

PLANNED UNIT DEVELOPMENT COVENANT

**Z.C. Order No. 02-38J
WFS2 LLC
(Second-Stage PUD @ Square 542, Lot 822)**

THIS PLANNED UNIT DEVELOPMENT COVENANT (“**Covenant**”), is made as of this 23rd day of March 2020, by the DISTRICT OF COLUMBIA, a municipal corporation (hereinafter referred to as the “**District**”). The District, solely in its capacity as owner of the property described in Exhibit A, shall hereinafter be referred to as “**Declarant**.”

W I T N E S S E T H:

WHEREAS, the District is the owner in fee simple of certain real property and improvements located in the District of Columbia known for assessment and taxation purposes as Lot 822 in Square 542, with an address of 1000 4th Street SW (the “**PUD Site**”). The PUD Site is generally bounded by Wesley Place, SW to the east, 4th Street, NW to the west, and separately-owned properties to the north and to the south, all in the Southwest quadrant of Washington, D.C., and as is more particularly described in Exhibit A. The PUD Site is a portion of Lot 89, Square 542 (the “**Overall PUD Site**”); and

WHEREAS, the Overall PUD Site was the subject of an application for the first stage of a two-stage Planned Unit Development (“**First-Stage PUD**”) and a related Zoning Map Amendment for a portion of the Overall PUD Site, which was filed on September 30, 2002. The Zoning Commission for the District of Columbia (the “**Commission**”) approved this application by Zoning Commission Order No. 02-38, dated July 31, 2003, and effective on November 28, 2003 (“**Order No. 02-38**”); and

WHEREAS, Subtitle A § 102.3 of Title 11 of the District of Columbia Municipal Regulations (the “**Zoning Regulations of 2016**,” or the “**Zoning Regulations**,” to which all further regulatory references herein are made unless otherwise specified) provides that Order No. 02-38

is considered a vested project under the 1958 Zoning Regulations, subject to the conditions of Subtitle A §§ 102.4 through 102.7; and

WHEREAS, the Zoning Commission approved an application to modify the First-Stage PUD for the Overall PUD Site, a related Zoning Map Amendment to rezone the Overall PUD Site from the C-3-B to the C-3-C Zone District, and a second-stage PUD application for the central portion of the Overall PUD Site, approved in Zoning Commission Order No. 02-38A (“**Order No. 02-38A**”), which was dated November 19, 2007, and effective as of January 25, 2008, which effectively replaced Order No. 02-38; and

WHEREAS, the District, along with the owner of the remainder of the Overall PUD Site, executed a PUD Covenant dated as of January 25, 2008, and recorded on March 3, 2008, among the Land Records of the District of Columbia (“**Land Records**”) as Instrument No. 2008023182, to construct on and use the Overall PUD Site in compliance with Order No. 02-38A, as required by the Zoning Regulations and Order No. 02-38A; and

WHEREAS, the District, along with the owner of the remainder of the Overall PUD Site, executed an Amended and Restated PUD Covenant dated as of July 24, 2008, and recorded on August 21, 2008, among the Land Records as Instrument No. 2008089839 (the “**Overall PUD Covenant**”) in order to correct the property description for the Overall PUD Site; and

WHEREAS, the Commission approved an application for a Second-Stage Planned Unit Development (the “**Second-Stage PUD**”) at the PUD Site by Z.C. Order No. 02-38J, dated April 8, 2019, that became final and effective on August 16, 2019 (the “**Second-Stage Order**,” and collectively with Order No. 02-38A, the “**Orders**”); and

WHEREAS, Subtitle X, Section 311.3 and Subtitle Z, Section 702.10 of the Zoning Regulations require the Declarant to enter into this Covenant for the PUD Site binding the

Declarant, and Declarant's successors and assigns, to construct on and use the PUD Site in accordance with the Second-Stage Order, including all modifications, alterations, or amendments thereto approved by the Commission; and

WHEREAS, this Covenant for the PUD Site, as required by the Zoning Regulations and the Second-Stage Order, supersedes and replaces the Overall PUD Covenant for the PUD Site.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed between the parties hereto as follows:

1. Approved Plans, Terms and Conditions. The terms and conditions of the Commission's approval of the Second-Stage PUD for the PUD Site in the Second-Stage Order, as the same may be amended and/or modified from time to time by the Commission, are incorporated herein by reference and made a part hereof as Exhibit B and shall be considered a part of this Covenant. The PUD Site shall be constructed on and used in accordance with the plans approved by the Second-Stage Order and its conditions and restrictions, subject to such changes as the Zoning Administrator of the District of Columbia may authorize pursuant to Subtitle A, Section 304.5, or as the Commission may authorize pursuant to Subtitle Z, Sections 703 or 704. The Declarant covenants to construct on and use the PUD Site only in accordance with the terms of the Second-Stage Order, as the same may be further amended and/or modified from time to time by the Commission, subject to the terms and conditions contained herein and the provisions of Subtitle X, Chapter 3.

2. Additional Time to Construct Second-Stage PUD. The Commission may consider an application filed by Declarant for good cause to extend the validity period of the Second-Stage Order and the time period requirements for filing a building permit application and commencing

construction in accordance with Subtitle Z, Section 702, in accordance with and subject to the limitations of Subtitle Z, Section 705.

3. Default. In the event that Declarant fails to file a building permit application to construct, or fails to commence construction of, the Second-Stage PUD approved in the Second-Stage Order within the time specified in Subtitle Z, Section 702, as modified by any extension of time granted by the Commission for good cause shown pursuant to Subtitle Z, Section 705, the benefits granted under the Second-Stage Order shall terminate pursuant to Subtitle Z, Section 702.6, and thereafter this Covenant shall be deemed null and void.

4. Future Conveyance. The Declarant covenants that if any conveyance of all or any part of the PUD Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns, to construct on and use the PUD Site, or a conveyed portion thereof, in accordance with the terms and conditions of this Covenant, and that the grantee, its successors and assigns, shall be considered a declarant to this Covenant.

5. Covenants to Run with the Land. The covenants and restrictions contained herein shall be deemed real covenants running with the PUD Site and shall bind the Declarant, its successors and assigns, and shall inure to the benefit of the District, and its successors and assigns. Such covenants are not binding upon Declarant should it no longer have a property interest in the PUD Site. The District, as the regulating authority, shall have the right to enforce all covenants, conditions, and restrictions contained herein. For the purposes of this paragraph, the term “property interest” includes, without limitation, a leasehold interest.

6. Recordation. The Declarant shall record this Covenant, as fully executed, among the Land Records and shall file a certified copy of this Covenant with the Zoning Administrator and the Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

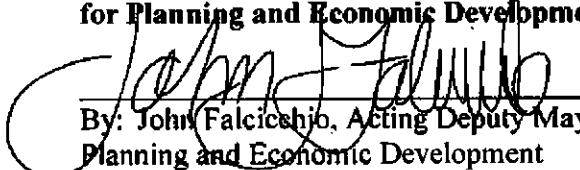
8. Rescission/Alteration of this Covenant. If the Commission modifies or amends the Orders in a manner directly affecting the Second-Stage PUD, no formal amendment of this Covenant shall be required, provided that the Declarant, or its successors or assigns, record a notice of modification in the Land Records together with a copy of the written order authorizing the modification or amendment. No other amendment of the obligations created by this Covenant is permitted without the prior written consent of the District and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Commission.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the District of Columbia, a municipal corporation, intending to be legally bound, has caused this Covenant to be executed by John Falcicchio, its Acting Deputy Mayor for Planning and Economic Development.

DISTRICT:

DISTRICT OF COLUMBIA,
by and through the Office of the Deputy Mayor
for Planning and Economic Development

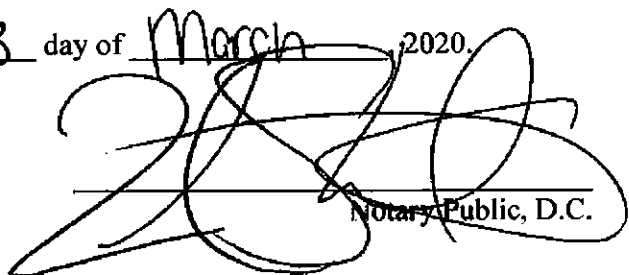

By: John Falcicchio, Acting Deputy Mayor for
Planning and Economic Development

DISTRICT OF COLUMBIA, ss:

I, Joel Mareath Stackhouse Notary Public in and for the jurisdiction aforesaid, do hereby certify that John Falcicchio, the Acting Deputy Mayor for Planning and Economic Development for the District of Columbia, personally appeared before me and, being personally well known to me, acknowledged said Covenant to be the act and deed of Declarant and delivered the same as such.

GIVEN under my hand and seal this 23 day of March, 2020.




Notary Public, D.C.

My commission expires: 11/30/2024

APPROVED AS TO TECHNICAL SUFFICIENCY:

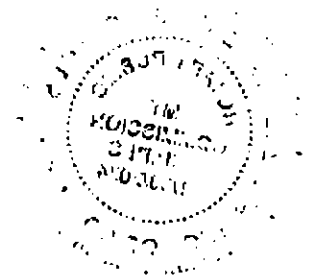
Matthew Le Grant

3-24-20

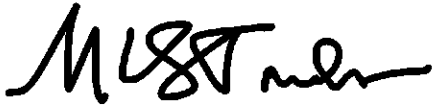
Matthew LeGrant
Zoning Administrator
Department of Consumer and Regulatory Affairs

Date

(PUD Covenant pursuant to Subtitles X § 311.3 and Z § 702.10 for Lot 822 in Square 542 for the Second-Stage PUD approved by Z.C. Order No. 02-38J)



APPROVED AS TO LEGAL SUFFICIENCY:



Maximilian L.S. Tondro
Assistant Attorney General
Office of the Attorney General for the District of Columbia

3-24-20

Date

(PUD Covenant pursuant to Subtitles X § 311.3 and Z § 702.10 for Lot 822 in Square 542 for Second-Stage PUD approved by Z.C. Order No. 02-38J)

EXHIBIT A

LEGAL DESCRIPTION OF THE SUBJECT SITE

Lot 822 Legal Description

All of those lots or parcels of land located in the District of Columbia and more particularly described as follows:

Part of Record Lot 89 in Square 542, District of Columbia, in a subdivision made by RLA Revitalization corporation, per plat of subdivision recorded in Subdivision Book 197 at Page 91 among the records of the Office of the Surveyor of the District of Columbia; said part of Lot 89 being more particularly described by metes and bounds as follows:

Beginning at a point, said point being the north easterly corner of Lot 89, thence the following courses and distances, south with the west line of Wesley Place 135.00 feet, thence departing the west line of Wesley Place, and continuing south 55.33 feet to a point, thence west 318.68 feet to a point, said point being on the east line of 4th Street, S.W. public easement area as dedicated in instrument 2010042878; thence, running with said east line of 4th Street, S.W. public easement N 05°13'05" E 138.38 feet to a point, thence continuing along an arc of curve to the left 49.63 feet having a radius of 545.0 feet to a point; thence north 2.96 feet to a point; thence east 303.83 feet to the point of beginning and containing 59,044 square feet.

NOTE: At the date hereof the above described land is designated among the records of the Assessor of the District of Columbia, for assessment and taxation purposes, as Lot 822 in Square 542.

[End of Exhibit A]

EXHIBIT B

ZONING COMMISSION ORDER NOS. 02-38, 02-38A, AND 02-38J


[Appended behind]

Government of the District of Columbia
Office of Zoning



MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

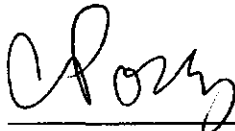
FROM: Alberto P. Bastida 
Secretary to the Zoning Commission

DATE: November 19, 2003

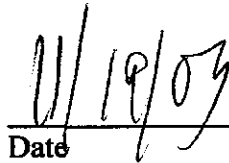
SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on November 28, 2003:

1. Z.C. Order No. 02-38 (Case No. 02-38); and
2. Z.C. Order No. 02-45 (Case No. 02-45).



Received By



Date

Attachments

ZONING COMMISSION
District of Columbia

Case 02-38

Exhibit 122

441 4th Street, N.W., Suite 210-S, Washington, D.C. 20001
Tel: (202) 727-6311 • Fax: (202) 727-6072

E-Mail: zoning_info@dcoz.dcgov.org • Web Site: <http://dcoz.dcgov.org/>

NOV 20 2003
ZONING COMMISSION
District of Columbia
CASE NO. 02-38
EXHIBIT NO. 122

ZONING COMMISSION ORDER NO. 02-38

Case No. 02-38

(First-Stage PUD – Waterfront)

July 31, 2003

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on February 13 and March 31, 2003, to consider an application from Waterfront Associates LLC (“Applicant”), a partnership of Forest City Washington, the Kaempfer Company, and Bresler & Reiner, Inc. The Application is for review and approval of the first stage of a two-stage planned unit development (“PUD” or “the Project”) and a related zoning map amendment, pursuant to Chapter 24 of the District of Columbia Municipal Regulations (“DCMR”), Title 11, Zoning. The proposed project is a redevelopment and adaptive re-use of the existing Waterside Mall property into a medium-high density mixed-use complex of offices, apartments, and retail establishments, together with a new roadway through the site. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the Application subject to the specified conditions.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On September 30, 2002, the Applicant submitted an application to the Zoning Commission for the first stage of a two-stage PUD and a related zoning map amendment from C-3-B to C-3-C for the four (4) corners of the site in order to construct a large mixed-use complex and neighborhood commercial center. On October 28, 2002, the Zoning Commission decided to schedule a public hearing on the application.
2. The subject property is a large site consisting of approximately 13.42 acres at 401 M Street, S.W., comprising Lot 60 in Square 499 and Lot 88 in Square 542 and bound generally by M, I, 3rd, and 6th Streets, S.W. (the “PUD Site”).
3. A description of the proposed development and the Notice of Public Hearing were published in the *D.C. Register* on December 20, 2002 (49 DCR 11387). The Notice of Public Hearing was mailed to all property owners within 200 feet of the subject property, as well as to Advisory Neighborhood Commission (“ANC”) 6D.

4. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD. The two-stage PUD process is appropriate in this case as it involves a large site with multiple building types and complex site planning, transportation, and urban design issues. This first-stage order governs site planning, land use planning, traffic, general density, and similar broad issues. The second stage PUD process will consist of reviews of more detailed plans and a determination of consistency with the intent and standards of this first-stage PUD order.
5. The parties in the case were the Applicant and ANC 6D.
6. The Zoning Commission opened the public hearing on February 13, 2003, and completed the hearing on March 31, 2003.
7. At its public meeting of June 9, 2003, the Zoning Commission took proposed action to approve the application by a vote of 5-0-0.
8. After referral to and review by the National Capital Planning Commission (see Finding of Fact 36), the Zoning Commission took final action to approve the application on July 31, 2003.

The Site

9. The property that is the subject of this application is located in the Southwest neighborhood, within the former Southwest Urban Renewal Area. The existing Waterside Mall was built in phases primarily in the 1970s. It is situated on the major part of a large "superblock" bounded by M, I, 3rd, and 6th Streets, S.W. Fourth Street between M and I Streets, S.W., was closed to create this large development site and to facilitate the new construction.
10. The central mall structure is three (3) stories and forty-five (45) feet in height, plus a basement level. Because of problems maintaining viable retail and personal service uses in the Mall, the upper floors are devoted to office uses, and on the ground floor, some spaces are vacant and some are occupied by office uses. An Urban Land Institute ("ULI") study conducted in 1998 (*Southwest Washington, D.C.: A Strategy for Revitalizing Waterside Mall and the Waterfront*) found a very high vacancy rate in the retail spaces in the mall. The structure also includes two (2) 130-foothigh office towers, which were leased for many years up to 2002 to the General Services Administration ("GSA") and occupied by the Environmental Protection Agency ("EPA"), with 5,500 employees..
11. With a land area of 584,655 square feet and an existing gross floor area of approximately 1,316,871 square feet, existing improvements constitute approximately a 2.25 FAR. In addition to 285 surface parking spaces, there are approximately 967 underground spaces for a total of 1,252 parking spaces.
12. With the office space and the majority of the retail space vacant, the application states that the time is ripe for the complex to be renovated and restructured, noting there are two

(2) critically important reasons to expeditiously rebuild and reoccupy the space. The first is to avoid the numerous negative effects on the surrounding neighborhood and the local economy of a large building complex remaining vacant for a period of years. The second is to provide a large number of employees in the building who will patronize the ground floor retail and services so that the retail establishments will prosper and serve the surrounding neighborhoods as well as the employees. The Commission concurs in this assessment.

The Surrounding Area

13. Other uses on the superblock with the Waterside Mall include four (4) large, high-rise apartment buildings – two (2) of them to the east and two (2) to the west of the mall. To the north, fronting on the south side of I Street, are two (2) churches, federal parkland, and a District of Columbia library (Southwest Branch). To the south, the M Street side of the mall, is the entrance to the Waterfront/Southeastern University Metrorail station.
14. The PUD Site is predominantly surrounded by residential areas having a planned mixture of building types, constructed pursuant to design review under the Southwest Urban Renewal Plan, which was legally in effect from 1952 to 1996. The various residential developments are typified by modern design, with building types including high-rise apartments, garden apartments, townhouses, and two-unit townhouses, or flats. The buildings are surrounded by ample open spaces, trees, and landscaped areas. Such residential areas are seen to the north and south of the PUD Site. The Amidon Elementary School and the Southeastern University are also located along the north frontage of I Street.
15. Across 3rd Street to the east is the low-rise Greenleaf Gardens public housing complex, situated on three (3) city blocks bounded by M, I, and 3rd Streets and Delaware Avenue, S.W. Greenleaf Gardens is an example of pre-existing residential development that was not demolished and redeveloped under the urban renewal plan.
16. Across 6th Street to the west is the Arena Stage, which serves a city- and region-wide clientele. South of Arena Stage and across Maine Avenue is St. Augustine's Church. From St. Augustine's, the Southwest Waterfront on the Washington Channel extends to the west and northwest for approximately half a mile. Waterfront buildings and uses include cruise ship lines, a police pier, several marinas, large restaurants, a fish market, and a hotel. The buildings accommodating these uses are of moderate height and bulk, approximately twenty (20) to forty (40) feet in height. They are served by parking lots situated between Water Street and Maine Avenue. Between the commercial buildings and the waterfront is a continuous two-level pedestrian promenade, as well as small public open spaces.

Existing and Proposed Zoning

17. The PUD Site is zoned C-3-B (Major Business and Employment Centers), the purpose clause of which states, "The C-3-B districts shall permit medium density development,

including office-retail, housing, and mixed uses. It is intended for uptown locations, where the largest component of development will be office-retail and other non-residential uses.” (11 DCMR § 740.6) Subsection 740.7 goes on to state that C-3-B districts, “shall be compact in area and shall be located in or near the Central Employment Area, on arterial streets, in uptown centers, and at rapid transit stops.” Matter-of-right uses include a wide variety of office, retail, housing, hotel, and mixed uses to a maximum height of seventy (70) feet/six (6) stories, a maximum density of 5.0 FAR for residential and mixed uses, with a maximum density of 4.0 FAR for commercial and other non-residential uses. In Zoning Commission (“ZC”) Order No. 967 dated September 9, 2002, the Commission adopted a text amendment that allows the Waterside Mall property to continue to be treated as one building for zoning purposes in the event that construction of a right-of-way through the property creates two (2) physically separate buildings.

18. The existing improvements, which are entirely non-residential, occupy approximately 2.25 FAR. This is well within the permitted maximum density of 4.0 FAR for commercial uses. The height of the existing office towers of 130 feet would normally have rendered the building a nonconforming structure based on height. However, one of the special provisions adopted in ZC Order No. 807 (Southwest Area Rezoning) provides:

2521.1 (c) A building or structure that was built prior to [November 20, 1998] which conformed to the height, area and bulk provisions of the Urban Renewal Plans shall be considered a conforming structure under these Regulations and in the event of fire, collapse, explosion or act of God may be built to its size as of the date specified above.

Accordingly, the 130-foot office towers are conforming structures and may be renovated and reoccupied under existing C-3-B zoning.

19. Several phases of the redevelopment plan are within the height and bulk limits of the C-3-B zone and will be carried out as a matter of right. However, the Applicant requests that the four (4) corners of the site be rezoned C-3-C in order to accommodate additional height and bulk and to offset the loss of land area for the new roadway through the site. The C-3-C zone is a medium-high density commercial zone that allows a maximum density of 6.5 FAR and a maximum building height of ninety (90) feet. With a PUD, the maximum bulk is 8.0 FAR and the maximum height is 130 feet. Permitted uses include a wide variety of office, retail, residential, hotel, and mixed uses.
20. The zoning classifications of areas surrounding the PUD Site include R-5-D for the immediately adjacent apartment towers, R-5-C for less dense high-rise apartments, R-5-B for areas generally developed with garden apartments, and R-4 for areas improved with townhouses and flats. The land fronting on the Southwest Waterfront is zoned W-1.

The PUD Project

21. The Applicant proposes to reconstruct the subject property into a new development to be known as "Waterfront," consisting of a mixture of office, retail, and residential uses at medium-high density. The general development pattern will consist of retail uses on the ground floor of new or renovated office buildings, two (2) apartment buildings, a public plaza surrounding the Metrorail station entrance, and a new north-south roadway through the center of the site. The parking and loading facilities will continue to be those now in existence in the underground garage, supplemented by existing and new parking and loading at and above grade.
22. The central part of the existing mall will be demolished in order to build the new roadway along the axis of 4th Street that will connect with 4th Street to the north and south of the PUD Site. The roadway is intended to improve area circulation; open up the site visually, allowing more light and air to reach the interior of the site; and support new retail uses along 4th Street. The proposed fifty-five (55) foot wide roadway will provide two (2) lanes of moving traffic, a turning lane, and curbside parking lanes on both sides of the street, as well as wide sidewalks within the ninety (90) foot wide passageway. The wide sidewalks and curbside parking are designed to enhance the retail and pedestrian environment along 4th Street. The two (2) moving lanes match the two-lane configuration of 4th Street to the north of the site.
23. The Applicant will construct a large, landscaped public plaza surrounding the entrance to the Metrorail station in the south-center part of the site. This plaza will constitute a major public amenity both visually and for persons sitting, walking, and congregating in the space.
24. The PUD proposes total development by component uses as follows: Commercial development will total 2,126,500 square feet of gross floor area ("g.f.a."), constituting a density of 3.64 FAR. This will include a minimum of 75,000 square feet of g.f.a. for retail uses with the remainder being office space. The two (2) apartment buildings will total 400,000 square feet of g.f.a., or 0.69 FAR, for a total built density of 4.33 FAR. This is less than the maximum 5.0 FAR for mixed residential and commercial uses allowed in the existing C-3-B zone as a matter of right. The minimum number of parking spaces will be 1,335.
25. The height of buildings will range from renovations with additions at fifty-six (56) feet; new construction at seventy-nine (79) and 112 feet; and renovation of the two (2) existing office towers at 130 feet. The new residential buildings are proposed to be 112 feet high, as are the two (2) office buildings on M Street. The reason for the height of 112 feet is to allow for extra height (12 feet) at the ground floor level to make the space optimal for retail establishments.
26. The project will be developed in several phases, with the timing of the phases dictated primarily by leasing agreements and construction of the roadway. The majority of

leasing and construction is projected to be completed within the next seven (7) years. These phases are summarized as follows:

- a. Matter-of-right construction of an addition to the Northeast Mid-rise Building, renovation of the existing East and West (office) Towers, Central Building (office and retail), and Southeast Mid-rise Building;
- b. Second-stage PUD (No. 1) for the East and West 4th Street buildings;
- c. Second-stage PUD (No. 2) for the West M Street and Northwest residential towers; and
- d. Second-stage PUD (No. 3) for the East M Street and Northeast buildings, occurring after the Safeway lease expires in 2020.

27. The Applicant's urban design objectives for the project are as follows:

- a. Reconnect the site to the neighborhood by breaking it into two (2) smaller city blocks, with the interior of the site opened up to light and air and public access by re-establishing 4th Street through the site;
- b. Line 4th Street and the M Street frontage with ground floor retail uses visible from the outside and accessible to the neighborhood;
- c. In place of a single, monolithic low-rise structure, create four (4) identifiable buildings with their own recognizable entrances;
- d. Create a more urban development pattern by constructing buildings to the 4th and M Street frontages, thereby visually defining the adjacent streets and public spaces; and
- e. Create a mixed-use town center, with office workers providing a significant daytime population, the apartments bringing full-time residents and evening activity to the site, and both of these serving as customers of the retail uses, which will also serve the surrounding neighborhood. The public plaza surrounding the entrance to the rapid transit station completes the town center concept.

28. The project's pedestrian circulation plan will enable pedestrians to walk through the site on wide sidewalks along 4th Street and will remove the surface parking that impedes convenient and safe pedestrian passage. Along 4th and M Streets, the retail display windows, landscaping, and sidewalk surface will create a pleasing pedestrian environment. Each office building component will have a specific vehicular access plan for employees, taking them from the parking garage to elevators in order to access their floor levels. Some vehicular access to parking and loading will occur from 4th Street, as well as from the north-south service drives through the site at its eastern and western edges. The Applicant's preliminary transportation analysis and the D.C. Department of

Transportation (“DDOT”) study both found that the anticipated traffic impacts under the PUD would be less than under a matter-of-right scenario, that traffic mitigation measures should be utilized in the detailed plans to be submitted, and that the proposed parking and loading are acceptable and functional.

Public Benefits of the PUD

29. The following public benefits and amenities will be created as a result of the PUD project:
- a. *Major Local Development Initiative.* The Waterfront development is a major revitalization effort being undertaken with close cooperation between the Applicant and the District of Columbia to achieve paramount public objectives for the city and the Southwest neighborhood. The agreed-upon actions by the District and the Applicant aim not only to achieve a first-class revitalization of the property into a new Town Center, but also to avoid protracted vacancy of the property after EPA’s exodus. Such vacancy could mean the presence of a deteriorating mega-structure blighting and diminishing the quality of the surrounding neighborhoods and the near-absence of retail uses on the site.
 - b. *4th Street Roadway.* The District of Columbia’s and the Applicant’s plan to demolish the central part of the Mall structure and create a north-south passageway through the site will improve the existing situation in several ways. It will create a safer, quicker, and more appealing passageway through the site for pedestrians and vehicular traffic; provide the opportunity for retail uses to be located along the 4th Street frontage rather than being primarily in interior spaces removed from streets and sidewalks; create curbside parking opportunities to serve the retail establishments conveniently; and open up the center of the site to more light and air and improved architectural design.
 - c. *Urban Design.* The PUD project is designed to accomplish several major urban design objectives, including: creating superior streetscape design and pedestrian amenities, including wide sidewalks and the public plaza; reducing the extreme horizontality of the existing structure and introducing more distinctive, vertical buildings that provide more interest and variety along street frontages and relate better to surrounding development patterns; constructing new buildings to the property lines so as to define edges and public spaces; and creating better connections visually and in terms of accessibility to the surrounding neighborhood.
 - d. *Town Center.* The project will create a new public plaza surrounding the Metrorail station entrance of substantial size, approximately 25,000 square feet in area. It will be suitably paved and landscaped for public use and enjoyment. Together with the active mixture of office, residential, and retail uses on the site, the Metrorail station, the new urban design image, and improved accessibility to the site, the result will be a new Town Center as called for in public planning

goals. The two (2) large apartment buildings to be constructed at the northwest corner of the site will add a substantial residential population to the site. These residents will add “eyes on the street,” extra pedestrian movement, and improved public safety.

- e. *Retail and Service Establishments.* The Applicant is committed to establishing and maintaining at least 75,000 square feet of retail and service uses at the ground floor level of the buildings. These establishments will occupy the ground floor area of buildings facing 4th and M Streets to a depth of sixty-eight (68) feet and will be highly visible and accessible.
- f. *No Adverse Effect on Neighborhood or Public Facilities.* The proposed redevelopment will prevent the numerous negative effects that could impair the neighborhood if the large existing complex remained vacant for some period of time. The adverse effects on neighborhoods from long-vacant buildings are normally visual blight, lack of retail services (in this case), and an increase in crime. DDOT’s traffic analysis indicates that the number of parking spaces is ample to serve the proposed development plan and that the street and highway network and public transportation – especially the Waterfront/SEU Metrorail station on site – will adequately function to serve the development and other traffic. The new design will give the property a more distinctive profile suitable to this neighborhood landmark site. The proposed roadway through the site will open it up in terms of light and air and create a more convenient passageway for pedestrians and potentially vehicles as well. The site is currently served by all major utilities, and the increased use of water and sanitary services will have a very minor effect on the city’s delivery systems. The reports of government agencies did not identify any problems with capacity of local facilities such as schools to accommodate the proposed PUD project.
- g. *Comprehensive Plan Policies.* The proposed PUD is consistent with, or will help implement, a number of policies in the *Comprehensive Plan for the National Capital* (the “Comprehensive Plan”). These include Major Themes from § 101 of the Plan such as:
- “Stabilizing and improving the District’s neighborhoods;”
 - “Increasing the quantity and quality of employment opportunities in the District;”
 - “Respecting and improving the physical character of the District;” and
 - “Reaffirming and strengthening the District’s role as the economic hub of the National Capital Region.”
- h. The Generalized Land Use Map of the Land Use Element designates the subject site for Medium-Density Commercial development. The existing C-3-B zoning

was adopted recently (1998) for the site in conformance with the Medium-Density Commercial designation. The proposed PUD stays within the matter-of-right density limits of the C-3-B zone.

- i. The PUD project also helps implement various policies in the Economic Development, Housing, Transportation, and Ward Two Elements of the Comprehensive Plan, as set forth in the Applicant's statement.

Report of the Office of Planning

30. By report dated February 6, 2003, and by testimony at the public hearing, the Office of Planning ("OP") recommended approval of the application. The report states, "OP concludes that the application meets the requirements of the Zoning Regulations, is consistent with the Comprehensive Plan, and furthers the City's objectives for the Southwest and the Anacostia Waterfront Initiative." The report also states that the PUD project would utilize only eighty-seven percent (87%) of the 5.0 FAR allowed under the existing C-3-B zoning and that the PUD is needed only for height relief. OP also notes that both the Applicant's preliminary transportation analysis and the DDOT report, "conclude[d] that the anticipated traffic impacts under the PUD would be less than under a matter-of-right scenario." OP recommended that traffic mitigation measures be included in second-stage applications. The report favorably noted the public benefits and amenities of the retail and residential uses, the reopened 4th Street, the maintenance by the Applicant of adjacent federal parkland, the public plaza, and improved urban design. The creation of a Town Center, the proposed retail establishments, and the housing component were emphasized as important public benefits. The report included specific recommended conditions for inclusion in the Zoning Commission order if approval is granted.

Report of the D.C. Department of Transportation

31. By report dated March 11, 2003, and by testimony at the public hearing, DDOT provided its support for the PUD. DDOT recommended that 4th Street be reconstructed as a roadway rather than a pedestrian-only facility. However, their report recommends several mechanisms to maintain a heavy pedestrian emphasis within the right of way of the proposed new roadway. These include parallel parking, only two (2) travel lanes and another, central lane for left turns into the project, and raised pedestrian crosswalks at some locations. Other transportation improvements were recommended to help mitigate future traffic impacts. DDOT indicated that it intended to continue to work with the Applicant and the surrounding community to formulate more detailed recommendations as the PUD undergoes further clarification and design.

Reports of Other Agencies

32. The Department of Housing and Community Development ("DHCD"), by report dated March 18, 2003, recommended approval of the Application. DHCD stated that the re-opening of 4th Street, "is one of the most important aspects of the Redevelopment,"

because it will facilitate traffic flow, create better access to the retail uses along 4th Street, and help alleviate existing traffic congestion on 3rd and 6th Streets, S.W. The report favored the Applicant's proposal to retain the existing pharmacy, grocery store, and bank during the construction period, and recommended that this should be a condition of PUD approval. DHCD also strongly supported the amount of parking to be provided, the partial rezoning to C-3-C, the inclusion of a substantial residential component, the landscaped plaza, and the urban design plan.

Report of Advisory Neighborhood Commission 6D

33. By letter dated March 31, 2003, and by testimony at the public hearing, ANC 6D recommended denial of the application, citing a number of areas of concern. In summary, these include:
- a. The proposed 110-foot-high buildings would, "dwarf neighboring structures, significantly blocking light, vistas and open space, and creating a 'canyon effect';"
 - b. The doubling of the quantity of office space on the site will not support necessary neighborhood-serving retail uses but only uses serving office workers; will eliminate the existing, convenient surface parking on the site; and will not create sufficiently wide sidewalks for pedestrians except in the public plaza;
 - c. The proposed towers at the southeast and southwest corners of the PUD site should be set back farther from M Street so as to allow more green space and protect vistas from the Metrorail station entrance toward the Southwest waterfront;
 - d. The proposed reopening of 4th Street to vehicular traffic will not create sufficient benefits to offset the conflicts between vehicles and pedestrians. The City must commit to carry out the traffic mitigation measures from the DDOT traffic study;
 - e. The redeveloped Mall could be accomplished under matter-of-right zoning. The only significant public amenity is the public plaza;
 - f. The retail and residential uses will be delayed too much by the need to lease office space first, and the project will take too long to be built. The residential component should be larger; and
 - g. The PUD should also include hiring and job training for neighborhood residents, a citizen panel to help select retailers, and a community meeting room.

Testimony in Support

34. Numerous residents in the vicinity of the PUD project sent letters and testified in support of the project complaining about existing blighted and unsafe conditions at the Mall, as well as inadequate retail and community services. They expressed support for a wholesale redevelopment of the site. Many also expressed support for the

reestablishment of 4th Street through the site, the project design, proposed housing, and planned retail component.

Testimony in Opposition

35. Several residents in the vicinity expressed opposition to various aspects of the proposed PUD, including the new 4th Street cut-through and the height and setbacks along M Street. Some suggested that the proposed retail and housing components be increased.

Recommendation of the National Capital Planning Commission ("NCPC")

36. The proposed PUD and map amendment were referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. The NCPC considered this matter at its July 10, 2003, meeting and approved the staff recommendation, which states in part, "The Commission concludes that the proposed First-Stage PUD and related rezoning . . . to allow for the mixed use redevelopment of Waterside Mall . . . would not adversely affect the identified federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital."

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides 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.
2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a two-stage PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. 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 attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The PUD is within the applicable height and bulk standards of the Zoning Regulations. The height and density will not cause an adverse effect on nearby properties and will, in fact, include less density on the PUD Site than is permitted as a matter-of-right. The proposed mixed-use development is appropriate on this site, which is well served by a major arterial street, bus lines and an on-site Metrorail station.
6. First-stage approval of this PUD and the existing C-3-B and proposed C-3-C zoning is not inconsistent with the Comprehensive Plan, including the designation of the site for Medium-Density Commercial development in the Generalized Land Use Map of the Land Use Element.
7. The Commission is required under D.C. Code 2001 Ed. § 1-309.10(d) to give great weight to the affected ANC's recommendation. The Commission acknowledges and responds to the issues stated by ANC 6D in its formal submission dated March 31, 2003, as follows:
 - a. As to the statement that the proposed 110-foot-high buildings will create a canyon effect; dwarf neighboring structures; and block light, air, and open spaces, the Commission is persuaded by the Applicant's and OP's testimony. That testimony argued that the nearest residential buildings are located to the south of the PUD Site and therefore will experience no loss of sunlight; that the ample width of M Street and the existence of some ninety (90) foot high buildings on the south side of this street mitigates any extreme difference in height or any canyon effect. The Commission is also persuaded by the testimony and graphic illustrations by the Applicant's architect that the relationship of the project's scale to its surroundings is sound, and that there are no adverse effects on views from the Metrorail station entrance toward the waterfront;
 - b. The Commission finds that the quantity of office space is not excessive, given the costs of redeveloping and readapting an obsolete building and the existence of rapid transit service and major arterial streets and bus service to accommodate commuter traffic. In addition, the Comprehensive Plan designates the site for commercial development of this magnitude, as reflected by the underlying zoning;
 - c. The ANC would prefer more retail space and is concerned that the presence of numerous office workers will result in retail uses more suitable for office workers than the surrounding neighborhood. The Commission notes that the Safeway lease is valid until 2020 and that the Applicant must provide at least 75,000 square feet of retail uses. The Applicant has stated in the record of this case that retail establishments will be typical strip center tenants: restaurants, coffee shops, flower shops, video store, grocery store, drug store, bank, electronic store, bakery, repair shop, dry cleaners, and the like;

- d. The Commission disagrees with the ANC's statement that amenities and public benefits are inadequate. The public benefits and amenities as set forth under Findings of Fact in this Order are appropriate to the degree of zoning flexibility being requested;
 - e. The report supported the residential component of the PUD and OP's recommendation for assuring the timing of residential development. The Zoning Commission concurs; and
 - f. The decision to reopen 4th Street rests with the Mayor of the District of Columbia, not the Commission. D.C. Official Code § 9-203.01 (2001). This order does not authorize the street to be reopened, but considered the proposed reopening as part of its analysis of the merits and impact of this project. As a result of that analysis, the Commission concurs with the ANC recommendation that the District commit itself to the traffic mitigation measures recommended in the DDOT report. The Commission has also fashioned a condition to require that each second stage PUD application include the traffic mitigation measures recommended in the DDOT study.
8. First-stage approval of the PUD Application will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
 9. The Application is subject to compliance with D.C. Law 2-38, as amended, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission orders **APPROVAL** of the Applications for first-stage review of a Planned Unit Development and for a Zoning Map amendment from C-3-B to C-3-C for indicated parts of the property located at 401 M Street, S.W., specifically Lot 60 in Square 499 and Lot 88 in Square 542. This approval is subject to the following guidelines, conditions, and standards:

1. The final PUD design shall be developed in accordance with the site plan and preliminary architectural and landscape plans submitted as Exhibits 5 and 17 in the record of this case, and as modified by the guidelines, conditions, and standards of this order.
2. The Project shall be developed with office, residential, and retail uses, together with public spaces, generally as depicted in the preliminary plans submitted in this first-stage application. A minimum of 75,000 square feet of retail space shall be included in the project.
3. The maximum building height in the Project shall be 112 feet and the maximum aggregate floor area ratio shall be 4.33, comprised of 3.64 FAR devoted to office and

retail uses and 0.69 FAR devoted to residential apartments. No fewer than 1,335 parking spaces shall be provided.

4. The four (4) corners of the PUD Site shall be zoned C-3-C, encompassing a land area of 222,429 square feet as depicted in Sheet 20 of Exhibit 17 of the record.
5. The Applicant is authorized to proceed with matter-of-right phases of this multi-phase project for those buildings that comply with the height, bulk, and use provisions of the existing C-3-B District, as set forth generally above under Finding of Fact Number 26 (a). The remaining phases of development shall be processed in accordance with Condition 6.
6.
 - a. This first-stage PUD approval by the Zoning Commission shall be valid for a period of three (3) years from the effective date of this Order. Within such time, the Applicant must file a second-stage PUD application for at least one (1) of the buildings described in Finding of Fact 26(b), (c), or (d), in order for this first-stage approval to remain in effect;
 - b. No later than five (5) years after the effective date of this Order, the Applicant shall apply for a second, second-stage PUD for all the buildings described in Finding of Fact 26(b) and (c) that were not included, in the first second-stage PUD, and may also include either or both of the buildings described in Finding of Fact 26(d); and
 - c. If not included in the second second-stage PUD application, a third second-stage application for one or both of the buildings described in Finding of Fact 26(d) shall be made no later than seventeen (17) years after the effective date of this Order, but only if the Applicant has complied with (a) and (b) of this condition.

The Applicant shall submit with each second-stage application detailed plans and elevations indicating the design treatment of the proposed PUD project, including but not limited to building and landscape materials, color, architectural and landscape details, and zoning data as required for a second-stage PUD application.

7. The Project shall include both residential and nonresidential components. In order to ensure that the proposed residential space is developed prior to the completion of all the nonresidential project components, the Applicant has agreed to be bound by the following condition, which shall be included in each subsequent Zoning Commission Order granting a second-stage PUD approval:

The applicant may not obtain a certificate of occupancy for more than 1.57 million square feet of new and renovated office and retail space (whether matter-of-right or PUD approved) until it has obtained a certificate of occupancy for at least 200,000 square feet of residential space for the Northwest Residential Towers. After a certificate of occupancy for this minimum amount of residential use is issued, the applicant may obtain a certificate of occupancy for an additional 250,000 square feet of new and

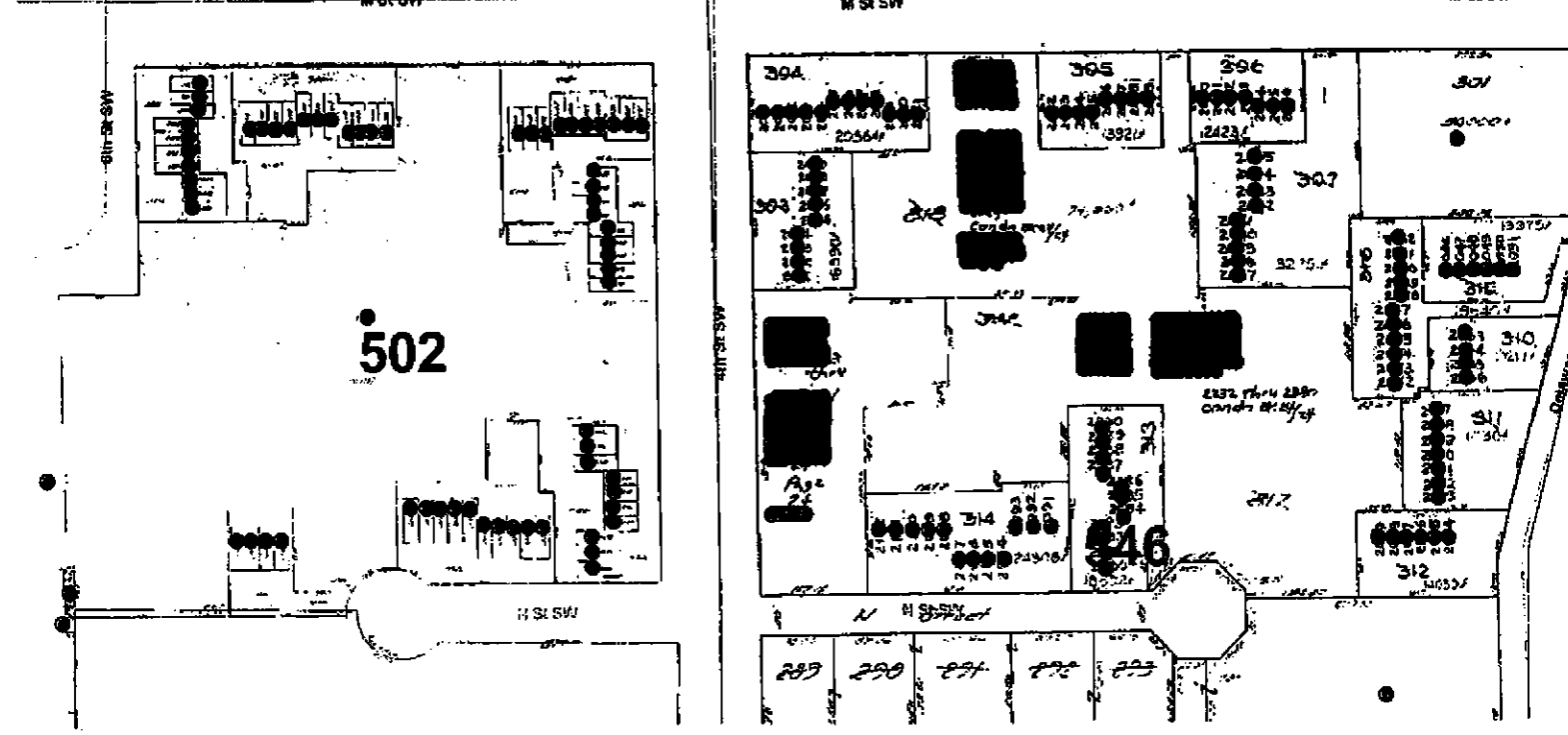
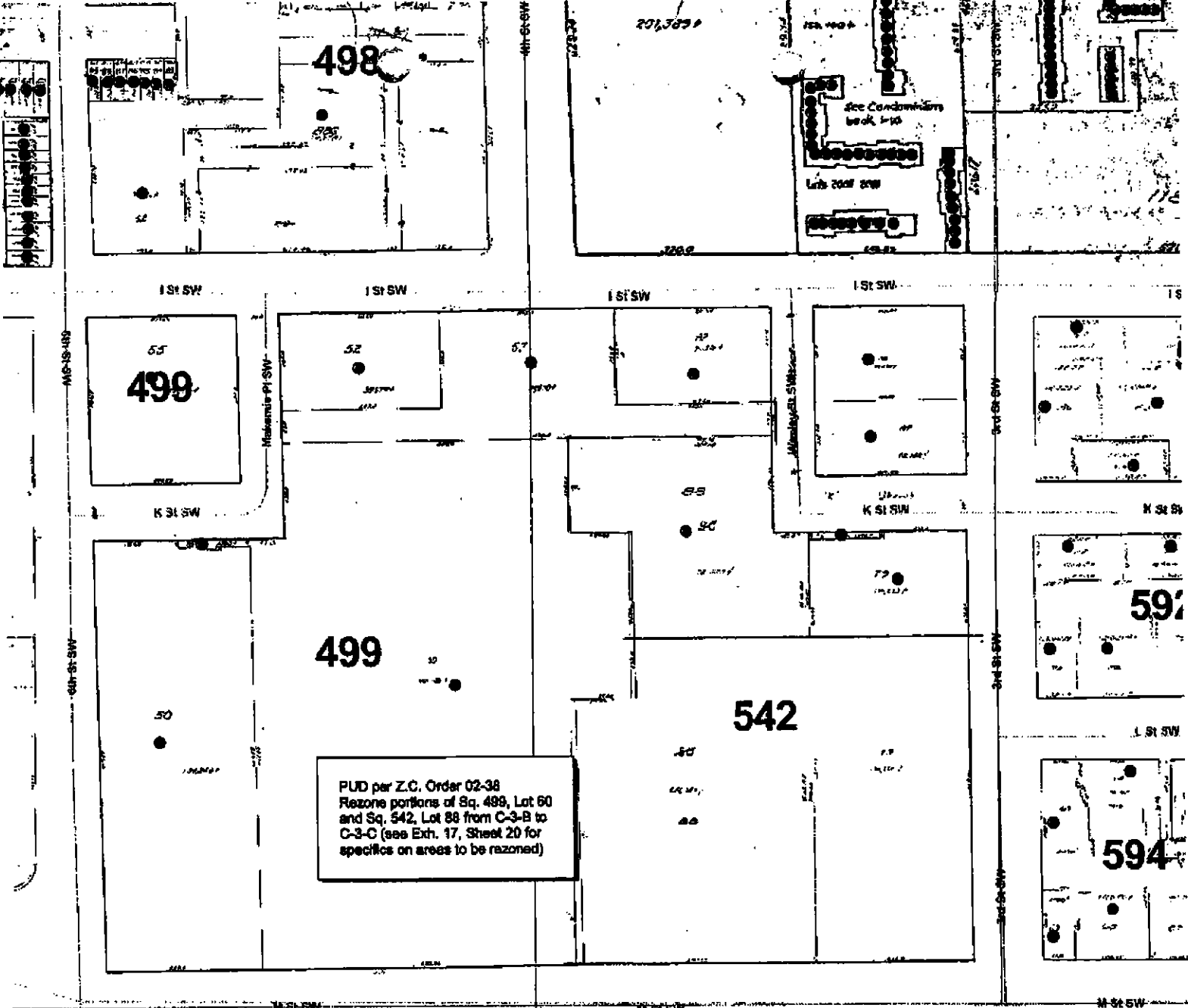
renovated office and retail space. Thereafter, the applicant may not obtain a certificate of occupancy for any additional non-residential space (whether matter-of-right or PUD approved), until it has obtained a certificate of occupancy for an amount of residential space for the Northwest Residential Towers so as to bring the amount of occupied residential space in that building to at least 400,000 square feet.

However, nothing in this condition is intended to limit the Commission, as part of the first or second second-stage PUD order that approves the residential use, from specifying the timing of the residential and nonresidential uses that are approved in that order, as permitted in 11 DCMR § 2408.7.

8. The residential portion of the Project shall have a direct pedestrian connection to the reopened 4th Street.
9. The Project shall designate a minimum of 75,000 square feet of gross floor area for retail and service uses. Such floor area shall be located at the ground floor level along the entirety of the M Street frontage and on both sides of the reopened 4th Street from M Street to the northern property boundary, as generally depicted in the revised Sheet 15 of the PUD plans dated January 22, 2003. As part of the 75,000-square-foot requirement, so long as the neighborhood, (as shown on the Neighborhood Service Map set forth in Exhibit 121, is not served by a full-service grocery store at least 30,000 square feet in size, the Applicant will set aside a minimum of 30,000 square feet for a grocery store in the Project. The Applicant will use reasonable efforts to lease the space for grocery store use.
10. The Applicant shall construct a 25,000-square-foot landscaped public plaza around the escalator of the Metrorail station in general conformance with Exhibit 17.
11. The Applicant shall assume the responsibility to maintain the former federal land north of the PUD boundary (Square 499, Lot 57) as a public park amenity that remains after construction of the reopened 4th Street, S.W. The Applicant's obligation to maintain this parkland shall begin with the opening of 4th Street through the PUD Site and shall continue for the life of the PUD project.
12. Second-stage PUD applications shall reflect traffic mitigation measures recommended in the "4th Street SW Transportation Study" prepared by the District of Columbia Department of Transportation by DMJM+Harris, Inc., dated January 2003.
13. The Applicant shall execute the following agreements prior to the adoption of the final Zoning Commission Order of the first second-state PUD in this case:
 - (a) A First-Source Employment Agreement with the Department of Employment Services; and

- (b) A Memorandum of Understanding with the District of Columbia Local Business Opportunity Commission ("LBOC") to ensure minority vendor participation.
14. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, 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.
15. On June 9, 2003, the Zoning Commission approved the applications by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, James H. Hannaham, and Peter G. May approved).
16. This order was adopted by the Zoning Commission at its public meeting held on July 31, 2003, by a vote of 5-0-0 (John G. Parsons, Carol J. Mitten, Anthony J. Hood, James H. Hannaham, and Peter G. May adopted).

In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register, that is, on _____.



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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance

From: Sharon S. Schellin ^{S3}
Secretary to the Zoning Commission

Date: January 15, 2008

Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on January 25, 2008:

1. Z.C. Notice of Special Public Meetings (January 28th & 31st);
2. Z.C. Notice of Public Hearing (Case No. 04-14);
3. Z.C. Order No. 02-38A;
4. Z.C. Order No. 05-223A;
5. Z.C. Order No. 06-30; and
6. Z.C. Order No. 07-07.

Attachment

ZONING COMMISSION
District of Columbia
CASE NO. 02-38A
EXHIBIT NO. 105

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 02-38A**

Z.C Case No. 02-38A

**(Modification to a First-Stage Planned Unit Development, a Second-Stage Planned Unit
Development Application and a Related Zoning Map Amendment
for Waterfront Associates, LLC)**

November 19, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held public hearings on June 7, 2007, June 14, 2007, and September 17, 2007, to consider applications from Waterfront Associates, LLC, on behalf of and in conjunction with RLA Revitalization Corporation ("RLARC"), the owner of the property (collectively, the "Applicant"), in support of the applications to the Commission for the District of Columbia for a modification to a first-stage Planned Unit Development ("First-Stage PUD") for property located at 401 M Street, S.W. (Lot 89, Square 542) (the "Site"), second-stage review and approval of a Planned Unit Development ("PUD") for the central portion of the Site, and a change to the District of Columbia Zoning Map under Chapter 24 of the District of Columbia Zoning Regulations, 11 DCMR (February 2003), as amended ("Zoning Regulations") (collectively, the "Applications"). The Commission considered the Applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the Applications.

FINDINGS OF FACT

Applications, Parties, and Hearings

1. On November 15, 2006, the Applicant filed the Applications for a modification to the First-Stage PUD for the Site, second-stage review and approval of a PUD for the central portion of the Site, and a related zoning map amendment of the Site to rezone the Site to C-3-C (the "PUD Submission"). The PUD Submission is in the record at Exhibit 4 (PUD Submission Statement), Exhibit 5 (First Stage Plans), and Exhibit 6 (Second Stage Plans).
2. At its February 12, 2007, public meeting, the Commission set the case for hearing.
3. The Applicant filed materials in its Prehearing Submission on March 30, 2007 (the "Preheating Submission") in the record at Exhibit 15. The Applicant then filed additional

materials in its Supplemental Prehearing Submission on May 18, 2007, along with fully re-issued plans and elevations (the "Supplemental Prehearing Submission"), in the record at Exhibit 24A (Supplemental Prehearing Statement), in the record at Exhibit 25 (Updated First Stage Plans), and in the record at Exhibit 26 (Updated Second Stage Plans).

4. A description of the proposed development and the Notice of Public hearing were published in the *D.C. Register* on April 20, 2007. The Notice of Public Hearing was mailed to all property owners within 200 feet of the Site as well as to Advisory Neighborhood Commission ("ANC") 6D.
5. The Commission held public hearings on the Applications on June 7, 2007, June 14, 2007, and September 17, 2007.
6. The Commission determined the parties to the case at the June 7, 2007 public hearing. Parties in this case included the following: the Applicant; ANC 6D, the ANC within which the Site is located; Tiber Island Cooperative Homes, Inc. ("Tiber Island"); and Carrollsburg Square Condominium Association ("Carrollsburg Square") (collectively, the "Parties"). Paul Greenberg and Henry Baker were not granted party status in their individual capacities, instead being named as the representatives for the Parties above respectively. Although the requests for party status from Tiber Island and Carrollsburg Square were framed as parties in opposition, the Chairman ultimately determined that the Parties were in support despite specific issues raised by each of the Parties.
7. The Applicant presented the following witnesses: Mitchell Schear and Deborah Ratner-Salzberg representing the Applicant; Shalom Baranes, architect with the firm of Shalom Baranes Associates; Chad Baird, traffic consultant with Gorove/Slade Associates; and Steven Sher, Land Planner with Holland & Knight. Mr. Schear and Ms. Ratner-Salzberg were accepted as experts in real estate and development. Messrs. Baranes, Baird, and Sher were accepted as experts in their respective fields. In addition, the following witnesses were available for questions and were accepted as experts in their respective fields: Tom Martens, Economics Research Associates, and Iris Amdur, GreenShape LLC.
8. The Office of Planning ("OP") testified in support of the project. The District Department of Transportation ("DDOT") testified generally in support of the project but raised several issues in its report, which are discussed below in Findings 121 through 136.
9. ANC 6D was represented Max Skolnick. His testimony reflected those issues set forth in the ANC 6D letter, discussed in Findings 137 through 138. Additional issues were raised, discussed in Finding 139.

10. Tiber Island presented one witness, Paul Greenberg, the president of Tiber Island. According to its submissions and testimony, Tiber Island supports the redevelopment of the Site with new high-density development. Tiber Island objected to the following aspects of the development: (1) setback of the buildings along M Street; (2) height and width of the buildings fronting on M Street; (3) projecting bay on the East 4th Street Office Building; (4) lighting for the office buildings along M Street being compatible with the residential lighting patterns for the area; and (5) compatibility of the design of the new buildings with the existing character of the neighborhood.
11. Carrollsburg Square presented one witness, Henry Baker, the President of the Carrollsburg Square Board. According to its submissions and testimony, Carrollsburg Square generally supports the redevelopment of the Site and revitalization of the project. Carrollsburg Square cited the following primary concerns: (1) setback of the buildings along M Street; (2) the M Street façade; (3) insufficient parking associated with the residential aspect of the project; and (4) curb and median cuts on M Street.
12. Many persons and organizations testified and wrote letters in support of the modified project, including Neil Albert, the Deputy Mayor for Planning and Economic Development; RLA Revitalization Corporation; WMATA; Marina View Towers, property owner immediately to the east of the Site; Town Center Apartments, the property owner immediately to the west of the Site; the Arena Stage; and Southeastern University.
13. Several persons testified in opposition to the modified project. The primary concerns included the setback of the M Street façade, the height and openness of the M Street Buildings, and the impact on the light and air of properties across M Street.
14. On June 22, 2007, Tiber Island filed an objection letter asserting that it was not given the right to cross examine the Applicant's rebuttal witness and requesting that it be given additional time to submit proposed findings of fact and conclusions of law. On July 3, 2007, Carrollsburg Square filed a similar letter. ANC 6D filed a letter supporting Tiber Island's objection.
15. On June 27, 2007, the Applicant responded to the objection letter, stating that Tiber Island waived its right to cross examine by not requesting the opportunity to cross-examine at the hearing and, in any event, was not prejudiced by the lack of an opportunity for cross examination because the issues in question will be presented as part of a second-stage application, for which Tiber Island can fully participate.
16. On July 9, 2007, the Applicant submitted a letter restating its previous response but agreeing in the spirit of cooperation to present the rebuttal witness for cross-examination.

- b. Line 4th Street and the M Street frontage with ground floor retail uses visible from the outside and accessible to the neighborhood;
- c. In place of a single, monolithic low-rise structure, create four identifiable buildings with their own recognizable entrances;
- d. Create a more urban development pattern by constructing buildings to the 4th and M Street frontages, thereby visually defining the adjacent streets and public spaces; and
- e. Create a mixed-use town center, with office workers providing a significant daytime population, the apartments bringing full-time residents and evening activity to the Site, and both of these serving as customers of the retail uses, which will also serve the surrounding neighborhood. The public plaza surrounding the entrance to the Metro Station completes the town center concept.

Proposed Modified First-Stage PUD Project

- 35. The proposed modified First-Stage PUD project ("Modified Project") includes the development of eight buildings including residential, office, and ground floor retail uses. The Modified Project includes significant open spaces as well as the re-opening of the 4th Street right-of-way.
- 36. The Modified Project includes approximately 2,526,500 square feet of gross floor area, as was approved in the First-Stage PUD. The Modified Project incorporates approximately 1,296,895 square feet of gross floor area devoted to office and retail uses and approximately 1,229,605 square feet of gross floor area devoted to residential uses, with the flexibility to convert one residential building to office use, as is discussed in Finding 42(a).
- 37. The Modified Project includes two residential towers at the north end of the Site, with maximum heights of 114 feet (referenced as the Northwest Building and Northeast Building). The existing high-rise towers (referenced as the West Residential Tower and the East Residential Tower) will be converted to residential use, maintaining a height of 130 feet. In the center of the Modified Project, two new commercial structures will be constructed, each with a height of 94 feet and flanking the newly re-opened 4th Street (referenced as the West 4th Street Office Building and the East 4th Street Office Building). On the south end of the Site, there will be two new commercial buildings fronting M Street. These buildings were initially proposed to have maximum heights of 114 feet (referenced as the West M Street Building and the East M Street Building); however, upon further study of the massing, the Applicant proposed, and the Parties agreed, that the maximum height of the West M Street and East M Street Buildings should be 127 feet, with greater setbacks incorporated upon the second floor level.

38. The Modified Project proposes a minimum of 1,087 parking spaces, and requests flexibility to increase this number based on market conditions, as was requested and granted in the approved First-Stage PUD.
39. Carrollsburg Square raised concerns regarding the number of parking spaces being insufficient to accommodate the demand of the Modified Project. Alternatively, DDOT raised concerns regarding the Applicant having the flexibility to increase the number of parking spaces without approval.
40. The Commission finds that the request for flexibility for increased parking spaces, so long as each increase is included in future second-stage applications, will address the concerns raised by community residents while at the same time will provide DDOT with sufficient opportunity to review impacts of the same.

Consistency of Proposed Modified First-Stage PUD with the Approved First-Stage PUD

41. The Modified Project is consistent with the approved First-Stage PUD as follows:
 - a. ***Overall Density.*** The overall density of the Modified Project is maintained at approximately 2,526,500 square feet of gross floor area, or 4.33 FAR based on the Land Area (calculated using the existing record lot, which includes the area that will comprise a re-opened 4th Street).
 - b. ***Building Height of the "Four Corners".*** The height of the buildings on each of the four corners has been modified – increasing from 112 feet to 114 feet for the Northwest and Northeast Buildings in order to accommodate increased retail ceiling heights on the ground level from 12 feet to 14 feet and increasing from 112 feet to 127 feet for the West M Street and East M Street Buildings to accommodate the increased retail ceiling heights on the ground level from 12 feet to 14 feet and the increased setbacks above the second floor.
 - c. ***Re-Opening of 4th Street.*** The Modified Project continues to include the re-opening of 4th Street through the Site, which will redefine the urban fabric of the area, create a vibrant neighborhood in numerous ways, and improve traffic circulation.
 - d. ***Public Benefits and Project Amenities.*** All of the public benefits and project amenities approved in the First-Stage PUD are maintained in the Modified Project; however, the Applicant has added additional amenities to the Modified Project, as set forth in Findings 90 and 91.

Modifications to First-Stage PUD Approval

42. The Modified Project modifies the approved First-Stage PUD in the following ways:
- a. ***Increase in Residential Density.*** The total residential density will increase from a minimum of 400,000 square feet of gross floor area to a minimum of 800,000 square feet of gross floor area. If the Northwest Building is maintained for residential use, the total residential density will be up to approximately 1,200,000 square feet of gross floor area. The increased residential density results from the conversion of the East and West Towers from office use in the approved First-Stage PUD to residential use as well as the conversion of the Northeast Building from office to residential use.
 - b. ***Timing for Residential Density.*** The First-Stage PUD required that no more than 1.57 million square feet of gross floor area devoted to office use be constructed until at least 200,000 square feet of residential gross floor area was constructed. In the Modified Project, a minimum of 400,000 square feet of gross floor area of residential use will be constructed in the first phase of development.
 - c. ***Retail Commitment.*** The Applicant has increased its commitment for retail space from a minimum of 75,000 square feet to a minimum of 110,000 square feet. The Applicant has also strengthened its commitment to providing a grocery store, as detailed in Finding 91(c)(2).
 - d. ***Public and Private Open Spaces.*** The proposed public and private open spaces in the Modified Project have significantly increased. The proposed lot occupancy has been reduced by approximately 40,000 square feet from that approved as a result of the increased height for the East and West 4th Street Office Buildings, with the Modified Project having a maximum lot occupancy of 63% based on the Land Area. The First-Stage PUD provided for a maximum lot occupancy of between 60% and 70%. In addition, the Modified Project includes more than double the amount of public open space adjacent to the Metro with the addition of two public plazas that traverse the Site, extending from 4th Street to the proposed entrances of the East and West Residential Towers. The total proposed public space includes more than 50,000 square feet as compared to the First-Stage PUD, which incorporated a minimum of 25,000 square feet.
 - e. ***Building Height of West and East 4th Street Office Buildings.*** The heights of the proposed West and East 4th Street Office Buildings have increased from 79 feet (6 stories with 12-foot-retail ceilings) to 94 feet (8 stories with 14-foot-retail ceilings). The two stories of additional height are necessary to increase open space and reallocate approximately 70,000 square feet of commercial use with the massing changes of the Northeast Building.

- f. *Access to West and East Residential Towers.* The primary entrances to the residential East and West Residential Towers are proposed to be from 4th Street via private drives through the east and west courtyards in lieu of access from east and west private drives adjacent to interior lot lines, which was approved in the First-Stage PUD. Moving the entrances to the façades that face the interior of the Site will increase pedestrian activity in the center of the Site along 4th Street and will improve the viability of retail. Eliminating the two entry courtyards of the First-Stage PUD adjacent to the East and West M Street Buildings also allows for more continuous retail frontage along M Street, thereby improving its viability as well.
 - g. *Above-Grade Parking Structure.* The existing above-grade parking structure will be demolished under the new plan for the Modified Project, with a residential courtyard to be provided at-grade above a parking structure below
43. The Commission finds that all of the changes reflected in the Modified Project serve to improve and enhance the overall development for the benefit of the Southwest community and the District as a whole.

M Street Set-Back, Height and Bulk

44. As part of the Modified Project, the Applicant proposes two office buildings fronting on M Street with ground floor retail. The East M Street Building includes approximately 339,000 square feet of gross floor area, and the West M Street Building includes approximately 322,700 square feet of gross floor area
45. In the First-Stage PUD, the buildings fronting on M Street included a setback from the face of the curb to the face of the building of approximately 22 feet. After working with OP and the adjacent property owner with its redevelopment of Marina View Towers, this setback has been modified to be 18 feet, 9 inches from the face of the curb to the face of the building. The Applicant testified that the continuous retail frontage along M Street will help make the retail more successful, especially in light of the fact that there is no retail on the opposite side of M Street. Furthermore, as a result of the relocation of the buildings three feet, three inches to the south, the public plazas on the north side of these buildings increased by the same dimension.
46. ANC 6D, Tiber Island and Carrollsburg Square, as well as several individuals testifying at the hearing, expressed concern that the proposed setback was not sufficient.
47. OP did not object to the proposed width of sidewalk, noting that the width was adequate for street retail and landscaping. OP also testified that the proposed width contributes to the other public places that are located in the interior of the Modified Project and are publicly accessible.

48. The Commission finds that additional setback is not necessary and that the additional setback would impair the urban fabric along M Street. The Commission further finds that the additional three feet of setback would not provide a benefit to pedestrians but would potentially have adverse impacts for the retail proposed along M Street.
49. ANC 6D, Tiber Island, and Carrollsburg Square, including others who testified in opposition to the Modified Project, also argued that the M Street façade of the Modified Project was monolithic and would adversely impact the character of that area. These groups also suggested that the M Street buildings be made taller and thinner in an effort to minimize the horizontal visual impact.
50. Mr. Baranes testified that the impact of the buildings would be negligible on the nearby properties because no shadows would be cast due to the north facing alignment of the project. Furthermore, the M Street right-of-way is exceptionally wide in this area at 120 feet in width, which is comparable to the larger boulevards throughout the District.
51. The Applicant also presented testimony in rebuttal that it would review and study the options for increasing the heights of the M Street buildings while thinning the buildings starting above the first or second level. To the extent that such revision is feasible, the Applicant would present such revised designs as part of the second-stage application(s) for those two buildings.
52. The Applicant subsequently submitted a proposed alternative plan for the M Street buildings, which incorporates a maximum height of 127 feet and setbacks of approximately 45 feet above the second level. The density of the M Street buildings does not change. Based on the record, the Applicant worked with the Parties, who each supported the proposed alternative by letters in the record. OP indicated its support for the proposed alternative at the September 17, 2007 public hearing.
53. The Commission finds that there will be no adverse impact to the amount of light, air, or open space available to neighboring properties as a result of the height, bulk and location of the East and West M Street Buildings. The Commission finds that the large right-of-way combined with the setback of the Modified Project from its property line and the setback of the Tiber Island's buildings on the southern side of M Street provide a more than appropriate visual corridor along M Street.
54. The Commission finds that the proposed alternative with maximum heights of 127 feet and setbacks of approximately 45 feet, as shown on the plan in the record at Exhibit 93, addresses the community's concern. The proposed alternative with additional height and greater setbacks is appropriate for this location, based on its proximity to the Metrorail station and location within the Central Employment Area.

Second-Stage PUD

55. The Applications include a request for second-stage approval of the four buildings through the center of the Site ("Second-Stage Site"), which involves the four buildings and their adjacent open spaces which span the middle third of the Site (the "Second-Stage Project"). The East and West 4th Street Office Buildings will flank the east and west sides of 4th Street and will include ground floor retail. Beyond these buildings, at the eastern and western boundaries of the Site, will be two existing twelve-story office buildings which will be renovated for residential use, known as the East and West Residential Towers. A continuous open space with an east/west orientation will connect the residential buildings' entrances to 4th Street. These spaces will provide pedestrian access across the center of the Site directly to the plaza surrounding the Metro station entrance. These spaces will be landscaped and activated with ground floor retail lining the base of each building along the newly re-opened 4th Street.

East and West 4th Street Office Buildings

56. The East and West 4th Street Office Buildings each have a maximum height of 94 feet, with eight stories. The East 4th Street Office Building is shaped to reflect the original 4th Street right-of-way alignment. A six-story, elongated bay which is a cantilevered extension of the aluminum and glass window system mirrors the angle right-of-way.
57. ANC 6D and Tiber Island raised concerns related to the design of this bay and its impact on the view corridors from the north and the south.
58. The Applicant responded that the construction of the Metro station in the original 4th Street right-of-way requires a curved 4th Street alignment. The proposed design allows the primary structure of the East 4th Street Office Building to respect the original 4th Street alignment while the "projecting" bay reflects the current alignment. Mr. Baranes, the Applicant's expert in architecture, testified that the impact on view corridors would be minimal.
59. The Commission finds that the design is an appropriate way of responding to an existing condition that cannot be modified (i.e., the location of the Metro station and the requirement that the 4th Street alignment). The Commission finds that the views will not be adversely impacted by the incorporation of this bay.
60. The West 4th Street Office Building establishes the west street-wall with an eight-story volume. A centrally-located indented bay, rising the entire height of the building, reduces the building's apparent length and marks the office entrance. A lower six-story bay wraps the western and southern faces of the building.

61. Two façade-types are used to define the building elevations. West and south facing façades are fully glazed ceiling-to-floor with banding frame-lines clad in metal panels. Projecting bris-soleil running in continuous horizontal bands protect the glazing from the afternoon sun and terminate in a vertical band near the center of the building, reducing the building's apparent length and marking the office entrance below. Similar shading devices are common to the neighborhood. East and north facing façades are glazed in horizontal bands offset between spandrels of modular terra cotta, with an alternate for roman brick cladding. Viewed from 4th Street, the buildings present both façade types in opposition, creating an enhanced sense of orientation and architectural complexity.

East and West Residential Towers

62. The existing towers on the Second-Stage Site will be renovated and re-fenestrated in order to convert them from office buildings into residential buildings. The massing of the existing structures will remain largely unchanged other than the addition of a mechanical penthouse, shallow glass bays, and corner balconies. The West Residential Tower will feature a two-story infill structure within the building footprint along its eastern face to replace the void formed by the removal of an adjacent above-grade parking structure that extends under the building footprint. Along the East Residential Tower's eastern face, a similar two-story infill structure is provided. Both the East and West Residential Tower are linked internally to one-story loading structures on their northern faces.
63. The façades are re-fenestrated with insulating glass and operable windows to accommodate residential use. Glazing is set in aluminum frames with metal clad horizontal and vertical bands defining floor slabs and unit partitions. Horizontal bands articulate the façade in three-story increments. Modern architectural frames wrap the mid-section of the outward facing façades. These elements reflect the proportion and character of the four adjacent I.M. Pei-designed towers. Facing inward, the façades are framed by a full-height bracket wall and roof projection that adds a formal northward orientation to the project's mid-section. The ends of the east and west plazas are marked with ten-story vertical bays added to each building's inner face.
64. The Commission questioned whether the East and West Residential Towers could accommodate roof-top terraces. The Applicant's expert testified at the hearing, and the Applicant submitted additional information in its Post-Hearing Submission (Exhibit 80) that given the dimensions of the existing building structure, the inability to stack or reconfigure the HVAC units and maintain equipment warranties, and the belief that tenants should be able to measure their own energy consumption, roof terraces are not feasible on the residential towers. The Commission is satisfied with the Applicant's response.

Retail Streetscape

65. The East and West 4th Street Office Buildings provide street-facing retail along the re-opened 4th Street. Retail extends deep into the East and West Plazas along the East and West 4th Street Office Buildings, taking full advantage of each building's corner location.
66. The retail façades have floor-to-ceiling heights of 14 feet and are expressed as one-story structures relieved from the upper levels by a shallow indented second floor. Copings, eaves, and extended canopies mark the upper horizon of the retail streetscape. Storefronts will maximize glazing heights and widths to allow for deep interior views. Canopies and solar-shading grilles enliven the Plaza-facing elevations.

4th Street Landscape, Metro, and East and West Plazas

67. The Metro Plaza is designed to direct pedestrian traffic efficiently with ample separation from vehicular traffic. Adequate sidewalk areas wrap the Metro escalator-way on all sides. The East Plaza private drive is set flush with the plaza paving to permit unimpeded pedestrian flow.
68. The Metro Plaza will be a center of activity. It incorporates two rows of shade trees, modular seating elements with internal lighting and water features. The vertical columns of water emerging from flush mounted jets in the pavement of the plaza will add visual and acoustic interest to the space. Lighting will be incorporated in the water feature to increase the effect at night. Additional lighting has been incorporated into the Metro Plaza, as indicated in Tab A of the Applicant's Post-Hearing Submission, in response to the Commission's request that this issue be further reviewed.
69. The East and West Plazas function as the development's mid-block cross-link in the best tradition of Southwest D.C. public space, including a crosswalk with additional safety measures, such as pedestrian signalization, "bulb outs," and special paving. Landscape elements further enhance the special character of these pedestrian-friendly open spaces. One-way private drives provide access to the residential towers.

Residential Courtyards

70. Amenities for the residential program are provided in the open spaces located between each pair of the residential and office buildings. The east courtyard is located above a one-story retail structure (or at-grade, pending development phasing). The landscaping in this courtyard has been designed to create two zones: a lawn and trees along the southern edge and sedum green roof panels along the northern end.

71. The west courtyard is located at-grade and consists of a series of more enclosed, intimate spaces. The spaces are more residential in nature, serving as "outdoor rooms" to serve the adjacent residential buildings.

Vehicular Access and Services

72. One-way private drives traversing the East and West Plazas provide vehicular access to the entrances of the East and West Residential Towers. When merged, vehicular traffic is separated from pedestrian flow with lines of low bollards along the East Plaza.
73. The entrances for the East and West 4th Street Office Buildings are accessed directly from 4th Street.
74. Loading access for the eastern and western halves of the Second-Stage Project is provided in covered, one-story structures adjacent to the East Residential Tower and the West Residential Tower.
75. A private drive will extend along the western edge of the Site and will function as a shared drive with the adjacent development of Marina View Towers. This shared private drive minimizes curb cuts on M Street and consolidates loading facilities for both projects.

Parking

76. The Second-Stage Project originally proposed a minimum number of parking spaces of 505 spaces, with the flexibility to increase the number of parking spaces. Community members raised concerns with the number of parking spaces being too few while DDOT requested that if the number of parking spaces was increased, such increase be permitted only after separate review and approval by the Board of Zoning Adjustment and relevant District agencies.
77. At the public hearing, the Applicant testified that the Second-Stage Project will provide a minimum of 505 parking spaces and a maximum of 745 parking spaces.

Compatibility of Design with Existing Southwest Neighborhood

78. ANC 6D and Tiber Island raised concerns about the compatibility of the design of the Second-Stage Project (and as a whole the Modified Project) with the existing character of Southwest.
79. Mr. Baranes testified that the Second-Stage Project has been designed sensitively to relate to and be compatible with the original architectural designs of the Southwest neighborhood. The Site has maintained significant open spaces in keeping with the character of Southwest, for both residents and the public alike.

80. Mr. Baranes further testified that the Second-Stage Project – and the Modified Project – have been designed in such a way to reflect the modernity that was an integral aspect of the original Southwest development. The buildings are one-of-a-kind and not found anywhere else in the District. Mr. Baranes also testified that the materials would complement the existing materials in Southwest while at the same time being unique and new.
81. The Commission finds that the Second-Stage Project has been designed to relate well with the existing character of Southwest while at the same time retaining a new and energized feeling for the town center.
82. The Commission finds that the Modified Project will create a sense of place and will achieve the goals of creating the town center.

Phasing of the Project

83. The Applicant requested that the Commission grant approval of the first-stage Modified Project for a period of five years from the effective date of the order granting the same. Within such time, the second-stage PUD application(s) for the Northwest Building, the West M Street Building, and the Northeast Building will be filed. These second-stage applications may be submitted individually, at the same time, or in any combination thereof.
84. The Applicant requested that the approval be granted for a longer period of time for the East M Street Building. In the event that the grocery store is constructed in the Second-Stage Project or that the existing grocery store surrenders its premises under the existing lease, the Applicant will file the stage-two PUD application for the East M Street Building within five years of the date that the existing grocery store vacates the Site, but no later than December 31, 2020.
85. The approval of the Second-Stage Project will be valid for a period of two years from the effective date of the order granting the same. Within this time, the Applicant shall file for a building permit. Construction shall begin with three years of the effective date of the order granting the Second-Stage Project.

Development Flexibility and Incentives

86. The Applicant requests the following areas of flexibility from the C-3-C standards:
 - a. Height in excess of matter-of-right for the Northeast Building, the Northwest Building, and the East and West M Street Buildings, but within that permitted for a PUD in the C-3-C District; and

- b. Roof structure relief to permit roof structures with walls of unequal height on the East and West 4th Street Office Buildings.
87. The Applicant initially requested flexibility from the residential recreation space requirements; however, since that time, the residential recreation space requirements have been officially repealed by Z. C. Order No. 05-02.
88. As part of the PUD, the Commission may grant such flexibility without the need for variance approval from the Board of Zoning Adjustment or compliance with the variance standards that might otherwise apply.

Public Benefits and Project Amenities

89. The Modified Project incorporates all of the public benefits and project amenities that were approved as part of the First-Stage PUD as follows:
- a. ***Reopening of 4th Street, S.W. (11 DCMR § 2403.9(i)).*** The Applicant continues to propose the re-opening of 4th Street through the center of the Site, and is currently negotiating the terms under which this area will be sold to the District. The re-opened 4th Street will consist of a 55-foot roadway within a 90-foot right-of-way for the portion of 4th Street within the confines of the Site. The re-opened 4th Street will redefine the urban fabric of the area and will create a vibrant neighborhood in many ways, including providing the opportunity for street-front retail, creating a passageway through the Site for pedestrians and vehicular traffic, opening the Site for development and benefiting the overall District transportation system. The re-establishment of 4th Street will knit the Southwest neighborhood back into the urban fabric of the District, with 4th Street ultimately running from P Street, S.W., through the Mall to Constitution Avenue, N.W.
 - b. ***Major Local Development Initiative (11 DCMR § 2403.9(i)).*** The Modified Project continues to be a major revitalization effort being undertaken with the close cooperation of the Applicant and the District to achieve important public objectives for the District and the Southwest neighborhood. The District's commitment to this revitalization effort has been confirmed by the lease agreement into which it has entered with the Applicant. Furthermore, the Modified Project will provide significant economic benefits to the District as compared to the existing situation.
 - c. ***Urban Design (11 DCMR § 2403.9(a)).*** The Modified Project will continue to accomplish major design objectives that were identified as an important part of the approved First-Stage PUD, such as superior streetscape design and pedestrian amenities, including wide sidewalks and public plaza, introduction of distinctive, vertical buildings that provide interest and variety along street frontages and are

construed to defined public spaces, and creating better connections for the neighborhood.

- d. ***Town Center (11 DCMR § 2403.9(i)).*** The Modified Project will continue to create an important town center surrounding the Metrorail station. In the First-Stage PUD, the Applicant committed to a minimum of 25,000 square feet in public open space. The Applicant now commits to a minimum of 50,000 square feet of open space suitably paved and landscaped for public use and enjoyment.
 - e. ***Maintenance of Public Park North of the Site (11 DCMR § 2403.9(h)).*** The Applicant has also agreed to maintain the land immediately to the north of the Site as a public park amenity after the construction by the District of the 4th Street extension through the park (the "Park Site"). The maintenance of the Park Site may include trash removal, lawn mowing, and planting, continuing for the life of the PUD, and will be governed by an agreement to be entered into between the Applicant and the appropriate District agency, after the Park Site and Park Street Extension have been transferred to the District from the Federal government.
 - f. ***Retail and Service Establishment (11 DCMR § 2403.9(h)).*** The Applicant originally committed to a minimum of 75,000 square feet of gross floor area devoted to retail use. As part of the Modified Project, the Applicant has committed to a minimum of 110,000 square feet, in addition to the additional retail commitments set forth in Finding No. 91(c).
90. The Modified Project includes a number of additional public and project amenities, including the following:
- a. ***Housing (§ 2403.9(f)).*** The Modified Project constitutes a new residential development adjacent to a Metrorail station and will provide at least 800,000 square feet of gross floor area devoted to residential space, with up to approximately 1,200,000 square feet of gross floor area of residential use if the Northwest Building is constructed as a residential building. A minimum of 400,000 square feet of gross floor area will be constructed as part of the first phase of development.
 - b. ***Affordable Housing (11 DCMR § 2403.9(f)).*** The Applicant commits to a minimum of 160,000 square feet of on-site affordable housing, with at least eight percent of the gross floor area within the East and West Residential Towers in the Second-Stage Project (which equals approximately 32,000 square feet) being available to households earning 80% of the Metropolitan Washington, D.C. Area Median Income ("AMI") or less. The affordable housing shall be evenly distributed between the East and West Residential Towers (a total of approximately 80,000 square feet of gross floor area) and the Northeast

Residential Building (approximately 80,000 square feet of gross floor area). The affordable housing units shall be approximately the same proportion of bedroom type and size as the market rate residential units and generally evenly distributed between and within the East and West Residential Towers, with the exception of the top two floors of each building. No affordable housing is required for the Northwest Building. All affordable housing units will be maintained as affordable for a period of twenty years, regardless of whether the units are rental or for sale.

- c. ***Retail and Service Establishments (11 DCMR § 2403.9(f))***. Not only has the Applicant increased its minimum retail commitment from 75,000 square feet to 110,000 square feet, it has also committed to the following additional retail commitments:

- (1) ***Use of Local and Small Businesses for Retail Space***: The Applicant will use best commercially reasonable efforts to provide opportunities for local and small businesses to occupy 12,500 square feet of retail space included within the minimum commitment. These local and small businesses will be certified by RLA Revitalization Corporation, as more specifically set forth in the Land Disposition and Development Agreement (“LDDA”).
- (2) ***Commitment to Grocery Store Use***: As part of the on-site retail, the Applicant has included space for a new 55,000 square foot grocery store within the Second-Stage Project. The Applicant has been working closely with the existing grocery store on the Site to renegotiate its lease, currently set to expire in December 2020, and to relocate the existing grocery store to the proposed new grocery store location on the east side of the Modified Project. The Applicant will continue to use best commercially reasonable efforts to complete such negotiations with the goal of executing a lease by August 18, 2007. If a lease is executed, the Applicant will maintain the space for the existing grocery store to operate while the new store is under construction.

In the event that the Applicant is unable to successfully negotiate a lease within the above timeframe, the Applicant agrees to:

- (a) Honor the existing grocery store lease expiring in 2020.
- (b) Reserve the proposed grocery location on the east side of the Modified Project and use best commercially reasonable efforts to lease such space to a full service grocery store (approximately 55,000 square feet) for a term commencing upon the earlier of the

termination of the existing grocery store lease or the vacation of such space for any other reason.

The Applicant further agrees to develop the Second-Stage Project in accordance with the plans set forth at Sheet 1.10 of the Second-Stage Plans (which shows the grocery store constructed) or Sheet 1.11 of the Second-Stage Plans (which shows the site plan option in the event that the existing grocery store is maintained in its current location). In the event that the Second-stage Project is constructed in accordance with Sheet 1.11 of the Second-Stage Plans, no additional construction between the East 4th Street Office Building and the East Residential Tower will be completed for any use other than the grocery store as shown on Sheet 1.10 unless the Applicant returns to the Zoning Commission for approval.

- (3) *Maintenance of Retail Uses During Construction*: In addition to the maintenance of the grocery use during the construction phase of the Second-Stage Project, the Applicant will maintain the operation of a bank and a drug store, which are the only other uses currently located at the Site
- d. *Sustainable Design Features (11 DCMR § 2403.9(h))*. The Applicant is committing to a variety of sustainable design features. For the East and West 4th Street Office Buildings, these sustainable design features include, among other items, storm water management, green roofs, and erosion and sedimentation control. A specific list of sustainable design features is set forth in Tab A to the Supplemental Prehearing Submission. The East and West Residential Towers will include sustainable design features such as erosion and sedimentation control and storm water management. A detailed list of these sustainable design features is set forth in the Applicant's Memorandum to OP (Exhibit 54). The Applicant intends to incorporate sustainable design features into each of the remaining buildings of the Modified Project in a similar quality and quantity to be determined at the second-stage proceedings for each of those projects.
- e. *Community Meeting Space (11 DCMR § 2403.9(i))*. The Applicant commits to provide approximately 1,000 square feet of office and meeting space for ANC 6D and the Southwest Neighborhood Assembly for a minimum of a 10-year term commencing upon the initial occupancy of such space. Within this committed space, the Applicant will provide approximately 350 square feet of space to each organization and a shared conference room for use by various community groups.
- f. *Security and Construction Mitigation Plan (11 DCMR § 2403.9(i))*. The Applicant commits to abiding by a Security and Construction Mitigation Plan ("Security and Construction Mitigation Plan") to be in place throughout the

development of the Modified Project. An initial draft of the Security Construction Mitigation Plan is in the record at Tab C to the Supplemental Prehearing Submission. The Applicant will continue to work with the community, RLARC, and the District government to update this plan as is necessary throughout construction.

- g. **Transportation Management Plan (11 DCMR § 2403.9(c)).** The Applicant proposes a transportation management plan, set forth in the Summary of Public Benefits and Project Amenities (Exhibit 52 – "Transportation Management Plan").
 - h. **Employment and Training Opportunities (DCMR § 2403.9(e)).** In order to further the policies established in Mayor's Order No. 83-265 and D.C. Law 5-93, the Applicant will enter into an agreement to participate in the Department of Employment Services First Source Employment Program that promotes and encourages the hiring of District residents. Furthermore, in order to further policies established in D.C. Law 1-95, the Applicant will enter into a Memorandum of Understanding with the District of Columbia Department of Small and Local Business Development to utilize local, small, and disadvantaged businesses in the development of this project.
91. The Commission finds that the relative value of the project amenities and public benefits offered is sufficient given the degree of development incentives requested and any potential adverse effects. The Commission finds that the benefits and amenities listed in Findings 90 and 91 are acceptable to be included as part of the balancing test required in § 2403.8 of the Zoning Regulations and deserve recognition as a benefit and amenities of the PUD.

Compliance with PUD Standards

- 92. The Applications comply with the standards for a PUD set forth in Chapter 24 of the Zoning Regulations.
- 93. The Commission finds that the Modified Project offers a high level of public benefits and project amenities. When compared with the amount of development flexibility requested and project impacts, the Applications satisfy the balancing test required in § 2403.8 of the Zoning Regulations.
- 94. The Site area is approximately 584,655 square feet in land area, which exceeds the minimum area requirement of 15,000 square feet for a PUD in the C-3-C District, in accordance with § 2401.1(c) of the Zoning Regulations.

95. The Modified Project has been evaluated under the PUD guidelines for the C-3-C District. The Modified Project is well below the density permitted for a PUD within the C-3-C District, even if the re-opened 4th Street right-of-way is not included as part of the land area. The maximum height of new construction within the Modified Project is 127 feet, which is within that permitted for a PUD in the C-3-C District. The existing towers with a height of 130 feet are permitted pursuant to § 2521.1(c) of the Zoning Regulations.
96. The Modified Project has been evaluated by the relevant District agencies, including being supported by both OP and DDOT. Based on those reports, there will be no adverse impacts that cannot be mitigated by the conditions imposed herein.
97. The Commission finds that the Modified Project will provide additional economic boost to the Southwest neighborhood and the District of Columbia, as indicated in the Economic Impact Analysis attached as Tab C to the Prehearing Submission.

Consistency with Comprehensive Plan

98. In Z.C. Order No. 02-38, the Commission found that the project was consistent with, or would help implement, a number of policies in the Comprehensive Plan of 1998.
99. At the time the Applications were filed, the governing comprehensive plan was still the Comprehensive Plan of 1998. The Applicant, in its PUD Submission, set forth in detail the Modified Project's consistency with that plan.
100. On March 12, 2007, the Comprehensive Plan of 2006 came into effect and became the governing document. The Applicant set forth in its Prehearing Submission and the Applicant's expert witness testified at the June 7, 2006 public hearing, to the Modified Project's compliance with the Comprehensive Plan of 2006.
101. The Future Land Use Map of the Comprehensive Plan of 2006 designates the Site for High-Density Commercial and High-Density Residential uses. The High-Density Commercial designation defines the central employment district of the District and other major office employment centers on the downtown perimeter. This area is characterized by office and mixed office/retail buildings greater than eight stories in height, although many lower scale buildings are interspersed. The High-Density Residential designation defines neighborhoods and corridors where high-rise (eight stories or more) apartment buildings are the predominant uses. The Modified Project is consistent with these designations.
102. The Generalized Policy Map of the Comprehensive Plan of 2006 includes the Site in a Land Use Change Area and more specifically designates it for an Enhanced/New Multi-Neighborhood Center. Land Use Change Areas are defined as "areas where change to a different land use is anticipated. The guiding philosophy in the Land Use Change Areas

is to facilitate new development and to promote the adaptive re-use of existing structures. Many of these areas have the capacity to become mixed-use communities containing housing, retail shops, services, workplaces, parks, and civic facilities." (§ 2.4.1, ¶¶ 223.9, 223.11) Designation as an Enhanced/New Multi-Neighborhood Center denotes a one to three mile service area with uses that could include supermarkets, restaurants, retail shops, service-oriented businesses, and office space for small businesses. Mixed-use infill development is encouraged to provide new retail and service uses, in addition to additional housing and job opportunities. The Modified Project is consistent with these designations.

103. The Modified Project is consistent with many of the Comprehensive Plan's Framework elements including managing growth and change, creating successful neighborhoods, increasing access to education and employment, and building green and healthy neighborhoods.
104. The Land Use Element (Chapter 3) of the Comprehensive Plan of 2006 sets forth the importance of a focus on transit-oriented and corridor development, which is a central theme throughout many elements of the plan. The Comprehensive Plan of 2006 recognizes the importance of fully capitalizing on the investment made in Metrorail and states that this requires better use of the land surrounding transit stations and along transit corridors. The plan further states that much of the city's planning during the last five years has focused on making better use of transit areas. The plan sets forth certain principles for management of these lands, including the following: a preference for housing above-ground floor retail uses; a preference for diverse housing types, including both market-rate and affordable housing units; a priority on attractive, pedestrian-friendly design; and a stepping down of densities away from each station. The plan further seeks to promote the vitality of neighborhood commercial districts, which should be inviting and attractive and should support social interaction and ease of access for nearby residents.
105. The Comprehensive Plan of 2006 also stresses the critical housing issues facing the District, including, among other things, ensuring housing affordability, fostering housing production, and promoting home ownership. The new Housing Element recommends providing zoning incentives to developers proposing to build affordable housing, which should be considered as a public benefit for the purposes of granting density bonuses when new development is proposed.
106. The Transportation Element (Chapter 4) of the Comprehensive Plan of 2006 seeks to link land use and transportation and to create walkable, transit-oriented neighborhoods. The Modified Project's location at a Metrorail station and the reopening of 4th Street serve to further many aspects of this element.

107. The Lower Anacostia/Near Southwest Area Element specifically provides for the redevelopment of the Waterside Mall with residential, office, and local-serving retail uses. Policy AW-2.1.6 goes on to state that the Site should be strengthened as a retail anchor for the surrounding Southwest community and that its redesign should restore 4th Street S.W. as part of the District's street grid and improved aesthetics, circulate, and connectivity to surrounding uses.
108. The Commission finds that the Modified Project is not inconsistent with the Comprehensive Plan of 2006.

Office of Planning

109. By report dated May 25, 2007 (Exhibit 33 – "OP Report"), and through testimony presented at the public hearing, OP recommended approval of the Applications subject to the Applicant providing the following:
 - a. Additional pedestrian safety measures at the intersection of the public plazas and 4th Street;
 - b. Additional information regarding the percentage of affordable units available to households earning less than 80% of the Area Median Income;
 - c. Commitment to an even distribution of affordable units between the East and West Towers and the Northeast Building; and
 - d. Commitment that any change from a grocery use in the grocery store space of the project in the Second-Stage Project would require Commission approval as a PUD modification.
110. The Applicant submitted a response to OP (Exhibit 54), providing all of the information and commitments requested by OP.
111. In its testimony at the hearing, OP noted that the Applicant had resolved each of the four conditions set forth in the OP Report.
112. OP testified and also set forth in the OP Report that the project is consistent with the land use maps of the Comprehensive Plan of 2006 and with numerous policies in the Plan, including one specifically calling for the redevelopment of the Site and the reopening of 4th Street. OP also stated that the Modified Project is consistent with basic principals of the Comprehensive Plan such as redevelopment of underutilized sites, increased density near Metro stations, provision of affordable housing, and environmental protection.
113. OP testified and set forth in the OP Report that it had no objection to the requested zoning relief and design flexibility.

- b. The Applicant and appropriate District government agencies shall complete a written agreement regarding the terms and amount of funds transferred for the construction of 4th Street, S.W.
 - c. The Applicant shall develop a Transportation Demand Management Plan to be reviewed and approved by DDOT prior to obtaining a certificate of occupancy.
 - d. The Applicant shall undergo a public space permitting review and approval process for all private surface and subsurface uses of the 110-foot easement area provided to the District of Columbia to ensure that 4th Street S.W. and site design details comply with DDOT safety and streetscape standards.
119. In response to DDOT's request, the Applicant submitted the Transportation Management Plan. The Applicant committed to work with DDOT as necessary to refine that plan.
120. The Commission finds that the Applicant's submission of a Transportation Management Plan addresses DDOT's concern set forth in Finding 122(c).
121. The Applicant testified at the hearing, and submitted in writing through its various submissions to the Commission, that it would agree to re-open a 90-foot right-of-way as 4th Street through the center of the Site.
122. In its testimony at the public hearing on June 7, 2007, DDOT stated that it would accept a 90-foot right-of-way. In its Supplemental Report dated June 27, 2007 (Exhibit 81), DDOT agreed in writing to the 90-foot right-of-way, stating that both the planned function of 4th Street and the engineering documents that DDOT has completed can and are accommodated within a 90-foot right-of-way. DDOT further stated in its Supplemental Report that so long as the 4th Street right-of-way is controlled by DDOT through either fee simple ownership or an easement that is subject to all District public space review, permits, inspections, and approvals, DDOT supports the project as it relates to the re-opening of 4th Street, S.W.
123. In order for 4th Street to be re-opened, the District must first acquire the land pursuant to D.C. Official Code § 9-203.10. Since the Applicant has neither offered to give this area to the District, nor construct the streets at no cost, the Commission will assume that the District will pay the market value of the land and the costs for building the street. The Applicant has merely stated its willingness to enter into an agreement to convey the land. This is not an insignificant benefit, in that the District will be spared the time and cost of acquiring the land by eminent domain.
124. The terms of the conveyance of 4th Street should be determined through agreement between the Applicant and the District, so long as 4th Street is reopened through the center of the Site, as set forth in Condition No. 12.

125. In its initial report, DDOT also raised concerns regarding the pedestrian safety improvements, such as crosswalks and traffic signals as they relate to the private drives and the civic plazas.
126. The Commission finds that the pedestrian safety issues within the Site have been addressed. To the extent that additional pedestrian safety measures are warranted in existing public spaces, DDOT can move forward with implementation of such measures, including cross walks across M Street to access properties south of M Street.
127. In its report, DDOT also recommended that the Applicant be required to seek additional review and approval by the Board of Zoning Adjustment and the relevant District agencies in the event that the number of parking spaces increased above the minimum number required.
128. The Applicant testified at the hearing that it would provide a maximum of 745 parking spaces for the Second-Stage Project and that it would provide a minimum of 1,087 parking spaces for the Modified Project. The Applicant requested flexibility to increase the number of parking spaces for the Modified Project based upon market conditions. To the extent that additional parking is provided, it will be shown on future second-stage applications.
129. The Commission finds that the Applicant should be given flexibility to increase the number of parking spaces for the Modified Project. The total number of parking spaces will be submitted with each of the future second-stage projects and thus the Commission and the relevant District agencies will have sufficient opportunity to review the sufficiency of such parking and the potential for adverse impacts.
130. DDOT also raised issues related to the loading access for the East and West M Street Buildings as well as for the proposed curb cuts on M Street for access to those commercial parking garages.
131. The Applicant submitted a report from its traffic consultant summarizing the reasoning behind the location of the entrances
132. The Commission finds that this issue should be further studied and addressed as part of the second-stage application(s) for the East and West M Street Buildings.
133. The Commission finds that the Modified Project, and more specifically the Second-Stage Project, will have no adverse traffic impacts.

ANC 6D Report and Testimony

134. By letter dated June 5, 2007 (Exhibit 42), ANC 6D indicated that it voted to support the Modified Project and Second-Stage Project by a vote of 6-1. ANC 6D noted the important community benefits to which the Applicant and ANC agreed, including the grocery store and retail commitments, the housing and on-site affordable housing, the comprehensive security and construction mitigation plan, the on-site community office and meeting space, the sustainable design features, and the commitment to an ongoing dialogue with the Applicant related to parking and traffic.
135. ANC 6D also noted in its report several issues of concern, including the following:
- a. Concern that the projecting bay from the East 4th Street Office Building will impede the sight view along 4th Street;
 - b. Concern as to whether the Modified Project incorporates the architectural characteristics of the Southwest neighborhood and creates a sense of place for the Southwest neighborhood, essentially requesting that the final product be fully integrated with the surrounding neighborhood;
 - c. Concern that the Zoning Commission is not simply targeting the Southwest neighborhood for increased density;
 - d. Concern with the M Street façade, both in terms of setback and openness; and
 - e. Concern that the affordable housing component of the Modified Project is targeted so that at least eight percent of the total floor area is available to households earning less than 80% of AMI.
136. In addition, in his testimony for ANC 6D, Mr. Skolnick noted that despite the great progress, several additional issues needed to be resolved:
- a. Concern regarding pedestrian crossings on M Street near 4th Street, S.W;
 - b. Concern regarding the impact on retail development in the event that the Northwest Building is converted to office and a request that any additional retail developed to serve office property be developed on a one-for-one square foot basis with neighborhood serving retail above what is currently provided; and
 - c. Request that additional space be provided in the East 4th Street Office Building to accommodate 100 people and that the duration of the space be longer than ten years.

137. The Commission finds that the issues and concerns raised by ANC 6D have been fully addressed throughout this Order, and the Commission finds that all of the issues and concerns have been addressed or resolved. Specifically, the Commission finds that the specific issues and concerns have been resolved as follows:
- a. The projecting bay will not adversely impact the views along 4th Street, S.W., as set forth in Findings 57 and 58;
 - b. The Modified Project has been designed to be compatible with the Southwest neighborhood and to create a sense of place for the Southwest neighborhood, as set forth in Findings 79 through 83;
 - c. The proposed setback of the M Street buildings is sufficient, as set forth in Findings 44 through 48;
 - d. The design of the M Street buildings, in terms of height and openness is appropriate as proposed, as set forth in Findings 49 through 54;
 - e. The Applicant has agreed to target its affordable housing to ensure that at least eight percent of the total floor area is available to households earning less than 80% of AMI, as set forth in Finding 91(b);
 - f. The cross-walks requested by ANC 6D are located within the public space on M Street and are within the jurisdiction of DDOT. According to DDOT plans, crosswalks are intended for M Street near 4th Street;
 - g. In the event that the Northwest Building is converted to commercial use, the minimum commitments to the amount and type of retail use, as set forth in Findings 90(d) and 91(c), will not change. In the event that modifications to the amount and type of retail are necessary, such modifications will be fully reviewed through a second-stage public hearing process; and
 - h. The Commission reviews the amenities package presented by an applicant to determine whether it is appropriate given the development flexibility and incentives requested and the impacts of the project. The Commission does not make decisions as to whether certain amenities should be increased to the reduction or detriment of others. In this case, the Commission finds that that proposed amenities package when balanced with the development incentives and flexibility requested and the impacts of the project are sufficient, as set forth in Findings 90 through 92.
138. The Commission finds that development is occurring throughout the District, with projects being developed as a matter-of-right and with requests for increased density.

The Commission finds that the Southwest neighborhood is not being targeted for development incentives any more than any other quadrant of the District.

139. The Commission afforded the views of ANC 6D the "great weight" to which it is entitled.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides 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).
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to modify the approved First-Stage PUD and to consider the application for approval of a Second-Stage PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. The development of the Modified Project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development. The Modified Project is consistent with the purposes and goals of the Commission's approval of the First-Stage PUD, and the proposed modifications serve to enhance the overall project.
4. The Modified Project meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The Modified Project is within the applicable height, bulk and density standards of the Zoning Regulations for a PUD within the C-3-C District. This mixed-use project, at a Metrorail station and serving as a town center for the surrounding community, is appropriate for the Site. The impacts of the Modified Project are not unacceptable.
6. The Applications can be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development will be mitigated.
7. The number and quality of the project benefits and amenities offered are a more than sufficient trade-off for the flexibility and development incentives requested.

8. Approval of the Applications is not inconsistent with the Comprehensive Plan of 2006.
9. The Commission is required under D.C. Code § 1-309.10(d) (2001) to give great weight to the affected ANC's recommendations. The Commission has carefully considered ANC 6D's support and stated issues and concerns and has responded to or addressed each of its issues and concerns.
10. The approval of the Applications will promote the orderly development of the Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
11. The rezoning of the Site to C-3-C is consistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, Section 6-641-.01 of the D.C. Code.
12. Notice was provided in accordance with the Zoning Regulations and applicable case law.
13. The Applications are subject to compliance with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission orders **APPROVAL** of the application for a modification to the First-Stage PUD approval in Zoning Commission Case No. 02-38, second-stage PUD approval for the center portion of the Site, and for a related Zoning Map amendment to rezone the Site from C-3-B to C-3-C. This approval is subject to the following guidelines, conditions, and standards:

1. The Modified Project shall be developed substantially in accordance with the plans prepared by Shalom Baranes Associates, dated May 18, 2007, in the record at Exhibit 25, as supplemented by subsequent plan pages in the record at Exhibit 54 (Updated Cross Walk Plan), at Exhibit 68 (Revised Sheet 2.0 and Sheet 2.1), and at Exhibit 93 (Proposed Alternative Plan for M Street Buildings) (collectively the "First-Stage Plans"), as modified by the guidelines, conditions, and standards herein.
2. The Second-Stage Project shall be developed substantially in accordance with the plans prepared by Shalom Baranes Associates, dated May 18, 2007, in the record at Exhibit 26, as supplemented by subsequent plan pages in the record at Exhibit 68 (Revised Sheets 1.9 and Sheet 1.10), and Exhibit 80 (New Sheet 1.19) (collectively the "Second-Stage Plans"), as modified by the guidelines, conditions and standards herein.

3. The Modified Project shall have an approximate gross floor area of 2,526,500 square feet, or 4.33 FAR based on the Land Area within the existing record lot. As shown on the First-Stage Plans, the Modified Project shall include approximately 1,296,895 square feet of gross floor area devoted to office and retail uses and approximately 1,229,605 square feet of gross floor area devoted to residential uses. The Applicant shall have flexibility to modify this allocation of density if it chooses to develop the Northwest Building for office use in place of the proposed residential use. In that alternative, the project shall include approximately 1,688,500 square feet of gross floor area devoted to office and retail uses and approximately 838,000 square feet of gross floor area devoted to residential uses, as shown Sheet 2.1 of the First-Stage Plans.
4. The lot occupancy of the Modified Project shall be a maximum of 63% based on the Land Area.
5. The maximum height of the East and West 4th Street Office Buildings shall be 94 feet, as shown on the Second-Stage Plans.
6. The maximum height of the East and West Residential Towers shall be the height of those existing structures, with the addition of penthouse structures as shown on the Second-Stage Plans.
7. The maximum height of the Northeast and Northwest Buildings shall be 114 feet, as shown on the First-Stage Plans.
8. The East and West M Street Office Buildings shall have a maximum height of 127 feet, with setbacks of approximately 45 feet on the exterior sides generally as shown on the plan in the record at Exhibit 93.
9. The Modified Project shall include a minimum of 1,087 parking space in a below-grade parking garage or multiple parking garages.
10. The Second-Stage Project shall include a minimum of 505 parking spaces and a maximum of 745 parking spaces in the below-grade parking garage.
11. The Applicant shall construct a minimum of 50,000 square feet of public open spaces in substantial conformity with the Second-Stage Plans.
12. The Applicant shall provide a 90-foot right-of-way for 4th Street, S.W., through the Site as shown on the First-Stage Plans.
13. The Modified Project shall include a minimum of 110,000 square feet of gross floor area which the Applicant shall target for neighborhood-serving retail and service uses,

including, but not limited to, uses such as restaurants, coffee shops, flower shops, video stores, grocery stores, drug stores, banks, electronic stores, bakeries, dry cleaners, and other similar types of uses. Such floor area shall be located at the ground floor level along the M Street frontage and on both sides of the re-opened 4th Street from M Street to the northern property boundary, as generally depicted in the First-Stage Plans.

14. The Applicant shall use best commercially reasonable efforts to provide opportunities for local and small businesses, as certified by RLARC, to occupy 12,500 square feet of retail space included within the Modified Project.
15. The Applicant shall use best commercially reasonable efforts to negotiate a lease with the existing grocery store tenant until August 18, 2007. If a lease is executed, the Applicant shall maintain the space for the existing grocery store to operate while the new store is under construction. In the event that the Applicant is unable to successfully negotiate a lease within the above timeframe, the Applicant shall do the following:
 - a. Honor the existing grocery store lease expiring in 2020; and
 - b. Reserve the proposed grocery location on the east side of the Second-Stage Project and use best commercially reasonable efforts to lease such space to a full-service grocery store (approximately 55,000 square feet) for a term commencing upon the earlier of the termination of the existing grocery store lease or the vacation of such space for any other reason.
16. In the event that the Second-Stage Project is constructed in accordance with the Interim Site Plan Option shown on Sheet 1.11 of the Second-Stage Plans, no additional construction between the East 4th Street Office Building and the East Residential Tower shall be permitted for any use other than the grocery store as shown on Sheet 1.10 of the Second-Stage Plans unless the Applicant returns to the Zoning Commission for approval.
17. During construction of the Second-Stage Project, the Applicant shall maintain the operation of a bank, drug store, and grocery store on the Site.
18. The Applicant shall provide a minimum of 160,000 square feet of affordable housing, with at least eight percent of the gross floor area within the East and West Residential Towers in the Second-Stage Project (which equals approximately 32,000 square feet) being available to households earning 80% of AMI or less. The affordable housing shall be generally evenly distributed between the East and West Residential Towers (a total of approximately 80,000 square feet of gross floor area) and the Northeast Residential Building (approximately 80,000 square feet of gross floor area). The affordable housing units shall be approximately the same proportion of bedroom type and size as the market rate residential units and generally evenly distributed between and within the East and

West Residential Towers, with the exception of the top two floors of each building. No affordable housing is required for the Northwest Building. All affordable housing units shall be maintained as affordable for a period of twenty years, regardless of whether the units are rental or for sale. All other aspects of the affordable housing for the Modified Project shall be as set forth in the Applicant's Prehearing Submission.

19. The Second-Stage Project's East and West 4th Street Office Buildings shall include the sustainable design features set forth in Tab A to the Applicant's Supplemental Prehearing Submission. The Second-Stage Project's East and West Residential Tower shall include the sustainable design features set forth in record at Exhibit 54.
20. The Applicant shall provide approximately 1,000 square feet of office and meeting space for ANC 6D, the Southwest Neighborhood Assembly and other local community groups for a minimum of a 10-year term commencing upon the initial occupancy of the East 4th Street Office Building. Within this designated space, the Applicant shall provide approximately 350 square feet of office space to ANC 6D and approximately 350 square feet of office space to the Southwest Neighborhood Assembly. The remaining space shall be used as a shared conference room.
21. The Applicant shall abide by the Security and Construction Mitigation Plan to be in place throughout the development of the Second-Stage Project. The Applicant shall continue to work with the community and District government as is necessary throughout construction. The Applicant shall enter into plans similar to the Security and Construction Mitigation Plans as necessary for each subsequent second-stage application for the Modified Project.
22. The Applicant shall abide by the Transportation Management Plan. The Applicant shall continue to work with DDOT as necessary to refine the Transportation Management Plan.
23. The Applicant shall maintain the Park Site immediately to the north of the Site as a public park amenity. The Applicant's obligation to maintain the Park Site shall begin after the 4th Street right-of-way is constructed from the Site to Eye Street, S.W., and shall continue for the life of the Modified Project.
24. The Applicant shall enter into an agreement to participate in the Department of Employment Services First Source Employment Program that promotes and encourages the hiring of District residents. Furthermore, in order to further policies established in D.C. Law 1-95, the Applicant shall enter into a Memorandum of Understanding with the District of Columbia Department of Small and Local Business Development to utilize local, small and disadvantaged business in the development of this project. The fully

executed agreements shall be filed with the Office of Zoning and the Office of the Zoning Administrator prior to the issuance of the first building permit for the project.

25. 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 but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the buildings.
 - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction.
 - c. To make minor refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals.
 - d. To make refinements to the garage configuration, including layout, location, number, and design of parking spaces and/or other elements, so long as the total minimum number of parking spaces is provided.
 - e. To use the Northwest Building for either residential or commercial use, based on market conditions, with such use being specified in the second-stage approval for that building.
 - f. To vary the final alignment and design of the 4th Street right-of-way in consultation with and as approved by DDOT. This flexibility includes the right to make changes to locations of curb cuts, bulb outs, crosswalks, traffic calming measures, parking spaces, and parking meters, as well as the flexibility to make changes to the design and location of paving materials.
 - g. To vary the design and components of the proposed streetscape within the 4th Street right-of-way, including the flexibility to modify paving materials and design, street lights, street furniture, trees, landscaping, and other streetscape elements. This flexibility also includes the right to make changes to the overall design of the streetscape to comply the streetscape standards of the Anacostia Waterfront Initiative, in consultation with DDOT.
26. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner of the Site

and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.

27. 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.
28. The Second-Stage PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three (3) years of the effective date of this Order.
29. The First Stage Approval for the Modified Project approved by the Zoning Commission shall be valid for a period of five (5) years from the effective date of the order granting the same. Within such time, the second-stage PUD application(s) for the Northwest Building, the West M Street Building, and the Northeast Building shall be filed. These second-stage applications may be submitted individually, at the same time, or in any combination thereof. In the event that the grocery store is constructed in the Second-Stage Project or that the existing grocery store surrenders its premises under the existing lease, the Applicant shall file second-stage PUD application for the East M Street Building within five (5) years of the date that the existing grocery store vacates the Site, but no later than December 31, 2020.
30. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

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The Zoning Commission **APPROVED** the Applications at its public meeting held on October 15, 2007 by a vote of 3-0-2 (Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to approve, Carol J. Mitten and Gregory N. Jeffries, having not participated, not voting).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on November 19, 2007, by a vote of 3-0-2 (Anthony J. Hood, Michael G. Turnbull, and John G. Parsons to adopt; Curtis L. Etherly and Gregory N. Jeffries, having not participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the D.C. Register; that is on JAN 25 2008.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 02-38J

Z.C. Case No. 02-38J

WFS2, LLC

(Second-Stage PUD @ Square 542, Lot 822)

April 8, 2019

Pursuant to proper notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on January 31, 2019 (“Public Hearing”), to consider an application (“Application”) by WFS2, LLC (“Applicant”) for review and approval of a second-stage planned unit development (“PUD”) for property located in Square 542, Lot 822 (“Property”). The Commission considered the Application pursuant to Subtitle X, Chapter 3, and Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The Public Hearing was conducted in accordance with the provisions of 11-Z DCMR § 408. The Commission **APPROVES** the Application.

FINDINGS OF FACT

Procedural Overview: Application, Parties, First-Stage PUD, Hearing, and Post-Hearing Filings

1. On December 22, 2017 the Applicant delivered a Notice of Intent to File a Zoning Application with respect to the Application. Such Notice was given to all property owners owning property within 200 feet of the Property, Advisory Neighborhood Commission (“ANC”) 6D, and to Tiber Island Cooperative Homes, Inc. and Carrollsburg Square Condominium, two parties to the first-stage PUD proceeding in Z.C. Case No. 02-38A, to which this second-stage PUD Application succeeds (the “Waterfront Station PUD”). (Exhibit [“Ex.”] 2B, 2D.)
2. The first-stage PUD and Zoning Map amendment contained in the Waterfront Station PUD were originally approved by an order dated November 28, 2003, which was amended and restated in a first-stage PUD order approved January 25, 2008. (Ex. 2G.) Because the Waterfront Station PUD was approved prior to September 6, 2016, pursuant to Subtitle A of the now effective 2016 Zoning Regulations (“ZR16”), the substantive requirements of the 1958 Zoning Regulations (“ZR58” and sometimes together with ZR16, the “Zoning Regulations”) apply to this Application. (11-A DCMR § 102.3(a).) This proceeding followed the procedural requirements of ZR16.

441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

ZONING COMMISSION
District of Columbia
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EXHIBIT NO.58

3. On May 15, 2018, the Applicant filed the Application for this second-stage PUD. (Ex. 1.) The Application contained a proposed eleven-story building with ground-floor retail, performing arts, educational/daytime care, and related uses along with upper-story residential uses, below-grade parking, and related streetscaping and landscaping improvements to the Property, which was consistent with the approval for the Property contained in the Waterfront Station PUD (the Property was therein sometimes referred to as the “Northeast Parcel” and the proposed building thereon the “Northeast Building”) except that the Application contained additional public benefits and amenities (“Project Public Benefits”) that were not required under the Waterfront Station PUD (collectively, the “Project”). (Ex. 2.)
4. On July 20, 2018, the Office of Planning (“OP”) submitted to the Commission a report (“OP Setdown Report”) recommending that the Application be set down for public hearing. (Ex. 11.)
5. On July 30, 2018, at a regularly-scheduled public meeting, the Commission, acting on a motion by Chairman Hood, seconded by Commissioner Shapiro, voted to set down the Application for a public hearing. (See Transcript of the District of Columbia Zoning Commission, Regular Meeting at 66-70 (July 30, 2018) [“Tr. 1”]).
6. On August 17, 2018, the Applicant submitted a pre-hearing statement with no proposed changes to the Project and certifying compliance with ZR16’s procedural requirements. (Ex. 13, 14.) On November 30, 2018, the Applicant submitted its Comprehensive Transportation Review (“CTR”) analyzing the Project. (Ex. 15, 15A.) On January 11, 2019, the Applicant submitted its supplemental pre-hearing statement with, among other documents, draft proffers and conditions, a Construction Management Plan (“CMP”), additional information regarding the Project Public Benefits, and revised plans of the Project. (Ex. 22.)
7. A Notice of Public Hearing was published in the *D.C. Register* on December 14, 2018. (65 DCR 13489.) The Notice of Public Hearing was also mailed to the owners of property located within 200 feet of the Property, to the ANC, and to other District agencies. (Ex. 16-18.)
8. On January 22, 2019, OP and the District Department of Transportation (“DDOT”) timely filed written reports recommending support of approval of the Project (respectively, the “OP Hearing Report” and “DDOT Report”).¹ (Ex. 24, 25.) On January 23, 2019, the Office

¹ Project opponents alleged that OP and DDOT failed to file their reports in a timely manner. The Commission disagrees; OP and DDOT timely filed their reports prior to the Public Hearing. OP and DDOT filed their final reports on January 22, 2019. Although agency reports are typically required 10 days in advance of the public hearing for inclusion in the public record, when the last day of a computed period for filing falls on a holiday (as was the case here), then the deadline runs to the end of the next day that is neither a weekend nor an official District holiday. (See 11-Z DCMR §§ 504.3, 204.3.) Because the date that was 10 days before the Public Hearing, January 21, 2019, was an official District holiday—Martin Luther King Day—the District agency’s deadline to file a report ran until the end of the day on January 22, 2019. The Commission finds that OP and DDOT timely filed their reports and even if the reports were filed late, there is no injury to the Southwest Accountability Group (“SWAG”), which had ample opportunity to review and comment on such reports.

- of the Deputy Mayor for Planning and Economic Development (“DMPED”) filed a letter in support of the Application. (Ex. 26.) On January 31, 2019, the ANC submitted its report (“ANC Report”) in support of approval of the Application. (Ex. 32.)
9. On January 31, 2019, the Applicant submitted a memorandum in response to the DDOT report, two updated drawings, a report regarding the Project’s potential economic impacts, and a copy of its presentation and materials. (Ex. 34-36.)
 10. The parties to the Waterfront Station PUD, Tiber Island Cooperative Homes, Inc. and Carrollsburg Square Condominium, did not seek to participate in this proceeding but were copied on the substantive filings from the Applicant in the record. Apart from the Applicant and the ANC, which were automatically parties to this proceeding, there were no other parties.
 11. On January 31, 2019, the Commission held the Public Hearing on the Application. At the start of the Public Hearing, the Commission accepted John Torti as an expert in architecture, Michael Vergason as an expert in landscape architecture, and Daniel Van Pelt as an expert in transportation planning and engineering. (*See In the Matter of WFS2, LLC – Second-Stage Planned Unit Development for 1000 4th Street, S.W.*, Case No. 02-38J, Transcript of the District of Columbia Zoning Commission, Public Hearing at 7 (January 31, 2019) [“Tr. 2”].) At the conclusion of the Public Hearing, the Commission closed the record except with respect to certain information requested of the Applicant and District agencies that the Commission requested provide written reports post-hearing. (*Id.* at 165.)
 12. On February 7, 2019, the Applicant submitted draft proffers and conditions, and on February 21, 2019, the Applicant submitted revised proffers and conditions. (Ex. 44, 46.)
 13. On March 11, 2019, the Applicant filed its post-hearing submission (“Post-Hearing Submission”), containing a full summary of the Project Public Benefits and the Project’s contribution to the public benefits and amenities approved as part of the Waterfront Station PUD (the “Waterfront Station Public Benefits,” and together with the Project Public Benefits, the “Public Benefits”), responses to the Commission’s questions and comments, a summary of the Applicant’s post-hearing discussions with the Amidon-Bowen Parent Teacher Association (“PTA”) and additional proffered benefits to the PTA, summaries of the Applicant’s affiliates’ experience with respect to affordable housing and job training elsewhere in Ward 6, a written response to the PTA’s concerns, and a written response and related exhibits to other opposition testimony first introduced into the record on the day of the Public Hearing. (Ex. 47.) On March 11, 2019, the Applicant submitted further revised proffers and conditions, which reflected the new PTA benefit as well as additional changes made in response to feedback from the ANC. (Ex. 48.)
 14. On March 14, 2019, the PTA submitted a letter stating that the PTA is in support of the Project and expressed support for the additional proffered benefits to the PTA. (Ex. 50.)
 15. On March 19, 2019, OP filed a post-hearing report (the “OP Final Report”). (Ex. 51.)

16. On March 25, 2019, the Commission held further deliberations on the Application. The Commission deferred taking final action to allow the Applicant and PTA to continue discussions about a proffered public benefit involving a monetary contribution to the PTA. The Commission did so because the Commission was concerned that the uses of the monetary contribution to the PTA had not been sufficiently defined, and because the proposal included an escrow agreement as a way to circumvent a zoning regulation that limits monetary contributions as PUD proffers. The Commission requested that the Applicant attempt to reach a revised agreement with the PTA that could comply with 11-X DCMR § 305. The Commission also requested comments from Office of the Deputy Mayor for Education (“DME”) on the proposed location of a charter school in the Project.
17. The Applicant submitted a revised proffer on April 1, 2019. (Ex. 55.)
18. The DME provided a response that states that charter schools are allowed to choose their own locations and that DME will not comment on this particular choice. (Ex. 56.)
19. On April 8, 2019, the Commission took final action to approve the Application.

Description of the Property

20. The Property is a single contiguous parcel located in the northeast corner of the overall Waterfront Station PUD and has a land area of approximately 59,044 square feet. The Property fronts on 4th Street, S.W. and is currently a vacant lot. (Ex. 2 at 4.)
21. Across 4th Street, S.W. to the west of the Property is Forest City’s Eliot on 4th, a multifamily residential building with ground-floor retail approved as a part of the Waterfront Station PUD (the “Eliot”). Immediately to the north of the Property is a tree-lined allée on property owned by the District; the allée separates the Property from the Christ United Methodist Church property at the corner of 4th Street, S.W. and I Street, S.W. Immediately to the south of the Property is the mixed-use office and retail building at 1100 4th Street, S.W. approved as part of the Waterfront Station PUD (“1100 4th Street”). The 1100 4th Street building contains various District government offices on the upper levels, ground-floor retail, including notably a full-size Safeway grocery store and a CVS Pharmacy, and below-grade parking. The upper levels of 1100 4th Street are set back from the property line adjacent to the Property by approximately 24 feet. Wesley Place, S.W. and a private alley form the eastern border of the Property. The Southwest Neighborhood Library, a branch of the District’s public library system, is opposite Wesley Place, S.W. from the Property. The existing “1001 at Waterfront Apartments” building and related parking, the subject of an approved PUD in Z.C. Case No. 12-14, are opposite the private alley from the Property. (*Id.* at 4.)
22. The Property is located within Waterfront Station, which is a transit-oriented, centrally-located town center that is nearing maturation. The Property is located less than 1,000 feet from the Waterfront-SEU Metrorail Station served by WMATA’s Green Line. The commercial corridor of 4th Street, S.W. created as part of the Waterfront Station PUD

- provides a spine of neighborhood-serving retail for the Southwest DC neighborhood. (*Id.* at 5.)
23. Waterfront Station is located less than a mile from the National Mall, the U.S. Capitol Building grounds, L'Enfant Plaza, the Wharf, and Nationals Park. In addition to nearby transit access, the Property has convenient access to the Southeast Freeway, Interstate 395, Maine Avenue, and South Capitol Street. (*Id.*)
 24. The blocks surrounding Waterfront Station contain a mix of existing high-rise and garden-style multifamily buildings, with much of the existing building stock dating to the urban renewal era of Southwest DC. The current development in the neighborhood reflects modern and contemporary urban design trends yet is appropriately respectful of the mid-century modern aesthetic that currently exists in Southwest DC. The recent development continues the town center's prevailing medium- to high-density residential condition. Many formerly empty lots along M Street, S.W. within and in the vicinity of Waterfront Station are under construction with new multifamily housing. Nearby Arena Stage and The Wharf are regional attractions that draw visitors and workers from across the District and the greater metropolitan area. (*Id.*)
 25. The Waterfront Station PUD approved the redevelopment of the 1960s-era Waterside Mall and a pair of 130-foot tall federal government-occupied towers. The Waterfront Station PUD includes eight development parcels. Five of the eight parcels are fully constructed pursuant to previous second-stage PUDs approved by the Commission. Two of the remaining parcels along M Street, S.W. are the subject of a second-stage PUD application that was recently approved in Z.C. Order No. 02-38I. The remaining eighth parcel is the Property. (*Id.* at 2.)
 26. The Waterfront Station PUD was created through a public-private redevelopment partnership. At the time of the initial first-stage PUD approval, public agencies owned the land in the area subject to the first-stage PUD. A private-sector joint venture led the efforts to obtain the first-stage PUD approval for the Waterfront Station PUD. Between 2006 and 2008, the public agencies transferred all of the land within the Waterfront Station PUD—with the exception of the Property—to the private partners. The Property has remained under the control of various public agencies, and it is now owned by the District. (*Id.*) Certain obligations between the District, as owner of the Property, and the other developer parties to the Waterfront Station PUD are set forth in that certain Land Use Restriction Agreement by and between the District and Waterfront Associates, LLC, dated September 15, 2008 and recorded in the Land Records of the District of Columbia Recorder of Deeds as Instrument No. 2008099321 (the "LURA"). (*See* Ex. 2H.)
 27. P.N. Hoffman & Associates, AHC Inc., Paramount Developers, and City Partners comprise the Applicant, which controls the Property and Project through a long-term ground lease arrangement with DMPED. The ground lease has been approved by the D.C. Council as of April 10, 2018. (Ex. 2 at 3; 2M1 at 3.) The Applicant's agreement with DMPED regarding the Project's affordable housing and other requirements is memorialized in that certain Land Disposition and Development Agreement by and between the District of Columbia

and the Applicant, dated December 13, 2018 (as the same may be amended from time to time, the “LDDA”). The LDDA contains, among other things, a form of “Affordable Housing Covenant” and an “Affordable Housing Plan” that perform a similar function to analogous documents established under ZR16’s inclusionary zoning regulations, which the Project is exempt from by virtue of it having vested prior to the effectiveness of such regulations.

28. At the time the Waterfront Station PUD was approved, the overall PUD site was located in the C-3-B Zone District. The amendment to the Zoning Map related to and approved as part of the Waterfront Station PUD rezoned the entire Waterfront Station PUD site, including the Property, to the C-3-C Zone District (“Map Amendment”). (Ex. 2 at 3.)
29. The Waterfront Station PUD, as modified and amended by prior applications, authorizes a total of 2,526,500 square feet of gross floor area (“GFA”) over approximately 584,655 square feet of land area (approximately 13.42 acres), including the now-reopened 4th Street, S.W. The overall floor area ratio (“FAR”) authorized under the Waterfront Station PUD is 4.33. The first-stage PUD established: the overall mix of uses for Waterfront Station, specific heights for each of the development parcels, an overall parking requirement for a minimum of 1,087 spaces, and a maximum overall lot occupancy of up to 63%. The Waterfront Station PUD also established the Waterfront Station Public Benefits, which included, among other items more particularly described below, (a) an affordable housing commitment, (b) a ground-floor retail requirement, and (c) the re-opening of 4th Street, S.W., which had been closed and occupied by the former Waterside Mall. (*Id.*)

Description of the Project and the Applicant’s Community Outreach

30. Consistent with the plans for the Northeast Building approved in the Waterfront Station PUD, the Project is an eleven-story residential building with ground-floor neighborhood-serving uses. The Project contains approximately 450 residential units, approximately 29,743 square feet of community-serving ground-floor uses and approximately 220 below-grade parking spaces. The Project’s ground floor includes space for retail, service, and eating and drinking establishments; space for an arts or cultural use; and space for an educational or daytime care use. (*Id.* at 6.)
31. The Project’s massing and uses are consistent with the proposal for the Northeast Building approved in the Waterfront Station PUD. Under the Waterfront Station PUD, the Commission approved for the Property a building with approximately 400,000 square feet of GFA and a maximum height of 114 feet. The Waterfront Station PUD imposed a site-wide maximum lot occupancy of up to 63%. Accounting for the Project, the lot occupancy of the existing and currently proposed buildings PUD-wide is approximately 55%. (*Id.*) The Project is proposed to be 400,000 square feet with a maximum height of 114 feet and will result in an overall lot occupancy for the Waterfront Station PUD as a whole of less than 63%. (Ex. 22G at 14-15.)

32. The Project's ground-floor uses are consistent with the Waterfront Station PUD's requirements for ground-floor retail and neighborhood-serving uses, focused along 4th Street, S.W. The Project's ground-floor uses include approximately 11,000 square feet of neighborhood-serving space for retail, service, or eating and drinking establishments; the Applicant intends to include a three-meal-per-day restaurant (the so-called "diner") in a portion of this space. The ground floor also contains approximately 9,000 square feet devoted to a performing arts or related use. Finally, the ground floor contains approximately 9,000 square feet devoted to an educational or daytime care use that could in the future be converted to retail or other neighborhood-serving uses. At the time of this Application, the Applicant is in active discussions to lease this 9,000 square foot educational or retail space to AppleTree Public Charter School ("AppleTree") to operate as a pre-kindergarten for approximately 132 students. AppleTree currently operates a pre-kindergarten in Southwest, and the Project provides an expanded space to serve these students and future Southwest residents in a new, centrally located location. (*Id.* at 6-7; Ex. 47 at 6-9.)
33. Consistent with the Waterfront Station PUD, the Project contains approximately 450 total residential units, with a mix of studios, one-bedroom units, and two-bedroom units; some of the one-bedroom and two-bedroom units also contain dens. (Ex. 2 at 7; 47H at 2.) Practically, a den can be used as an additional bedroom or a play room for children, and "dens" are regularly marketed as "bedrooms" in both for sale and for rent market-rate units throughout the District. Ten of the Project's two-bedroom units include a den, and five of these two-bedroom plus den units are affordable. (Ex. 47 at 9-10.)
34. Broadly, the Waterfront Station PUD required a minimum of 160,000 square feet of affordable housing, set aside for households earning 80% of median family income ("MFI") for a period of 20 years. Of this, half was to be distributed between the so-called "East and West Residential Towers" (developed as a part of the first phase of the PUD) and half was to be provided in the Northeast Residential Building (i.e., the Property that is the subject of this PUD).² No affordable housing was required, and none was provided in the Northwest Residential Building (i.e., the Eliot on 4th). (Ex. 2H.)
35. The Project significantly exceeds the amount, level of affordability, and duration required by the Waterfront Station PUD. For the duration of the Applicant's 99-year ground lease of the Property, the Applicant will reserve 30% of the units (or approximately 136 units, which equates to approximately 117,094 square feet of gross floor area³) as affordable

² The current total amount of affordable housing is approximately 84,033 sf in the East and West Residential Towers, all at 50% AMI. (See Z.C. Case No. 02-38A. See also Affordable Housing Covenant Waterfront Station West Residential Building, dated May 1, 2014 by 1151-4th Street SW LLC recorded in the Land Records of the District of Columbia Registry of Deeds as Instrument No. 2014038849 and Affordable Housing Covenant Waterfront Station East Residential Building, dated May 1, 2014 by 1150-4th Street SW LLC recorded in the Land Records of the District of Columbia Registry of Deeds as Instrument No. 2014039291.) The amounts provided in the pending second-stage PUDs on M Street (i.e., in Z.C. Case No. 02-38I) are in addition to the above requirements.

³ The affordable housing contribution in the Project will be on the basis of 30% of the total *units* rather than as a percentage of GFA, but an approximate GFA equivalent is provided here for tabulation purposes.

housing. This is in excess of the amount and duration of affordability that is required under the Waterfront Station PUD or under the District's current inclusionary zoning requirements. Furthermore, for the first 50 years of the Project, the Applicant agreed to set aside half of those affordable units at 30% MFI and half of those units at 50% MFI. After those fifty years and for the remainder of the ground lease, the Applicant will set aside 25% of the affordable units at 30% MFI and 75% of the units at 50% MFI. This provides a significantly deeper level of affordability than was proffered in the first-stage PUD. (Ex. 2 at 7.) The Project is exempt from the inclusionary zoning requirements of the Zoning Regulations (except for the requirements with respect to the Project's habitable penthouse habitable space) because it is part of a PUD approved prior to the effective date of such requirements, and this second-stage PUD Application is for the same "building" approved by the first-stage PUD. (*See* 11-C DCMR § 1008.1.⁴)

36. The Project's proposed site plan is consistent with the Waterfront Station PUD. The Project is a single "U"-shaped structure that is set back from the northern lot line, which allows the Project to provide the private drive from 4th Street, S.W. to Wesley Place, S.W. contemplated in the Waterfront Station PUD ("Private Drive"). An existing curb cut along 4th Street, S.W. serves as the western vehicular entrance to the Private Drive, and an existing curb cut on Wesley Place, S.W. serves as the eastern entrance. Adjacent to the Private Drive is a pedestrian sidewalk that includes ample space for outdoor seating and café tables at its western end and a play area ("Play Area") at its eastern end. The Play Area will serve the Project's pre-kindergarten use during school hours and young children from the greater community after school hours as well as on weekends, holidays, and during the summer. (Ex. 2 at 7-8.)
37. The Project's ground-floor retail uses are consistent with the Waterfront Station PUD. Consistent with the existing character of 4th Street, S.W., retail, service, and/or eating and drinking establishment uses line the Project's western ground-floor façade. The Project completes an important segment in the stretch of streetscape between M Street, S.W. and I Street, S.W. To help activate the pedestrian plaza immediately to the north of the Project,

⁴ The Applicant consents to a PUD condition requiring the affordable housing that reflects the commitments of the LDDA. Because the Applicant is adding habitable penthouse space, which was not contemplated in the first-stage PUD but which is authorized as a minor modification by 11-C DCMR § 1504.3, the inclusionary zoning exemption does not apply to penthouse habitable space. (*See* 11-C DCMR § 1008.1.) Therefore, the Applicant is required to provide the affordable housing required as a result of the provision of habitable penthouse space. The habitable penthouse space in the Project generates a set aside requirement of approximately 1,877.5 square feet of affordable housing at 50% MFI for the life of the project. (*See* 11-C DCMR § 1003.2 ("inclusionary development ... shall set aside ... eight percent (8%) of the gross floor area dedicated to residential use including penthouse habitable space as described in Subtitle C § 1001.2(d)," which references C, 1500.11; *see also* 11-C DCMR § 1500.11 ("the construction of penthouse habitable space, except penthouse habitable space devoted exclusively to communal rooftop recreation or amenity space for the primary use of residents of the residential building, is subject to the Inclusionary Zoning set-aside provisions of Subtitle C, Chapter 10 Inclusionary Zoning.")) The Applicant will be requesting an inclusionary zoning exemption from the Zoning Administrator pursuant to 11-C DCMR § 1001.6(a) for the affordable housing generated by the habitable penthouse space, but will provide more than the equivalent amount by virtue of the LDDA. The District Department of Housing and Community Development has concurred in this analysis.

the Project's ground-floor commercial and neighborhood-serving uses also turn the corner from 4th Street, S.W. along the Private Drive. (*Id.* at 8.)

38. The Project's parking and loading are accessible via an existing private alley from Wesley Place, S.W. along the eastern side of the building. This locates the vehicular entrance away from pedestrian activity and places loading access adjacent to the building services and loading for 1100 4th Street. (*Id.*) All of the Project's parking and loading is fully enclosed. Vehicle parking is provided in two below-grade levels containing a total of approximately 220 spaces. Bicycle parking with a total of approximately 156 long-term spaces is located in a secure facility on the upper level of the garage. The Project also provides 14 bicycle racks (i.e., 28 short-term parking spaces) on the surrounding sidewalks. Fully enclosed, at-grade, back-in loading berths and trash facilities are provided from the private alley at the rear of the Project. (Ex. 2 at 11; 22G1 at 15.)
39. The Project's orientation is a significant component of its urban design strategy and offers a unique expression while still respecting the immediate and surrounding neighborhood context. The Project responds to both the tilted axis of 4th Street, S.W. and the more regular street grid of the L'Enfant Plan. The L'Enfant 4th Street, S.W. was closed in the 1960s for the construction of the Waterside Mall and Waterfront Metrorail station. When 4th Street, S.W. was reopened as part of the Waterfront Station PUD in the later part of the last decade, it included a subtle curve deviating from the grid in order to accommodate the presence of the Metrorail station. Taking into account this existing condition, the north façade of the Project's podium is oriented orthogonally to the irregular configuration of 4th Street, S.W. and therefore establishes the street grid in a manner similar to the condition of other buildings constructed under the Waterfront Station PUD. However, the west-facing ground-level façade, the second floor and eleventh (top) floor are oriented to align with the historical L'Enfant street grid. (*Id.* at 9.)
40. The effect of reorienting the bottom and top floors is to establish an overall frame that is consistent with the prevailing orientation of high-rise buildings throughout the Southwest quadrant. The third through 10th floors of the Project are skewed slightly relative to the orthogonal L'Enfant grid and align with the oblique angle of 4th Street, S.W. Similar to the Eliot across 4th Street, S.W., and as originally approved in the Waterfront Station PUD, the Project's overall form is an inverted "U" shape. The upper levels wrap around a courtyard on the south side of the Project allowing maximum penetration of light to south-facing windows. (*Id.*; Tr. 2 at 12-13, 150-51.)
41. The Project's height is a deliberate component of the overall urban design strategy for Waterfront Station, as the Project's height helps establish the importance of the 4th Street corridor as a transit-oriented town center. The Property, like the parcels at the other corners of the Waterfront Station PUD, was approved for a maximum of 114 feet. From the north, the Project's 114-foot height creates a balanced composition with the similar height of the Eliot on the west side of 4th Street, S.W. Together, the Project and the Eliot frame the 4th Street, S.W. entrance into Waterfront Station. In the other direction, but for the intervening above-grade highway and railway overpasses, a view to the north from 4th Street, S.W.

between the Project and the Eliot would terminate at John Marshall Park north of the National Mall. (Ex. 2 at 9-10.)

42. The Project provides well-designed landscaping and streetscaping along both of its public street frontages and along the proposed Private Drive. The Project's 4th Street, S.W. streetscaping continues the pedestrianized character of that corridor. The Applicant proposes to maintain the current material and furnishing palette. The standard DC concrete sidewalk will be extended where necessary to meet the building face. New streetscape and additional street trees will be provided on the Project's eastern side, along Wesley Place, S.W. (*Id.* at 10.)
43. As the primary landscaping feature of the Project, the Private Drive and adjacent hardscaping and landscaping along the north side of the Project are central elements of the Project's placemaking strategy. The Private Drive's roadway varies in width from 12 to 19 feet and is intended to accommodate vehicle queueing for pick-up and drop-off at the pre-school, for events at the theater, and for the Project's residents. Removable bollards are located at either end of the Private Drive so that it can be intermittently closed off to vehicular traffic for festivals and similar community events. (*Id.*)
44. In addition to the ground-level streetscaping and landscaping, well-designed outdoor spaces have also been integrated into the building itself. The building is oriented around a courtyard on the second floor that is comprised of both semi-private patios and a central courtyard planted with trees and perennials. Units facing the courtyard are south-facing and therefore enjoy more direct sunlight; after the initial filing, the Project's courtyard was revised to increase the amount of open space and improve the amount of light and air to units fronting on the courtyard. For units facing north or west, many of these units enjoy a balcony. The penthouse roof provides a similar range of semi-private and public outdoor spaces, including a swimming pool and terrace for the use of all building residents. (*Id.* at 10-11.) On the whole, the building residents enjoy access to significant outdoor space: of the Project's 450 units, 150 (33%) have a balcony or terrace, and units have access to outdoor space in the courtyard as well as on the roof. (Ex. 22 at 2.)
45. The Project's architecture and materials are designed to be contextually appropriate and high quality. The Project is primarily composed of a ceramic rain screen panel system, visually compatible with those on adjacent buildings, set atop a two-story base containing storefront glass. The two-level podium presents a unified, double-height pedestrian experience at street level. The Project's form incorporates a combination of rectilinear and angular geometries that shift the fourth through 10th floors and create dynamic balconies and views on the north and west façades. Materiality changes further accentuate this dichotomy through the use of concrete on the balconies, which evokes the mid-century residential buildings that characterize Southwest DC. Several second floor and penthouse-level units include private walkout terraces. (*Id.* at 11.) The secondary façade material used for the interior courtyard is a high-quality brick; as the Project's architect noted at the public hearing, the use of differing high-quality masonry materials for the "front" and "back" of a building is a common practice that is found in historic as well as contemporary architecture throughout the District. (Ex. 47 at 9-10.)

46. The Project achieves a high level of sustainability consistent with the District’s Anacostia Waterfront Initiative. The Project is designed to achieve a minimum level of Gold under the U.S. Green Building Council’s rating LEED-2009 system. Significant sustainability elements are currently intended to include a VRF HVAC system, rooftop solar panels, green roofs, use of recycled materials, and a water management/harvesting system. Although the Project is exempt from the green area ratio (“GAR”) requirements by virtue of the Waterfront Station PUD having been adopted prior to the effectiveness of such requirements, the Project integrates green features that achieve the same effect. (Ex. 2 at 12.)

Consistency of the Project with the Waterfront Station PUD

47. The Project is in accordance with the use and design parameters approved for the Northeast Building in the Waterfront Station PUD. The Applicant does not seek any modifications to either the approved first-stage plans for the Northeast Building or any of the outstanding conditions of the Waterfront Station PUD. The only changes of note for the Project relative to the approved PUD are: (a) the Project includes a habitable penthouse, which was not contemplated at the time of the first-stage PUD approval, but which is allowed under the substantive provisions of ZR58 adopted after the first-stage approval, and (b) the Project includes the additional Project Public Benefits which were neither contemplated nor required as part of the Waterfront Station PUD. (*Id.* at 12.) As addressed below, the project’s zoning flexibility does not constitute a modification of the first-stage PUD.
48. The Project is also in accordance with the Conditions of the Waterfront Station PUD. As set forth below, the Commission finds that the Project complies with each of the applicable Conditions of the Waterfront Station PUD⁵:
- (a) Condition 1 identifies the final approved first-stage PUD plans that govern the massing and other broad design parameters of the Project. The Project is consistent with this Condition; (Ex. 2F at 31-36; 2H; 22G1; *see also* Finding of Fact (“FF”) 50.)
 - (b) Condition 3 identifies the maximum overall GFA and FAR in the Waterfront Station PUD. The Project is consistent with this Condition; (Ex. 2F at 31-36; 2H; 22G1.)
 - (c) Condition 4 identifies the maximum overall lot occupancy (63%) in the Waterfront Station PUD. The Project is consistent with this Condition; (*Id.*)
 - (d) Condition 7 establishes a maximum height of 114 feet for the Northeast Building, and the Project is consistent with this Condition; (*Id.*; 22G.)

⁵ Conditions 2, 5, 6, 8, 10, 16, 17, 19, 20, 23, and 25-28, apply to other parcels at Waterfront Station and are not applicable here.

- (e) Condition 9 establishes a minimum number of parking spaces at Waterfront Station (at least 1,087 total parking spaces are required), and the Project is consistent with this Condition; (*Id.*)
- (f) Condition 11 requires a minimum of 50,000 square feet of public open space and has been fully satisfied by prior approved second-stage PUDs at Waterfront Station; (*Id.*)
- (g) Condition 12 requires the reopening of 4th Street, S.W. and has been fully satisfied by prior approved second-stage PUDs at Waterfront Station. (*Id.*)
- (h) Condition 13 requires a minimum of 110,000 square feet of GFA for neighborhood-serving retail and service uses and has been fully satisfied by prior approved second-stage PUDs at Waterfront Station. (*Id.*) Notwithstanding the foregoing, the Project will continue to advance the intent of this condition with additional neighborhood-serving retail and other uses, focused on 4th Street;
- (i) Condition 14 requires use of best commercially reasonable efforts to provide opportunities for local and small businesses to occupy a total of 12,500 square feet within the Waterfront Station PUD. This Condition applies to the Project to the extent of 2,500 square feet; (*Id.*; see also FF 109(g).)
- (j) Condition 15 requires negotiation of a lease with a grocery store at Waterfront Station and has been fully satisfied by prior approved second-stage PUDs at Waterfront Station; (*Id.*)
- (k) Condition 18 requires a minimum of 160,000 square feet of affordable housing at Waterfront Station. The Project contributes to the satisfaction of this Condition and exceeds the requirements in amount, level of affordability, and duration of term; (*Id.*; see also FF 109(j).)
- (l) Condition 21 requires a CMP that is satisfied in part by the Project's provision of the superseding Project-specific CMP; (*Id.*)
- (m) Condition 22 requires a Transportation Management Plan that is satisfied in part by the Project's inclusion of such a Plan; (*Id.*; see also FF 109(n).)
- (n) Condition 24 requires a First Source Agreement and an agreement with the Department of Small and Local Business Development ("DSLBD"). The Applicant has satisfied this Condition; (Ex. 2J, 2K.)
- (o) Condition 29 establishes the time for filing the instant Application; it was extended by multiple orders of this Commission, including most recently Z.C. Order No. 02-38H, with which this Application complies; and
- (p) Condition 30 imposes requirements regarding D.C. Human Rights Act compliance and is also a condition of this Order.

Development Incentives: Zoning Relief, Design Flexibility, and Map Amendment

49. The PUD process specifically allows greater flexibility in planning and design than is possible under strict application of the Zoning Regulations. Under ZR16, the Commission retains discretion to grant relief from the development standards of the Zoning Regulations and to allow for project flexibility development incentives. (11-X DCMR §§ 303.1, 303.11, 303.13.) ZR16 specifically allows the Commission to approve any such zoning relief that would otherwise require the approval of the Board of Zoning Adjustment, and generally such relief is available at the discretion of the Commission. (*Id.* § 303.13.) A Zoning Map amendment is a type of development incentive and accordingly is addressed here. (*Id.* § 303.12.)
50. This Application is subject to four sets of development incentives (collectively, the “Development Incentives”): (a) zoning relief with respect to the Project’s side and rear yards (“Zoning Relief”); (b) flexibility with respect to the Project’s ground-floor uses (“Ground-Floor Flexibility”); (c) design flexibility previously granted by the Zoning Commission and revised slightly here (“Design Flexibility”); and (d) the now-vested Map Amendment designating the Property as within the C-3-C Zone District, which is not affected or modified by this Application:
- (a) **Zoning Relief:** The Project complies with the substantive requirements of ZR58 except for the side and rear yard requirements and except as previously modified by the Waterfront Station PUD: (Ex. 22 at 3-4.)
- The Project’s side yards—along 4th Street, S.W. and Wesley Place, S.W.—do not comply with the requirements of the C-3-C Zone District, which does not require any side yard be provided but requires that any side yard provided be at least 2 inches for each foot of building height; (*See* 11 DCMR § 775.)
 - For the Project, which is 114 feet in height, any side yard would need to be at least 19 feet. The Project’s side yard along 4th Street varies in width from 12 feet to 0 feet as it tapers off with the angle of 4th Street; the Project’s side yard along Wesley Place is four feet wide; (Ex. 22 at 3-4.)
 - The Project’s two side yards result from the Property’s unique configuration and context. Along 4th Street, S.W. the side yard is created by the architectural decision to align the ground floor of the building to the historical L’Enfant grid, which creates a setback from the oblique orientation of 4th Street, S.W. The side yard along Wesley Place, S.W. is created by a design decision to create a sidewalk along that frontage. Wesley Place, S.W. is itself otherwise too narrow for a sidewalk. Both of the Project’s non-conforming side yards are adjacent to public streets, which means there is ample open space on either side of the building. Thus, the typical concerns about a non-conforming side yard are inapplicable to the Project: the adjacent public streets provide ample room for light and air

between the Project and any other building.⁶ The non-compliant side yards are necessary from an urban design perspective: they align the Project with the existing street wall and create the type of strong urban presence encouraged by the Comprehensive Plan (as defined below) and urban design principles; and (*Id.*)

- The Project's rear yard to the north of the building also does not comply with the requirements of the C-3-C Zone District, which requires a rear yard of approximately 28 feet for the full width of the lot. All or portions of two to three balconies on the fourth through 10th floors project into the required rear yard by four feet or less. These balconies, a design decision established at the second-stage PUD phase, represent a minimal incursion into the required rear yard, add articulation, visual interest, and private outdoor space. The rear yard abuts a 45-foot-wide District-owned parcel that separates the Property from the church to the north and that provides ample open space at the rear of the Project; (*Id.*)
- (b) Ground-Floor Flexibility: The Project includes flexibility to provide a range of ground-floor uses. (Ex. 22 at 4.) All of the Project's proposed ground-floor uses are within the scope of the neighborhood-serving uses contemplated in the Waterfront Station PUD;
- (c) Design Flexibility: The Project is subject to the Commission's now-standard design flexibility. Flexibility analogous to the Design Flexibility was previously approved as part of the Waterfront Station PUD, and is modified in the Conditions of this Order to bring it in accordance with the Commission's current day practices, which are in general more stringent than what was initially approved in the Waterfront Station PUD; and (Ex. 2H at 8.)
- (d) Map Amendment: The Waterfront Station PUD included the Map Amendment, re-designating the Property from the C-3-B Zone District to the C-3-C Zone District. This Application does not propose to modify the Map Amendment or its now-vested status. The Commission previously found as part of the Waterfront Station PUD that the Map Amendment is not inconsistent with the Comprehensive Plan, which finding satisfies the requirements for granting the Map Amendment. (*See* 11-X DCMR § 500.3; Ex. 2F at 1.) The Commission confirms that the Map Amendment is vested because the Commission approved it previously in the Waterfront PUD and, as such, it is not the subject of this second-stage PUD Application. The proposed C-3-C zoning for the Project continues to be consistent with the purposes of the Zoning Regulations for the same reasons as identified in the first-stage PUD. Broadly, the C-3 Zone Districts are intended to accommodate major business and employment centers and to provide substantial amounts of employment, housing, and mixed uses. (11 DCMR §§ 740.1-740.2.) Within this

⁶ For this reason, under ZR16, the two side yards would not require relief because each could be considered a "front" yard pursuant to Subtitle B § 313.1 and therefore would not need to comply with the side yard requirements.

framework, the C-3-C Zone Districts are intended to contain medium-high density development. (*Id.* § 740.8.) As applied to the Waterfront Station PUD, the C-3-C Zone District is appropriate for this location: a town center located above a Metrorail station within in the “Central Employment Area” as defined in the Comprehensive Plan. The C-3-C Zone District allows for a broad mix of residential, office/employment, retail and other neighborhood-serving uses, and the C-3-C Zone District is accordingly suitable for the Project’s mix of residential, retail, arts, and educational uses. Moreover, the Project’s mix of uses, height, and density are consistent with the character of the C-3-C Zone District.

51. None of the Development Incentives constitutes a modification to the Waterfront Station PUD. The Zoning Relief does not materially affect the Project’s massing or other elements established through the first-stage PUD process. Rather, the Zoning Relief is a result of the Project being architecturally designed and articulated, a step that does not occur until the second-stage PUD process. Accordingly, the Zoning Relief could not have been contemplated at the time of the first-stage PUD and is not a modification of the massing approved at that stage. The Ground-Floor Flexibility allows uses within the range of uses contemplated in the Waterfront Station PUD. The Design Flexibility was contemplated in the Waterfront Station PUD and is refined here only to bring the language of such flexibility into line with the Commission’s current-day and more stringent conditions. The first-stage PUD expressly approved the Map Amendment.

District Agency Reports

Office of Planning

52. The OP Setdown Report recommended that the Commission set down the Application for public hearing. OP concluded the Project is not inconsistent with the Comprehensive Plan, and that the Application generally meets the requirements of ZR16’s Subtitle X, Chapter 3. OP supported the Project’s proposed architecture, especially its evocation of mid-century modern design and its meshing with the architecture of the surrounding neighborhood. (Ex. 11.) OP referred the Application to the District Department of Energy and Environment (“DOEE”), DHCD, DDOT, the Department of Parks and Recreation, D.C. Public Schools (“DCPS”), the Department of Public Works, the Office of Aging (“OOA”), the Department of Employment Services (“DOES”), Fire and Emergency Management Services (“FEMS”), the Metropolitan Police Department (“MPD”), the Office of Early Childhood Development, DC Water, and WMATA. In its Setdown Report, OP asked the Applicant for additional information on three topics: (a) rooftop materials, (b) affordable unit summary, and (c) proposed material on the Private Drive.
 - (a) Rooftop Materials: OP requested a description of the “rooftop materials” surrounding the Project’s open-air mechanical penthouse. The Applicant responded that such metal screening is a painted dark gray aluminum panel with perforations for air flow. The Applicant provided a materials board available at the public hearing with samples; (Ex. 22 at 2; 36.)

- (b) Affordable Unit Summary: The Applicant provided floor-by-floor locations of the Project's affordable housing units showing dispersion of units throughout the Project. The Project's affordable units are in proportion to the market-rate units with respect to bedroom count. (Ex. 22 at 3.) In its Post-Hearing Submission, the Applicant relocated some of the affordable units in response to comments from the Commission and others at the Public Hearing; and (Ex. 47 at 10.)
- (c) Materials for the Private Drive: OP also requested further evaluation of the relationship of the Project's Private Drive to the analogous private drive at the "Eliot" building on the west side of 4th Street, S.W. The design of the Project's Private Drive reflects the general materiality and character of the existing private drive on the west side of 4th Street, S.W. Both drives use all-weather, permeable unit pavers of a similar material and color, but the shape of the pavers differs to reflect the different function and intent of each drive. Further, the design of the Project's Private Drive reflects the form and function of the Project's active, pedestrian-focused ground-floor uses. The one-way driveway allows for ample space for café seating on the west end and a play area on the east end, and it creates a dynamic environment that connects the building uses to the outdoor public realm. The Private Drive also accommodates pick-up and drop-off services for the multiple ground floor uses in the Project that are served by the Private Drive. By contrast, the Eliot's existing private drive is a less intense, two-way drive, adjacent to ground-level walk-out residences. (Ex. 22 at 2.)
53. The OP Hearing Report recommended approval of the Application subject to two conditions: (a) inclusion of electric vehicle charging stations in the Project's garage, as proposed by DOEE; and (b) revisions to the design flexibility language requested by the Applicant. The Applicant agreed to both conditions suggested by OP and satisfied OP's concerns. (See Conditions A.2(d) and (l); Tr. 2 at 91.) The OP Hearing Report and Public Hearing testimony also summarized OP's outreach to other agencies, including the Historic Preservation Office ("HPO"), DHCD, and DCPL and its hosting of an interagency meeting. (Ex. 24; Tr. 2 at 91.) HPO had no comments; DHCD's and DCPL's comments are summarized below. The Commission makes additional findings with respect to the OP Setdown Report and OP Hearing Report below in the discussion of the Project's satisfaction of the PUD Evaluation Criteria (as hereinafter defined). (See FF 90(b).) OP did not raise new information in its Public Hearing testimony. (Tr. 2 at 90-91.)
54. The OP Final Report responded to the Commission's request that OP solicit comments from the DME concerning the relocation and expansion of the AppleTree Learning Center from Jefferson Middle School to the ground floor of the proposed building that is the subject of this application, in light of concerns expressed by the Amidon-Bowen PTA and others. OP's Final Report stated that it contacted DME to request comments but did not receive any. OP also commented that since the hearing it noted that the Amidon-Bowen PTA filed a letter in support of the application. In addition to contacting DME, OP stated in its Final Report that it also requested comments from agencies that had not responded to its earlier request for comments, and received responses from DOEE, DCPL, and FEMS.

Department of Transportation

55. The DDOT Report stated no objection to the approval of the Project subject to certain revised conditions. (Ex. 25 at 3-4.) DDOT found that the Applicant used sound methodology and assumptions in its CTR analysis. (Ex. 25 at 2.)
56. DDOT also found the elements of the Applicant's Transportation Management Plan ("TMP") acceptable, subject to revisions that the Applicant accepted prior to the Public Hearing. (Ex. 34B.) DDOT recommended either a reduction in parking or an increase in the robustness of the TMP through the provision of a 19-unit Capital Bikeshare station. (Ex. 25 at 3.) The Applicant agreed to the latter. DDOT made five recommendations: (a) upgrade the southern leg of Wesley Place, S.W. to include a curb cut; (b) provide a revised ground-floor plan showing loading berths; (c) ensure vehicles and pedestrians can freely use the Private Drive; (d) implement the TMP subject to certain revisions; and (e) implement the Transportation Demand Management ("TDM") Plan subject to certain DDOT-proposed revisions. (*Id.* at 4.) The Applicant accepted these recommendations and revisions to DDOT's satisfaction. (Ex. 34B; Tr. 2 at 95.)
57. In addition to the parking, loading and TMP/TDM comments above, DDOT also reviewed the Project's impacts on: (a) streetscaping and the public realm, (b) trees, (c) the pedestrian network, (d) the roadway network, and (e) public transit. DDOT noted no adverse impacts from the Project on any of these elements of the District's infrastructure. (Ex. 25 at 7-15.)
58. The Applicant's CTR capacity analysis suggested that adjusting signal timings and/or cycle lengths could improve intersection delay and level of service back to acceptable conditions at four intersections that trigger DDOT's "Significant Impact Policy." (Ex. 15A.) According to DDOT, these improvements would necessitate the retiming of entire corridors of traffic signals so DDOT typically does not make these changes in conjunction with a land development project. In lieu of traffic signal adjustments, DDOT recommended the Applicant instead reduce the amount of on-site vehicle parking through the enhanced TDM strategies recommended by DDOT and reduce auto mode share and encourage non-auto travel in order to offset the impacts to the roadway network. (Ex. 25 at 17.)
59. The Commission accepts DDOT's findings and agrees that no further impact mitigation of the Project is necessary beyond the Applicant's implementation of the TMP and associated TDM.

Other District Agencies

60. In addition to DMPED, OP, and DDOT, the Applicant met with or discussed the Project with representatives from DOEE, DHCD, DCPL, FEMS, MPD, OOA, as well as with utilities such as DC Water and PEPCO. Among other discussions and meetings, the Applicant participated in an intensive interagency discussion regarding the Project with many of the stakeholders listed above, so that the agencies could coordinate with each other and share comments and questions about the Project in real time with each other and the

Applicant and its design team and consultants. These conversations affected and improved the final design of the Project. (*Id.* at 7.)

61. OP received email comments from DOEE after the hearing and forwarded those comments to the Commission with its Final Report. The comments stated that DOEE “continues to be supportive of the proposed design while reserving any technical comments for formal review as part of the permitting process” while encouraging the Applicant to pursue formal LEED certification rather than simply providing a LEED checklist, and install 3,000 feet of rooftop solar and design the roof space so as to allow maximum solar generation. (Ex. 51.)
62. OP contacted DME to request comments concerning the relocation and expansion of the AppleTree Learning Center from Thomas Jefferson Middle School to the ground floor of the Project, at the request of the Commission in response to the concern expressed at the hearing that this could potentially draw students away from Amidon-Bowen Elementary School, adversely affecting it. OP did not receive comments from DME in response. (Ex. 51.) However, in response to a request from the Commission, DME submitted a letter dated April 1, 2019. (Ex. 56.) It states that charter schools are allowed to choose their own locations and that DME will not comment on this particular choice.
63. DHCD provided written comments to OP, and OP included DHCD’s comments in the OP Hearing Report. The Applicant met with DHCD as part of the interagency meeting and followed up with separate correspondence. In summary, DHCD had no objections to the proposed development, subject to the implementation of the proposed affordable housing public benefit. (Ex. 24 at 13-14.) DHCD concurred with the amount, duration, and levels of affordable housing proposed for the Project and noted that the proposed affordable housing in the Project exceeds the amount that the inclusionary zoning regulations would require for both the building and penthouse, both in terms of amount of set-aside and level of affordability. (*Id.*; *see also* FF 35.)
64. OP also included DCPL’s written comments in the OP Hearing Report. In sum, DCPL requested the Applicant assist with wayfinding signage for the Southwest Library during and after construction and requested that DDOT and OP review the Project’s transportation and public space plans to consider the impact of the Project on the access and use of the Library. (Ex. 24 at 14.) The Applicant agreed to DCPL’s requested signage condition. (*See* Condition B.11.) DDOT agreed to address DCPL’s concerns. (Ex. 24 at 13-14.) After the Public Hearing, DCPL confirmed to OP that the Project, including its inclusion of AppleTree, would not place an undue burden on the public library system. (Ex. 51.)
65. OP also forwarded a FEMS report on the Project after the Public Hearing. FEMS’s report noted no objection to the Project subject to its compliance with the applicable provisions of the fire code. (Ex. 51.) The Applicant previously agreed to comply with such provisions. (Ex. 47 at 12.)
66. MPD did not submit written comments in this proceeding. However, the Applicant confirmed that it met with Commander Morgan Kane of MPD to discuss design and

operational measures that could be incorporated into the Project to improve its overall safety and security, particularly with respect to the Private Drive and Play Area. (Ex. 22.) MPD suggested that the Applicant: (a) raise the height of the fence around the Play Area from four feet to five feet; (b) ensure that cameras are placed on the perimeter of the building and monitored by the building management; (c) install barriers reinforcing the fence against cars/traffic along the out-side of the Play Area; (d) ensure that there is sufficient lighting at night to prevent overnight loitering; (e) monitor the Play Area and work with patrol officers to ensure that it does not become an after-school “hangout” area; and (f) set up further follow up meetings with patrol officers to get additional perspectives. (Ex. 22 at 7.) In response to comments (a) and (c), the Applicant increased the fence height and revised the design of the Play Area. In response to comments (b), (d), (e), and (f), the Applicant agreed to review the camera placement and lighting plans again with Commander Kane and her staff and to set up further meetings with patrol officers in the Police Service Area (“PSA”) later in the development process. (*Id.*)

67. Finally, the Applicant met with officials from DDOT’s Safe Routes to School program, and agreed to continue to work with the Safe Routes team to ensure student safety both during construction and after completion of the Project. (*Id.*)
68. Additional findings regarding the necessity and adequacy of reports from District agencies are included below in the Commission’s review of this Application’s satisfaction of the procedural requirements for a second-stage PUD. (*See* FF 123.)

Advisory Neighborhood Commission 6D

69. Prior to the Public Hearing, the Applicant engaged in extensive outreach with the ANC, neighbors, and community groups. The Applicant’s outreach with the ANC and community groups informed the Project’s design, mix of uses, mitigation plans, and Project Public Benefits. Beginning over three years before the Public Hearing and leading up to the Hearing, the Applicant met with the ANC, members of the communities surrounding the Project, neighbors, and neighborhood groups to discuss plans and designs for the Project and to address community concerns. In addition to the ANC, the Applicant met or had discussions with representatives from Westminster Presbyterian Church and Christ United Methodist Church, which are located to the immediate northwest and north of the Project, SWNA, Waterfront Towers, Capitol Park Towers, USAA Real Estate, Bernstein Management Company, Forest City, Carrollsburg Condominium, Tiber Island Cooperative, and Tiber Island Condominium Association, which together represent a broad cross-section of community groups, nearby residential buildings, and adjacent commercial property owners. (Ex. 22 at 6.) The Applicant also met multiple times with the Amidon-Bowen PTA on behalf of students at the public school approximately one block north of the Property. (*Id.*; Ex. 47 at 6-7.)
70. The ANC played a significant and positive role in the development of the Project. Because the Applicant has worked closely with the ANC from the outset of the RFP process by which DMPED selected the Applicant, the ANC’s preferences regarding the Project’s ground-floor uses are reflected in parts of the Project’s program and design. Similarly, the

ANC's concerns about traffic and curbside management were factors in the design of the Project's Private Drive and parking and loading access locations. In addition, at the behest of the ANC, the Project expands substantially on the already-robust package of Waterfront Station Public Benefits to include the Project Public Benefits, all as outlined in more detail below. The expansion of the Project Public Benefits is largely the result of the Applicant's discussion with the ANC. At the encouragement of the ANC, the Applicant undertook a comprehensive study of the Project's transportation impacts, mitigation, and safety measures and construction management to address potential impacts. (Ex. 22 at 6.)

71. The Applicant presented the Project to the ANC at the ANC's December 2018 public meeting, met subsequently with the Commissioners on multiple occasions to resolve outstanding questions and concerns, and presented to the ANC again in January 2019 for a vote on the Project. (*Id.*) The ANC voted unanimously to support the Project. (Ex. 32.)
72. The ANC Report stated that the Project is consistent with the Southwest Neighborhood Small Area Plan (defined below) and is an appropriate final puzzle piece that will complete the larger Waterfront Station development. (*Id.*) The ANC Report listed the following issues and concerns:
 - (a) Affordable Housing: The ANC stated it was pleased that the Applicant was going beyond its obligations required by the first-stage PUD by providing deeper levels of affordability and duration, but that it would appreciate if the Applicant would "give some thought" to a portion of the affordable units larger than two bedrooms;
 - (b) Architecture and Materials: The ANC stated that it was pleased with the design, particularly the balconies, but expressed that it "hopes the balcony units will be made available, in proper percentages, as part of that number that will be set aside for affordable housing";
 - (c) Parking and Loading: The ANC stated that "parking and loading is going to be tight at this site" and requested more information about the usage and design of the Private Drive, clarification regarding the hours of operation of the Play Area and the hours that it would be open to public use, and that it would "appreciate a broader discussion from the Commission and DDOT representatives to ensure what is planned will be adequate";
 - (d) Landscaping and Streetscaping: The ANC stated that it wanted more information about the design of the Private Drive so that the paving and design will provide a space and surface that will safely accommodate pick up and drop off of pre-school children;
 - (e) Bicycles: The ANC stated that it was pleased there was considerable secured bike parking in the Project. The ANC stated that it wished to be involved in discussions regarding the location of the planned Capital Bikeshare station near the Project, including information about demand levels;

- (f) Retail: The ANC expressed support the Project’s retail plans, and that a specific condition is included in this Order;
- (g) Impact on the Library: The ANC expressed concern that the planned charter school would use the library as an extension of its campus and unduly burden the library staff and resources; and
- (h) Impact of the Charter School: The ANC expressed concern about a lack of transparency and coordination between the Applicant, AppleTree, the Amidon-Bowen PTA and the ANC, potential adverse impacts of the charter on Amidon-Bowen, and encouraged the Applicant to develop a community benefits agreement with the Amidon-Bowen PTA.

73. The ANC, in its direct testimony, and cross-examination at the Public Hearing, also noted some concerns with the Project. The ANC requested: (a) that the Project include three-bedroom units; (b) that the Project’s affordable units be reallocated so that more affordable units had access to balconies and other similar private outdoor spaces; (c) more information about the usage and design of the Private Drive; (d) clarification regarding the hours of operation of the Play Area and the hours that it would be open to public use; (e) information about the need for an additional Capital Bikeshare station; (f) an assessment of the Project’s impacts on the Southwest Library; (g) further dialogue between the Applicant and the PTA; (h) clarification regarding the length of the Project’s contracts with its performing arts tenant(s); (i) information from the Applicant the development of the Greenleaf Public Housing community in Southwest DC (“Greenleaf”); and (j) support from the Commission and the District government regarding the cumulative effects of multiple ongoing developments in Southwest DC, of which the Project is one of many.⁷ (See Ex. 40; Tr. 2 85-90, 93-94, 95-97, 98-114, 116-19, and 145-48.) The Applicant provided responses to the ANC’s comments:

- (a) Three-Bedroom Units: The ANC’s concerns regarding three-bedroom and larger units are addressed below in the Commission’s review of the Project’s consistency with the Comprehensive Plan and in the review of the Project’s potential impacts; (See FF 117-122.)
- (b) Allocation of Affordable Units: The Applicant revised the allocation of the Project’s affordable units in response to these comments from the ANC and related comments from the Commission and others at the Public Hearing; (Ex. 47 at 10; 47H.)
- (c) Information about the Private Drive: The ANC noted that it would “appreciate a broader discussion from the Commission and DDOT representatives to ensure that what is planned will be adequate both architecturally and operationally.” At the Public Hearing, the Applicant’s transportation consultant and landscape architect

⁷ The ANC Report also included language regarding the Applicant’s proffer of a “diner”-type use. At the Public Hearing, ANC Commissioner Litsky confirmed that the language in the written report was not the final language. (Tr. 2 at 105-106.) The final language is included here as Condition B.1(a).

provided testimony regarding the Private Drive's design and operations. (Tr. 2 at 14-16, 18-20.) Commissioner Litsky thereafter confirmed these responses from the Applicant satisfied the ANC's concerns. (*Id.* at 110.) The ANC also raised concerns about whether the AppleTree use, and in particular the after school care hours, had been fully analyzed in the Project's CTR. The Applicant explained that "after care" programs are a common feature of both public and charter schools in the District. The Applicant provided evidence that only a fraction of the AppleTree's students participate in such after school program. That is, of the 108 students enrolled at AppleTree today, only approximately 40 participate in the school's after care program, where student pickups can range from any time from 3:15 p.m. until 6:00 p.m. The Applicant's CTR conservatively assumed that, with respect to educational uses only, 33 vehicles would exit the Project during the evening peak hour alone (i.e., between approximately 5:00 p.m. and 6:00 p.m.). (Ex. 15A at 19-20.) The CTR assumes 82 total out-bound trips (including the 33 related to educational uses) and 122 total in-bound trips (29 education related) during the evening peak hour. These are conservatively high numbers to "stress test" the Project's private drive pick-up/drop-off loading plan and garage-based contingency plan; (Ex. 47 at 8; Tr. 2 at 153-54.)

- (d) Hours of Operation of the Play Area: In its Post-Hearing Submission, the Applicant confirmed that the Play Area will be open to public use during daylight hours outside of AppleTree's typical school hours but not later than 5:00 p.m. daily. The end result of this commitment is that the playground will be open to the public all day 184 days a year (i.e., weekends, holidays, and summertime) and in use by the school during school hours only, on only 181 days per year. As is the case with most public schools and public charter schools in the District, AppleTree currently provides after school care during hours that extend until as late as 6:00 p.m. on weekdays. (Ex. 47 at 5-6.) The Play Area's hours of availability for neighborhood children is slightly superior to that of other area school playgrounds.⁸ As discussed more fully below, the Play Area satisfies the Public Benefit Criteria; (*See* FF 110(k), 111-12.)
- (e) Demand for Capital Bikeshare: In its Post-Hearing Submission, the Applicant submitted usage data from the Capital Bikeshare program for the existing Waterfront Station Bikeshare station. (Ex. 47F.) That data shows unmet demand for a second Bikeshare station at Waterfront Station;

⁸ The existing playground at Amidon-Bowen Elementary School, which also has after care hours, similarly states that its facilities are open to the public only outside of school hours, which last until 6:00 p.m. on school days. These policies are consistent with general DC Public Schools policies for school playgrounds. (*See* Track, Field, Playground Usage and Access Policy, DCPS CHANCELLOR DIRECTIVE 604.2 V 2.0 at 3 (Aug. 2016) <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/Track%2and%20Field%20Policy.pdf> ("School playgrounds will not be available when DCPS scheduled activities are using the facility during the times stated above. This includes extracurricular activities, or when entities or programs are granted access through a building use agreement or lease, as well as when the facilities are otherwise locked or closed to the public").)

- (f) Assessment of Impacts on DCPL: The ANC raised concerns that the inclusion of a charter school in the Project would overburden the Southwest Branch of the DC Public Library given the proximity of the proposed school to the existing library. The Applicant reports that AppleTree does not now regularly take its students to the Public Library and has no plans to do so in the future. (Ex. 47 at 8-9.) As noted above, after the Public Hearing, DCPL provided written testimony concluding that the Project would not have any undue burden on the library; (See FF 64.)
- (g) Further Dialogue with the PTA: The ANC's concerns regarding the PTA are addressed below in the Commission's review of the Project's potential impacts; (See FF 103.)
- (h) Performing Arts Contract Length: The ANC expressed concern that the space in the Project reserved for performing arts and related uses would be limited to leases with a term of five years. The Applicant confirmed that is not the intent. Rather, the space will be reserved for a performing arts use for a period of five years after the issuance of the first certificate of occupancy for the Project. If during that five-year period no tenant is found that satisfies the use criteria, then the 9,000 square feet reserved for that use will be opened up to a broader range of uses. However, this commitment does not limit the Applicant to entering into a five-year lease for such space. The five-year commitment is entirely unrelated to the lease term; (Ex. 47 at 5.)
- (i) Greenleaf Redevelopment: The ANC's concerns about Greenleaf are not properly before the Commission in this proceeding.⁹ The future redevelopment of Greenleaf is not part of the instant proceeding and any question involving it is at best speculative at this point, since the process is in the preliminary "Request for Qualifications" stage, meaning no development partner has been selected and no development plan has been identified. (Tr. 2 at 94.) Accordingly the concerns regarding Greenleaf are not legally relevant to this proceeding, and the Commission does not give them great weight.¹⁰ To the extent the ANC's comments about affordable housing overlap with its comments about Greenleaf and are relevant to the instant proceeding, the Commission gives those concerns their statutorily determined weight.¹¹ If at some point in the future the Greenleaf redevelopment

⁹ As a threshold matter, the ANC's cross-examination of the Applicant with respect to Greenleaf was improper. The Applicant did not mention the Greenleaf redevelopment in its direct testimony or any filing to the Commission, and questions on cross-examination are to be limited to the scope of direct testimony. (See *Watergate East Committee Against Hotel Conversion Co-op Apartments v. District of Columbia*, 953 A.2d 1036, 1046 (D.C. 2008) ("Matters beyond the scope of direct examination are properly left to the opposing party's case-in-chief."))

¹⁰ See *Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 89 (D.C. 1978). ("Thus, we interpret "issues and concerns," as used in D.C. Code 1978 Supp., § 1-171i(d), to encompass only *legally relevant* issues and concerns.") (Emphasis added).

¹¹ Project opponents, in oral testimony provided at the Public Hearing also raised concerns about Greenleaf. (Tr. 2 at 136-38.) For the reasons given here, the Commission does not consider this testimony relevant to this proceeding.

plan goes forward with the Project identified as a Build First site, the Commission will consider any legally relevant issues in connection with those proceedings; and

- (j) Construction Coordination: The ANC expressed concerns about the cumulative impact of construction in Southwest DC resulting from the Project and other ongoing or planned development activities. The Commission finds that the Applicant does its part to mitigate construction-period impacts including its contribution to cumulative impacts. That is, as part of the CMP, the Applicant is obliged to engage in construction coordination among the numerous parties engaged in construction in the neighborhood, a novel measure that addresses cumulative impacts and impacts resulting from the interrelation of simultaneous construction projects on separate properties. As discussed more fully below, the Commission finds that the Applicant's CMP fully mitigates any potential adverse impacts from construction of the Project. (*See* FF 105.)

Commission Comments and Questions

- 74. Prior to the Commission's vote to set down the Application for a public hearing, the Commission did not raise any comments or questions with respect to the Project. (Tr. 1 at 66-68.)
- 75. At the Public Hearing, the Commission raised questions regarding: (a) the location and total student population of AppleTree today in relation to Amidon-Bowen Elementary School; (b) the placement of solar panels over the Project's green roofs; (c) the nature of the Project's "diner" use; (d) the Project's LEED commitment; (e) the Project's "front" "rear" and "side" yard configuration; (f) the Project's building height measuring point; (g) the potential visibility of the Project's solar panels from public streets; (h) the Project's lack of three-bedroom units; (i) the design of the Project's courtyard-facing façades; (j) the placement of the Project's affordable units; (k) the Project's signage dimensions; (l) the Project's employment benefits; (m) the vacancy and absorption rates in the neighborhoods surrounding the Project; (n) the time-frame of the ground lease with DMPED; (o) whether any representatives of the Applicant reside in the neighborhood surrounding the Project; and (p) the PTA's concerns and requests. (Tr. 2 at 35-85.) The Commission also asked questions and engaged in dialogue with members of the PTA, the ANC, and those testifying in support and opposition to the Project:
 - (a) AppleTree: The Applicant confirmed that AppleTree has been located in Southwest DC at a couple of different locations for nearly two decades; (Tr. 2 at 37-40; Ex. 35 at 41.)
 - (b) Solar Panels over Green Roofs: In its Post-Hearing Submission the Applicant provided recent materials from DOEE confirming the feasibility and design of a green roof together with solar panels. (Ex. 47E.) Consistent with this recent guidance, the Applicant's design expert confirmed that while he had not yet installed solar panels over a green roof, he had been told that it was possible; (Tr. 2 at 40.)

- (c) “Diner” Use: The Applicant provided information about its retail search and the type of restaurant tenant that it was hoping to attract; (*Id.* at 41.)
- (d) LEED Commitment: The Applicant confirmed it was designing to achieve LEED Gold v2009; (*Id.* at 42.)
- (e) “Front,” “Rear,” and “Side” Yard Configuration: The Applicant provided testimony that the Project’s 4th Street, S.W. and Wesley Place, S.W. frontages were “side” yards because the Project’s front is on M Street, S.W. as memorialized in the Waterfront Station PUD and consistent with the practice in other second-stage PUDs under the Waterfront Station PUD; (*Id.* at 42-45; *see also* FF 116(a).)
- (f) Building Height Measuring Point: Again, the Applicant confirmed that a shared measuring point on M Street was a feature of all buildings within the Waterfront Station PUD and is consistent with the Zoning Regulations. The Applicant’s architecture expert confirmed that the use of M Street, S.W. as a measuring point (rather than 4th Street, S.W.) results in an increased maximum elevation of two to three feet; (Tr. 2 at 46.)
- (g) Solar Panel Visibility: The Commission also expressed some concern that the Project’s solar panels could result in visual clutter at the roof level of the Project. The Applicant’s provided studies of the potential locations for solar panels suggest that none would be visible from the public right-of-way given the screening and setback requirements for such panels; (Ex. 47H.)
- (h) Three-Bedroom Units: The Commission’s questions regarding three-bedroom and larger units are addressed below in the Commission’s review of the Project’s consistency with the Comprehensive Plan and in the review of the Project’s potential impacts; (*See* FF 117-22.)
- (i) Courtyard-Facing Façades: The Commission raised concerns with the overall design of the courtyard, suggesting that it relies on a “lesser” material and is not as well articulated as the three public-facing façades. The courtyard is generally not visible from 4th Street, S.W. or any other public right-of-way, However, upon further review of the materials samples provided by the Applicant and its Post-Hearing Submission, the Commission is satisfied that the courtyard brick is not a “lesser” material than the ceramic on the public-facing sides of the building. Indeed, the high-quality brick employed on the courtyard could be a façade material elsewhere. The Applicant elected a larger ceramic rain screen on the public-facing façades because that is more in character with the other modern buildings in the Waterfront Station PUD. However, the brick is entirely contextual for Southwest DC and is a high-quality exterior material. Moreover, the courtyard is not bereft of articulation. Each of the three courtyard façades is articulated through a mix of massing changes, including bays and reveals. The courtyard views also benefit from landscaping in the courtyard and the sunnier southern exposures. These benefits balance the benefits of the north and west-facing units with balconies but also with

respectively, no direct daylight or more street noise. Finally, the color of the courtyard's brick is deliberately light in tone to reflect light and to create a brighter experience for the south-facing units. In sum, the Project's courtyard façade is not as richly designed as other public facing façades, but that is acceptable in light of its interior-facing configuration. The Commission is moreover satisfied that its concerns about the disparity in level of articulation are ameliorated by the Applicant's reallocation of the Project's affordable units to be more evenly balanced between the north and south sides of the Project; (Ex. 47 at 10-11.)

- (j) Location of Affordable Units: In its Post-Hearing Statement, the Applicant reallocated the Project's affordable units. (Ex. 47 at 10; 47H.) Now only approximately 57% of such units face onto the Project's courtyard, which addresses the Commission's concerns that such units were previously distributed in such a way that a disproportionate number looked onto either the "back" of the building. (Ex. 47 at 10.) The courtyard side of the Project, though nominally the "back" is by some measures the more desirable side of the Project: (i) it is south-facing, which typically results in better daylighting than the north side of the building, (ii) it faces the Project's courtyard, which is likely to be quieter than the east and west-facing sides of the Project, both of which sides face onto public streets, and (iii) it has a "greener" view, with green roofs on all levels of the Project's courtyard and on the roof and garage roof of the adjacent office building at 1100 4th Street. (*Id.*) The Commission is fully satisfied that the Applicant's reallocation of the Project's affordable units resolves all concerns about the initial proposed allocation of such units and finds that the proposed allocation satisfies the relevant regulations governing such allocation;
- (k) Signage Dimensions: In response to the Commission's questions regarding the maximum allowed height of the Project's signage, the Applicant provided updated drawings from the Project's signage plan showing such maximum allowable height in its Post-Hearing Submission; (Ex. 47H.)
- (l) Employment Benefits: The Applicant confirmed that it had entered into employment-related agreements with DOES and that it had a long history of successful job-training and apprenticeship programs. (Tr. 2 at 59-61.) In its Post-Hearing Submission, the Applicant provided detailed information about its affiliates' job training programs confirming the Applicant's broad successes with job training; (Ex. 47C.)
- (m) Vacancy and Absorption Rates: The Applicant confirmed that the rate of absorption among apartment units in the neighborhoods around the Project is very high; (Tr. 2 at 61.)
- (n) Ground Lease: The Applicant confirmed that the ground lease had a 99-year term; (*Id.* at 61-62.)

- (o) Applicant Residency: The Applicant confirmed that its corporate headquarters were in Southwest DC and that many of its senior executives also lived in Southwest DC; and (*Id.* at 84-85.)
- (p) PTA Concerns and Requests: Further discussion regarding the PTA's concerns is below in the Commission's review of the Project's potential impacts. (FF 103.)

Testimony in Support

- 76. The Commission reviewed three letters in support of the Project from private individuals or organizations. (Ex. 29, 30, 33.) These letters applauded the Project's affordable housing, ground-floor program, and overall design as well as the Applicant's outreach and employment practices. (*Id.*) The Commission received and reviewed a letter of support of the Project from DMPED, which expressed support for the Project on behalf of the District's executive branch and its policy objectives. (Ex. 26.) DMPED's letter also described the D.C. Council's approval of the Project. (*Id.*) The Commission reviewed letters of "qualified" support, which are addressed more fully below. (FF 76-77.)
- 77. At the Public Hearing, the Commission heard from two qualified supporters, whose testimony is addressed below, and one unqualified supporter of the Project. The unqualified supporter, Mr. Paul Taylor a/k/a "Big South", testified on behalf of the Applicant's and its affiliates' job training and local employment successes. (*See* FF 76-77; Tr. 2 at 127-129, 132-135.) The Commission found Mr. Taylor to be a highly credible witness whose testimony was strongly supportive of the Applicant's ability to carry out the Public Benefits.

Qualified Support / Testimony in Opposition

- 78. The Commission reviewed written testimony in opposition to or in qualified support of the Project from individuals or organizations and additionally considered the oral testimony of six individuals or organizations. (Ex. 23, 28, 31, 37-39, 43, 45; Tr. 2 at 65-84, 136-148.)
- 79. The Waterfront Tower Condo Association ("WTCA") applauded the Project's affordable housing component, but raised concerns about the Project's drop-off zones, retail commitments, northern façade design, and landscaping, each addressed below. (Ex. 23 at 1.)
- 80. Near SE/SW Community Benefits Coordinating Council ("CBCC") was also generally in support of the Project's affordable housing, but also raised concerns with the Project's retail benefits, its potential impacts on Amidon-Bowen Elementary School, and its lack of three-bedroom units. (Ex. 39 at 2.)
- 81. Mr. Chris Williams raised concerns in his oral testimony at the Public Hearing about the Project's lack of three-bedroom units, the Applicant's failure to identify which affordable units were reserved at which level of income, Greenleaf, and anecdotes regarding lease up of affordable units at The Wharf. (Tr. 2 at 136-138.) To Mr. Williams's thoughtful concern that the Applicant's filings did not identify which units would be reserved for households

earning 30% MFI and which would be reserved for those earning 50% MFI, the Applicant's Post-Hearing Submission included this information. (Ex. 47H at 2-12.) The Applicant also provided information confirming that its affiliates have successfully leased up and operated affordable housing units nearby. (Ex. 47B.)

82. Ms. Joelle Rodney objected to the Project's alleged lack of family-sized housing units and potential displacement impacts. (Tr. 2 at 138-139.)
83. Three representatives of the PTA spoke in opposition to the Project at the Public Hearing and submitted into the record a total of four written letters, all of which together raised concerns about AppleTree's potential impacts on Amidon-Bowen Elementary School. (Tr. 2 at 65-84; Ex. 28, 31, 38, 45.)
84. Finally, a representative from SWAG provided oral testimony at the Public Hearing, and a few minutes before the close of the record before the Public Hearing, SWAG provided written testimony raising a number of allegations about the Project's lack of consistency with the Comprehensive Plan and potential impacts. (Ex. 37.) There are a number of concerns about SWAG's testimony:
 - (a) First, much of SWAG's testimony raises generalized grievances of public policy matters that would apply to any development in the District, whether via a PUD or as a matter of right. This PUD, which is part of an adjudicatory process, is not the proper proceeding for crafting the public policy responses SWAG seeks for its allegations of generalized injuries. (*See York Apartments Tenants Association v. District of Columbia Zoning Commission.*, 856 A.2d 1079, 1084 (D.C. 2004).) Rather, SWAG should pursue its concerns before the D.C. Council, the Mayor's Office or other executive agencies, or before the Commission when it is sitting in a rulemaking or other quasi-legislative posture. The DC Court of Appeals has recognized that these types of broad, general, and unsupported claims—such as those regarding “destabilization of land values,” “environmental impacts,” and broad concerns regarding overdevelopment in the community—“involve policy and political considerations beyond the scope of legal review”;¹²
 - (b) Second, these broad complaints and alleged impacts are not tied to any particular harm caused by the Project or arising out of the Application proceeding. SWAG's proposed “planning area”—the area it argues should be studied to understand the impacts of the Project—underscores the diffuse and generalized nature of the impacts it alleges as arising from the Project. SWAG, in footnote 5 of its written testimony, defines the proposed “planning area” by reference to an aerial photo included in the record of the first-stage PUD proceeding, which encompasses all four quadrants of the District and extends well beyond the Southwest neighborhood.¹³ (Ex. 37.) It is not plausible that the Project could possibly have a

¹² *Union Market Neighbors v. District of Columbia Zoning Comm'n*, No. 17-A-0042 (D.C. December 18, 2018).

¹³ SWAG's planning area is bounded by 17th Street, N.W. on the west to 14th Street, N.E. on the east and C Street, N.W./N.E. to the north and Stanton Street, S.E. to the south.

material impact (or any measureable impact) on land values or housing markets or displacement or gentrification on this scale. Rather, SWAG's identification of such a broad "planning area" underscores that its concerns are District-wide in scale and not specific to the Project;

- (c) Third, many of SWAG's generalized grievances are conclusory statements that are not supported by any substantial evidence or concrete facts. The Commission has previously determined that "[f]or a party or witness to raise an issue for which a response is required, the party or witness must have some factual basis for the claim and draw a nexus between the claimed deficiency and the current application." (*See* Z.C. Order No. 11-03J, FF 150.) Further to this point, the Court of Appeals has ruled that project opponents "must allege an injury or aggrievement which is real, perceptible, concrete, specific and immediate, rather than one that is conjectural, hypothetical or speculative"; and (*Lee v. District of Columbia Bd. of Appeals & Review*, 423 A.2d 210, 217 (D.C. 1980) (citations omitted).)
 - (d) Notwithstanding these grievous deficiencies in its testimony, the Commission evaluates SWAG's concerns one-by-one to conduct a probing examination of the merits of each.
85. Although not always expressly framed as such, testimony in opposition to the Project tended to fit into four broad categories: (a) allegations of inconsistency with the Comprehensive Plan; (b) allegations of adverse impacts; (c) alleged inadequacies of the Public Benefits; and (d) alleged inconsistency of the Project with the first-stage PUD. In an effort to create a common vocabulary for evaluating the concerns of Project opponents and the qualified supporters, the Commission considers their allegations in connection with findings evaluating the Application's satisfaction of the criteria for review and approval of a second-stage PUD. One concern—the Project's lack of three-bedroom units—cuts across the above four categories and the Commission's findings on that issue are addressed separately below.

Consistency of the Project with the Purposes of the PUD Process

86. As set forth in ZR16, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, provided that the project that is the subject of the PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; (c) protects and advances the public health, safety, welfare, and convenience and does not circumvent the intent and purposes of the Zoning Regulations; (d) is not inconsistent with the Comprehensive Plan and does not result in action inconsistent therewith; and (e) undergoes a comprehensive public review by the Commission in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits. (*See* 11-X DCMR §§ 300.1, 300.2, 300.5.) For the following reasons the Project advances the purposes of the PUD process:

- (a) The following aspects of the Project make it superior to the development of the Property under the matter-of-right standards:
- Housing/Affordable Housing: The Project provides substantially more housing and affordable than could be constructed on the Property without a PUD. In addition, the reservation of 30% of all units as affordable for households earning 30%-50% MFI vastly exceeds the amount and level of affordable housing that would be required in a matter-of-right development pursuant to ZR16's inclusionary zoning requirements. The Applicant provided calculations that a matter-of-right development of the Property would result in only approximately 37 affordable units at 60% MFI, whereas the Project actually results in 136 affordable units at 30% or 50% MFI. (Ex. 2 at 26.) For this reason alone, the Project is superior to a matter-of-right development of the Property;
 - Public Benefits: The Project's construction as part of the overall Waterfront Station PUD supports the significant package of Waterfront Station Public Benefits that accompanied that approval. Furthermore, the Applicant has developed and agreed to the additional Project Public Benefits, including commitments to neighborhood-serving ground-floor uses and spaces and sustainable design features, which further exceed what would be provided in a matter-of-right development; and
 - Community Engagement: Finally, the Project is undergoing a comprehensive public review process with multiple opportunities for neighbor, community group, and public agency participation. The Project has been modified and improved as a result of community and District agency input. The Applicant also agreed to the detailed and extensive TMP/TDM and CMP. Those opportunities for community input and enhanced mitigation would not exist in a matter-of-right development of the Property;
- (b) The Public Benefits are commendable in number and quality. The Public Benefits are enumerated and discussed in detail below. (See FF 103-110.) For the reasons set forth more fully in the Public Benefits findings, the Public Benefits are of a commendable quality. There are multiple distinct categories of Project Public Benefits in addition to the Waterfront Station Public Benefits, resulting in an absolute number of benefits that the Commission finds to be commendable. Finally, the Commission finds that the Public Benefits are meaningful. The Public Benefits address the preferences, needs and concerns of community residents, were developed following the Applicant's robust community engagement process, supported by OP, and are not inconsistent with the Comprehensive Plan; (See FF 108-09.)

(c) The Project protects and advances the public health, safety, welfare, and convenience and does not circumvent the purposes of the Zoning Regulations:¹⁴

- Public Health: The Project protects and advances the public health by being designed in a high-quality manner and in compliance with all applicable construction codes. (Ex. 2 at 22.) The Project includes a number of mitigation measures, notably the TMP and CMP, which protect and affirmatively advance the public health. The Project also encourages cycling, walking and fitness, measures that advance public health. The Project does not entail any overcrowding or overpopulation, but instead rationally increases residential density near a Metrorail station and protected open space. The Project also complies with, and exceeds many, applicable environmental performance standards, all of which go to protecting public health;
- Safety: The Project protects and advances public safety: the Project's balconies and active ground-floor uses are designed to put "eyes on the street" and promote public realm safety. In addition, the Applicant has engaged with MPD and DDOT to improve the Play Area's safety and to engage in post-hearing dialog regarding security cameras, lighting, patrols, and safe pedestrian routes to school;
- Welfare: The Project protects and advances the public welfare by bringing much needed economic activity and by adding 136 units of affordable housing and by providing jobs training, employment, and small business-related benefits;
- Convenience: Finally, the Project protects and advances the public convenience by adding new neighborhood-serving retail and arts uses. Such uses serve existing Southwest residents and the District's convenience more generally, given the Project's strong transit-oriented component; and
- Morals, Order, Prosperity: The Project promotes public morals insofar as the Application was undertaken in concert with extensive community outreach. (See FF 66-70.) The Commission finds that this community dialogue exemplifies public morals as expressed through the Zoning Regulations and the PUD process. The Project also exemplifies orderly, well-planned development that is undertaken on behalf of the best interests of the residents of the District. The Project complies with all of the specific development standards set forth in the Zoning Regulations, except where

¹⁴ The general intent and purposes of ZR16 are, *inter alia*, to promote the "public health, safety, morals, convenience, order, prosperity, and general welfare to (a) provide adequate light and air, (b) prevent undue concentration of population and the overcrowding of land, and (c) provide distribution of population, business, and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services." (11-A DCMR § 101.1 ("Zoning Purposes").)

flexibility is hereby requested, which flexibility is minor in this instance and expressly contemplated as part of the PUD process. The Project allows for an appropriate amount of light and air by virtue of its bulk, height, orientation, setbacks, and location. The Project's conformance to the massing limitations imposed as part of the Waterfront Station PUD ensures that it will not unduly concentrate people on or overburden the Property. The Project's transit-oriented location allows for an appropriate distribution of residences, economic activity, and cultural and public education uses that create many favorable conditions and further the District's economy and supply of public services;

- (d) The Project is not inconsistent with the Comprehensive Plan and would not result in any action inconsistent with the Comprehensive Plan. Extensive findings regarding the Project's lack of inconsistency with the Comprehensive Plan are provided below; and (*See* FF 87-91.)
- (e) The Project has undergone a comprehensive public review by this Commission, which has evaluated the Development Incentives in proportion to the Public Benefits. The Commission has reviewed the entirety of the record. The record is complete with multiple detailed, thorough, and credible briefings from the Applicant and reports from multiple District agencies and the ANC. The Commission heard presentations on the Application and had the opportunity to ask questions of the Applicant, OP, DDOT, the ANC, the PTA, SWAG, and other supporters and opponents of the Project. In every material way, the Applicant responded satisfactorily to the requests from the Commission. The Applicant has also responded thoroughly to OP, DDOT, the ANC, SWAG, and the PTA. The record in this matter is unquestionably full, and the Commission has reviewed the record in its entirety.

- 87. In addition to the foregoing requirements, the minimum area included within a proposed PUD must be no less than 15,000 square feet, and all such area must be contiguous. (11-X DCMR § 301.) The Property, at 59,044 square feet, satisfies the area and contiguity requirements.
- 88. The Commission finds that the Project is consistent with and advances the purposes of the PUD process.

Compliance of the Project with the PUD Evaluation Standards

- 89. In order to approve an application for a PUD, the Commission must find that such application: (a) is not inconsistent with the Comprehensive Plan or other adopted public policies and active programs (collectively, the "Plan") related to the Property; (b) does not result in unacceptable impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and amenities, which are not inconsistent with the Plan with respect to the

Property (collectively, the “PUD Evaluation Standards”). (See 11-X DCMR § 304.3.) As described more fully below, the Project satisfies the PUD Evaluation Standards.

Evaluation of the Project’s Consistency with the Comprehensive Plan

90. The Project is not inconsistent with, as a whole, the Comprehensive Plan or other adopted public policies related to the Property. The Commission rests this finding on three subsidiary findings: (a) the Applicant provided a robust analysis regarding the Project’s consistency with the Plan, an analysis that was not seriously rebutted in any material way by anything introduced into the record by any opponent of the Project; (b) OP concluded the Project is not inconsistent with the Plan, and the Commission affords OP’s analysis “great weight”; and (c) the Commission in the Waterfront Station PUD made findings regarding the Project’s consistency with the Comprehensive Plan and it sees no reason to disturb those findings now:

- (a) The Applicant’s initial filing included a matrix analyzing in significant detail the Project’s consistency with the Comprehensive Plan for the District of Columbia set forth at 10-A DCMR § 100, *et seq.* (“Comprehensive Plan”) and the 2015 Southwest Neighborhood Small Area Plan (“Small Area Plan”). There are approximately 775 specific policy objectives in the Comprehensive Plan’s District Wide Elements and the Lower Anacostia Waterfront/Near Southwest Area Element. The Applicant’s analysis reviewed the Project against the Future Land Use Map, Generalized Policy Map, and the approximately 200 policy objectives (of the 775 total) that apply in whole or in part to the Project. In addition, the Applicant’s initial planning analysis reviewed the Project against all eleven “Guiding Principles” and more than a dozen of the “Concept Actions” set forth in the Small Area Plan. Moreover, many of the Comprehensive Plan policies cited only in a cursory fashion by SWAG are thoroughly analyzed in the Applicant’s filing and which provides more compelling evidence of consistency with the Comprehensive Plan. Accordingly, the Applicant provided the Commission with as thorough and probing an assessment of the Project’s consistency with the Comprehensive Plan as is reasonable. The Commission accepts the Applicant’s analysis on the Project’s consistency with the Comprehensive Plan and Small Area Plan as thorough, credible and convincing. The Project and the Public Benefits proposed herein are unquestionably not inconsistent with, as a whole, the Comprehensive Plan and other adopted public policies applicable to the area around the Project;
- (b) The OP Setdown Report and OP Hearing Report also provided analysis concluding that the Project is not inconsistent with the Comprehensive Plan. (Ex. 11 at 4-15; 24 at 2-5.) The Commission gives great weight to these OP findings, which the Commission hereby adopts as if restated herein;
- (c) Finally, as part of the Waterfront Station PUD, the Commission found that the overall proposal for Waterfront Station, including the proposal for the Property (with which the Project is hereby complies) was consistent with the Plan and other

adopted policies of the District. (*See* Ex. 2F; FF 98-108 and Conclusions of Law 8 (“Approval of the [Waterfront Station PUD] is not inconsistent with the Comprehensive Plan.”).) The Commission made particularized findings with respect to the Comprehensive Plan’s Future Land Use Map, Generalized Policy Map, Framework Element, Land Use Element, and Lower Anacostia/Near Southwest Area Element, among other sections. (*Id.*) Since the approval of the Waterfront Station PUD, the Council of the District of Columbia has adopted a small area plan, the “Southwest Neighborhood Plan,” applicable to the Property. Given the findings in the record, the clear conclusions of law in the Waterfront Station PUD, and the consistency between the instant Project and the approval for the Property contained in the first-stage PUD, the Commission finds that the Project is not inconsistent with the Comprehensive Plan. The Project is also not inconsistent with other public policies applicable to the Property adopted since the approval of the Waterfront Station PUD.

91. The Commission supplements its findings above with the following particularized findings about the Project’s consistency with the Comprehensive Plan:

- (a) Future Land Use Map and Generalized Policy Map. The Property is within the mixed-use “High Density Residential” and “High Density Commercial” area on the Future Land Use Map of the Comprehensive Plan. Such areas contemplate high-rise apartment and mixed-use buildings in excess of eight stories. The Project is consistent with this designation. The Property is also within the “Land Use Change Area” on the Comprehensive Plan’s Generalized Policy Map. Such areas are intended to encourage and facilitate new development . . . to become mixed-use communities containing housing, retail shops, services, workplaces, parks and civic facilities, . . . [and] to create high quality environments that include exemplary site and architectural design and that are compatible with and do not negatively impact nearby neighborhoods.” (10-A DCMR §§ 223.11, 223.12.) The Project is consistent with the objectives of the Generalized Policy Map for the Property;
- (b) Guiding Principles. The Applicant reviewed the Project against more than 30 of the 36 “Guiding Principles” in the Comprehensive Plan’s Framework Element. (*See* Ex. 2L.) The Commission agrees with and adopts that analysis, finding that the Project is not inconsistent with the relevant Guiding Principles of the Plan;
- (c) District-Wide Elements. The Applicant provided an exhaustive analysis of the Project’s consistency with dozens of specific policy objectives in the Comprehensive Plan’s District-Wide Elements. (*Id.*) The Commission agrees that the Project is not inconsistent with the Comprehensive Plan as a whole; and
- (d) Lower Anacostia Waterfront/Near Southwest Area Element. The Applicant also provided an analysis of the Project’s consistency with many specific policy objectives in the Comprehensive Plan’s Area Element applicable to the Property. (*Id.*) The Commission agrees that the Project is not inconsistent with the Comprehensive Plan’s Area Element.

92. Small Area Plan. Because the Small Area Plan had not been adopted at the time of the Waterfront Station PUD, the Commission makes these further findings with respect to the Project's consistency with such plan:

- (a) The Small Area Plan identifies numerous "Guiding Principles" of its own. Among these are objectives to: (i) foster an environment that encourages and embraces cultural and economic diversity; (ii) preserve the varied scale and green character of the neighborhood; (iii) design buildings, connections and sidewalks to improve safety, security, and pedestrian circulation; (iv) support, enhance, and expand neighborhood retail amenities; (v) enhance, connect, and better utilize parks both active and passive as open space; (vi) invest in community, arts and education uses that serve resident needs; (vii) preserve and develop a range of housing for a mix of income, age, and family size, and encourage quality design and architecture (viii) strengthen multimodal transportation and improve street connections, parking, and safety; (ix) remember the history and legacy of the Southwest neighborhood while planning for change in the future; (x) develop a strategy for height, density, and open space that enhances, acknowledges and complements the character of the neighborhood; and (xi) incorporate goals and targets from the Sustainable DC Plan to protect our environment and conserve resources to foster a vibrant, healthy neighborhood; (Ex. 2L.)

- (b) In relation to these Guiding Principles of the Small Area Plan, the Commission finds that the Project: (i) encourages cultural diversity through its inclusion of arts and educational spaces and encourages economic diversity through its provision of 136 affordable residential units; (ii) is located in an appropriate location for its proposed height and scale and contributes positively to the green character of Southwest DC; (iii) has a location and balconies and café areas, which together with the Private Drive, enclosed and reinforced Play Area and streetscaping improve safety and security and promote pedestrian circulation; (iv) introduces additional residents who will likely support and enhance existing retail offerings and also provides ground floor uses that enhance and expand existing retail amenities; (v) has public spaces and a Play Area that together connect and enhance Southwest DC's collection of parks; (vi) includes arts and education investments that serve Southwest DC residents; (vii) includes units that are affordable to very low income households (30% MFI), low income households (50% MFI), and market-rate households and includes two-bedroom units that accommodate families with children; (viii) improves the pedestrian condition along 4th Street, S.W., adds riders for the nearby Metrorail station, and contributes to Southwest's bicycle infrastructure through the provision of a new Capital Bikeshare station in a high demand area; (ix) provides architecture that recalls and promotes the best elements of the modernist character of Southwest DC; (x) has an appropriate height and density given its location near the Metrorail station and includes open spaces that reflect the urban town center character of Waterfront Station; and (xi) is constructed with a high level of environmental sustainability and healthy living features;

- (c) The Small Area Plan also includes numerous specific policy recommendations. Many of those recommendations are not relevant to the Project given the broad aims of the Small Area Plan. However, the Commission finds that the Project advances individual aims of the Small Area Plan. In particular, the Project: (i) is an infill development project that respects and enhances the Modernist character of Southwest DC; (ii) has massing and orientation that reinforce the re-establishment of the L'Enfant Plan along 4th Street, S.W.; (iii) complies with the Design Guidelines in the Small Area Plan (that is, the Waterfront Station PUD includes a mix of building heights, and the Project provides high-quality materials and significant articulation on all three street-facing façades); (iv) has a ground floor that is pedestrian oriented with tall, appropriately transparent retail storefront spaces; (v) includes private green areas as well as a public plaza; (vi) is designed to be LEED Gold 2009; (vii) locates all of its parking below grade where it is not a detractor to the streetscape; (viii) is designed to promote pedestrian, bicycle, and transit connectivity; (ix) adds additional street trees and tree cover in the private internal courtyard; (x) is setback along Wesley Place, S.W. to help facilitate street trees along that frontage; (xi) reduces stormwater runoff with green roofs and other bioretention areas; (xii) is located entirely outside of the 100-year floodplain and includes resiliency elements such as solar panels; (xiii) contains no surface parking; (xiv) includes electric vehicle-charging stations; (xv) includes a new theater use, which adds to the range of Southwest DC neighborhood arts venues; (xvi) includes ground-floor retail, arts, and educational uses that enhance and add to the existing retail cluster along 4th Street, S.W.; (xvii) includes ground-floor uses that are all neighborhood-serving and are capable of being demised in a variety of sizes and formats and that will enliven 4th Street, S.W. and activate the pedestrian zone. These factors of the Project advance Small Area Plan “Modernist Gem” recommendations 3, 6, and 7; “Green Oasis” recommendations 8 and 11-14; “Arts and Culture” recommendation 1; and “Thriving Town Center” recommendations 2, 3, and 7; and
- (d) The Commission finds there is no evidence in the record to suggest that the Project is not consistent with the Small Area Plan.

93. In written testimony presented to the Commission, Project opponents alleged that the Project is inconsistent with the Comprehensive Plan. In general, these allegations are untimely raised in a second-stage PUD proceeding unless such allegations pertain to modifications to the first-stage PUD. The Commission is directed to make findings on regarding an application’s consistency with the Plan only during the first-stage of a PUD proceeding. (*See* 11-X DCMR 302.3(a); *see also Randolph v. District of Columbia Zoning Commission*, 83 A.3d 756, 762 (D.C. 2014) (“reject[ing] petitioners’ claim that the Commission was required to address the Historic Preservation Elements of the Comprehensive Plan in its [second-stage PUD]” where “the Commission had already addressed the character of the neighborhood and it devoted approximately ten pages of its stage-one order to discussing the Comprehensive Plan”).) The Commission made extensive findings in the Waterfront Station PUD, and those findings were never challenged. Any challenge to those findings now is far too late especially because this Application proposes no modifications to the first-stage PUD.

94. Setting aside the timeliness problem with opponents' Comprehensive Plan allegations, the opponents' allegations of the Project's inconsistency with the Plan have no merit when carefully evaluated:

- (a) Amount of Affordable Units: SWAG correctly notes that "Only 30% of the total units [in the Project] are considered affordable", but incorrectly states that "plan policies call for 51% or more of the units on former public land (especially given Ward 6's affordable housing crisis). (See, Policy H-1.2.4: Housing Affordability on Publicly Owned Sites.)" SWAG's assertion that "plan policies call for 51% or more of the units on former public land [to be affordable]" is readily disproved by the actual language of the Comprehensive Plan policy that SWAG then cites:

"Policy H-1.2.4: Housing Affordability on Publicly Owned Sites – Require that a *substantial percentage* of the housing units built on publicly owned sites, including sites being transferred from federal to District jurisdiction, are reserved for low and moderate income households." 10-A DCMR § 504.11 (emphasis added).

SWAG offers no support from the Comprehensive Plan or any other adopted plan and points to no authority interpreting "a substantial percentage" as meaning a "majority." To the contrary, the glossary to the Comprehensive Plan defines "substantial" as "Having considerable and perceptible importance, value, degree, or extent." The Project's reservation of 30% of its units as affordable satisfies the guidance in the Comprehensive Plan that a substantial percentage of the units on a publicly owned site be reserved for 30% and 50% MFI households. The Commission finds that the Project is not inconsistent with Policy H-1.2.4 because a substantial percentage of the Project's residential units are reserved for low- and very-low income households. The Commission makes separate findings below on the Project's alleged inconsistency with the Comprehensive Plan related to family-sized and three-bedroom units;

- (b) Scale of the Project's North Façade: WTCA alleges that the Project's north façade is out of scale with the modernist architecture of Southwest DC and the Small Area Plan. (Ex. 23; Tr. 2 at 124-27.) The Applicant provided rebuttal testimony that the Project's northern façade, at approximately 300 feet long, is in line with or shorter than that of many nearby buildings. The Applicant cited Potomac Place Tower, which has a length of 530 feet along 4th Street, S.W. one block north of the Project and Capitol Park Plaza, two blocks to the east which has a width of approximately 505 feet on its south (street-facing) elevation. (Ex. 47G4.) The Commission finds that the Project's materials and use of balconies match Southwest DC's modernist character. The Project is consistent with the "Modernist Gem" recommendations of the Small Area Plan and is not inconsistent with any objectives of the Comprehensive Plan or other adopted public policies. Moreover, the Project's massing, now complained about by WTCA, was established in the first-stage PUD and not modified here. The Commission finds no inconsistencies between the

Project's façade, on the one hand, and the Small Area Plan, Comprehensive Plan, or other adopted public policies applicable to the Property, on the other;

(c) Alleged Inconsistency with Urban Design Element Policies. SWAG insinuates that the Project is inconsistent with five urban design-related figures and related policy objectives in the Comprehensive Plan's Urban Design Element. On closer examination none of these concerns have any merit:

- Figure 9.5 encourages “Preservation of River View Corridors.” (10-A DCMR § 905.9.) There are no river views in the vicinity of the Property. South of the Project, Fort McNair's “Military Police” building and sentry wall block any views from the Property to Greenleaf Point, which is more than a mile away; west of the Project Waterside Towers interrupts any view that would be created to the river along K Street, S.W.; (Ex. 47G4.)
- Figure 9.8 encourages “fine-grained street and development patterns” rather than “Superblocks.” (10-A DCMR § 909.9.) The Project is not inconsistent with this approach, as the Private Drive creates porosity in Waterfront Station at roughly the same scale as exists elsewhere in Southwest DC; (Ex. 47G4.)
- Figure 9.9 identifies “desired scale transitions at downtown edges to residential areas.” (10-A DCMR § 909.11.) The Project is itself a transition from the 130-foot-tall buildings at the center of Waterfront Station. Even if it is an insufficient transition to nearby properties (and it is not), these transitions are merely “desired” and not “required.” The Commission finds that the desire for these transition wanes in instances such as the Project, where the Future Land Use Map supports greater densities and where the site is near transit. The Commission notes that the Future Land Use Map, as part of the Land Use Element, is ordinarily to be accorded greater weight than the Urban Design Element, and in this instance at least the Commission agrees with such weighting. Finally, given the benefits provided by the Project's height—namely, its provision of affordable housing and other public benefits—and its transit-proximate location, the Project is appropriately scaled for its context and not inconsistent with this figure; and
- Figure 9.13 encourages “breaking up massing of development on lots larger than prevailing neighborhood lot size.” (*Id.* § 909.17.) The Project complies with this objective. The Project has a maximum façade length of 166 feet on a public street (and a maximum overall façade length of approximately 303 feet). These dimensions are characteristic of Southwest DC historic modernist character and existing residential building stock. For instance, Potomac Place Tower has a length of 530 feet along 4th Street, S.W. one block north of the Project. Capitol Park Plaza two blocks to the east has a width of approximately 505 feet on its south (street-facing) elevation. The apartment building at 355 I Street, S.W. immediately north of the Property

has a length of approximately 140 feet along its south (street-facing) elevation. (Ex. 47G-4.)

The Commission finds that the Project is not inconsistent with any of the Comprehensive Plan Urban Design Element figures raised by SWAG and is in accordance with the first-stage PUD with respect to the Project's height and massing;

(d) Alleged Inconsistency in Transportation Impact Analysis: With respect to the study of the Project's transportation impacts (which impacts are themselves addressed substantively below), SWAG alleges that the Project is inconsistent with specific policy objectives of the Comprehensive Plan. The Commission finds to the contrary: the Project is not inconsistent with the Comprehensive Plan policy objectives that SWAG cites on this point:

- SWAG's citation of Comprehensive Plan Policy T-1.1.1 is not applicable in this context. That policy calls for "a full environmental impact statement" for "major transportation projects, including new roadways, bridges, transit systems, road design changes, and rerouting of traffic from roads classified as principal arterials or higher onto minor arterials or neighborhood streets with lesser volumes." (10-A DCMR § 403.7.) There is no way to reasonably read that policy and believe it could apply to the Project; and
- The other Comprehensive Plan policy that SWAG cites here is more on point. SWAG cites Policy T-1.1.2, which has two directives: (i) "Assess the transportation impacts of development projects using multi-modal standards rather than traditional vehicle standards to more accurately measure and more effectively mitigate development impacts on the transportation network." (*Id.* § 403.8.) This is precisely what the CTR does. The CTR assesses the Project using multi-modal standards. (Ex. 15A at 19-20 (assessing the Project's impact on four travel modes: driving, transit, biking, and walking).) Moreover, the Project effectively mitigates any impacts of the Project on the transportation network, as DDOT concluded. (Ex. 25.) The second directive, (ii) "Environmental and climate change impacts, including that of carbon dioxide, *should be included* in the assessment to land use impacts." (10-A DCMR § 403.8. (emphasis added).) The Applicant does consider environmental impacts, so it is in part consistent with this component of this policy objective. However, the Applicant's CTR does not consider climate change or carbon dioxide impacts. This is the type of analysis that the Commission may request for a project of a different scale or arriving in a different posture (i.e., not as a second-stage PUD). But it was not necessary or required here. The Applicant and DDOT developed a scope for what the CTR should evaluate. These sorts of environmental impacts were outside the scope of that study and for good reason. There was no mechanism to reduce the scale of the Project's massing, given that it was established as part of the Waterfront

Station PUD. Notwithstanding the lack of a climate change impact assessment, the Project is nonetheless not inconsistent with Policy T-1.1.2, which merely suggests such an assessment and does not require a climate change impact analysis for the Commission to complete its review. Moreover, SWAG makes no allegation that the Project has adverse climate effects or that if it does, whether such effects injure SWAG. Without any allegation of harm arising from the Project on account of the lack of analysis of climate change impacts, SWAG's point here simply fails to rise to the level of warranting further scrutiny by the Commission;

(e) Alleged Inconsistency with Impact Reviews Generally. SWAG alleges that the record is deficient with respect to reporting on the Project's impacts and cites the Comprehensive Plan as the authority mandating such reporting. On this point SWAG is simply incorrect. The Comprehensive Plan policies encouraging impact review are not limited to the Commission's portion of the development review process. The Commission is aware that the District's many technical agencies continue the review of a development application at the building permit stage (and sometimes beyond) following the completion of the Commission's. There is no requirement in the Comprehensive Plan or in the Zoning Regulations that the Commission's "comprehensive public review" of a PUD application include all steps of a building permit or other permit review. With respect to the specific Comprehensive Plan policies SWAG cites, either the Project is not inconsistent with such policies or SWAG misunderstands the applicability of such policies to the current context:

- Policy IM-1.5.4 "strongly encourages transparent decision-making in all land use and development matters, making information available and accessible to residents." (10-A DCMR § 2507.6.) The Project and the instant process complies with this policy. The Commission's review of this application is entirely on the record and based on the record before it. All information in the record is publicly available;
- Policy E-3.4.2 encourages "discussions and decisions regarding environmental impacts and mitigation measures [to] occur through a transparent process in which the public is kept in-formed and given a meaningful opportunity to participate." (*Id.* § 616.4.) The Project will comply with the District's Environmental Policy Act, which is triggered at the building permit review stage. As noted above, the Commission's review is not the end of the review of a development project. If the Project is required to undergo an environmental impact statement in accordance with applicable District law, then the provisions of this policy objective will be applicable. However, this policy is not applicable to the instant proceeding at this point;
- Policy H-1.4.6 encourages "that the construction of housing [be] accompanied by concurrent programs to improve neighborhood services,

schools, job training, child care, parks, health care facilities, police and fire facilities, transportation, and emergency response capacity.” (*Id.* § 506.12.) The Project is not inconsistent with this policy. The Project includes job training benefits, a play area, and transportation improvements. This policy does not require that every new housing development provide every one of the items listed therein;

- Policy IM-1.1.6 seeks to “Ensure that zoning case approvals such as Planned Unit Developments (PUDs) utilize: (1) transportation and infrastructure studies and recommended conditions of approval to mitigate potential impacts; (2) agreements for financing any necessary improvements, including public and private responsibilities; (3) agreements to comply with “first source employment” requirements and other regulations that ensure public benefits to District residents.” (*Id.* § 2502.10.) The Project is consistent with this policy. The record in this proceeding includes transportation and infrastructure studies and recommended conditions of approval to mitigate potential impacts. The Applicant will control the Property through an agreement with the District setting forth financial terms for the improvement of the Property. Finally, the Applicant has already entered into a first source employment agreement with the District; and
- Policy IM-1.1.1 encourages “To the greatest extent feasible, use [of] the development review process to ensure that impacts on neighborhood stability, traffic, parking and environmental quality are assessed and adequately mitigated.” (*Id.* § 2502.5.) The Project complies with these objectives as well;

(f) Alleged Inconsistency with Infrastructure-Related Policies. SWAG makes broad, non-particularized statements regarding the Project’s alleged inconsistency with Comprehensive Plan policies regarding infrastructure analysis, citing Policy IM-1.1.3 (“Ensure that development does not exceed the capacity of infrastructure. Land use decisions should balance the need to accommodate growth and development with available transportation capacity, including transit and other travel modes as well as streets and highways, and the availability of water, sewer, drainage, solid waste, and other public services;”); Policy CSF-1.2.6 (“Ensure that new development pays its “fair share” of the capital costs needed to build or expand public facilities to serve that development. Consider the use of impact fees for schools, libraries, and public safety facilities to implement this policy;”); and Policy IN-6.1.3 (requiring “that private developers fund the necessary relocation or upgrading of existing utilities to address limitations with existing infrastructure on or adjacent to proposed development sites. For necessary upgrades to water and wastewater infrastructure, developers should contribute to the cost of extending utilities to the project site or upgrading existing utilities to the specifications necessary for their proposed project.”). (10-A DCMR §§ 2502.7, 1317.5, 1104.8.) The common thread in these policies is that new development should pay for new

infrastructure. The Project is part of the Waterfront Station PUD, which did provide a significant privately-funded contribution to infrastructure in Southwest DC. (Ex. 47G.) However even if the Waterfront Station PUD had not provided such infrastructure, there is no requirement that such contribution commitments be made at the PUD stage or even at all. These policies are not binding on any particular development. Moreover, SWAG provides no credible allegation of actual infrastructure shortages or impairments and certainly none specifically related to the Project, and its assertions are unsupported by any substantial evidence. There is nothing in the record that shows, even when read in the light most favorable to SWAG, that the Project causes SWAG (or anyone else) any harm with respect to these policies. The better argument is that the Project is not inconsistent with the Comprehensive Plan with respect to the aforementioned policies; and

- (g) Generalized Comprehensive Plan References. SWAG's written testimony includes multiple references to the Comprehensive Plan without any stated connection between such references and in the instant proceeding. (Ex. 37.) Where SWAG ties Comprehensive Plan references to something approaching a particularized concern, the Commission can evaluate the nature of such concern and does so here. However, where SWAG simply lists a string of references to the Comprehensive Plan without anything more, the Commission is unable to discern any meaning from such references and therefore declines to address SWAG's comment. For instance, SWAG cites, without specific reference to the Project, Comprehensive Plan Policies UD-2.2.1, 2.2.4, 2.2.7, 2.2.8, and 2.2.9 but offered no explanation as to how such policies are relevant to the Project. (*Id.* at 5; n. 6.) The Applicant also cited each of those five policies and provided detailed analysis of how the Project advances those policies. (Ex. 2L.) Separately, SWAG provides a footnote with a list of approximately 30 references to Comprehensive Plan policies without any explanation of the relevance of those policies to the Project. (See Ex. 37 at 6-7; n. 7, 8.) Because the Applicant has so thoroughly addressed the Project's consistency with the Comprehensive Plan as a whole, the Commission declines to find any inconsistency between the Project and those individual policies of the Comprehensive Plan where it cannot discern any injury caused by the Project or with any nexus to those cited policies. (Ex. 2I.)

Evaluation of the Project's Adverse Impacts and Mitigation Thereof

95. In order to approve the Application, the Commission must find that it does not result in unacceptable impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of Public Benefits. For the following reasons, the Commission finds that the Project does not result in unacceptable impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of Public Benefits. In general, the Commission finds the multiple impact studies from the Applicant as well as those from the various District agencies to be satisfactory of the substantial evidence standard by which it must make its

findings. There is no reasonable contrary evidence in the record that tends to rebut or contradict those impact statements.

96. Zoning and Land Use Impacts. The Project has no unacceptable zoning or land use impacts, and any such impacts are either favorable, capable of being mitigated or acceptable given the quality of the Public Benefits:
- (a) The Commission approved the zoning for the Property as part of the Map Amendment included in the Waterfront Station PUD. As noted in the order for the Waterfront Station PUD, the zoning approved therein does not create adverse impacts that cannot be mitigated by the conditions of that order; (*See* Z.C. Order No. 02-38A at FF 96.)
 - (b) From a land use perspective, the Project has no unacceptable impacts. The Project's uses are all compatible with existing uses in and around the Waterfront Station PUD. The Project's ground floor uses add to and enhance the critical mass of neighborhood-serving retail and service establishment uses along 4th Street, S.W. The cultural and educational uses provide daytime and evening activity to help support other retail and service uses in the town center surrounding the Project and serve Southwest residents. The Project's housing and affordable housing contribute to the much needed supply of transit-accessible housing in the District. The Play Area is a benefit for families with children living in the neighborhood or visiting the town center. The proposed uses, height, density, and zoning are consistent with the approved Waterfront Station PUD and are appropriate in light of the Project's proximity to the Metrorail station;
 - (c) Lack of Greenery along Private Drive: WTCA is also concerned that only hardscape is proposed along the Private Drive and that there is no greenery in that area. (Ex. 23; Tr. 2 at 124-27.) The Commission finds that the context surrounding the Project significantly mitigates this concern. Immediately north of the Property is an approximately 40-foot-wide allée of trees and landscaping. The existing landscaped allée runs two blocks and connects two of Southwest's most prominent parks: the Duck Pond is at the western end of the allée and the Southwest Library with its surrounding greenery at its eastern. Therefore, although the Project does not itself feature green space in the Private Drive, it is part of an overall urban framework with more than sufficient green space. Again, this design was established in the first-stage PUD proceeding and not modified now. Further mitigating these concerns: the Project complies with GAR even though it is not obligated to do so. On balance, the Private Drive's lack of landscaping does not have any adverse impacts on the surrounding properties in light of its urban context; and
 - (d) Potential impacts from AppleTree are discussed below, but on balance AppleTree does not produce any unacceptable land use impacts. (*See* FF 100.) Any adverse effects from the proposed mix and intensity of uses are either capable of being mitigated or acceptable given the quality of the Project Public Benefits.

97. Housing Impacts. The Project's housing impacts are all favorable, capable of being mitigated, or acceptable in light of the Public Benefits:

- (a) The Project contributes 450 new units of multifamily housing in a transit-oriented location;
- (b) Significantly, the Project adds approximately 136 new units of affordable housing reserved for households earning below 30% MFI and 50% MFI. As noted above, the Project includes a mix of unit types ranging from studios to two-bedroom units (10 with dens), which accommodate a variety of household sizes including households with children. The Project's contribution of housing supply is an impact of the Project that contributes favorably to the District's housing situation. That is, relative to what is required under the Waterfront Station PUD, the Project provides more affordable housing (approximately 111,077 square feet provided v. 75,967 square feet required), at deeper levels of affordability (30% and 50% MFI provided v. 80% MFI as required under the Waterfront Station PUD), for a longer period of time (the entirety of the 99-year term of the Project's private ground lease v. 20 years as required under the Waterfront Station PUD). Half of the affordable units are reserved at deeply affordable levels (i.e., 30% MFI), and all of the units are reserved at affordability levels below what is required under the inclusionary zoning regulations;
- (c) Even the Project's market-rate units help to balance the demand for housing in the District and have a muting effect on any potential run-up of housing prices in the areas surrounding the Project; (*See Ex. 34C "RCLCO Memo."*)
- (d) In addition, because the Property is currently a vacant lot, all of the Project's housing is net new housing and there is no displacement of or effect on any existing housing;
- (e) Because the Project is located immediately proximate to a Metrorail station, it is most appropriate to develop the property with unit types that appeal to smaller households and small families, consistent with Comprehensive Plan policies that call for density to be focused at Metrorail stations and near transit stops and consistent with prevailing demographics in nearby neighborhoods; and
- (f) SWAG and Ms. Rodney allege that the Project will have adverse impacts on the surrounding housing markets and low-income residents of Southwest DC. Namely, SWAG and Ms. Rodney raise the specter of displacement impacts. The Commission finds that the Project will not directly displace any existing residents because there are none today. The Property is an entirely vacant plot of land and no one will be displaced from the Property as a result of the Project. Given the facts that the Property's current vacant state cannot result in direct displacement of residents from the Property (because there are none to displace), then the Commission is left to assume that SWAG is concerned that the Project will set in motion a change in prevailing market conditions such that existing residents are

priced out of their homes. SWAG did not introduce any credible evidence that this could happen.¹⁵

- The Applicant introduced substantial evidence that the Project on its own does not set prices in the Southwest DC residential submarket, and that such submarket prices have been fluctuating for a period of many years. (*See Ex. 34C.*) Moreover, the nature of these price fluctuations is not universally good or bad. For homeowners, price increases in Southwest DC can be a boon and can help create household wealth. For renters, price increases can be problematic and can create displacement pressure. However, there is no evidence in the record that the Project, whether on its own, or as part of a greater trend of apartment development in Southwest DC will have adverse price effects on existing residents. Instead, the opposite seems to be true: the increase in construction of new units in Southwest DC has at times created *reductions* in rents; and (RCLCO Memo at Ex. 1.)
- The limited evidence that SWAG did introduce on this point is not compelling. First, SWAG recited statistics regarding poverty levels and unemployment disparities across racial lines in the District. Although these trends are distressing, the Commission fails to understand how they are relevant in this proceeding.¹⁶ Second, SWAG introduces testimony from a Mr. David Lee, a purported Southwest resident (or former resident – SWAG’s testimony is unclear) who claims that he has been forced to relocate to a studio in Ward 3. Setting aside the potential evidentiary irregularities in this purported testimony, Mr. Lee can hardly be considered evidence of displacement resulting from the Project if he has already relocated or even if he is about to: the Project has been a vacant site, with planned redevelopment for more than 15 years yet no construction has occurred. The Project cannot be the cause of Mr. Lee’s injuries (or any other member of SWAG or the public generally who can claim to be injured as a result of displacement pressures in Southwest more generally). In addition, Mr. Lee’s story underscores the *need* that the Project *fulfills*: a need for affordable studio and one-bedroom units. The Project provides 33 affordable studio units and 75 affordable one-bedroom units that Mr. Lee could seek to qualify for. Although it is not clear what housing program Mr. Lee sought (and was denied) assistance from, he would not be “too poor”

¹⁵ Despite having the opportunity to file written comments and provide oral testimony after the Applicant filed its economic impact study, SWAG elected not to introduce any meaningful evidence of its own with respect to potential economic impacts of the Project. SWAG clearly did read the Applicant’s study because SWAG provided detailed negative comments on such study in its written testimony. SWAG did introduce two items of evidence worthy of brief consideration.

¹⁶ SWAG’s contention that the Project “will consist of vastly single white professionals” and its purported “fact” that the Project’s residents will be “largely white, likely with no families of color” are both baseless statements. There is no evidence that the Applicant has any history of racial exclusion in its residential developments and the Commission sees no reason to believe any discrimination will occur as part of the Project.

to qualify for the affordable units in the Project, which are subject only to income *maximums* and not income minimums.

In sum, after weighing the evidence, the Commission finds that the Project does not result in any unacceptable impacts on the housing market.

98. Economic Impacts. The Project has no unacceptable economic impacts, and its economic impacts are generally favorable or capable of being mitigated:

- (a) The Project generates multiple sources of direct revenue for the District, including not only its ground lease rent but also property tax revenue, sales tax revenue from its commercial establishments, and income tax from its new residents. In addition, the Project also generates secondary benefits, such as sales tax revenue associated with its new residents. The Project also has positive economic impacts on nearby neighborhood-serving businesses because the Project adds many new residents who will patronize such businesses. Similarly, its cultural and educational uses will draw some visitors who will also patronize nearby businesses. The Project is unlikely to have any adverse impacts on nearby property values;
- (b) The Project infills an existing vacant lot at a Metrorail station with high-density residential and supporting commercial uses, consistent with the Comprehensive Plan, the Small Area Plan, the Waterfront Station PUD, and the intent of the D.C. Council when it approved the disposition of the Property. By improving a vacant lot with new construction as well as new retail and other neighborhood-serving uses, the Project improves existing conditions and will likely result in an increase in surrounding property values, which benefits surrounding residential and commercial property owners;
- (c) The Project's neighborhood-serving uses and other amenities, such as the improved streetscape and Play Area, also benefits others who work and live in the Southwest neighborhood. At the same time, the Project includes meaningful amounts of affordable housing set aside for the duration for the ground lease, which ensures the continued provision of affordable rental housing in the immediate area even as property values otherwise rise; and
- (d) The Project does not have any unacceptable economic impacts that cannot be mitigated in light of the extraordinary public benefits provided. The Applicant has entered into First-Source and other employment-related agreements with respect to the Project. Separately, the Waterfront Station PUD commits the Applicant to target small businesses and neighborhood operators for ground floor retail space in the Project. Together, these and other commitments applicable to the Project mitigate any adverse economic impacts from the Project's non-residential uses.

99. Open Space, Urban Design, and Massing Impacts. The Project has no unacceptable impacts on surrounding open space or on the urban design and massing of Waterfront Station and the surrounding area:

- (a) The Project's new residents and ground-floor uses contribute to the creation of a neighborhood that celebrates and enhances open spaces within and immediately around Waterfront Station. The Project's urban design and massing are compatible with surrounding development and consistent with the master-planned design for the Waterfront Station PUD. From an urbanism perspective, the Project's infilling of a currently vacant lot is a favorable impact and leads to no unacceptable impacts on the surrounding area;
- (b) Shadows to the north of the Property are one potential impact of the Project. The Project's shadows stem from its height and mass, which are appropriate given the transit-oriented location at the center of Southwest. The potential shadow impacts are mitigated by the distance between the Project and the nearest structure to the north, which is 80 feet away because of the combination of the Project's setback from its northern property line and the intervening District-owned land containing the allée of trees. This is consistent with the first-stage PUD and with the massing approach approved for the Eliot building to the west, which is similarly proximate to a lower-scale church building. The modest shadow impacts that occur in winter months are acceptable given the quality of the Project Public Benefits as well as the overall amounts of housing, affordable housing, and other beneficial uses created by the PUD;
- (c) The Project also has favorable impacts on the surrounding area from a design and aesthetic perspective. The Project includes high-quality architecture. The Project also enhances the surrounding urban realm with streetscape areas such as bicycle racks as well as landscaping with materials and plantings that are intended to be long-lasting and sustainable. The Project's architecture is designed to fit into and enhance the rich mid-century and contemporary vocabulary of Southwest DC;
- (d) SWAG argues that a building the size of the Project should be "found downtown, not in Southwest and next to a prevailing low- and moderate-sized architectural open space aesthetic." (Ex. 37.) The Commission disagrees for the following reasons:
- The Project's height and massing was established as part of the first-stage PUD, and the Project is entirely consistent with the height and massing established for the Property in the first-stage PUD. There is simply no justification for reducing the height of the Project now, nor is the Project at all inconsistent with any relevant planning documents;
 - SWAG's statement that there are lower buildings to the north, west, and east is incomplete and misstates the Project's dense urban context. Immediately west of the Project is an existing building with an identical height and beyond that an existing building (originally constructed in the 1960s) rises even taller (to 130 feet). Further to the west, at 6th and I Street, S.W. are the Waterside Towers, which rise to ten stories. North of the Project are Potomac Place Tower and Capitol Park Plaza, both of which are

nine stories. East of the Project is a nine story building and an eleven story building, the latter of which is taller than the Project. (Ex. 47G4.) The Project is not anomalously tall, and “transitions” in height are unnecessary. Waterfront Station, and the Project were intended as a tall, dense town center near the Metrorail station;

- Buildings similar in size to the Project have existed across the Southwest neighborhood, and in the blocks immediately near the Project, for decades. SWAG has not presented any light and air related injuries to the Commission and has not identified any individuals with redressable grievances related to the Project’s size; and
- SWAG’s objection to the Project’s height is also puzzling. Reducing the Project’s height necessarily would result in a reduction of density and therefore fewer affordable units, seemingly at odds with its concerns about the production and delivery of affordable housing. Moreover, there have been no objections from residential or non-residential neighbors regarding the Project’s height. Although SWAG purports to speak for all of its members within the “planning area” identified as an exhibit to the first-stage PUD, it has not identified to the Commission the addresses of any such neighbors who live in any of the blocks north of the Project and who would at all be negatively affected by the Project’s height. SWAG similarly provides no explanation or mechanism for how the development of a vacant lot that has been planned for redevelopment for nearly two decades produces negative impacts on nearby residents who are “on fixed incomes” or who are “working-poor families”. SWAG does not even allege what those impacts might be and how they might be related to the Project’s height. The Commission finds that the Project is highly unlikely to have any adverse impacts with respect to its height or mass, and that even if it does, such impacts are acceptable in light of the Project Public Benefits, and particularly the amount of housing and affordable housing which would not be possible without such height; and

- (e) The Project’s design imposes no unacceptable impacts on the surrounding area in light of the Public Benefits.

100. Transportation Impacts. The Project has no unacceptable transportation or mobility impacts. Instead, any such impacts of the Projects are either capable of being mitigated or acceptable given the quality of the Public Benefits. The Applicant has undertaken an extensive study of the Project’s potential transportation impacts, and in particular, has studied those potential impacts in the context of the new and proposed developments in the vicinity of the Project. (Ex. 15A, 34B, 47G3.) The scope and design of the Project’s impact analysis was established in close coordination with DDOT. (Ex. 25.) The Commission finds these impact studies as satisfactory of the substantial evidence standard by which it must make its findings:

- (a) In large part because of the Project's proximity to the Metrorail, strong pedestrian connectivity along all nearby streets, and a growing network of bicycle lanes in Southwest DC, the Project is not expected to have any adverse transportation effects. (Ex. 15A, 25.) The Project is located close to a Metrorail station and the Applicant expects that many residents, employees, and visitors of the Project will travel via transit. The Project provides ample bicycle parking along with a new Capital Bikeshare station and is located proximate to both 4th Street, S.W. and I Street, S.W. which provide north-south and east-west connections for cyclists through and beyond Southwest;
- (b) The Applicant has elected to make residents of the Property ineligible for participation in the District's residential permit parking and visitor permit parking systems. The Project provides an appropriate amount of below-grade parking in order to avoid residents parking on nearby streets but not so much parking as to induce an inappropriate amount of vehicular traffic for a location so well-served by transit. These commitments, together with the TMP and TDM more than adequately mitigate any potential adverse impacts of the Project;
- (c) The Project's Private Drive accommodates pick-up and drop-off activities for the residential, cultural and educational uses, which avoids queuing in the alley or on the street. The Project includes physical design elements—notably the Private Drive, which has a well-designed pick-up and drop-off space outside of the public realm, as well as the below-grade garage—and operational elements that together minimize any adverse transportation effects on the surrounding road network. The Drive's uses design-based measures accomplish the necessary calming. The Private Drive's narrow width at its driveway opening and the continuation of a flush sidewalk across the Drive's entrance are a strong visual cue to drivers that the Private Drive is not a street for cut-through travel. Similarly, the Project's pavers create a "rumble-strip" effect for drivers in cars, another cue to slow travel speeds. In addition, the Private Drive has a slight change in grade at the entry and exit points, which is a DDOT design requirement intended to slow traffic. Operable bollards at both ends of the Private Drive allow it to be closed from time to time for special events outside of school days, and the Drive's design could accommodate additional calming measures (e.g., a speed hump) if necessary in the future. DDOT, FEMS, and MPD have all reviewed the Project's Private Drive design and have given the Applicant no indication of concern with the design or safety measures of the Drive;
- (d) The Applicant has a robust plan in place to address transportation matters related to the proposed AppleTree use. The Applicant proposes a detailed signage plan and operational controls to be enforced through its lease with AppleTree to manage parking, drop-off, pick-up, and queuing activities on the Private Drive. In order to prevent school unloading and loading from disrupting traffic, AppleTree staff will escort children to and from cars that queue in the Private Drive so that caregivers do not need to get out of their cars. The Project's garage also includes dedicated

space to accommodate unloading and loading for caregivers who elect to walk students into and out of the school;

- (e) In addition, the Applicant has met with representatives from DDOT's "Safe Routes to School" program both with respect to access to AppleTree's use as well as with respect to neighborhood children walking to Amidon-Bowen Elementary School and Jefferson Middle School during the period of construction on the Project. The Applicant's discussions included concepts now incorporated into the Project's construction management plan regarding neighborhood student's walking routes;
- (f) The Applicant is also obligated as a condition of this approval to implement a robust TMP and TDM to mitigate any possible transportation effects;
- (g) WTCA raised a concern that there is not a designated pick-up or drop-off zone by the 4th Street, S.W. entrance to the building where the Project's residential entrance is shown as being located. The space in front of the proposed building where WTCA would like to see a drop-off area is currently used as on-street, curbside parking. (Ex. 23; Tr. 2 at 124-27.) The Applicant explained at the hearing that DDOT and not the Applicant controls whether a drop-off zone is established in front of the Project on 4th Street, S.W. (*Id.* at 153.) The Private Drive will accommodate pick-up and drop-off activity for all uses in the Project, including the building residents, since the residential lobby is accessible via an interior connection from the Private Drive. The Commission finds that the Applicant's location of all drop-off activity on the Private Drive, rather than 4th Street, is highly unlikely to result in any adverse impacts. Instead, the Private Drive allows pick-up and drop-off activity to occur off of the street in order to minimize adverse impacts on traffic flow along 4th Street, S.W. The TMP and TDM included as Conditions to this order adequately mitigate any potential impacts from pick-up and drop-off activities along 4th Street, S.W.;
- (h) SWAG states that the Project seeks more parking than is allowed, providing more than 200 parking spaces when the underlying regulations require less than 100 spaces. To the contrary, the Commission finds that the Project provides an appropriate amount of parking, as shown in the Applicant's studies and in DDOT's report. SWAG's statement is simply not true as a matter of law. Although it is not entirely clear from its sparse writing on this point, presumably SWAG is suggesting that under ZR16, a development the size of the Project would be required to provide only approximately 187 spaces, an amount that could be reduced by half (i.e., to 94) given the Property's proximity to a Metrorail station pursuant to § 702.1 of Subtitle C of ZR16. However, SWAG is incorrect on this count for two reasons: (i) such reduction in minimum parking within a certain distance of a Metrorail station is permissive rather than required (so the 94 spaces would not be the maximum "allowed"; 94 spaces would be the minimum allowed), and (ii) the parking requirements of ZR16 do not apply to the Project given its vested status under the substantive provisions of 1958 Zoning Regulations per § 102.3 of Subtitle A of ZR16. Under the substantive parking requirements that do apply to the Project,

i.e., those of the Waterfront Station PUD and ZR58, the Project provides sufficient parking. SWAG's statement is also incorrect as a matter of parking policy. The Applicant provided substantial evidence that the Project provides, relative to similar developments in Southwest DC, a relatively lesser amount of parking, when examined as a ratio of parking spaces to rental apartment units and when accounting for the Project's non-residential uses. (Ex. 47G3.) The Commission finds that the Project provides sufficient parking so as to not cause adverse impacts on neighbors who rely on on-street parking but not so much parking as to induce unnecessary vehicle trips given the Project's location in an area well-served by transit. The Commission is satisfied with the Applicant's detailed analysis with respect to its parking levels; and

- (i) SWAG further alleges that the Project's impacts "remain largely unstudied by planning agencies and the Applicant." (Ex. 37.) Again, the Commission cannot agree with SWAG. The Applicant's CTR is thorough and addresses the types of impacts cited by SWAG. (Ex. 15A, 47G3.) Moreover, DDOT conducted its own review of the Project and the Applicant's CTR and concluded that it had no objection to approval of the Project subject to conditions that the Applicant adopted. (Ex. 25.) On the point of DDOT's review of the Applicant's CTR, DDOT found that the CTR "used sound methodology and assumptions to perform the analysis." (*Id.* at 2.)

101. Environmental, Open Space, and Public Infrastructure Impacts. The Project has no unacceptable impacts on the environment or District utilities that are not capable of being mitigated. The Project will not have unacceptable adverse impacts with respect to construction, noise, or air quality:

- (a) The Project has no unacceptable noise, air quality or construction-period impacts. Noise, air quality, and construction period impacts arise from matter-of-right development and are not unique to PUDs. Nevertheless, the proposed CMP will address construction-period impacts of the Project as a whole and therefore goes well beyond whatever incremental construction impacts, if any, are attributable to the PUD;
- (b) The Project also has no unacceptable open space impacts. This portion of Southwest enjoys a variety of well-designed, neighborhood-scale open spaces—the Southwest Duck Pond, the Southwest Library grounds, and the District-owned allée immediately to the north of the Property that connects the Duck Pond to the Library, as well as Lansburgh Park (which has dedicated play areas and a dog park), among others—that are well-served with appropriate amenities. The Waterfront Station PUD required at least 50,000 square feet of new open spaces, an amount already satisfied in previously approved second-stage PUDs and includes the plaza at the Waterfront Metrorail Station. The Project includes additional ground level public open space in addition to that amount. The Property has been contemplated as a redevelopment site for more than a decade. Rather than fence off the Property and "mothball" it, the District kept it open and green and installed a temporary paved

path to allow for interim use during the pre-development period. With the development of the Project, that interim use comes to its planned end. In place of the interim vacant-lot condition, the Project provides new uses that are public benefits—new housing and affordable housing as well as a mix of diverse and vibrant retail, cultural, and neighborhood-serving ground-floor uses, which will draw people and will contribute to the diversity of the existing public and quasi-public gathering spaces in Southwest DC. Furthermore, the Project contributes its own additional publicly-accessible open space, through the 3,000 square foot Play Area that will be open to public use outside of school hours and the Private Drive that will provide an additional activated and engaging east-west connection through the Waterfront Station development. On balance, the Project makes a positive contribution to the Southwest open space network consistent with the established and planned vision for redevelopment of Waterfront Station; (Ex. 22.)

- (c) The Project contains approximately 400,000 square feet of new GFA. The average daily water demand, anticipated to be 161,000 gallons per day, for this Project can be met by the existing District water system, which includes relatively new infrastructure in 4th Street, S.W. installed as part of the Waterfront Station PUD. The proposed connection for the fire and residential water supply will be made within the existing distribution system and will be coordinated with DC Water. The Project has multiple individual water meters; (Ex. 21.)
- (d) The sanitary sewer connections for the Project are within the existing distribution system and will be coordinated with DC Water. The infrastructure for the Waterfront Station neighborhood has largely already been constructed; (*Id.*)
- (e) The Project has been designed to achieve high levels of on-site stormwater retention. The proposed planters, green roofs, and permeable pavement are designed to exceed DOEE stormwater management retention and detention requirements. The requisite inlets and closed pipe system comply with the standards set by DOEE, DC Water, and DDOT; (*Id.*)
- (f) Solid waste and recycling materials generated by the Project are to be collected regularly by a private trash collection contractor; (*Id.*)
- (g) Electricity for the new building is provided by Pepco in accordance with its usual terms and conditions of service. All electrical systems are designed to comply with the D.C. Energy Code. Transformers will be installed on the Property in accordance with Pepco's design guidelines and the Project's solar panels provide some resiliency; (*Id.*)
- (h) The Project is designed in full compliance with Article 24 (Energy Conservation) of the Building Code. Conformance to code standards minimize the amounts of energy needed for the heat, ventilation, hot water, electrical distribution, and lighting systems contained in the building; (*Id.*)

- (i) During excavation and construction, erosion on the Property will be controlled in accordance with District law; (*Id.*)
- (j) SWAG asserts that the Project “will increase pressure and abuse on existing area infrastructure, public services, and environment, impacts thereof that largely remain unstudied.” (Ex. 37.) The Commission disagrees with this statement from SWAG. For one, SWAG’s assertion is a broad generalization that lacks any evidence or support. For another, SWAG’s assertion lacks any evidence that the alleged impacts on infrastructure—which would occur to a large degree with any matter-of-right development of the Property—are the result of this PUD. Indeed, all evidence in the record is to the contrary and indicates that the Waterfront Station PUD, including the Project, has a net positive impact on infrastructure, public services, and the environment:
 - i. With respect to infrastructure, the Project is part of the larger Waterfront Station PUD, pursuant to which 4th Street, S.W. between I Street, S.W. and M Street, S.W. was newly reconstructed. As part of that reconstruction, new infrastructure, including new sanitary and stormwater lines were installed. (Ex. 47G2.) SWAG’s statement is therefore incorrect: the Property is a District-owned property that takes advantage of infrastructure recently installed by private developers; and
 - ii. With respect to the Project’s alleged unstudied environmental impacts, SWAG’s statement is again incorrect. The Project’s impacts on the environment *have* been studied in filings presented by the Applicant and addressed in its mitigation plans. (*See* Ex. 2I, 22E.) While DOEE did not file a formal report in this case, OP provided the comments it received from DOEE in its Final Report DOEE concluded that it was “supportive” of the proposed design. (Ex. 51.) Moreover, the District’s in-depth environmental review process is by regulation is triggered at the building permit stage and not at the entitlement stage. If SWAG had bona fide concerns about the Project’s environmental impacts, it could have elected to present those concerns in a much more particularized manner to the Commission prior to the close of the record in this proceeding. It is simply not enough to allege that a PUD will have environmental impacts without offering more as to what those impacts might be or how they might impact the persons or organizations allegedly aggrieved, or even how or what about the Project causes environmental impact-related injuries;
- (k) SWAG also alleges that the “Costs for infrastructure and transit upgrades [will] be unfairly born by the surrounding community leading to more displacement.” (Ex. 37.) This is another generalized allegation that is both unsupported and false. As noted above, the Project is part of a larger PUD that did make significant infrastructure improvements at the outset of construction, including constructing a new public street. It is unclear how or what “infrastructure costs” and “transit upgrades” will be unfairly born by the community surrounding the Project or how

that is an injury caused by the Project. As explained by the Applicant's engineer, the Project is required to make infrastructure-related improvement payments at the time of connection. (Ex. 47G2.) Moreover, the Applicant has already commitment to make transit improvements in the form of an Applicant-funding Capital Bikeshare station to be located to the north of the Property and in the form of a driveway that increases connectivity and porosity in the neighborhood and that is required to remain open to public use. Similarly, the first-stage PUD also included the reconstruction of the Waterfront Metrorail station, which constitutes the type of "transit upgrade" SWAG alleges is absent from the project;

- (l) SWAG alleges that "Use of status quo construction materials and basic quality . . . will lead to premature building degradation on public land." (Ex. 37.) SWAG again fails to provide any detail or evidence to support or justify its claim. To the contrary, the Project's façade materials are high quality and designed to be durable and the Project, with standard maintenance, is designed to withstand weather conditions for 99 years or longer; (Ex. 47G.)
- (m) Finally, SWAG also avers non-particularized due process violations arising from the absence of District agency reporting on impact assessments. No such violations exist. SWAG elected not to request party status to the instant proceeding. It had every opportunity to do so within the context of the Commission's Rules of Practice and Procedure. SWAG's rights in this proceeding as an organization in opposition to the Project are no different than those of any other member of the general public and SWAG has shown no harm arising from the exclusion of District agency reporting on the Project. The Commission has ample factual basis in the record before it to conclude that the Project will not have any unacceptable impacts; and
- (n) Given the Applicant's thorough environmental impact analysis in the record and the absence of any particularized allegations (let alone any facts) to the contrary in the record, the Commission finds that the Project will have no adverse effects on District services or the environment that cannot be mitigated.

102. Schools, Libraries, Parks, and Other Public Facilities and Services Impacts. The Project has no unacceptable impacts on public facilities such as schools, libraries, or parks, and the Project's impacts are generally favorable or capable of being mitigated:

- (a) The Project is highly unlikely to have an unacceptable impact on schools in the District given the size of the Project, its mix and type of units, and the capacity for the District's nearby schools to take on additional students. As of the 2017-2018 school year, the Project is within the boundaries of Amidon-Bowen Elementary School at 401 I Street, S.W.; Jefferson Middle School Academy at 801 7th Street, S.W.; and Eastern High School at 1700 East Capitol Street, N.E. DCPS data show that the Property's in-boundary schools are generally below capacity based on the most recently available data: for 2016-17, Amidon-Bowen had an enrollment of 350 students in a building with a capacity for 400; Jefferson had an enrollment of 305 students in a building with a capacity for 567; and Eastern had an enrollment

of 818 students in a building with a capacity for 1,100. In addition, several other private and charter schools (such as AppleTree) are in the general vicinity of the Project, offering educational options to residents who may seek alternatives to the neighborhood public schools;

- (b) The Project accommodates the relocation and expansion of AppleTree’s local pre-kindergarten program into a new, centrally-located space. Immediately opposite Wesley Place, S.W. from the Project is the Southwest Branch of the DC Public Library. Potential impacts from AppleTree are discussed below, but on balance AppleTree does not produce any unacceptable impacts; (*See* FF 100.)
- (c) The Project is unlikely to have an adverse impact on the District’s library facilities. Instead, the Project’s effects are likely to be positive as the Project adds new patrons and have the potential to create positive synergies with the proposed new educational and arts uses. The Applicant has had conversations with DCPL administration officials to ensure that the Project does not create any adverse impacts on the nearby library branch during construction of the Project. The Applicant has committed to providing wayfinding signage to help the public find the library from the Metrorail and has committed to significant dust and noise mitigation measures during construction. DCPL itself confirmed that the Project, including AppleTree, will not place an undue burden on the library; (Ex 51.)
- (d) The Project is also within a few blocks of the 3rd and I Street Park (adjacent to the library), Southwest Duck Pond, Lansburgh Park, and the Southwest Waterfront Park. The Project’s residents will help activate the use of these facilities, and revenue associated with the Project will increase the tax base to support these facilities;
- (e) On its own, the Project is highly unlikely to cause any critical overcrowding of publicly-accessible District services because of its relatively small scale. Rather, the Project has a significantly net positive effect on District revenues. That is, the Project over-contributes to any necessary future expansion of District services—parks, emergency services, community centers, etc.—relative to the impact of the Project;
- (f) The Project contributes to the capacity of the District’s art and cultural “infrastructure” with a ground-floor space that is intended to have a community-serving scale; and
- (g) Any adverse effects from the Project are either capable of being mitigated or acceptable given the quality of the Project Public Benefits.

103. AppleTree-Related Impacts. The PTA spoke in opposition to the Project, and particularly its inclusion of AppleTree, at the Public Hearing and submitted written testimony into the record with similar concerns. The ANC and CBCC also raised concerns related to AppleTree. The PTA’s concerns with the Project relate exclusively to the Project’s

anticipated inclusion of AppleTree Public Charter School, which serves pre-K3 and pre-K4 students, within the ground floor of the Project.¹⁷ In sum, the Commission finds that the Project does not result in unacceptable project impacts on the operation of District public school services but is instead overall favorable with respect to educational impacts. The primary reason that AppleTree does not represent an unacceptable impact of the Project is that it is not a new potential impact. AppleTree has operated a pre-K3 and pre-K4 charter school in Southwest DC for a period of nearly two decades, and has usually been located within a few blocks of Amidon-Bowen. (Ex. 35 at 41.) According to the testimony of the PTA, during this period Amidon-Bowen has been “on the rise” within increasing test scores, teacher retention, and other “significant improvements.” (Ex. 31.) Clearly, AppleTree’s presence alone is not negatively impactful to Amidon-Bowen. However, the PTA’s concerns about the impact of locating AppleTree in a new space within the Project warrant further analysis:

- (a) The PTA’s primary concern with the Project’s anticipated inclusion of AppleTree as a ground floor use is a concern about competition with Amidon-Bowen for students and by extension resources within the District’s school system. The PTA is concerned that upon completion of the Project, AppleTree, a public charter school in a brand new facility would have the potential to draw students from the

¹⁷ The PTA noted that the Commission studies transportation and economic and other impacts but does not have anything in the record in this case regarding the Project’s education impacts. (Tr. 2 at 72.) At the Public Hearing, the Commission called on DME to provide a report in this proceeding. The DME provided a report stating that charter schools are allowed to choose their own locations, and that DME will not comment on this particular choice. (Ex. 56.)

The PTA’s other concerns simply do not rise to the level of material contested issues that are redressable by the Commission. For instance, the PTA raised the concern that AppleTree’s pre-kindergarten demographic as a particular concern because it has the potential to draw away students at the beginning of their education, when parents are making an important early decision about where to send their students to school. The District has a student choice-driven lottery system for public schools and public charter schools that allows students to seek to enroll in any public or public charter school across the District. AppleTree’s inclusion in the Project does not affect the rights or abilities of students living within the boundary of Amidon-Bowen to participate in that school choice program. Under the District’s existing program, whether students attend AppleTree or Amidon-Bowen, each year they have the option to re-enter the school choice lottery even after making an initial election. This is a District-wide policy issue that the Commission cannot affect. Similarly, the PTA complained that AppleTree failed to encourage its students to attend public schools. Again this is not an issue that the Commission can influence. Finally, the PTA objected to the Applicant and AppleTree’s lack of transparency in its lease negotiations. The Commission finds that this concern of the PTA does not produce any identifiable adverse impact. The Applicant disclosed that it has entered into negotiations with AppleTree for AppleTree to lease space within the building and that lease is not yet final, but it is close to being final. The ANC and the PTA complained that the Applicant’s response to DMPED’s RFP for the Property did not identify AppleTree as a potential tenant. The Applicant acknowledged that its RFP response, which was submitted to DMPED in 2015, did not identify AppleTree as a potential tenant or a public charter school as a potential use. However, the Project’s ground floor plan was not entirely allocated in 2015 and has evolved since 2015 and will continue to do so prior to and after completion of construction. A public charter/pre-kindergarten use (i.e., AppleTree) was identified as a potential tenant of the Project as early as December 2017 in the Applicant’s pre-filing “Notice of Intent to File a Zoning Application” and during the January 2018 public meeting of the ANC and was identified in the Applicant’s initial application materials filed in May 2018. (Ex. 2B, 2.) Once it began the PUD process, the Applicant made no secret of its intent to include AppleTree in the Project. The Commission can find no harm in the Applicant’s actions on this point that the Commission can remedy.

same pool as Amidon-Bowen, and the extent of such competition will increase if AppleTree increases its overall enrollment. If AppleTree were to draw neighborhood students from Amidon-Bowen, the PTA alleges it could potentially negatively impact the financial resources that the District allocates to Amidon-Bowen because the District allocates resources to public schools in proportion to the number of students enrolled in the school. If the District reduces resources to Amidon-Bowen because of falling enrollment, such reduction in resources could potentially reduce the quality of the education of those students enrolled at Amidon-Bowen. In this regard, the impacts of AppleTree, and thereby the Project, are far too attenuated to have any effect on Amidon-Bowen given the existing structure of the District's school choice program;

- (b) The Commission finds that the PTA's concern about losing students to AppleTree is not an impact attributable to the Project and/or is capable of mitigated;
- (c) The potential impact of Amidon-Bowen potentially losing students to AppleTree is a function of the District's school choice lottery system and not AppleTree directly:
- The District has a student choice and lottery system for public schools and public charter schools that allows students to elect to enroll in any public or public charter school across the District. As a result, Amidon-Bowen competes not only with AppleTree, but also with all other pre-K programs across the District for students. AppleTree is only one competitor among more than 220 others. Therefore, the PTA's concern is not specifically with AppleTree (or the Project) but with the District's broader public policy decision of allowing students choice of schools to attend;
 - Moreover, AppleTree's presence as one of a very small number of schools in Southwest DC is not particularly impactful. Students leave the Amidon-Bowen boundary area for schools all across the District. According to school year 2016-2017 data from DCPS, students living within Amidon-Bowen boundaries and eligible to attend that school attended 84 different public and public charter schools across the District. AppleTree is hardly the only school drawing students from Amidon-Bowen; and
 - Finally, Amidon-Bowen itself is a net beneficiary of school choice in the District: according to statistics from the DME, of the 350 students enrolled at Amidon-Bowen during the 2016-2017 school year, only 143 (approximately 40%) lived "in-bounds"; the other 60% came from other elementary school boundary zones (i.e., from "out of bounds"). That is, in the recent past, the majority of Amidon-Bowen's students elected to leave their in-bounds school in favor of Amidon-Bowen. The PTA's objection to AppleTree is not an objection to AppleTree specifically as part of the Project, but rather to AppleTree's mere existence in Southwest and to the District's longstanding policy of allowing students to elect to attend schools outside of the boundaries within which they reside. That impact is not

something that the Commission can redress because it stems from a much broader policy decision made by the executive and legislative branches;

- (d) AppleTree's potential adverse impact on Amidon-Bowen by drawing away students from Southwest households is capable of being mitigated:
- First, AppleTree serves only pre-K3 and pre-K4 students. Even if AppleTree does present some sort of heightened level of competition with Amidon-Bowen for students who live within Amidon-Bowen's boundary area given AppleTree's location in Southwest DC, AppleTree and Amidon-Bowen are competing only for a very small percentage of students. Once students reach kindergarten age, they will have aged out of AppleTree's program, and AppleTree no longer presents any competition;
 - Second, the Applicant and AppleTree agreed to cap the maximum number of students who can enroll at AppleTree. Under the conditions to this PUD, AppleTree can increase its enrollment from its existing approximately 110 students to no more than 132, an addition of only at most approximately one more pre-K class (i.e., 22 students). The Commission finds that this sufficiently mitigates any potential adverse impact to Amidon-Bowen from AppleTree;
 - Third, the competitive advantage that AppleTree gains by virtue of its inclusion in a new facility in the Project is greatly offset by the relatively difficult path it has taken and is on until the Project opens. AppleTree's existing Southwest Center, which has been in existence for nearly two decades, has generally been located in trailers and other temporary structures and has moved multiple times. Until the Project opens, it will shut down entirely at the end of the 2018-2019 school year. On the other hand, Amidon-Bowen underwent a \$5 million modernization concluding in 2012, has not had to relocate, and will be stable and open between now and the time AppleTree resumes operation, which is not likely to occur until 2022 at the earliest; and
 - Finally, other factors mitigating any impact include the District's broader school choice policy which allows students from the Amidon-Bowen "in bounds" neighborhood to disperse all across the District (a phenomenon that is already occurring); the co-existence of AppleTree and Amidon-Bowen for nearly two decades (the Project is not presenting new impacts other than the incremental addition from 110 to 132 students and the potential "selling point" of being located in a new building); and the fact that students come from "out of bounds" to attend Amidon-Bowen;
- (e) The Commission is quite sympathetic to the concerns and priorities of the PTA. Even in a system where charter schools and neighborhood public schools co-exist, neighborhood public schools, and particularly elementary schools, play a vital role

in the community fabric of a neighborhood. The PTA's testimony makes it abundantly clear that such dynamic exists in Southwest. The dedication, hard-work and passion of the PTA's committed volunteers are clearly improving the status of Amidon-Bowen and by extension the educational opportunities for its students. The PTA is to be commended;

- (f) The Applicant's additional proffer related to the PTA—funds to provide additional resources for Amidon-Bowen and a cap on the number of students enrolled at AppleTree—more than compensate for any adverse impacts on Amidon-Bowen resulting from the Project's inclusion of AppleTree; and
- (g) In sum, AppleTree is highly unlikely to have adverse impacts on Amidon-Bowen or the public school system in general because the charter school and the public school have co-existed in Southwest for nearly two decades since AppleTree first opened. AppleTree provides additional educational opportunities for District families in a part of the District that is seeing an increase in development and population growth.

104. Public Health and Safety Impacts. The Project has no unacceptable public health or safety impacts:

- (a) The Project protects and advances the public health by being designed in a high-quality manner and in compliance with all applicable construction codes. Solid waste associated with the Project is stored in an enclosed facility within the building consistent with best management practices. The Project includes bicycle facilities and other transportation demand management measures that together discourage automobile use and protect and affirmatively advance public health. The Project does not entail any overcrowding or overpopulation, but instead rationally increases residential density near a Metrorail station at a planned town center. The Project also complies with or exceeds applicable environmental performance standards;
- (b) The Project protects and advances public safety with a design that puts "eyes on the street" through ground-floor uses that encourage pedestrian activity include active outdoor spaces such as the café zone and Play Area, which was designed in consultation with MPD. The Project's new residents and upper-story balconies add additional activity and visibility to deter crime; and
- (c) The Project's site plan also promotes pedestrian and public safety by locating the parking and loading entrances in the far corner of the site, away from the active pedestrian entrances on 4th Street and the Private Drive. Through its transportation study, the Applicant will also have evaluated the impact of the Project on pedestrian, bicycle, and vehicle safety in the transportation network and found no potential adverse impacts that are not adequately mitigated by the TMP.

105. Construction Period Impacts. The Project’s construction-period impacts are all capable of being mitigated. The Applicant has been in contact with its three most proximate neighbors (the owner of the abutting office building located at 1100 4th Street, S.W., the Christ United Methodist Church and the owner of the Eliot across 4th Street) about construction-period impacts and has agreed to a robust CMP. Given the Applicant’s significant experience managing construction of multistory mixed-use buildings in infill locations in the District, the Applicant can undertake and complete the Project without any unacceptable construction-period impacts. (See Ex. 2.) In sum, the CMP: requires that the Applicant coordinate with other developers undertaking construction in the neighborhoods around the Project; establishes requirements for pre- and post-construction surveys and monitoring of nearby buildings during construction of the Project; identifies required truck routes and staging areas; provides for trash, noise, dust, rodent control, and imposes other construction mitigation measures on the Applicant and its contractors. (Ex. 22E.) Taken as a whole, the CMP more than mitigates any potential adverse impacts of the Project.

Evaluation of the Public Benefits

106. The objective of the PUD process is to encourage high-quality development that provides a commendable number of quality of public benefits and amenities by allowing greater flexibility in planning and design than may be possible under matter-of-right zoning. (11-X DCMR §§ 300.1, 305.2.) As part of its evaluation of the Application, the Commission must find that the Project includes specific public benefits and amenities, which satisfy certain enumerated criteria. The Public Benefits must be designed such that: (i) each public benefit is tangible and quantifiable; (ii) each public benefit measureable and able to be completed or arranged prior to issuance of a certificate of occupancy; (iii) the benefits as a whole primarily benefit a neighborhood or area of the District or service a District-wide need; (iv) a majority of the public benefits relate to the geographic area of the ANC in which the application is proposed, and (v) the public benefits are not inconsistent with the Comprehensive Plan and other adopted public policies (the “Public Benefits Criteria”). (*Id.* §§ 304.4(c), 305.3, 305.4.)
107. The Project achieves the goals of the PUD process by creating a high quality mixed-use commercial development which includes the numerous attendant Public Benefits. The Commission finds that the Project includes the following Public Benefits, which are not inconsistent with the Plan as a whole with respect to the Property and which satisfy the Public Benefits Criteria.
108. Subtitle X § 305.4 requires that a majority of the public benefits of the proposed PUD relate to the geographic area of the ANC in which the application is proposed. Findings with respect to the geographic effect of the Public Benefits are addressed in the following paragraphs. In general, the Public Benefits relate to the area of the ANC.
109. Waterfront Station Public Benefits:
- (a) Reopening of 4th Street, S.W.: The reopening of 4th Street, S.W. and the establishment of infrastructure in that street were major public benefits approved

as part of the first-stage PUD. This benefit has been satisfied by previous second-stage PUDs approved under the Waterfront Station PUD although the Project provides an additional and related benefit by committing to make the Private Drive publicly accessible except during closures for short-term special events;

- (b) Major Local Development Initiative: The Waterfront Station PUD is a major revitalization effort that has contributed to the substantial economic development of Southwest DC over the past two decades. The Project is the final phase of this Initiative;
- (c) Urban Design: The Waterfront Station PUD established broad urban design objectives for Waterfront Station, and the Project is consistent with and advances those objectives;
- (d) Town Center: The Waterfront Station PUD created a “town center” node around the Waterfront Station Metrorail stop with 50,000 square feet of open space for public use and enjoyment. This benefit has been satisfied by previous second-stage PUDs approved under the Waterfront Station PUD. Related but additional benefits from the Project are described below;
- (e) Maintenance of Public Park North of the Site: This benefit has been satisfied by previous second-stage PUDs approved under the Waterfront Station PUD;
- (f) Neighborhood-Serving Uses: The Waterfront Station PUD committed to 110,000 square feet of gross floor area devoted to retail uses. This benefit has been satisfied by previous second-stage PUDs approved under the Waterfront Station PUD. Related but additional benefits from the Project are described below;
- (g) Neighborhood-Serving Uses – Local/Small Businesses: The Waterfront Station Public Benefits also included an obligation to use best commercially reasonable efforts to provide opportunities for local and small businesses to occupy 12,500 square feet of retail space. Pursuant to the LURA, the Project contributes to this benefit to the extent of 2,500 square feet;
- (h) Neighborhood-Serving Uses – Grocery Store Use: The Waterfront Station Public Benefits included a commitment to include a 55,000-square-foot grocery store within the PUD area. This benefit has been satisfied by previous second-stage PUDs approved under the Waterfront Station PUD;
- (i) Housing: The Waterfront Station PUD agreed to add at least 800,000 square feet of gross floor area of residential uses. This benefit has been satisfied by previous second-stage PUDs approved under the Waterfront Station PUD. With the Project, the PUD provides a total of in excess of 1.7 million square feet of residential gross floor area. Related but additional benefits from the Project are described below;

(j) Affordable Housing: The Waterfront Station PUD committed to add, for a period of 20 years, at least 160,000 square feet of gross floor area of affordable housing for households earning 80% of area median income. With the Project, the PUD provides a total of in excess of 241,000 square feet of affordable housing (13.6 % of the total residential gross floor area):

- 84,033 sf at 80% MFI for 20 years (Z.C. Case No. 02-38A);
- 40,161 sf at 60% MFI in perpetuity (Z.C. Case No. 02-38I); and
- 117,094 sf at 30%/50% MFI for 99 years (this proceeding).

The Project completes the satisfaction of this benefit and greatly exceeds the requirement in amount, level of affordability, and duration, as described in more detail below;

(k) Sustainable Design Features: The Waterfront Station PUD committed to a series of stormwater management, green roof, and erosion and sedimentation control measures for office buildings within the overall PUD area. This benefit has been satisfied by previous second-stage PUDs approved under the Waterfront Station PUD. Related but additional benefits from the Project are described below;

(l) Community Meeting Space: The Waterfront Station PUD provided approximately 1,000 square feet of office and meeting space for the ANC and other community groups for a period of 10 years. This benefit has been satisfied and expanded upon by previous second-stage PUDs approved under the Waterfront Station PUD;

(m) Security and Construction Mitigation Plan: The Waterfront Station PUD committed to providing security and construction mitigation measures during the development of the Waterfront Station PUD. This benefit has been satisfied and expanded upon by previous second-stage PUDs approved under the Waterfront Station PUD. Related but additional benefits from the Project are described below;

(n) Transportation Management Plan: The Waterfront Station PUD committed to a transportation management plan, which the Applicant significantly expanded upon with respect to the Project; and

(o) Employment and Training Opportunities: The Waterfront Station PUD committed to enter into First Source Employment Agreements and DSLBD agreements for second-stage PUDs. The Project complies with this requirement.

110. Project Public Benefits. In addition to contributing to the Waterfront Station Public Benefits, the Project provides additional benefits and amenities not contemplated in the first-stage PUD. These Project Public Benefits go above and beyond what the Commission would expect in a second-stage PUD given the limited extent of the Project's Development Incentives:

- (a) Superior Urban Design and Architecture: The Project's contemporary, yet contextual form (i.e., recalling key elements of mid-century modernism in Southwest DC), high quality materials, dual orientation, and extensive use of balconies are all elements of the Project's superior design and architecture;
- (b) Superior Open Spaces: The Private Drive and Play Area are public elements of the Project's superior streetscape and open space design;
- (c) Site Planning and Efficient Land Utilization: The Project's transit-oriented location and design, lack of surface parking, and infilling of a gap in a maturing retail town center each exemplify efficient site planning and land use;
- (d) Housing in Excess of Matter-of-Right Development: The Project's provision of in excess of 370,000 square feet of residential gross floor area (and 450 overall new units) adds much needed housing supply to meet increasing demand and offset upward pressures on housing prices in a transit-accessible and mixed-use location;
- (e) Affordable Housing: The Project's most outstanding public benefit is its contribution of affordable housing. In sum, the Project provides 136 affordable units, affordable at either 30% or 50% MFI for a period of 99 years, which exceeds the requirements of the Waterfront Station PUD in amount, depth of affordability, and duration. For reference, approximately 91 units (at 80% MFI for only 20 years) are required to satisfy the conditions of the Waterfront Station PUD, and only 37 units (at 60% MFI) would be required under a matter-of-right inclusionary zoning development of the Property;
- (f) Building Spaces for Special Uses – Neighborhood-Serving Retail: The Project reserves at least 11,000 square feet of the ground floor for neighborhood-serving uses in the retail, general service, financial service, or eating/drinking establishment use categories. An additional 9,000 square feet of the ground floor is reserved for uses in the above categories plus education or daytime care categories;
- (g) Building Spaces for Special Uses – Neighborhood-Serving “Diner” Uses: As part of the 11,000 square foot retail requirement, the Project also reserves at least 1,200 square feet of the ground floor for a restaurant serving at least three meals per day. This obligation survives for two years following the issuance of the first Certificate of Occupancy for the building after which the restriction sunsets. The Applicant will provide the ANC with quarterly leasing updates regarding this commitment and other retail leasing developments;
- (h) Building Spaces for Special Uses – Arts/Cultural: The Project reserves 9,000 square feet of the ground floor for a theater or similar performing arts venue, or if such a use cannot be secured within five years after the first Certificate of Occupancy for the Project, any use in the entertainment/assembly/performing arts, arts/design/creation, or arts-related educational use categories. The Applicant is

also obligated to work with the ANC to develop and solicit a public request for proposals or undertake similar process to find a theater operator;

- (i) Environmental/Sustainable Benefits – LEED Gold: The Project is designed to achieve LEED (2009) Gold or better;
 - (j) Environmental/Sustainable Benefits – Solar Panels: The Project includes no less than 3,000 square feet of roof top solar panels;
 - (k) Outdoor Children’s Play Area: The Project includes a 3,000 square foot Play Area open to general public use during daylight hours except during the hours of use by any educational/daytime care use in the Project and/or at other designated times.; and
 - (l) Uses of Special Value to the Neighborhood – Amidon-Bowen PTA Contribution: The Applicant has committed to providing \$75,000 to the PTA immediately upon the final effective date of the order in this proceeding (subject to the resolution of any appeals) for the purchase of information technology and/or audio-visual equipment. The Applicant has also committed to limiting the enrollment of any public charter school in the Project to no more than 132 students in the aggregate in grades pre-K3 and pre-K4.
111. The Public Benefits as a whole primarily benefit the geographic area encompassed by the ANC or, in the case of the Project’s housing, affordable housing, and environmental benefits, service a District-wide need. The Play Area, the neighborhood-serving uses, the contribution to the PTA, and the superior design and site planning, all primarily benefit the geographic area encompassed by the ANC. The Waterfront Station Public Benefits, particularly the reopening of 4th Street, S.W., the neighborhood-serving ground floor uses, the spaces for community groups, the park maintenance, plazas, and urban design and town center all primarily benefit the area encompassed by the ANC.
112. The Commission also finds that the Project Public Benefits are not inconsistent with the Plan because each is an integral part of the Project, which itself is not inconsistent with the Plan. Moreover, such Public Benefits are each tangible, quantifiable, measurable, or capable of being completed or arranged prior to the issuance of a certificate of occupancy for the Project. The Public Benefits satisfy the Public Benefits Criteria.
113. The Project opponents take issue with some of the Public Benefits, and usually only by implication, allege that some of the Public Benefits do not satisfy the regulatory requirements. Although the Commission ultimately concludes to the contrary, these various assertions warrant further evaluation:
- (a) Neighborhood-Serving Retail: WTCA and CBCC alleged that the Project’s neighborhood-serving retail is inadequate and would like clearer commitments and plans for the Project’s ground floor. (Ex. 23, 39; Tr. 2 at 120-27.) The Commission understands WTCA’s request for more certainty but recognizes that the Project is too far away from completion of construction of the Project for firm commitments

for all of the Project's ground floor space from individual retailers. The Commission finds that the Applicant's commitments regarding ground floor uses satisfy the Public Benefit Criteria even if the individual retail uses are not yet known. CBCC would like to see "locally-owned, community-serving retail and services." (Ex. 39.) The Commission notes that the Applicant has committed to providing exactly those uses on the Project's ground floor. CBCC also objected to the potential expiration of the Project's commitment to a "diner" and performing arts uses if those uses cannot be located within, respectively, two and five years following the issuance of a certificate of occupancy for the Project. The Commission finds that the "sunset" concept in the Applicant's ground floor use commitment appropriately balances the need to provide a strong incentive for the Applicant to deliver the proposed uses while also not indefinitely leaving valuable ground-floor retail space vacant. Neither the Applicant, nor this Commission, nor any neighborhood groups wants to see ground-floor vacant space for an extended or indefinite period of time. Vacant ground floor spaces undermine street level vitality. The Applicant's commitment to engage in regular dialogue with the ANC regarding retail uses during build out provides a further effective safeguard. Notwithstanding CBCC's concerns, the Commission sees no reason to believe that the Project's ground floor use proffers do not satisfy the Public Benefits Criteria;

- (b) Location of Affordable Units: SWAG noted that the Project's affordable units were initially concentrated around the enclosed courtyard. As noted above, the Applicant revised the location of the Project's affordable units after the Public Hearing, addressing SWAG's concern. In addition, SWAG is simply wrong that the courtyard is the "less sunny" side of the building. The courtyard side of the building is south-facing and therefore the *more* sunny side of the building (because the sun traces an arc from east to west in the southern sky). Finally, the only level of the Project without affordable units is the penthouse level, and not, as SWAG suggests, the upper floor *and* the penthouse. All residential stories of the Project contain affordable units. The location of affordable units on all of the floors of the Project except for the penthouse is not prohibited (indeed it is not addressed at all) under the D.C. Human Rights Act. The Zoning Regulations prohibit concentrating affordable units on any one floor, but such regulations do not require locating any affordable units in a penthouse. Indeed, the Commission's practice has been to allow no affordable units on the penthouse or top floor, recognizing that the premium rents from those floors support and subsidize affordable housing on lower levels as well as other benefits. By providing affordable units up to and including the top floor, the Project goes beyond the Commission's standard practice. More to SWAG's concern: the residents of the Project's affordable units will in no way have a "lesser experience" than the residents of the Project's market-rate units. The Project's affordable units and market-rate units will all have comparable interior finishes and fixtures, equal access to amenities, and are allocated throughout the building so that the affordable units are not distinguishable from the market-rate units. On the whole, nothing SWAG raises on this point that has gone unaddressed by the Applicant undermines the Commission's findings that the Project's affordable housing satisfies the Public Benefits Criteria;

- (c) Duration of Affordability Restriction: In a critique that implicitly seeks to undermine the value of the Project’s affordable housing benefit, SWAG asserts that all of the proffered affordable units expire over time. (Ex. 37.) SWAG’s characterization of the affordable housing benefits “expiring” over time is misleading. The Project’s affordability proffer lasts only 99 years because that is the term of the ground lease under which the Applicant controls the Property. The Project’s 99-year affordability restriction is co-terminus with the period of private control. If the District wishes to extend the period of private control beyond 99 years, it could similarly extend the affordability controls. The District’s action with respect to the Project’s affordability restriction after it reverts to District control is a public policy decision. Moreover, the 99-year period of affordability proffered as part of the Project greatly exceeds the 20-year period required under the Waterfront Station PUD. That 20-year period, which is the period binding on the Project as vested under a first-stage PUD, and not the IZ period of control, is the appropriate baseline for comparison. The Commission finds that the Project’s affordable housing proffer complies with the Public Benefits Criteria;
- (d) Affordability Program in Waterfront Station PUD: SWAG raises objections with the affordability program in other buildings under the Waterfront Station PUD, perhaps in an effort to call into question the value of the Waterfront Station Public Benefits. The Commission notes that these other buildings are not before the Commission in this proceeding. The Northwest Building that SWAG cites was approved in Z.C. Order No. 02-38D and the M Street, S.W. projects that SWAG cites in Z.C. Order No. 02-38I, and neither are before the Commission now. The affordable housing benefit in the Waterfront Station PUD was allocated among the multiple residential buildings on the overall site. Whether the Commission’s approval of the allocation of affordable units to the Northwest Building was in error or not, it is not redressable now as part of this proceeding. In any event, the Project provides more affordable housing, at deeper levels of affordability, and for a longer period of time than originally was required under the Waterfront Station PUD. With the approval of the Project, the total affordable housing commitment for Waterfront Station PUD will be 13.6% of the aggregate residential gross floor area, which is more than 1.5 times the percentage that would be required for a matter-of-right development under the District’s Inclusionary Zoning requirements. To the extent SWAG is objecting to the value of the Project’s Public Benefits, the Commission strongly disagrees;
- (e) Income Limits: SWAG makes further assertions that appear directed at the level of affordability of the Project’s units, again in an apparent attempt to impugn the value of the affordability benefit. However, SWAG gets the facts incorrect, so this allegation can be easily dismissed. SWAG asserts that the Project is “an exclusive community for single professionals making \$45,000+” and its citation “to the housing cost floor of \$1200/month,” an assertion that is demonstrably false:
- All of the affordable units in the Project are subject to an income *maximum* rather than an income *minimum* as SWAG suggests;

- A household occupying one of the Project’s 30% MFI one-bedroom or studio units could earn a *maximum income* of \$24,600 if an individual or \$28,150 if a couple under DHCD’s current income limits. SWAG confusingly cites “\$45,000+” as the minimum income;
 - The *maximum* income for *any* of the Project’s affordable units is \$58,600 under DHCD’s current income limits for a two-bedroom unit affordable at 50% MFI;
 - Similarly, incorrect is SWAG’s assertion that \$1,200 per month is the “housing cost floor.” Rather than a floor, the *maximum* monthly rental for the Project’s affordable units is \$1,280 monthly under DHCD’s current rental limits; and
 - Notwithstanding the confusing and incorrect statements from SWAG, the Project’s affordable housing is a meaningful public benefit that satisfies the Public Benefit Criteria;
- (f) Affordable Commercial Space: SWAG notes that there is “no proffered affordable commercial space or conditions to work with local Ward 6 small businesses, or with Ward 6 organizations to access affordable incubator/retail space in perpetuity on the ground floor.” The Waterfront Station PUD does require that the Project (like other phases of the Waterfront Station PUD) undertake reasonable efforts to provide space for small and local businesses and 2,500 square feet of the Project’s ground floor must be dedicated to such uses.¹⁸ It is true that there is no affordable/incubator commercial space requirement for the Project. The neighborhood-serving ground floor uses requirements and benefits were established in part during the first-stage PUD and more recently in consultation with the ANC. SWAG is effectively encouraging additional public benefits. The Commission finds that additional benefits are unnecessary given the already robust package of Public Benefits. The Project’s Public Benefits reflect the community’s desires and satisfy the Public Benefit Criteria, notwithstanding SWAG’s lack of participation in determining such benefits;
- (g) Applicant Contribution to Funds for Community Emergencies: At the Public Hearing, SWAG asked whether the Applicant could reserve space or a fund for Southwest residents who experience an emergency like the fire that occurred at the Arthur Capper senior houses. The Applicant provided evidence that its affiliates have already made these types of contributions outside of the PUD process. As noted in the Post-Hearing Submission, affiliates of the Applicant have been collaborating with DCHA to provide units for displaced seniors with vouchers from Arthur Capper Carrollsburg at The Wharf and The Banks, two residential buildings

¹⁸ To SWAG’s point about limiting such spaces to Ward 6 businesses and organizations specifically, such a restriction would arguably run contrary to the D.C. Human Rights Act, which generally prohibits such discrimination on the basis of Ward. D.C. Code § 2-1401.1. The Project’s small business benefits are available to all District businesses.

controlled by the Applicant's affiliates although the Applicant does not seek to proffer these prior contributions as public benefits; and (Ex. 47C.)

- (h) Anecdotal Information about The Wharf: Mr. Williams alleged that some households encountered troubles renting units at The Wharf, a separate development in Southwest DC that is owned by affiliates of the Applicant. In the Post-Hearing Submission, the Applicant provided information about its record of renting affordable units at The Wharf. Weighing the non-particularized statement from Mr. Williams against the Applicant's Post-Hearing Submission regarding leasing activities at The Wharf, the Commission finds that there is no reason to believe that the Applicant cannot or is unlikely to deliver on its obligations with respect to affordable housing benefits in the Project.

114. Accordingly, the Project satisfies the PUD Evaluation Standards.

Consistency with the First-Stage PUD

115. In addition to reviewing the Application against the PUD Evaluation, the Commission must review the Application against the Waterfront Station PUD. In general, the Commission must grant approval to any second-stage PUD application that it finds in accordance with the first-stage approval. (11-X DCMR § 309.2.) As noted above, the Project is in accordance with the parameters established in the Waterfront Station PUD and is consistent with the Conditions of that order.

116. However, SWAG argues that the Project is inconsistent with the first-stage PUD. SWAG is ultimately incorrect on this point, but its concerns are worthy of careful scrutiny:

- (a) Alleged Height and Height Act Deficiencies: SWAG avers that the Project "cheats the DC Height Act." (Ex. 37.) This is incorrect. The maximum point of the Project's roof or parapet is at an *elevation* of 133 feet. (Ex. 22G.) The height of the Project (i.e., the vertical distance from the measuring point on the ground to the highest point of the roof or parapet) is approximately 114 feet. (*Id.*) The Commission finds no error in measuring the Project's height from M Street, S.W. given (i) the Project's history as part of the Waterfront Station PUD, which expressly contemplated that all buildings constructed under that PUD use M Street, S.W. for a measuring point, and (ii) the text of § 2521.1(h) which provides for specific changes to the Zoning Regulations for all building in Square 542;
- (b) Other Alleged Modifications of Waterfront Station PUD: SWAG alleges that the Project has been modified in several ways relative to the approvals under the Waterfront Station PUD. (Ex. 37.) Once again the Commission finds to the contrary of SWAG's assertions:
- SWAG alleges the Project now maximizes the building footprint and eliminates side and rear yards. The Project actually covers slightly less of the Property than the "Northeast Building" (the name of the Project under the Waterfront Station PUD) was proposed to cover in the Waterfront

Station PUD. Both the original Northeast Building and the Project included open space for what is now called the “Private Drive” but the Northeast Building was shown as constructed to the lot line on both the east and west boundaries of the parcel. That is, the Northeast Building originally had no side yards, whereas the Project adds side yards to widen the sidewalk and improve the pedestrian experience along both adjacent public streets. The Project’s required side yard relief is necessary to provide side yards, not because it is not providing side yards;

- The Project also does not eliminate a previously required rear yard. Rather, small portions of some balconies on only some floors of the Project encroach into the required rear yard, which is at least as deep, and in some instances deeper, than was contemplated in the first-stage PUD. These balconies are architectural details not contemplated during the first-stage PUD process because such details are typically not added until a second-stage PUD;
- SWAG alleges the Project’s “brings the wings of the building to encroach in on the courtyard” as though this were a change. It is not. The Northeast Building, like the Project, also showed “wings” wrapping the courtyard. The Project adds articulation to all three public facing façades and to the courtyard, but does not change the form or massing approved in the first-stage PUD. Rather the first-stage PUD established the massing and orientation of the building and the second-stage PUD establishes the architectural details.¹⁹ The Project’s articulation constitutes final building detailing properly incorporated at the second-stage of the PUD process; and
- Finally, SWAG complains that the allocation of the Project’s affordable units is inconsistent with the first-stage PUD. This is incorrect because the first-stage PUD did not specify any allocation of units within any of the buildings in Waterfront Station; and

(c) The Commission finds that the Project is fully in accordance with the Northeast Building approved as part of the first-stage PUD and that the Project includes appropriate detailing and articulation that is only shown for the first time during the second-stage PUD process.

¹⁹ Compare 11-X DCMR § 302.3(a) (describing a first-stage PUD as “a general review of . . . the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed”) with *id.* § 302.3(b) (describing a second-stage PUD as “a detailed site plan review to determine transportation management and mitigation, final building and landscape materials”).

Family-Sized and Three-Bedroom Apartment Units

117. The Commission, the ANC, SWAG, and others raised questions about the Project's lack of units containing three or more bedrooms.²⁰ The Project's purported lack of family-sized housing and its lack of three-bedroom units are related, though separate, concerns, and the Commission reviews them independently because the latter has merit as a concern of the Project, whereas the former does not. These questions implicate elements of the Project's consistency with the Comprehensive Plan as well as its potential impacts and its package of Public Benefits. Given the overlapping nature of this issue, the Commission addresses it separately here.
118. Family-Sized Housing. The Commission finds that the Project contains a substantial amount of "family"-sized housing. The Commission considered concerns from the ANC, SWAG, and others who would like to see in Southwest DC the development of housing units large enough to allow families with children to move into and/or remain in the neighborhood. The Project positively addresses those concerns: it contains a total of 90 two-bedroom units, 28 of which are reserved as affordable (14 at 50% AMI and the other 14 at 30% AMI). Two-bedroom units, especially those with an additional "den," of which there are 10 in the Project, are sufficiently large to accommodate families with one or two children. Five of the 10 two-bedroom plus den units are affordable, and are therefore reserved as affordable at a disproportionately greater percentage. Thirty percent of the Project's *net* residential floor area is devoted to family-sized units, a percentage that the Commission determines is substantial. Moreover, the Project's two-bedroom units are also slightly larger than typical two-bedroom units in the marketplace and therefore provide additional space for families. For instance, the Project's two-bedroom units are on average 1,063 square feet. Comparable nearby new buildings have two-bedroom units averaging 861 square feet to 1,178 square feet. None of the ANC, SWAG, or any other opponent cited any authority defining "family-sized" units as only those units containing three- or more bedrooms. The Commission is not aware of any authority establishing such a definition, as it arguably would be contrary to federal fair housing law to exclude families with children from units with two-bedrooms. The Commission therefore finds that there is no meaningful dispute that the Project contains units sufficiently large so as to accommodate families with children, and indeed the Project contains more than two-dozen affordable (and many deeply affordable) units capable of doing exactly that.
119. Three-Bedroom Units. The Project does not contain any three-bedroom units notwithstanding the request from the ANC and others that the Project be revised to include three-bedroom units. While the Commission agrees with the ANC, SWAG, CBCC, Mr. Williams, and Ms. Rodney that three-bedroom units are a benefit, the Commission does not believe that three-bedroom units are necessary here given the quality and quantity of other public benefits, including in particular the amount and depth of affordable housing. (*See* 11-X DCMR § 305.5(f)(3).) Furthermore, the lack of three-bedroom units does not cause the Project to run afoul of the Comprehensive Plan or any other adopted policy applicable to the Property. The lack of three-bedroom units does not cause any

²⁰ Sometimes these concerns were phrased as a lack of "family-sized" housing in the Project. (*See, e.g.*, Ex. 37 at 1.)

unacceptable impacts, it does not void the Project's commendable Public Benefits, and it does not violate the approval in the first-stage PUD or any procedural requirement. On balance, the Applicant has compelling reasons for not providing three-bedroom units, and after carefully weighing all of the evidence and evaluating the argument, the Commission sides with the Applicant.

120. Comprehensive Plan Analysis. While there are meritorious policy arguments for three-bedroom units, there is no evidence that the Project is *required*, pursuant to any law or regulation binding on the Project, to provide three-bedroom units. In the absence of any binding law or regulation, the Commission looks to policy guidance regarding the design of the Project's units. On this point, the Commission finds arguably competing policies. In sum, the Commission resolves this issue in favor of the Applicant and finds that the Project is not inconsistent with the Comprehensive Plan with respect to its lack of three-bedroom units. Mindful of its obligation to weigh and reconcile competing policy objectives in determining whether the PUD is not inconsistent with the Comprehensive Plan as a whole,²¹ the Commission makes these subsidiary findings with respect to three-bedroom units:

- (a) The Argument for Three-Bedroom Units. The desire of the ANC, SWAG, and others for three-bedroom units is moored to an articulable and adopted public policy document: the Comprehensive Plan's Housing Element. In particular, as cited by SWAG, Housing Element Policy H-1.3.1 encourages the provision of housing units for families with children through, among other things, construction of three- and four-bedroom apartment units. (10-A DCMR § 505.6.) Concededly, the Project does not directly advance this objective by providing three- or four-bedroom units. However, that is not the end of the analysis;
- (b) Policy H-1.3.1 Does Not Require Three- and Four-Bedroom Apartment Units. Policy H-1.3.1 is not so tightly prescriptive so as to limit compliance therewith to the provision of only three- and four-bedroom apartment units. Rather, H-1.3.1 has broader aims than merely the production of three- and four-bedroom apartment units, and such broader objectives become clear when Policy H-1.3.1's reference to three- and four-bedroom apartment units is reviewed in context:
 - Policy H-1.3.1 reads in full: "Provide a larger number of housing units for families with children by encouraging new and retaining existing single family homes, duplexes, row houses, and three- and four-bedroom apartments"; (*Id.*)
 - The overriding intent of this policy objective is captured in the first half of the sentence: provision of "housing units for families with children." As noted above, there is no real dispute that the Project accomplishes this

²¹ See *Friends of McMillan Park v. District of Columbia Zoning Comm'n.*, 149 A.3d 1028, 1034 (D.C. 2016); *D.C. Library Renaissance v. District of Columbia Zoning Comm'n.*, 73 A.3d 103, 126 (D.C. 2014) (noting that the Court of Appeals "recognize[s] that the Commission may balance competing priorities in order to evaluate whether a project would be inconsistent with the Plan *as a whole*") (emphasis added).

overall objective: the Project indisputably contains apartment units large enough to accommodate families with children;

- Following the broad statement of the goal of providing housing units for families with children, the second half of H-1.3.1 sets forth the many different ways that it can be satisfied. First, it can be satisfied through constructing “new” housing units or “retaining existing units”. Second, it can be satisfied through a non-exhaustive list of housing types, *viz.* “single family homes, duplexes, row houses, and three- and four-bedroom apartments.”;
- The Commission must presume that the list of housing types recited as compatible with “family-sized housing” is intended to be non-exhaustive because, for instance, five-bedroom units would certainly satisfy the overriding intent but are not included in the list. That is, the list of housing types provided in this objective are intended to be illustrative and are not rigidly prescriptive. There are numerous ways to satisfy the overriding objective of “housing for families with children” and some of those ways are not expressly listed out; and
- Therefore, the Commission reads that the intent of this objective can be satisfied through two-bedroom units (and two-bedroom plus den units) even if such smaller units do not advance this objective as far as would three- or four-bedroom units. That is, the Project is not inconsistent with H-1.3.1’s overriding objective of providing “housing units for families with children” because it contains 90 two-bedroom units, even if the Project does not include three- and four-bedroom units as H-1.3.1 cites as examples of ways to achieve consistency with such objective;

(c) The Project’s Housing is Not Inconsistent with the Comprehensive Plan as a Whole. The operative standard of review for the Commission’s analysis of a project’s consistency with the Comprehensive Plan is whether the project is not inconsistent with the Comprehensive Plan *as a whole*. The Comprehensive Plan “reflects numerous occasionally competing policies and goals,” and it is up to the Commission to “balance competing priorities in determining whether a PUD is consistent with the Comprehensive Plan as a whole.” (*McMillan* at 1034.) Insofar as Policy H-1.3.1 calls for larger units, it is precisely the type of policy that operates in a loose tension with other policies that call for a greater number of units: (*See, e.g.,* 10-A DCMR § 504.7 (i.e., Policy H-1.2.2: [Affordable Housing] Production Targets).)

- That is, the Project contains only 370,257 square feet of gross floor area capable of being devoted to housing given the volumetric constraints imposed on the Property through the Zoning Regulations. That total gross floor area can be divided in many different ways, but the Applicant elected to divide such area to provide a greater overall number of units rather than

to provide larger, albeit fewer units. The Project's 370,257 square feet of residential floor area could be reconfigured to provide for larger units but doing so would reduce the overall number of units;

- In this way, policies H-1.3.1 and H-1.2.2 operate in some tension: H-1.3.1 encourages larger units, H-1.2.2 encourages a greater number of units. In a fixed amount of space, it becomes necessary to choose one over the other. As described above, the Project is not inconsistent with H-1.3.1 even if it does not reach the outer bounds of what such policy objective encourages; and
- Given the Project's consistency with other Comprehensive Plan elements that cannot be fully reconciled with H-1.3.1, the Commission finds that the Project is not inconsistent with the Comprehensive Plan "as a whole".

(d) The Project's Housing is Fully Consistent with "Other Adopted Public Policies and Active Programs Related to the [Property]." Even if the Commission assumes *arguendo* that the Project's lack of three-bedroom makes it per se inconsistent with Policy H-1.3.1 (although for the reasons given above, it does not), that is not the end of the analysis. Rather, the relevant standard for the Commission is whether the Project "is not inconsistent with [as a whole] the Comprehensive Plan *and with other adopted public policies and active programs related to the subject site.*" (11-X DCMR § 304.4(a) (emphasis added).) There are other adopted public policies related to the Property specifically that override the general District-wide objectives of the Comprehensive Plan's Housing Element:

- The Applicant's decision about the division of the Project's floor area was made in consultation with and subject to approval from the Mayor (through DMPED) and the D.C. Council, both of which affirmatively acted to select the Applicant and this Project, including, specifically the number of units and the mix of affordable and market-rate units. The executive and legislative branches reasonably concluded that the Project should provide an overall greater number of units even at the cost of not providing units with three or more bedrooms;
- Given that this adopted public policy decision was made together by the executive and legislative branches for this Project specifically, the Commission cannot conclude that the Project runs contrary to Section 304.4(a). Instead, given the specificity of the Project and the public policy deliberations made with respect to it by the executive and legislative branches, the Commission is inclined to weigh more heavily the parcel-specific considerations of the Project over the general District-wide objectives of the Housing Element;
- Along those same lines, the specific determinations about the Project made by DMPED and the Council are more recent than the more general policy

objectives set forth in the Comprehensive Plan, which objectives are at this point more than 12 years old. The Commission is inclined to weigh more heavily more recent policy guidance over older policy guidance, just as it is inclined to weigh more heavily specific policies over general ones; and

- Therefore, the Project does not run counter to the requirements of § 304.4(a), given the recent executive and legislative approval for the specific unit mix and unit sizes proposed for the Project;

(e) The Project's Mix of Units and Unit Sizes is Logically Connected to its Context. Peering behind the imprimatur of reasonableness in the policy determination from DMPED and the Council as to the Project's unit mix, the Commission finds that there are strong justifications for skewing the Project's unit mix towards a greater number of smaller units rather than a lesser number of larger units. That is, notwithstanding a desire for three-bedroom units in the District generally, the Project specifically is on sound footing with respect to unit size and mix because of its proximity to transit and the demographics of Southwest DC:

- First, the Project's proximity to the Waterfront Station Metrorail stop counsels toward providing a greater number of smaller units so as to increase, as much as is reasonable, the number of households that live near transit. This is the urban planning underpinning for transit-oriented development; and (*See, e.g., 10-A DCMR §§ 306.11, 309.15, 403.1; Ex. 2L.*)
- Second, the Project's mix of units also reflects the demographics of Southwest DC, which continues to show much smaller household sizes and lower percentages of households with children relative to other parts of the District. For instance, information provided to DMPED in a report prepared in 2015 by the Urban Institute and introduced into the record by the Applicant, showed that there were on average 1.7 people per household in the "Waterfront" cluster of Ward 6 (i.e., the majority of Southwest) and that only 10% of the households in such cluster had children. These are among the lowest averages in the District. (*Ex. 47G1.*) Further, households of one and two people, the demographic most likely to inhabit the Project's studio and one-bedroom units, are growing faster than any other household size. (*Id.*) With this demographic context, the Project's provision of primarily studio and one-bedroom units is entirely rational and consistent with the neighborhood's current character and predominant needs. The Commission therefore finds that the Project's mix of units, which comports to the prevailing demographic character of Southwest DC.

121. Three-Bedroom Units: Potential Adverse Displacement Impacts. SWAG alleges that such lack of three-bedroom units could result in displacement or other adverse impacts to the housing market. SWAG implies that the Project could have adverse impacts in the form of "increasing displacement impacts . . . on the surrounding community's existing affordable

housing.” (Ex. 37.) Apart from providing an anecdote that undercuts its argument (that is, SWAG’s example of Mr. Lee, who is looking for a studio unit), SWAG does not provide any evidence of these impacts beyond conjecture or bare assertion and does not provide any explanation for the connection between the Project and the stated concern. For all the reasons given above, the Project’s mix of housing and addition of new housing is much more likely to have net positive benefits on the housing market. The Property’s vacant condition today undercuts any credible argument that the Project will have adverse displacement impacts. SWAG notes that the Project does not replace any of “Ward 6’s threatened public housing so to mitigate any future public housing resident displacement and gentrification.” SWAG has failed to produce any evidence that the Project creates any discernible impact on public housing in Ward 6 that would necessitate any such mitigation.²² In sum, the Commission disagrees with SWAG and instead finds that the Project is highly unlikely to have any adverse impacts with respect to displacement of existing residents.

122. Three-Bedroom Units: Public Benefits Package. It is true that the Commission considers three-bedroom units to be public benefits under § 305.5 of Subtitle X and the Commission would likely consider the Project’s Public Benefits package to be stronger if it contained three-bedroom units. However, the Commission rules prohibit it from compelling specific benefits. (11-X DCMR § 305.11.) The Commission may deny a PUD only if the proffered benefits do not justify the degree of development incentives requested. (*Id.*) That is hardly the case here. The Project’s overall package of Public Benefits more than adequately justifies the Development Incentives, and it is not at all a close call.
123. Alleged Lack of Adequate Agency Reports. SWAG raised concerns about the lack of reporting by District agencies to the Commission. SWAG raised concerns about the lack of reporting from District agencies generally, identifying DHCD in particular as one agency that, in SWAG’s view, should have reported on specific aspects of the Project.²³ In sum, further reports are unnecessary: the Commission is the expert decision maker on matters of land use planning and policy in this proceeding and does not require input from

²² Although the burden of proof is on the Applicant to provide evidence that allows the Commission to conclude that the Application satisfies the PUD Evaluation Standards and the PUD Requirements, if an opponent wishes to allege that the Project causes an adverse impact, such opponent must provide more than a bare assertion of that impact. The Commission cannot make findings on conjecture and speculation but instead must base its findings on more than a mere scintilla of evidence. That evidentiary threshold applies to project opponents as well as the Applicant even if the Applicant carries the burden of proof in satisfying the regulatory requirements for a PUD.

²³ SWAG also raised related concerns about the purported lack of agency reporting in general being “fatal.” (Ex. 37). For example, SWAG incorrectly states that the record lacks studies related to pedestrian safety. Such studies are included in the CTR and DDOT report and further addressed in the Applicant’s CMP and follow-up commitments related to DDOT’s Safe Routes to School program. (Ex. 15A, 22E, 25.) SWAG also asserts that the record lacks studies as to environmental impacts, infrastructure impacts, public service community facilities overcrowding and the like. Again SWAG is incorrect as environmental and infrastructure assessments were included in the Applicant’s initial filing and in subsequent filings. (Ex. 2I, 15A, 22E.) For the reasons given here, SWAG’s and the PTA’s concerns about the lack of agency reports is not problematic.

other District agencies in order to make a decision. Often the Commission welcomes reports with input from other agencies, but it does not *require* it:

- (a) The Commission Does Not Require Agency Reports to Approve a PUD. The Court of Appeals has recently re-affirmed that agency reports are not a pre-requisite to the Commission approving a PUD; and²⁴
- (b) DHCD has Provided a Written Report and Further Reporting is Unnecessary. Notwithstanding that a report from DHCD is not a requirement, DHCD provided written comments to OP in satisfaction of the reporting provisions of the Zoning Regulations and directly addressed the Project's affordable housing commitment. Further reporting from DHCD is not necessary. The Commission does not require DHCD to determine whether the Project's units (affordable or otherwise) are capable of accommodating families. The Commission finds that the Project's units can accommodate families, including families with children. SWAG also encourages DHCD's further participation because it allegedly has information or data germane to the Project's putative displacement impacts. The Applicant provided the requested data, which was contained in a report commissioned by DMPED. Further reporting from DHCD is not necessary.

124. On balance and having reviewed the weight of the evidence in the record before it, the Commission finds that the Project's mix of unit sizes satisfies the PUD requirements generally and does not disturb the Commission's findings with respect to the PUD Evaluation Standards. The Project provides housing units sufficient to accommodate families with children. The Project's lack of three-bedroom units is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Property and does not result in any unacceptable impacts on the surrounding area.

PUD Balancing Test

125. As set forth in the Zoning Regulations, the Commission must evaluate and grant or deny a PUD application according to the standards of § 304 of Subtitle X. The Applicant has the burden of proof to justify the granting of the Application according to such standards. (11-X DCMR § 304.2.)

²⁴ A common thread in complaints by SWAG and related groups is that the Commission has erred by not hearing from DHCD or other District agencies, often citing 11-X DCMR § 308.4 (“[OP] shall coordinate review of the application and prepare an impact assessment of the project, which shall include reports in writing from relevant District of Columbia departments and agencies, including, but not limited to, [DDOT] and [DHCD].”) The Court has recently confirmed that such a report is not a requirement of a PUD. (*See Shickler v. District of Columbia*, No. 17-AA-496 (D.C. Feb. 7, 2019) “In this case, the relevant agencies were solicited for comment, and many of them either wrote reports or participated in meetings throughout the process. The fact that some did not submit reports is not enough to undermine a decision of the Commission that is otherwise supported by substantial evidence.”) (internal citations omitted).)

126. The Commission's findings in relation to a PUD must be supported by substantial evidence. (*See Howell v. District of Columbia Zoning Commission*, 97 A.3d 579 (D.C. 2014).) The Commission finds that the Applicant has satisfied the relevant evidentiary threshold to carry its burden of proof in the instant proceeding. The Applicant has provided multiple filings containing volumes of evidence all relevant to this proceeding and proffered three expert witnesses each of whom presented credible testimony at the Public Hearing. (*See Ex. 2, 13, 14, 15, 15A, 22, 34, 35, 36, 47* [plus exhibits thereto]; Tr. 2 at 11-20, 40, 46-58, 150-163.) The Commission, in its reasonable determination, accepts such filings and expert testimony as containing evidence adequate to support the findings contained herein.
127. Pursuant to Subtitle X § 304.3, in deciding on the Application, the Commission has, according to the specific circumstances of the Application, judged, balanced, and reconciled the relative value of: (i) the Public Benefits and other amenities offered as part of the Project, (ii) the Development Incentives requested by the Applicant (where, pursuant to Subtitle X § 303.12, the requested Map Amendment is a type of PUD incentive), and (iii) any potential adverse effects (collectively, the "PUD Balancing Test"):
- (a) The Public Benefits Are Numerous and of a High Quality. In sum, the Project provides the numerous and high quality Public Benefits, which satisfy the Public Benefits Criteria. A full accounting of the quality of the Public Benefits is provided above; (*See* FF 106-114.)
 - (b) The Development Incentives Are Comparatively Minor and Appropriately Granted in Light of the Public Benefits. The Commission finds that the Applicant requests comparatively minor Development Incentives for the Project. The Project's individual Development Incentives are described above. (*See* FF 49-51.) The most significant, by far, of the Development Incentives is the Map Amendment, which allows the Applicant to construct the Project to a higher density and greater height than is possible as a matter of right. However, the Map Amendment was previously approved as part of the Waterfront Station PUD and is not inconsistent with the Comprehensive Plan. The Commission previously determined that the Waterfront Station Public Benefits more than justify the Map Amendment. The only Development Incentives before the Commission now are the Zoning Relief and Ground-Floor Flexibility. The Design Flexibility was also previously approved to a greater extent than contemplated here. The Zoning Relief and Design Flexibility, to the extent updated here, underlie and indeed make possible the Project's superior architecture and design, which alone justify the Zoning Relief. Other Project Public Benefits (e.g., the uses of special value) justify the Ground-Floor Flexibility. Finally, the Project Public Benefits, particularly the provision of so much housing and affordable housing at levels far below and to a much greater extent than required in the Waterfront Station PUD more than adequately account for any potential adverse effects of the Project;
 - (c) Any Potential Adverse Effects of the Project are Appropriately Mitigated or Outweighed by the Public Benefits. The Project's potential adverse impacts are

listed above. (See FF 95-105.) As this Commission found in response to each individual articulated concern or objection to the Project, these potential adverse effects are either capable of being mitigated or appropriate in light of the Public Benefits; and

- (d) The Public Benefits Together Outweigh the Project’s Potential Adverse Effects and Justify the Development Incentives. The Commission returns to a familiar point in its review of the record in this proceeding: the Project adds much needed housing, including significant amounts of affordable housing and family-sized housing and provides numerous additional Public Benefits. The Project’s modest potential adverse effects—traffic, shadow, and construction period impacts, along with the highly attenuated impacts to Amidon-Bowen resulting from the inclusion of AppleTree—are all more than justified by the Project’s provision of such a significant amount of affordable housing, the outdoor Play Area and other Public Benefits. These items are the crux of the Project’s trade-off for the reasonable Development Incentives sought through the Application and more than compensate for any possible adverse effects of the Project.

128. The Commission finds that the Applicant has responded fully and satisfactorily to each material contested issue raised in this proceeding.²⁵ The Commission has reviewed the record, identified the circumstances of the Application, the Property, the Project and the surrounding area, and balanced, reconciled, and judged the Public Benefits against the Development Incentives and potential adverse effects. In sum, the Commission finds that the Project satisfies the PUD Balancing Test.

CONCLUSIONS OF LAW

Procedural and Jurisdictional Conclusions

1. A PUD application must adhere to certain procedural requirements. (11-X DCMR § 307.1; 11-Z DCMR §§ 205, 300, 400-08, 600-06, 700-707.) The Commission must hear any PUD in accordance with the contested case procedures its Rules of Practice and Procedure. (11-X DCMR § 300.3.) The Commission has found and hereby concludes: (i) the Application satisfies the PUD application requirements, and (ii) the Applicant, the Office of Zoning, OP, and this Commission have satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations. (FF 1-19.)
2. The minimum area included within a proposed PUD must be no less than 15,000 square feet and all such area must be contiguous. (11-X DCMR § 301.) The Application satisfies these minimum area and contiguity requirements. (FF 20, 87.)

²⁵ See *Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 89 (D.C. 1978); see *Lee v. D.C. Zoning Comm’n*, 411 A.2d 635, 638 (D.C. 1980) (“[A]n issue is not necessarily “material” simply because evidence was presented on the point at the hearing.”). The Court of Appeals has articulated the standard by which a contested issue in a PUD becomes “material”: a material contested issue is one that the Commission must consider as part of its decision-making process. (See *Daro Realty v. D.C. Bd. of Zoning Adjustment*, 581 A.2d 295, 303 (D.C. 1990).)

3. The Application is subject to compliance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. (the “Act”). The Conditions of this Order require that the Project and the Applicant comply with the Act.

Evidentiary Standards

4. The Applicant has the burden of proof to justify the granting of the Application according to the PUD and map amendment standards enumerated above. (11-X DCMR §§ 304.2, 500.2.) The Commission’s findings in relation to a PUD must be supported by substantial evidence. (*See Howell v. District of Columbia Zoning Comm’n.*, 97 A.3d 579 (D.C. 2014).) Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support” the conclusions contained herein. (*D.C. Library Renaissance Project v. District of Columbia Zoning Comm’n.*, 73 A.3d 107, 125 (D.C. 2013).) The Applicant’s filings, testimony, and expert witness presentations are credible and thorough and reasonably adequate to support the Commission’s analysis and conclusions contained herein. (FF 126.) Accordingly, the Applicant has provided substantial evidence to demonstrate that the Project satisfies the relevant PUD evaluation standards and has carried its burden of proof sufficiently to allow the Commission to approve the Application.
5. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to issues and concerns raised in the affected ANC's written report. Great weight requires the acknowledgement of the ANC as the source of the recommendations and explicit reference to each of the ANC’s concerns. The written rationale for the decision must articulate with precision why the ANC does or does not offer persuasive evidence under the circumstances. In doing so, the Commission must articulate specific findings and conclusions with respect to each issue and concern raised by the ANC. (D.C. Official Code § 1-309.10(d)(3)(A) and (B).)

ANC 6D’s written report listed the following issues and concerns, which are listed below. Following each one is the Commission’s response:(Ex. 32.)

- (a) Affordable Housing: The ANC stated it was pleased that the Applicant was going beyond its obligations required by the first stage PUD by providing deeper levels of affordability and duration, but that it would appreciate if the Applicant would “give some thought” to making a portion of the affordable units larger than two bedrooms.

At the hearing, the Commission was persuaded by this concern and requested that the Applicant consider making a portion of the affordable units larger than two bedrooms, and report back to the Commission after it made this consideration. The Applicant did this and reported in its March 11, 2019 post-hearing submission that it was not possible to include three-bedroom units in the Project without reducing the overall number of units in the Project. The Applicant stated that it was required to provide a certain number of units by agreement with DMPED and by legislation

authorizing disposition of the Property to the Applicant. The Applicant stated that as a result it would not provide three or more bedrooms in the Project. The Commission is satisfied that the Applicant considered this issue as suggested by ANC 6D in its report;

- (b) Architecture and Materials: The ANC stated that it was pleased with the design, particularly the balconies, but expressed that it “hopes the balcony units will be made available, in proper percentages, as part of that number that will be set aside for affordable housing.”

The Commission was persuaded by this concern, and at the hearing requested that the Applicant reconsider the location of the affordable units. The Applicant did this and submitted revised drawings with its March 11, 2019 post-hearing submission re-allocating the location of the affordable units. The Commission is satisfied with the revised locations of the affordable units, and that a proper percentage of the affordable units have balconies;

- (c) Parking and Loading: The ANC stated that “parking and loading is going to be tight at this site” and requested more information about the usage and design of the Private Drive, clarification regarding the hours of operation of the Play Area and the hours that it would be open to public use, and that it would “appreciate a broader discussion from the Commission and DDOT representatives to ensure what is planned will be adequate.”

The Commission found this advice persuasive. At the hearing, there was a robust discussion of the parking and loading for the Project, including the usage and design of the Private Drive, and the proposed AppleTree use. The Commission believes this discussion satisfied the concern expressed in the ANC’s report. With respect to the hours of operation of the Play Area, the Applicant clarified the hours of usage in its March 11, 2019 post-hearing submission to the satisfaction of the Commission;

- (d) Landscaping and Streetscaping: The ANC stated that it wanted more information about the design of the Private Drive so that the paving and design will provide a space and surface that will safely accommodate pick up and drop off of pre-school children.

The Commission found this advice persuasive. At the hearing, there was a discussion of the design of the Private Drive by the Project’s landscape architect that addressed this issue. The Commission is satisfied that it addressed the ANC’s concern;

- (e) Bicycles: The ANC stated that it was pleased there was considerable secured bike parking in the Project. The ANC stated that it wished to be involved in discussions regarding the location of the planned Capital Bikeshare station near the Project, including information about demand levels.

The Commission found this advice persuasive. In its post-hearing submission dated March 11, 2019, the Applicant shared the information it had regarding demand levels. The Commission is satisfied that it addressed that portion of the ANC's concern. The Commission notes the degree of cooperation between the Applicant and the ANC noted in the ANC's report and testimony and is satisfied that the Applicant will continue to collaborate with the ANC regarding locations for the planned BikeShare station;

- (f) Retail: The ANC expressed support of the Project's retail plans, and that a specific condition is included in this Order related to what is described in the conditions of this Order as the Preferred Restaurant Use.

The Commission does not consider the advice persuasive regarding the ANC's suggested condition language related to the Preferred Restaurant Use because the ANC's language differs from what the Applicant has proffered as a public benefit of the Project. This Order does include a condition that is similar in some respects to the preferred condition language included in the ANC report. The Commission believes the condition in this Order is sufficient to ensure that the Applicant complies with its proffer of a neighborhood serving diner type restaurant with the qualities described in FF 110(g);

- (g) Impact on the Library: The ANC expressed concern that the planned charter school would use the library as an extension of its campus and unduly burden the library staff and resources.

The Commission considered this advice persuasive and asked the Applicant to address this issue at the hearing, and its post-hearing submission. The Commission is satisfied by the response provided in the Applicant's post-hearing submission dated March 11, 2019 that AppleTree does not now and has no future plans to take students to the Public Library; and

- (h) Impact of the Charter School: The ANC expressed concern about a lack of transparency and coordination between the Applicant, AppleTree, the Amidon-Bowen PTA and the ANC, potential adverse impacts of the charter on Amidon-Bowen, and encouraged the Applicant to develop a community benefits agreement with the Amidon-Bowen PTA.

The Commission considered this advice persuasive and asked the Applicant to meet with the Amidon-Bowen PTA to attempt to address these issues and concerns. The Applicant provided a response that addressed the issues of transparency and coordination to the Commission's satisfaction with its post-hearing submission dated March 11, 2019. The Applicant developed a community benefits agreement with the Amidon-Bowen PTA. After reaching that agreement the PTA submitted a letter stating that it no longer opposed the Project.

6. The Commission is also required to give great weight to the written reports of OP. (D.C. Code § 6-623.04; 11-Z DCMR § 405.8.) The Commission has reviewed the OP Setdown Report and OP Hearing Report, and OP Final Report and heard testimony from OP and finds that OP supports the Application. (FF 52-54.) The Commission gives great weight to OP's recommendation to approve the Application and concurs with OP's conclusions and findings, particularly those with respect to the Project's consistency with the Comprehensive Plan and Small Area Plan. Because the Commission agrees with the OP's reports and OP's overall conclusions, the Commission concludes it has properly granted OP's reports the great weight that they are due.

Consistency with the PUD Process, Zoning Regulations, and Plan

7. Pursuant to ZR16, the purpose of the PUD process is "to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (i) Results in a project superior to what would result from the matter-of-right standards; (ii) Offers a commendable number or quality of meaningful public benefits; and (ii) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan." (11-X DCMR § 300.1.) This Commission concludes that the approval of the Application is an appropriate result of the PUD process. The Project is a high-quality development that is superior to what could be constructed on the Property as a matter of right via the underlying zoning. (*See* FF 86(a).) The Commission has found that the Public Benefits are meaningful and are commendable both in number and quality. (*Id.* 86(b), 111-114.) Finally, the Commission has found that the Project does not injure but instead advances the public health, safety, welfare, or convenience and is not inconsistent with the Comprehensive Plan. (*Id.* 86(c), 90-94.)
8. The PUD process is intended to "provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan." (11-X DCMR § 300.2.) The Commission has found that the Project generally conforms to the requirements of the Zoning Regulations except for the few areas of articulated Zoning Relief, which are nonetheless consistent with the intent and purposes of the Zoning Regulations. (FF 86, 127.) The Project is not inconsistent with the Comprehensive Plan. (*Id.* 90-94.) Therefore, this Commission concludes that Project does not circumvent the Zoning Regulations and is not inconsistent with the Plan.

Evaluation Standards

9. The Commission must evaluate the Map Amendment request and approve it only if it is not inconsistent with the Plan. (11-X DCMR §§ 500.1, 500.3.) The Commission made extensive findings in the Waterfront Station PUD that the Map Amendment is not inconsistent with the Plan. (FF 49-51.) This conclusion is consistent with the conclusion in the previously-approved Waterfront Station PUD. Accordingly, the Map Amendment has previously satisfied the relevant standard for approval and is not a contested issue in the Application.

10. The Commission must grant approval to any second-stage PUD application that it finds in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, provided such approval may be subject to conditions. (11-X DCMR § 309.2.) The Commission concludes that the Application is in accordance with the Zoning Purposes, the PUD process, and the Waterfront Station PUD for the reasons stated in FF 47-48, 51, 86, and 115-116. Accordingly, the Commission concludes that it must approve the Application subject to the Conditions of this Order. The Commission concludes it could approve this Application on this basis alone.
11. However, out of an abundance of caution, the Commission has reviewed and analyzed the Application to determine compliance with all of its Planned Unit Development Evaluation Standards. They require the Commission to evaluate whether the Application: “(a) is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.” (11-X DCMR § 304.4.) In deciding on the Application, this Commission must “judge, balance, and reconcile the relative value of the public benefits project and amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” (Id. § 304.3.) The Map Amendment is a development incentive against which the Commission previously weighed the benefits of the Waterfront Station PUD. (Ex. 2F.)
12. The Commission concludes the Project is not inconsistent with Comprehensive Plan and with other adopted public policies and active programs related to the subject site, for the reasons stated in FF 90-94. The Commission also notes its earlier findings regarding the Waterfront Station PUD’s consistency with the Comprehensive Plan, and sees no reason to disturb those findings now. The Commission therefore concludes that the Application complies with 11-X DCMR § 304.4(a).
13. The Commission analyzed the Project’s impacts, and concludes that the Project does not have any unacceptable impacts for the reasons stated in FF 95-105. The Commission further analyzed whether it found the specific impacts of the Project to be favorable, capable of being mitigated, or acceptable given the quality of the public benefits of the Project in FF 95-105. In several instances the Commission did not identify whether it found the impact to be favorable, capable of being mitigated, or acceptable given the quality of the public benefits of the project. This is because those impacts are highly speculative and difficult to quantify. In those instances in which the Commission did not articulate whether an impact is favorable, or identify a mitigation in those findings, the Commission concludes that the impact is acceptable given the quality of the public benefits of the Project. The Commission therefore concludes that the Application complies with 11-X DCMR § 304.4(b).

14. The Commission analyzed the specific public benefits and project amenities of the Project. The Commission concludes that the Project includes the Public Benefits listed in FF 109-110, all of which satisfy the Public Benefits Criteria and none of which are inconsistent with the Plan for the reasons discussed in FF 111-113. ZR16 defines public benefits as “superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title.” (11-X DCMR § 305.2.) Such public benefits must satisfy the Public Benefit Criteria: (i) benefits must be tangible and quantifiable items; (ii) benefits must be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (iii) benefits must primarily benefit the geographic boundaries of the ANC; and (iv) monetary contributions shall be permitted only if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. (Id. §§ 305.3, 305.4.) Based on this Commission’s findings regarding the Public Benefits as well as the Conditions of this Order, the Commission concludes that the Public Benefits benefit the surrounding neighborhood or the District as a whole to a significantly greater extent than would a matter-of-right development and readily satisfy the Public Benefit Criteria. The Commission therefore concludes that the Application complies with 11-X DCMR § 304.4(c).
15. The Commission has judged, balanced, and reconciled the relative value of the public benefits project and amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case, and concludes the Application warrants approval. The Commission therefore concludes the Application complies with 11-X DCMR § 304.3.
16. This Commission must undertake a “comprehensive public review” of the PUD application “in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits.” (11-X DCMR § 300.5.) The Commission’s review of the Application has been comprehensive. The Commission has reviewed the entire record and has identified and examined the concerns and statements about the Project raised by the ANC, District agencies, and Project supporters and opponents. The Commission has appropriately considered the substantial evidence presented by the Applicant. The Commission grants appropriate weight to the reports and testimony of the various reviewing District agencies and the ANC. There are no items in the record that the Commission has excluded from its consideration notwithstanding in some instances this Order does not contain precise citation to such items. This Commission heard the Application at the Public Hearing and followed the contested case procedures of the Zoning Regulations. The Commission has concluded that the proposed public benefits of the Project are sufficient to justify the flexibility and incentives. The Commission therefore concludes that it has complied with 11-X DCMR § 300.5.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the second-stage PUD Application subject to the guidelines, conditions, and standards set forth below:

A. Project Development

1. The Project shall be constructed in accordance with the plans prepared by Torti Gallas Urban, dated January 11, 2019 and included in the record at Ex. 22G1-22G6, as updated by the plans dated January 31, 2019 and included in the record as Ex. 34A and by the plans dated March 11, 2019 and included in the record as Ex. 47H1-47H2 (collectively, the “Final Plans”), modified by the guidelines, conditions, and standards herein.

2. The Property shall be subject to the requirements of the C-3-C Zone District except as set forth herein or modified hereby as shown on the Final Plans. The Project shall be constructed to a maximum height of 114 feet and as measured from the measuring point on M Street as shown on the Final Plans. The Project shall have flexibility from the rear yard and side yard requirements of the Zoning Regulations as set forth in the Final Plans. The Applicant shall have the design flexibility as follows:
 - (a) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - (b) To vary the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Final Plans;
 - (c) To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the Final Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
 - (d) To vary the final number of residential units by plus or minus 10%, and accordingly adjust the type and location of affordable units to reflect the final unit mix of the Project, provided that the Applicant shall provide the affordable housing set forth in Condition B.4 of this Order and shall not modify the size and bedroom counts of the affordable units as shown in Ex. 47H1 unless the flexibility results in larger affordable units or units with more bedrooms, and provided further that the affordable units shall continue to be distributed evenly throughout the building including on all floors of the building other than the penthouse level and in roughly the

proportion between the north and south sides of the building as shown in Ex. 47H1;

- (e) To make refinements to the approved parking configuration, including layout and number of parking spaces between a range of 205 to 233 parking spaces, so long as the number of parking spaces is at least the minimum number of spaces required by the Zoning Regulations;
- (f) To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
- (g) To vary the final streetscaping and landscaping materials on private property within the Project based on availability and suitability at the time of construction or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, DCRA, or other applicable regulatory bodies;
- (h) To vary the amount, location and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the Project achieves a minimum GAR of 0.2 and installs solar panels on a minimum of 3,000 square feet of roof area;
- (i) To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Plans and remain compliant with all applicable penthouse setback requirements;
- (j) To vary the final design and layout of the indoor and outdoor residential amenity spaces to reflect their final design and programming;
- (k) To vary the location, layout, and type of play equipment within the Play Area;
- (l) To vary the location of the residential lobby entrance on 4th Street, S.W. and/or relocate the lobby entrance to the Project's frontage on the Private Drive to accommodate the final retail demising plan;
- (m) To vary the size and location of the theater/cultural use entrance to accommodate the final plans for the theater use, provided that the entrance will remain on the Private Drive; and
- (n) To vary the final design of the ground floor-frontage, including the number, size, design, and location of windows and entrances, signage,

awnings, canopies, and similar storefront design features, to accommodate the needs of the specific tenants within the parameters set forth in the Storefront and Signage Plans.

B. Public Benefits

1. **Retail Use: For the life of the Project**, the Applicant will reserve 11,000 square feet of the Project's ground floor for uses in the neighborhood-serving retail, general service, financial service, or eating/drinking establishment use categories set forth in Subtitle B of the Zoning Regulations, in accordance with the requirements of Conditions 13 and 14 of Z.C. Order No. 02-38A and to the extent required pursuant to the LURA with respect to the Property:
 - (a) **For a minimum of two years after the date of issuance of the first certificate of occupancy for the Project**, the Applicant will reserve a minimum of 1,200 square feet of the Project's ground floor for a restaurant use serving three meals a day with typical hours of operation beginning not later than 7:00 a.m. ("Preferred Restaurant Use"), or other use as approved by ANC 6D. The Applicant will ensure that the Project is designed to accommodate kitchen equipment functions for the Preferred Restaurant Use (e.g. exhaust systems and grease traps). After the expiration of this period, the Preferred Restaurant Use may be used for any other use in the retail, service, financial service, or eating/drinking establishment use categories set forth in Subtitle B of the Zoning Regulations; and
 - (b) **Following the issuance of a building permit for the Project and until two years after the date of issuance of the first certificate of occupancy for the Project**, the Applicant will provide ANC 6D representatives with quarterly updates on retail marketing and leasing efforts for Preferred Restaurant Use as well as other retail space.
2. **Theater/Cultural Use: For a minimum of five years after the date of issuance of the first certificate of occupancy for the Project**, the Applicant will reserve a minimum of 9,000 square feet of the Project's ground floor for a theater or similar performing arts venue. After the expiration of this period and for the life of the Project, the space will be reserved for any use in the entertainment/assembly/performing arts, arts/design/creation, or arts-related educational use categories set forth in Subtitle B of the Zoning Regulations.

Prior to the issuance of a building permit for the Project, the Applicant will issue solicitations for a potential theater operator through a "request for proposals" or similar process. The Applicant will request that respondents address neighborhood engagement and inclusivity in their respondents and include them as evaluation criteria within such request for proposals. The Applicant will

provide ANC 6D representatives with an opportunity to review and advise on proposals that are received.

3. **Retail/Educational Use: For the life of the Project**, the Applicant will reserve 9,000 square feet of the Project’s ground floor for neighborhood-serving uses in the retail, general service, financial service, eating/drinking establishment, education, or daytime care use categories set forth in Subtitle B of the Zoning Regulations. The maximum number of students attending school daily at any educational use shall not exceed 132.

4. **Housing and Affordable Housing**

(a) **For the duration of the Ground Lease**, the Project shall provide affordable housing pursuant to the terms of the LDDA and as set forth in the following chart:

Residential Unit Type	Gross Residential Square Feet (Percent of Total)	Units	MFI	Affordability Control Period	Tenure
Total	366,842 sf + <u>23,469 sf</u> ²⁶ 390,311 sf (100%)	450		Varies	Rental
Market Rate	273,217 sf (70%)	314	N/A	N/A	Rental
YEARS 1 – 50					
Affordable Units	58,547 sf (15%)	68	30% MFI	Years 1-50	Rental
Affordable Units	58,547 sf (15%)	68	50% MFI	Years 1-50	Rental
YEARS 51-99					
Affordable Units	29,000 sf (7.5%)	34	30% MFI	Years 51-99	Rental
Affordable Units	88,000 sf (22.5%)	102	50% MFI	Years 51-99	Rental

(b) **In addition to the affordable housing required by B.4.(a) following the expiration of the Ground Lease and for the remainder of the life of the Project**, the Applicant shall set aside for households earning up to 50% MFI a portion of the building’s residential area equal to at least eight percent of the penthouse habitable space, not including penthouse habitable space devoted exclusively to communal rooftop recreation or amenity space for the primary use of the residents of the residential building. This provision assumes that the Zoning Administrator will grant the Applicant an exemption from the Inclusionary Zoning regulations (“IZ Regulations”) set forth in Subtitle C, Chapter 10 of the Zoning Regulations pursuant to 11-C DCMR § 1001.6 (“IZ Exemption”). However, the Commission takes no position as to whether the exemption should be

²⁶ This square footage is not GFA but is instead attributable to habitable penthouse space.

granted. Should the Zoning Administrator deny the IZ Exemption, the Applicant shall provide the affordable housing in accordance with Condition B.4.(a) and comply with the requirement of 11-C DCMR § 1500.11, unless the IZ Regulations impose more restrictive standards;

- (c) Each control period shall commence upon the issuance of the first certificate of occupancy; and
 - (d) **Prior to the issuance of a certificate of occupancy**, the Applicant shall record the monitoring and enforcement documents required by 11-X DCMR § 311.6, which shall require compliance with this Condition. (For the avoidance of doubt, the Affordable Housing Covenant required pursuant to the LDDA shall satisfy this requirement.) If the IZ Exemption is denied by the Zoning Administrator, the Applicant shall also record the covenant required by the Inclusionary Zoning Act.
5. **Prior to the issuance of a building permit for the Project**, the Applicant shall submit to the Zoning Administrator a copy of the executed First Source Agreement and Certified Business Enterprise agreement for the Project.
 6. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with evidence that the Project has or will achieve the requisite number of prerequisites and points necessary to secure Gold certification or higher from the U.S. Green Building Council under the LEED-2009 rating system.
 7. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with information showing that solar panel systems installed on the Project occupy no less than 3,000 square feet of roof area.
 8. **For the life of the Project**, the Applicant shall provide and maintain a children's play area of no less than 3,000 square feet which shall be open to general public use during daylight hours except during the hours of use by any educational/daytime care use in the Project and/or at other designated times , provided, however, that if there is an educational or daytime care use in the Project such play area shall be open to public use by not later than 5:00 p.m. daily, and if there is no educational/daytime care use in the Project such play area shall be open to general public use during all daylight hours and/or at other designated times (e.g., to allow cleaning, maintenance, repairs, and the like).
 9. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall submit evidence to the Zoning Administrator that it has engaged a lighting consultant to incorporate sufficient lighting to discourage loitering after dark and developed a protocol for the placement and monitoring of security cameras in consultation with MPD officers.

10. **During the construction of the Project**, the Applicant shall abide by the terms of the CMP. (Ex. 22E.)
11. **During the construction of the Project**, the Applicant shall assist the Southwest Library with wayfinding through signage or other means.
12. Contribution to Amidon-Bowen Elementary School PTA:
 - (a) **Not more than 90 days after the issuance of this Order with no appeal having been taken (or in the event of an appeal of this Order, no more than 90 days following the issuance of a mandate fully and finally affirming this Order)**, the Applicant shall deliver to Amidon-Bowen Elementary School either (i) \$75,000-worth of laptop computers and corresponding number of compatible laptop computer storage carts, or (ii) such other combination of up to \$75,000-worth of information technology equipment and/or audio-visual equipment as may be agreed upon by the Applicant, the Amidon-Bowen Elementary School PTA, and DCPS representatives; and
 - (b) In satisfaction of this condition, the Applicant shall, **prior to the issuance of a Certificate of Occupancy**, submit to DCRA invoices evidencing proof of purchase of \$75,000 of such computers, carts, and/or other equipment together with evidence that all such computers, carts, and/or other equipment have been delivered to Amidon-Bowen Elementary School PTA

C. **Transportation Mitigation**

School Pick-up/Drop-Off Measures:

1. **For as long as an educational or day care (i.e., a “School”) use exists in the Project**, the Applicant shall implement the following transportation mitigation measures with respect to the School use:
 - (a) Pick-up/drop-off operations may either occur along the Private Drive, or within the parking garage, or a combination of both, depending on the ultimate needs of the School;
 - (b) During the morning drop-off period and afternoon pick-up period, vehicles dropping off students may use the Private Drive only when staffed by a School employee(s), and at all other times, any caregiver dropping off a student must park in one of the designated parking spaces in the Project’s garage and walk the student(s) into the School unless special arrangements are made in advance with the School;
 - (c) A School staff member or designee shall monitor the queue along the Private Drive during pick-up and drop-off periods, and if such queues

extend past the point in which a vehicle can comfortably pass standing vehicles, such School staff member shall direct vehicles dropping off students to continue to the Project's garage;

- (d) To accommodate caregivers parking in the garage for pick-up/drop-off activity, a minimum of 10 spaces in the garage shall be designated for School-related users, shall be signed as such, and shall be available without charge for up to 30 minutes per user;
- (e) School officials shall inform caregivers that parking for pick-up/drop-off activity is to occur within the garage and not within on-street parking spaces surrounding the school on 4th Street, S.W., Wesley Place, S.W., or K Street, S.W.;
- (f) School officials, and the property manager as necessary, shall monitor pick-up/drop-off operations during the first year of operation and thereafter make adjustments as necessary; and
- (g) The foregoing requirements and all other applicable transportation-related conditions contained herein shall be incorporated into any School operator's lease with the Applicant, and the Applicant shall reserve its rights under the lease to enforce the operator's compliance with such conditions.

Safe Routes to School Measures

- 2. **Prior to the issuance of a certificate of occupancy for a School use in the Project**, the Applicant shall submit evidence to the Zoning Administrator that the Applicant and School officials have met with DDOT Safe Routes to School staff to prepare a safe routes plan for the School.

Private Drive Management Measures

- 3. **For the life of the Project**, the Applicant shall implement the following measures with respect to the Private Drive:
 - (a) Pick-up and drop-off activities in the Private Drive shall be limited to only that portion of the Drive that is sufficiently wide to allow through traffic to pass standing vehicles;
 - (b) The Applicant shall not permit residential or commercial pick-up/drop-off activities to occur along any of 4th Street, S.W., Wesley Place, S.W. or K Street, S.W.;
 - (c) "No Parking" signage shall be installed and maintained along the Private Drive to direct vehicles not to park along the Private Drive in accordance with the Final Plans; and

- (d) The Private Drive may from time to time be closed to vehicular traffic for special events but only during times that do not coincide with School pick-up/drop-off activity.
4. **For the life of the Project**, the Private Drive shall be open to vehicular and pedestrian through traffic but may be closed to public vehicular and/or pedestrian through traffic for events and programming.

Loading Management Measures

5. **For the life of the Project**, the Applicant shall implement the following measures with respect to the Project's loading:
- (a) The Project's property manager shall designate a loading facility manager ("Loading Manager") and shall deliver the contact information (including the cell phone number and e-mail address) for such Loading Manager to the property manager for the adjacent office building at 1100 4th Street, S.W. The Loading Manager shall communicate regularly and work cooperatively with the property and loading managers of that adjacent building to avoid conflicts in the private alley and to comply with all written agreements between the property owners;
 - (b) The Loading Manager shall schedule deliveries so as to not exceed the Project's loading facility capacity, and in the event that an unscheduled delivery vehicle arrives while the Project's loading facility is full, the Loading Manager shall direct the driver of such vehicle to return at a later time when the loading facility has adequate capacity;
 - (c) The Project's property manager shall provide all tenants of the Project with information regarding loading dock restrictions, rules, and suggested truck routes;
 - (d) The Project's property manager shall require all tenants (i.e., residential and non-residential) to use trucks 30 feet or shorter in length, and in the event that a tenant requires the use of a truck that is longer than 30 feet in length, the truck will be directed to load/unload within the east-west Private Drive and not within public space;
 - (e) The Project's property manager shall require all residential tenants to schedule move ins/move outs in advance of the occurrence of same;
 - (f) The Project's property manager shall instruct all short-term deliveries (e.g., UPS, FedEx, USPS, etc.) to be made from within the Project's loading docks in accordance with the conditions herein and not from any of the Private Drive, 4th Street, S.W., K Street, S.W., Wesley Place, S.W., or the private extension of Wesley Place, S.W.;

- (g) The Applicant shall coordinate with the property management of other buildings within the overarching Waterfront Station development to instruct deliveries be made within the provided loading docks;
- (h) The Loading Manager shall not permit tenants or delivery trucks serving the Project to (i) permit any vehicle accessing the loading area to park, stand, load, or unload in the restricted “Access Area” in the private extension of Wesley Place, S.W., (ii) store or otherwise permit any trash, refuse, rubbish, debris, structure, or equipment within the Access Area, (iii) cause or permit any use of the Access Area that would otherwise conflict with loading dock operations for the Safeway or other tenants of the adjacent office building, or (iv) use or permit to be used the Access Area in a manner that interferes with or disturbs use and enjoyment of the Access Area by the grocery store tenant or other tenants of the adjacent office building;
- (i) The Loading Manager shall not permit trucks using the loading facility to idle and shall require such trucks to follow all District guidelines for heavy vehicle operation including but not limited to 20 DCMR § 900 (Engine Idling), the requirements set forth in DDOT’s “Freight Management and Commercial Vehicle Operations” document, and the primary access routes listed in DDOT’s “Truck and Bus Route System” as applicable from time to time; and
- (j) The Loading Manager shall disseminate to drivers from delivery services that frequently utilize the loading facility (i) suggested truck routing maps, and (ii) other applicable materials such as DDOT’s “Freight Management and Commercial Vehicle Operations” document, as needed to encourage compliance with idling laws.

Parking Management Measures

- 6. **For the life of the Project**, the Applicant shall implement the following with respect to the Project’s parking:
 - (a) A minimum of 35 spaces in the Project’s garage shall be reserved for non-residential uses; and
 - (b) Such non-residential parking spaces shall be made available for educational and/or daytime care uses in the Project for short-term parking at no cost to encourage non-residential pick-up/drop-off activity to take place within the Project’s garage rather than on public streets or within the Private Drive.
- 7. **For the life of the Project**, the Applicant shall install and maintain electric vehicle charging stations within the garage that can accommodate a minimum of six vehicles at any given time.

Transportation Demand Management (“TDM”) Measures

8. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has paid for the cost of installation and one year of operating costs for a 19-dock Capital Bikeshare station in the vicinity of the Property at a location to be selected by DDOT.
9. **For the life of the Project**, the Applicant shall implement the following with respect to the Project’s transportation demand:
 - (a) The Applicant shall identify a “TDM Leader” (for planning, construction, and operations), who shall distribute and market to the residents and tenants of the building various transportation alternatives and options in existence from time to time, which materials shall include TDM materials to new residents and tenants in a welcome package;
 - (b) The Applicant shall provide the TDM Leader’s contact information to DDOT and report TDM efforts and amenities to goDCgo staff once per year;
 - (c) The TDM Leader shall receive TDM training from goDCgo to learn about the TDM conditions for this Project and nearby available options;
 - (d) The Applicant shall post all TDM commitments online, publicize the availability of the same, and allow the public to see what commitments have been promised;
 - (e) The Applicant shall provide website links to CommuterConnections.com and goDCgo.com on Project-related websites;
 - (f) The Applicant shall unbundle the fee it charges for parking from the base rent under a lease or the purchase price of a residential unit and shall set the minimum parking fee at the average market rate, where the market rate is determined by the average price in garages within 0.25 miles of the Project;
 - (g) The Applicant shall install a “Transportation Information Center Display” on an electronic screen within the residential lobby, which Display shall contain information related to local transportation alternatives;
 - (h) The Applicant shall meet or exceed the Zoning Regulations’ requirements for bicycle parking, including the requirement to provide secure interior bicycle parking and short-term exterior bicycle parking around the perimeter of the Property, and long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids’ bikes;

- (i) The Applicant shall install a bicycle repair station within each of the long-term bicycle storage rooms;
- (j) The Applicant shall install a minimum of two showers and six lockers, which shall be available for use by employees of the Project's ground floor uses;
- (k) The Applicant shall provide 10 shopping carts for resident use to run errands and for grocery shopping;
- (l) For the residential use, the Applicant shall distribute welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, Capital Bikeshare coupon or rack brochure, Guaranteed Ride Home (GRH), and the most recent DC Bike Map; and
- (m) For the theater/cultural use, the Applicant shall coordinate with the theater/cultural tenant to post "getting here" information on the tenant website for attendees/visitors that includes information about how to travel to the site via Metro, biking, and walking. A printable map should also be available and goDCgo can assist with this effort.


10. **For the life of the Project**, residents of the Project shall be ineligible to participate in the District's Residential Parking Permit or Visitor Parking Pass programs by notice given and enforced through a lease provision or similar mechanism.


On April 8, 2019, upon motion by Vice Chair Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Peter G. May, Robert E. Miller, Peter A. Shapiro, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register* on August 16, 2019.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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


 ANTHONY J. HOOD
 CHAIRMAN
 ZONING COMMISSION


 SARA A. BARDIN
 DIRECTOR
 OFFICE OF ZONING

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03/24/2020 03:35 PM
IDA WILLIAMS
RECORDER OF DEEDS
WASH DC RECORDER OF DEEDS
RECORDING FEES \$25.00
SURCHARGE \$6.50
TOTAL: \$31.50