to evaluate the potential to accommodate neighborhood parking demand once the Project is completed.

60. The Commission credits the testimony of the Applicant that WNNC's proposed modifications are either infeasible given project viability as well as operational and physical constraints, or unnecessary given the Applicant's proposed management and mitigation measures. See Tr. May 20 at 24-27. Other issues raised by WNNC regarding the Comprehensive Plan and Zoning Regulations are addressed in Findings of Fact 73 - 91 and the Conclusions of Law.

3300 Idaho Neighbors ("Idaho Neighbors")

61. The Idaho Neighbors appeared as a party in opposition. Ex. 55, 64. The Idaho Neighbors, composed of residents who live on Idaho Avenue immediately southwest of the PUD Site, objected primarily to the proposed scale and location of the grocery loading area on Idaho Avenue, and proposed relocating the loading area further to the northeast. Ex. 206. The Idaho Neighbors also raised concerns regarding the impacts of the secondary loading area on the South Parcel located off Macomb Street. *Id.*

62. The Idaho Neighbors proffered Precision Systems Inc. ("PSI") as an expert in the field of traffic engineering, and PSI was qualified as an expert. PSI conducted a peer review of the Applicant's traffic studies. See Ex. 176/207. In its report and testimony, PSI primarily challenged the Applicant's truck generation rate and the ability of the proposed number of loading berths to accommodate truck deliveries, particularly the loading berth off Macomb Street. PSI offered a number of other observations regarding the use of Idaho Avenue for truck traffic and the impact of truck traffic on Idaho Avenue. PSI also challenged the Applicant's estimates for parking demand. PSI also observed a difference in one traffic link count on Newark Street, though the Applicant noted that the link count was conducted two blocks away from the Applicant's count location. Ex. 236; see also FOF 82 - 83 (crediting the Applicant's traffic analysis and DDOT's review and approval). The Idaho Neighbors filed supplemental comments regarding DDOT's analysis on May 4, 2009, maintaining that its estimate regarding truck deliveries to the secondary South Parcel loading area off Macomb Street, which was based on ITE data, was reasonable. See Ex. 214; see also Ex. 246, 252.

63. The Commission agrees with the Applicant that the data relied on by the Idaho Neighbors and their traffic expert to estimate the commercial parking demand is not credible, because it exceeds industry standards and fails to consider the particular circumstances that affect parking demand at the PUD site, including the likelihood of shared parking synergy and means of travel to the PUD site other than private passenger vehicle. See Ex. 236. Accordingly, the Commission finds that PSI's estimate of 6.03 spaces per 1,000 square feet for retail parking

demand and 7.97 spaces per 1,000 square feet for office parking demand is not credible.⁸ The Commission credits the testimony of the Applicant and DDOT regarding parking demand generated by the PUD, for the reasons detailed in Finding of Fact 59

64. The Commission finds that the scale and location of the primary South parcel loading area for the grocery store on Idaho Avenue is not unacceptable. The Commission finds that the proposed grocery loading dock represents an improvement over existing conditions, because it relocates loading activity from an open surface area to an enclosed series of berths and separates truck traffic from other vehicular and pedestrian traffic.

- a. The Commission credits the testimony of OP and finds that Idaho Avenue southwest of its intersection with Newark Street currently lacks a residential character notwithstanding its residential zoning designation, due to the existing commercial parking and loading activity on its east side and the police station on its west side. See Tr. Apr. 6 at 158-59.
- b. The Commission credits the Applicant's testimony that it is infeasible to locate the loading docks further to the north because of operational and physical constraints. On rebuttal, the Applicant's representative testified that the proposed entrance was located on Idaho Avenue for operational reasons: (1) loading for the grocery store needed to be located at the rear of the grocery store, (2) the introduction of a vehicular and pedestrian entrance from 38th Street required the loading to be located on the second level of the parking garage and (3) the slope of the site would make it impossible for trucks to maneuver into the loading berth from a location further north on Idaho Avenue or on Newark Street. Tr. May 20 at 14-18. In addition, trucks would have difficulty navigating the Newark Street/Idaho Avenue intersection if the loading entrance were located further to the north, and would conflict with increased pedestrian activity along Newark Street. Id; see Tr. Apr. 6 at 202-03.
- c. The Commission finds that the Applicant has designed and modified the dock in order to minimize its impacts, through the relocation of the entrance, installation of a 20-foot sound wall, and proposed berm and tree installation. In response to community concerns, the Applicant moved the location of the entrance to this loading area twice, away from residential property to the south. See Ex. 12, 46. The Applicant has also angled the loading entrance and proposed a truck routing plan that will prohibit its trucks from approaching the grocery loading area from the residential neighborhood to the south. Finally, the Commission credits the testimony of the Applicant and OP that the proposed wall, berm, and tree plantings will provide visual and noise buffering. See Tr. Apr. 6 at 148-49.
- d. The Commission credits the analysis and methodology utilized by the Applicant's noise consultant, and finds that noise generated by unloading activity would be substantially improved over existing conditions, and the noise generated by truck

⁸ The Commission notes that these ratios are approximately double and five times the requirements for these uses respectively in the Zoning Regulations for the C-2-A Zone District.

maneuvering would be below ambient background levels. The Commission concludes that the noise generated by the proposed truck unloading and maneuvering will not be unacceptable.

- e. The Commission credits the testimony of the Applicant regarding the estimated number of trucks that will serve the grocery store at this location, based on data provided by Giant and available data at comparable urban grocery stores. Ex. 3, 20, 236. The Commission notes that the data provided by PSI is consistent with this data.
- f. The Commission credits the testimony of the Applicant and DDOT that Idaho Avenue can accommodate two-way traffic, including truck traffic, that such use of local streets for truck deliveries is not uncommon in an urban setting, and that the Applicant's proposed modification of the Wisconsin Avenue / Idaho Avenue intersection will adequately accommodate truck turn movements. See Ex. 236; Tr. Apr. 6 at 207, 230.

Based on the foregoing, the Commission finds that the proposed location of the grocery loading dock and entrance is not unacceptable.

65. The Commission finds that the secondary South Parcel loading area located off Macomb Street will not impose unacceptable impacts due to number of truck deliveries or other conditions.

- a. The Commission agrees with the Applicant and DDOT that the data relied on by the Idaho Neighbors and their traffic expert to estimate the number of trucks generated by the proposed South Parcel retail space is unreliable and fails to account for local conditions or business practices. See Ex. 236. Accordingly, the Commission finds that PSI's estimate of 68-83 truck deliveries a day for 32,155 square feet of ground floor retail space and 17,320 square feet of neighborhood office space is not credible.⁹
- b. The Commission credits the Applicant's estimates regarding truck deliveries, which were based on observations of current activity at the existing site and similar urban sites in the metropolitan area. The Commission also credits DDOT's evaluation and approval of these estimates.
- c. The Commission credits the testimony of the Applicant and DDOT that the 20-foot public alley is sufficient to accommodate truck traffic. See Tr. Apr. 6 at 121.

⁹ Under the Zoning Regulations, a second loading berth and a delivery space is triggered by additional retail density between 30,000 and 100,000 square feet. Office space below 20,000 square feet does not trigger a requirement for loading. The South Parcel contains 32,155 square feet of retail space. While a second loading berth and a delivery space may be strictly required under the Regulations to accommodate the additional 2,155 square feet of retail space, the Commission finds that the additional loading space is unnecessary as a practical matter, given the marginal increase above the 30,000 square foot threshold. Similarly, the Commission notes that the North Parcel contains a mere 799 square feet of retail space above the 30,000 square foot trigger.

- d. The Commission credits the Applicant's testimony that, in addition to the South Parcel retail berth, the loading area contains additional space for a second truck to pull in off the alley and wait; and nearby Macomb Street contains two designated curbside loading areas.

Accordingly, the Commission concludes that the PUD will not impose adverse impacts due to number of truck deliveries unloading activity off Macomb Street or elsewhere in the PUD.

Ordway Street Neighbors Association ("Ordway Neighbors")

66. The Ordway Neighbors appeared as a party in opposition. Ex. 100. Representatives for the Ordway Neighbors raised concerns regarding competition for on-street curb parking on Ordway Street and car and truck traffic on Ordway Street, as well as general concerns regarding the scale, uses, and loading activity on the North Parcel. Ex. 222, 239 [?]. The Ordway Neighbors proposed that mitigation of traffic impacts could be accomplished through prohibitions on bus and truck traffic on Ordway Street, installation of more permanent traffic control measures on Ordway Street at Idaho Avenue, and directional limitations for traffic moving northeast on Idaho Avenue. Id.

67. The Commission finds that the Applicant and DDOT have addressed the majority of the Ordway Neighbors' concerns. On rebuttal, the Applicant demonstrated that the proposed location and amount of parking for the North Parcel retail in the South Parcel parking garage was a convenient and accessible location for patrons and employees. The Applicant demonstrated that the distance between the North Parcel retail and the South Parcel garage was no greater than the distance to Ordway Street and, furthermore, that the South Parcel garage would offer greater supply of parking than searching for a potential on-street space on Ordway Street. The Applicant and DDOT also indicated that truck and bus traffic would not be permitted to use Ordway Street. Tr. Apr. 6 at 239-40. Finally, the Applicant stated that it would construct permanent curb and gutter improvements on Ordway Street at Idaho Avenue to make the existing temporary traffic control measures permanent. In light of the foregoing, the Commission finds that further measures are not required to address the concerns of the Ordway Street neighbors.

Immediate Macomb Street Neighbors ("Macomb Neighbors")

68. The Macomb Neighbors appeared as a party in opposition. Ex. 50. The representative for the Macomb Neighbors raised concerns regarding excavation, environmental and safety impacts of the proposed PUD on property to the south, and focused on the PUD's impacts on the six-story apartment building south of the grocery store. Id.; see also Ex. 181.

69. The Commission finds that the bulk of the Macomb Neighbors' concerns are not issues within the Zoning Commission's jurisdiction. As noted in the OP Report, issues regarding excavation and groundwater are typically addressed during the processing and review of a building permit and, moreover, are standard practice in the metropolitan D.C. area. See Ex. 104 at 9. With regard to the Macomb Neighbors' concerns regarding safety and emergency access to the apartment building south of the grocery store, the Commission credits the report of the D.C.

Fire and EMS Department, which had no objection to the proposal, and also notes that even with the new grocery store, the apartment building would have sufficient emergency access. See Ex. 172; see also Tr. Apr. 23 at 294-96.

70. Approximately 33 individuals wrote letters or testified in opposition to the Application at the public hearing. Ex. 62, 79; Tr. 170-79. These individuals raised concerns regarding the parking, loading, and traffic impacts of the PUD.

71. District of Columbia At-Large Councilmember Phil Mendelson testified in opposition to the proposed PUD-related rezoning and its consistency with the Comprehensive Plan.

72. Peter Pasdan, owner of a restaurant located at 3715 Macomb Street, testified and submitted written evidence in opposition to the Applicant, based on loading and parking concerns. Mr. Pasdan indicated that his restaurant is located immediately east of the 20-foot public alley that serves one of the PUD's loading areas. Mr. Pasdan indicated that he regularly uses the alley to store his dumpsters and receive deliveries, and objected to the potential impact of the PUD on his use of the alley. Mr. Pasdan also objected to the limited amount of parking made available on the PUD property for use by patrons of neighborhood restaurants such as his establishment. On rebuttal, the Applicant's architect indicated that the PUD's loading dock off the alley could be managed to accommodate deliveries to Mr. Pasdan's establishment, provided that Mr. Pasdan could relocate his dumpsters out of the public right of way. Tr. May 20 at 12-13; see also Tr. Apr. 6 at 118 (testimony of DDOT endorsing coordination between the Applicant and Mr. Pasdan).

Compliance with PUD Standards

73. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." 11 DCMR § 2403.8. The Commission finds that the development incentives for the proposed height, density, flexibility, and related rezoning to C-2-A are appropriate and are fully justified by the superior benefits and amenities offered by this Project. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines for the reasons set forth in the Applicant's written rebuttal testimony. See Ex. 257 at 12-17.

74. The Commission credits the testimony of the Applicant and its architect and planning consultants, as well as OP and ANC 3C, and finds that the proposed neighborhood retail (including a grocery store), housing and affordable housing, commitment to sustainable design, streetscape improvements, below-grade loading and parking, neighborhood parking spaces, new traffic signal, intersection improvements, revenue for the district, First Source Employment Agreement, and superior architecture and design all constitute project amenities and public benefits. Ex. 257 at 16-17.

75. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities relating to urban design, landscaping and open space, housing and affordable housing, site planning, job

training and employment opportunities, transportation measures, environmental benefits and uses of special value to the neighborhood and District as a whole. Ex. 257 at 16-17.

76. The Commission disagrees with the opponents' position that the proposed amenities are insufficient given the requested height, density, zoning, and flexibility. The Commission credits the testimony of the Applicant regarding the collaborative planning effort that guided the development of the Project, and finds that the planning process resulted in proffered amenities that strongly reflect community preferences and priorities. The Commission credits the testimony of numerous organizations and persons in support, as well as OP and ANC 3C, that the PUD provides significant and sufficient public benefits and project amenities.

77. The Commission finds the Property is a suitable site for the proposed PUD and that the character, scale, mix of uses and design of the Project are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant's architect and planning consultants that the superior site plan consisting of mixed-use development will create an active pedestrian-oriented environment along the Wisconsin Avenue corridor at one of its commercial nodes.

78. The Commission credits the testimony provided by the Applicant's architect regarding the height of surrounding buildings, and acknowledges the testimony of numerous organizations and persons that the building height and scale is appropriate. The Commission disagrees with the opponents regarding the alleged inappropriateness of the five-story North Parcel building. The Commission finds that the Project's height and massing is appropriate given the existing and proposed building heights surrounding the Property, the surrounding land use and zoning designations, and the Property's location along the Wisconsin Avenue corridor.

79. The Commission finds that the proposed Map Amendment to the C-2-A Zone District is not inconsistent with the Comprehensive Plan and the character of the surrounding area. See Ex. 257 at 14. The Commission notes that the C-2-A Zone District is noted as one that comports with the Low Density Commercial designation on the Future Land Use Map. The proposed zoning is consistent with the Property's location at a neighborhood commercial center along Wisconsin Avenue, and is necessary to permit the mix and density of uses appropriate for transit- and pedestrian-oriented development at this strategic site. Further, the rezoning is part of a PUD application, which allows the Zoning Commission to review the design, site planning, and provision of public benefits and amenities against the requested zoning relief.

80. The Commission also finds that the removal of the MW Overlay designation for purposes of the PUD is not inconsistent with the Comprehensive Plan and character of the surrounding area. See Ex. 257 at 15-16. Notwithstanding the removal of the Overlay, the proposed PUD will further many of the objectives of the MW Overlay, including the promotion of neighborhood-serving retail and service uses, removal of curb cuts along Wisconsin Avenue, and limitations on financing and eating establishments. Moreover, the PUD public hearing process provided a thorough, public review of the PUD over five nights of public hearings. The Commission credits the testimony of the Applicant that the additional height and linear footage permitted for eating establishments enabled by the elimination of the MW Overlay is appropriate given the limited impact of the height and uses as well as the numerous benefits and amenities of the PUD. The

authority of the Commission to amend the zoning map, as well as other issues regarding the impact of the MW Overlay on the proposed PUD, are addressed in the Conclusions of Law.

81. The Commission credits the testimony of OP that the Project provides benefits and amenities of substantial value to the community and the District that are commensurate with the additional density and height sought through the PUD. Further, the Commission credits OP's testimony that the impact of the PUD on the level of services is not unacceptable.

82. For the reasons detailed in this Order, the Commission credits the testimony of the Applicant's transportation consultant and finds that the traffic, parking, loading and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the mitigation measures, TMP, and truck management plan proposed by the Applicant, and are acceptable given the quality of public benefits in the Project. The Commission is not persuaded by the opponents that the traffic study did not provide a credible showing regarding the PUD's impact. The Commission notes that the PUD standards require a showing that the impacts of the PUD are either favorable, capable of being mitigated, or are offset by the PUD's public benefits. Further, the Commission credits the findings of the Applicant's traffic consultant that any impacts will be mitigated by the proposed TMP, traffic improvements, and truck management measures. The Commission notes that the Applicant has proffered an escrow account for traffic calming measures as a condition of the PUD, which will allow DDOT and ANC 3C to monitor the Project's actual traffic impacts and provide improvements, if necessary.

83. The Commission agrees with DDOT's conclusion that the Applicant has fully addressed traffic, parking, loading and other transportation issues associated with the proposed development. The Commission credits DDOT's testimony, including its evaluation of issues raised by the opponents, that the traffic impacts of the Project will be mitigated by specific measures, including the TMP, a new traffic signal and traffic signal optimization measures, intersection reconstruction, and a truck management plan. The Commission also credits DDOT's testimony that the proposed amount of parking is sufficient to accommodate the anticipated parking demand generated by the PUD. The Commission concurs with DDOT that the provision of a traffic calming escrow account report will ensure that the Project's traffic impacts are fully mitigated. The Commission also credits DDOT's testimony regarding the acceptability of the Applicant's proposed future mitigation measures, provided that the Applicant obtain final approval from DDOT for the new signal, necessary signal timing adjustments, and intersection reconstruction.

84. The Commission finds that the PUD's Truck Management Plan as well as all aspects of the Project's operation can be monitored and enforced by the District of Columbia based on a consideration of the facts and circumstances regarding any alleged violation.

Not Inconsistent with the Comprehensive Plan

85. The Commission credits the testimony of the Applicant, OP, and Ms. McCarthy regarding the interpretation of the Property's designations as Low Density Commercial and Low Density Residential on the Future Land Use Map of the Comprehensive Plan. The Framework Element lays out "interpretation guidelines" for the Future Land Use map, and many of these guidelines are reprinted on the map itself. The Interpretation Guidelines state that the Future

Land Use Map is not a zoning map and does not specify allowable uses or dimensional standards. The Guidelines also indicate that the typical building heights and densities included in the land use category simply describe the “general character” of the area, and state that the “granting of density bonuses [through PUDs] may result in heights that exceed the typical ranges cited here.” Finally, the Guidelines indicate that the Future Land Use map designations are not parcel-specific and should be interpreted in conjunction with the text of the Plan.

- a. The Comprehensive Plan describes the Low Density Commercial category as primarily one- to three-story buildings, with retail, office, and service businesses as the predominant uses. The Plan does not require, however, that each block strictly correspond with the general description. See Tr. Apr. 23 at 260, 270, 274-75. The Plan also specifically states that housing is explicitly permitted in the commercial land use categories, and permits height and density beyond the typical range of one to three stories through the use of the PUD process. See Tr. Apr. 23 at 260-61. The Plan states that corresponding zone districts are C-1 and C-2-A. Tr. Apr. 23 at 258, 268-9, 273.
- b. The Plan describes the Low Density Residential category as single family neighborhoods with detached and semi-detached housing units, and notes that “other zones may apply” in addition to the typical R-1 and R-2 zone districts.

86. The Commission credits the testimony of the Applicant, OP, and Ms. McCarthy regarding the interpretation of the PUD’s designation as a Neighborhood Commercial Center on the Generalized Policy Map. Neighborhood Commercial Centers are intended to meet the daily needs of residents and workers in adjacent neighborhoods, and include grocery stores, restaurants, and other basic retail and service establishments as typical uses.

87. The Commission does not agree with the opponents that the absence of a mixed use designation on the Future Land Use map precludes mixed use development. The text of the Plan is clear that housing is permitted in all commercial areas, and that mixed use striping is only used where mixing of land uses is “strongly encouraged.” Moreover, the Commission does not agree with the opponents that the lack of a “mixed use” designation precludes a mixed-use commercial center. The Mixed Use Main Street Corridor category was added in 2006 to supplement existing commercial categories (such as Neighborhood Commercial), with a new commercial category intended to identify pedestrian-oriented shopping districts. The Neighborhood Commercial Center continues to permit mixed-use, pedestrian-oriented development, but also permits larger-scale, auto-oriented commercial development.

88. The Commission finds that the PUD and Map Amendment are not inconsistent with the Comprehensive Plan’s designation of the site in the Low Density Commercial and Low Density Residential land use categories or as a Neighborhood Commercial Center, based on the descriptions and interpretation of those categories in conjunction with the Project’s compatibility with numerous elements, goals and policies of the Comprehensive Plan.

- a. The proposed five-story building on the North Parcel and two-story building on the South Parcel are not inconsistent with the Low Density Commercial Land Use

category. The commercial area will continue to be primarily two and three story buildings.

- b. The proposed townhouses and entrance to the grocery loading area are not inconsistent with the Low Density Residential designation of the western portion of the Property. The Guidelines state that the land use designations are not “parcel-specific” and are intended to be interpreted broadly, in concert with text of the Plan. This portion of the Property, as well as the property across Idaho Avenue from the Property, is currently used for nonresidential purposes, as a commercial parking and loading area for the existing grocery store and as a police station. The proposed loading entrance is consistent with the current use of the site, and the proposed townhouses actually represent an improvement because they introduce residential uses that are more consistent with the residential land use designation.
- c. The proposed rezoning to C-2-A is not inconsistent with the Comprehensive Plan. The Plan explicitly states that the C-2-A Zone District corresponds with the Low Density Commercial land use category.

89. The Commission credits the testimony of the Applicant, OP, and Ms. McCarthy that the PUD is not inconsistent with the Land Use Element of the Plan. The Land Use Element calls for denser development on commercially-zoned properties along the city’s transit-oriented corridors as well as its Metrorail stations. The Land Use Element also includes specific policies for Neighborhood Commercial Centers that encourage the continued growth and expansion of these centers, particularly as pedestrian-oriented nodes of commercial development at key locations along major corridors. Finally, the Land Use Element notes that the height, mass, and scale of development at these nodes should be appropriate and compatible with surrounding areas and not unreasonably impact surrounding residential areas.

90. The Commission finds that the PUD is not inconsistent with the Land Use Element of the Comprehensive Plan. Given the PUD’s location at a commercial center along Wisconsin Avenue, substantial levels of bus service along this stretch of Wisconsin Avenue, and extensive testimony regarding the need for growth of the center to meet the surrounding community’s daily needs, the Property is appropriate for denser redevelopment as a pedestrian-oriented commercial node along the Wisconsin Avenue corridor. The Commission also finds that the PUD is compatible with the character of surrounding buildings, which include four to nine story residential buildings, a five-story office building, and a police station. Finally, for the reasons described throughout this Order, the Commission finds that the proposed Project will not unreasonably impact surrounding residential properties. The Commission notes again that the use of the PUD process permits the Commission to impose conditions that will accomplish this goal, which is a clear advantage over matter-of-right development.

91. The Commission credits the testimony of the Applicant, OP, and Ms. McCarthy that the Project is also consistent with many of the Comprehensive Plan’s major elements, including the Housing, Transportation, Urban Design, and Economic Development elements. The Commission also concurs with the Applicant, OP, and Ms. McCarthy that the PUD does not conflict with the policies of the Rock Creek West Area Element; in fact, the PUD promotes multiple provisions that call for infill development of commercially-zoned sites along Wisconsin

Avenue. See Tr. Apr. 23 at 259, 260. The Commission agrees with the Applicant that the PUD is not inconsistent with the other provisions of the Comprehensive Plan cited by the opponents, for the reasons cited in the Applicant's rebuttal brief. See Ex. 257 at 7-12.

92. The Commission gives "great weight" to ANC 3C. The Commission credits ANC 3C's testimony that the PUD furthers the purposes of the Zoning Regulations and utilizes the PUD process to provide a more efficient and attractive project than would be attainable under matter-of-right standards. The Commission credits the testimony of ANC 3C that the Project's height and density are not unacceptable given the height and density of surrounding buildings and location of the PUD along a major multi-modal corridor. The Commission also credits the testimony of ANC 3C that the proposed map amendment, height, density, and other flexibility are acceptable given the proffered amenities and benefits. The Commission agrees with ANC 3C that many of its conditions are reasonable efforts to balance the interests of the Applicant with concerns of the community, and applauds the ANC's effort to provide a balanced resolution of the loading, traffic, parking, and other issues in the PUD. The Commission credits the testimony of the Applicant's representative on rebuttal that the Applicant had agreed to the majority of the ANC's conditions, and finds that the Applicant has satisfied the ANC's conditions of approval.

93. The Commission disagrees with ANC 3C, however, regarding the need for additional commercial parking on the North Parcel. The Commission credits the testimony of the Applicant and DDOT that the proposed amount of commercial parking is sufficient, and the proposed location on the South Parcel will be convenient and accessible. The Commission also disagrees with ANC 3C regarding the request to limit the ability of PUD residents to secure residential permit parking. The Commission credits the testimony of the Applicant that the proposed PUD provides an ample amount of off-street residential parking given the type of units and location of the PUD, which makes it unlikely that PUD residents will compete for on-street parking surrounding the PUD. Moreover, the Commission does not believe that the rights of residents of the PUD to park on a public street in other areas of Ward 3 should be distinguished from the rights of other Ward 3 residents.

CONCLUSIONS OF LAW

Authority of the Commission to Consider the PUD Application

The Commission disagrees with WNNC that Section 1308.3 of the Regulations prohibits consideration of the PUD and mandates removal of the matter to the D.C. Board of Zoning Adjustment under Section 1308.3. Under the express terms of the Zoning Act and as a matter of legislative principle, the Zoning Commission retains the power to modify or remove the MW Overlay as a zone district.¹⁰ The approval of the PUD and related map amendment will rezone

¹⁰ It is a fundamental principle of law that one legislature cannot bind its future successors, and no prior Commission could create a zone category that would bind future Zoning Commissions to maintain that zone category. See William Blackstone 1 Commentaries *90 ("Acts of parliament derogatory from the power of subsequent parliaments bind not.") Therefore, the 1989 Zoning Commission, which implemented the MW Overlay, could not have created an overlay that future Commissions could not modify or rescind.

the Property and remove it from the Overlay, which will eliminate the requirement for BZA review.

Assuming *arguendo* that the provisions of the MW Overlay remain in force until the map amendment takes effect, the Commission still retains the authority to review the proposed development plan through the PUD process. The Zoning Commission has the authority to review requests for special exceptions—including the special exception review envisioned by Section 1308.3—as a part of its review of the PUD. 11 DCMR § 2405.7. The Commission’s 1980 Order, which adopted the text of Section 2405.7, makes it clear that the Commission intended to completely eliminate the BZA’s role in reviewing and approving PUD Applications. See Order No. 313.

Furthermore, the review and approval of this application as a PUD does not circumvent the intent or purpose of Section 1308.3, which is to ensure a public review of large developments within the MW Overlay. The Commission’s proceeding in this manner, which took place over five separate nights of public hearing, included a review of over 250 exhibits in the record, and afforded exceptional latitude to the opponents to conduct lengthy and often repetitive cross-examination, provided ample opportunity for public review of the development plan.

Based on the foregoing, the Commission grants the Applicant’s request to dismiss the WNNC petition to refer the matter to the BZA.

Appropriateness of PUD Zoning Mechanism and PUD-related Rezoning

The Commission concludes that the PUD process is an appropriate means of controlling future development of the Property in a manner consistent with the best interests of the District of Columbia. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare and convenience.” 11 DCMR § 2400.2. The Commission has found that the Application offers specific community benefits that significantly advance the public interest.

Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. 11 DCMR § 2402.5. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, penthouse setback, or yards or courts. The Commission may also approve adjustments to the amount and location of parking and loading facilities. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. 11 DCMR § 2405.

The Commission has the authority to rezone the Property to C-2-A and remove the MW Overlay for purposes of the PUD. The text of the Zoning Regulations and prior precedent support the Commission’s authority to remove the MW Overlay through a PUD-related amendment to the Zoning Map. The regulations that govern PUDs explicitly permit related map

amendments, and do not distinguish overlay zones from base zone districts. Both types of zones are applied through a map amendment, and both types of zones may be removed through a map amendment. Nothing in the Regulations suggest that a PUD-related zoning map amendment somehow precludes rezonings into, or out of, overlay districts. The Commission has exercised its authority to remove a neighborhood commercial overlay district through a PUD-related map amendment. See Z.C. Order No. 05-37; cf. Z.C. Order No. 06-11/06-12; 06-17; 06-27 (approving PUDs and related map amendments within the boundaries of an approved campus plan as valid exercises of the Commission's authority under the PUD Regulations).

Furthermore, the proposed PUD-related map amendment does not threaten the integrity of the MW Overlay District, or circumvent the intent and purposes of the Zoning Regulations, because the Commission is able to evaluate the map amendment in the context of a specific development and condition its approval. In fact, the PUD process supplements and enhances the protections afforded by the MW Overlay: the consolidated PUD review process provides for detailed design review as well as review of the project's proposed height, density, and use, and offers substantial project amenities and public benefits in exchange for a higher overall height and density and design flexibility. As OP testified during the hearing, the MW Overlay will still exist on the Property, but is conditionally removed by the PUD only if the Applicant complies with the terms and conditions of the PUD Order. A PUD-related map amendment is a conditional, temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates.

Compliance with PUD Regulations

The Commission is required to give great weight to the recommendations of OP. See D.C. Code § 6-623.04 (2001). For the reasons stated herein, the Commission gives great weight to the recommendation of the Office of Planning regarding the PUD's compliance with the PUD Regulations and consistency with the Comprehensive Plan.

The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more efficient and attractive overall planning and design not achievable under matter-of-right development. The character, scale, mixture of uses and design of uses in the proposed PUD are appropriate, and the proposed development is compatible with the citywide and area plans of the District of Columbia as detailed below.

The application meets the minimum area requirements of § 2401.1 and the contiguity requirements of § 2401.3 of the Zoning Regulations.

The PUD is within the applicable height and bulk standards of the Zoning Regulations. The proposed height and density will not cause an adverse effect on nearby properties, is consistent with the height and density of surrounding properties, and is appropriate given the location along a major commercial corridor. The mix of residential and retail uses is appropriate for the site, which is located at a neighborhood commercial node at the nexus of multiple residential neighborhoods and communities.

The impact of the proposed PUD on the surrounding area and upon the operation of city services and facilities is acceptable. As demonstrated in the traffic studies submitted by the Applicant and the reports and testimony of DDOT, the Project will not cause adverse traffic impacts and the Property is well served by major arterial streets and numerous bus lines. Further, the application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the Project will be mitigated.

The PUD Regulations permit the Commission to reduce or increase the amount of off-street parking spaces or loading facilities depending on the uses within the PUD and the location of the Project. The proposed increase in residential parking and decrease in commercial parking on the North Parcel is appropriate given the importance to the nearby community of providing adequate residential off-street parking and the ability to better accommodate and manage commercial demand in a shared facility on the South Parcel. The proposed reduction in the amount and size of the loading berths on both the North and South Parcel is appropriate given the relatively small size of the retail space in each building as well as the ability to manage residential and retail demand through shared use of the berths.

For the reasons set forth in the Findings of Fact, the analysis of traffic, parking and loading provided by PSI as well as the anecdotal evidence provided by the parties in opposition were not persuasive. The Applicant's expert witnesses and DDOT were more persuasive in their reliance on established methods for calculating parking and loading demand and assessing traffic, parking, and loading impacts.

The application seeks a PUD-related zoning map amendment to the C-2-A District, and an increase in height and density as permitted under the PUD guidelines, with flexibility from the lot occupancy, roof structure, parking, loading, and lot control requirements, as well as special exception approval for the townhouses under Section 353. The benefits and amenities provided by the Project, particularly the provision of housing and affordable housing, exemplary architecture, significant public open spaces and streetscape improvements, neighborhood parking spaces, below grade parking and loading, grocery store and other neighborhood-serving retail, and sustainable design commitments, are reasonable for the development incentives proposed in this application. For the reasons set forth in the Findings of Fact, the evidence provided by the parties in opposition regarding the application of the PUD regulations, requested development incentives, and sufficiency of the amenities package was not persuasive. The PUD and rezoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

The Comprehensive Plan

Approval of the PUD and change in zoning is not inconsistent with the Comprehensive Plan, including the designation of the Property as Low Density Commercial and Low Density Residential, based on the consistency of the proposed height, density, and rezoning to C-2-A with the land use category descriptions, guidelines for interpretation, surrounding land uses and heights, and other provisions of the Comprehensive Plan. The PUD and related rezoning is not

inconsistent with the designation of the Property as a Neighborhood Commercial Center based on similar reasons.

The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan, including:

- Land Use. The transit-oriented, mixed use development satisfies District goals for development on commercial nodes along major corridors with compatible mixes of uses, appropriate densities, good pedestrian and vehicular circulation, appropriate combinations of public and private action, and the promotion of appropriate commercial development, to serve the economic needs of the District and its neighborhoods.
- Housing. Through the construction of approximately 138 multi-family units and 8 townhouse units, as well as the proposal to set aside 10% of the residential gross floor area as affordable housing, the Project provides new housing to meet all levels of need and demand;
- Transportation: The proposed mixed-use, pedestrian-oriented development is strategically located on a major transportation corridor and capitalizes on investment in public transportation along that corridor;
- Urban Design. The Project's significant retail component and streetscape improvements at a neighborhood commercial center provide a functionally active commercial center within the District, create active use during both the day and evening hours, and create aesthetically pleasing physical concentrations of activity and development.
- Economic Development. The PUD promotes the development of a new grocery store and other neighborhood shopping and local-serving office space to better serve the needs of the surrounding community.

Finally, the Project is completely consistent with the objectives of the Rock Creek Area Element, including multiple provisions which call for compatible infill development of additional housing with retail and office space on underutilized commercial sites along Wisconsin Avenue. For the reasons set forth in the Findings of Fact, the analysis of the Comprehensive Plan provided by CPCA's expert as well as the evidence provided by the parties in opposition were not persuasive. The Applicant, OP, and Ms. McCarthy were persuasive in their interpretation and application of the Comprehensive Plan.

ANC "Great Weight"

The Commission is required under D.C. Code § 1-308.10(d) (2001) to give *great weight* to the issues and concerns raised in the recommendations of the affected ANC. The Commission has considered the position of ANC 3C and accords it the great weight to which it is entitled. The Commission concurs with ANC 3C that the PUD will provide a more efficient and attractive project than would be attainable under matter-of-right standards. The Commission also concurs with ANC 3C that the Project's height and density are not unacceptable based on the site location

and surrounding context. The Commission also concurs with ANC 3C that the proposed map amendment, height, density, and other flexibility are acceptable given the proffered amenities and benefits.

As set forth above in the Findings of Fact, the Commission finds the majority of the conditions proposed in the ANC Resolution are persuasive and that the Applicant has complied with those conditions. The Commission disagrees with ANC 3C, however, regarding the need for additional commercial parking on the North Parcel. The Commission is not persuaded that additional commercial parking is needed on the North Parcel because the commercial parking on the South Parcel has sufficient parking, and that parking will be convenient and accessible for patrons of the North Parcel retail. The Commission also disagrees with ANC 3C regarding the request to limit the ability of PUD residents to secure residential permit parking. The proposed PUD provides an ample amount of off-street residential parking given the type of units and location of the PUD, which makes it unlikely that PUD residents will compete for on-street parking surrounding the PUD. Moreover, curbside parking is a public use that should be available to all District residents, and is not persuaded that the rights of residents of the PUD to park on a public street in other areas of Ward 3 should be limited more than those of other Ward 3 residents.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of an application for a Consolidated Review and Approval of a Planned Unit Development (“**PUD**”) and related Zoning Map Amendment for property consisting of Square 1920, Lot 831 and Square 1920-N, Lots 1 and 2 (the “**Property**”). This approval is subject to the following guidelines, conditions, and standards:

1. This PUD shall be developed in accordance with the plans prepared by Street-Works, LLC marked as Exhibit 20 in the record and modified by Exhibits 46, 156, 164, and 256, as modified by guidelines, conditions and standards herein.
2. The Property shall be rezoned from MW/C-1 and R-5-A to C-2-A as shown on the Zoning Exhibit marked as Tab B of Exhibit 3 of the Record.
3. The Applicant is permitted to construct townhouses on the remaining R-5-A portion of the Property and is also permitted to use the R-5-A portion of the Property for commercial access to the primary South Parcel loading facility as shown on Exhibit 20 of the record and modified by Exhibits 46, 156, 164, and 256.
4. The Applicant shall have flexibility from the lot occupancy, roof structure, parking, loading, and theoretical lot provisions of the Zoning Regulations, as shown on the plans marked as Exhibits 20, 46, 156, 164, and 256.
5. The Property shall be used for residential, commercial, and commercial parking uses, as shown on the plans marked as Exhibits 20 and 156 of the record, provided:

- a. No more than 20% of the ground-level gross floor area along Wisconsin Avenue and Newark Street shall be devoted to banks, loan offices, other financial institutions, and tax preparation establishments.
 - b. Restaurants, prepared food shops, and fast food establishments are permitted, but shall occupy no more than 20% of the commercial linear street frontage within the PUD site.
6. The Applicant shall set aside approximately 10% of the residential gross floor area as affordable housing, with 50% of the units set aside for low-income households and 50% set aside for moderate-income households, exclusive of the townhouses planned on the Idaho Avenue property line. The affordable housing units shall be distributed as generally shown on the plans marked A104-A105 in Exhibit 20 of the record.
7. The Applicant shall design the project as a whole to achieve the equivalent of a Silver rating under the LEED for Neighborhood Development (LEED-ND) rating system. The Applicant shall design the North Parcel residential component to achieve the equivalent of a Silver rating under the LEED for Homes Mid-Rise rating system.
8. The Project shall include commercial parking facilities as shown on the plans referenced above; provided:
 - a. The Applicant shall permit use of the South Parcel garage by residents of the PUD and their guests.
 - b. The Project shall make at least 30 spaces in the South Parcel garage available during off-peak hours for users of existing neighborhood restaurants and overnight parking for the surrounding community.
 - c. The Applicant may restrict the use of the North Parcel garage for private use by residents and guests of the Project.
9. The Project shall provide off-street loading consistent with the approved plans. The Applicant shall abide by the Truck Management Plan included in Exhibit 20 of the Record; provided
 - a. No loading activity shall be permitted between 9:00 PM and 7:00 AM.
 - b. Commercial tenants shall be required to abide by the terms of the Truck Management Plan through a lease provision or similar mechanism.
10. The Applicant shall comply with the Transportation Management Plan included in Exhibit 20 in the Record.
11. Prior to the issuance of a base building permit, the Applicant shall undertake the following actions:

- a. Contribute 100 percent of the traffic engineering and construction costs of the signalization of the intersection of Wisconsin Avenue and Idaho Avenue;
 - b. Contribute 100 percent of the construction costs to install curb and gutter improvements that make permanent existing temporary traffic control measures at Ordway Street and Idaho Avenue;
 - c. Place \$100,000 into an escrow fund to provide for unanticipated traffic calming measures caused by impacts from the PUD in accordance with terms and conditions acceptable to DDOT.
12. The Applicant shall have flexibility with the design of the PUD in the following areas:
- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structures.
 - b. To vary final selection of the exterior materials within the color ranges and materials types as proposed based on availability at the time of construction.
 - c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belts, courses, sills, bases, cornices, railings, and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.
 - d. To vary the exact location of the affordable units, as shown on the plans, provided they are located on the same floor as shown on the plans.
 - e. To vary the size and location of retail entrances to accommodate the needs of specific retail tenants and storefront design.
 - f. To make alterations to the design of the underground parking garages and the townhouse parking spaces, provided that the North Parcel parking garage contains approximately 124 spaces, the South Parcel garage contains approximately 395 spaces, and the townhouses contain approximately 16 spaces, which requirement may be satisfied with any combination of compact and full-sized spaces.
13. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services.
14. No building permit shall be issued for this PUD until the Applicant has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Zoning Commission.

15. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.
16. The PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for building permit for Phase 1 (defined below) as specified in 11 DCMR § 2409.1. The Applicant shall have the flexibility to construct the Project in two phases.
 - a. Phase 1 consists of the South Parcel improvements. Within three (3) years of the receipt of a certificate of occupancy for the grocery store, the Applicant shall file for a building permit for the Phase 2 improvements (defined below).
 - b. Phase 2 consists of the North Parcel improvements.
 - c. The Applicant shall have flexibility to construct the South Parcel townhouses during Phase 1 or Phase 2.
17. 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 section 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, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income or place of residence or business. Sexual harassment is a form of sex discrimination, which 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. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

On _____, 2009, the Zoning Commission approved the application by a vote of _____. This order was adopted by the Zoning Commission at its public meeting held on _____, by a vote of _____.

In accordance with the provisions of 11 DCMR § 2038, this order shall become final and effective upon publication in the D.C. Register; that is, on _____.

Anthony Hood, Chairman
Zoning Commission

Richard Nero,
Acting Director, Office of Zoning