

May 9, 2019

VIA IZIS

Chairman Anthony Hood
District of Columbia Zoning Commission
441 4th Street N.W., Suite 200S
Washington, DC 20001

Re: Zoning Commission Case No. 06-10D – Applicant’s Proposed Findings of Fact and Conclusions of Law

Dear Chairman Hood and Members of the Commission:

Enclosed please find the Applicant’s proposed Findings of Fact and Conclusions of Law.

During the Applicant’s discussions with the Office of the Attorney General (OAG) regarding the proposed proffers and conditions for this case, OAG raised a question regarding the Applicant’s affordable housing contribution. OAG stated that pursuant to Subtitle C § 1008.1 of the Zoning Regulations, the Inclusionary Zoning Requirements are applicable for a PUD project that was set-down prior to March 14, 2008 if: (i) if there is any increase in the residential square footage that was approved in the original PUD Order; and (ii) if the original PUD Order was for a non-residential use, and that non-residential use is now changed to a residential use. OAG noted that this application includes residential uses that were not originally included in Block B.

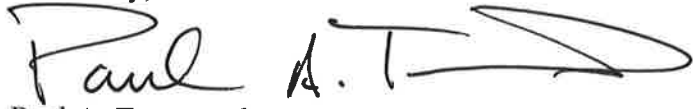
The Applicant is not convinced that Subtitle C § 1008.1 requires that the mere modification of an approved First-Stage PUD order, when that modification does not seek to increase the amount of permitted residential density in the approved First-Stage PUD order but merely moves forward the time period in which the originally required affordable housing will be provided, triggers an IZ requirement when the Zoning Commission previously approved an affordable housing requirement for the project. However, if the Zoning Commission believes that this Second-Stage PUD application is subject to IZ, the Applicant hereby requests flexibility from the IZ requirements. The rationale for granting the IZ flexibility is as follows:

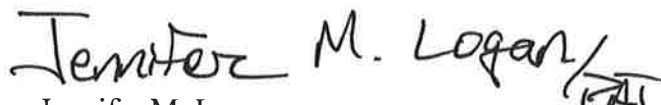
- ZC Order No. 06-10 established the affordable housing requirements for the development of the entire PUD project. The affordable units were to be provided in Blocks A and C. Condition No. 8 of ZC Order No. 06-10 required a minimum of 171 dwelling units be reserved as affordable housing units.

- Block A of the project included 141 affordable units, consistent with the requirements outlined in ZC Order No. 06-10. The remaining 30 affordable units, which were initially anticipated to be provided in the development of Block C, are now being provided in Block B. The inclusion of residential units in Block B is one of the primary reasons that ZC Case No. 06-10D is a First Stage PUD modification, in addition to a Second-Stage PUD application. Upon the delivery of the Block B residential units, affordable units in Blocks A and B of the project will account for approximately 22% of the total number of residential units in the project.
- The First-Stage PUD modification that is being proposed in ZC Case No. 06-10D does not seek to increase the overall residential density (approximately 930 residential units) that was approved by the Zoning Commission in ZC Case No. 06-10, as Blocks A and B will include approximately 790 residential units. The inclusion of residential units (both affordable and market-rate) in Block B, rather than in later phases, is a benefit of the overall PUD project.
- Moreover, as noted throughout this case, the principal benefits and amenities of this application are the arts and cultural uses that are provided in the FEZ/HUB building, the artist/maker studio spaces that are provided along 4th Street, and the Aldi grocery store located at the corner of S. Dakota Avenue and Kennedy Street. The arts, cultural, and studio/maker space uses can only be achieved through significant financial subsidy from the Applicant.

We look forward to the Zoning Commission's decision regarding this application on May 20, 2019.

Sincerely,


Paul A. Tummonds


Jennifer M. Logan

Enclosure

Certificate of Service

The undersigned hereby certifies that copies of the foregoing document will be delivered by e-mail and Regular Mail to the following agencies and Parties on May 9, 2019.

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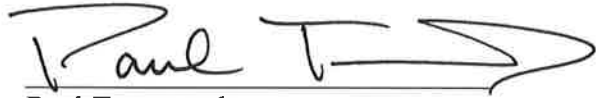
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Applicant's Post- Hearing Submission
ZC Case No. 06-10D
May 9, 2019
Page 4

Lamond Riggs Citizens Association
Uchenna Evans, President
915 Hamilton Street, NE
Washington, DC 20011 (By E-Mail)

A handwritten signature in black ink that reads "Paul Tummonds". The signature is stylized, with a large, sweeping "P" and "T".

Paul Tummonds

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-10D**

Z.C. Case No. 06-10D

**(Modification of First Stage PUD Application and Second Stage Planned Unit Development
Application - Art Place at Fort Totten – Block B)**

May 20, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on April 4, 2019, to consider an application of The Morris and Gwendolyn Cafritz Foundation (the “Applicant”) for second stage approval of a planned unit development and modification of an approved first stage planned unit development. The Commission considered the application pursuant to Title 11 of the District of Columbia Municipal Regulations (“Zoning Regulations”), Subtitles X and Z. The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 4 of the Zoning Regulations. The Commission approves the application, subject to the conditions below.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The property that is the subject of the application is comprised of lots 1, 2, 3, 4, 7, 8, and 9 in Square 3765, Lots 3 and 4 in Square 3767, the to-be-closed 4th Street, NE between Ingraham Street and Kennedy Street and a parallel 16-foot alley running between Kennedy Street and Ingraham Street (the “Property”). The Property has an area of approximately 222,541 square feet (Exhibit 2, Exhibit 44A).
2. In an order effective as of January 15, 2010, the Commission approved the consolidated and first stage PUD application for Art Place at Fort Totten (“APFT”) in Z.C. Order No. 06-10, which approval was subsequently modified in Order 06-10A and 06-10C (collectively, the “First Stage Order”). The First Stage Order also granted a PUD-related map amendment for the Property to a combination of the C-2-B and FT/C-2-B zone, which became the MU-5-A zone effective September 2016.
3. On September 4, 2019, the Applicant submitted an application for approval of a second stage planned unit development for Block B of and modification of the first stage planned unit development approved by the First Stage Order. (Exhibits 1-2).
4. On November 9, 2018, the Office of Planning (“OP”), delivered a report (the “OP Setdown Report”) on the Application recommending that the Commission set it down for public hearing and requesting additional information from the Applicant.
5. At a public meeting on November 19, 2018, (“Setdown”), the application was set down for a public hearing.

6. On January 25, 2019, the Applicant filed its pre-hearing statement (“PHS”), which included updated plans and information in response to requests from OP, the District Department of Transportation (“DDOT”), and the Commission. (Exhibits 11-12).
7. Notice of the public hearing was published in the D.C. Register on February 15, 2019 (*DC Register*, Volume 66, Issue 7) and was mailed to Advisory Neighborhood Commission (“ANC”) 4B, ANC 5A and to owners of property within 200 feet of the Property. (Exhibits 14, 18).
8. On March 5, 2019, the Applicant filed a Comprehensive Transportation Review (“CTR”) for the project. (Exhibits 19, 20).
9. On March 15, 2019, the Applicant filed a supplemental statement (“20-Day Statement”) providing additional information requested from OP, the ANCs, and community organizations, and providing an updated set of architectural plans, drawings, and renderings, a construction management plan, and a proposed series of security policies and procedures. (Exhibit 22).
10. In addition to the Applicant, ANC 5A was automatically a party in this proceeding. On April 3, 2019, ANC 5A submitted a resolution dated as of March 27, 2019 in support of the application. ANC 4B did not participate in this case. (Exhibit 28).
11. On March 19, 2019, the Lamond-Riggs Citizens Association (the “LRCA”) filed a request for party status in support of the Application. (Exhibit 23).
12. On April 4, 2019, the Applicant filed additional information responding to requests from OP and DDOT for additional information. (Exhibits 31, 32 and 34).
13. A public hearing was conducted on April 4, 2019 (the “Hearing”).
14. At the Hearing, the Commission voted 5-0-0 to accept the LRCA as a party in support. (Transcript of the April 4, 2019 Zoning Commission Public Hearing (“Tr.”) at 7-8.)
15. At the Hearing, the Commission accepted Matthew Bell as an expert in the field of architecture, Ben Wood as an expert in the field of architecture, and Barbara Mosier as an expert in the field of traffic engineering. The Applicant provided testimony from these experts as well as from Jane Lipton Cafritz, a director of The Morris and Gwendolyn Cafritz Foundation (Tr. at 9-10.)
16. At the Hearing, the Commission heard testimony and received evidence from OP and DDOT representatives who recommended approval, and approval with conditions, respectively, of the application. (Tr. at 102-105, 105-107).
17. The Commission also heard testimony from the LRCA in support of the application. (Exhibit 28.) (Tr. 116-130).

18. At the Hearing, Deborah Grimstead and Gavin Baker testified as persons in support of the application. (Tr. 132-137).
19. At the Hearing, Spenser Balog testified on behalf of Casey Trees regarding the application. (Tr. at 137)
20. At the close of the hearing, the Commission asked the Applicant for further information responding to questions from the Commission, OP, DDOT, the LRCA, Ms. Grimstead, Mr. Baker, and Casey Trees. (Tr. at 145).
21. The Applicant filed its post-hearing submission addressing the comments from the Commission, OP, DDOT, the LRCA, Ms. Grimstead, Mr. Baker, and Casey Trees and including updated plans and renderings and supporting exhibits on May 2, 2019 (the "Post-Hearing Statement"). (Exhibit 44).
22. The Commission took FINAL ACTION to APPROVE the application on _____, 2019 by a vote of ____.

Summary of the Property and the Project

23. The Applicant seeks review and approval for a second stage PUD and modification of the first stage PUD approved by the First Stage Order. The application does not modify the formerly approved PUD-related Map Amendment, which was approved by the First Stage Order.

Overview of the Property and Surrounding Area

24. The Property consists of approximately 5.18 acres, and is formally designated as Square 3765, Lots 1-4 and 7-9, Square 3767, Lots 3-4, 4th Street, NE between Ingraham Street, NE and Kennedy Street, NE (to be closed) and a parallel 16-foot alley running between Kennedy Street, NE and Ingraham Street, NE (to be closed). (Exhibit 2).
25. The Property is currently occupied by low-rise multi-family residential apartment buildings that are part of the Riggs Plaza Apartment complex and is bounded by South Dakota Avenue, NE to the east, Kennedy Street, NE to the north and Ingraham Street, NE to the south, and a 20-foot public alley to the west. (Exhibit 2).
26. Immediately south of the Property is the Modern, a residential apartment building that was approved as a consolidated PUD pursuant to the First-Stage Order.
27. West of the Property is a multi-family apartment building, north and east of the Property opposite South Dakota Avenue, NE are detached houses as well as the Lamond Riggs Neighborhood Library, and north of the Property is the headquarters of Food and Friends. (Exhibit 2).
28. The Property is located only several hundred feet from the red, green, and yellow line Fort Totten Metrorail stop. (Exhibit 2).

First Stage PUD

29. The First Stage Order approved the plans for Block B to be constructed as a three-story building not to exceed 60 feet in height that was to include approximately 144,000 square feet of anchor retail and supporting retail uses, 59,000 square feet of grocery store use, an approximately 47,000 square foot children's museum, as well as recreational and meeting space for resident and community seniors, with a total gross floor area not to exceed 456,000 square feet, all of which would be for non-residential uses. (First Stage Order, Condition 7(b)).
30. Block B was approved in the First-Stage Order to have a maximum lot occupancy of approximately 76% and contain approximately 1,100 parking spaces. (First Stage Order, Condition 7(b)).
31. The First-Stage Order also approved an eight story building with a maximum 90 foot height containing 400 residential units to be located in Block C and a maximum 90 foot tall building containing non-residential uses, including a rehearsal and support space for Washington-area performing arts institutions, in Building D. (First Stage Order, Condition 7(c-d)).

The Project

32. Block B is comprised of a mixed-use building, known as the Family Entertainment Zone (the "FEZ"), fronting on South Dakota Avenue, NE, and containing: retail space; theater/interactive space; gala/events space; cultural space - including Meow Wolf (an innovative arts collective) and the Explore! Children's Museum; a food hall, an Aldi grocery store; artist maker space and residential uses. A residential building on the west side of the closed 4th Street will contain two towers connected by an amenity terrace, ground floor retail uses and artist/studio maker spaces. The east and west residential buildings will be connected by a pedestrian bridge over 4th Street. Multiple outdoor plazas, and a pedestrian-oriented outdoor area will be located on a portion of the to-be-closed 4th Street, as well as along South Dakota Avenue, Ingraham Street, and Kennedy Street (collectively, the "Project"). (Exhibit 44A).
33. The FEZ will provide experiential arts, interactive and education uses, and entertainment programming for kids, teens, and adults, quality neighborhood serving retail and dining options, and a grocery store to the community. (Exhibits 2, 11, 33).
34. The total gross floor area of the Project is 549,996 for a total FAR of 2.47 and a lot occupancy of approximately 62.9%. (Exhibit 44A).
35. The buildings will have varying heights with the FEZ building reaching a maximum height of 77'6", and the residential building towers reaching a maximum height of 80'. (Exhibit 44A).
36. The southwest tower of the west residential building will contain approximately 70 units, the northwest tower of the west residential building will contain approximately 110 units,

and the east residential building will contain approximately 90 units for a total of approximately 270 residential units. 30 of the residential units will be reserved for artists and will be offered at 60% of AMI. The artist units will be interspersed throughout the east and west residential buildings (but will not be located in the top two floors of the west residential building or the top floor of the east residential building). (Exhibit 11, 43, 44A).

37. The Project was initially proposed to include 930 parking spaces. At the Hearing the Applicant's representatives noted that one parking level was removed from the Project in response to DDOT comments. The Project will include approximately 780 parking spaces across a garage level, ground floor, and mezzanine level. The parking areas will be accessible from Kennedy Street and Ingraham Street. At the Hearing, the Applicant requested that it be provided the flexibility to raise or lower the number of parking spaces by +/- 5%. (Exhibit 44A).
38. Loading for the mixed-use building will be accessed through Kennedy Street and along a portion of the to-be-closed 4th Street and loading for the residential towers will be accessed from Kennedy Street and the public alley behind the residential towers. (Exhibit 44A).
39. The Project contains numerous public gathering spaces. The to-be-closed 4th Street will become a flexible pedestrian zone, that will be bounded by trees and include street furniture, landscaping, and café zones. The pedestrian zone of 4th Street will be separated from the service and loading area of 4th Street by the pedestrian bridge connecting the east and west residential buildings. (Exhibit 22, 44A).
40. The Project also includes the HUB Plaza located on the corner of South Dakota Avenue and Ingraham Street, which will function as a gathering area for arriving and departing groups, the Central Plaza, containing a splash fountain and built-in seating, Art Place Plaza, which is the gateway to the food hall and the flexible pedestrian 4th Street, and Kennedy Plaza, which is located along Kennedy Street and may host markets or outdoor events. An outdoor dog run will also be located along Kennedy Street. (Exhibits 22, 44A).
41. In addition to the various plazas, Block B will include ground-floor artist studio/maker space, located along the east residential building and the northwest tower of the west residential building, which will be curated by a third-party group. (Exhibits 11 and 44A).

Modifications to and Consistency with First Stage PUD Approval

42. The Project complies with the general parameters established for the site in the First Stage Order, but differs from the specific development plans for Block B. Therefore, the Applicant seeks modifications to the First Stage PUD. The elements of the Project that differ from the approved First Stage PUD include:
 - (a) Rather than a single large building occupying the entire Property, as approved in the First-Stage Order, the Project has been redesigned to maintain 4th Street, NE as pedestrian

and flex space with residential and mixed-use structures created to the east and west. This modified design creates a more open, light, and active environment on Block B and the adjacent public streets. (Exhibit 2).

(b) In order to further the tenant relocation process for exiting tenants of the Riggs Plaza Apartments, one of the existing Riggs Plaza Apartment buildings will remain on the Property. (Exhibit 44).

(c) The uses envisioned in the First Stage Order will be shifted such that Block B will include residential uses and the FEZ, as well as the originally intended grocery, retail and museum space. (Exhibit 2).

(d) In order to accommodate the shift in uses and building design within the overall PUD site, certain development standards have been adjusted as follows: (Exhibit 44).

(i) FAR of 2.09 approved in the First Stage Order has been adjusted to FAR of 2.47.

(ii) Heights of up to 90 feet approved in the First Stage Order have been reduced to varying heights with a maximum of 80'.

(iii) 1,100 parking spaces approved in the First Stage Order have been reduced to 780 spaces.

43. The Applicant noted that these proposed modifications are consistent with the development, policy objectives, impacts, planning objectives, character and appropriateness of the overall AFPT PUD and were undertaken to accelerate the delivery of residential units and following detailed evaluation of the Project's site plan, architecture, landscaping, and transportation, as well as current market conditions. (Exhibit 25).

44. The Project is in general compliance with the conditions of the First Stage Order as follows:

(a) Condition 8: The Applicant is providing 30 income-restricted residential rental units as part of Block B, bringing the total number of income-restricted units to 171 units. (Exhibit 44).

(b) Condition 13: The Applicant is constructing multiple public spaces and public plazas as part of Block B, including a plaza at the corner of South Dakota Avenue and Ingraham Street NE. (Exhibit 44A)

(c) Condition 14: The Applicant is installing landscaping, hardscaping, lighting, trees, and shrubs along South Dakota Avenue and Ingraham Street. (Exhibit 44A).

(d) Condition 17: The Applicant is pursuing certification for the APFT PUD under the LEED Neighborhood Development rating standard.

- (e) Condition 20: The Applicant has established a Transportation Demand Management (“TDM”) plan and loading plan that includes appointment of a transportation coordinator, appointment of a loading dock manager, providing a car share membership, a SmarTrip card, and a Get Around Guide highlighting local transportation options, to each new resident for the first 10 years of the development, and covered secure bicycle parking facilities in accordance with the minimum required by the Zoning Regulations. (Exhibits 20A1, 44D.)
45. Upon review of the record, the Commission finds that the Applicant has satisfied the general intent of the above-noted conditions and requirements of the First Stage Order.
46. In response to the request of the Zoning Commission, the Applicant also provided information on the timing for the filing of the Second Stage PUD applications for the development of Blocks C and D. The Applicant noted that it intends to start construction of Block B during the first quarter of 2020 and the project will take approximately 30 months to build. The project is expected to be completed during the Fourth Quarter of 2022. All of Block B, the residential component and The HUB (Meow Wolf, Explore! Children’s Museum, Aldi) component will be constructed at the same time. The Applicant will file a second-stage PUD application for either Block C or Block D by December 31, 2024, which is expected to be two years after Block B is open and operating, and the second-stage PUD application for the final development parcel included in APFT will occur by December 31, 2030. The Applicant stated that it believes that such time periods are appropriate in order to allow each development parcel to be constructed and have a period of operation prior to the beginning of the next round of development of APFT. The Applicant also noted that it anticipates that Block C will include non-residential uses and Block D will include residential uses. However, the Applicant requested flexibility to modify the ultimate mix of uses on these blocks at the time each of the Second-Stage PUD applications are filed. (Ex. 2, Ex. 22)

Community Outreach

47. The Applicant presented evidence and testimony that it engaged in significant outreach to the surrounding community prior to the Hearing. The Project reflects the extensive engagement with the surrounding community. The Applicant and its development team met with and presented the Project to ANC 5A08, ANC 4B, ANC 5A, the LRCA, the LRCA Development Task Force, Queens Chapel Civic Association, and the Executive Director of the South Dakota Avenue Riggs Road Main Streets organization. (Exhibit 22, Tr. 15-17).

Zoning Commission Comments and Questions

48. At the Hearing, the Commission provided comments on the application and requested that the Applicant review a number of issues related to the architectural details of the residential and FEZ structures and provide additional information on specific items. The Applicant responded completely to the Commission’s requests, as described below:

- (a) In response to requests by the Commission, the Applicant modified the color palette of the residential building and updated the residential building facades to include a refined material palette. The Applicant stated that the updated material palette presents the ensemble as coordinated in color and materials but is also designed so that the supporting residential buildings along Ingraham, 4th Street and Kennedy Streets provide the proper backdrop for the FEZ, resulting in an authentic and varied streetscape. (Exhibits 44 and 44A).
- (b) In response to the Commission's requests for more information about proposed materials, the Applicant provided an updated materials list, depicting the proposed materials the Applicant intends to use for Block B, including materials showing the range of colors that are under consideration for certain facades in which the exact material has not yet been determined. (Exhibits 44 and 44A).
- (c) In response to Commission requests to refine the location and details of the residential building balconies and modify the design of the pedestrian bridge, the Applicant provided updated plans showing balconies on three sides of the south tower and the north tower on 4th Street, which are strategically located to provide interesting relief to the facades and suggest a more vertical proportion to each of the residential elevations. The Applicant also redesigned the pedestrian bridge to include a more simple form of a box truss. (Exhibits 44 and 44A).
- (d) In its Post-Hearing Statement, the Applicant provided enhanced renderings and views of the 7-sided structure in front of FEZ hub, and a view of Building A from the pedestrian/flex portion of 4th Street in response to the Commission's requests. (Exhibit 44A).
- (e) In response to the Commission's comment to simplify the FEZ building and concerns from the Commission about the kinetic façade and the tri-vision panels, the Applicant refined the exterior appearance of the FEZ Building to reflect the various uses that will occur inside. Specifically, the Applicant removed several of the angled façade embellishments as well as the kinetic façade and the tri-vision panels. (Exhibits 44-44A).
- (f) The Commission expressed concerns about the variability of design along the ground floor retail storefronts. In response to this concern, the Applicant proposed a series of design guidelines for ground floor retail tenants to enable the retail tenants to display brand-specific design elements while maintaining overall design cohesion throughout the ground floor façade and retail spaces. (Exhibits 44 and 44A).
- (g) The Commission requested that the Applicant provide information regarding the ability to provide solar panels in the project. In response to this request, the Applicant's design team confirmed that solar panels can be installed on the roofs of the building without significant detrimental impact to the project's ability to satisfy GAR and stormwater management requirements. The Applicant requested that the Zoning Commission provide the Applicant flexibility to include solar panels on the

roof of the building if it is economically feasible. The Applicant noted that if solar panels are provided, they will be set-back from all building walls at a 1:1 ratio to minimize any appearance from adjacent public spaces. (Exhibit 44 and 44A).

- (h) In response to questions from the Commission regarding accessibility and inclusivity for seniors at Block B, the Applicant responded at the Hearing that it has designed Block B to be accessible to seniors, including providing access points that avoid stairs or steps. Block B will feature many public gathering spaces, including along the pedestrian-oriented 4th Street, which will be open to all, including seniors. The Applicant further noted in its Post-Hearing Statement that the retail offerings, including the food hall, will also be open to visitors of all ages and that the Children's Museum is intended to welcome all families, including grandparents visiting with grandchildren. Additionally, Meow Wolf will have a reduced entrance fee for seniors. (Exhibits 33 and 44, Tr. 71).
- (i) The Commission raised questions regarding the operation and use of the artist studios and how they will be similar to the Brookland Arts Walk. The Applicant provided information detailing that the Applicant will enter into a contract with an arts organization that will interview and select the artists for the studio and maker spaces. The Applicant stated that it will rent these spaces to artists at a dollar/sf net monthly lease rate not to exceed 50% of the average dollar/sf net monthly lease rate charged to the other retail tenants in Block B. (Exhibits 33 and 44).
- (j) The Applicant committed to relocating the dog run in the development of Block C or Block D to accommodate the realignment of Kennedy Street, as requested by the Commission. (Exhibit 44).
- (k) As requested by the Commission, the Applicant confirmed in its Post-Hearing Statement that the artist affordable units will be distributed throughout the residential building in Block B (but not on the upper two floors) at a ratio of unit types that is consistent with the market-rate unit types. (Exhibit 44)
- (l) The Commission requested detailed information about ticket prices for the Children's Museum and Meow Wolf and asked that the Applicant specify discounts or other ticket concessions that will be offered to community members and/or children. In its Post-Hearing Statement as well as in its list of proffered benefits, the Applicant committed to offering a Neighborhood Appreciation Day on a quarterly basis, during which the Explore! Children's Museum will offer discounted admission of 25% off of then-prevailing ticket prices for residents of Ward 4 and Ward 5. The Applicant also noted that Meow Wolf will establish separate admissions prices for adults, children, and seniors/military members and will provide a discounted admission fee for District residents of 15% less than the admissions fees charged for similar non-District residents. (Exhibits 33 and 44).
- (m) In response to the Commission's request that the Applicant consider deeper affordability levels and longer duration of affordability for the artist units, the

Applicant explained in its Post-Hearing Statement that it has agreed to lower the affordability level of the 30 artist units from 80% MFI to 60% MFI. The Applicant additionally noted that the principal benefits and amenities of this case are the arts and cultural uses that are provided in the FEZ building and the artist studio/maker spaces, which can only be achieved through significant financial subsidy from the Applicant. (Exhibit 44).

- (n) In response to the Commission's request that the Applicant provide more information on how the Applicant will coordinate with LRCA and ANC to ensure that local businesses are featured in the FEZ food hall, the Applicant detailed in its Post-Hearing Statement that it plans to provide the LRCA, ANC 5A, and ANC 4B with regular updates as to the status of the retail plans and food hall development at Block B. As the food hall development progresses, the Applicant plans to provide the LRCA, ANC 5A, and ANC 4B with detailed information regarding the leasing and tenant selection process for the food hall. The Applicant will also make presentations, as appropriate, at ANC and LRCA meetings to further explain the tenant selection process to interested retailers for the food hall. (Exhibit 44).
- (o) In response to a request from the Commission, the Applicant committed to increasing the amount of money loaded onto SmarTrip cards provided to residents to \$20.00. (Exhibit 44 and 44D).
- (p) The Commission requested that the Applicant confirm the LEED certification level for Block A. In its Post-Hearing Statement, the Applicant provided the LEED certification information for Block A. (Exhibit 44 and 44B).
- (q) The Commission requested that the Applicant address how the height of Block B is compatible with the Future Land Use Map ("FLUM") Comprehensive Plan Designation, and underlying zoning of the First-Stage PUD. In its Post-Hearing Statement, the Applicant provided a detailed explanation of how the development of Block B is compatible with the FLUM and underlying zoning of the First-Stage PUD approval. (See further discussion Finding of Fact 91).

49. The Commission finds that the Applicant responded completely to the Commission's questions and comments at the Hearing and its post-hearing submission materials.

Office of Planning Comments and Questions

50. In its Setdown Report report dated November 9, 2018, the Office of Planning requested additional information from the Applicant related to the following:

- (a) The program for, and possible impacts of, the Family Entertainment Zone;
- (b) Design details regarding façade materials, the retail frontage on South Dakota Avenue and the western façade of the seven-story western building;

- (c) Traffic generation, transportation management, pedestrian circulation and loading details that have been requested by DDOT in its ongoing meetings with the applicant;
 - (d) A breakdown, by count, of residential unit types and clarification of projected residential totals for the entire PUD if Phase B modifications area approved;
 - (e) Details on requested zoning relief and design flexibility; and
 - (f) Clarification of the depth and length of the subsidy for the artist housing/ maker space live units in the east building. (Exhibit 10).
51. In its PHS and 20-Day Statement, the Applicant responded to the questions raised in the OP Setdown Report. (Exhibits 11 and 22).
 52. In its Final Report dated March 25, 2019 (the “OP Final Report”), the Office of Planning recommended approval of the Second Stage PUD application and modification of ZC Order No. 06-10. OP noted the Applicant worked closely with OP throughout the application process on the Project’s design and the Applicant has significantly improved the Project’s massing, building elements, proposed facades, landscape architecture, design of public spaces, and publicly-accessible private outdoor spaces.
 53. The OP Final Report concluded that the Commission’s prior determination in the First-Stage Order that the APFT PUD is not inconsistent with the Comprehensive Plan is not affected by any subsequent changes to the Comprehensive Plan. OP also noted that the Property is identified by the Generalized Policy Map as a Housing Opportunity Area and the addition of a residential component to Block B is consistent with this designation. OP further concluded that the FAR of 2.55 proposed at the time of the report is not inconsistent with the Property’s FLUM designation. The FAR has been further reduced since the date of the OP Final Report to 2.47.
 54. The OP Final Report also discussed that the shift of residential units from Block C to Block B is a benefit and consistent with District objectives, and that OP applauds the Project’s proffer of a First Source Agreement. OP encouraged the Applicant to implement policies and procedures to promote hiring and training of neighborhood residents for on-site jobs and to encourage leasing to neighborhood-serving retail establishments. As discussed further herein (Finding of Fact 71(j)), the grocery store operator will hold at least three-monthly hiring open houses in the four months prior to the opening of the Aldi store. The open houses will provide local job candidates with information about employment opportunities with the grocery store operator.
 55. OP noted that the application was referred to several agencies, including DDOT, the Department of Energy and Environment (“DOEE”), DC Public Libraries (“DCPL”), Department of Housing and Community Development (“DHCD”), and Metropolitan Police Department (“MPD”). The OP Final Report states that DDOT has recommended several changes with which the Applicant agreed, including the elimination of the curb cut and garage entry previously proposed on South Dakota Avenue. The OP Final Report

also noted that the Applicant has worked closed with DOEE on sustainability and stormwater plans, that DCPL has no objection to the Project and will not be filing a separate report, and that MPD will not be filing a separate report.

56. OP points out that DCHD stated that clarity is needed on the subsidy and terms for the artist housing and any application that may be filed for related funding. DHCD also requested further clarity regarding the relocation plans for remaining Riggs Plaza Apartment residents. DHCD stated that Inclusionary Zoning should apply to the residential units that would be relocated from Block C to Block B and that the change in use from the approved First-Stage PUD warrants the proffering of additional Inclusionary Zoning units. As discussed further herein (Findings of Fact 36 and 42(b)), the Applicant is maintaining one of the Riggs Plaza Apartment buildings as part of the tenant relocation plan and the artist units will be offered at 60% AMI for 20 years from the issuance of the first Certificate of Occupancy in Block B. As discussed further below (see Finding of Fact 109), the Applicant does not believe that Inclusionary Zoning should apply to the residential units in Block B. However, the Applicant noted that if the Zoning Commission determined that the Inclusionary Zoning requirements do apply, it requests flexibility from those requirements. (Ex. __ *[Applicant's May 9, 2019 submission]*)
57. OP also requested additional information from the Applicant related to the following:
- (a) Clarification of overall lot occupancy and FAR with and without public streets and alleys, distinguishing between those that would remain open and those proposed for closure;
 - (b) Clarification of proposed square footages and FARs of particular uses, noting the size of particular uses both with and without space that does not count towards FAR;
 - (c) Clarification of whether the applicant is committing to LEED Gold Certification for Building B;
 - (d) Submission of additional illustrations of the relationship between Building A and the proposed Building B, particularly a ground level view from the to-be-closed 4th Street to Building A;
 - (e) Submission of larger-scale drawings of façade details;
 - (f) Submission of diagrams showing the distribution of residential unit types throughout the east and west wings of Building B;
 - (g) The addition of balconies to residential elements;
 - (h) Amenities focused on project residents;
 - (i) Clarification of where the proffered dog run will be relocated after it is eliminated by the future realignment of Kennedy Street;

- (j) Clarification of whether additional retail leases have been signed for Building A;
 - (k) Additional detail about wayfinding elements for pedestrians and emergency vehicles;
and
 - (l) Clarification of amount of solar panels to be provided.
58. The Commission finds that Applicant responded specifically to each item raised by OP in its “Response to Office of Planning’s Requests for Additional Information” filed on April 4, 2019, as well as during the Applicant’s presentation at the Hearing and the Applicant’s Post-Hearing Statement. (Exhibits 34 and 44).
59. At the Hearing, OP recommended that the Commission approve the Project and also requested additional information related to the following: (Tr. 102).
- (a) Clarification of whether the residential component of APFT not subject to Inclusionary Zoning is based on unit count or square footage.
 - (b) Clarification that amenities provided in Block A will be available to residents of Block B.
 - (c) Improvements in detail and representations of the design.
60. The Commission finds that the Applicant responded completely to OP’s questions at the Public Hearing and in the Applicant’s Post-Hearing Statement, specifically that the residential component of APFT not subject to Inclusionary Zoning is based on the total number of units approved in the First Stage Order and that the amenities provided in Block A will be available to the residents of Block B. Additionally, the revised plans submitted as part of the Post-Hearing Statement contain design updates that reflect the discussion during the Hearing related to the design, facades, and balconies at the Project. (Exhibits 34 and 44).

DDOT Report

61. In its report dated as of March 25, 2019 (the “DDOT Report”), DDOT stated that it had no objection to the approval of the second-stage planned unit development, subject to certain revisions and conditions. DDOT noted that it finds the Applicant’s proposed Loading Management Plan to be sufficient and that the preliminary public space plans are generally consistent with DDOT standards. (Exhibit 24).
62. At the Hearing, DDOT stated that it did not have concurrence from the Applicant on the following issues: (Tr. 105-107).
- (a) Dedication of funds that would have been applied to a full signal at South Dakota Avenue and Ingraham Street, if the full signal is ultimately not warranted.

- (b) Improvement of pedestrian infrastructure at the intersection of Hamilton Street, Ingraham Street, and the public alley and on 3rd Street.
- (c) Removal of the crosswalk and associated curb ramps across South Dakota at Jefferson Street.

63. The Applicant responded to the above three issues at the Hearing and in its Post-Hearing Statement as follows:

- (a) The preliminary signal warrant study included in the Applicant's Comprehensive Transportation Report indicates that a traffic signal would likely be warranted at the intersection of Ingraham Street and South Dakota Avenue upon full buildout of the Project. The Applicant intends to submit a full signal warrant study, and if found to be warranted, design and fund the construction of a full traffic signal concurrent with the construction of the Project. If the traffic signal is not warranted, then the traffic impact of the Project concluded based on the traffic analysis would not have been realized, and a commitment to the mitigation measure would not be required. (Exhibit 44C).
- (b) In its Post-Hearing Statement, the Applicant evaluated the costs necessary to create the pedestrian sidewalk and bike trail connection at 3rd Street NE (which is located outside of the Block B development) and provided a plan showing a new concrete 6' DDOT standard sidewalk as well as an 8' wide asphalt bike lane and a preliminary analysis, showing that the approximate cost of these improvements would be a minimum of \$50,000. The Applicant noted that it is committed to creating a safe and accessible circulation path for both pedestrians and vehicles as part of the Block B development and is making substantial improvements to the pedestrian infrastructure on the Block B site and immediately adjacent to the site. However, the Applicant believes that upgrading the pedestrian path on 3rd Street NE falls outside the scope of the Block B development and does not believe that it is a required mitigation in order for the Zoning Commission to approve this project. (Exhibits 44A, 44E, 44F).
- (c) At the Hearing, the Applicant committed to removal of the crosswalk and associated curb ramps across South Dakota at Jefferson Street.

64. At the hearing, DDOT also stated that some elements of the Project do not meet DDOT standards, including vaults in public space and a noncontinuous row of trees on South Dakota Avenue. In its Post-Hearing Statement, the Applicant proposed to improve the site frontage along South Dakota Avenue consistent with the frontage on Block A. (Exhibit 44C).

65. At the hearing, DDOT additionally noted that the Applicant did not concur with two of DDOT's revisions to the TDM plan, but that given the reduction in parking, DDOT finds the TDM plan to be sufficient as proposed by the Applicant. (Tr. at 106).
66. At the hearing, DDOT also noted its support for the reduction in parking. (Tr. at 106).
67. The Commission finds that the Applicant responded fully to DDOT's questions raised in the DDOT Report and at the Hearing and has provided satisfactory evidence to support its responses. The Commission agrees with the Applicant's analysis that it is not necessary for the Applicant to pay for the upgrading of the pedestrian path on 3rd Street, as it is not a necessary mitigation related to vehicular traffic impacts associated with this Project. Similarly, the Commission agrees with the Applicant's conclusion that if the full traffic signal warrant study determines that a traffic signal is not warranted at the intersection of South Dakota Avenue and Ingraham Street, then the Applicant should not be required to dedicate a similar amount of funds to DDOT for other traffic mitigation measures.

ANC 5A Report

68. At a duly noticed and regularly scheduled meeting on March 27, 2019, with a quorum present, ANC 5A approved a resolution in support of the project, noting specifically: (Exhibit 28.)
 - a. The ANC was supportive of the overall mix of uses for the Block B development, particularly the Aldi grocery store;
 - b. The ANC believes that the Applicant has addressed concerns about traffic, parking, pedestrian travel, stormwater and infrastructure, and security at the site.
 - c. The ANC found the Applicant to be responsive to questions and comments from the community.
69. The Commission gives "great weight" to the report from ANC 5A in support of the application.

Testimony of LRCA

70. At the Hearing, the LRCA testified in support of the Project and made several requests and comments regarding the development of the Project, including regarding (a) traffic and transportation issues, including parking signage, traffic signals, pick up/drop off zones, crosswalks, and pedestrian improvements, (b) construction management, including, debris, pest control, truck routing, and sidewalk closures, (c) pedestrian oriented lighting and the formerly proposed kinetic facade, (d) carsharing services and SmarTrip cards for residents, (e) security and trash cleanup measures, (f) flooding control and landscaping, (g) appropriate retail offerings and solicitation of community feedback on retail tenants, (h) admission discounts for offerings at the FEZ, (i) senior accessibility, (j) neighborhood-based hiring, (k) relocation of remaining Riggs Plaza residents, (l)

proposed use of existing warehouse buildings, (m) affordable housing, and (n) shared parking. (Tr. 116-130 and Exhibit 37).

71. The Applicant addressed each of these comments in its Post-Hearing Statement, as follows:

(a) The Applicant committed to installing a no-parking sign behind the crosswalk at 4th Street and Galloway Street, and committed to including monitoring of the bus and pick-up/drop-off areas as part of the loading manager's responsibilities. The Applicant also committed to completing the design and funding the construction of a full traffic signal on South Dakota Avenue and Ingraham Street, subject to DDOT approval and concurrent with construction of the Project, consistent with requests of community organizations. The Applicant also committed to improving any existing traffic signal poles that will be impacted by the Project, to investigate various traffic calming and pedestrian crossing improvements on Ingraham Street during the public space approval process, and to improve the site frontage along South Dakota Avenue, consistent with the frontage along Block A. (Exhibit 44C).

(b) The Applicant has provided a robust Construction Management Plan which addresses construction debris, trash, pest control, truck routing, and sidewalk closure in accordance with the LRCA requests. (Exhibit 44G).

(c) The Applicant committed to installing pedestrian oriented lighting for all pedestrian areas, sidewalks, and the shared 4th Street, and removed the kinetic façade from the FEZ design. (Exhibit 44 and 44A).

(d) As part of its TDM plan, the Applicant will provide a move-in kit to new residents that includes a carshare membership at a value of \$85.00 and two spaces will be designated in the garage for car-sharing vehicles. Additionally, the Applicant will provide new residents with a SmarTrip card preloaded with \$20.00. (Exhibit 44D).

(e) The Applicant has provided a Proposed Security Policies and Procedures at APFT, which addresses security policies and restrictions for Block B including surveillance measures, generous lighting, motion sensor lighting, night vision cameras, and coordination with the Metropolitan Police Department. Additionally, the Applicant has committed to provide pet waste bags and receptacles in the proposed dog park to reduce trash. (Exhibits 22C and 44).

(f) The Applicant committed to monitor inlets during construction to ensure that they are not blocked and will not increase flooding problems and the Applicant's Construction Management Plan notes that the Applicant will work with DCRA to maintain temporary stormwater management systems throughout the construction of Block B so as to avoid any adverse water impacts to the adjacent neighborhood. Furthermore, the development of Block B will include robust landscaping features that are complementary to those in Block A. (Exhibits 44A and 44G).

(g) The Applicant has committed to continue to regularly engage with the LRCA and the ANCs to facilitate coordination of input from residents. The Applicant will make information on retail plans available at the Lamond Riggs library for individuals without computer access and will continue to engage with the LRCA and the ANC to hear community feedback on the retail plans. (Exhibit 44).

(h) As discussed in Finding of Fact #52 above, both the Explore! Children's Museum and Meow Wolf will provide discounted admission to residents of Ward 4 and Ward 5, and to District residents, respectively.

(i) As discussed in Finding of Fact #40 above, Block B will introduce several public gathering spaces, particularly along the 4th Street pedestrian/flex area, that will be open to visitors of all ages. Block B will also include a variety of retail offerings and a food hall that will appeal to adults and seniors.

(j) The Applicant committed to continue to abide by the terms of the First Source Employment Agreement that were followed during the development of Block A. Furthermore, the grocery store operator will hold at least three-monthly hiring open houses in the four months prior to the opening of the Aldi store. The open houses will provide local job candidates with information about employment opportunities with the grocery store operator. (Exhibits 33 and 44).

(k) The Applicant's Post-Hearing Statement noted that as part of the relocation process for Riggs Plaza residents, the Applicant has relocated all but four of the original Riggs Plaza tenants. The Applicant will continue to work with the few remaining Riggs Plaza tenants to ensure a smooth and respectful relocation. (Exhibit 44).

(l) As described in the Applicant's Post-Hearing Statement, the Applicant envisions that the charter school will begin operations in the fall of 2020. (Exhibit 44).

(n) The Applicant explained in its Post-Hearing Statement that the First-Stage Order approved an affordable housing requirement of 171 affordable housing units. Block A included 141 affordable units and the remaining 30 affordable units will be provided in Block B. Upon the delivery of the Block B residential units, the affordable units in Block A and Block B will fulfill the affordable housing requirement set forth in the approved First-Stage PUD order. To the extent that additional housing units above the 929 approved in the First-Stage PUD Order are provided in future phases, such additional housing will be subject to Inclusionary Zoning. (Exhibit 44).

(m) The Applicant's Post-Hearing Statement discusses that shared library parking is not appropriate for Block B because the Lamond-Riggs library is an institution that primarily serves its immediately surrounding neighborhood. Due to the close proximity to its primary patrons' residences, library patrons may walk or bike to the library. The Applicant further noted that it would be difficult for the Applicant and the library to develop and coordinate a parking validation system. Furthermore, the Applicant stated its concern that commuters using the Fort Totten Metrorail station will utilize the parking at

Block B as commuter parking and stop by the library simply for validation at the end of the day, placing a significant burden on library staff to manage a parking validation system. (Exhibit 44).

72. The Commission finds that the Applicant has fully and satisfactorily addressed each of the LRCA's comments and questions raised in its testimony in support of the application.

Additional Testimony in Support

73. At the Hearing, the Commission heard testimony from Deborah Grimstead, a resident living within 200 feet of the Project. Ms. Grimstead testified in support of the Project, but asked that the Applicant consider the combined effects of the development of Block B, the Lamond-Riggs library and a nearby townhome development on transportation connectivity. (Tr. 132-134).
74. In its Post-Hearing Statement, the Applicant addressed Ms. Grimstead's requests by noting that maintenance of traffic plans are required to be reviewed and approved by DDOT prior to construction impacts to public streets and that the projects identified by Ms. Grimstead will be required to submit Maintenance of Traffic plans for their respective construction schedules. The Applicant committed to work with DDOT to coordinate the Maintenance of Traffic plans for the adjacent developments to the extent possible, pending a formalized timeline of building for the various projects. (Exhibit 44C).
75. At the Hearing, the Commission heard testimony from Gavin Baker in support of the Project. In his testimony, Mr. Baker requested that the Applicant explore using shared parking, particularly with respect to the Lamond-Riggs library and provide validated parking in Block B for visitors to the Lamond-Riggs library. Mr. Baker also requested that the Applicant provide a 1:1 ratio of bedrooms to long-term bicycle parking in the residential portion of Block B and address the traffic signal at Ingraham Street and South Dakota Avenue. (4/4/19 Tr. 134-137).
76. In its Post-Hearing Statement, the Applicant addressed Mr. Baker's requests as follows:
- (a) Shared and Validated Parking: The Applicant's Post-Hearing Statement explained the Applicant's position that shared library parking is not appropriate for Block B.
 - (b) Bicycle Parking: The Applicant will provide the amount of bicycle parking required by the Zoning Regulations. The Applicant wants to ensure that space is used optimally and efficiently at Art Place at Fort Totten and that excess bicycle storage does not go unused. Currently, at Block A, 232 long-term bicycle storage spaces are offered, but only approximately 75 are regularly used. There are 18 retail bicycle storage spaces offered in Block A, and they are also rarely used and often empty. (Exhibit 44).

(c) Traffic Signal: The Applicant addressed the traffic signal at the intersection of Ingraham and South Dakota Avenue in its Post-Hearing Statement. (Exhibit 44C).

77. Although the comments from Ms. Grimstead and Mr. Baker were part of testimony in support of the Project, the Applicant nevertheless responded to such comments in full. The Commission finds that the Applicant has satisfactorily responded to Mr. Baker's and Ms. Grimstead's comments in its Post-Hearing Statement.
78. The South Dakota Avenue/Riggs Road Main Streets program submitted a letter of support for the Project. The letter noted that the South Dakota Avenue/Riggs Road Main Streets program believes the Project will be an exciting addition to the Ft. Totten and Lamond Riggs neighborhoods and will help foster and encourage a dynamic and vibrant streetscape along South Dakota Avenue and that the proposed mix of uses – including the arts, a museum, retail, and a grocery store – will help create a signature destination for the community. (Ex. 27)

Testimony From Casey Trees

79. At the Hearing, the Commission received testimony from Spenser Balog, a representative of Casey Trees. In his testimony, Mr. Balog requested that the Applicant protect 7 of the existing street trees along 4th Street, NE, protect 3 trees that are on the perimeter of the future Art Place building and one tree beside the residential buildings on the west side, and adopt a 3:1 planting ratio.

In its Post-Hearing Statement, the Applicant addressed Mr. Balog and Casey Trees' comments as follows: (Exhibit 44 and 44H).

(a) Protection of 7 existing trees. The Applicant noted that 6 of the 7 trees identified by Casey Trees are in the proposed excavation area of Block B and therefore cannot be preserved. However, the Applicant will preserve one of these 7 trees. While this tree will be preserved during the construction of Block B, the future realignment of Kennedy Street will require the removal of this tree.

(b) Protection of 3 trees along perimeter and one tree beside the residential building. The Applicant noted that one of the trees identified by Casey Trees along the perimeter of the Art Place building no longer exists. The two other trees identified along the perimeter of the future Art Place building cannot be preserved as they are located within the limits of the project's excavation and disturbance area. The tree identified on the north side of the residential building can be preserved. While this tree will be preserved during the construction of Block B, the future realignment of Kennedy Street will require the removal of this tree.

(c) Adopt a 3:1 planting ratio. The Applicant noted that as Block B is an urban project the ability to introduce new plantings is limited and a 3:1 planting ratio cannot be met. However, Block B is designed as an environmentally sensitive project, including its proximity to mass transit, provision of bikeshare facilities, and robust landscaping and

planting plans. Block B will fulfill the required Green Area Ratio as well as the applicable stormwater management requirements.

80. The Commission finds that the Applicant has fully and satisfactorily responded to Casey Trees' comments. The Applicant's responses are supported by substantial evidence in the record, including the Applicant's tree inventory and tree removal plans.

Compliance with PUD Requirements

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

- (a) The Project is superior to the development of the Property under the matter-of-right standards for the following reasons:
- **Public Space**. The Project's physical form—loading access from alleys, new construction facing the street, a tree-lined streetscape, numerous public plazas, a pedestrian-oriented 4th Street—encourages pedestrian use and mitigates traffic impacts by promoting and encouraging active mobility over driving.
 - **Retail, Residential, and Cultural Uses**. The Project adds residential, cultural, and retail uses in a transit-oriented location. The Project will introduce innovative cultural and arts space for both children and adults, which will serve as an anchor for the surrounding neighborhood. The PUD process provides the necessary flexibility and density bonuses to allow the Applicant to redevelop the site while providing the public benefits described below. Additionally, these uses provide employment and economic benefits, which makes the Project superior to a matter-of-right development.
 - **Other Public Benefits**. The Project includes the other Public Benefits, as discussed further below (See Findings of Fact 102-112), many of which would not be required or feasible under a matter-of-right development.
 - **Community Engagement**. A matter-of-right development would not have afforded the community as many opportunities to engage with the Applicant and provide feedback. The PUD process has facilitated extensive community engagement and the Applicant has responded to community.

- (b) The Public Benefits are commendable in number and quality. For the reasons set forth more fully in the Public Benefits findings, the Public Benefits are of a commendable quality. (See Findings of Fact 102-112). The Commission finds that the Public Benefits are meaningful and are not inconsistent with the Comprehensive Plan.
- (c) The Project protects and advances the public health, safety, welfare, and convenience.
- Public Health. The Project protects and advances the public health by being designed in a high-quality manner and in compliance with all applicable construction codes. The Project will replace the existing residential units on the Property that are outdated and in poor condition and the proposed neighborhood-serving retail uses, such as the Aldi grocery store and food hall will provide residents with more variety of food offerings. The Applicant has also developed a robust Construction Management Plan to safeguard public health during construction of Block B. The Project includes a number of mitigation measures, notably the pedestrian-oriented design, outdoor spaces, and bicycle facilities, which protect and affirmatively advance the public health. The Project does not entail any unwarranted overcrowding or overpopulation. The Project also complies with all applicable environmental performance standards.
 - Safety. The Project protects and advances safety: the Applicant has devised significant Proposed Security Policies and Procedures at APFT to safeguard visitors and residents to Block B. Furthermore, the Project will involve increased lighting and streetscape improvements, enhancing the safety of pedestrians.
 - Welfare. The Project protects and advances the public welfare by bringing economic activity and cultural offerings to the Fort Totten neighborhood. The Project introduces a unique experience with Meow Wolf and provides multiple opportunities for children and family education at the Explore! Children's museum. The Applicant has also agreed to multiple measures to promote and encourage the hiring of local residents for jobs related to the Project.
 - Convenience. Finally, the Project protects and advances the public convenience by adding new neighborhood-serving retail uses. Streetscape enhancements will also improve convenience in access to the Fort Totten Metrorail station.
- (d) The Project is not inconsistent with the Comprehensive Plan and would not result in any action inconsistent with the Comprehensive Plan. Extensive findings regarding the Project's lack of inconsistency with the Comprehensive Plan are provided below. (See Findings of Fact 88-93).

- (e) The Project does not circumvent the Zoning Purposes. The Project does not circumvent the Zoning Purposes. The general intent and purposes of the Zoning Regulations are, *inter alia*, to promote the “public health, safety, morals, convenience, order, prosperity, and general welfare.” 11-A § 101.1. Findings regarding the Project’s protection and advancement of the public health, safety, convenience, and welfare are provided above.
- Morals. The Project promotes morals insofar as the Application was undertaken with extensive community outreach. The Commission finds that this community dialogue exemplifies public morals as expressed through the Zoning Regulations and PUD process. Furthermore, the Project promotes morals by providing educational opportunities for the District’s children and families.
 - Order. The Project exemplifies orderly, well-planned development that is undertaken on behalf of the best interests of the residents of the District with respect to the above-cited objectives. The Project complies with all of the specific development standards set forth in the Zoning Regulations. The Project’s residential component underwent significant modification to maximize access to light and air, and the Project overall allows for an appropriate amount of light and air by virtue of its bulk, height, orientation, setbacks and location east of existing residences.
 - Prosperity. As noted with respect to public welfare above, the Project promotes prosperity by putting to productive use land, including retail, residential, and cultural space, which is currently underutilized with outdated residential buildings. The Project also promotes public prosperity with respect to its future provision of tax revenue to the District and its addition of many new employees. It also introduces a new transit-oriented employment opportunity for District residents.
- (f) The Project has undergone a comprehensive public review by this Commission, which has evaluated the Project’s flexibility and incentives in proportion to the Public Benefits. The Commission has reviewed the entirety of the record. The record is complete with multiple detailed briefings from the Applicant and reports from multiple District agencies (as identified in the OP Final Report) and the ANC. The Commission heard presentations on the Application and had the opportunity to ask questions of the Applicant, OP, DDOT, and the ANC. In every material way, the Applicant responded satisfactorily to the requests from the Commission. The Applicant has also responded thoroughly to OP, DDOT, the ANC and the LRCA. The record in this matter is unquestionably full, and the Commission has reviewed it in its entirety.

82. The Commission finds that the Project satisfies the PUD Requirements.

PUD Balancing and Evaluation Standards

PUD Balancing

83. As set forth in the Zoning Regulations, the Commission must evaluate and grant or deny a PUD application according to the standards of Section 304 of Subtitle X. The Applicant has the burden of proof to justify the granting of the Application according to such standards. (X, § 304.2).
84. The Commission's findings in relation to a PUD must be supported by substantial evidence. *See Howell v. District of Columbia Zoning Comm'n.*, 97 A.3d 579 (D.C. 2014). The Commission finds that the Applicant has satisfied the relevant evidentiary threshold to carry its burden of proof in the instant proceeding. The Applicant has provided multiple filings which provide relevant evidence to the issues of material fact that were raised in this case. This Commission, in its reasonable determination, accepts such filings as containing evidence substantial to support the findings contained herein.
85. Pursuant to Subtitle X, Section 304.3, in deciding this PUD Application the Commission has, according to the specific circumstances of this Application, judged, balanced, and reconciled the relative value of: (a) the Public Benefits and other project amenities offered as part of the Project, (b) the Development Incentives requested by the Applicant (where, pursuant to Subtitle X, Section 303.12, the requested Map Amendment is a type of PUD incentive), and (c) any potential adverse effects (collectively, the "PUD Balancing Test").
- (a) The Public Benefits are numerous and of a high quality. In sum, the Project provides the numerous Public Benefits. A full accounting of the Public Benefits is provided below. (See Findings of Fact 102-112).
 - (b) The Project's Development Incentives are comparatively minor and appropriately granted in light of the Public Benefits. The Commission finds that the Applicant requests comparatively minor Development Incentives for the Project. The most significant, by far, of the Development Incentives is the Map Amendment, which was approved in the First-Stage Order. The Map Amendment allows the Applicant to construct the Project to a higher density and greater height than is possible as a matter-of-right. The Development Incentives underlie and indeed make possible the Public Benefits, and the Public Benefits justify the additional height and density afforded by the Map Amendment.
 - (c) Any potential adverse effects of the Project are appropriately mitigated or outweighed by the Public Benefits. As discussed herein, the Applicant has evaluated and studied potential adverse impacts of the Project. These potential adverse effects are either capable of being mitigated or appropriate in light of the Public Benefits, as discussed further in Finding of Facts 102-112, below.
 - (d) The Public Benefits together outweigh the Project's potential adverse effects and justify the Development Incentives. The Project provides numerous Public

Benefits, which offset the additional density sought through the application. During its consideration of the First-Stage PUD, the Commission determined that the development incentives and related rezoning for the entire Property were appropriate and justified by the benefits and amenities offered by the PUD. Here, the Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations for this second stage PUD. The benefits and amenities proffered by the Project are commensurate with the flexibility afforded by the PUD process.

86. The Commission has reviewed the record, identified the circumstances of the Application, the Property, the Project and the surrounding area, and balanced, reconciled, and judged the Public Benefits against the PUD Incentives and potential adverse effects. In sum, the Commission finds that the Project satisfies the PUD Balancing Test.

PUD Evaluation Standards

87. As set forth in the immediately succeeding paragraphs, the Commission hereby also finds that the Project: (a) is not inconsistent with the Comprehensive Plan or other adopted public policies and active programs (collectively, the “Plan”) related to the Property; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and amenities, which are not inconsistent with the Plan with respect to the Property (collectively, the “PUD Evaluation Standards”). *See X § 304.4.*
88. Comprehensive Plan Purposes. The purposes of the Comprehensive Plan are to: (a) define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development; (b) guide executive and legislative decisions and matters affecting the District and its citizens; (c) promote economic growth in jobs for District residents; (d) guide private and public development in order to achieve District and community goals; (e) maintain and enhance the natural and architectural assets of the District; and (f) assist in conservation, stabilization and improvement of each neighborhood and community in the District. *See DC Code Section 1-306.01(b).* The Project advances these purposes by furthering social and economic development through the construction of new cultural and retail uses on currently underutilized land, offering a design that prioritizes transit and pedestrian activity over automobiles, creating significant educational and cultural establishments, improving the urban design and landscaping, surrounding the Property, providing market-rate and workforce housing, investing in a District neighborhood that seeks new investment, committing to the implementation of the TDM measures, and improving the urban design and public space surrounding the Property. The Project assists in the improvement and stabilization of the urban environment in the immediate neighborhood and the District as a whole. The Project will have a transformative effect on the neighborhood and introduce high-quality, innovative artistic and educational programming and institutions to the residents of the surrounding neighborhood as well as to the District as a whole.

89. OP Findings regarding the Comprehensive Plan. The OP Final Report finds that the Project is not inconsistent with the Comprehensive Plan. (Exhibit 25). The Commission gives great weight to these OP findings and incorporates them herein.
90. As part of the First-Stage Order, the Commission found that the proposal for Art Place at Fort Totten, was consistent with the Plan and other adopted policies of the District. See First-Stage Order, Conclusions of Law ¶ 8 (“Approval of this PUD and change of zoning is not inconsistent with the Comprehensive Plan.”). Given the findings in the record, the clear conclusions of law in the First-Stage Order, and the consistency between the instant Project and the First-Stage Order, the Commission finds that the Project is not inconsistent with the Comprehensive Plan.
91. The FLUM designates the Property a mix of Medium Density Residential and Medium Density Commercial. The Medium-Density Residential designation defines areas where mid-rise (four to seven stories) apartment buildings are the predominant use, but also applies to taller residential buildings. Buildings in Medium-Density Commercial areas are generally eight stories in height. The First-Stage Order found that residential buildings of up to 90 feet were appropriate for this site and approved an eight-story, 90-foot-tall residential building to be located in Block C (see First-Stage Order, Findings of Fact # 36 and #49(a,j)). The residential buildings proposed for Block B range between 5-7 floors, with a maximum height of 80’, and the FEZ building is proposed to reach a maximum height of 77’6”. These heights are in line with the number of stories that typically characterize Medium Density Residential/Medium Density Commercial and in fact are smaller in scale than the 90’ height that was approved as appropriate for the site in the First-Stage PUD order. Furthermore, as noted by the District of Columbia Court of Appeals in *Friends of McMillan Park v. District of Columbia Zoning Commission*, more intensive development than is otherwise reflected in the FLUM may be permissible, specifically “a larger development that as a whole is consistent with the FLUM designation may contain individual buildings with greater height or density”. (*Friends of McMillan Park v. District of Columbia Zoning Commission*, 149 A.3d 1027 (D.C. 2016)). In this case, the varying heights of the residential and FEZ buildings are appropriate under the FLUM, particularly when the Block B site is taken as a whole. Therefore, The Commission finds that the Project, in the con-text of the overall AFPT PUD, complies with the FLUM.
92. Taken as a whole, the Project is not inconsistent with the Plan or with the objectives of other adopted public policies applicable to the Property.
93. The Commission finds that there were no particularized allegations of inconsistency with the Comprehensive Plan raised by the ANC or any other party or person. Therefore, for the reasons set forth more fully above the Commission finds that the Application is not inconsistent with the Plan.

Project Impacts

94. For the following reasons, the Commission finds that the Project does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities, but instead creates impacts that are either favorable, capable of being mitigated, or acceptable given the Public Benefits.
95. Land Use Impacts. From a land use perspective, the Project will create no unacceptable impacts on surrounding neighborhoods. Given the Project's proximity to Metrorail transit and given the overall approvals in the First-Stage Order for additional commercial activities on the Site, the density on the Property will have positive impacts on the surrounding neighborhoods. The Project will help transform Fort Totten into a mixed-use, transit-oriented neighborhood. Accordingly, the overall land use impacts of the Project will either be favorable or capable of being mitigated. (Exhibit 2).
96. Development-Period Impacts on Residents and Neighbors. During the development period for Block B, the Project's impacts on residents and neighbors are capable of being mitigated. As part of the materials submitted in the application for the First Stage Order, the Applicant prepared a tenant relocation plan designed to ensure that existing tenants are not displaced. The Applicant's Post-Hearing Statement noted that as part of the relocation process for Riggs Plaza residents, the Applicant has relocated all but four of the original Riggs Plaza tenants. The Applicant will continue to work with the few remaining Riggs Plaza tenants to ensure a smooth and respectful relocation. Additionally, the Applicant has committed to an extensive Construction Management Plan to minimize construction-related disruption to neighbors. (Exhibit 2, Exhibit 44G).
97. Open Space, Urban Design, and Massing Impacts. The Project favorably improves upon the existing conditions with respect to the relationship between the buildings, open spaces, and the public realm. The current relationship between the Riggs Plaza Apartment buildings and the surrounding open spaces and public realm is a source of considerable concern from a public safety perspective. The existing buildings and open spaces form partially-enclosed and semi-observed areas that create uncomfortable conditions for pedestrians and facilitate illicit outdoor activities. The Project greatly improves upon these conditions by being oriented along the surrounding streets with open and well-lit pedestrian zones. The lively streetscape and open plazas will create active areas for families visiting the FEZ as well and residents to enjoy. The Project will have a significantly favorable impact on open space in the neighborhood. (Exhibit 2).
98. Design and Aesthetic Impacts. The Applicant stated that it hopes that the Project's design and architecture will create a point of resident and community pride. The Project incorporates the highest-quality architecture and exemplary design. The materials and design details of the buildings in Block B are significant improvements over the existing conditions. Upon completion of the Block B redevelopment, the new buildings will appear fresh and emblematic of new investment. The Applicant noted that the Project will usher in a new architectural vocabulary that will establish a high baseline of quality of design and finishes expected for projects along South Dakota Avenue, NE. (Exhibit 2).

99. Transportation and Mobility Impacts. The proposed Project will not have an adverse impact on the public transportation facilities or roadways that it will rely on for service. The Project's vehicular traffic impacts are strongly mitigated by its transit options, and the Project achieves the right balance of mobility. The Property is well-served by transit and vehicular infrastructure. The Fort Totten Metrorail station is only several hundred feet from the Property, and it is expected that many of the Project's residents and visitors will use public transit. The Applicant has agreed to pay for a full traffic signal warrant study at the intersection of South Dakota Avenue and Ingraham Street. If a fully signalized traffic intersection is warranted, the Applicant has agreed to design and fund the construction of the full traffic signal concurrently with the construction of the Project.

Additionally, the Project includes an extension TDM plan to mitigate any transportation impacts. The TDM plan includes the following commitments for the life of the Project: (Exhibits 2 and 44D).

- (a) The Applicant will work with DDOT to identify a space for a Capitol Bikeshare station on or near the site and provide funding for that station;
- (b) A member of the property management team will be designated as the Transportation Management Coordinator (TMC). The TMC will be responsible for ensuring that information regarding transportation options is disseminated to retail and residential tenants of the building. The position may be part of other duties assigned to the individual. The contact information for the TMC will be provided to DDOT and goDCgo, and the TMC will work with them to promote sustainable and active transportation options to and from the site;
- (c) The property management website will include information on and/or links to current transportation programs and services, such as:
 - Capital Bikeshare,
 - Car-sharing services,
 - Ride-hailing services (e.g. Lyft or Uber),
 - Transportation Apps (e.g. Metro, Citymapper, Spotcycle, Transit)
 - The requirements of the transportation demand management plan.
- (d) A move-in kit will be provided to each new resident for the first 10 years of the development containing:
 - A Get Around Guide highlighting local transportation options
 - A one-year annual membership to Capital Bikeshare (\$85)
 - A carshare membership of equivalent value (\$85) and
 - A SmarTrip Card preloaded with \$20.00.
- (e) The retailers and performing arts space tenants will work with DDOT and goDCgo to tailor and share transportation options to/from the site;
- (f) The performing arts space tenant will share "Getting Here" information with attendees and guests ahead of any events and post the same information on the website;
- (g) An electronic display will be provided in residential lobby as well as the main cultural building lobby and will provide public transit information such as nearby Metrorail stations and schedules, Metrobus stops and schedules,

- car-sharing locations, and nearby Capital BikeShare locations indicating the number of bicycles available at each location;
- (h) Shower and changing facilities will be provided in the retail bike parking area building for employees who bike, walk, or jog to work;
 - (i) Convenient and covered secure bike parking facilities will be provided in accordance with the minimum required by the Zoning Regulations;
 - (j) A bicycle repair station will be provided on the P1 level of the garage;
 - (k) A sufficient number of electric car charging stations as required under LEED ND standards will be provided in the garage;
 - (l) The cost of parking spaces for tenants will be unbundled from leases and will be based on market rates, and spaces will not be leased to outside groups with exceptions for district services;
 - (m) Two spaces will be designated in the garage for carsharing vehicles, and the applicant will work with regional carsharing companies to locate vehicles on this site if possible based on demand;
 - (n) Two spaces will be designated in the garage for vanpooling spaces to be used by commuters who vanpool to the area for work;
 - (o) Two annual transportation events will be held for residents, such as walking tours of local transportation options, a transportation fair, lobby events, and resident socials;
 - (p) The TMC will monitor parking demands so as to minimize spillover parking in surrounding neighborhood;
 - (q) The TMC will monitor the use of the Capital Bikeshare and bicycle use around the Block B site to look for opportunities to implement elements of the moveDC plan, particularly with respect to bicycle infrastructure.
100. The Project will not have an adverse impact on the public facilities and District services that it will rely on for service. (Exhibit 2).
- (a) Water Demand: The average daily water demand for the Project can be met by the existing District water system. The proposed connection for the fire and residential water supply will be made within the existing distribution system and will be coordinated with DC Water.

- (b) Sanitary Sewer Demand. The proposed connection for the sanitary sewer connections for the Project will be made within the existing distribution system and will be coordinated with DC Water.
- (c) Stormwater Management. The Project has been designed to achieve high levels of on-site stormwater retention. The proposed green roofs, permeable pavement, and bioretention devices are designed to meet District Department of Energy and Environment (“DOEE”) stormwater management retention and detention requirements. The requisite inlets and closed pipe system will be designed and constructed in compliance with the standards set by DOEE, DC Water, and DDOT.
- (d) Solid Waste Services. Solid waste and recycling materials generated by the Project will be collected regularly by a private trash collection contractor.
- (e) Electrical Services. Electricity for the new Buildings will be provided by the Potomac Electric Power Company (“Pepco”) in accordance with its usual terms and conditions of service. All electrical systems will be designed to comply with the D.C. Energy Code. Transformers will be installed on the Property in accordance with Pepco’s design guidelines.
- (f) Energy Conservation. The Project will be constructed in full compliance with Article 24 (Energy Conservation) of the District of Columbia Building Code. Conformance to code standards will minimize the amounts of energy needed for the heat, ventilation, hot water, electrical distribution, and lighting systems contained in the building.
- (g) Erosion Control. During excavation and construction, erosion on the Property will be controlled in accordance with District of Columbia law.
- (h) Public Schools. The Project is unlikely to have an unacceptable impact on schools in the District given the size of the Project, its mix and type of units, and the capacity for the District’s nearby schools to take on additional students. Because of the nature of the Project’s demographics, and the variety of school choices nearby, the Applicant expects that the school network will be able to accommodate, without any unfavorable impacts, the school-age children that may reside at the Project.

101. In sum, the Project’s impacts are either capable of being mitigated or not unacceptable in light of the Public Benefits.

Public Benefits

102. The objective of the PUD process is to encourage high-quality development that provides public benefits and amenities by allowing greater flexibility in planning and design than may be possible under matter-of-right zoning. (X § 305.1).
103. The Project achieves the goals of the PUD process by creating a high quality mixed-use development with significant related Public Benefits. The Commission finds that the Project includes the Public Benefits enumerated in the following paragraphs, which are not inconsistent with the Plan as a whole with respect to the Property.
104. Subtitle X, Section 305.4 requires that a majority of the public benefits of the proposed PUD relate to the geographic area of the ANC in which the application is proposed. Findings with respect to the geographic effect of the Public Benefits are addressed in the following paragraphs. In general, the Public Benefits relate to the area of the ANC.
105. Building Space for Special Uses, Promotion of the Arts, and Uses of Special Value to the Neighborhood or the District as a Whole. Pursuant to Subtitle X, Section 305.5(j) of the Zoning Regulations, “building space for special uses including, but not limited to, community educational or social development, promotion of the arts or similar programs and not otherwise required by the zone” are public benefits and project amenities to be evaluated by the Zoning Commission. The FEZ and children’s museum will provide a variety of innovative enrichment activities for the community. The Project will have a transformative effect on the neighborhood by introducing first-class artistic and educational programming. The Applicant is strongly committed to providing services for children as well as sponsoring projects in the arts and humanities. The Project will also provide a variety of uses that will serve the neighborhood, such as the grocery store, new residential uses, including artist space, and ground floor retail. The FEZ and children’s museum will enhance the neighborhood, but also provide value to the District as a whole, by offering unique educational and artistic programming for all residents of the District that is easily accessible by public transportation. The FEZ and the children’s museum are a superior public benefit. (Exhibit 2).
106. Superior Urban Design, Architecture, and Landscaping, Creation of Open Spaces. The Project’s urban design is a superior public benefit. Subsection 305.5(a) of Subtitle X lists urban design as a category of public benefits and project amenities for a project proceeding under a PUD. The Project is a unique, culturally immersive, art-inspired place that brings a unique, world-class arts and cultural destination to the Lamond Riggs and Fort Totten neighborhoods. The urban design strategy reinforces the overall intent of the master plan, to make a great transit-oriented neighborhood at Fort Totten, with walkable streets, great outdoor places and a diverse program of activities and living accommodations. The Project incorporates numerous urban design precepts that guide attractive urban design in the District and that represent significant improvements over the existing aesthetic and functional conditions of the existing buildings on the Property. Indeed, a primary objective of the APFT overall (and by extension the Project

individually) is to address many of the urban design ills that plague the outdated Riggs Plaza Apartment complex and that contribute to crime and other social concerns in the neighborhood. Examples of the Project's superior design and architectural elements include its strong orientation to the surrounding streets, the prioritization of pedestrians over vehicles, quality public realm and amenities, a mixture of uses, and the thoughtful site planning as part of the integrated redevelopment of the site. Moreover, the high quality of design, materials, and finishes proposed for the Project announces the emergence of APFT and establishes a baseline for future phases of the site's redevelopment, signaling the Applicant's commitment to delivering high-quality housing and retail development. Ultimately, the Project will re-calibrate expectations about the quality of design and architecture for future development nearby. (Exhibits 2, 33, 45).

107. Superior Landscaping, Creation of Open Spaces. Subsection 305.5(b) of Subtitle X includes superior landscaping, or creation or preservation of open spaces as a public benefit. Block B includes extensive plaza areas, café spaces and pedestrian focused activity. These areas are identified as: the HUB Plaza, Art Place Plaza, Central Plaza, and Kennedy Plaza, the to-be-closed 4th Street - which becomes a Flexible Pedestrian Zone, and the public streetscapes along South Dakota Avenue, Ingraham Street, and Kennedy Street. A dog-run is provided at the corner of 4th Street and Kennedy Street and will be retained in future development phases after the relocation of Kennedy Street. (Exhibits 2, 33, 45).
108. Site Planning, and Efficient and Economical Land Utilization. The proposed site plan is another superior benefit of the Project. Pursuant to Subtitle X, Section 305.5(c) of the Zoning Regulations, "site planning and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Zoning Commission. The benefits of the Project's site plan and efficient land utilization are captured in the Project's variety of uses and number of new residential units provided. The development of a mix of residential uses, a grocery store, retail uses, and a unique entertainment establishment at the Project will generate revenue for the District in property and sales tax as well as add vitality to the existing neighborhood and encourage additional high-quality development in the surrounding area. The fact that the Project is adjacent to the Fort Totten Metrorail station will only contribute to this effect. The Project's site planning is a superior public benefit. (Exhibit 2).
109. Housing and Affordable Housing. The Consolidated and First-Stage PUD Order for the Project (ZC Order Nos. 06-10, 06-10A - 06-10C) required the provision of 171 income and age restricted residential rental units in the approved PUD. Block A includes 141 income and age restricted units. Block B will contain 30 artist housing units which will be reserved as affordable for a period of 20 years from the issuance of the first Certificate of Occupancy in Block B at the 60% MFI level. Consistent with the affordable housing requirements of the First-Stage PUD Order, the 30 artist affordable units will be distributed vertically and horizontally through the residential building in Block B, but not on the upper two floors, at a ratio of unit types that are consistent with the market-rate unit types. The Applicant will enter into a contract with a qualified organization that will interview and select the qualified artists for these residential units.

As with the development of Building A, the development of the Project will ensure that existing residents of the Riggs Plaza Apartment complex are not displaced, by offering relocation for tenants in good standing to income-restricted units at APFT. The Project's provision of affordable units, market-rate units, and artist housing will provide a variety of housing types to help ease the District's housing shortage. (Exhibits 2, 33, 45).

The Applicant stated that it did not believe that Subtitle C § 1008.1 requires that the mere modification of an approved first stage PUD order, when that modification does not seek to increase the amount of permitted residential density in the approved first stage PUD order but merely moves forward the time period in which the originally required affordable housing will be provided, triggers an Inclusionary Zoning requirement when the Zoning Commission previously approved an affordable housing requirement for the project. The Applicant also stated that if the Zoning Commission believes that this application is subject to IZ, the Applicant requested flexibility from the Inclusionary Zoning requirements. The Applicant's rationale for granting the Inclusionary Zoning flexibility is as follows:

- ZC Order No. 06-10 established the affordable housing requirements for the development of the entire PUD project. The affordable units were to be provided in Blocks A and C. Condition No. 8 of ZC Order No. 06-10 required a minimum of 171 dwelling units be reserved as affordable housing units.
- Block A of the project included 141 affordable units, consistent with the requirements outlined in ZC Order No. 06-10. The remaining 30 affordable units, which were initially anticipated to be provided in the development of Block C, are now being provided in Block B. The inclusion of residential units in Block B is one of the primary reasons that ZC Case No. 06-10D is a first stage PUD modification, in addition to a second stage PUD application. Upon the delivery of the Block B residential units, affordable units in Blocks A and B of the project will account for approximately 22% of the total number of residential units in the project.
- The first stage PUD modification that is being proposed in ZC Case No. 06-10D does not seek to increase the overall residential density (approximately 930 residential units) that was approved by the Zoning Commission in ZC Case No. 06-10, as Blocks A and B will include approximately 790 residential units. The inclusion of residential units (both affordable and market-rate) in Block B, rather than in later phases, is a benefit of the overall PUD project. (Ex. 46)

110. Employment and training opportunities. Subtitle X, Section 305.5(h) provides that employment and training opportunities are also public benefits. The Project will also create employment benefits. The Applicant entered into a First Source Employment Agreement with DOES as part of the overall APFT redevelopment. The Applicant will continue to abide by the terms of the First Source Employment Agreement that were followed during the development of Block A. Additionally, the grocery store operator believes that being a part of a community means hiring locally. Therefore, the grocery

store operator will hold at least three monthly hiring open houses in the four months prior to the opening of the store. The open houses will provide local job candidates with information on employment opportunities with the grocery store operator. Furthermore, the Project will generate a significant number of construction-related jobs during development and permanent jobs in the variety of residential, retail, and cultural and artistic establishments that comprise the Project. (Exhibits 2, 33, 45).

111. Environmental and sustainable benefits. Section 305.5(k) provides that environmental benefits are also public benefits to the extent such environmental benefits exceed the standards required by zoning or other regulations. The Applicant will pursue sustainability certification for the entire PUD under the US Green Building Council's LEED Neighborhood Development (ND) rating system. LEED Neighborhood Development rating system. (Exhibits 2, 33, 45).
112. Mass Transit Improvements. The Applicant will locate a Capital Bikeshare Station on the site, or at a nearby location identified by DDOT. Funding of a shared bike station is specifically identified as a public benefit in Subtitle X, Section 305.5(p).

Consistency of the Public Benefits with the Plan

113. The Commission also finds that the Project's Public Benefits are not inconsistent with the Plan because each is an integral part of the Project, which itself is not inconsistent with the Plan. Moreover, such Public Benefits are each tangible, quantifiable, measurable, or capable of being completed or arranged prior to the issuance of a certificate of occupancy for the Project. Accordingly, the Project satisfies the PUD Evaluation Standards.

CONCLUSIONS OF LAW

Procedural and Jurisdictional Conclusions

1. A PUD application must adhere to certain procedural requirements. (X § 307.1; Z §§ 205, 300, 400-08, 600-06, 700-707). This Commission must hear any PUD case in accordance with the contested case procedures of Subtitle Z, Chapter 4. X § 300.3. This Commission has found and hereby concludes: (i) the Application satisfies the PUD application requirements, and (ii) the Applicant, Office of Zoning, OP, and this Commission have satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations.
2. The minimum area included within a proposed PUD must be no less than 15,000 sf and all such area must be contiguous. X § 301. The Application satisfies these minimum area and contiguity requirements.
3. The Application is subject to compliance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.* (the "Act").

Evidentiary Standards

4. The Applicant has the burden of proof to justify the granting of the Application according to the PUD and Map Amendment standards enumerated above. (X §§ 304.2, 500.2). The Commission’s findings in relation to a PUD must be supported by substantial evidence. *See Howell v. District of Columbia Zoning Comm’n.*, 97 A.3d 579 (DC 2014). Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support” the conclusions contained herein. *D.C. Library Renaissance Project v. District of Columbia Zoning Comm’n.*, 73 A.3d 107, 125 (DC 2013). The Applicant’s filings, testimony, and expert witness presentations are credible and thorough and reasonably adequate to support the Commission’s analysis and conclusions contained herein. Accordingly, the Applicant has provided substantial evidence to demonstrate that the Project satisfies the relevant PUD evaluation standards.

Consistency with the PUD Process, Zoning Regulations, and Plan

5. Pursuant to the Zoning Regulations, 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.” (X § 300.1). This Commission concludes that the approval of the Application is an appropriate result of the PUD process. The Project is a high-quality development that is superior to what could be constructed on the Property as a matter-of-right via the underlying zoning. This Commission has found that the Public Benefits are meaningful and are commendable both in number and quality. Finally, this Commission has found that the Project does not injure but instead advances the public health, safety, welfare or convenience, and is not inconsistent with the Comprehensive Plan.
6. The PUD process is intended to “provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan.” (X § 300.2). This Commission has found that the Project conforms to the requirements of the Zoning Regulations. The Project is not inconsistent with the Comprehensive Plan. Therefore, this Commission concludes that Project does not circumvent the Zoning Regulations and is not inconsistent with the Comprehensive Plan. The Zoning Commission agrees that the Applicant’s request for flexibility from the Inclusionary Zoning requirements of Subtitle C § 1000 et seq. is appropriate, as the total amount of affordable housing that will be provided in Blocks A and B will be approximately 22% of the total number of residential units, the total number of residential units that will be provided in Blocks A and B (790) is still below the total number of residential units that were originally approved in the project (929), and the provision of housing – both affordable and market-rate- in earlier phases of the overall development of the APFT project is a benefit.

Evaluation Standards

7. The PUD provisions require the Commission to evaluate whether the Application: “(a) is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.” (*Id.* § 304.4). The Commission has reviewed the entire record and issued findings to support its conclusion that the Application satisfies the PUD Evaluation Standards. The Commission concludes the Project is not inconsistent with the Plan as a whole, accepts the entirety of the Applicant’s impact analysis contained in the record and concludes that the Project does not have any unacceptable impacts. The Commission further concludes that the Project includes Public Benefits, as described herein, which are also not inconsistent with the Plan.

8. The Zoning Regulations define Public Benefits as “superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title.” X § 305.2. Such public benefits must satisfy the following criteria (“Public Benefit Criteria”): (a) benefits must be tangible and quantifiable items; (b) benefits must be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) benefits must primarily benefit the geographic boundaries of the ANC; and (d) monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. (*Id.* §§ 305.3, 305.4). Based on this Commission’s findings regarding the Public Benefits as well as the Conditions of this Order, this Commission concludes that the Public Benefits benefit the surrounding neighborhood and the District as a whole to a significantly greater extent than would a matter-of-right development and readily satisfy the Public Benefit Criteria.

9. This Commission must undertake a “comprehensive public review” of the PUD application “in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits.” (X § 300.5). In deciding on the Application, this Commission must “judge, balance, and reconcile the relative value of the public benefits project and amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” as follows (X § 304.3. *Id.* § 303.12):
 - (a) This Commission heard the Application at the Public Hearing and followed the contested case procedures of the Zoning Regulations. This Commission therefore concludes that it has satisfied the procedural

requirements in order to review the Application and evaluate the flexibility and Development Incentives requested and potential adverse effects against the proposed Public Benefits, in light of the circumstances of the case;

- (b) The Commission’s review of the Application has been comprehensive. The Commission has reviewed the entire record and has identified and examined the concerns and statements about the Project raised by the ANC and District agencies. The Commission has appropriately considered the substantial evidence presented by the Applicant. The Commission grants appropriate weight to the reports and testimony of the various reviewing District agencies and the ANC. There are no items in the record that the Commission has excluded from its consideration notwithstanding in some instances this Order does not contain precise citation to such items; and
- (c) The Project has largely been designed to avoid adverse effects. However, to the extent such effects exist as a result of the Project—for instance with respect to traffic—the magnitude of the Public Benefits and the Applicant’s mitigation efforts provide sufficient justification for the Project notwithstanding such effects. Moreover, the Public Benefits generally accrue most significantly to the area immediately surrounding the Project. Therefore, those most likely to be adversely affected by the Project nonetheless also benefit from it. The Commission concludes that the Project’s Development Incentives are warranted in light of the Public Benefits, when considering the specific nature of the area surrounding the Project and the Project’s overall consistency with the Comprehensive Plan.

10. The Commission must grant approval to any second-stage PUD application that it finds in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, provided such approval may be subject to conditions. (X § 309.2). The Commission has found that the Application is in accordance with the Zoning Purposes, the PUD process, and the First-Stage Order, as modified by this Order. Accordingly, the Commission concludes that it must approve the Application subject to the Conditions of this Order.
11. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give “great weight” to the issues and concerns raised in the written report of the affected ANC. The Commission concludes that the Applicant appropriately engaged in dialogue with the ANC. The ANC supports the Project without conditions and the Commission affords great weight to the ANC.
12. The Commission is also required to give great weight to the recommendations of OP under § 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). This Commission has reviewed

the OP Setdown Report and OP Final Report and heard testimony from OP and finds that OP supports the Application. The Commission gives OP's recommendation to approve the Application great weight.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a Second Stage Planned Unit Development and modification of a First Stage Planned Unit Development for the Property for the mixed-use development described herein, subject to the following conditions:

A. Project Development

1. The Project will be developed in accordance with the architectural drawings submitted into the record as Exhibits 44A1-44A10, as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").
2. The Applicant will have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - b. To vary final selection of the exterior colors and materials within the color ranges and general material types approved, based on availability at the time of construction;
 - c. To vary the final selection of landscaping materials utilized, based on availability and suitability at the time of construction; and
 - d. To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
 - e. To provide solar panels on the roof of the building if it is economically feasible, if solar panels are provided they will be set-back from all building walls at a ratio of 1:1 to minimize any appearance from adjacent public spaces;
 - f. To increase or decrease the number of parking spaces provided in the Project within 5% of 750 parking spaces; and
 - g. To modify the ultimate mix of residential and non-residential uses on Blocks C and D at the time each of the Second-Stage PUD applications are filed.

B. Transportation

1. **For the life of the Project**, the Applicant shall abide by the terms of the transportation demand management plan, which requires compliance with the following:

- a. The Applicant will work with DDOT to identify a space for a Capitol Bikeshare station on or near the site and provide funding for that station;
- b. A member of the property management team will be designated as the Transportation Management Coordinator (TMC). The TMC will be responsible for ensuring that information regarding transportation options is disseminated to retail and residential tenants of the building. The position may be part of other duties assigned to the individual. The contact information for the TMC will be provided to DDOT and goDCgo, and the TMC will work with them to promote sustainable and active transportation options to and from the site;
- c. The property management website will include information on and/or links to current transportation programs and services, such as:
 - Capital Bikeshare,
 - Car-sharing services,
 - Ride-hailing services (e.g. Lyft or Uber),
 - Transportation Apps (e.g. Metro, Citymapper, Spotcycle, Transit)
 - The requirements of the transportation demand management plan.
- d. A move-in kit will be provided to each new resident for the first 10 years of the development containing:
 - A Get Around Guide highlighting local transportation options
 - A one-year annual membership to Capital Bikeshare (\$85)
 - A carshare membership of equivalent value (\$85) and
 - A SmarTrip Card preloaded with \$20.00.
- e. The retailers and performing arts space tenants will work with DDOT and goDCgo to tailor and share transportation options to/from the site;
- f. The performing arts space tenant will share “Getting Here” information with attendees and guests ahead of any events and post the same information on the website;
- g. An electronic display will be provided in the residential lobby as well as the main cultural building lobby and will provide public transit information such as nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital BikeShare locations indicating the number of bicycles available at each location;
- h. Shower and changing facilities will be provided in the retail bike parking area building for employees who bike, walk, or jog to work;
- i. Convenient and covered secure bike parking facilities will be provided in accordance with the minimum required by the Zoning Regulations;
- j. A bicycle repair station will be provided on the P1 level of the garage;
- k. A sufficient number of electric car charging stations as required under LEED ND standards will be provided in the garage;
- l. The cost of parking spaces for tenants will be unbundled from leases and will be based on market rates, and spaces will not be leased to outside groups with exceptions for district services;
- m. Two spaces will be designated in the garage for carsharing vehicles, and the applicant will work with regional carsharing companies to locate vehicles on this site if possible based on demand;

- n. Two spaces will be designated in the garage for vanpooling spaces to be used by commuters who vanpool to the area for work;
- o. Two annual transportation events will be held for residents, such as walking tours of local transportation options, a transportation fair, lobby events, and resident socials;
- p. The TMC will monitor parking demands so as to minimize spillover parking in surrounding neighborhood;
- q. The TMC will monitor the use of the Capital Bikeshare and bicycle use around the Block B site to look for opportunities to implement elements of the moveDC plan, particularly with respect to bicycle infrastructure.

C. Construction

1. The Applicant will abide by the terms of the Construction Management Plan submitted into the record as Exhibit 44G.

D. Promotion of the Arts and Uses of Special Value to the Neighborhood or the District of Columbia as a Whole

1. **Prior to the issuance of a certificate of occupancy for the Meow Wolf space**, the Applicant will provide evidence to the Zoning Administrator that residents of the District of Columbia will be able to receive discounted entry fees that are 15% less than the admissions fees charged for similar non DC residents. These discounted entry fees will be applicable for the life of the Project.
2. **Prior to the issuance of a certificate of occupancy for the Explore! Children’s Museum space**, the Applicant will provide evidence to the Zoning Administrator that residents of Ward 4 and Ward 5 will receive discounted entry fees of 25% off then-prevailing ticket prices on a quarterly basis. These discounted entry fees will be applicable for the life of the Project.
3. **Prior to the issuance of the certificate of occupancy for the residential building**, the Applicant will provide evidence to the Zoning Administrator that it has entered into a contract with a qualified arts organization that will interview and select the qualified artists for the artist studio and maker spaces.
4. **For the life of the Project**, the Applicant will rent the artist studio and maker spaces to artists at a dollar/sf net monthly lease rate not to exceed 50% of the average dollar/sf net monthly lease rate charged to the other retail tenants in the Project.

E. Benefits and Amenities

1. *Affordable Housing*. **Prior to the issuance of a building permit for the residential portion of the Project**, the Applicant shall provide the Zoning Administrator with evidence that the recorded Affordable Housing Covenant for the entire PUD project has been amended to reserve the 30 artist housing units in Block B to households with incomes not exceeding 60% MFI. The period of affordability will be 20 years from the issuance of the first Certificate of Occupancy in Block B. Consistent with the affordable housing requirements of the First-Stage PUD Order, the 30 artist affordable units will be

distributed vertically and horizontally through the residential building in Block B, but not on the upper two floors, at a ratio of unit types that are consistent with the market-rate unit types.

2. *Sustainability.* **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide evidence to DOEE and/or the Zoning Administrator that the entire PUD will be able to secure certification under the LEED ND rating system.
3. *Employment and Training Opportunities.*
 - a) **Prior to the issuance of the first building permit for the Project**, the Applicant shall provide evidence of the signed First Source Employment Agreement that was followed during the development of Block A.
 - b) **Prior to the issuance of a certificate of occupancy for the grocery store space**, the Applicant (or the grocery store operator) will provide evidence to the Zoning Administrator that at least three monthly hiring open houses were held in the four months prior to the opening of the store. The open houses will provide local job candidates with information on employment opportunities with the grocery store operator.
4. *Mass Transit Improvements.* **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence to the Zoning Administrator that it has paid for the installation of a Capital Bikeshare Station on the site, or at a nearby location identified by DDOT.
5. *Superior Landscaping and Creation of Open Spaces.* **For the life of the Project**, the Applicant will maintain the plaza and pedestrian areas shown on the Plans, including the dog-run. The Applicant will relocate the dog-run prior to the issuance of a Certificate of Occupancy for the development of Block D, in order to accommodate the realignment of Kennedy Street.

F. Miscellaneous

1. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA and no building permit shall be issued for the Project until the Applicant has recorded a Notice of Modification of the PUD Covenant in the land records of the District of Columbia. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the Notice with the records of the Office of Zoning.
2. The approval for construction of the Project on Block B shall be valid for a period of two years from the effective date of this Order. Within such time, an application(s) must be filed for a building permit(s). Construction of the project must begin within three years of the effective date of this Order.

3. The Applicant will file a second-stage PUD application for either Block C or Block D by December 31, 2024, and the second-stage PUD application for the final development parcel included in APFT will occur by December 31, 2030.
4. In accordance with the DC Human Rights Act of 1977, as amended, DC Official Code §§ 2-1401 01 et al (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, familial 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.

For this reason stated above, the Commission concludes that the Applicant has met its burden, and it is hereby **ORDERED** that the application be **GRANTED**.

On _____, 2019, upon the motion of _____, as seconded by _____, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of _____ (_____).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on _____.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING