

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA ZONING
COMMISSION ORDER NO. 03-05A
Z.C. Case No. 03-05A
NRP Properties LLC
(Modification of Significance to Approved Planned Unit Development and
Related Zoning Map Amendment @ Square 770, Lot 804)
July 25, 2024**

Pursuant to notice, the Zoning Commission for the District of Columbia (“**Commission**”) held virtual public hearings on July 1, 2024 and July 25, 2024, to consider the application (the “**Application**”) of NRP Properties, LLC (“**Applicant**”) for approval of a Modification of Significance to a Planned Unit Development (“**PUD**”) and related Zoning Map Amendment (“**Map Amendment**”) approved by the Commission in ZC Order No. 03-05 for Lot 804 in Square 770 (the “**Property**”).

The Commission reviewed the Application pursuant to Subtitle Z, Chapter 4 of the Zoning Regulations for 2016, Title 11 of the District of Columbia Municipal Regulations (the “**Zoning Regulations**” or “**ZR-16**”). For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

I. Background

Prior Approval and the Overall PUD Site

1. Pursuant to Z.C. Order 03-05 dated April 16, 2004 (the “**Original Order**”), the Commission approved a consolidated PUD and related Map Amendment from unzoned to the C-3-C¹ zone for Lot 39, Lot 803 and Lot 804 in Square 770 (collectively, the “**PUD Site**”). (Exhibit (“**Ex.**”) 3).²
2. The PUD Site has a total land area of 391,342 sq. ft., excluding land dedicated for the nearby public street network, and is generally bound by M Street SE to the north, New

¹ Z.C. Order 03-05 was approved under the 1958 Zoning Regulations. Under ZR-16, the C-3-C zone was re-designated as the MU-9 zone.

² References are based on current lot numbers.

Jersey Avenue SE to the west, Tingey Street SE to the south and 4th Street SE to the east. The PUD Site is located in "The Yards" neighborhood, a high-density, mixed-use area along the Anacostia River. Much of "The Yards" has been redeveloped over the past two decades. (Ex. 3).

3. The centerpiece of the PUD is two office buildings that are the headquarters for the U.S. Department of Transportation (the "**DOT Buildings**") located on the parcel to the north of the Property. The DOT Buildings have a height of 121 ft. and 109 ft., respectively, and a total of 1,454,008 sq. ft. of gross floor area, which equates to a floor-area-ratio ("FAR") of 3.8. There is a below-ground parking garage with 936 spaces and six loading berths. (Ex. 3).
4. The PUD also included 13,900 sq. ft. of retail space in two small structures located adjacent to the DOT Buildings as well as through the adaptive reuse of historically-contributing Building 170 on Lot 803. (Ex. 3).
5. For the Property, the PUD proposed a one-story retail structure with approximately 4,000 sq. ft. In conjunction with the retail structure, the PUD contemplated 35,000 sq. ft. of publicly-accessible open space on the PUD Site, including a publicly-accessible plaza area on the Property. (Ex. 3).
6. Overall, the PUD was approved with an FAR of 3.8, a maximum height of 130 feet, and a lot occupancy of 52%. As part of the Original Order, the Commission granted flexibility for vehicular parking, including the grouping of compact vehicles and number of spaces for retail uses, and roof structure setback. (Ex. 3).

Parties

7. The following were automatically parties to this proceeding pursuant to Subtitle Z § 403.5:
 - The Applicant; and
 - Advisory Neighborhood Commission 8F (the "**ANC**"), the ANC in which the Property is located and, therefore, an "affected ANC" pursuant to Subtitle Z § 101.8.
8. The Commission received no requests for party status.

Notice

9. Pursuant to Subtitle Z § 300.7, on August 11, 2023, the Applicant mailed a Notice of Intent to file a Zoning Application to all property owners within 200 feet of the Property and to the ANC. (Ex. 3E).
10. Pursuant to Subtitle Z § 402, the Office of Zoning ("**OZ**") provided notice of the July 1, 2024 virtual public hearing by:
 - A letter dated May 14, 2024 with the Notice of Public Hearing sent to: (Ex. 14-15)

- The Applicant;
 - ANC;
 - ANC Single Member District (“SMD”) 8F02;
 - Councilmember Trayon White;
 - Office of ANC;
 - Office of Planning (“OP”);
 - D.C. Department of Transportation (“DDOT”);
 - D.C. Department of Buildings (“DOB”);
 - Zoning Commission lead attorney;
 - D.C. Department of Energy and Environment (“DOEE”);
 - At-Large Councilmembers and the Chair of the Council; and
 - Owners of property within 200 feet of the Property.
- Publication of the Notice of Public Hearing in the May 24, 2024 edition of the *D.C. Register*. (Ex. 14A).

11. Pursuant to Subtitle Z § 402.3, the Applicant posted notice of the hearing on the Property on May 21, 2024 and maintained such notice. (Ex. 16, 24).

Current Zoning

12. Prior to the PUD, the PUD Site, including the Property, was unzoned federal land. Pursuant to the Original Order, the PUD Site, including the Property, was rezoned to the MU-9 zone district (formerly C-3-C zone).

Comprehensive Plan

13. The Comprehensive Plan's (Title 10A of the D.C. Municipal Regulations) Future Land Use Map (“FLUM”) identifies the Property for “High-Density Residential” and “High-Density Commercial,” uses. The “High-Density Residential” designation includes “neighborhoods and corridors, generally, but exclusively, suited for high-rise apartment buildings” where “density is typically greater than a FAR of 4.0, and greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development.” 10A DCMR § 227.8. The “High-Density Commercial” designated is defined to include “commercial areas with the greatest scale and intensity of use in the District...with densities greater than a FAR of 6.0...” 10A DCMR § 227.13. The “High-Density Commercial” designation is consistent with the MU-9 zone. *Id.*
14. The Comprehensive Plan's Generalized Policy Map (“GPM”) identifies the Property as a “Regional Center,” which is an area for the “largest range of commercial functions outside the Central Employment Area and are likely to have major department stores, many specialty shops, concentrations of restaurants, movies, and other leisure or entertainment facilities. They typically draw patrons from across the city, as well as patrons from nearby suburban areas. A large office component is also associated with Regional Centers. As with Multi-Neighborhood Center, infill development at Regional Centers should provide new retail, entertainment, service uses, additional housing, and employment opportunities.” 10A DCMR § 225.19. The GPM also identifies the Property as within a “Resilience Focus

Area,” which is intended for areas within the 100- and 500-year floodplain. 10A DCMR § 304.7.

15. The Comprehensive Plan designates the PUD Site as within the Lower Anacostia Waterfront/Near Southwest Area Element.

Anacostia Waterfront Framework Plan

16. The Anacostia Waterfront Framework Plan is a 2003 policy document that is intended to guide the revitalization of Anacostia Waterfront areas and bridge the gap between communities west and east of the river. The Framework Plan identifies the Near Southeast Waterfront, which includes the PUD Site and the Property, as a target area. (Ex. 3).

II. The Application

The Project

17. The Application only proposes modifications to the Property, which was previously approved for a one-story retail structure. The remainder of the PUD Site, including the DOT Buildings and Building 170, are not impacted by the Application.
18. In place of the approved retail structure, the Application proposes to construct a new, 12-story plus penthouse, mixed-use building (the “Project”) at the Property. The Project features 127 new dwelling units, all of which will be affordable, and approximately 2,653 sq. ft. of ground level retail space. (Ex. 3).
19. Overall, the Applicant proposes the Project to have:
 - Approximately 123,233 sq. ft. of gross floor area (“GFA”), plus habitable penthouse space, for a total FAR of 5.58 on the Property.
 - A maximum building height of 130 ft. plus a penthouse of 17 ft.
 - A lot occupancy of 48%.
 - 127 dwelling units to include 40 three-bedroom units. The Project will also have residential amenities to include a children’s play room, a gym, a business center, and wrap-around services. All of the residential units will be affordable, with the average affordability of all units no greater than 60% Area Median Income (“AMI”).
 - 56 long-term bicycle parking spaces and 10 short-term bicycle parking spaces.
 - No on-site parking or loading facilities.
 - A proposed public space plan to include a 48-foot loading zone and 40-foot pick-up/drop-off zone on New Jersey Avenue SE and a 60-foot loading zone on Tingey Street SE.

(Ex. 3, 3J1-3J4, 28A, 28C).

20. The Project will maintain approximately 10,175 sq. ft. of open plaza space on the Property, including the portion along New Jersey Avenue SE and to the rear of the Project adjacent to Building 170. (Ex. 3).
21. The Project's architecture is intended to reflect a harmony of moder aesthetics and historical warehouse influences common to the area. The base of the building is clad in black speckled brick, which lends a contemporary and upscale appearance to the structure. The street-level storefront extends almost 12 feet and is designed to be accessible at grade, enhancing interaction with the urban environment. Unique designed pillars between the storefront sections are angled, creating a dynamic and visually engaging pedestrian experience. The building's typical floors continue with the use of brick while introducing metal panels, emphasizing intricate brick detailing to add depth and character to the façade. The bricks are carefully layered, creating an undulating facade that provides a textured appearance from the viewer's perspective. Metal panels serve as a backdrop, offering a contrast to the warm tones of the brickwork. Punched windows, inspired by the scale and openings of historical warehouses, punctuate the brick façade. (Ex. 3).
22. The Project is designed to achieve Enterprise Green Communities Plus certification and will include a green roof and solar panels. (Ex. 3).

Applicant's Submissions, Revisions and Testimony

23. On September 27, 2023, the Applicant filed the initial Application and related materials. (Ex. 1-3J4).
24. On February 5, 2024, the Applicant filed a supplement to the Application in order to expand on the racial equity analysis provided in the Application. (Ex. 10).
25. On April 18, 2024, the Applicant filed a prehearing statement, which responds to the issues and comments raised by the Commission during the March 14, 2024 set-down meeting as well as OP's comments in its March 4, 2024 report (Ex. 11). In sum, the prehearing statement included the following:
 - Zoning Comparison Chart: To best illustrated the proposed changes to the approved PUD, the Applicant a chart comparing the zoning development standards for the PUD Site and the Property.
 - Zoning Relief/Flexibility Chart: In response to Commission comments regarding changes to the relief/flexibility approved in the Original Order, the Applicant provided a chart outlining the new flexibility requests in the Application.
 - Public Benefits Chart: The Commission sought an understanding as to how the Project might impact the public benefits proffers in the PUD. In response, the Applicant provided a chart outlining each public benefit, whether the public benefit has been

completed, and if the Project would impact any approved public benefits. As detailed, the Project impacts the public benefit concerning the provision of 35,000 sq. ft. of open plaza space.

- Conditions Chart: The Applicant provided a chart outlining all conditions in the Original Order and whether the conditions have been met.
- Architectural Comparison: The Applicant provided an architectural comparison between the one-story retail structure in the approved PUD and the proposed Project.
- Vehicular Parking Clarification: Due to a typographic error in the original statement, the Applicant clarified the number of parking spaces that are required for the Project and the flexibility from vehicular parking being requested.

(Ex. 13).

26. On May 31, 2024, the Applicant submitted a Transportation Statement prepared by Gorove/Slade, the Applicant's traffic and transportation expert. (Ex. 18-18B).

27. On June 11, 2024, the Applicant filed a supplemental statement, as permitted under Subtitle Z § 401.5, which included the following:

- Architectural Updates: The Applicant provided an updated architectural plan set that included revisions to the public space design to incorporate enhanced curbside loading and pick-up/drop-off areas. The curbside loading and pick-up/drop off area are intended to mitigate any impacts due to the Project's lack of on-site loading. The updated plan set also included minor adjustments to the layout of two unit types and façade materiality. As a follow up to the charts provided in the prehearing statement (Ex. 13), the updated plans further incorporate diagrams to illustrate the proposed changes to the approved PUD.
- Transportation Demand Management and Loading Management: The Applicant highlighted the proposed transportation demand management plan ("TDM") and loading management plan ("LMP") set forth in the transportation statement. The Applicant noted that it would engage the ANC and DDOT on the proposed TDM and LMP.
- Affordability Levels: The Applicant clarified the affordability levels for the Project. The Applicant proffered that the average affordability of all units in the Project will be no greater than 60% AMI, with some units as low as 30% AMI.
- Community Outreach: The Applicant summarized the community outreach conducted since the setdown meeting, including the meetings and correspondence with the ANC.

(Ex. 19-19A4).

28. Testimony at the public hearing on July 1, 2024, including a powerpoint presentation. (Ex.

25). Four witnesses testified during the Applicant's presentation: Chris Marshall from NRP Properties LLC; Babatunde Oloyedo from Marshall Heights Community Development Organization; Sean Pichon from Michael Graves Architects; and Daniel VanPelt from Gorove/Slade Associates. Mr. Goins and Mr. VanPelt were accepted as expert witnesses by the Commission.

29. On August 28, 2024, the Applicant filed a post-hearing submission responding to issues and comments from the Commission and the ANC raised during the July 1, 2024 hearing. The post-hearing submission included the following:

- Revised Public Space Plan and Architectural Updates: The Applicant included revised public space and architectural plans to address comments from the Commission and the ANC with regard to loading. The primary change is to move the Project's residential entrance from the Tingey Street façade to the New Jersey Avenue façade in order to funnel traffic and curbside congestion away from Tingey Street. The new entrance location is also a shorter walking distance from the curb on New Jersey Avenue. The Applicant proposed additional mitigating measures for the public space plan, including signage for the loading and pick-up/drop-off spaces, reserving the spaces for sole use of the Project, and installing cameras in public space to monitor the spaces for potential violations. The public space plan also proposed improved conflict zones for the bicycle lane on New Jersey Avenue to create safer conditions. Finally, the architectural plans included minor updates with additional details for the "Juliet" balconies and a reference to a proposed mural.
- OP Conditions: The Applicant confirmed that it agreed to two conditions requested by OP in its hearing report concerning the TDM and LMP as conditions to an approval and changes to design flexibility language.
- Enterprise Green Communities Plus Scorecard: In response to a request from the DOEE, the Applicant enclosed the proposed Enterprise Green Communities Plus scorecard; and
- Expert Resume: The Applicant enclosed the resume of Sean Pichon from Michael Graves.

(Ex. 28-28E)

30. On July 10, 2024, the Applicant filed draft proffers and conditions. (Ex. 29-29A).

31. On July 16, 2024, the Applicant filed the final version of the proffers of conditions. (Ex. 34).

32. On _____, the Applicant filed proposed findings of fact and conclusions of law pursuant to Subtitle Z § 601.1. (Ex. ____).

Relief Requested

33. The Applicant requested additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1, as follows:

- To provide zero off-street vehicular parking spaces where 13 spaces are required for the Project pursuant to Subtitle C § 701.5;
- To provide zero loading berths or service-delivery spaces where 1 loading berth and 1 service-delivery space is required for the Project pursuant to Subtitle C § 901.1;
- To allow a northern side yard of five feet in width where a side yard of 21.6 ft. is required pursuant to Subtitle G § 208.2.

34. The Applicant also requested certain design flexibility to vary elements of the final plan set approved by the Commission and still comply with the requirements of Subtitle X § 311.2 and Subtitle Z § 702.8 to construct the Project in complete accordance with the final approved plans.

III. Applicant's Justification for Relief

35. **Consistency with Comprehensive Plan and Other Public Policies (Subtitle X § 304.4(a))**. The Applicant provided evidence that the Application complies with Subtitle X § 304.4(a) because the PUD remains not inconsistent with the Comprehensive Plan and other public policies related to the Property, as follows:

- *FLUM*: The Project is not inconsistent with the FLUM's designation for the Property, which is a mix of uses to include "High-Density Residential" and "High-Density Commercial." The Comprehensive Plan's Framework Element defines "High-Density Residential" to include "neighborhoods and corridors, generally, but not exclusively, suited for high-rise apartment buildings," where density greater than a 4.0 FAR "may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development." 10A DCMR § 227.8. Similarly, the Framework Element defines "High-Density Commercial" to include "commercial areas with the greatest scale and intensity of use in the District." 10A DCMR § 227.13. Densities greater than 6.0 FAR are predominant in the "High-Density Commercial" designation. *Id.* The Project will have a density, scale and mix of uses that is consistent with the FLUM designations and in context with the surrounding built environment, which is almost exclusively high-density, mixed-use development. The Project aligns with the evolution of planning guidance, including the FLUM designation, which has changed since the original PUD was approved. (Ex. 3).
- *GPM*: The Project is not inconsistent with the GPM's designation for the Property of "Regional Center" because the Project is a vibrant, mixed-use building with new housing and retail space in the middle of a high-density and walkable neighborhood. The Project will also incorporate building standards to account for its location in the "Resilience Focus Area." (Ex. 3).

- *Racial Equity*: The Project advances racial equity goals by providing new, all-affordable units in a highly-amenitized, transportation-rich neighborhood. The Project will provide opportunities for individuals and families from a variety of income levels of backgrounds to live in a neighborhood that is otherwise predominantly market rate housing. The Project will contribute toward the affordable housing production goals in the Lower Anacostia Waterfront/Near Southwest Planning Area, which have otherwise not been met as identified in the Mayor's Order on Housing. The Project will also provide wrap-around services administered by Marshall Heights Community Development Organization, that will include job training, financial-literacy training and other offerings for residents. The Project achieves environmental equity goals by proposing to meet Enterprise Green Communities plus certification. (Ex. 3, 10)

- *Citywide Elements*: The Project is not inconsistent with a number of policies reflected in the Comprehensive Plan's Citywide Elements, including:

- Land Use Element: The Project will provide 127 new units of affordable housing with ground level retail space within blocks of a Metrorail station. The Project is an infill development of an unimproved site in the high-density Yards neighborhood. The Project encourages non-auto-oriented transit, such as public transportation, bicycling and walking. (Ex. 3).
- Transportation Element: The Project will improve the surrounding public space to encourage pedestrian and bicycle transportation. The Project discourages personal automobile use by not providing any on-site parking. The Project will exceed its long-term bicycle parking requirements and, therefore, residents will be more likely to utilize bicycle transportation. These findings are supported by the reports of both the Applicant's transportation expert, Gorove Slade, as well as DDOT. (Ex. 3, 18-18B, 21).
- Housing Element: The Project will be all-affordable and includes 40 three-bedroom units, in a high-cost, downtown neighborhood. The average affordability level of all units will be 60% AMI. The Property's location will ensure that families have access to one of the City's most "well-resourced" neighborhoods. (Ex. 3, 19).
- Environmental Element: The Applicant is committed to achieving an Enterprise Green Communities Plus certification, which is a higher level of performance in what is already a leading standard for affordable housing development. The Project will also have a green roof and a solar panel array. (Ex. 3).
- Urban Design Element: The Project will provide exceptional urban architecture by incorporating high-quality materials and architectural styling that is complementary of the surrounding aesthetic. The Project makes efficient use of a relatively small lot that is restricted by encumbrances. Nonetheless, the Project will activate the surrounding streetscape by incorporating ground level retail and a public plaza space to the rear. (Ex. 3).

- *Area Element:* The Application implements the goals of the Lower Anacostia Waterfront/Near Southwest Area Element by proposing a high-density, mixed-use development to further activate areas along the Anacostia waterfront. The Project achieves equity and inclusion goals in the planning area by providing all-affordable dwellings and family-sized units. (Ex. 3).

- *Anacostia Waterfront Framework Plan:* The Application is consistent with the overarching development goals set forth in the Anacostia Waterfront Framework Plan, which envisions mixed-use development in a lively and active neighborhood along the waterfront. The Project's all-affordable units further the plan's goal to ensure a strong and balance neighborhood through diversity in housing types and income levels (Ex. 3).

36. **No Unacceptable Impacts on the Surrounding Area or to City Services (Subtitle X § 304.4(b)).** The Application asserted that the PUD satisfies the requirements of Subtitle X § 304.4(b) because the Project will not result in any unacceptable impacts to the surrounding area or to city services and facilities, as the impacts are either favorable, capable of being mitigated or acceptable given the quality of public benefits, as follows:

- The Project will have a favorable impact on land use and zoning by improving a vacant lot with a mixed-use building that includes 127 affordable residential units. The Project is consistent with the prescribed density in the MU-9 zone, which is the approved zoning for the PUD. The Project is also reflective of the pattern of development in the surrounding Yards neighborhood, which has experienced significant changes since the PUD was approved. Much of the development in The Yards is high-density, mixed-use development as is being proposed by the Project. While the Project proposes to remove open plaza space, the Project will maintain 10,175 sq. ft. of publicly-accessible plaza space on the Property. There are also a number of parks and community spaces nearby that can further supplement the loss of open plaza space on the Property. (Ex. 3).
- The Project will not have unacceptable impacts on city services and facilities as the Property is already served by major utilities; the nearby school network can accommodate an increase to enrollment; and there are ample services such as recreation, library and fire and emergency personnel to meet the needs of the Project's residents. With respect to the transportation network, the Applicant's traffic expert from Gorove/Slade found no unacceptable impacts (Ex. 18-18B). The Project provides excellent access to alternative forms of transportation, and the Project's provision of bicycle parking in excess of requirements will encourage alternative forms of transportation to and from the site. Additionally, the Applicant has mitigated the potential impacts of providing no parking or loading by proposing an extensive TDM plan and LMP along with a public space plan that includes two loading zones and a pick-up/drop-off zone adjacent to the Project. (Ex. 3, 19, 28).
- The Project will not have unacceptable environmental impacts because it is designed to meet the Enterprise Green Communities Plus certification and will include a green roof and solar panels. (Ex. 3). The Project will also meet or exceed the green-area-ratio requirement under the Zoning Regulations. (Ex. 3).

37. The Project Provides Specific Public Benefits and Amenities (Subtitle X § 304.4(c)).

In accordance with Subtitle X § 304.4(c), the Project will provide specific public benefits and amenities that are not inconsistent with the Comprehensive Plan and other adopted public policies and active programs related to the Property. The Applicant's benefits and amenities exceed what could result from a matter-of-right development, are tangible, measurable, and able to be arranged prior to issuance of the certificate of occupancy, and benefit either the immediate neighborhood or address District-wide priorities. *See* Subtitle X §§ 305.2, 305.3. The Application proposes the following additional public benefits and project amenities beyond what was originally approved for the PUD:

- **Superior Urban Design and Architecture (Subtitle X § 305.5(a)):** The Project's architecture blends modern aesthetics and historical warehouse influences. The vibrant design will activate the unimproved Property and maintain a strong street wall that is seen throughout The Yards. (Ex. 3, 19, 28).
- **Site planning and efficient and economical land utilization (Subtitle X § 305.5(c)):** The Project will activate a currently vacant site with new housing and ground-level retail in a high-density, mixed-use neighborhood. The Project will make efficient use of a challenging site, which is relatively small and has a constricted buildable area due to easements. The Applicant's proposal to provide no parking or loading further maximizes utilization of the small site and demonstrates efficient and economical land use in a transit-rich area. (Ex. 3, 19, 28).
- **Housing (Subtitle X § 305.5(f)):** The Project will provide housing that exceeds the amount that would have been required through matter-of-right development under existing zoning and provides 40 units with three or more bedrooms. (Ex. 3).
- **Affordable Housing (Subtitle X § 305.5(g)):** The Project proposes 127 all-affordable units at deeper level of affordability than required under IZ. The average affordability level of all units will be 60% AMI. (Ex. 3).
- **Environmental and Sustainable Benefits (Subtitle X § 305.5(k)):** The Applicant proposes for the Project to achieve Enterprise Green Communities Plus certification, which is the affordable housing equivalent of LEED. The Project also incorporates sustainability features such as a green roof and solar panel array. The Project will provide a 0.3 green area ratio, which exceeds the requirement of 0.2 by one-tenth. (Ex. 3).
- **Other Public Benefits Advancing Policy Objectives (Subtitle X § 305.5(r)):** The Project will incorporate a children's playroom, a gym, and a business center for residents. These Project amenities advance policy objectives in the Comprehensive Plan by offering space for families and to enrich the lives a residents. These amenities are not common in all-affordable projects, particularly those in a high-cost neighborhood. (Ex. 3).

IV. Responses to the Application

Office of Planning

38. OP submitted a report dated March 4, 2024 (the “**OP Setdown Report**”, Ex. 11) recommending that the Commission set the Application down for a hearing based on OP's conclusion that the Project is not inconsistent with the Comprehensive Plan as viewed through a racial equity lense and the Anacostia Waterfront Framework Plan and meets the requirements of Subtitle X, Chapter 3.
39. OP submitted a report dated July 8, 2022 (the “**OP Hearing Report**”, Ex. 23) recommend that the Commission approve the Application subject to two conditions. The OP Hearing Report concluded that:
- The Project, on balance, is not inconsistent with the Comprehensive Plan as viewed through a racial equity lens and would further policy statements under the Land Use, Transportation, Housing, Environmental Protection, Economic Development, Parks, Recreation and Open and Urban Design Citywide Elements, and the Lower Anacostia Waterfront/Near Southwest Area Element. The Project is not inconsistent with the Property's FLUM and GPM designations;
 - The Applicant responded to the issues raised by the Commission at the March 14, 2024 public meeting;
 - OP is supportive of the requested design flexibility, with the condition that the Applicant revise the flexibility request with respect to changes to the number of units being provided in the Project
 - OP is supportive of the requested zoning flexibility from the standards for vehicular parking, loading and side yard. With respect to loading, OP noted that the proposed public space plan, including the two loading zones and pick-up/drop-off zone would offset demand for loading. OP also pointed to the provision of bicycle parking exceeding zoning requirements and the Project's access to public transit and pedestrian and bicycle facilities; and
 - The Project provided benefits and amenities that are commensurate with the related Map Amendment and other requested zoning flexibility through the PUD. OP noted that the Applicant would be maintaining some of the plaza space envisioned as part of the original PUD.
 - OP requested two conditions: 1) The Applicant shall comply with conditions set forth in the Transportation and Loading Management Plan as approved by DDOT and 2) Design flexibility requested for the number of units be amended to

plus/minus 5%, and amended to not allow a reduction in proffered three bedroom units.³

40. At the July 1, 2024 public hearing, OP testified in support of the Application, including the requested relief. (Transcript "Tr." 57-59).

DDOT Report

41. DDOT filed a report dated June 21, 2024 (the "**DDOT Report**," Ex. 21) stating that it has no objection to the Application and supports the requested zoning relief from the parking and loading requirements. DDOT conditioned its support on the Applicant implementing the proposed TDM and LMP for the life of the project as reflected in the Applicant's transportation statement. DDOT stated its general support for the Applicant's proposed public space plan, including the provision of two loading zones and a pick-up/drop-off zone.
42. At the public hearing on July 18, 2022, DDOT testified in support of the Application. (Tr. 54-55). DDOT also testified that the Project design and public space plan would mitigate traffic concerns for the site. (Tr. 57).
43. DDOT filed a supplemental report dated July 15, 2024 (the "**DDOT Supplemental Report**," Ex. 32) reviewing the Applicant's revised plans to address ANC concerns regarding traffic congestion, pedestrian and bicyclist safety, and enforcement of the loading and pick-up/drop-off zones. DDOT stated its support for the Applicant's proposal to move the Project's residential entrance to the New Jersey Avenue façade. DDOT further stated that the proposed signage must be approved by the Curbside Management Division, but that DDOT does not support reserving the loading and pick-up/drop-off zones for the Project or cameras in public space. DDOT is supportive of the proposed treatments for the bicycle lanes to improve pedestrian and bicyclist safety. DDOT also acknowledged that the Applicant increase bioretention or green space along New Jersey Avenue to offset the new loading and pick-up/drop-off zones. Overall, DDOT continued to support the Application.

Additional Agency Reports

44. In addition to OP and DDOT, DOEE submitted a report on the Application, which is included with the OP Hearing Report. (Ex. 23). Overall, DOEE applauded the Applicant for pursuing Enterprise Green Communities certification and made other suggestions about how the Project can be designed in an energy- and environmentally-friendly manner.

ANC Report

45. The ANC submitted a resolution dated June 18, 2024 (the "**ANC Report**," Ex. 26), which

³ The Applicant agreed to these conditions during the July 1, 2024 hearing and in the post-hearing submission. (Ex. 28).

was adopted at a duly noticed and regularly scheduled monthly meeting, with a quorum present. The ANC provided support for the Project, particularly the all-affordable housing. However, the ANC conditioned its support on the resolution of issues pertaining to loading concerns. Specifically, the ANC identified that the proposed loading plan would exacerbate traffic and transportation problems that currently exist around the Property. As such, the ANC Report requested the following:

- The Applicant request private use of the loading zone for the Project to allow for more effective enforcement against illegal use of the zone;
- DDOT remove the bicycle lane at Tingey Square;
- DDOT guarantee the pick-up/drop-off space and loading plan that is proposed for the Project; and
- DDOT approve the removal of landscaping and vegetation along New Jersey Avenue SE to accommodate the loading and pick-up/drop-off spaces.

46. During the hearing on July 1, 2024, the ANC provided testimony through Chair Edward Daniels and Commissioner Rick Murphree, who is also the Single Member District Commissioner for the Property. On behalf of the ANC, Chair Daniels testified that the ANC is supportive of the Project because it provides 100% affordable housing. However, the ANC reiterated its concerns about transportation and public safety, including an extensive discussion about existing conditions around the Property. (Tr. 65-79). Commissioner Murphree stated similar concerns during his testimony. (Tr. 90-92).

47. After the hearing, the ANC submitted an addendum dated July 15, 2024 (the “**ANC Addendum**,” Ex. 31) in response to the Applicant’s revised public space plan. The ANC Addendum states that the ANC appreciates the Applicant’s revised public space plan, including changing the main entrance from Tingey Street SE to New Jersey Avenue SE. The ANC continued to request the Applicant seek private use of the loading zone and signage for the bicycle lane. The ANC added unrelated requests concerning leasing language on the Project website and to establish a tenure for the Applicant’s affordability proffer. Finally, the ANC reiterated its request to DDOT to remove the bicycle lane on Tingey Street SE.

Letters in Support or Opposition

48. There is one letter of support in the case record and no letters of opposition. (Ex. 27). Additionally, no individuals or groups spoke in support or opposition at the Commission’s hearing.

National Capitol Planning Commission (“NCPC”)

49. NCPC submitted letter dated _____ stating that the Application was not inconsistent with the Comprehensive Plan for the National Capital and would not adversely impact any other identified federal interests. (Ex. ____).

IV. Conclusions of Law

Authority

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

Standard of Review for Approval of PUD and PUD-related Map Amendment

2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
 - (a) Results in a Building superior to what would result from the matter-of-right standards;
 - (b) Offers a commendable number or quality of meaningful public benefits; and
 - (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.
3. Pursuant to Subtitle X §303.11: "The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission."
4. Pursuant to Subtitle X § 303.12: "A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD."
5. Pursuant to Subtitle X §§ 303.1 and 303.13: "As part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards. Any such flexibility shall be considered the type of development flexibility against which the Zoning Commission shall weigh the benefits of the PUD."
6. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application, the Commission must: "Judge, balance, and reconcile the relative value of the public benefits and Building amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case;" and must find that the proposed development:
 - (a) Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;
 - (b) Does not result in unacceptable Building 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 Building; and

(c) Includes specific public benefits and Building 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.

7. A PUD's proposed public benefits must comply with Subtitle X § 305.12: "A Building may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many.
8. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP's purposes as: (1) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development; (2) to guide executive and legislative decisions on matters affecting the District and its citizens; (3) to promote economic growth and jobs for District residents; (4) to guide private and public development in order to achieve District and community goals; (5) to maintain and enhance the natural and architectural assets of the District; and (6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.
9. In determining whether a PUD is not inconsistent with the Comprehensive Plan, the Commission shall balance the various elements of the Comprehensive Plan. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related zoning map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)) (the "McMillan PUD"). In its decision affirming the Commission's approval of the McMillan PUD, the Court stated the following:

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

10. Pursuant to Subtitle Z § 704.4, the Commission's scope of hearing in review of a modification of significance to an approved PUD "shall be limited to impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision."

Consistency with the Comprehensive Plan and Public Policies (Subtitle X § 303.4(a))

11. Based on the case record and the Findings of Fact above, the Commission concludes that the Application results in no changes to the Commission's determination in the Original Order that the PUD is not inconsistent with the Comprehensive Plan and other active public policies.
12. The Commission concludes the Application is not inconsistent with the FLUM's mixed-use High-Density Residential and High-Density Commercial designations for the Property, which envision a density and scale consistent with the proposed Project. Similarly, the Project's density, scale and mix of uses are consistent with the surrounding Yards neighborhood, much of which has the same FLUM designation and is improved with high-density mixed-use development. (Findings of Fact ("FF") 13, 35).
13. The Commission concludes that the Application is not inconsistent with the GPM's "Regional Center" designation for the Property because the PUD and Map Amendment will allow for a new all-affordable, mixed-use building to be constructed in the middle of a vibrant and walkable neighborhood. (FF 14, 35).
14. The Commission concludes that the Project furthers the goals of the Comprehensive Plan's Citywide Elements, including the Land Use, Transportation, Housing, Environmental and Urban Design Elements. In particular, the Commission emphasizes the over-arching goal in the Land Use and Housing Elements to provide new affordable housing in the District. The Project will provide 127 new units of highly-affordable housing in an excellent location with access to amenities, public transportation and employment opportunities. The Project is designed to be family-friendly, with 40 three-bedroom units as well as the toddler play-room, gym, and business center. The Project proposes long-term and short-term bicycle parking that exceeds the minimum zoning requirements. The Project is also designed with exceptional and memorable architecture, high-quality materials, and to meet Enterprise Green Communities plus standards. (FF 35).
15. The Commission concludes that the Project is not inconsistent with the Racial Equity goals of the Comprehensive Plan. Overall, the Project will provide affordable housing opportunities in a neighborhood that is primarily market rate housing with increasing affordability challenges due to the relatively new housing stock and substantial amenities. The new housing will be provided without displacing any existing residents, as the Property is currently unimproved. To that end, the Commission agrees with the Applicant and OP's analysis finding that the Project's 127 units of new affordable housing will substantially increase the existing affordable housing stock in the planning area. The Commission agrees that the location of the Project provides residents with substantial ability to improve their lives through access to opportunities and amenities. The proposed wrap-around

services to be provided by Marshall Heights Community Development Organization will provide additional resources for residents. The Commission also acknowledges the Applicant's community engagement in satisfaction of racial equity goals. (FF 35).

16. The Commission finds the Project is not inconsistent with the Anacostia Waterfront Framework Plan, which incorporates policy goals encouraging high-density, mixed-use and walkable neighborhoods adjacent to the Anacostia River. The plan also calls for a diversity in housing type and income levels, which the Project provides. (FF 35).

Potential Adverse Impacts – How Mitigated or Outweighed (Subtitle C § 304.4(b))

17. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts that are not capable of being mitigated or outweighed by the Project's proffered public benefits and amenities as detailed below. Accordingly, the Application does not alter the Commission's previous finding that the PUD's impacts are acceptable given the quality of public benefits as set forth in the Original Order.
18. The Commission concludes the Project will not create any unacceptable impacts to land use and zoning because the Project will improve a vacant lot with a mixed-use building that has a similar density and scale to nearby development. The proposed density is particularly important given the Project's provision of all-affordable residential units. Further, the Project will maintain a substantial portion of the open plaza space that was originally envisioned for the Property in the PUD. (FF 20, 36).
19. The Commission concludes the Project will not create any unacceptable impacts to city services and facilities or that any impacts are capable of being mitigated or acceptable given the Project's public benefits. The Project could result in impacts to the transportation network as a result of the Project providing no parking or loading; however, those impacts are capable of being mitigated or are otherwise acceptable given the level of public benefits in the Project. First, the Project provides excellent access to alternative forms of public transportation, including Metrorail and Metrobus, that will reduce the need for personal vehicles. Second, the surrounding area provides a pedestrian and bicycle network that will make it easier for residents and visitors to access the Property by foot or bicycle. Third, the Applicant is proposing an extensive public space plan that will incorporate a loading zone and pick-up/drop-off zone on New Jersey Avenue SE and a loading zone on Tingey Street SE that can be used to serve the residential and retail portions of the Project. The Applicant has worked with the ANC to address its concerns over loading and public space, including by changing the Project's residential entrance to move it away from Tingey Street where much of the existing congestion exists. In conjunction with the public space, the Applicant has proffered the inclusion of a TDM and LMP to further mitigate any loading and traffic issues. DDOT has states its support for the Applicant's proposed loading zones and pick-up/drop-off zones as well as the TDM and LMP. Accordingly, the Commission finds that the potential impacts to the transportation network as a result of the Project's provision of no parking or loading are capable of being mitigated. (FF 19, 27, 29).

20. The Commission concludes the Project will not create any unacceptable impacts on the environment. The Project is designed to meet Enterprise Green Communities Plus certification and includes sustainability features such as a large green roof and solar array. The Project will also exceed its green-area-ratio requirement under zoning. (FF 28).

PUD Flexibility Balanced Against Public Benefits (Subtitle X § 304.4(c))

21. Based on the case record and the Findings of Fact above, the Commission concludes the Application satisfies the balancing test under Subtitle X §§ 304.3 and 304.4(c) because the requested zoning flexibility is outweighed by the Application's public benefits and amenities.
22. The Commission concludes that the Application's request for development flexibility from the standards for parking and loading are appropriate because the Project has excellent access to alternative forms of transportation, including train, bus, bicycle and pedestrian networks. The Commission also finds that the Applicant has sought to mitigate this request for flexibility by providing an extensive public space plan, TMD and LMP. The Commission notes that the provision parking and loading would result in the loss of important square footage that could be dedicated to more affordable housing units or amenities for residents. (FF 19, 27, 29).
23. The Commission concludes the Applicant's request for development flexibility from the standards for side yards is appropriate because the Project maintains a five-foot side yard, and is otherwise buffered from the DOT Buildings by those buildings' side yard. Further, the Commission notes a side yard is not generally required in the MU-9 zone.
24. Whereas, the Commission concludes the Application provides superior public benefits that benefit the surrounding neighborhood or general public to a significantly greater degree than what would result from a matter-of-right development at the Property. (FF 37).
25. The Commission concludes that the Project will provide superior urban design and architecture (Subtitle X § 305.5(a)) due to high-quality materials and design that blends modern aesthetics with historical warehouse influences common the area. (FF 37).
26. The Commission concludes that the Project will provide superior site planning and efficient and economical land utilization (Subtitle X § 305.5(c) because the Project will improve a small, vacant site in the middle of The Yards neighborhood with 127 new units of affordable housing and ground level retail space. The Project will make efficient use of the Property, which is encumbered by easements that limit the buildable area on site. (FF 37).
27. The Commission concludes that the Project will provide superior housing benefits (Subtitle X § 305.5(f)) because the 127 units of housing is significantly greater than that permitted under matter-of-right PDR-1 zoning. The Project also provides 40 three-bedroom units. (FF 37).

28. The Commission concludes that the Project's must substantial benefit is the amount of affordable housing (Subtitle X § 305.5(g)). The Project proposes 127 all-affordable units that will be provided at an average affordability of 60% AMI. The Project exceeds the amount of affordable housing that would be normally required under the IZ program. (FF 37).
29. The Commission concludes that the Project will provide superior environmental and sustainable benefits (Subtitle X § 305.5(k)) by achieving Enterprise Green Communities Plus certification, and incorporating sustainability features such as a green roof and solar panel array. The Project will also exceed its green-area-ratio requirement. (FF 37).
30. The Commission concludes that the Project provides other superior public benefits that advance policy objectives (Subtitle X § 305.5(r)), including the proposed children's play room, gym and business center. These Project amenities will provide space for individuals and families and are particularly commendable given the Project's affordability and high-cost location. (FF 37).

"Great Weight" to the Recommendations of OP

31. The Commission must give "great weight" to the recommendation of OP, pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016)).
32. The Commission finds persuasive OP's evaluation of the Application as having satisfied the applicable PUD modification standards, including that the Application is not inconsistent with the Comprehensive Plan as a whole and other applicable public policies; the requested zoning flexibility is appropriate; and that the Application's public benefits and amenities are commensurate with the zoning flexibility requested. (FF 38-40).

"Great Weight" to the Written Report of the ANC

33. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy this great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016). The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." *Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).
34. The ANC Report references support for the Application, particularly given the Project's provision of all-affordable residential units. However, the ANC Report conditioned the

ANC's support on resolution of issues pertaining to loading and transportation. In particular, the ANC Report and the ANC's testimony at the July 1, 2024 hearing noted that the Project's lack of on-site loading would exacerbate traffic and transportation problems in the neighborhood. (FF 45-46). In particular, the ANC identified issues with congestion, pedestrian and bicyclist safety, and enforcement of the loading and pick-up/drop-off zones. As such, the ANC Report requests the Applicant seek private use of public space for the loading zone and requests that DDOT: 1) remove the bicycle lane on Tingey Street; 2) guarantee the proposed public space plan will be approved; and 3) approve the removal of vegetation and landscaping on New Jersey Avenue SE.

35. After the July 1, 2024 hearing, the Applicant revised its public space plan to address the ANC's concerns. As reflected in the Applicant's post-hearing submission, the Applicant moved the residential entrance to New Jersey Avenue SE to alleviate congestion around Tingey Square and agreed to seek DDOT's approval for private use of the proposed loading zone and cameras in public space to allow for better enforcement of the loading and pick-up/drop-off zones. The Applicant also proposed signage for loading and pick-up/drop-off zone enforcement as well as improved features for bicyclist and pedestrian safety. (FF 29).
36. In response to the Applicant's changes, the ANC Addendum reiterates its overall support for the Project, commends the change in location for the residential entrance, and reiterates its request for the Applicant to seek private use of the loading zone. (FF 43).
37. As reflected in the DDOT Report and DDOT Supplemental Report, DDOT has no objection to the Applicant's request for flexibility from the zoning requirements for parking and loading and supports the Applicant's public space plan, including the proposed loading zones and pick-up/drop-off zones. With respect to the removal of vegetation and landscaping for the proposed loading and pick-up/drop-off zone, DDOT stated its expectation that the Applicant would offset the removal of existing vegetation with increased bioretention or by expanding existing tree boxes or green space. (FF 41, 43)
38. During the hearing, DDOT testified that the Applicant's public space plan would mitigate traffic concerns in the area. DDOT also testified that it does not support removal of the bicycle lane on Tingey Street SE. DDOT further testified that the ANC will have an opportunity to participate in the public space permitting process to ensure the public space plans, as presented to the Commission, are consistent with what is approved by DDOT. (FF 42, Tr. 61-63).
39. The Commission concludes the ANC's issues and concerns with respect to loading and transportation have been adequately addressed. Overall, the ANC is supportive of the Project, as reflected in the ANC Report and ANC Addendum. Nonetheless, the Commission relies on the statements and testimony of DDOT and the Applicant's traffic expert, both of which concluded that the proposed public space plan, the TDM, and the LMP are sufficient to mitigate any transportation impacts arising from the Project's lack of on-site loading. Following the July 1, 2024 hearing, the Applicant worked with the ANC and made changes to further address the ANC's loading and safety concerns, including moving the Project's residential entrance to New Jersey Avenue SE, proposed

signage and bicycle/pedestrian safety elements. The Applicant has also committed to requesting that the loading zone and pick-up/drop-off zone be reserved for the Project and to install cameras in public space; although, the final decision on these public space items will be made by DDOT.

DECISION

Based on the case record, the testimony at the public hearing, and the above Findings of Fact and Conclusions of Law, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for:

- A Modification of Significance to the consolidated PUD and related Map Amendment originally approved in ZC Order 03-05;
- Flexibility from the requirements for vehicular parking (Subtitle C § 701.5);
- Flexibility from the requirements for loading (Subtitle C § 901.1); and
- Flexibility from the requirements for side yards (Subtitle G § 208.2).

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

A. Project Development

1. The Project shall be developed substantially in accordance with the architectural plans and drawings submitted on June 11, 2024 at Exhibits 19A1-19A2, as modified in the Applicant's Post-Hearing Submission dated July 8, 2024, and marked as Exhibit 28A in the case record (collectively, the "Architectural Plans"), subject to the following areas of flexibility:
 1. Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the Modified Plans.
 2. Exterior Materials – Color: To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the Modified Plans.
 3. Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the Modified Plans. Examples of exterior details include, but are not limited to, doorways, canopies, railings, and skylights.

4. Streetscape Design: To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division or the Public Space Committee or other permitting process.
5. Signage: To vary the number, font, message, logo, and color of the Project signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the Modified Plans and are compliant with the D.C. signage regulations.
6. Residential Units: To modify the number of residential units by plus or minus 5%, provided that (1) the total square footage of the Project's residential dwelling units shall not be reduced, and (2) the percentage of gross floor area square footage reserved for the affordable housing shall not be reduced; and (3) the number of three-bedroom units shall not be reduced below forty (40) as reflected in the Modified Plans.
7. Sustainable Features: To vary the approved sustainable features of the Project and the features, means, and methods of achieving the required GAR and Enterprise Green Communities certifications.

B. Certificate of Occupancy Requirements

1. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall furnish a copy of its preliminary Enterprise Green Communities Plus certification application to the Zoning Administrator demonstrating that the building has been designed to meet the Enterprise Green Communities Plus standard for residential buildings.

C. Requirements for the Life of the Building

1. **For the life of the Project**, The Applicant shall provide affordable housing as set forth in this condition:
 - a. For so long as the Project is subject to public financing-related affordability restrictions ("Initial Affordability Period"), but in no event for a period of less than forty (40) years, all of the Project's dwelling units shall be reserved at an average affordability level no greater than 60% of Area Media Income ("AMI"), with some units as low as 30% AMI. The affordability level assumes that the Applicant will be granted an exemption from the Inclusionary Zoning Regulations ("IZ") set forth in Subtitle C, Chapter 10 of the Zoning Regulations, pursuant to 11 DCMR Subtitle C § 1001.6. However, the Commission takes no position as to whether an exemption from the IZ Regulations should be granted;

- b. Should the exemption from the IZ Regulations be granted, the affordable housing requirements of this condition shall be stated in the covenant required under 11 DCMR Subtitle C § 1001.6(a)(4); and
 - c. Should the exemption from the IZ Regulations be denied, the equivalent of 8% of the residential gross floor area of the Project shall become IZ units in accordance with the IZ Regulations and the remaining units shall be affordable housing in accordance with this condition, unless the IZ Regulations impose more restrictive standards. The Applicant shall record the covenant required by the Inclusionary Zoning Act as to 8% of the residential gross floor of the Project, and shall execute the monitoring and enforcement documents required by 11 DCMR Subtitle X § 311.6 as to the remaining residential gross floor area.
 - d. Following the conclusion of the Initial Affordability Period, and for so long thereafter as the Project exists, the Project shall reserve no less than eight percent (8%) of the Project's gross floor area at 60% AMI.
2. **For the Life of the Project**, at least forty (40) of the dwelling units will be three-bedroom units.
 3. **For the Life of the Project**, the Applicant shall implement the following Transportation Demand Management ("TDM") measures:
 - a. Identify a Transportation Coordinator for the planning, construction, and operations phases of development. The Transportation Coordinator will act as the point of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo.
 - b. Develop, distribute, and market various transportation alternatives and options to residents, including promoting transportation events (e.g., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications;
 - c. Direct the Transportation Coordinator to subscribe to goDCgo's residential newsletter and receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan;
 - d. Provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing info@godcgo.com.

- e. Post all transportation and TDM commitments on the building website, publicize availability, and allow the public to see what has been promised;
 - f. Offer a SmarTrip card and one (1) complimentary Capital Bikeshare coupon good for a free ride to every new resident;
 - g. Provide at least ten (10) short- and fifty-six (56) long-term bicycle parking spaces, exceeding ZR16 minimum requirements for at least six (6) short- and forty-two (42) long-term bicycle parking spaces;
 - h. Accommodate non-traditional sized bicycles including cargo, tandem, and kids bicycles in the long-term bicycle storage room, with two (2) spaces that will be designed for longer cargo/tandem bicycles, six (6) spaces that will be designed with electrical outlets for the charging of electric bicycles and scooters, and dual electrical outlets installed at 6-foot intervals throughout the storage room to accommodate additional electrical bicycles and scooters in the future. There will be no fee to building employees or residents for the usage of the bicycle storage room, and strollers will also be permitted to be stored in the bicycle storage room.
4. **For the Life of the Project**, the Applicant shall provide the following loading management measures:
- a. A loading manager will be designated by the building management who will be on duty during delivery hours. The loading manager will be responsible for coordinating with vendors and tenants to schedule deliveries and will work with the community and neighbors to resolve any conflicts should they arise;
 - b. Lease provisions will require all residential tenants to use only the designated loading zone for all move-in and move-out activities through coordination with the loading zone;
 - c. All tenants and retail vendors will be required to schedule deliveries that utilize the loading zone (any loading operation conducted using a truck 20-feet in length or larger);
 - d. The loading manager will schedule deliveries using the loading zone such that the zone's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the loading zone is full, that driver will be directed to return at a later time when the loading zone will be available so as to not compromise safety or impede Tingey Street and New Jersey Avenue functionality;
 - e. The loading manager will schedule residential loading activities so as not to conflict with retail deliveries. All residential loading will need to be scheduled with the manager;

- f. Trucks using the loading zone will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight);
- g. The loading manager will be responsible for providing suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading zone as well as notifying all drivers of any access or egress restrictions. The residential and retail loading managers will also distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws. The residential and retail loading managers will coordinate to post these materials and other relevant notices in a prominent location adjacent to the loading zone;
- h. The loading manager will coordinate with building staff to roll trash receptacles from the building to the curb for collection. Trash bins will be rolled to the curb at the time of collection and will be expeditiously returned to the building trash room;
- i. "No Parking: Loading Zone" signs will be used to demarcate the loading zone, and "No Parking" signs will be used to demarcate the pick-up/drop-off zone. The exact restrictions and placards will be determined by DDOT's Curbside Management Division (CMD) during public space permitting;
- j. The loading manager will schedule deliveries so that no deliveries should arrive within three (3) hours prior to or three (3) hours after a game or other event at Nationals Park, consistent with the Audi Field + Nationals Park Traffic Operations & Parking Plan;
- k. The loading zone along Tingey Street SE will be approximately 60 feet in length and solely dedicated to residential and retail loading for the building. The pick-up/drop-off zone along New Jersey Avenue will be approximately 40 feet in length and the loading zone along New Jersey Avenue will be approximately 48 feet in length. The exact dimensions will be determined by CMD during public space permitting;
- l. The loading manager will use traffic cones to block off the loading zone and actively manage deliveries and move-ins/outs;
- m. The loading manager will call 311 to obtain DPW enforcement of the parking restriction in the loading zone and pickup/drop-off zone as needed; and
- n. The Applicant will provide a curbside management and signage plan, as well as a copy of this LMP, in the public space construction permit application.

D. ANC Mitigation

1. **For the Life of the Project**, there shall be a link on the Project website that points potential residents to all income-based programs that will be accepted by the property's leasing office (i.e. Inclusionary Zoning, DCHA vouchers, etc.).

E. Miscellaneous

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of Zoning Legal Division and the Zoning Division, Department of Buildings. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The Project shall be valid for a period of two years from the effective date of this Order within which time an application shall be filed for a building permit. Construction of the Project must begin within three years of the effective date of this Order.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. (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 also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

Proposed Action

Vote (July 1, 2024): 4-0-1 (Anthony J. Hood, Robert E. Miller, Tammy Stidham and Dr. Joseph S. Imamura to APPROVE; one seat vacant)

Final Action

Vote (July 25, 2024): _____ (_____ ; one seat vacant)

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on _____.

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

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