



BEFORE THE ZONING COMMISSION AND
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



FORM 129 – ADVISORY NEIGHBORHOOD COMMISSION (ANC) REPORT

Before completing this form, please review the instructions on the reverse side.

Pursuant to Subtitle Z § 406.2 and Subtitle Y § 406.2 of Title 11 DCMR Zoning Regulations, the written report of the Advisory Neighborhood Commission (ANC) shall contain the following information:

IDENTIFICATION OF APPEAL, PETITION, OR APPLICATION:

Case No.:	20308	Case Name:	4865 MACARTHUR LANDLORD, LLC
Address or Square/Lot(s) of Property:	Square 1389, Lot 25		
Relief Requested:	Special Exception		

ANC MEETING INFORMATION

Date of ANC Public Meeting:	2	1	1	1	0	1	2	0	Was proper notice given?:	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Description of how notice was given:	3 Local Listservs ; ANC3D Website												
Number of members that constitutes a quorum:	5				Number of members present at the meeting:	9							

MATERIAL SUBSTANCE

The issues and concerns of the ANC about the appeal, petition, or application as related to the standards of the Zoning Regulations against which the appeal, petition, or application must be judged (a separate sheet of paper may be used):

See Letter

The recommendation, if any, of the ANC as to the disposition of the appeal, petition, or application (a separate sheet of paper may be used):

See Letter

AUTHORIZATION

ANC	3D	Recorded vote on the motion to adopt the report (i.e. 4-1-1):	9-0-0	
Name of the person authorized by the ANC to present the report:	Michael Srigui			
Name of the Chairperson or Vice-Chairperson authorized to sign the report:				
Signature of Chairperson/ Vice-Chairperson:	Charles Elkins, Chair		Date:	10/27/2020

ANY APPLICATION THAT IS FOUND TO BE INCOMPLETE MAY NOT BE ACCORDED "GREAT WEIGHT" PURSUANT TO
11 DCMR SUBTITLE Z § 406 AND SUBTITLE Y § 406.

Board of Zoning Adjustment
PURSUANT TO
CASE NO. 20308
EXHIBIT NO. 31

Advisory Neighborhood Commission 3D

Government of the District of Columbia



21 October 2020

Mr. Frederick Hill
Chairman
District of Columbia Board of Zoning Adjustment
District of Columbia Office of Zoning
441 Fourth Street, Northwest, Suite 200S
Washington, DC 20001

Mr. Anthony J. Hood
Chairman
District of Columbia Zoning Commission
District of Columbia Office of Zoning
441 Fourth Street, Northwest, Suite 200S
Washington, DC 20001

Mr. Andrew Trueblood
Director
District Office of Planning
1100 Fourth Street, Southwest, Suite 650 East
Washington, DC 20024

Dear Chairman Hill, Chairman Hood, and Director Trueblood:

Advisory Neighborhood Commission 3D convened a duly-noticed special meeting to consider an application for the special exception before the Board of Zoning Adjustment in Case 20308. This letter is addressed to the three of you because the case raises issues of, not only whether a special exception *should* be approved by the Board, but also whether the Zoning Regulations *allow for* the local community to contribute impactful views on the broad merits and location of facilities such as the subject Continuing Care Retirement Community (CCRC) proposal.

The subject application is for 4865 MacArthur Landlord, LLC on behalf of Safeway/NAI Saturn Eastern, LLC and Trammell Crow Companies, (collectively, "Applicants"), with respect to redevelopment plans for 4865 MacArthur Boulevard, N.W., (Lot 89, Square 1325). Among other concerns addressed in the attached Memorandum of Agreement (MOA), the community's review of the application raised serious concerns about an insufficient retail allocation in furtherance of the MacArthur Boulevard commercial corridor's future viability.

In response to these concerns, the Applicants negotiated the MOA and a Construction Management Agreement (CMA) (also attached) with community representatives. In consideration of these agreements, and with a quorum present, the Commission voted to support the Board's approval of the Applicants' request for use-related special exception relief

under §203.1 (g) of Subtitle U of the District of Columbia Zoning Regulations of 2016. In the interest of both sides, we further advise the Board's ruling be propounded via a full order.

As the Board is aware, Subtitle U, §203.1(g)(6) authorizes the Board to require "*special treatment in the way of design, screening of buildings, planting and parking areas, signs, or other requirements as it deems necessary to protect adjacent and nearby properties.*" Our Commission believes such special treatments are necessary and therefore requests that the Board incorporate the signed MOA and CMA into its order. This action by the Board will assure that the Applicants' commitment to mitigate several potential objectionable conditions has the force of law and will be adhered to by the Applicant without fail.

The Commission feels it is vital to express to the Board of Zoning Adjustment, the Zoning Commission, and the Office of Planning several reservations with the proposal's implications for our constituents, the process in place allowing or preventing these to be considered, and important ways in which we fear it fails to reflect the intent of ZR-16.

Section 203.1 (g) establishes a regulatory framework that is unfavorable to the community's ability to meaningfully respond to the underlying proposal's range of potential impacts. To begin with, the ANC believes that a commercial CCRC use is generally inconsistent with others the Section applies to, such as day care centers, religious buildings, emergency shelters, and the like. The pecuniary, special interest aspects of for-profit retirement homes are in stark contrast to the community-driven, public interests of most types of projects the Section covers. The gap is all the wider in this case, where the CCRC's prospective operator manages a portfolio of ultra-high-end communities whose average assisted living room and board fees alone surpass statewide averages for *all* housing, care, and amenity fees in the assisted living category.¹

We understand that in Special Exception cases, the BZA customarily limits its consideration to the portion of a project on land specifically requiring use relief. This is important in a case such as this, where the lot is divided into two zones. The Applicant's presentation, which speaks only to the relatively small portion of its proposed development in the R-1-B zone, tends to agree with this conclusion. The Commission feels the notion that one portion of a development should be severable from another is arbitrary and harmful from a community interest point of view. To our constituents advocating for the best possible economic and quality of life outcomes connected to this project, the distinction is entirely illusory. That both sides intuitively negotiated an MOA encompassing the entire lot, and beyond, acknowledges this reality. ANC 3D believes that the case before the Board should include the entire parcel upon which development is proposed by the Applicants. Were an applicant to ask for a special exception to construct a penthouse upon a proposed structure, the Board would not have before it an application that depicts just the literal penthouse access hatch and nothing else pertaining to the proposed structure. Yet that is effectively what is happening here.

The above procedural concerns portend serious consequences for our constituents that a review subject to the standards under Subtitle X, Chapter 9 render practically immaterial. For example, the grant of a Special Exception in this case will result in the effective re-zoning of the portion of the lot in the R-1-B Zone. The relative sizes of the proposed CCRC's two wings adds permanency to this change, as uses for the smaller R-1-B building will presumably be tied to those of the one in the MU-4 zone of the lot. This is particularly troubling with respect to our

¹ For operator's base rental rates see, www.balfourcare.com. For benchmark catalog of statewide averages for assisted living costs see *Genworth Cost of Care Survey* via www.genworth.com/aging-and-you/finances/cost-of-care.html. Note, operator's existing sites are in Colorado and Michigan, where comparable settings to the proposed DC site are in LoDo, Denver and Ann Arbor, MI.

earlier concern that a CCRC's relatively passive interaction with the surrounding community does not comport with most of the neighborhood-centric uses concerning §203.1.

While smaller segments of the community emphasized one specific concern with the proposed development over another, the broader community's, and the ANC's, priority in discussions with the Applicants has been and remains heavily weighted toward the issue of recovering some of the site's lost retail capacity following the 2019 departure of its previous occupant, a roughly 15,000 square-foot Safeway grocery store. Since Safeway, (among the Applicants in this case), closed its Palisades store, our constituents have been without daily access to fresh produce and other grocery essentials that are within walking distance or easily reachable via transit.

Broader commercial impacts are also highly relevant and concerning. Academic studies on this topic consistently fail to conclude that retirement communities either contribute to a local economy's long-term customer and sales tax bases or their businesses' revenues.² Accounting for the current public health emergency, adjacent businesses in Palisades have reported lost sales up to 40 percent to the Commission following Safeway's departure. These businesses' owners and many residents are skeptical that the Applicant's hypothetical 5,000 square foot grocer-like tenant, itself only one-third the size of the former Safeway, will be capable of generating sufficient downstream business to act as a new anchor retailer for the community. In short, the significantly limited retail component of the proposed project – should it even become reality – may be unable to help foster a viable retail corridor in this area. Policy and regulatory decisions related to such concerns should be able to receive an audience before your bodies.

It is important to acknowledge the Applicants' efforts to accommodate retail space on the site at all, and specifically the type—a grocer—neighbors unequivocally state they most desire. These efforts are real and have involved a degree of flexibility and time from the Applicants, which we appreciate. Such challenges, however, are a result not of community intransigence, but the Applicants' overarching priorities for the site that make a vibrant retail presence harder to realize.

Section 203.1 allows the community to opine only on potential impacts of limited reach by this application. In fact, however, very far-reaching impacts are at issue. This Commission is neither sufficiently cynical nor anti-development to burden the Applicants with the type of objections that the process narrowly creates room for us to raise. The critical and meaningful issues, as whether the proposed development reflects zoning in the spirit of Subtitle A, §101.1 of the Zoning Regulations, are effectively off-limits. The process applied in this case results in effectively the same playing field for the community to express its interests as a by-right development. Such matters deserve broader evaluative horizons than those we anticipate will be applied to the underlying application. The District overall is harmed should this be the case.

Within the confines the Commission's concerns are material to the Board's consideration of this application, we feel compelled to support it. In fact, the Applicants have made clear in writing that they "will not include any retail in the project" "if the ANC votes 'no[t]'" to support the project.³

² See, among others, Serow, William. "Economic Consequences of Retiree Concentrations: A Review of North American Studies" *The Gerontologist*, Vol 43,6. December 2003, pp 897–903 / "Economic and Fiscal Implications of Aging for Subnational American Governments." *Journal of Aging & Social Policy*, Vol. 12, pp 47-63.

³ Email from William Brewer on behalf of Trammel Crow Companies on October 15, 2020 at 7:27 PM.

Thank you all for your consideration of the matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck Elkins". The signature is written in a cursive style with a large initial "C" and a long, sweeping tail.

Chuck Elkins, Chair

Attachment A: Memorandum of Agreement

Attachment B: Construction Management Agreement

Attachment A

Memorandum of Agreement

Memorandum of Agreement
Between ANC 3D, 4865 MacArthur Landlord LLC, and the Trammell Crow Company
For the Development at 4865 MacArthur Boulevard, NW

This Memorandum of Agreement (the "MOA" or "Agreement") is made this 27th day of October, 2020 by and between 4865 Macarthur Landlord LLC, a Delaware LLC (“Owner”), through TC MidAtlantic Development, Inc., a subsidiary of Trammell Crow Company (the “Developer”) and Advisory Neighborhood Commission (“ANC”) 3D ("ANC 3D" or the "ANC"). The Developer and ANC 3D are collectively referred to herein as the "Parties."

Understanding of the Parties

WHEREAS, the Developer is the ground lessee of the real property located at the address of 4865 MacArthur Boulevard, NW, Washington, DC (Lot 25 in Square 1389) ("Site" or “Property”);

WHEREAS, the Site is within the boundaries of ANC 3D, and the ANC is automatically a party in proceedings before the District of Columbia Board of Zoning Adjustment ("BZA");

WHEREAS, the Site is split-zoned, with the southern portion in the MU-4 District and the northern portion in the R-1-B District (Exhibit D);

WHEREAS, the Developer intends to develop both the MU-4 and R-1-B portions of the Site with a Continuing Care Retirement Community (“CCRC”) with approximately 135 independent living, assisted living and memory care units, as well as a grocery store consisting of a minimum of 5,000 square feet located entirely within the MU-4 District (the MU-4 and R-1-B development collectively referred to as the “Project” as shown in the drawings included herein as Attachment B). The portion of the CCRC use located in the R-1-B District (the “R-1-B Wing”) requires special exception approval from the BZA pursuant to 11-U DCMR § 203.1(g) and the Developer has applied for such relief in BZA Case No. 20308 (“BZA Case”);

WHEREAS, a hearing on the application has been scheduled for November 4, 2020;

WHEREAS, upon completion of the Project, the CCRC will be operated by a separate CCRC Operator (“Operator”);

WHEREAS, ANC 3D residents desire that the Project accommodates an expansion of the Palisades Farmers Market as part of its public space improvements, includes retail space for a grocery tenant, provides adequate parking, has landscaping that complements the Project’s surroundings, and adopts environmental best practices.

WHEREAS, in response, the Developer developed a plan for an anticipated grocery store in the Project that will be located at either the southeast or southwest corner of the building along MacArthur Boulevard at either the 48th Place, NW or U Street, NW intersection;

WHEREAS, several ANC 3D commissioners and residents desire sufficient parking spaces on the Site to ensure a “parking neutral” outcome for the Project, to serve the parking demand generated by the Project, including the associated retail, and accommodate parking for the commercial and

retail uses along MacArthur Boulevard, as well as the Palisades Farmers Market that operates on Sundays in the temporarily closed portion of 48th Place, N.W., immediately west of the Site;

WHEREAS, the Developer wishes to accommodate the community's desire for additional parking on the Site and to attract a grocer to the Site, and has therefore provided additional parking places for the facility as well as parking spaces for a potential grocer, as shown in Attachment B hereto;

WHEREAS, the Developer is committed to bringing a grocer to the Site but has encountered difficulties in its negotiations as a result of current economic conditions, which the Developer believes preclude it from unconditionally guaranteeing such a use on the Site;

WHEREAS, the Developer desires ANC 3D to support the BZA Case and ANC 3D desires to support the BZA Case provided Developer agrees to certain conditions related to the Project.

NOW THEREFORE, in consideration of the foregoing recitals and agreements set forth below, and provided that ANC 3D supports the BZA Case ("support" shall be indicated by an affirmative vote of the ANC on a resolution or motion recommending approval of the Project and reflecting the terms and conditions of this Agreement), Developer agrees to the following:

1. Retail Uses

- a. Retail Grocery Store: The Developer shall use all commercially reasonable efforts throughout the Project's construction and for two years following the Project's completion to secure a ten-year in-person grocery store lease term from a qualified, experienced grocery store operator. In the event Developer is unsuccessful in securing a qualified grocery store lease within the two-year period following receipt of the Project's Certificate of Occupancy, Developer shall then use all commercially reasonable efforts during an additional three-year period to secure a qualified and experienced food retail tenant. In the event that the Developer is unsuccessful in securing either a qualified grocery store lease or a qualified in-person food retail tenant within five years following receipt of the Project's Certificate of Occupancy, the Developer shall then use all commercially reasonable efforts during an additional five-year period to secure a qualified and experienced retail tenant. Developer shall give preference to tenants that provide products rather than services. During this total ten-year period, the retail space must remain vacant except for the uses specified in this section of this Agreement. The Developer may sign one or more leases to fill the retail space provided that those leases comply with the provisions of this agreement.
- b. Retail Viability: In the event Developer is unsuccessful in securing any qualified and experienced grocery store or retail tenants during the construction period and the ten-year period following the Project's completion, then the Developer shall have the option to convert the retail space to any use permitted in the MU-4 District at the sole discretion of the Developer.
- c. Lease Renewals: Each lease for retail use signed by the Developer will contain the lessee's option for two five-year extensions of the base term at either the rental rate being paid at the end of the term or fair market rent.
- d. Retail Location: The retail space addressed in this section of the Agreement shall be no less than 5,000 square feet and be located in the MU-4 zoning district portion of the Project.

- e. Definitions of terms used in this section: the term “Grocery Store” means the definition in 11 DCMR Subtitle B, 100.2. The term “retail food tenant” means a tenant that provides primarily consumable food items, the majority of which are not canned or snack foods, and therefore must include such items as fresh fruits and vegetables, fresh or frozen poultry, meat, and fish, and fresh bakery items. The words “store” and “tenant” mean one or more stores or tenants and also means tenants that provide in-person transactions between the tenant or store and customers and precludes automated micro-fulfillment centers where customers order products on line for pick-up only.
- f. Amending of this Retail Uses Section: Notwithstanding other provisions of this Agreement, this Section 1 may be modified by the parties only if the following conditions are met: (a) The Developer/Operator submits a petition to ANC3D to modify this section of the Agreement. (b) The Developer/Operator presents the proposed change at a regularly scheduled meeting of ANC3D and answers questions about it from Commissioners and members of the public. (c) ANC3D approves the modification by a 2/3rds majority of those voting at a subsequent regularly scheduled meeting, having provided a full opportunity for public comments to be submitted for consideration by ANC3D prior to the vote.

2. **Affordable Housing**

- a. Affordable Housing: The Developer agrees to comply fully with all DC laws and regulations, whether or not the DC Government undertakes a compliance action, relating to affordable housing that affect the Project without seeking any variance or exception.

3. **Environmental Regulations**

- a. LEED and Environmental Regulations: The Developer agrees to comply fully with all DC laws and regulations related to the environment whether or not the DC Government undertakes a compliance action. Developer will complete the LEED certification process and be certified at the LEED Certified level without seeking any variance or exception.

4. **Public Space**

- a. Landscaping: The Developer shall comply with all requirements of the Urban Forest Preservation Act, D.C. Code § 8-651.01 *et seq.*, (“UFPA”) and its implementing regulations, to protect any Heritage Trees (as defined in the UFPA) located in public space during construction. Developer shall seek approval from the District’s Department of Transportation (“DDOT”) and its Urban Forestry Administration for the planting and care of new street trees in public space along U Street, MacArthur Boulevard, 48th Place and V Street adjacent to the Project, filling any tree box gaps that exist to ensure the new structure more fully blends with the character of the neighborhood that is replete with larger mature trees along the streets. If there is a conflict between the Developer’s proposals for the planting and care of new street trees and the plans approved for public space by DDOT, the Developer will implement the public space tree planting plan for the Project as approved by DDOT.
- b. Improvement of Public Spaces at or near the Development: As part of the Project, Developer shall seek approval from DDOT to improve the public spaces along U Street, MacArthur Boulevard, 48th Place, and V Street as shown on the landscape

plan included herewith as Attachment A. Developer will work with DDOT and seek its approval to expand facilities for the Palisades Farmers Market, providing at least 450 linear feet of vendor space. Developer will also provide café tables, chairs and benches and Operator shall maintain such café tables, chairs, and benches, as shown on Attachment A. The Developer will modify the landscape plan (Attachment A) to include to the greatest extent possible reasonable suggestions from community groups, and the ANC shall reasonably support the Developer's Public Space Permit Application, with final approval of the plan vested in DDOT's Public Space Committee. If there is a conflict between the landscape plan proposed by the Developer and the plans approved by the Public Space Committee, the plans approved by the Public Space Committee will prevail.

- c. Community Kiosk: Subject to approval by the Public Space Committee of DDOT, the Developer will preserve the current kiosk and its surrounding engraved pavers located on public space in either (i) its current location (ii) the new location as shown on Attachment A, or (iii) some other location mutually agreed upon by the Developer and the ANC. If option (ii) or (iii) is mutually agreed upon, Developer will assume the costs to move and install the pavers and kiosk at the new site. Attachment A may be modified to reflect the new, agreed upon location.
- d. V Street Parking Lot: As part of the Project, and as an incentive for a potential grocer to lease at the site, Developer will construct, maintain, and operate a fifteen (15) space surface parking lot with a curb cut off of V Street, if approved by the District of Columbia. The V Street Parking Lot shall be available to be used by patrons of the associated retail space and, except as specified in subsection (d)(i) below, for patrons of the commercial facilities along MacArthur Boulevard on a non-reserved basis. Developer and Operator will determine the fees for parking, which shall not exceed DC standard meter fees for the Palisades area and shall not offer daily or monthly parking access.
 - i. Lessees of the retail space in the Project may restrict some or all of the parking in the V Street Parking Lot under the following circumstances, to only patrons of the retail space in the Project"
 - 1. If the tenant is a grocery store as defined in Section 1(e) above, or
 - 2. If ANC3D approves a petition to restrict the parking in this manner.
- e. Traffic and Safety Improvements around the Perimeter of the Site: Developer recognizes that the changes to the Site, including the new curb cut on V Street will negatively impact traffic. As a result, Developer has agreed to pursue the following Traffic and Safety Improvements around the Perimeter of the Site in conjunction with the PCA and ANC, but subject to final approval by DDOT:
 - i. Construct sidewalks, at Developer's expense, on the south side of V Street NW, from 48th Place to MacArthur Blvd. and from 48th Place to the curb cut to the proposed V Street parking lot.
 - ii. Construct, at its expense, at the beginning of the construction, an extension of the sidewalk on the west side of 48th place up to V Street NW.
 - iii. Actively promote with the District Department of Transportation both in writing and orally the following safety improvements near the Project's site:
 - 1. Three-way stop signs and cross walks at V and 48th place, V and 49th Street, and V and 48th Street;
 - 2. A no-right-turn-for-trucks sign at 48th Place and V Street intersection for trucks exiting 48th Place.

3. A crosswalk and a speed control measure on 48th Street near the intersection with U Street;
4. 15 mph signs near the library on V Street;
5. A high-visibility crosswalk and crosswalk signal at U Street and MacArthur
6. Sidewalk extensions along all of V Street, 48th Street, and 49th Street.

5. Stormwater Management

- a. Stormwater Management: The Developer agrees to fully comply with all DC laws and regulations relating to Stormwater Management that effect the Project, whether or not the DC Government undertakes a compliance action.

6. Restrictions on Residential Parking Permits (RPPs)

Residential Parking Permits: The Developer shall implement measures that prevent the Project's residents from securing Residential Parking Permits. These include but are not limited to registry in City databases excluding Residential Parking Permit issuance, prior to the initial sales of any units within the CCRC, and placing a clause in emphasized type in all leases of Continuing Care Retirement Community units that prohibits residents from applying for or obtaining RPPs, or using an RPP guest pass within one mile of the Subject Property, upon pain of mandatory lease termination ("No RPP Policy") The Developer shall enforce the No RPP Policy, to the full extent permitted by law and oppose any effort by residents or others to add Subject Property Buildings to the list of properties eligible for RPPs. If Developer is unsuccessful in obtaining this exclusionary building status for Residential Permits, then Developer shall oppose any effort by residents or others to add Subject Property Buildings to the list of properties eligible for RPPs and shall notify the ANC and within thirty (30) days, and develop a plan to ensure that residents' cars are parked within the CCRC facility parking.

7. Traffic Control Measures

- a. The Developer shall install, maintain, and manage an electronic parking garage space monitoring system that will measure the number of vehicles parking in the Project garage on a continuous daily and hourly basis. The Developer and its Operator shall provide the PCA and ANC 3D a monthly parking report within 30 days of the month's end, or on a less frequent basis if requested by the recipient organization. That report will contain the raw data collected by the space monitoring system if requested by the recipient organization. The report shall tabulate daily and maximum peak hour parking count volumes as well as other data to assist the Developer and its Operator in maintaining adequate parking facilities and practices to ensure proper operations that do not impact the surrounding community. If, over the course of a one-month period, the parking garage occupancy averages greater than 90 percent of the number of parking spaces in the garage for one hour each day, then the Operator shall be obligated to adopt one or more Transportation Demand Management (TDM) practices to reduce the average occupancy of the garage within 60 days. If these TDM practices are not successful within three months in reducing average peak hour occupancy below 90 percent, then the Operator shall be obligated to adopt additional TDM practices on a sixty-day basis until this standard is achieved. Notwithstanding the foregoing, the hour before and the hour after any

regularly scheduled shift change will be excluded from this analysis to incentivize the Operator to fully utilize the garage for the shift change using such techniques as valet-facilitated double parking within the garage.

- b. The Developer will fully comply with the Zoning Regulations of 2016 requirements to provide bicycle parking facilities for the Project, whether or not the DC Government undertakes a compliance action, which include a minimum of 10 secure long-term parking spaces and a minimum of 10 short-term bicycle spaces around the perimeter of the building in the form of bicycle racks.
- c. The cost of parking will be unbundled from the unit lease rate.
- d. The operator will provide alternative transportation options to the Project's residents.
- e. A Transportation Coordinator will be designated for the planning, construction and operations phases of the development. The Transportation Coordinator will act as the point of contact with DDOT, goDCgo, and Zoning Enforcement.
- f. The Transportation Coordinator's contact information will be provided to goDCgo, and they will also conduct an annual commuter survey of staff and residents and report TDM activities and data collection efforts to goDCgo once per year.
- g. The Transportation Coordinator will receive TDM training from goDCgo to learn about the TDM conditions for this Project and available options for implementing the TDM plan.
- h. Welcome packets to all new staff and residents will be provided that include site shuttle information, the Metrorail pocket guide, brochures of local bus lines, carpool and vanpool information, Guaranteed Ride Home brochures, and the most recent DC Bike Map as applicable.
- i. The Transportation Coordinator will provide staff who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future.
- j. The Transportation Coordinator will subscribe to goDCgo's newsletter and distribute information on alternative transportation options to staff and residents on a regular basis.
- k. Every staff member will receive a free SmartTrip card pre-loaded with \$50 and a complimentary annual capital bikeshare membership for 1 year after the employee begins working at the facility.
- l. Every resident will receive a complimentary SmartTrip card pre-loaded with \$50 after the resident moves in.
- m. Developer and Operator will instruct trucks traveling to the Site, to use the loading dock for deliveries, and post in the loading dock instructions informing drivers that they should use 48th Place, NW to enter and exit the facility, and not to drive on V Street, NW. In addition, Developer will work with DDOT to implement a "No Right Turn for Trucks" sign at the corner of V Street and 48th Place to prevent trucks from turning right onto V Street.

8. **Building Use**

- a. Waste Management: Developer commits to implementing a plan for waste management so that waste from the Senior Living Component of the Project is managed within the facilities of the Project. Trash collection by private haulers will be in accordance with D.C. regulations.

- i. Waste management pickups will be limited to the hours of 8:00 am to 6:00 pm.
- ii. Waste trucks will not use V Street (a residential street) to access the property.
- b. Food Service Venting: Developer shall run any kitchen exhaust venting from any retail or the CCRC to the highest roof of the building and away from residential dwellings, so as to minimize the impact of odors and noise on the neighbors to the Property.
- c. Noise and Light: Developer shall mitigate as much as possible all noise and light emanating from the property, and meet or exceed District of Columbia laws and regulations with regard to noise. If the ANC believes that the facility, on several occasions, may have been in violation of the allowable levels of noise, the Developer agrees to request, in cooperation with the ANC, that the City take noise measurements to determine whether or not the facility is in compliance. If the City is unwilling or unable to take noise measurements, the Developer and the ANC shall arrange for a trained contractor to make the requisite measurements, paid for by the Developer.
- d. Light Emanations: The Developer and its Operator shall mitigate as much as possible light emanations from the planned rooftop terrace and will ensure that the overhead lights of the facility do not directly shine into residential areas.

9. Construction Agreement

- a. Construction Management Agreement: The Developer will enter into a separate Construction Management Agreement with the Palisades Citizens Association.

10. ANC Support

- a. Provided ANC 3D votes to support the BZA Case, it shall submit a support resolution to the BZA prior to the hearing. If the ANC does not vote to support the BZA Case, this Agreement shall be null and void and of no force or effect.

11. Effect of Agreement

- a. Enforcement and Obligations of the Operator: This Agreement shall be included and made part of any agreement between the Owner and its chosen Operator. The Operator must agree to assume all undischarged obligations and promises set forth herein. Developer shall propose each of the commitments in this Agreement as specific, enforceable conditions of approval of the special exception by the Board of Zoning Adjustment. If the Board of Zoning Adjustment does not for any reason include a commitment as a specific, enforceable condition of approval of the special exception, Developer nonetheless commits to comply with the commitments in this Agreement.
- b. No Approval; R-1-B Wing Not Constructed: If the BZA does not approve the BZA Case then this Agreement shall be null and void. If the BZA approves the BZA Case, but Owner elects not to proceed with construction of the R-1-B Wing, Developer shall notify the ANC in writing and this Agreement shall be null and void.
- c. Lawful Activities Permitted: Nothing in this agreement shall preclude the Developer from engaging in any lawful activities except as otherwise addressed herein.

12. Miscellaneous

- a. Headings: Section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this agreement.
- b. Entire Agreement: This Agreement constitutes the entire Agreement between the Parties hereto.
- c. Severability: If any clause, or portion of a clause, in this Agreement is considered invalid under the rule of law, it shall be regarded as stricken while the remainder of this Agreement shall continue to be in full effect.
- d. Choice of Law: All parts of this Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.
- e. Modifications: Modifications, waivers, and consents regarding this Agreement shall only be binding if in writing and signed by both Parties; provided, however, that the Developer may modify Attachment A with only the consent of single member district representative ANC 3D05 and the chair of ANC 3D by written confirmation, which may take the form of an email or similar electronic written communication.
- f. Succession: This Agreement shall be binding upon and shall inure to the benefit of Developer Operator and ANC 3D, and their respective heirs, successors, and assigns.
- g. Liability: Each Party shall only be responsible for the obligations attributable to that individual party. No Party shall be liable for the other Party's failure to abide by the terms of this agreement.
- h. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be distributed to the Parties via email.

[Signature Pages Follow]

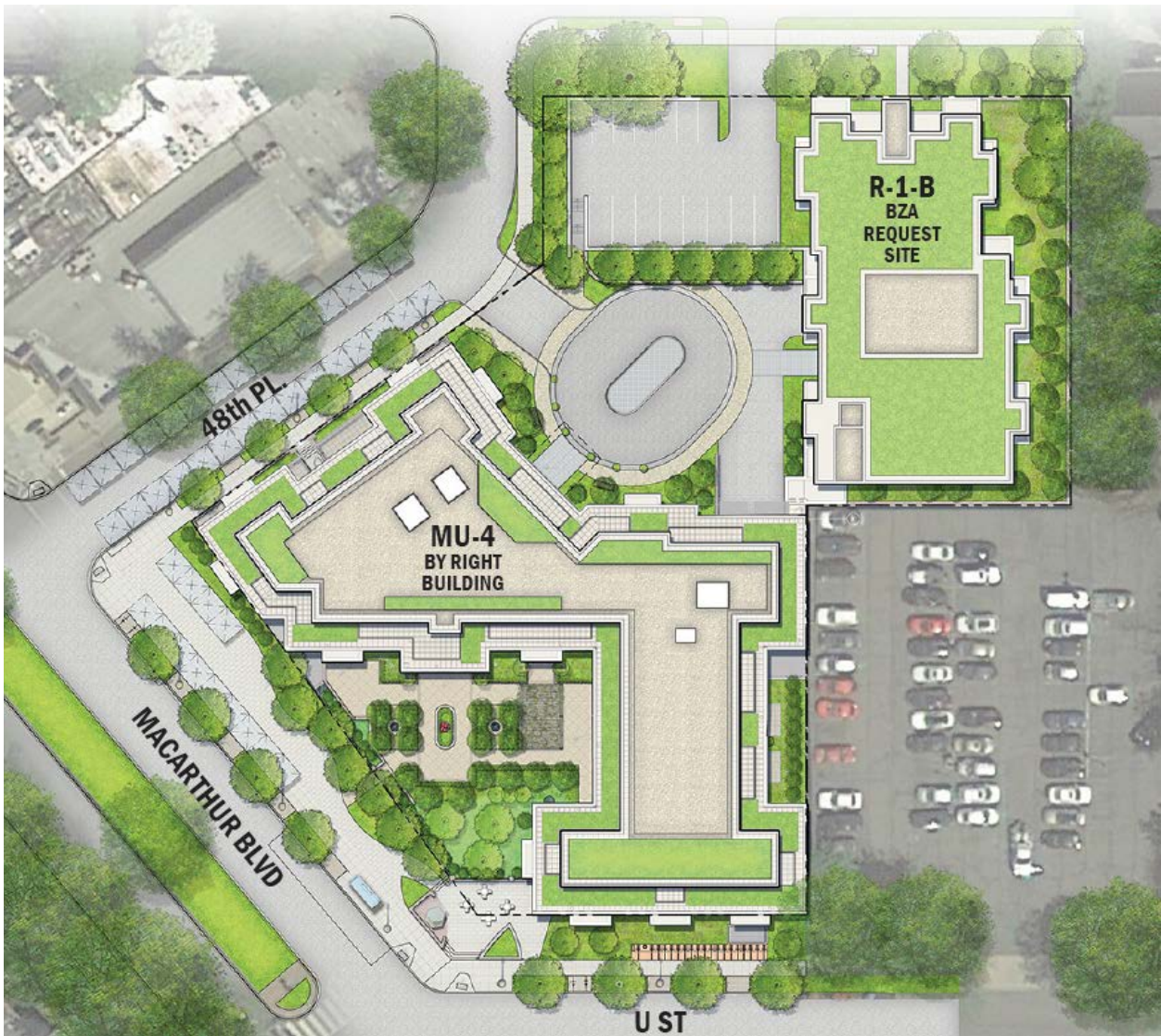
TC MIDATLANTIC DEVELOPMENT, INC.,
a Delaware corporation

By: Eric W. Fischer
Name: Eric W. Fischer
Title: Authorized Signatory

ANC 3D
as authorized by a unanimous vote on October 21, 2020

By: Charles Elkins
Name: CHARLES ELKINS
Title: CHAIR, ANC 3D

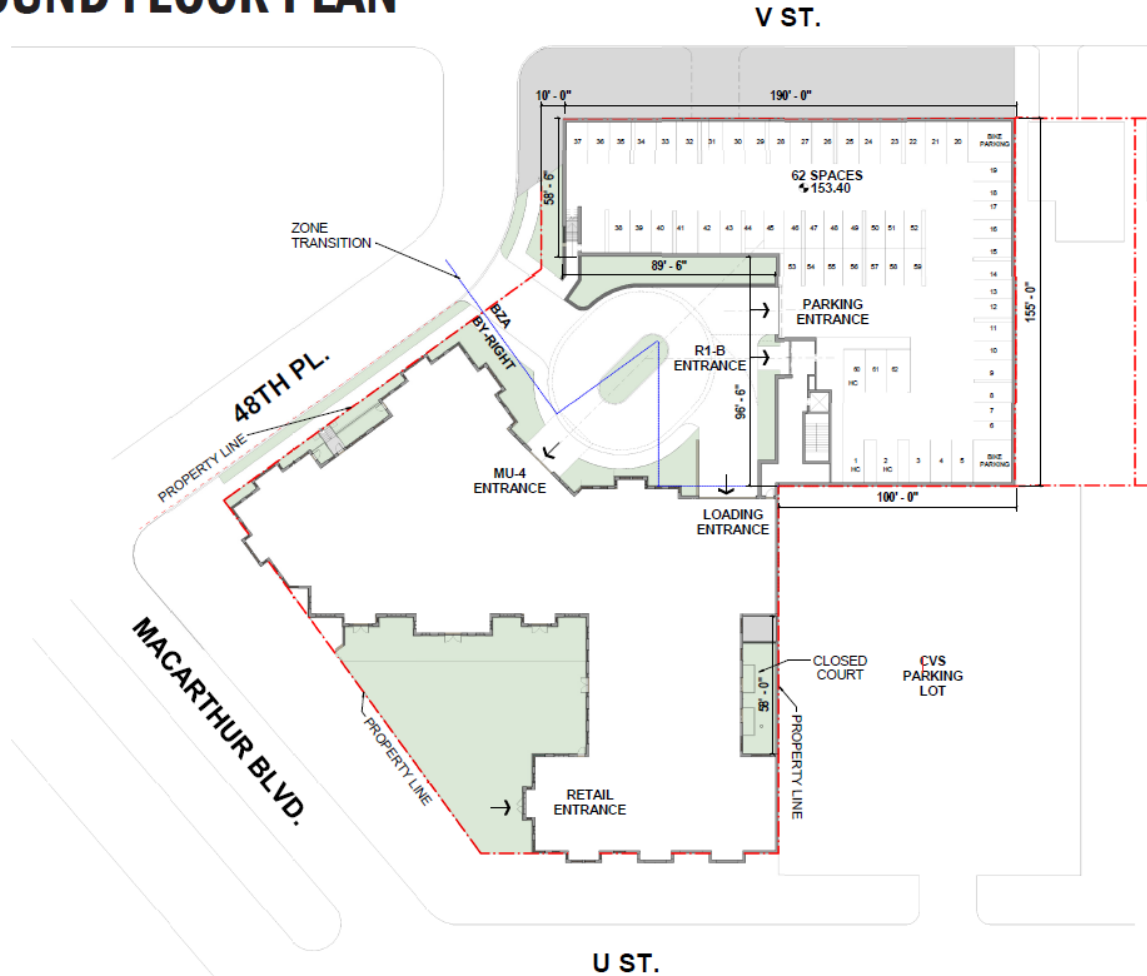
Attachment A
Landscape Plan



*The configuration of landscape elements and their location is subject to change based on the final location of the retail tenant and further input from the community.

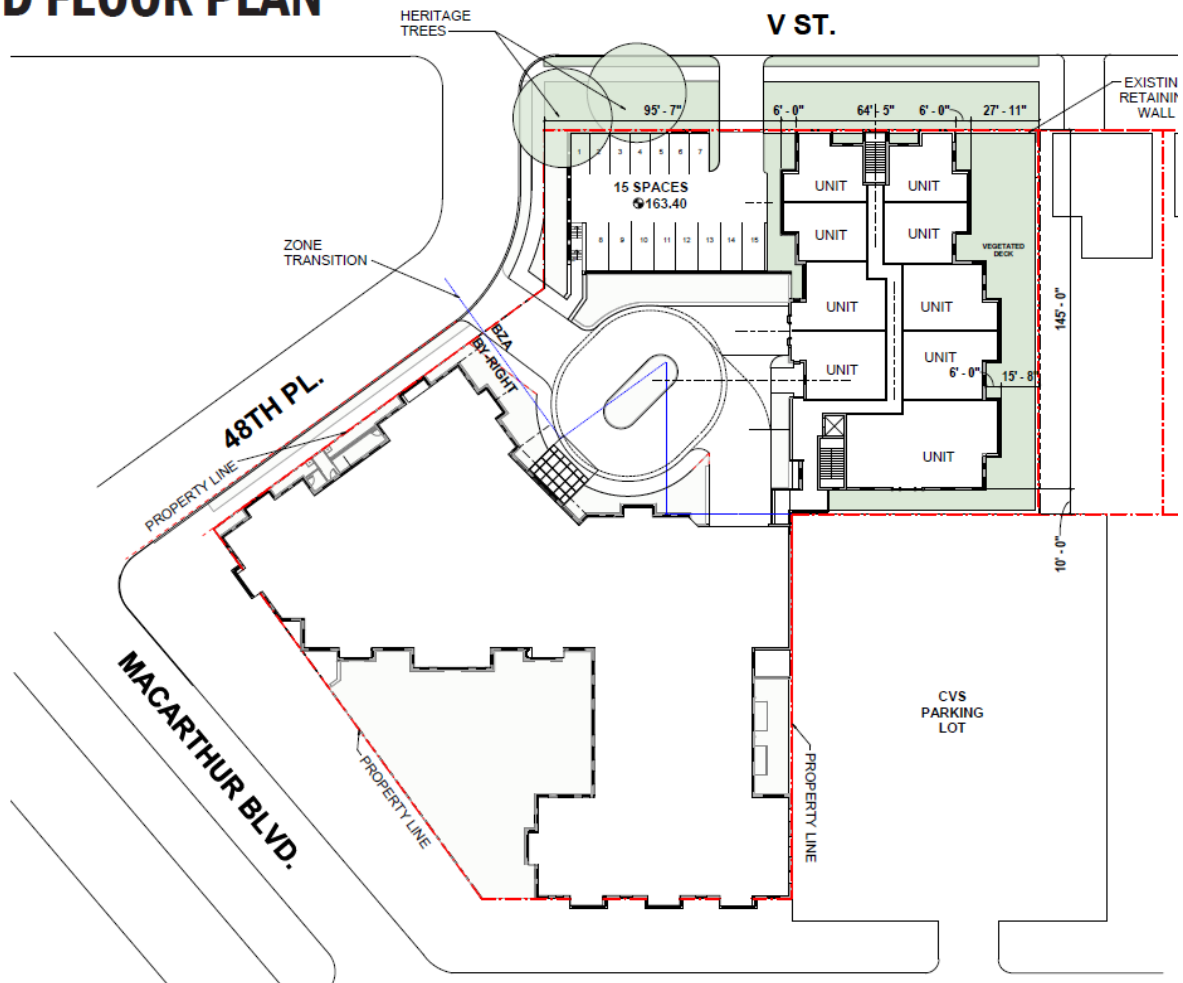
Attachment B
Development Plans

GROUND FLOOR PLAN



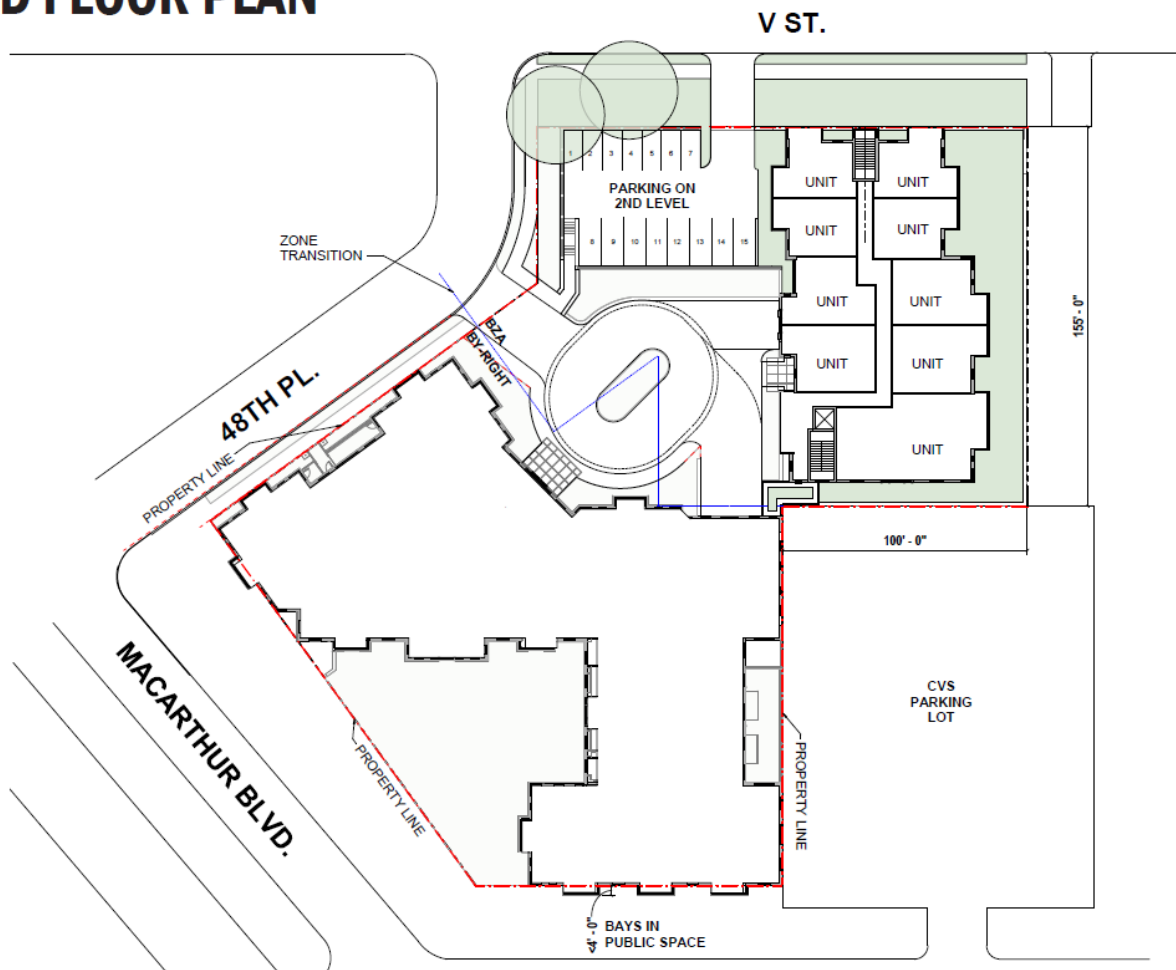
*Interior layouts are conceptual and shown for illustrative purposes. The final layout may vary. Number of units, and size and location of retail space and outdoor seating area may vary, without creating or increasing the need for any zoning relief.

2ND FLOOR PLAN



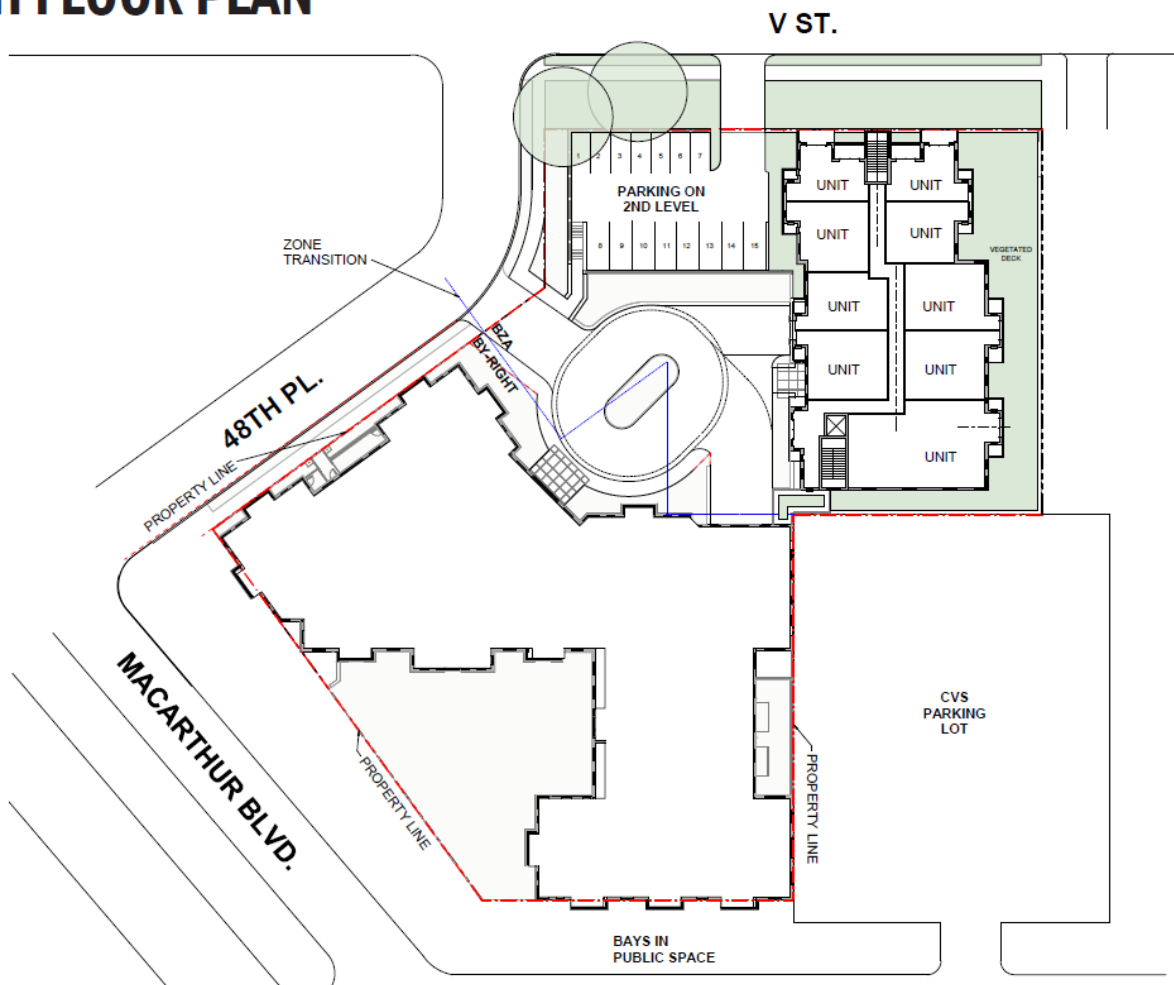
*Interior layouts are conceptual and shown for illustrative purposes. The final layout may vary. Number of units, and size and location of retail space and outdoor seating area may vary, without creating or increasing the need for any zoning relief.

3RD FLOOR PLAN



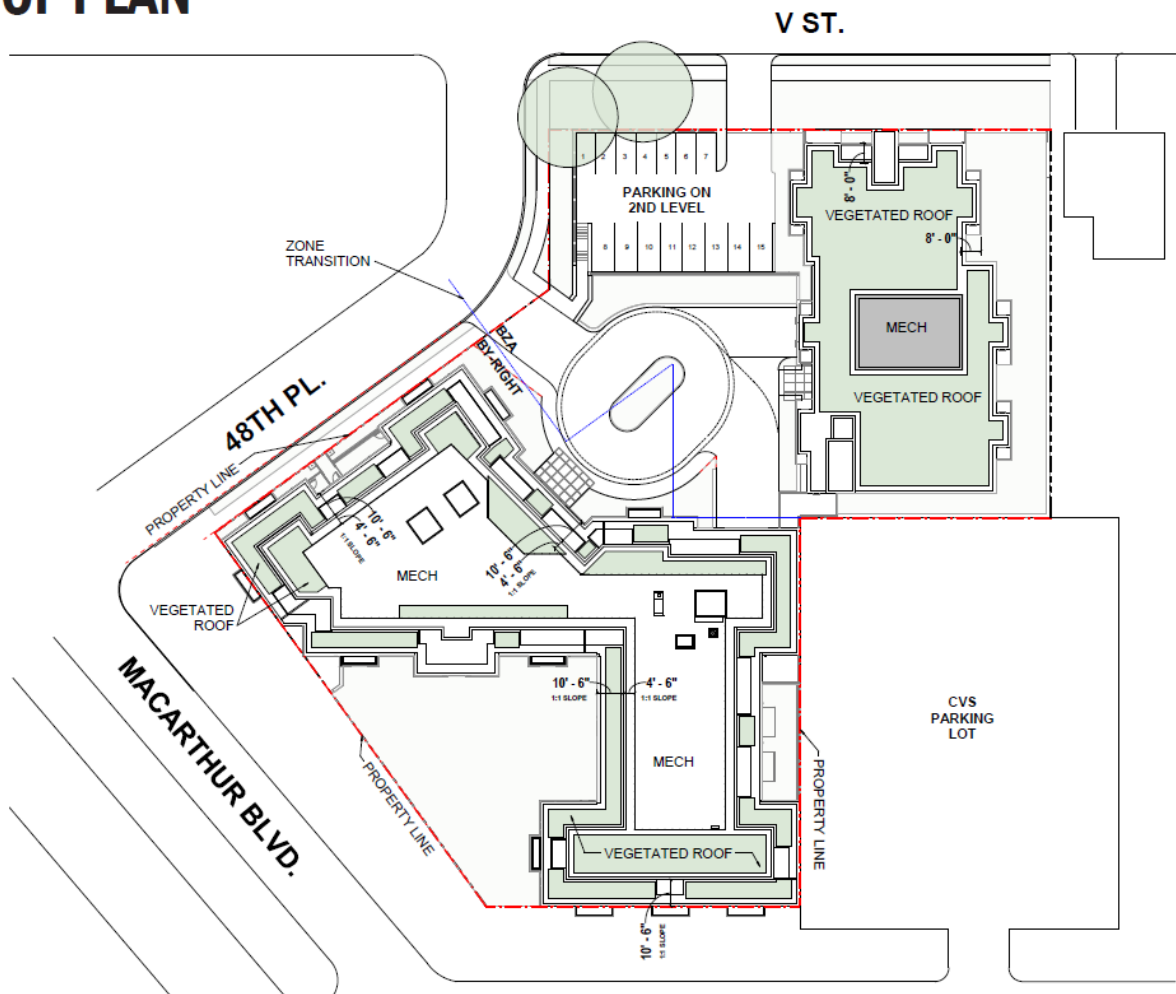
*Interior layouts are conceptual and shown for illustrative purposes. The final layout may vary. Number of units, and size and location of retail space and outdoor seating area may vary, without creating or increasing the need for any zoning relief.

4TH FLOOR PLAN



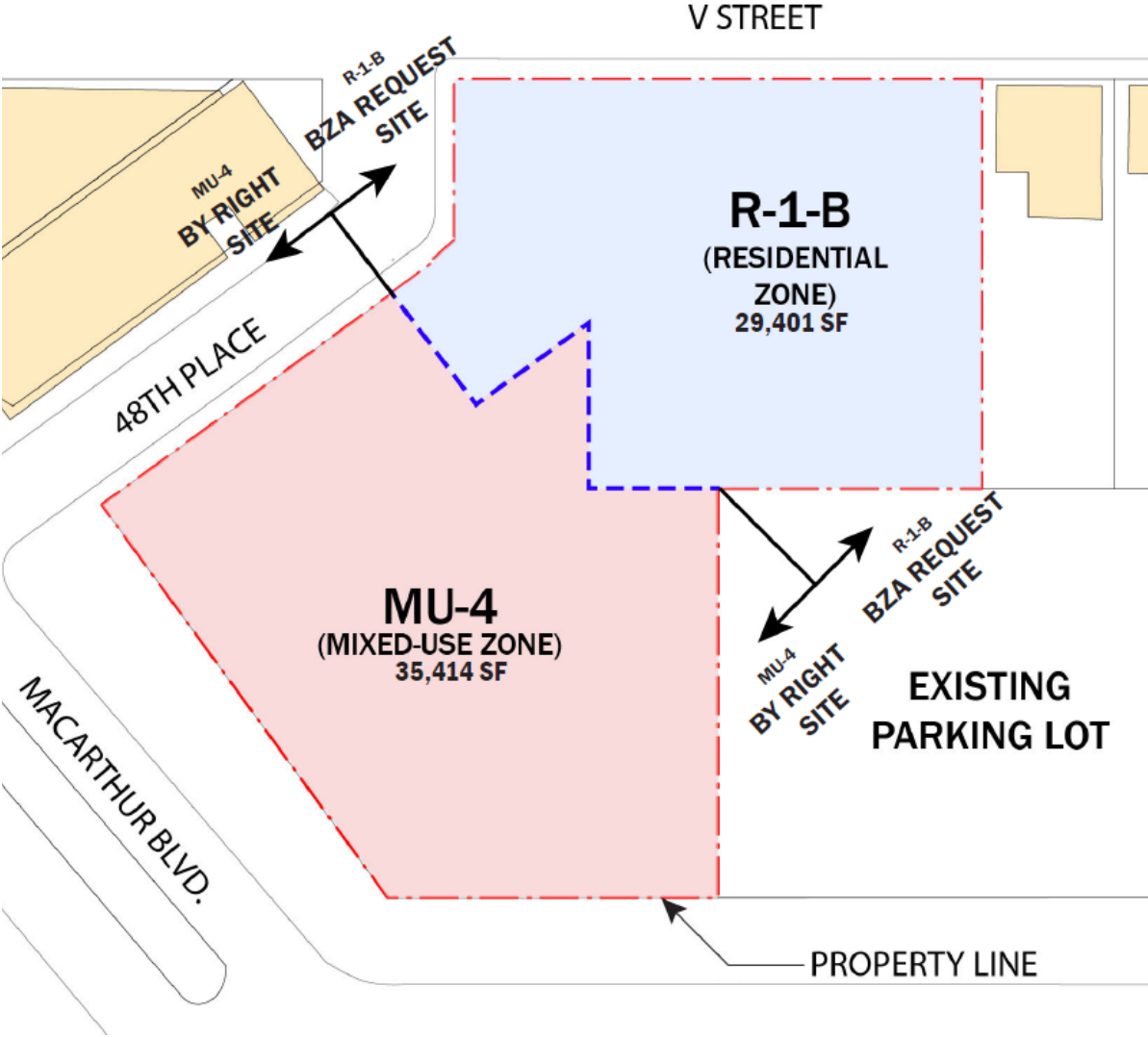
*Interior layouts are conceptual and shown for illustrative purposes. The final layout may vary. Number of units, and size and location of retail space and outdoor seating area may vary, without creating or increasing the need for any zoning relief.

ROOF PLAN



*Interior layouts are conceptual and shown for illustrative purposes. The final layout may vary. Number of units, and size and location of retail space and outdoor seating area may vary, without creating or increasing the need for any zoning relief.

Attachment D
Site Zoning



Attachment B

Construction Management Agreement

CONSTRUCTION MANAGEMENT AGREEMENT

THIS CONSTRUCTION MANAGEMENT AGREEMENT (“CMA”) is entered into as of the 27th day of October, 2020 by and between the undersigned Parties.

WITNESSETH:

WHEREAS, 4865 MacArthur Landlord, LLC, a Delaware LLC (“Owner”) through TC MidAtlantic Development, Inc. a subsidiary of Trammell Crow Company (the “Developer”) seeks approval from the Board of Zoning Adjustment (“BZA”) in BZA Application No. 20308 (“Application”) in order to permit development of the property located at the address of 4865 MacArthur Boulevard, NW (Lot 25 in Square 1389) (“Site”);

WHEREAS, the Site is split-zoned, with the southern half in the MU-4 District and the northern half in the R-1-B District;

WHEREAS, the Developer seeks to develop on the Site a Continuing Care Retirement Community (“CCRC”) with approximately 135 independent living, assisted living, and memory care units across two buildings in both the R-1-B and MU-4 Districts, including a grocery store of between 5,000 and 6,400 square feet located entirely within the MU-4 District (the “Project”).

WHEREAS, Advisory Neighborhood Commission 3D (“ANC 3D”) and the Palisades Community Association (“PCA”); and the Developer (collectively, “Parties”) hereby seek to address issues and concerns regarding the construction of the Project; and

WHEREAS, the Developer will engage a fully licensed and insured general contractor (“Contractor”) to construct the Project and the Developer will require that the Contractor and all subcontractors adhere to the terms and conditions of this CMA; and

WHEREAS, the Parties have met regularly over a number of months to discuss these issues and concerns, and as a result of these discussions have reached a mutual understanding and resolution on most of the material issues and concerns; and

WHEREAS, the Parties enter into the CMA to confirm understandings and agreements between them regarding the Project.

NOW, THEREFORE, in consideration of the foregoing recitals (which are a material part hereof) and in consideration of the mutual promises of the parties hereto and of other good and valuable consideration it is agreed as follows:

1) COMMUNICATION.

- a) Developer will provide the PCA with the name, cell phone number and email address of a primary point of day-to-day contact (“Construction Ombudsman”), to be distributed by

PCA to its members and other parties directly or indirectly impacted by construction on the Site (“Community Parties”) and governmental agencies with jurisdiction over the site during pre-construction and construction activity on the Site. The PCA shall designate a single representative (the “PCA Representative”) and provide the name, cell phone number and email address of the PCA Representative, and the related contact information if the PCA Representative is replaced, to Developer.

- b) The Construction Ombudsman will be available at all times during construction operations and be able to respond to and resolve potential problems associated with noise, erosion, trash/construction debris, security, and other construction-related issues. The Construction Ombudsman will receive complaints and concerns from owners of surveyed properties and other Community Parties, and work to resolve issues that arise without the initial involvement of the PCA, provided, however, that PCA may elect to invoke the dispute resolution provisions of Section 21 if problems are not resolved informally by the Construction Ombudsman.
- c) The Contractor will send a monthly email update on construction progress to the PCA Representative and provide an electronic link for each monthly update for the PCA to include on the PCA website. The Contractor will provide monthly updates of upcoming construction activities, periods of expected acute construction activity that may impact the surrounding area and construction hours via an electronic link and monthly email.
- d) The Contractor will email the PCA within 48 hours of any upcoming acute activity not included in the monthly email.
- e) Developer will coordinate monthly walkthroughs of the areas adjacent to the Site with the PCA Representative and a maximum of 4 other invitees.

2) CONSTRUCTION SURVEYS

- a) Prior to any grading or excavation work on the Site, Developer will perform a survey, in either video, photo or written formats (“Survey”) to document the pre-construction and post-construction condition of the surrounding properties specifically identified in Exhibit D (“Surveyed Properties”), and of the sidewalks, Site, and roads within the area specified in Exhibit D.
- b) Developer will identify the Surveyed Properties by lot number and address and pay for the Surveys, which will be completed two (2) weeks prior to any grading or excavation work being performed on the Site. Developer and Contractor will indemnify the owner(s) of the Surveyed Properties (“Surveyed Property Owners”) for any damage caused by construction. Developer and Contractor will have adequate insurance in place before commencing any grading or excavation work and will add the Surveyed Property Owners as additional insureds to insurance policies. Developer and Contractor will maintain in full

force and effect for the term of this Agreement commercial general liability insurance (including property damage, bodily injury and personal injury coverage) with a minimum combined single limit of liability of \$1,000,000 per occurrence and \$10,000,000 in the aggregate. All such insurance policies shall be primary and non-contributing, insure on an "occurrence" and not a "claims made" basis, be issued by companies with an A.M. Best rating of A-:VIII or better authorized to do business in the District of Columbia and name each Surveyed Property Owner as additional insured. Certificates of insurance evidencing the foregoing requirements shall be delivered to each Surveyed Property Owner prior to the start of any construction activities and thereafter, within thirty (30) days following a written request by any Surveyed Property Owner.

- c) The Surveys must be date stamped and performed by an independent 3rd party firm with a minimum of ten years of experience conducting such pre-construction and post-construction surveys ("Surveyor").
- d) Surveyed Property Owners (collectively, the "Owners") are entitled to provide evidence of the existing condition of their property, which shall be included in the Surveys.
- e) Developer will use pre- and post-construction Surveys as tools to assess the extent of any claims of damage caused by construction of the Project. A copy of the pre- and post-construction Surveys will be furnished to the Owner's upon completion of the Surveys. A copy of the retaining wall surveys will be furnished to the owner of 4812 V Street, NW. A copy of the pre-construction road and sidewalk condition will be furnished to the PCA.
- f) Developer or the Surveyor will notify the Owners, in writing, of the opportunity to have a Survey conducted by the Surveyor. The Owners shall be provided a reasonable period of time to respond to such notice, to respond to the Surveyor's reasonable request for access to the Owner's property, and to respond to other reasonable requests of the Surveyor.

3) SHEETING AND SHORING

- a) The Contractor will drill the sheeting and shoring piles. Upon verification that drilling is not feasible, Contractor and Developer will drive the piles and provide notice to the Parties about the timing and duration of any unavoidable pile driving and will take all reasonable measures to mitigate any additional noise impact, will respond promptly to any community concerns conveyed to the Construction Ombudsman regarding noise that exceeds legal limits, and undertake prompt action to address the problem.

4) WATER AND SETTLEMENT MONITORING

- a) Developer recognizes that water runs under the site. As such, Developer has surveyed the site accordingly and will provide general pumping of the water and dewatering as needed during the construction of the site. Prior to any grading or excavation work on

the Site, Developer will install settlement monitors within the Site and on the retaining wall located next to Lot 823 as shown on Exhibit D.

5) CONSTRUCTION HOURS

- a) Monday through Saturday: 7:00 AM to 7:00 PM unless a DDOT approved after-hours permit is obtained. Heavy machinery use that generates sound levels in excess of 90 decibels (90 db) should be reasonably avoided unless a noise variance is obtained.
- a) Saturday: Contractor will not conduct construction activity in excess of 70 decibels before 8:00 am.
- b) Sunday: No construction, except in emergencies and/or by after-hours permit issued by DDOT and/or DCRA.
- c) No construction activity will be permitted on Federal Holidays and Federal Holiday weekends that DCRA has identified as a no construction workday unless an after-hours permit is granted by DCRA.
- d) Contractor will be responsible for finding off-site staging areas in the morning for any truck arrivals prior to 7:00 AM. At no time, will the off-site staging area be located within residential neighborhoods.

6) COMPLIANCE WITH APPLICABLE D.C. BUILDING CODE PROVISIONS

- a) Developer will satisfy all District of Columbia municipal regulations related to construction.
- b) Developer will maintain a decibel meter onsite at all times to monitor compliance. If decibel levels are exceeded, the Developer will identify the source and alleviate the problem as soon as possible.

7) CONSTRUCTION STAGING

- a) Developer has provided a Site Utilization Plan attached as Exhibit A, which will show agreed entrances and exits to the Site, agreed public areas to be used by the Developer or Contractor during the construction process and public parking restrictions, among other things that the Developer or the PCA believe will be helpful for the PCA to see, and a Construction Timeline attached as Exhibit B. Developer will adhere to DDOT approved truck routes. No changes to the Site Utilization Plan may be made without prior notice to and an opportunity to review by the PCA .
- b) Outside of the construction hours, Developer shall not permit construction activity on the Site that requires the movement of heavy vehicle traffic or other significant traffic to, or

from, the Site or which otherwise generates sound levels in excess of 60 decibels (60 db) or otherwise is likely to significantly disturb the residents of the neighborhood near the Site. Restrictions stated here in exclude any and all work including and not limited to utility work (and anything else) performed under a DDOT approved after-hours permit.

- c) Developer will utilize closed parking lane(s) adjacent to the Property to the greatest possible extent for construction staging and delivery truck queuing in order to facilitate traffic flow on MacArthur Boulevard and 48th Place and will not double park vehicles on the streets. Developer will also work in partnership with the PCA and DDOT to reasonably maximize the available parking of the unrestricted parking spaces on 48th Place and MacArthur Boulevard.
- d) Upon completion of parking areas and the entry court of the Proposed Development, Developer will utilize these areas to the maximum possible extent for the staging of construction materials.
- e) Developer agrees to give back parking spaces removed from public use as shown on Exhibit A as early as possible to the neighborhood once the Contractor no longer needs those spaces to conduct the construction activities. Developer will work with DDOT on the installation of new parking spaces and corresponding parking meters that will result from the elimination of the existing site curb cuts on U Street, MacArthur Boulevard, and 48th Place, subject to DDOT's approval. In addition, upon the installation of the new curb cut entry to the Site on 48th Place, Developer will work with DDOT on the removal of any parking restrictions north of the new curb cut on 48th Place, subject to DDOT's approval. Such updates on parking will be included in the monthly email submitted by the Construction Ombudsmen.
- f) Developer will notify the PCA of the request for permits that require partial or total closure of streets or sidewalks, except in emergency situations.
- g) Developer and the PCA recognize that the Truck Routing Plan has not been reviewed and approved by DDOT. Both parties mutually agree that any truck routing or hauling from the site should not be conducted on any residential street adjacent to the property such as V Street, U Street, and 48th Street. Should DDOT mandate a Truck Hauling Plan that utilizes the aforementioned streets, then Developer and Contractor will work with DDOT to redirect traffic accordingly away from the residential streets or will develop a traffic and pedestrian safety plan within 30 days of DDOT's approval of the Truck Hauling Route. The Developer will work with DDOT and the PCA to install a no-right-turn for trucks sign on 48th Place where it intersects V Street. Alternative truck hauling plans and pedestrian safety measures are at the discretion of DDOT.

8) CONTINUITY OF FARMERS MARKET DURING CONTRUCTION

- a) Developer agrees to abide by a Site Utilization plan that will allow the Palisades Farmers Market (“Market”) access to 48th Place and its east and west sidewalks on public space from MacArthur Boulevard, NW to V Street, NW (the “Market Area”) from 7:00 am to 2:00 pm Sundays per the PCA’s existing public space permit. Unless otherwise approved by DDOT and/or DCRA, Developer shall ensure that construction work does not interfere with the Market, and shall take measures to ensure that the Site is clean and that any debris, material, or equipment is removed from the Market Area no later than Saturday at 7 pm. The Developer will provide appropriate pedestrian safety measures to ensure full access to the Market Area, including covered sidewalk protection on the east sidewalk in public space during Market hours as called for in the DDOT pedestrian safety and work zone standards.
- b) Developer will attempt to minimize disruption to the Market while work is ongoing and notify the PCA three months in advance of when Developer estimates a Market may be disrupted or displaced. If access is required that disrupts the Market, Developer agrees to undertake best efforts to safely accommodate rather than wholly displace Market activities. Notwithstanding the foregoing, the access limits noted above will not apply to either public improvements or utility work that can only be accommodated by working in the Market Area. The Developer will endeavor to limit disruption caused to the Market by public improvements and utility work.
- c) Regardless of any permit issued by DDOT and/or DCRA and regardless of any prior notification, Developer agrees that it will not displace, interfere with or cause disruption to the Market more than four times within a twelve-month period not including the installation and removal of the Project’s tower crane, or the construction of either public improvements or utility work that can only be accommodated by working in the Market Area. During the site improvement construction phase, Developer will use best and reasonable efforts to accommodate any displaced Market vendors on MacArthur Boulevard.
- d) At the reasonable request of the PCA, Developer will install, at its own expense, fencing signage to mitigate any disruption to the Market using designs submitted by the PCA.

9) CRANES

- a) As shown on Exhibit A, Developer may erect a tower crane(s) and the boom(s) of which may swing over the adjacent properties.
- b) Should any loads swing over the property of the neighboring properties, then such affected properties will be listed as additional insured on the Developer’s and Contractor’s General Liability Insurance, which shall be in effect for the entire time that the crane is operating at the Site and shall be in the amounts and within the provisions as listed in Section 2(b).

Proof of such insurance will be shared with each property owner prior to the erection of any tower cranes.

- c) Developer will provide advance notice of at least one month prior to the installation of any cranes and endeavor to install the crane on a Saturday, however, the timing of the installation will be subject to DC regulatory approval.

10) STORMWATER MANAGEMENT

- a) Developer shall implement and maintain stormwater-management measures in accordance with Department of Energy & Environment (“DOEE”) approved permits.

11) SITE PROTECTION

- a) Developer agrees to install and remove a minimum 6’ board on board wood fence to secure and block views of the Site (with exception to 48th place) prior to commencing grading and excavation work.
- b) Developer agrees that there will be no outward facing lights facing residential homes. Developer will ensure that during the construction process, temporary solar lights may be needed for the safety of pedestrians on 48th Place and MacArthur Boulevard and will supply as needed or if requested by the PCA Representative.
- c) Once the Contractor begins installing finishes (i.e. copper wiring, appliances, etc.) in the Project, the Contractor will have either physical and/or electronic security on-site at all times during non-Construction Hours.

12) THROUGH TRAFFIC ON U STREET, V STREET, 48th PLACE AND MACARTHUR BOULEVARD.

- a) Developer agrees that through traffic on U and V Streets, 48th Place and MacArthur Boulevard shall not be obstructed unless necessary for the required improvement of the streets, and will provide the PCA notice one month in advance of the estimated start of work that would substantively impact through traffic.
- b) Contractor will utilize flagmen or other appropriate mechanisms to manage traffic and incoming/outgoing construction vehicles as a result of constructing the Project in accordance with DDOT standards and guidelines.
- c) At least sixty days prior to the start of any construction, Developer will work with the PCA and Our Lady of Victory Church and School to mitigate visibility and safety concerns arising from school drop off and pick up time periods.

13) IMPROVEMENTS AND REPAIR TO DAMAGE TO ADJACENT STREETS AND SIDEWALKS

- a) To the extent allowed by DDOT, and other DC regulators:
 - i) Developer agrees to install safe temporary crosswalk conditions with ramps and temporary striping at the intersection of 48th Place and V Street and U Street and MacArthur Boulevard.
 - ii) At the beginning of the project and upon receipt of DDOT permits, Developer will fully pave sidewalks on both sides of 48th Place from MacArthur Boulevard to V Street to ensure general pedestrian safety at all times.
- b) Developer shall be responsible for the prompt repair of any damage to adjacent road and/or sidewalk surfaces that creates unsafe conditions caused by its construction activities (exclusive of normal wear and tear and general public use of such street and/or sidewalk).
- c) Developer agrees that after construction of the Proposed Development is complete that it will restore any damaged adjacent roadway and/or sidewalk surfaces to its pre-construction Survey condition.

14) CLEANLINESS

- a) Contractor shall be required to maintain a clean worksite and surrounding public streets, including removal of trash, dirt and mud, and other debris from construction activities (“Debris”) at the end of each workday.
- b) No construction related trash or materials will be deposited in the private trash cans belonging to the residents.
- c) Contractor agrees that it will inspect the adjacent road and sidewalks for any hazardous Debris caused by the Contractor’s construction activities (and, if necessary, remove) at least two (2) times per day.
- d) Contractor agrees that the wheels of all dump trucks and concrete trucks will be washed down prior to leaving the construction site in accordance with DDOT standards and guidelines.
- e) Contractor will take the proper precautions to control pests and rodents through the entire construction duration.
- f) Contractor agrees to regularly clean and maintain the port-a-john(s) and will ensure that the port-a johns are not placed within the vicinity of the Market set-up to ensure that the Market does not encounter any health violations.

- g) Trucks carrying excavation material and debris from the site will adhere to DDOT standards and guidelines.
- h) Developer will ensure that any trucks serving meals to workers must do so within the fenced property or along the east side of 48th Place during construction hours. At no time will any meal trucks park in front of the commercial businesses located between 4877 and 4885 MacArthur Boulevard.

15) PROTECTION OF LANDSCAPING.

- a) Developer will provide a final Landscaping Plan (“Landscaping Plan”) to be shared with the public prior to the Developer’s submission of their application for public space permits for the landscaping of the Site. Developer will give the Community Parties five business days to submit comments to the Landscaping Plan prior to the permit submission. Developer will act in good faith to review all comments from the Community Parties and may choose to implement any comments it deems to be mutually acceptable in its sole discretion.
- b) Contractor will protect all street trees adjacent to the Site that are to remain post-construction in accordance with the DDOT Urban Forestry permit.
- c) Contractor will repair and/or replace in kind any plant or tree located on abutting properties sustaining damage as a result of the Project, as determined by DDOT Urban Forestry.

16) INDEPENDENT ARBORIST. Prior to the commencement of any grading or excavation work on the Property, Developer agrees to retain an independent, certified arborist to:

- a) Examine all trees on or adjacent to the Property that are to remain post-construction;
- b) Identify and tag those trees requiring removal;
- c) Identify and tag all trees that can be saved as part of the Project’s overall landscape plan; and

17) PROTECTION OF ADJACENT PROPERTIES. Developer agrees to the following:

- a) Developer will protect adjacent/adjoining properties and vehicles from Developer’s construction activities excluding work performed by public utility companies. Complaints on protection issues will be transmitted directly to the Construction Ombudsman and will be resolved by mutual agreement, provided, however, that PCA may elect to invoke the dispute resolution provisions of Section 21 if problems are not satisfactorily resolved by the Developer.

18) CONSTRUCTION PARKING

- a) Developer acknowledges that vehicular parking is extremely limited in the area near the Site and that to minimize the impact of construction on residents, agrees to require the Contractor and their employees park in commercial facilities so as to not occupy residential parking, and that they may not park in any on-street parking spaces in the neighborhood. If commercial parking facilities nearby are not adequate for the number of employees at the site, then Developer shall require Contractor and any Subcontractors to provide shuttles for their employees to reach the site. Such shuttles shall use the approved truck route for the Site in accordance with DDOT standards and guidelines and will not utilize U Street or V Street for driving routes or pick up/drop off locations. Contractor and subcontractors may cooperate to offer shared transportation to their workers to help them access the Site.
- b) Developer shall encourage the use of public transportation and carpooling by the Contractor and subcontractors during the course of the Project.
- c) Upon completion of the parking areas of the Project, Developer will utilize these parking areas to the maximum possible extent for construction worker parking.

19) PLAN VIOLATIONS, ENFORCEMENT AND FINES.

- a) Developer and Contractor will ensure that the Project is managed in accordance to both this CMA and DCRA regulations. Developer will impose punitive measures on its Contractor for lack of adherence to this construction management agreement. The penalties will be imposed and administered by the Developer. Violations and penalties will be reported to the PCA Representative. Specifically, penalties for documented incidents, violations or infractions apply to the following sections of this agreement:
 - i) Construction Staging;
 - ii) Crane Swing;
 - iii) Through Traffic Provisions;
 - iv) Improvements and Repairs to Damaged Sidewalks and Streets;
 - v) Cleanliness; and
 - vi) Construction Parking.

- b) The following table represents the method of penalization for individual violators on a per incident basis:

Individual Violation per Incident	1 st Offense	2 nd Offense	3 rd Offense	4 th Offense
Penalty	\$100.00	\$500.00	\$1,000.00	Removal from Project

Note: Subcontractor employee removal from the Project can occur at any time.

- c) PCA Representative and Developer will review and collaborate on the effectiveness of such enforcement and recalibrate, if mutually agreed upon, on a monthly basis.
- d) Notwithstanding the aforementioned, such measurable and material punitive measures enforced by the Developer and Contractor will not replace any or all DCRA regulations.

20) MODIFICATION

- a) No modification of this CMA shall be valid unless made in writing and duly executed by authorized representatives of the Parties. Developer may transfer or assign this CMA to an affiliate of Developer and to other successors and assigns.

21) DISPUTE RESOLUTION AND ENFORCEMENT

- a) The Parties acknowledge that this Agreement is being adopted by Developer for the benefit of the Parties and is an agreement between Developer, ANC and PCA. The Parties intend that if concerns or disputes arise, these concerns and disputes should be addressed collegially to the maximum extent possible and resolved as set forth below in subsection (b).
- b) The Parties agree to follow the procedures set forth below with respect to any disputes between or among them which arise under, or involve the subject matter of, this Agreement without resort to litigation, as follows:
 - i) The disputing Party shall give the other Parties written notice of the dispute (“*Dispute Notice*”). Within twenty (20) days after receipt of the Dispute Notice, the receiving Party shall submit to the other Parties a written response. The Parties will meet within thirty (30) days of the date of the response and thereafter as often as they each, in their sole discretion, reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.
 - ii) If the dispute has not been resolved by negotiation within thirty (30) days following the date of the written response, or if one Party fails to meet with either of the other Parties within thirty (30) days of such date, any Party may, upon written notice by one Party to any other Party, initiate mediation of the dispute in accordance with the commercial mediation rules of the American Arbitration Association.
 - iii) If the dispute has not been resolved by mediation within thirty (30) days of the appointment of the mediator, or if a mediator is not appointed within thirty (30) days of the notice of mediation, upon written notice, any Party may elect to submit the dispute to binding arbitration. The arbitration will be held in the District of Columbia and shall be conducted in accordance with the commercial rules of the American Arbitration Association (or successor organization). The arbitrator(s) shall have no authority to vary from or ignore the terms of this Agreement and shall be bound by

controlling law to the extent available. The cost of any arbitration proceeding shall be borne by the non-prevailing party or as the arbitrator(s) shall otherwise determine. The arbitrator(s) shall render their final decision in writing to the parties.

- iv) The initiation of this dispute resolution process shall toll the running of the statute of limitations for any cause of action arising from the dispute. All time limitations contained in this section may be altered by mutual agreement of the Parties.
- v) The result of the arbitration will be binding on the Parties, and the venue for any action to enforce any arbitration award, will be in District of Columbia.
- vi) Any conflict between this Agreement and the commercial rules of the American Arbitration Association (or successor organization) will be resolved in favor of this Agreement.
- vii) Notwithstanding the arbitration provisions herein, any Party may seek a preliminary injunction or other preliminary judicial relief if in its judgment such action is necessary to avoid irreparable damage.

22) SUPPORT FOR BZA APPLICATION NO. 20308

- a) Subject to the provisions of this MOU and adherence to those provisions by the Parties, ANC 3D and the PCA shall:
 - i) Submit a letter indicating an agreement to support or not oppose the application for approval in BZA Application No. 20308 prior to the public hearing scheduled for November 4, 2020.
- b) ANC 3D and the PCA shall take no action to cause or support, directly or indirectly, any appeal or other legal cause of action, to challenge or oppose the BZA Application or other applications, permits, and approvals related to the Proposed Development.
- c) If the Developer does not receive approval for its BZA Application then this Agreement will terminate.
- d) If the Developer receives approval for its BZA Application, but chooses not to move forward with the construction of the additional density approved in its BZA Application then the Developer may terminate this Agreement by providing written notice to the Parties.

23) COUNTERPARTS

- a) This CMA may be executed in counterparts and via original or facsimile signature.

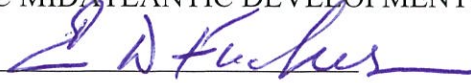
(Signature Page Follows)

|

|

IN WITNESS WHEREOF, the Parties hereto have executed this CMA as of the day and year 27th day of October, 2020.

TC MIDATLANTIC DEVELOPMENT, INC., a Delaware corporation:



Signature

ERIC W. FISCHER


Name

AUTHORIZED SIGNATORY

Date

10.27.2020

For the Palisades Community Association



Signature

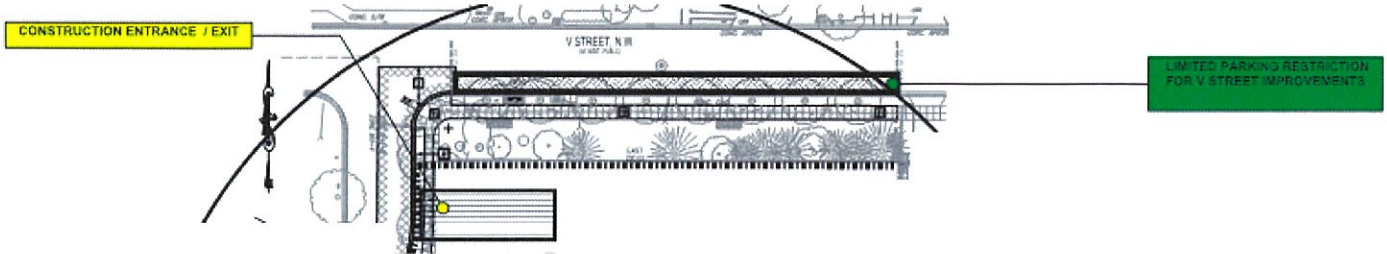
Patricia Duncan

Name

October 27, 2020

Date

**DRAFT
V STREET, NW**



 **CONSTRUCTION
FENCING**

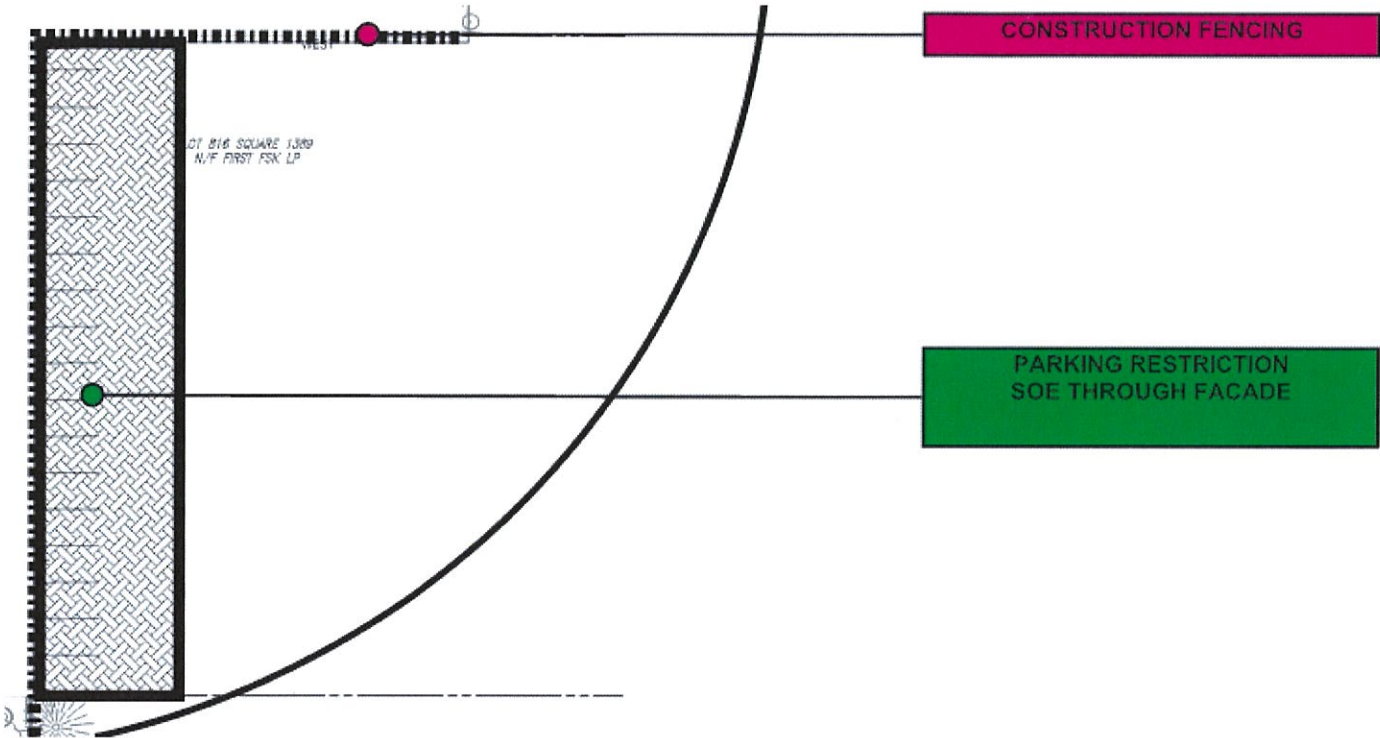
 **PARKING
RESTRICTION**






 **OVERHEAD
PROTECTION**

 **CONSTRUCTION ENTRANCE /
EXIT**

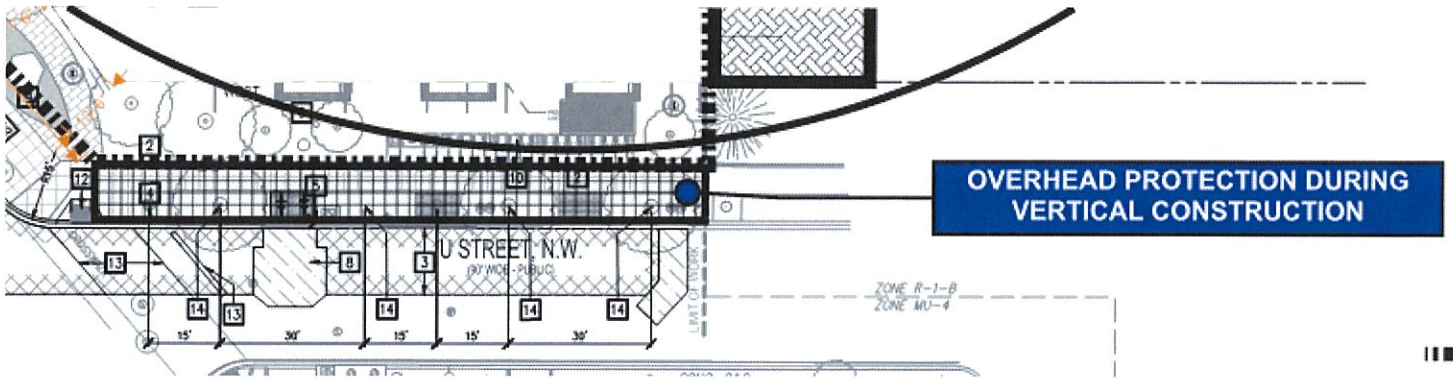
 **TOWER CRANE SWING
RADIUS**

DRAFT
LOT 816 (CVS LOT)



-  CONSTRUCTION FENCING
-  OVERHEAD PROTECTION
-  TOWER CRANE SWING RADIUS
-  PARKING RESTRICTION
-  CONSTRUCTION ENTRANCE / EXIT

DRAFT
U STREET, NW



III

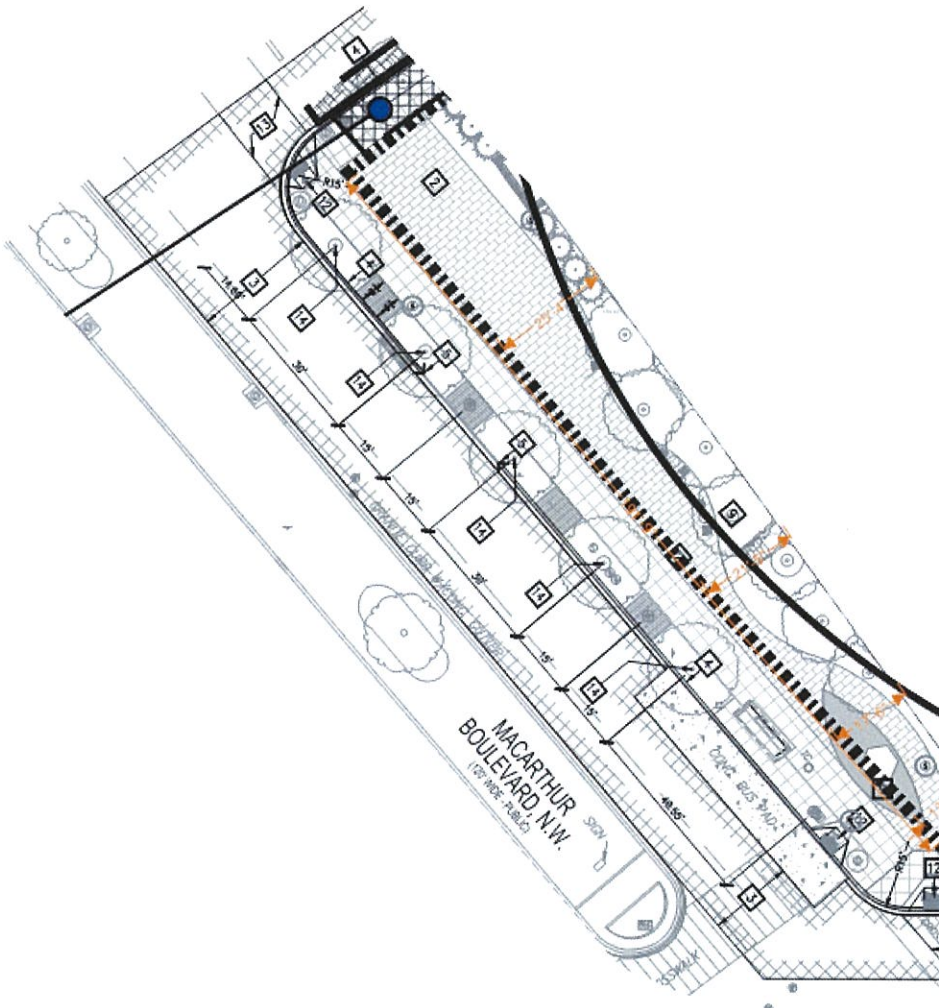
-  CONSTRUCTION FENCING

 OVERHEAD PROTECTION

 TOWER CRANE SWING RADIUS
-  PARKING RESTRICTION

 CONSTRUCTION ENTRANCE / EXIT

**DRAFT
MACARTHUR BLVD, NW**



 CONSTRUCTION FENCING

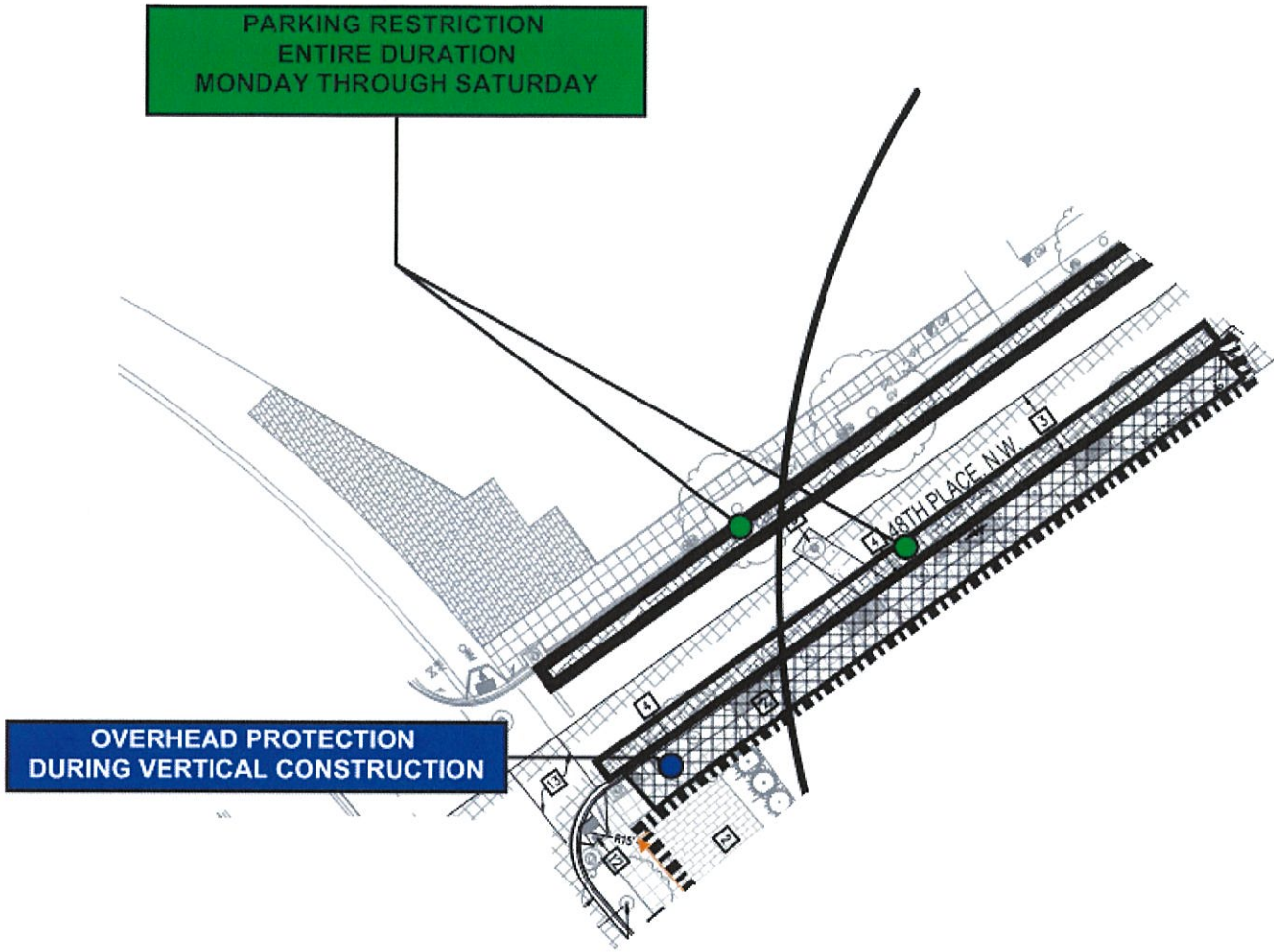
 OVERHEAD PROTECTION

 TOWER CRANE SWING RADIUS

 PARKING RESTRICTION

 CONSTRUCTION ENTRANCE / EXIT

DRAFT
48TH PLACE, NW



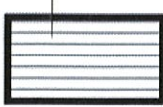
CONSTRUCTION FENCING



PARKING RESTRICTION



OVERHEAD PROTECTION



CONSTRUCTION ENTRANCE / EXIT



TOWER CRANE SWING RADIUS

Exhibit B: Construction Timeline

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	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19	M20	M21	M21
MOBILIZATION / SOE / EXCAVATION / UTILITIES	X	X	X																			
FOUNDATION / UTILITIES			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
STRUCTURE				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
FAÇADE / CORE / ROOF								X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
INTERIORS / SITE											X	X	X	X	X	X	X	X	X	X	X	X
OCCUPANCY																			X	X	X	X
PUNCHLIST / FINAL COMPLETION																			X	X	X	X

This exhibit shall be amended with the updated timeline upon receipt of the construction permit and future impacts to the project.

Exhibit C: Truck Routing Plan

NOTE: TO BE PROVIDED BY DDOT AT A LATER DATE

Exhibit D: Surveyed Properties

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☐ SURVEYED PROPERTIES

