

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 a virtual public hearing on July 1, 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 Z.C. Order No. 03-05 for Lot 804 in Square 770 (the “Property”).

The Commission reviewed the Application pursuant to Subtitle Z, Chapters 4 and 7 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 square feet, excluding land dedicated for the nearby public street network, and is generally bound by M Street, S.E. to the north, New Jersey Avenue, S.E. to the west, Tingey Street, S.E. to the south and 4th Street, S.E. 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).

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. As discussed below, the modifications will occur on Lot 804.

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 feet and 109 feet, respectively, and a total of 1,454,008 square feet 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 square feet 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 square feet. In conjunction with the retail structure, the PUD contemplated 35,000 square feet of publicly accessible open space on the PUD Site, including space on adjacent Lot 803 and 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 (“ANC”) 8F, 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):
 - Applicant;
 - ANC 8F;
 - ANC Single Member District (“SMD”) 8F02;
 - Councilmember Trayon White;
 - Office of ANCs;
 - 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.
11. OZ published of the Notice of Public Hearing in the May 24, 2024, edition of the *District of Columbia Register* (71 DCR 6387 *et seq.*) (Ex. 14A).
 12. Pursuant to Subtitle Z § 402.3, the Applicant posted notice of the hearing on the Property on May 21, 2024, and maintained such notice in accordance with Subtitle Z § 402.10 (Ex. 16, 24).

Current Zoning

13. 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 (formerly C-3-C zone).

Comprehensive Plan

14. 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.*).
15. 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).
16. The Comprehensive Plan designates the PUD Site as within the Lower Anacostia Waterfront/Near Southwest Area Element.

Anacostia Waterfront Framework Plan

17. 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

18. 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.
19. In place of the approved approximately 4,000 square foot 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 square feet of ground level retail space (Ex. 3).
20. Overall, the Applicant proposes the Project to have:
- Approximately 123,233 square feet 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 feet plus a penthouse of 17 feet;
 - 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 playroom, 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; and
 - A proposed public space plan to include a 48-foot loading zone and 40-foot pick-up/drop-off zone on New Jersey Avenue, S.E. and a 60-foot loading zone on Tingey Street, S.E.
- (Ex. 3, 3J1-3J4, 28A, 28C).
21. The Project will maintain approximately 10,175 square feet of open plaza space on the Property, including the portion along New Jersey Avenue, S.E. and to the rear of the Project adjacent to Building 170.³ (Ex. 3)
22. The Project’s architecture is intended to reflect a harmony of modern 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

³ The open space in the Project is reduced from 35,000 sq. ft. to approximately 22,175 sq. ft. (Ex. 13).

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).

23. 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

24. On September 27, 2023, the Applicant filed the initial Application and related materials (Ex. 1-3J4).
25. 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).
26. 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 illustrate the proposed changes to the approved PUD, the Applicant provided 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 square feet 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; and
 - 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.⁴(Ex. 13)

⁴ The Applicant's statement in support (Ex. 3) incorrectly stated that the Project requires 29 vehicular parking spaces; however, the Project requires 21 vehicular parking spaces, from which the Applicant seeks flexibility.

27. On May 31, 2024, the Applicant submitted a Transportation Statement prepared by Gorove/Slade, the Applicant's traffic and transportation expert (Ex. 18-18B). The findings of the study included:
- The 101 Tingey Street, S.E. site is surrounded by a very well-connected existing network of transit, bicycle, and pedestrian facilities that result in an environment for safe, enjoyable, and effective non-vehicular transportation;
 - The requested flexibility from the requirement to provide on-site parking spaces is not expected to have a detrimental impact due to the site's proximity to transit, carsharing facilities, nearby publicly available parking garages with over 1,600 publicly available spaces, and bicycle facilities;
 - The requested flexibility for one loading berth and one service/delivery space is not expected to have a detrimental impact due to the proposed on-street loading zones on New Jersey Avenue, S.E. and Tingey Street, S.E.;
 - The proposed project will provide short- and long-term bicycle parking in excess of zoning requirements;
 - The proposed project will calm traffic along New Jersey Avenue, S.E. by installing curb extensions along the east side of New Jersey Avenue, S.E. to decrease the roadways' widths and reduce crossing distances;
 - The proposed project will install a sidewalk-level bicycle lane on New Jersey Avenue, S.E. maintaining existing bicycle connectivity and providing separation from the vehicular travel lane;
 - The proposed project will include TDM measures that adequately promote non-vehicular modes of travel;
 - The proposed project will establish an LMP that will ensure efficient operation of the on-street loading and pick-up/drop-off zones; and
 - The proposed project will not have an adverse impact on the surrounding transportation network.
28. 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; and
- Community Outreach: The Applicant summarized the community outreach conducted since the setdown meeting, including the meetings and correspondence with the ANC:
 - The Applicant presented Project updates to the ANC at its public meeting on April 23, 2024. The ANC identified the importance of transportation and loading management at the Property since the Project will not incorporate on-site parking or loading. Accordingly, in mid-May, the Applicant provided the TDM and LMP to the ANC.

(Ex. 19-19A4)

29. 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 (July 1, 2024, Public Hearing Transcript “Tr.”):
- With respect to community outreach, the Applicant stated that it continued its dialogue with the ANC as follows:
 - May/June 2024 – Correspondence with ANC regarding transportation issues; and
 - June 18, 2024 – Applicant presents to ANC 8F at public meeting with focus on transportation discussion.
30. On July 8, 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 to amend the residential units total to plus/minus 5% and to not allow a reduction in the proffered three-bedroom units;

- 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)

31. On July 10, 2024, the Applicant filed draft proffers and conditions (Ex. 29-30).
32. On July 16, 2024, the Applicant filed the final version of the proffers of conditions (Ex. 34).
33. On July 23, 2024, the Applicant filed proposed findings of fact and conclusions of law pursuant to Subtitle Z § 601.1 (Ex. 35-35A).

Relief Requested

34. The Applicant requested additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1, as follows:
 - To provide zero vehicular parking spaces where 21 spaces⁵ 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; and
 - To allow a northern side yard of five feet in width where a side yard of 21.6 feet is required pursuant to Subtitle G § 208.2.
35. 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

36. 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

⁵ The Commission took final action to approve a text amendment under Z.C. Case No. 23-17 on June 27, 2024, which will reduce the vehicular parking requirement for affordable housing developments by exempting the first 50 units and requiring 1 space per 3 units beyond those 50 units. The text amendment is not yet final and effective; however, when applied to this Project, the vehicular parking space requirement would reduce from 21 to 13 spaces, which is inclusive of the 50% transit reduction.

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 and 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:
 - The Applicant stated that the Project will not cause any direct displacement of tenants or residents as the Property does not currently contain any residential use, that indirect displacement is not expected to occur in the area surrounding the Project, and that the additional affordable housing in the Project is likely to relieve pressure on existing housing stock and provide additional affordable housing options; and
 - The Applicant made the following observations and conclusions about the neighborhood in its responses to the Community Outreach and Engagement component of the Commission’s Racial Equity Tool:
 - The Applicant focused its community outreach efforts on ANC 8F, which was active and well-organized.
 - ANC 8F Commissioners identified that the community is in need of more affordable housing; and
 - All of the residential developments in The Yards are majority market-rate apartments and condominiums. Therefore, the existing housing stock in the neighborhood is attainable only for more affluent residents, albeit with some limited affordable options through standard IZ set aside requirements. Given existing income disparities based on race, the neighborhood skews toward white residents. The Applicant believes the provision of 127 new all-affordable

units in the heart of The Yards will begin to address some of these challenges; (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, 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); and
 - 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; and
- *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 balanced neighborhood through diversity in housing types and income levels (Ex. 3).

37. 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 square feet 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); and
- 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).

38. 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 (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 as it will be all-affordable and provides 40 units with three bedrooms (Ex. 3);
- Affordable Housing (Subtitle X § 305.5(g)): The Project proposes 127 all-affordable including units at deeper levels 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); and
- 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

39. OP submitted a report dated March 4, 2024 (the “OP Set down Report”) 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, including its maps, the Citywide and Lower Anacostia Waterfront and Near Southwest Area Element, and when viewed through a racial equity lens; and is not inconsistent with the Anacostia Waterfront Framework Plan. Further, the Project meets the requirements of Subtitle X, Chapter 3. (Ex.11)
40. OP submitted a report dated July 8, 2022 (the “OP Hearing Report”) recommending that the Commission approve the Application subject to two conditions. The OP Hearing Report concluded that (Ex.23):
 - 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:
 - With respect to disaggregated race and ethnicity data, OP provided data for the Lower Anacostia Waterfront/Near Southwest (LAW/NSW) planning area, in which

the subject site is located for two time periods, 2012-2016 and 2018-2022⁶. The data shows that in comparing the two time periods, the number of residents of each race or group increased, except Blacks; the percentage of people who identify as White, Hispanic, and People of two or more races increased significantly, while the percentage who identify as Black decreased significantly. For the 2018-2022 time period, the planning area has a higher percentage of residents who are White (58.6%) as compared to Districtwide (39.6%) , and a lower percentage of residents who identify as Black (29.2%) or Hispanic (7.4%). Over the two time periods, the median income for all races and groups increased in the planning area and is higher than the Districtwide median household income; however, for the 2018-2022 time period, although the median income for Blacks (\$58,755) rose in the planning area, it remained lower than the median income for Blacks Districtwide (\$75,942). Given the income data by race, it can be inferred that the families who would potentially benefit the most from the affordable housing proposed in this PUD site would be Black or other minority groups, which could help to reverse the present trends of declining Black population in the planning area;

- 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 to amend to plus/minus 5% and to not allow a reduction in proffered three-bedroom units;
- 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 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.

41. 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 five percent and amended to not allow a reduction in proffered three-bedroom units.⁷

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

⁶ The OP Setdown Report provided disaggregated race and ethnicity data taken from the 2012-2016 and the 2017-2021 American Community Survey (“ACS”) 5-Year Estimates, which are available via the OP State Data Center. After the OP Setdown Report was filed, the OP State Data Center was updated to include more current ACS data from 2018-2022. The updated data, which includes the 2018-2022 ACS 5-Year Estimates, is provided in the OP Hearing Report and is summarized in Finding of Fact No. 39.

⁷ The Applicant agreed to these conditions during the July 1, 2024 hearing and in the post-hearing submission (Ex. 28).

DDOT Report

43. 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 at Exhibit 18A. 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.
44. 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)
45. DDOT filed a supplemental report dated July 15, 2024 (“DDOT Supplemental Report”) after 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 (Ex. 32). DDOT stated its support for the Applicant’s proposal to move the Project’s residential entrance from Tingey Street to the New Jersey Avenue façade. DDOT further stated that the proposed signage must be approved by the Curbside Management Division (CMD) during the public space permitting process, and it will work with the Applicant and ANC during the process to ensure that the final approved signage addresses enforcement concerns. DDOT also stated that it does not support reserving the loading and pick-up/drop-off zones for sole use by the Project and noted that there is not yet a process to incorporate video cameras in public space to monitor loading and PUDO zones, but it will note this Project as a potential study location for future pilot programs. DDOT is supportive of the proposed treatments for the bicycle lanes to improve pedestrian and bicyclist safety. DDOT also expressed concern regarding the increase in hardscaping and impermeable surfaces and requested that the Applicant incorporate bioretention facilities or green space to offset the new loading and pick-up/drop-off zones. Overall, DDOT continued to support the Application, with two revisions to the Loading Management Measures of the Applicant’s Proffers and Conditions. Specifically, changes to Condition C.2.k. and to add a new Condition C.2.o.

Additional Agency Reports

46. In addition to OP and DDOT, DOEE submitted a report on the Application, which is included with the OP Hearing Report; and the Office of the Attorney General (“OAG”) submitted a letter in support and a PowerPoint presentation⁸ (Ex. 23, 22A-22B). 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.

⁸ OAG also provided testimony in support and presented its PowerPoint at the July 1, 2024, hearing. (Tr. at pp. 43-50)

ANC Report

47. The ANC submitted a resolution dated June 18, 2024 (“ANC Report”), which was adopted at a duly noticed and regularly scheduled monthly meeting, with a quorum present (Ex. 26). The ANC Report expressed that the ANC supported the Project, particularly the all-affordable housing. However, the ANC conditioned its support on the resolution of issues pertaining to transportation, pedestrian safety, and loading concerns, and raised a number of related issues and concerns. Specifically, the ANC identified that:
- The “[P]roject’s lack of any on-site parking coupled with existing conditions that do not offer a pick-up and drop-off zone, nor a loading zone nor a curb cut, will ...exacerbate an already problematic intersection”;
 - The Project “lies adjacent to a bike lane that would need to be removed should this development proceed. Users of this bike lane, positioned near the main entry point of the proposed development, would be in direct conflict with vehicular traffic should the bike lane remain alongside the site;
 - The Project’s “loading plan and pick-up and drop-off plan that would exacerbate several problems that exist on the site, those being”:
 - “DPW’s inability to keep up with illegally parked vehicles which occupy stadium zone spaces ... due to staffing limits”;
 - The “[A]pplicant proposes a public loading zone which has .. shown to fail due to lack of enforcement and congestion of travel lanes due to simultaneous ... use of said zones”.

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, S.E. to accommodate the loading and pick-up/drop-off spaces.
48. Attached to the ANC Report were several photos showing the parking and streetscape conditions near the site (Ex. 26A).
49. 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).
50. After the hearing, the ANC submitted an addendum dated July 15, 2024 (“ANC Addendum,”) in response to the Applicant’s revised public space plan (Ex. 31, 36).⁹ The

⁹ Ex. 31 and 36 are the same document filed on July 15, 2024 and July 25, 2024, respectively.

ANC Addendum states that the ANC appreciates the Applicant's revised public space plan, including changing the main entrance from Tingey Street, S.E. to New Jersey Avenue, S.E. The ANC continued to request the Applicant seek private use of the loading zone. The ANC added unrelated requests concerning leasing language on the Project website and to establish a tenure for the Applicant's affordability proffer. The ANC also requested that the Applicant install a clear "yield to pedestrians" sign along the bicycle lane in front of the building. Finally, the ANC reiterated its request to DDOT to remove the bicycle lane on Tingey Square, S.E.

Letters in Support or Opposition

51. 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 hearing.

Contested Issues

52. The Commission finds that the following contested issues were raised in the record.
53. When deciding whether to schedule a hearing on the Application, the Commission stated the Applicant should provide more information about the nature of the core elements of the PUD balancing test that were changing as a result of the requested modification so it could evaluate whether the revised Project met the PUD test (*See* Subtitle X § 304.3¹⁰). This was necessary because it was clear from the information that the Applicant provided that the revised Project was altering the relief required, and the public benefits of the Project, and accordingly the Commission needed further information before it could conclude that the Application satisfied the burden of proof. Therefore, when it decided to schedule a hearing, the Commission directed the Applicant to provide the following additional information prior to that hearing:
- The changes in development standards between the approved PUD and the modified Project;
 - Whether additional zoning flexibility was required for the revised PUD Project;
 - How the revised Project would impact the public benefits proffered in the approved PUD, including the reduction in open space plaza space; and
 - An evaluation of any potential adverse effect of the Project.
- (March 14, 2024 public meeting transcript at 38-40)
54. The Applicant responded to the Commission's request in its filing at Ex. 13, which is described above in Finding of Fact ("FF") 25. The Commission was satisfied that the Applicant's response provided sufficient information to evaluate the Application as follows:
- The Commission finds that the revised Project has several significant differences in the development standards, most importantly that the uses were changing from retail to

¹⁰ Subtitle X § 304.3 states: "In deciding a PUD application, the Zoning Commission shall judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case."

- residential, building footprint, GFA, FAR, and height of the revised Project were increasing substantially;
- The Commission finds that the revised Project also requires additional vehicular parking, loading, and side yard relief;
 - The Commission finds that the revised Project reduces the size of the public plaza, a significant public benefit of the Original PUD. The Commission further finds that the revised Project provides several new public benefits in the areas of housing, affordable housing, and family sized units. The Commission further finds that the revised Project enhances several existing public benefits in the areas of enhanced landscape and streetscape materials, environmental benefits, and local business opportunities; and
 - The Commission finds that the Project will have adverse impacts related to its increased density, as well as transportation and traffic impacts, and appreciates the Applicant's candor in noting them in its response.
55. OP and DDOT recommended that the Applicant include conditions of approval in this Order related to traffic demand management and loading demand management in order to mitigate potential adverse effects of the Project in their respective hearing reports (Ex. 21, 23, 32). OP also suggested limitations on the design flexibility requested by the Applicant in order to ensure that the built Project conformed with the application's provision of residential units (Ex. 23). The Applicant agreed to these conditions at the hearing, confirmed the language of the conditions in its post-hearing submission (Ex. 28), and they are included as conditions of this Order.
56. DOEE requested that the Applicant provide an Enterprise Green Communities Plus scorecard for the Project and made additional suggestions for ways to make the Project more environmentally friendly (Ex. 23). The Applicant responded and provided the scorecard (Ex. 28D). The Commission believes that the Project provides adequate benefits overall, including in the area of environmental benefits to warrant approval.
57. ANC 8F submitted a report (Ex. 26) stating that the ANC conditioned its support on the resolution of issues pertaining to transportation, pedestrian safety, and loading concerns, and raised a number of related issues and concerns. The ANC identified that:
- The "[P]roject's lack of any on-site parking coupled with existing conditions that do not offer a pick-up and drop-off zone, nor a loading zone nor a curb cut, will ...exacerbate an already problematic intersection";
 - The Project "lies adjacent to a bike lane that would need to be removed should this development proceed. Users of this bike lane, positioned near the main entry point of the proposed development, would be in direct conflict with vehicular traffic should the bike lane remain alongside the site; and
 - The Project's "loading plan and pick-up and drop-off plan that would exacerbate several problems that exist on the site, those being:
 - DPW's inability to keep up with illegally parked vehicles which occupy stadium zone spaces ... due to staffing limits"; and

- “The [A]pplicant proposes a public loading zone which has ... shown to fail due to lack of enforcement and congestion of travel lanes due to simultaneous ... use of said zones”.
58. The ANC suggested that the following mitigations could address its issues and concerns:
- 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, S.E. to accommodate the loading and pick-up/drop-off spaces.
59. After hearing the ANC’s hearing testimony, the Commission requested that the Applicant consider changes to the Application to address the issues raised by the ANC.
60. The Applicant made significant changes to Application to address the issues raised by the ANC. The changes are described in the post-hearing filing submitted by the Applicant as follows (Ex. 28-28E):
- The Applicant redesigned the Project to relocate its residential lobby and entrance away from the troubled Tingey Street intersection, and instead locate it on the New Jersey Avenue, S.E. side of the building, where it will more directly access the planned PUDO and loading zones on New Jersey Avenue (Ex. 28B). The Commission believes relocating the entrance will reduce congestion on Tingey Street because of the natural tendency for the most intense pick up and drop off activity to be proximate to the entrance;
 - The Applicant added additional commitments to request loading and PUDO zone signage for the updated zones shown in the new diagram that it submitted with the post-hearing statement (Ex. 28C). The revised signage request would expressly restrict use of the loading zone to 30-minute loading for commercial vehicles and require a permit or payment to use the loading area. The signage will also expressly state that the PUDO zone is restricted to pick up and drop off, and that all unattended vehicles will be ticketed and towed. In addition, the Applicant asserted that it would pursue and seek DDOTs approval to reserve the loading and PUDO zone on New Jersey Ave, S.E. to be solely used for the Project and incorporate video cameras in public space to help monitor the loading and PUDO zones. The Applicant noted that all use, restrictions and signage of public space is subject to DDOT approval through the public space approval process; and
 - The Applicant noted that in its hearing testimony, the ANC identified safety challenges where a bicycle lane is located between the loading/parking area and the sidewalk, which is what is proposed by the Applicant. The Applicant stated that it was proposing this condition to preserve existing bicycle connectivity and provide a hardened buffer between vehicular movement and the bicycle lane. The Applicant further stated it was proposing to install dashed green conflict striping, flexiposts, and caution signage along the bike lane to alert bicyclists and pedestrians about potential conflicts.

61. The Commission finds that DDOT, not the Commission, has the exclusive authority to grant private use of the loading zone, remove the bicycle lane on Tingey Square, and approve the PUDO and loading zones plan and signage, and the removal of landscaping and vegetation along New Jersey Ave, S.E., which are requested conditions in the ANC report. DDOT also has exclusive authority to approve the Applicant's proposed bicycle/pedestrian mitigations.
62. The ANC responded in an addendum to its report, stating appreciation for the Applicant's revised public space plan (Ex. 31, 36). In the addendum, the ANC further stated that it continued to request the following:
 - The Applicant seek private use of the loading zone and signage for the bicycle lane; and
 - DDOT to remove the bicycle lane on Tingey Square, S.E.
63. The Commission notes that the Applicant asserted that it would pursue and seek DDOT's approval to reserve the loading and PUDO zone on New Jersey Ave, S.E. to be solely used for the Project (Ex. 28). However, the Commission notes again that it is within the purview of DDOT through its public space process to determine whether the use of the zones will be limited to the Project, and this is outside of the Commission's control. Likewise, the removal of the bike lane on Tingey Square is solely within DDOT's control.
64. The ANC's addendum also requested that the Applicant ensure that the installation of a yield to pedestrian's sign is clear along the bike lane in front of the building. The Commission finds that the Applicant's proposed dashed green conflict striping, flexiposts, and caution signage along the bike lane substantially address this concern.
65. The Commission finds that the redesigned entrance location, the Project's TDM and loading management plans, and the Project's other traffic, loading and public space mitigations are sufficient to make the situation acceptable given the public benefits of the Project.

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, Chapters 3 and 7, and Subtitle Z § 300.

Standard of Review for Approval of PUD Modification of Significance

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 project superior to what would result from the matter-of-right standards;
 - (b) Offers a commendable number or quality of meaningful public benefits; and
 - (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.
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 project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case;” and must find that the proposed development:
- (a) Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;
 - (b) Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and
 - (c) Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.
7. A PUD public benefit must “benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provision.” (Subtitle X § 305.2). Each public benefit must (i) be a tangible and quantifiable item; (ii) measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; and (iii) may primarily benefit a particular neighborhood or area of the city or service a critical city-wide need (Subtitle X § 305.3). Further, the majority of a PUD’s public benefits should relate to the geographic area of the ANC in which the application is proposed (Subtitle X § 305.4). A project need only be

particularly strong in one area or a few of the categories of public benefits listed in Subtitle X § 305 but must be acceptable in all proffered categories and superior in many in order for a project to qualify for approval (Subtitle X § 305.12).

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 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.”

Scope of Modification Review

11. Based on the case record and the Findings of Fact above, the Commission concludes that the PUD-related map amendment to the MU-9 zone approved in the Original Order remains appropriate and is not being revisited in the Commission’s evaluation of this Application.

Consistency with the Comprehensive Plan and Public Policies (Subtitle X § 304.4(a))

12. 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.
13. 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 (FF13, 35, 38, 39).
14. The Commission concludes that the Application is not inconsistent with the GPM’s “Regional Center” designation for the Property because the proposed Project 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, 38, 39).
15. The Commission concludes that the Project furthers the goals of the Comprehensive Plan’s Citywide Elements, including the Land Use, Transportation, Housing, Environmental Protection, 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 affordable housing in a 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 playroom, 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, 38, 39).
16. 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.

Community Outreach and Engagement

The Applicant's racial equity analysis included community outreach efforts to ANC 8F, which is active and well-organized. In response, ANC 8F Commissioners identified that the community is in need of more affordable housing. The Project includes 127 new all-affordable units, which directly addresses this need. ANC 8F also identified transportation issues, which the Applicant addressed by significantly revising the Project design to relocate the residential entrance away from the problematic location identified by the ANC, and by including additional mitigation measures. The Applicant also consented to adding conditions to this Order in response to requests by the ANC.

Displacement

The Project will not cause any direct displacement of tenants or residents, as the Property does not currently contain any residential use. The Project is likely to relieve pressure on existing housing stock and provide additional affordable housing options.

Disaggregated Race and Ethnicity Data

OP provided data for the Lower Anacostia Waterfront/Near Southwest planning area, in which the Property is located, for two time periods, 2012-2016 and 2018-2022. The data shows that over the two-time periods, the number of residents of each race group, except Blacks, increased in the planning area. Similarly, the median income for all races and groups increased over the two time periods, but although median income of Blacks in the planning increased overall it remained below the Districtwide median income for Blacks. Given the population and median income data for the planning area, the Commission is encouraged that the Project's provision of 127 new affordable units in this transit and amenity rich location will create housing opportunities to retain the Black population, which is declining, and further increase the overall minority population within the planning area (FF 27-28, 35, 39).

17. 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, 38, 39).

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

18. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts that are not capable of being mitigated or outweighed by the Project's proffered public benefits and amenities as detailed below.
19. 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).

20. 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 as follows:
- 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, S.E. and a loading zone on Tingey Street, S.E. that can be used to serve the residential and retail portions of the Project. In conjunction with the public space, the Applicant has proffered the inclusion of a TDM and LMP to further mitigate loading and traffic issues. DDOT has stated its support for the Applicant's proposed loading zones and pick-up/drop-off zones as well as the TDM and LMP; and
 - The ANC raised a related concern that the Applicant's original proposed plan positioned the main entry point of the development at a location that would exacerbate already problematic conditions, potentially creating an unacceptable impact. The Applicant addressed this concern by changing the Project's residential entrance to move it away from Tingey Street where much of the existing congestion exists to New Jersey Avenue. The Applicant also made commitments to additional mitigations, consisting of PUDO zone signage for the updated zones, signage that would restrict use of the loading zones, a commitment to seek DDOT's approval of exclusive use of the zones for the Project, to incorporate video cameras for monitoring and enforcement of the zones, and enhanced conflict striping, flexiposts, and caution signage to reduce bicycle/pedestrian conflicts. Accordingly, the Commission concludes that the potential impacts to the transportation network as a result of the Project are capable of being mitigated. The Commission believes that despite these mitigations there will still be some adverse impacts, but they are acceptable given the public benefits of the Project, as discussed in detail in Findings of Fact 55-63 above (FF 19, 26-27, 29, 36-37, 41-43, 45-48, 52, 55-63).
21. 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 22, 29, 44, 54).

PUD Flexibility Balanced Against Public Benefits and Potential Adverse Effects (Subtitle X §§ 304.3 and 304.4(c))

22. 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, and the potential adverse effects for the reasons discussed below.
23. 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, TDM 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, 33, 36-37, 39, 41-43).
24. 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 (FF 33, 36, 39).
25. 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 for the following reasons (FF 37):
 - 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 to the area;
 - 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;
 - 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;
 - The Project's most 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;
 - 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; and

- The Project provides other superior public benefits that advance policy objectives (Subtitle X § 305.5(r)), including the proposed children’s playroom, 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.
26. The Commission concludes the Project may cause potential adverse effects related to traffic congestion and pedestrian/vehicular conflicts, but those effects are largely mitigated, and acceptable given the quality of the public benefits of the Project (FF 19, 26-27, 29, 36-37, 41-43, 45-48, 52, 55-63).
 27. The Commission has judged, balanced and reconciled the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and the potential adverse effects, and concludes the Application warrants approval.

“Great Weight” to the Recommendations of OP

28. 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)).
29. 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 from parking, loading, and side yard requirements 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

30. 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)).
31. 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. 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, S.E. (FF 45-46).

32. At the conclusion of the July 1, 2024, hearing, the Commission directed the Applicant consider changes to the Application to address the issues raised by the ANC that pertain to traffic congestion, pedestrian safety, and loading. The Commission did so because it was persuaded that the Application would make an already bad situation worse and could create an unacceptable impact (FF 55-57).
33. 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, S.E. 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, 58).
34. 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, reiterates its requests for the Applicant to seek private use of the loading zone, and that DDOT remove the bicycle lane on Tingey Street, S.E., and added additional requests that the Applicant install yield to pedestrian signs along the bike lane in front of the building, that the Applicant add information on its website intended to help prospective tenants find income based programs that will be accepted in the Project, and that this Order include information about the tenure for which the property is completely affordable. (FF 48, 60)
35. 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 proposed loading zones and pick-up/drop-off zones and the proposed treatments for the bicycle lanes to improve pedestrian and bicycle safety. However, DDOT stated it does not support reserving the loading and PUDO zones for sole/private use by the Project and noted that there is not yet a process to enforce loading and PUDO zones with video cameras in public space. With respect to the removal of vegetation and landscaping for the proposed loading and pick-up/drop-off zone, DDOT stated concern about removal of existing vegetation and replacement with hardscaping impermeable surface and suggested this be offset by increasing bioretention or by expanding existing tree boxes or green space (FF 41, 43).
36. 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 Square S.E. 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. 55-57, 61-63).

37. The Commission concludes the ANC raised concerns about the pedestrian and vehicular safety that warranted additional mitigation to prevent unacceptable impacts. 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, S.E., 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. The Commission believes these changes are sufficient to mitigate the traffic, loading impacts, and pedestrian and vehicular safety issues raised by the ANC (FF 45-48, 55-63).
38. The Commission further concludes the ANC's advice regarding several suggested mitigations was not persuasive, namely that DDOT remove the bicycle lane on Tingey Square, guarantee that the PUDO and loading zones are reserved for the sole/private use by the Project, approve the removal of landscaping in public space, and approve certain signage for the loading and PUDO zones and bicycle lane in front of the building. This is because these decisions are exclusively within DDOT's purview, so the Commission does not have the authority to dictate these outcomes to DDOT. The Commission believes that the mitigations that are required by this Order are sufficient to prevent unacceptable Project impacts, go a long way to addressing the issues raised, and any remaining adverse impacts are acceptable given the quality of the Project's public benefits (FF 55-63).
39. Finally, with respect to the ANC's requests that the conditions of this Order address housing tenure and require a link to applicable income-based programs accepted by the Project's leasing office, the Applicant acquiesced to these requests, and the Commission has included appropriate conditions in this Order. (FF 48)

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 Z.C. Order No. 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. The following conditions are intended to replace those in Z.C. Order

03-05. Changes to the conditions of Z.C. Order No. 03-05 are shown below, with text to be deleted marked in ~~strikethrough~~ text and new text marked in **bold and underlined** text.

A. Project Development

1. The PUD shall be developed substantially in accordance with the plans prepared by DMJM Design and Michael Graves Architect, P.C., dated August 22, 2003, in the record at Exhibits 33 and 33a, as supplemented by the drawings dated September 18, 2003, in the record at Exhibit 43, (collectively, the "Plans") as modified by the guidelines, conditions, and standards herein **and as further modified pursuant to the architectural plans filed in the record of ZC Case No. 03-05A as Exhibits 19A1-19A4 and Exhibit 28A (the "Modified Plans") as modified by the guidelines, conditions, and standards herein.**
2. The PUD shall be two office buildings, consisting together of approximately 1,454,008 square feet of gross floor area (the "Office Buildings"), with an approximate zoning density of 3.7 FAR **and one mixed-use building, consisting of approximately 123,233 square feet of gross floor area (the "Mixed-Use Project"), with an approximate zoning density of 5.58 FAR.** The **Office Buildings** shall also include on-site retail of at least **10,085** square feet of gross floor area **and the Mixed-Use Project shall include on-site retail of approximately 2,653 square feet,** as described in detail in Condition No. The total project, including the on-site retail, shall have an approximate density of 4.08 FAR.
3. The west Office Building shall have an approximate height of 121 feet to the top of the parapet and a maximum height of 130 feet to the top of the atrium, as measured in accordance with the Zoning Regulations. The east Office Building shall have an approximate height of 109 feet to the top of the parapet and a maximum height of 118 feet to the top of the atrium, as measured in accordance with the Zoning Regulations. The project may include a roof structure with a height not to exceed eighteen feet, six inches, with setbacks as indicated in the Plans. The project shall comply with the Height Act of 1910. The Applicant shall have the flexibility to modify the atrium to comply with the Height Act of 1910.
4. The ~~**Office Buildings**~~ shall include a minimum of 936 parking spaces and fifty (50) bicycle parking spaces in the below-grade parking garage. **The Mixed-Use Project shall include a minimum of fifty-eight (58) long-term bicycle parking spaces and ten (10) short-term bicycle parking spaces.** The Applicant shall have flexibility to arrange compact cars in groups of less than five contiguous spaces with access from the same aisle.
5. The **Office Buildings** shall include three twelve-foot by fifty-five-foot loading berths and three twelve-foot by thirty-foot service/delivery spaces as shown on the Plans. Access to the loading facilities for trucks that are larger than thirty feet is prohibited between the hours of 7:00-9:00 AM and 4:30-6:30 PM on weekdays, excluding legal holidays. Access to loading facilities is permitted at all times for trucks that are thirty feet or smaller. This restriction shall not apply to the loading facility until nine months after the issuance of the principal certificate of occupancy for the **Office Buildings**, or during such move-in or moveout periods as may be required during building renovations or re-tenanting of the

buildings. The **Office Buildings** shall implement the Loading Dock Management Plan as referenced in Finding No. 39 **in ZC Order 03-05.**

[Commission note: the following condition was numbered 24 in Order 03-05. It is re-numbered here as Condition 6 to maintain the structure of the conditions.]

6. The Applicant shall have flexibility with the design of the **Office Buildings** in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atrium, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not materially change the exterior configuration of the building;
 - b. To make minor modifications to the location and design of the retail building at the corner of New Jersey Avenue and M Street, and the retail kiosk at the corner of Fourth and M Streets, provided that the structures and their locations are generally consistent with those shown on the Plans;
 - c. 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;
 - d. To make minor refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments 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; and
 - e. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not decrease below a minimum of 936 spaces.

The Applicant shall have flexibility with the design of the Mixed-Use Project in the following areas:

- a. **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;**
- b. **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;**
- c. **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;**

- d. **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;**
- e. **Signage: To vary the number, font, message, logo, and color of the Mixed-Use 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;**
- f. **Residential Units: To modify the number of residential units by plus or minus five percent, 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 40 as reflected in the Modified Plans.**
- g. **Sustainable Features: To vary the approved sustainable features of the Mixed-Use Project and the features, means, and methods of achieving the required GAR and Enterprise Green Communities certifications.**

[Commission note: the following conditions are re-numbered from Order 03-05 to accommodate the re-numbering of Condition 24 to Condition 6 above.]

- 7. The Applicant shall provide retail as follows:
 - a. Adaptive re-use of Building 170 with a minimum of 8,000 square feet of gross floor area at ground level, with the possibility of incorporating approximately an additional 10,500 square feet of gross floor area within Building 170 on the upper levels;
 - b. Construction of the **Mixed-Use Project** containing approximately **2,653** square feet of gross floor area **for retail**.
 - c. Construction of a retail pavilion at the corner at New Jersey Avenue and M Street as shown on the Plans, containing approximately 1,755 square feet of gross floor area;
 - d. Construction of a retail kiosk at the corner of Fourth and M Streets, as shown on the Plans, containing approximately 330 square feet of gross floor area; and
 - e. The Applicant shall implement a seasonal retail kiosk program in accordance with the concepts identified at Exhibit 41 in the record.

8. The Applicant shall provide a minimum of 24,000 square feet of gross floor area for publicly-accessible ground floor retail along M Street in the Office Buildings at such time as the DOT or any subsequent Federal tenant no longer occupies the Office Buildings. The Applicant may provide additional retail in the Office Buildings at any time.

B. Public Benefits

9. The Applicant shall dedicate in fee to the District of Columbia portions of New Jersey Avenue, Fourth Street and Tingey Street (the "Dedicated Streets"), as indicated in the Street Re-Opening file in the Office of the Surveyor, known as S.O. 03-1420. The Applicant shall record a covenant acceptable to DDOT and the Office of Corporation Counsel evidencing the dedication and grant of easements for the Dedicated Streets. This covenant must be filed prior to the Applicant's receiving a certificate of occupancy for either of the Office Buildings.
10. The Applicant shall design and construct the Dedicated Streets in accordance with the DDOT standards and specifications.
11. The original Third Street L'Enfant right-of-way, between M and Tingey Streets ("Third Street"), is part of the Site and therefore will remain private property. The owner of the property may restrict the use by or disallow vehicles from traveling along this private thoroughfare, but shall permit travel by emergency vehicles. Third Street shall be improved by the Applicant in accordance with the Plans to serve as an open-air pedestrian thoroughfare and to provide access for emergency vehicles. The Applicant shall construct Third Street to DDOT standards and specifications for future conversion to a public roadway. At such time as the DOT or a subsequent Federal tenant no longer occupies the Office Buildings, the Applicant shall dedicate Third Street to the District. The dedication shall include at least the surface of Third Street and such subsurface area as is needed for the installation of water and sewer lines and other public infrastructure. The Applicant shall improve Third Street for use as a public roadway in accordance with DDOT standards and specifications. In the event that the Council of the District of Columbia does not accept the dedication, the Applicant shall be relieved of the requirement under this Order to dedicate Third Street as a public street.
12. The Applicant shall construct and maintain the Site Animation and Activation Plan in accordance with the concept plan submitted as Exhibit E in the Prehearing Submission, in the record at Exhibits 14 and 14a **of Z.C. Case No. 03-05**.
13. The Applicant shall expend \$75,000 towards a Comprehensive Signage Program, as described in the record at Exhibit 41 **of Z.C. Case No. 03-05**, that will include the Canal Blocks Park and the Hope VI community north of the Site. This program will be implemented in coordination with DDOT.

14. Prior to the issuance of a certificate of occupancy for either of the Office Buildings, the Applicant shall contribute \$2,500,000 to the Canal Park Development Association for the development of Canal Blocks Park.
15. Prior to the issuance of a certificate of occupancy for either of the Office Buildings, the Applicant shall contribute \$1.5 million to the District of Columbia. The payment shall be accompanied by a written statement indicating that the payment is made in compliance with this Order and that the District may not use the money for any purpose other than for construction and programming of the Anacostia Riverwalk and Trail located within ANC 6D. The Applicant shall advise the Commission if the District indicates that it is unwilling or unable to use the money for this purpose.
16. The PUD shall include the creation of approximately **22,175** square feet of landscaped, publicly accessible open space. This plaza shall be preserved in perpetuity as publicly-accessible open space, unless this Condition is **further** modified by the Zoning Commission.
17. The Applicant shall include landscaping improvements for the project as indicated in the Plans **and Modified Plans**. The Applicant or its successors shall maintain all landscaping improvements.
18. Landscaping and security improvements in the public space along M Street shall be in accordance with the Plans, as approved by the Public Space Division of DDOT. The Applicant or its successors shall maintain all landscaping improvements in the public space.

[Commission note: conditions 19-23 are new.]

19. **The Applicant shall provide affordable housing as set forth in this condition:**
 - a. **For so long as the Mixed-Use Project is subject to public financing-related affordability restrictions (“Initial Affordability Period”), all of the Mixed-Use 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-C DCMR § 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-C DCMR § 1001.6(a)(4); and**
 - c. **Should the exemption from the IZ Regulations be denied, the Applicant shall provide 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 eight percent of the residential gross floor of the Mixed-Use Project, and shall execute the monitoring and enforcement documents required by 11-X DCMR § 311.6 as to the remaining residential gross floor area.

20. **Following the conclusion of the Initial Affordability Period, and for so long thereafter as the Mixed-Use Project exists, the Mixed-Use Project shall reserve no less than eight percent of the Mixed-Use Project's gross floor area at 60% AMI.**
21. **For the Life of the Mixed-Use Project, at least 40 of the dwelling units will be three-bedroom units.**
22. **For the Life of the Mixed-Use Project, the Applicant shall provide a link on the Mixed-Use 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.)**
23. **Prior to the issuance of a Certificate of Occupancy for the Mixed-Use 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. Transportation

[Commission note: the following conditions are re-numbered from Order 03-05 to accommodate the re-numbering of Condition 24 to Condition 6, and new conditions 19-23 above.]

24. **For the Office Buildings,** the Applicant shall implement a Transportation Management Plan as set forth in the Applicant's Traffic Impact Study dated March 14, 2003, attached as Exhibit C to the Supplemental PUD Statement filed with the Commission on March 19, 2003, and found in the record **of ZC Case No. 03-05** at Exhibit 12.

For the life of the Mixed-Use Project, the Applicant shall implement the following Transportation Demand Management 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 10 short- and 58 long-term bicycle parking spaces, exceeding ZR16 minimum requirements for at least six (6) short- and 42 long-term bicycle parking spaces;
 - h. Accommodate non-traditional sized bikes including cargo, tandem, and kids bikes, with a minimum 5% of spaces (minimum 2) be designed for longer cargo/tandem bikes, and a minimum of 10% of spaces (minimum 6) will be designed with electrical outlets for the charging of electric bikes 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 the building employees or residents for usage of the bicycle storage room and strollers will be permitted to be stored in the bicycle storage room.
25. The Applicant shall work with the DDOT to create a corridor-based organization focusing on transit improvements. This organization will support the evaluation and implementation of a means for property owners on the M Street corridor to assist in financing a portion of the capital and operating costs for the "next generation" of transit on the M Street corridor. This model may be consistent with the one used to finance construction of the New York Avenue Metrorail Station. The Applicant shall participate in a coordination committee to facilitate dialogue among property owners along the M Street corridor to assist the DDOT in making a trolley or other "next generation" transit model a reality.
26. The Applicant shall work with the DDOT to install a new traffic signal at the intersection of New Jersey Avenue and M Street and to install a new traffic signal at the intersection

of Fourth and M Streets. The Applicant shall bear the cost of the installation of these two traffic signals.

27. The Applicant shall work with DDOT, GSA, WASA, and OP to finalize the design of the intersection of Tingey and N Streets at the terminus of New Jersey Avenue to create an operational and safe intersection.
28. The Applicant shall abide by the terms of the executed Memorandum of Understanding with the D.C. Local Business Opportunity Commission in order to achieve the target goal of thirty-five percent participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security to be created as a result of the PUD project. In addition, the Applicant shall give preference in hiring to residents of ANC 6B and ANC 6D. The Applicant shall provide information regarding available jobs created by the project to ANC 6B and ANC 6D, who will be responsible for disseminating this information to the surrounding communities. After completion of construction of the project, the Applicant shall provide a written status report to the Zoning Commission and the D.C. Local Business Opportunity Commission regarding compliance with this agreement.
29. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent of the new jobs created by the PUD project. In addition, the Applicant shall give preference in hiring to residents of ANC 6B and ANC 6D. The Applicant shall provide information regarding available jobs created by the project to ANC 6B and ANC 6D, who will be responsible for disseminating this information to the surrounding communities. After completion of construction of the project, the Applicant shall provide a written status report to the Zoning Commission and the Department of Employment Services regarding compliance with this agreement.
30. **For the Life of the Mixed-Use 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 hours prior to or three 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, S.E. will be approximately 60 feet in length to accommodate 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; and
- o. The Applicant will print and distribute *Bike Lanes and Safe Loading* educational fliers to users of the curbside loading and pick-up/drop-off zone adjacent to the proposed sidewalk-level bike lane on New Jersey Avenue to show users how to properly use loading zones located along bike lanes and minimize conflict for all public space users.

Miscellaneous

31. No building permit shall be issued for the Mixed-Use Project until the Applicant has recorded a Notice of Modification of Zoning Commission Order relating to the Property and requiring compliance with this Order in the land records of the District of Columbia.
32. The Office of Zoning shall not release the record of this case to the Zoning Division of **DOB** until the Applicant has filed a copy of the covenant in the records of the Zoning Commission.
33. The Mixed-Use Project approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit. Construction of the Mixed-Use Project shall begin within three years of the effective date of this Order.
34. Pursuant to § 267 of the Human Rights Act of 1977, D.C. Official Code § 2-1402.67 (2001), the Applicant is required to comply fully with the provisions of the Act, and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Division of **DOB** to approve permits if the Applicant fails to comply with any provision of the Human Rights Act.
35. In the event that the PUD expires because 1) the PUD covenant is not recorded in the land records of the District of Columbia, 2) the time periods set forth in Condition No. **33** are not met, or 3) no extension for the time periods set forth in Condition No. **33** is requested or approved, then the Site shall be zoned CR.

Proposed Action

Vote (July 1, 2024): 4-0-1

(Anthony J. Hood, Robert E. Miller, Tammy Stidham, and Joseph S. Imamura to approve; 3rd Mayoral Appointee seat vacant).

Final Action

Vote (July 25, 2024): 4-0-1

(Tammy Stidham, Robert E. Miller, Anthony J. Hood, and Joseph S. Imamura to approve; 3rd Mayoral Appointee 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 *District of Columbia Register*; that is, on March 7, 2025.

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.