

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 08-07C

Z.C. CASE NO. 08-07C

(Four Points, LLC – Second-Stage PUD @ Square 5784)

September 17, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on July 26, 2018, to consider an application from Four Points, LLC (the “Applicant”) for approval of a second-stage planned unit development (“PUD”) for property located at Square 5784, Lots 899, 900, and 1101 (the “Site”) in accordance with the Zoning Commission’s first-stage PUD approval in Z.C. Order No. 08-07 (the “Application”). The Commission considered the Application pursuant to Subtitle X, Chapter 3 and Subtitle Z of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”).¹ For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On March 9, 2018, the Applicant filed an application for a second-stage PUD to develop an office building with ground floor retail on the Site (“Building 4”).
2. On May 4, 2018, the Office of Planning (“OP”) submitted a setback report recommending that the Commission setback the Application for a public hearing and identifying some items for which more information or clarification was needed from the Applicant prior to the public hearing. (Exhibit [Ex.] 10.) OP indicated in its report that it would consult with other District agencies as part of its review of the Application, including the Department of Energy and the Environment (“DOEE”), District Department of Transportation (“DDOT”), Fire and Emergency Medical Services Department (“FEMS”), Metropolitan Police Department (“MPD”), and DC Water. (Ex. 10, p. 14.)
3. At its public meeting held on May 14, 2018, the Commission voted to setback the Application for a public hearing with certain questions and requests for additional information.
4. On May 16, 2018, the Applicant filed its Prehearing Submission. (Ex. 12.) The Prehearing Submission responded to the questions raised by the Commission at the setback meeting

¹ Pursuant to 11-A DCMR §§ 102.1 and 102.3(a), the second-stage PUD has vested development rights under the 1958 Zoning Regulations because the architectural drawings approved in this second-stage PUD application are consistent with the unexpired first-stage PUD that was approved prior to the effective date of the 2016 Zoning Regulations. Accordingly, all zoning tabulations for the Project were properly reviewed and approved according to the standards of the 1958 Zoning Regulations.

and by OP in its setdown report. (Ex. 11-12): (i) confirmation on the flexibility requested for building materials; (ii) confirmation that zoning flexibility is not needed from the penthouse requirements and an estimated contribution amount to the affordable housing trust fund generated by the penthouse amenity space; (iii) confirmation that short-term bicycle parking spaces would be provided at the Project; (iv) information on the loading management plan, curbside management plan, and pathways between the loading dock and the office and retail areas; (v) architectural drawings showing Building 4's south elevation and signage plan, and landscape drawings showing precedent images of the proposed streetscape and courtyard; (vi) confirmation that the Applicant would enter into a First Source Employment Agreement and Certified Business Enterprise ("CBE") Agreement for development of Building 4; and (vii) information on the Anacostia Business Improvement District. The Applicant also indicated that any information not provided in the Prehearing Submission would be filed prior to the public hearing on the Application.

5. On May 29, 2018, the Office of Zoning sent copies of a Notice of Public Hearing on the Application (Ex. 12) to the Office of Planning, DDOT, DOEE, and the D.C. Housing Authority ("DCHA"), in addition to ANC 8A, the affected District Councilmembers, and the owners of property within 200 feet of the Site. (Ex. 17.)
6. A Notice of Public Hearing was published in the D.C. Register on June 8, 2018. (Ex. 14.) The Notice of Public Hearing was mailed to the owners of property located within 200 feet of the Site and to Advisory Neighborhood Commission ("ANC") 8A. (Ex. 17.)
7. On June 26, 2018, the Applicant submitted a Comprehensive Transportation Review ("CTR") report prepared by Gorove/Slade Associates and dated June 11, 2018. (Ex. 20.) The CTR reviewed and provided analysis on the impact of Building 4 and two other mixed-use buildings within the PUD Site (defined below) known as "Building 5" and "Building 8." As it relates to Building 4, the CTR concluded that the building would not have a detrimental impact on the surrounding transportation network once all planned site design elements are implemented.
8. On July 6, 2018, the Applicant filed a Supplemental Prehearing Submission. (Ex. 21.) The Supplemental Prehearing Submission included: (i) updated architectural drawings that included all project details and additional renderings requested previously by the Commission and OP; (ii) final confirmations on the total number of long-and short-term bicycle parking spaces provided for the Project; and (iii) a construction management plan ("CMP") with which the Applicant agreed to comply during construction of Building 4.
9. On July 16, 2018, DDOT submitted a report (the "DDOT Report") (Ex. 22) stating no objection to the Application subject to a number of revisions and conditions (*see* Ex. 22, pp. 4-5). The DDOT Report also listed items that the Applicant would be required to address with DDOT outside of the zoning process and during the permitting process. (*see* Ex. 22, pp. 5-6).
10. On July 18, 2018, OP submitted a report (the "OP Report") (Ex. 25) recommending approval of the Application subject to several outstanding items and requests for information detailed in Finding of Fact ("FF") No. _____. The OP Report also requested a

waiver for the Commission to accept the report less than ten days prior to the public hearing. The Commission approved the waiver. The OP Report indicated that OP had circulated the Application to DDOT, DOEE, FEMS, MPD, and DC Water. (Ex. 25, p. 14.)

11. On July 18, 2018, the Metropolitan Police Department submitted a letter stating that the Project would have little impact on public space and safety. (Ex. 23.)
12. By letter dated July 18, 2018, ANC 8A appointed Commissioner Greta Fuller, the Single Member District representative for the Site (SMD 8A06) to represent ANC 8A at the public hearing. (Ex. 27.)
13. By letter dated July 24, 2018, ANC 8A requested that the Commission permit the ANC to finalize a Community Benefits Agreement (“CBA”) with the Applicant no later than September 7, 2018, to provide additional time to gain community support for the Project. (Ex. 28.)
14. On July 26, 2018, the Applicant submitted the following materials: (i) its PowerPoint presentation for the public hearing; (ii) photos of the proposed materials for Building 4; and (iii) a response to the DDOT Report, prepared by Gorove/Slade, identifying the conditions and items for continued coordination which the Applicant agreed, and for those with which it did not agree, and explanation as to its position (the “DDOT Response Memo”). (Ex. 37.)
15. Eight letters in support of the Application from local organizations were filed in the case record on July 26, 2018. (Ex. 29-36.)
16. After proper notice described above, the Commission held a public hearing on the Application on July 26, 2018.
17. The parties to the case were the Applicant and ANC 8A.
18. The Applicant presented three witnesses at the public hearing in its direct testimony: Keith Turner on behalf of the Applicant; Lawrence Caudle on behalf of Hickok Cole Architects; and Erwin Andres on behalf of Gorove/Slade. Ryan Brannan of Bowman Consulting and Shane Dettman of Holland & Knight were also accepted by the Commission as expert witnesses but they did not testify at the hearing. Based on their professional experience, as evidenced by resumes submitted for the record, the Commission qualified each of the witnesses as experts in their respective fields of architecture (Mr. Caudle), transportation planning (Mr. Andres), civil engineering (Mr. Brannan), and land use planning (Mr. Dettman).
19. OP testified in support of the Application at the public hearing. OP stated that the Applicant adequately responded to questions raised in the OP report, including providing a description of the Applicant’s proposed proffer related to employment and training opportunities for local residents. OP also indicated its support for either zoning relief or design flexibility to provide parking spaces in Building 4 that do not fully comply with the size requirements of the 1958 Zoning Regulations, but do comply with the size requirements of the 2016 Zoning Regulations.

20. DDOT testified that it had no objection to approval of the Application, based on the Applicant agreeing to the majority of the conditions and items for continued coordination, as set forth in the Applicant's DDOT Response Memo. (Ex. 37(c).)
21. Commissioner Greta Fuller testified on behalf of ANC 8A at the public hearing. Commissioner Fuller raised several issues related to the Application, including (i) the need for the ANC to review the proposed building materials in more detail; (ii) concerns that Building 4 would create additional traffic congestion, pedestrian safety issues, noise, and trash in the surrounding streets; (iii) concern for a loss of privacy and increased shadows on the adjacent row homes to the south of Building 4; and (iv) the need for more time to thoroughly review the CBA and Construction Management Plan ("CMP").
22. One organization, the Anacostia Coordinating Council ("ACC") (a membership consortium of organizations and individuals involved in the revitalization of Anacostia through information gathering and sharing, networking, advocacy, and community organization), represented by its Executive Director Philip Pannell, testified in support of the Application at the public hearing. Mr. Pannell stated that the Applicant had previously presented the Project to the ACC, which received positive community feedback, and that the Applicant was scheduled to present the Project again at an upcoming ACC meeting.
23. By letter dated August 4, 2018 (Ex. __), submitted a formal letter in support of the Application, noting that the Applicant had presented to the ACC twice, with approximately 200 community members in attendance between the two meetings. The ACC letter stated that the PUD "in general and this office building, in particular, will bring dramatic economic development and added vibrancy to... greater Anacostia" and would "leverage investments already made or planned by the District." The letter also noted that the project would "dramatically enhance the neighborhood and continue its revitalization by replacing low-scale industrial uses with a new, well designed building that includes ground floor retail, an attractive landscaped courtyard and public space improvements that will help improve the pedestrian experience in our neighborhood."
24. One organization, DC 4 Reasonable Development ("DC4RD") represented by Chris Otten, testified as undeclared at the public hearing. Mr. Otten raised a variety of unsubstantiated claims regarding development of Building 4 that the Applicant responded to in its rebuttal testimony and are addressed in detail in FF Nos. __.
25. At the conclusion of the August 26, 2018 public hearing, the Commission closed the record, except to receive additional information from the Applicant and the ANC, including post-hearing submission materials, responses thereto, a report from the ANC, and draft Findings of Fact and Conclusions of Law.
26. On August 27, 2018, the Applicant submitted a post-hearing submission in response to the requests for information at the public hearing. (Ex. __.) The post-hearing submission included the following information: (i) an updated materials board showing a broader range of proposed colors for Building 4's metal panels; (ii) a photograph of the existing townhomes across the public alley from the Site and a photograph of the Site from the townhomes' rear yards; (iii) a proposed rendering of Building 4 from the townhomes' rear

yards, including a view of the upgraded screening on Building 4 that will hide the existing generator and utilities that serve Building 3 but are located on the Site; (iv) a site plan showing the linear dimensions between the townhomes and Buildings 3 and 4; (v) a request for zoning flexibility to provide parking spaces that are 9' x 18' in size; and (vii) an update on the Applicant's coordination with ANC 8A and the ACC.

27. The Commission took final action to approve the Application on _____.

The PUD Site and Prior Zoning Approvals

28. Pursuant to Z.C. Order No. 08-07, dated September 9, 2013, and effective on October 25, 2013, the Commission approved a first-stage PUD and a related Zoning Map amendment from the C-2-A and C-M-1 Districts to the C-3-A District for Square 5772, Lots 827, 829, 831, 880, 984, 1017, and 1019; Square 5783, Lots 829 and 1018; Square 5784, Lots 898, 899, and 900; and Square 5785, Lots 839 and 906 (collectively, the "PUD Site").² The PUD Site has an overall land area of approximately 340,467 square feet (approximately 7.8 acres) and is generally bounded by U Street, to the north, Martin Luther King, Jr. Avenue to the east, Chicago Street to the south, and Interstate 295 to the west, all located in the southeast quadrant of the District.
29. The approved first-stage PUD is a mixed-use project consisting of approximately 1,570,000 square feet of gross floor area (4.5 floor area ratio ("FAR")) comprised of seven new buildings and two renovated existing buildings. The Commission approved the development of approximately 481,000 square feet of gross floor area for residential use; approximately 144,000 square feet of gross floor area for retail, service, arts, and limited types of office use; and approximately 945,000 square feet of gross floor area for office use. *See* Z.C. Order No. 08-07, Decision Nos. A(2)-(3).
30. In the approved first-stage PUD, the Commission approved Building 4 to have a maximum building height of 90 feet (not including penthouse) and a maximum density of 4.0 FAR. The Commission also granted relief from the parking and loading requirements for Building 4. *See* Z.C. Order No. 08-07, FF Nos. 29 and 30.
31. Pursuant to Z.C. Order No. 08-07A, dated March 30, 2015, and effective on May 22, 2015, the Commission approved a second-stage PUD and modifications to the approved first-stage PUD to develop Lot 839 and part of Lot 906 in Square 5785 with a residential building ("Building 1"). "Building 3," which contains office use, has been completed and is occupied.

² Z.C. Order No. 08-07 was approved under the 1958 Zoning Regulations. Under the 2016 Zoning Regulations, which repealed and replaced the 1958 Zoning Regulations on September 6, 2016, the C-2-A District was re-designated to the MU-4 District, the C-M-1 District was re-designated to the PDR-1 District, and the C-3-A District was re-designated to the MU-7 District. This application for a second-stage PUD for Building 4 is subject to the development and use requirements of the 1958 Zoning Regulations.

Second-Stage PUD for the Building 4

32. The Applicant seeks second-stage approval to permit the development of Building 4. As shown on the Architectural Plans and Elevations dated July 6, 2018 (Ex. 21A), as revised by the site plan and street sections included in the July 25, 2018 “DDOT Response Memo” (Ex. 37C), and as further revised by the Architectural Plans and Elevations dated August 27, 2018 (Ex. ___), (together, the “Architectural Drawings”), Building 4 will have a maximum building height of 90 feet (not including penthouses) and approximately 287,886 square feet of gross floor area (4.4 FAR). Approximately 6,644 square feet of gross floor area will be devoted to retail space and approximately 281,242 square feet of gross floor area will be devoted to office space. Building 4 includes 460 total parking spaces, comprised of 324 zoning-compliant spaces and 136 tandem spaces. Loading facilities for Building 4 include three loading berths at 30 feet deep, one 20 foot service/delivery space, and one 400 square foot loading platform.
33. Building 4’s volume is comprised of two main components of seven and five stories, organized to create an “L” shape with the main fronts aligned on Railroad Avenue, W Street, and Shannon Place. The south elevation faces an alley while the internal elevations face the existing building at 2235 Shannon Place (Building 3) to create a landscaped courtyard. The five story volume features retail on the ground floor and a shared lobby to provide access to both retail and office uses. This area is the main entrance to Building 4, with a second entrance provided from the landscaped courtyard.
34. Service, delivery, and parking garage access is located on Railroad Avenue near W Street, SE. W Street, SE is the subject of a pending street dedication application (S.O. No. 00469) that would effectively widen the W Street sidewalk adjacent to the Site by setting Building 4 back 20 feet and creating an unencumbered surface easement to provide wider sidewalks, enhanced landscape treatments, and a significantly improved pedestrian realm.
35. The material selection for Building 4 is consistent with the overall massing diagram. The five-story volume at the corner of Shannon Place and W Street is defined by a brick and metal grid that organizes the facades in a sequence of 10-foot wide by 12.5-foot high bays. This language defines the transition between the scale of the neighborhood and the seven-story main volume along Railroad Avenue at the north and south elevations, alternating the 10-foot bays with 15-foot bays to differentiate the more civic and urban nature of the Shannon Place and W Street elevations from the Railroad Avenue elevations. The articulation of the front with different heights and materials reduces the scale of the larger volume and establishes a gradual transition between the building’s seven-story bulk and the scale of the town homes on Chicago Street.
36. The Railroad Avenue façade is primarily characterized by an articulated window wall system that maximizes views across the Anacostia River and creates a composition of gently angled glass. The articulation of Building 4 with different volumes and heights also creates an opportunity to provide a sequence of roof terraces that complement the amenity spaces within Building 4, providing both landscaped and paved outdoor areas. The roof terrace at the 7th floor will provide unique views of the Anacostia River and the District’s

skyline beyond, and the roof terrace at the 5th floor will provide an intensive green garden, introducing a strong natural presence into the Project.

Development Flexibility

37. The PUD process was created to allow greater flexibility in planning and design than may otherwise be possible under conventional zoning procedures. As part of the first-stage approval, the Commission granted zoning flexibility such that Building 4 was permitted to provide 347 parking spaces where 461 spaces were required, and three loading berths where four berths and one service/delivery space were required. Building 4 continues to need zoning flexibility for the number of parking spaces and loading berths. At the public hearing, the Applicant requested zoning flexibility to permit the parking spaces in Building 4 to be 9 feet x 18 feet in size instead of the required dimension of 9 feet x 19 feet in size. The Commission approves this requested relief, since the 9 feet x 18 feet parking spaces comply with the new size standards of the 2016 Zoning Regulations (*see* 11-C DCMR § 712.5) even though they do not comply with the standards of the 1958 Zoning Regulations under which the Application was reviewed. The Commission also notes that OP testified in support of this flexibility request at the public hearing.
38. The Applicant also requests flexibility in the following areas:
- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, and to vary the size of the retail area, provided that the variations do not change the exterior configuration of the building;
 - b. To vary the number, location, and arrangement of parking spaces in Building 4, provided that the total number of spaces is not reduced below 324 zoning-compliant parking spaces;
 - c. To vary the final selection of exterior building materials within the color ranges of the material types shown at Exhibit 37B (materials board) as modified by Sheet A-01 of the Post-Hearing Submission (Ex. __), based on availability at the time of construction. Any such variations shall not reduce the overall quality of materials, nor substantially change the exterior appearance, proportions, or general design intent of the building.
 - d. To make minor refinements to exterior details, locations, and dimensions, including curtainwall mullions and spandrels, window frames, doorways, glass types, belt courses, brick shapes, sills, bases, cornices, railings and trim; and any other changes to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;
 - e. To vary the sustainable features of Building 4, provided the total number of LEED points achievable for Building 4 does not decrease below LEED-Gold;

- f. To vary the final design of retail frontages, including the location and design of entrances, show windows, and size of retail units, in accordance with the needs of retail tenants, and to vary the types of uses designated as “retail” use on the approved architectural drawings to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)), and to vary the amount of retail space, so long as the total amount is not less than 6,644 square feet and is not devoted to a single retail category;
- g. To vary the retail signage according to the signage guidelines and storefront guidelines shown on Sheet A-47 of the Architectural Drawings (Ex. 21A); and
- h. To provide on-site parking spaces that measure 9 feet x 18 feet.

Public Benefits and Amenities

39. The Commission found in Z.C. Order No. 08-07 that the first-stage PUD provided an exceptional number and level of public benefits and project amenities, including those related to urban design and planning, public space improvements, transportation benefits, employment and training opportunities, housing and affordable housing, and environmental benefits. *See* Z.C. Order No. 08-07, FF No. 33(a)-(f). The Commission also found that the first-stage PUD provided uses of special value to the neighborhood and to the District as a whole, including the provision of significant new retail with active street frontages; below-market rent space to help foster an active mix of uses in the vicinity of the PUD Site; and funding and/or free space to community initiatives. *See* Z.C. Order No. 08-07, FF No. 33(g). Thus, the Commission concluded that the “project benefits and amenities are reasonable tradeoffs for the requested development flexibility.” *See* Z.C. Order No. 08-07, Conclusions of Law No. 7.
40. For this second-stage PUD, the Office of Planning confirmed the Commission’s prior finding that the first-stage PUD included the benefits and amenities described above and noted that “[w]hile some of the benefits are not specific to Building 4, the benefits proffered with the current application are consistent with the First Stage approval.” (Ex. 25, pp. 8-9.) OP also described the additional benefits proposed as part of the Application, including those related to urban design; landscaping, creation, or preservation of open spaces; site planning and efficient and economical land utilization; office and community serving retail; local business opportunities and First Source Agreements; green elements; transportation demand management; and other benefits to be determined by the Applicant, ANC 8A, and community organizations and members. (*See* Ex. 25, pp. 9-10.)
41. Moreover, the Applicant executed a CBA with ANC 8A that established additional public benefits, including employment opportunities for Ward 7 and 8 residents; a commitment to enter into a First Source Employment Agreement with DOES that governs project components for which Tax Increment Financing (“TIF”) is being used; commitment to enter into a CBE Agreement for Building 4 to contract with CBEs for at least 35% of the contract dollar volume of the entire project for which TIF financing is being used;

affordable local rents; space for the Anacostia Playhouse; and a number of contributions to local organizations, among others. *See Ex. __.* Although the CBA is not enforceable by the Zoning Commission and its contents are not being proffered as additional public benefits and amenities since a number of them do not meet the standards of 11-X DCMR § 305.2, the CBA includes a variety of items that the Applicant has committed to provide, and that both the Applicant and ANC 8A believe provide special value to the neighborhood.

42. Based on the foregoing, the Commission finds that the first-stage PUD provided important public benefits and amenities that were “reasonable tradeoffs for the requested development flexibility” (*see Z.C. Order No. 08-07, Conclusions of Law No. 7*), that the benefits and amenities have not changed with this Application and are therefore consistent with the first-stage PUD, and that the second-stage PUD will result in significant new benefits and amenities for the community. The Commission further finds that the relative value of the project benefits and amenities offered is sufficient given the degree of development incentives requested, including the requested relief for the size of on-site parking spaces, and any potential adverse effects of the Project.

Transportation Demand Management

43. The Applicant will implement the following TDM measures as part of the Project:
- a. The Applicant will identify a TDM leader (for planning, construction, and operations). The TDM leader will work with employees in Building 4 to distribute and market various transportation alternatives and options.
 - b. The Applicant will work with DDOT and goDCgo (DDOT’s TDM program) to implement TDM measures at Building 4.
 - c. The Applicant will share the full contact information of the TDM leader for Building 4 with DDOT and goDCgo.
 - d. The Applicant will post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised.
 - e. The Applicant will provide retail employees who wish to carpool with detailed carpooling information and will refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (“MWCOG”).
 - f. The Applicant will provide 82 long-term and 10 short-term bicycle parking spaces for Building 4.
 - g. The Applicant will provide a bicycle repair station in the secure long-term bicycle storage room in Building 4.
 - h. The Applicant will provide changing facilities in Building 4 that include six showers and 49 lockers for employees of the retail and office uses.

- i. The Applicant will install a Transportation Information Center Display (electronic screen) within the lobby of Building 4 containing information related to local transportation alternatives.
- j. The Applicant will fund and install a 19-dock Capital Bikeshare station within the PUD Site and provide funding for one year of maintenance and operations.
- k. The Applicant will fund and install the expansions of three nearby existing Capital Bikeshare stations to 19 docks (Pleasant Street, Good Hope Road, and Shannon Place).
- l. The Applicant will dedicate two parking spaces within the garage of Building 4 for car-share services. If a car-share provider(s) chooses not to locate vehicles in those spaces, then the Applicant will host a transportation event for employees of Building 4.
- m. The Applicant will dedicate nine parking spaces within the garage of Building 4 as electric vehicle charging stations.

Compliance with PUD Standards and Consistency with Comprehensive Plan

- 44. Pursuant to 11-X DCMR § 302.2(b), a second-stage PUD application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials, and compliance with the intent and purposes of the first-stage approval, and the Zoning Regulations.
- 45. With respect to a second-stage PUD, “[i]f the Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Zoning Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Zoning Commission's decision.” 11-X DCMR § 309.2.
- 46. The Commission previously found that the first-stage PUD, including the Project, was not inconsistent with the Comprehensive Plan (*see* Z.C. Order No. 08-07, FF Nos. 35-39); that the impact of the PUD on the surrounding area was not unacceptable and could be approved with conditions to ensure that any potential adverse effects on the surrounding area would be mitigated (*see* Z.C. Order No. 08-07, Conclusion of Law Nos. 5 and 6); that the requested flexibility was consistent with the Comprehensive Plan and the project benefits and amenities were reasonable trade-offs for the requested development flexibility (*see* Z.C. Order No. 08-07, Conclusion of Law No. 7).
- 47. The Commission finds that this second-stage Application meets the requirements of 11-X DCMR § 302.2(b) because it included a detailed review of the site plan, building design, and landscape materials, which the Commission finds are in compliance with the first-stage PUD and the Zoning Regulations.
- 48. The Commission further finds that this second-stage PUD Application is consistent with the first-stage PUD approval in Z.C. Order No. 08-07, with the exception of the additional

flexibility requested for the size of parking spaces, which the Commission has approved. The Commission previously found that the PUD provides important public benefits and project amenities (*see* Z.C. Order No. 08-07, FF No. 33) and that those benefits and amenities were reasonable trade-offs for the requested development flexibility. *See* Z.C. Order No. 08-07, Conclusions of Law No. 7. The approved public benefits and amenities have not changed with the Application, and are therefore fully consistent with the first-stage PUD approval. However, in working with ANC 8A, the Applicant agreed to a number of additional benefits, which although not being specifically proffered as additional public benefits and amenities, will have a positive impact on the immediate community.

49. The Commission moreover concludes that this second-stage PUD for Building 4 will continue to advance the priorities approved in Z.C. Order No. 08-07 and will not create any new adverse impacts. The Application has been evaluated by the relevant District agencies, and based on the reports of those agencies and their testimony at the public hearing, the Commission finds that there will be no adverse impacts created by Building 4 that cannot be mitigated by the conditions imposed in this Order.
50. Building 4 has been evaluated under the PUD guidelines for the C-3-A District under the 1958 Zoning Regulations, which was the zone approved for the Site by Z.C. Order No. 08-07.
51. Regarding the issue of consistency with the Comprehensive Plan, in Z.C. Order No. 08-07, the Commission found that the first-stage PUD advanced the purposes of the Comprehensive Plan, was not inconsistent with the Future Land Use Map, complied with the guiding principles in the Comprehensive Plan, and furthered a number of the major elements of the Comprehensive Plan. *See* Z.C. Order No. 08-07, FF No. 34. The Commission also found that the Applicant's proposal in the first-stage PUD to rezone the PUD Site "to C-3-A and to redevelop the PUD Site into a neighborhood center with a mix of office, retail, service, and residential uses is fully consistent with the Future Land Use Map and Generalized Policy Map designations for the PUD Site. *See* Z.C. Order No. 08-07, FF No. 42.
52. The Commission further found that the first-stage PUD, including Building 4, advanced the Comprehensive Plan's purposes by promoting the social, physical, and economic development of the District through the provision of a high-quality mixed-use development that would increase the housing supply, add new retail uses, create additional employment opportunities, and generate significant tax revenues for the District. *See* Z.C. Order No. 08-07, FF No. 36. The Commission determined that the first-stage PUD was not inconsistent with many guiding principles in the Comprehensive Plan and furthered the objectives and policies of many of the Comprehensive Plan's major elements, as set forth in Z.C. Order No. 08-07, FF Nos. 38 and 39. Moreover, the Commission found that the first-stage PUD carried out the purposes of Chapter 24 of the 1958 Zoning Regulations to encourage the development of well-planned developments, which would offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development. *See* Z.C. Order No. 08-07, Conclusion of Law No. 3.

53. As stated in the provisions of the Zoning Regulations governing PUD applications, “[t]he **first-stage application** involves a general review of the site’s suitability as a PUD and any related map amendment, ... **and the compatibility of the proposed development with the Comprehensive Plan**,...” (emphasis added) (11-X DCMR § 302.2). Further, 11-DCMR § 309.2 states that “[i]f the Zoning Commission finds the application to be in accordance with the intent and purpose of ... **the first-stage approval**, the Zoning Commission shall grant approval to the second-stage application,...” (emphasis added). As such, as required under the Zoning Regulations, the Commission finds that it has already determined that the PUD is not inconsistent with the Comprehensive Plan as part of its review and approval of the first-stage PUD, and the Commission is not required to revisit that decision.
54. Furthermore, as set forth in the OP Report of the present case (Ex. 25), OP found that the second-stage PUD for Building 4 is not inconsistent with the first-stage PUD or with the Comprehensive Plan Future Land Use and Generalized Policy Maps’ designations (Ex. 25, p. 11) and determined that the Project meets or furthers many of the policies of the Comprehensive Plan Elements and the Far Southeast and Southwest Area Elements (Ex. 25, p. 11 and Ex. 10 appendix). OP also acknowledged that the Commission previously found in the first-stage PUD that the overall PUD would further the objectives of the Anacostia Transit Area Strategic Investment and Development Plan (2006), including the provision of new retail space and improvements to the pedestrian realm. (Ex. 25, p. 11 and Z.C. Order No. 08-07, FF No. 44.) The Commission concurs with OP’s findings.
55. Notwithstanding the fact that the Commission has already determined that the overall PUD is not inconsistent with the Comprehensive Plan, out of an abundance of caution the Applicant provided an extensive analysis of the Project’s consistency with the Comprehensive Plan at Exhibit 3D. Based on this additional information, the Commission reconfirms its prior finding in the first-stage PUD that the Project is not inconsistent with the Comprehensive Plan. Moreover, the Commission finds that based upon the evidence in the record, including the Applicant’s Statement in Support (Ex. 3), the Applicant’s Comprehensive Plan analysis (Ex. 3D), and the OP Report (Ex. 25), the requested first-stage PUD is not inconsistent with the approved first-stage PUD.
56. Therefore, taken together and based on all of the evidence in the record, including the Commission’s findings in Z.C. Order No. 08-07, the Applicant’s filings in the case record, and the OP Reports, and consistent with the Findings of Fact above, the Commission concludes that the Project is not inconsistent with the guiding principles, policies, and goals of the Comprehensive Plan, including the Future Land Use Map and the Generalized Policy Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major Citywide and Area Elements of the Comprehensive Plan.

Office of Planning Reports and Testimony

57. By report dated July 18, 2018 (Ex. 25) OP recommended approval of the Application, stating that the Application is not inconsistent with the first-stage PUD and accompanying Zoning Map amendment or the Comprehensive Plan. OP acknowledged the Commission’s previous finding that the first-stage PUD was not inconsistent with the Comprehensive Plan Future Land Use and Generalized Policy Maps and that the proposed second-stage

PUD is not inconsistent with the first-stage approval or with the Comprehensive Plan map designations. (Ex. 25, pp. 10-11.) OP also supported the Applicant's requested zoning and development flexibility with comments on certain areas of flexibility described in FF Nos. ___ and as fully addressed by the Applicant. In addition, OP found that the first-stage PUD "included a number of benefits, including urban design, public space improvements, transportation benefits, affordable housing, workforce housing, First Source Employment and CBE agreements, environmental designs and benefits, retail space, the creation of a Business Improvement District (BID), setting aside space for below market rents and funding and/or space for community initiatives. While some of the benefits are not specific to Building 4, the benefits proffered with the current application are consistent with the First Stage approval." (Ex. 25, pp. 8-9.)

58. OP's support was subject to the following outstanding items and requests for information:
- (i) further details on building materials, including additional language limiting the design flexibility permitted for exterior materials;
 - (ii) confirmation that the flexibility granted regarding the design of retail frontages would be consistent with Sheet A-47 of the Architectural Drawings submitted with the Applicant's Supplemental Prehearing Submission (Ex. 21A), which was confirmed in the Applicant's proposed conditions submitted on August 20, 2018 (Ex. 43A);
 - (iii) support for the Applicant's requested flexibility to vary the interior components of the Project including the size of the retail area, so long as the retail space is not reduced to less than 6,644 square feet and is not dedicated to one single retail category;
 - (iv) support for the Applicant's proposal to add an egress stair through the roof of the fifth floor portion of Building 4, provided that any resultant penthouse meets all zoning requirements; and
 - (v) information on how the Applicant would be expanding employment and business opportunities to the surrounding area and how the First Source Employment and CBE Agreements would be implemented.
59. The Applicant responded to the outstanding items from the OP Report at the public hearing as follows:
- a. The Applicant provided material samples as shown in Exhibit 37B, which were since modified by Exhibit ___. The Applicant also revised the requested design flexibility to the language shown at FF Nos. ___ of this Order;
 - b. The Applicant confirmed that the flexibility granted regarding the design of retail frontages would be consistent with Sheet A-47 of the Architectural Drawings (Ex. 21A);
 - c. The Applicant agreed to provide a minimum of 6,644 square feet of retail space in Building 4, not to be devoted to a single retail category;
 - d. Although the Applicant initially requested flexibility to add an egress stair through the roof of the fifth floor if necessary, prior to the public hearing the Applicant determined that the egress stair was necessary for the Project. Thus, the Architectural Drawings (Ex. 21A) show the egress stair and confirm that the resultant penthouse fully meets the requirements of the Zoning Regulations; and

- e. The Applicant described the employment and training opportunities it committed to as part of the CBA (*see* Ex. __).
60. At the public hearing, OP testified that it was supportive of the Project based on the Applicant's filings in the record and testimony at the public hearing.
61. Based on the analysis provided in the OP Report and the Applicant's responses thereto, the Commission finds that the Applicant fully addressed all of OP's outstanding concerns, that the Application is consistent with the Commission's intent in approving the first-stage PUD, and that the second-stage PUD is not inconsistent with the Comprehensive Plan, would not result in unacceptable impacts on the area or on city services, and includes public benefits and project amenities that balance the flexibility requested.

DDOT Report and Testimony

62. By report dated July 16, 2018, DDOT asserted no objection to the Application subject to the following conditions (*see* Ex. 22, pp. 4-5):
- a. Fund and construct the widened portion of W Street, SE between Shannon Place and Railroad Avenue, as proposed by the Applicant and shown on the plan set. This approximately 20-foot strip along the northern portion of the Site is intended to serve as the new pedestrian realm and widened W Street, and should be constructed to DDOT standards and be provided within a public access easement. The easement must be recorded with the Office of the Surveyor;
 - b. Upgrade Railroad Avenue, SE between Chicago Street and W Street to include a curb on the west side and a row of street trees. Work with DDOT to determine the ultimate cross-section of Railroad Avenue and which side of the street the row of trees will be installed;
 - c. In lieu of the proposed traffic signal at Martin Luther King Jr. Avenue and Shannon Place, the Applicant should fund and construct the following pedestrian network improvements in the vicinity of the Site to offset vehicular impacts to the transportation network and encourage nonautomotive travel:
 - i. Bulb-outs on the east side of Martin Luther King Jr. Avenue at Morris Road, Maple View Place, Pleasant Street, W Street, V Street, and U Street, consistent with the recommendations of the Great Streets Initiative; and
 - ii. A 6-foot sidewalk along the north side of Talbert Street, SE between Shannon Place and the public alley;
 - d. Implement the Loading Management Plan ("LMP"), for the life of the Project, as proposed by the Applicant in the June 11, 2018 CTR;
 - e. Implement the Transportation Demand Management ("TDM") Plan as proposed by the Applicant in the June 11, 2018 CTR, for the life of the Project, unless otherwise noted, with the following additions and minors revisions:

- i. Clarify in TDM Plan: Specify that a minimum of six showers, 49 lockers, 82 long-term, and 10 short-term bicycle spaces will be provided at Building 4 to meet the requirements of the 2016 Zoning Regulations;
 - ii. Clarify in TDM Plan: Provide TDM leader contact information to DDOT, report TDM efforts and amenities to goDCgo staff once per year, and notify goDCgo staff each time a new office tenant moves in;
 - iii. Add to TDM Plan: Unbundle the cost of retail and office parking from the cost of lease or purchase, and only offer hourly, daily, or weekly rates. Monthly, annually, and discounted parking rates will not be offered;
 - iv. Add to TDM Plan: Retail and office tenants with 20 or more employees will demonstrate compliance with the DC Commuter Benefits Law and participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer paid direct benefit, or shuttle service);
 - v. Add to TDM Plan: Post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised;
 - vi. Add to TDM Plan: Fund and install a 19-dock Capital Bikeshare station within the PUD Site and provide funding for one year of maintenance and operations;
 - vii. Add to TDM Plan: Fund and install the expansions of three nearby existing Capital Bikeshare stations to 19 docks (Pleasant Street, Shannon Place, and Good Hope Road); and
 - viii. Add to TDM Plan: Dedicate two parking spaces within the garage for car-share services. If a car-share provider chooses not to locate vehicles in those spaces, then an alternate TDM strategy should be implemented.
- f. The portion of the sidewalk along the western side of Shannon Place, SE proposed on private property should be provided within a public access easement to be recorded with the Office of the Surveyor.

63. On July 26, 2018, the Applicant submitted the DDOT Response Memo responding to DDOT's conditions listed above (Ex. 37C) and also testified to these items at the public hearing. The Applicant agreed to each of DDOT's conditions and submitted updated plans and street sections where applicable, except as clarified below:

- a. The Applicant did not agree to fund and construct the requested off-site pedestrian improvements (FF No. __ (c)), which were the bulb-outs on the east side of Martin Luther King Jr. Avenue at six different intersections and a six-foot sidewalk on the north side of Talbert Street, SE, between Shannon Place and the public alley. As noted in the DDOT Response Memo, the requested improvements were not

associated with the Project and would be impacted by other development projects that are currently under construction or will be under construction in the near future. Moreover, the sidewalk on Talbert Street is not expected to be used by pedestrians associated with the Project, who will more likely use Shannon Place to access most of the PUD Site. The Applicant and DDOT agreed to revisit the need for any additional off-site pedestrian improvements as part of any subsequent second-stage PUD application. The Commission finds that the Applicant has fully addressed DDOT's concern and finds that the solution proposed is appropriate.

- b. The Applicant did not agree to unbundle the cost of retail office parking from the cost of lease or purchase, or to only offer hourly, daily, or weekly parking rates (see FF. No. __ (e)(iii)). As set forth in the DDOT Response Memo and as testified to at the public hearing, at the time of the hearing the Applicant already had a Letter of Intent ("LOI") with a future office tenant to lease the majority of Building 4, and the terms of that LOI provided that parking spaces were included in the cost of the lease of the office space. Thus, in order to obtain a high quality tenant for Building 4, avoid limiting other office leases in the future, and prevent the Applicant from breaking its current LOI, the Commission finds that the Applicant is not required to unbundle the cost of parking or limit parking rates in Building 4 as requested by DDOT.
 - c. The Applicant did not agree to comply with the DC Commuter Benefits Law (see FF. No. __ (e)(iv)). As stated in the DDOT Response Memo, future office and retail tenants of Building 4 will be responsible for complying with any laws applicable to them, and this responsibility should not be on the owner of the building. Therefore, the Commission finds that it is the responsibility of the individual tenant to comply with the DC Commuter Benefits Law.
 - d. The Applicant did not agree to provide a public access easement over the portion of the sidewalk along the western side of Shannon Place, SE (*see* FF. No. __ (f)) because doing so was not necessary after the Applicant submitted an updated landscape plan with the DDOT Response Memo showing a revised courtyard design with a sidewalk on Shannon Place, NE. This solution addresses DDOT's concern of having a consistent sidewalk width and appropriately-scaled pedestrian realm. Therefore, the Commission finds that based on the revised design, a public access easement is not needed to address DDOT's concern.
64. DDOT's support was also conditioned on the Applicant continuing to work with DDOT outside of the zoning process on the following items (*see* Ex. 22, pp. 5-6):
- a. Provide a detailed curbside management and signage plan, assumed to include multi-space meter installation at the Applicant's expense, consistent with current DDOT policies;
 - b. Public space, including curb and gutter, street trees and landscaping, street lights, sidewalks, curb ramps, and other features within the public rights of way, are expected to be designed and built to DDOT standards;

- c. The Applicant will be required to obtain public space permits for all elements of the Project shown in public space. The following issues with the current public space design should be coordinated with DDOT as the Applicant pursues public space permits:
 - i. DDOT concurs with the removal of three curb cuts along Shannon Place and W Street, SE;
 - ii. Remove unused curb cut on Railroad Avenue just south of the Building 4 Site;
 - iii. The proposed 79.5 foot curb cut to the loading area and parking garage on Railroad Avenue is wider than DDOT standards;
 - iv. All vaults are expected to be located on private property;
 - v. The loading area must be separated from the parking garage driveway by at least 12 feet;
 - vi. Install curbs on the west side of Railroad Avenue;
 - vii. Install one row of street trees along Railroad Avenue between Chicago Street and W Street on either the east or west side. If on the east side, then the curb must be moved at least four feet to fit tree boxes;
 - viii. The sidewalk jogs on Shannon Place south of the retail portion of the building. The courtyard feature should be moved back a minimum of three feet to accommodate a straight sidewalk and additional street trees installed where missing;
 - ix. Determine final locations for the short-term bicycle spaces (inverted U-racks) in the “furniture zone” within public space near the retail entrances;
 - x. All building entrances should be at-grade with no stairs or ramps in public space;
 - xi. Doors are currently shown swinging into the pedestrian realm along both Shannon Place and W Street. Doors should be recessed into the building to ensure a continuous six foot wide pedestrian clear zone; and
 - xii. Do not preclude future bicycle and pedestrian connections to the Shepherd Branch Trail at either Chicago Street or W Street, SE.
- d. The Applicant should participate in a Preliminary Design Review Meeting (“PDRM”) with OP and DDOT to resolve the public space issues noted above;
- e. Coordinate with DDOT's Project Review Team, Transportation Safety and Operations Division (“TOSD”), and Traffic Engineering and Signals Division

(“TESD”) regarding the proposed and recommended pedestrian improvements and roadway changes;

- f. Coordinate with DDOT's Capital Bikeshare Team regarding the location of a new Capitol Bikeshare station as well as expansion of the three existing stations noted above;
 - g. Coordinate with DDOT's Active Transportation Branch regarding the future Shepherd Branch Trail and any connections from the PUD Site; and
 - h. Coordinate with DDOT's Urban Forestry Division (“UFD”) and the Ward 8 arborist regarding the preservation and protection of existing small street trees, as well as the planting of new street trees, in bioretention facilities or a typical expanded tree planting space.
65. As set forth in the DDOT Response Memo, the Applicant agreed to each of DDOT’s items recommended for “continued coordination.” As part of the DDOT Response Memo, the Applicant submitted a curbside management plan and an updated landscape site plan showing that all elements within public space are designed to DDOT standards and incorporate the additional public space elements and conditions requested in the DDOT Report. The revised landscape plan confirmed that the three curb cuts that are proposed on Railroad Avenue meet DDOT standards: (i) a 24-foot wide curb cut for the parking garage; (ii) a 24-foot curb cut for the loading dock; and (iii) a 12-foot curb cut for the loading dock, all of which will be separated by 12-foot wide pedestrian refuge islands. The updated site plan also shows that the Applicant updated the courtyard design so that a consistent sidewalk width is now provided on Shannon Place, NE.
66. At the public hearing DDOT confirmed its support for the Application based on the Applicant’s response to the conditions and items for continued coordination identified in the DDOT Report, addressed in the DDOT Response Memo, and discussed at the public hearing.
67. Based on the analysis included in the DDOT Report, including implementation of DDOT’s stated conditions as revised and the updated TDM plan, the Commission concludes that any potential adverse transportation impacts that may arise out of the Project will be adequately mitigated and will not create any adverse impacts to the surrounding roadway network or neighborhood.

ANC Report

68. By letter dated July 18, 2018, ANC 8A appointed Commissioner Greta Fuller to represent ANC 8A at the public hearing. (Ex. 27.) By letter dated July 24, 2018, ANC 8A requested that the Commission permit the ANC to submit a CBA no later than September 7, 2018, to provide additional time to gain community support for the Project. (Ex. 28.)
69. At the public hearing, Commissioner Fuller raised several issues related to the Application, including (i) the need for the ANC to review the proposed building materials in more detail; (ii) concerns that Building 4 would create additional traffic congestion, pedestrian safety

issues, noise, and trash in the surrounding streets; (iii) concern for a loss of privacy and increased shadows on the adjacent row homes to the south of Building 4; and (iv) the need for more time to thoroughly review the draft CMP and CBA.

70. The Applicant responded to Commissioner Fuller's concerns as follows:

- a. The Applicant provided an updated materials board in its post-hearing submission (Ex. ___) and presented those materials at an August 2, 2018, public meeting about the Project hosted by the Anacostia Coordinating Council, at which Commissioner Fuller was present;
- b. The Applicant committed to a number of TDM measures (*see* FF No. ___), which DDOT found would mitigate any potential adverse traffic and/or pedestrian safety issues created by the Project. Therefore, based on the Applicant's CTR (Ex. 20), the DDOT Report (Ex. 22), the Applicant's DDOT Response Memo (Ex. 37C), the testimony from the Applicant's transportation consultant, and the testimony of DDOT provided at the public hearing, the Commission finds that the Project will not create traffic congestion or pedestrian safety concerns that cannot be mitigated.

Regarding noise and trash, the Applicant agreed to abide by a Construction Management Plan (Ex. __) and will also be required to comply with all applicable laws and regulations regarding construction noise and trash, such that all construction-related noise and trash impacts will be properly mitigated. Furthermore, the Project does not establish new land uses that will generate excessive noise during Building 4's operation, since the proposed office and retail uses already exist in the surrounding neighborhood;

Moreover, the Commission previously found that the first-stage PUD "has been designed so that it does not result in unreasonable or unexpected traffic, parking, litter... odor, noise, or vibration impacts on surrounding residential areas." *See* Z.C. Order No. 08-07, FF No. 39(a)(vii). Because Building 4 has been designed to be consistent with the first-stage PUD approval, the Commission concludes that the Project will not create unreasonable traffic, pedestrian safety, noise, or trash impacts in the surrounding neighborhood that cannot be mitigated.

- c. As shown on Sheet A-30 of the Architectural Drawings (Ex. 21A), the Applicant provided shadow studies showing that Building 4 would not cast shadows on any existing residences for the majority of the year. As shown on Sheet A-05 of the Architectural Drawings included in the Post-Hearing Submission (Ex. ___), Building 4 will be located between 59 feet and 71.5 feet from the existing row houses to the south of the Site and separated by a public alley, which is a typical condition for property located adjacent to commercial uses and commercially-zoned land. Moreover, it is well settled in the District of Columbia that a property owner is not entitled to a view, light, or air across another person's property without an express easement. (*See Hefazi v. Stiglitz*, 862 A.2d 901, 911 (D.C. 2004) ("American courts have wisely refused to allow the acquisition by prescription of easements of light and air"); *see also Ash v. Tate*, 73 F.2d 518 (D.C. Cir. 1934) (no

injunction under District of Columbia law to prevent adjoining landowner from erecting structure that cuts off light and air); Z.C. Order No. 11-03, Finding of Fact No. 91 (“[t]he Commission finds that the viewsheds and property values ... are not protected by any restrictive covenants).

In addition, the Commission previously found that the first-stage PUD “includes a number of elements designed to serve as buffers, including landscaping, height step-downs and setbacks, and other architectural and site planning measures that avoid potential conflicts.” *See* Z.C. Order No. 08-07, FF No. 39(a)(viii). Because Building 4 includes step-downs and setbacks previously approved by this Commission and determined to be adequate to avoid potential conflicts, the Commission continues to find that Building 4 will not create an unreasonable loss of privacy or increased shadows on adjacent residential homes.

- d. The Applicant continued to work closely with ANC 8A following the public hearing. [TO BE UPDATED FOLLOWING ANC MEETING ON SEPTEMBER 4, 2018 AND ANC SUBMISSION DEADLINE ON SEPTEMBER 7, 2018]
71. Based on the foregoing findings of facts, the Commission concludes that the Applicant has fully addressed and reasonably responded to all of the ANC’s stated concerns and that the Commission has given great weight to all of the ANC’s issues.

Other Contested Issues

72. In addition to the issues raised by the ANC, DC4RD testified as undeclared at the public hearing and raised the following issues:
- a. DC4RD stated that the Project would have significant impacts on the surrounding neighborhood generally, given that the first-stage PUD was approved in 2013 and the public better understands now that PUDs must be consistent with the Comprehensive Plan, including in this case with the Generalized Policy Map’s designation of Building 4 in Neighborhood Conservation Area.
 - b. DC4RD claimed that the Building 4’s height diverges too much from existing buildings in the neighborhood, would create a “canyon effect” when constructed in conjunction with surrounding projects being developed in the neighborhood, and as a result would have negative impacts on light and air to surrounding properties because Building 4 does not provide adequate setbacks.
 - c. DC4RD alleged that development of Building 4 would increase neighborhood housing prices, property taxes, and rents, thus resulting in displacement, and requested a mitigation system in the form of tax abatements and freezes and rent abatements for properties in the surrounding area. DC4RD also stated that the Department of Housing and Community Development (“DHCD”) did not submit a report to the record indicating whether adequate affordable housing, including affordable family housing, was being provided.

- d. DC4RD stated that FEMS did not submit a report to the record indicating whether capacity exists to respond to emergencies at Building 4 and at surrounding properties.
 - e. DC4RD requested that the Applicant commit to providing jobs created by the development of Building 4 to Ward 8 residents.
 - f. Finally, DC4RD stated that development of Building 4 does not account for policies within the District's pedestrian action plan related to pedestrian safety, and specifically noted concerns with large trucks during construction.
73. The Applicant responded to the issues raised by DC4RD in its rebuttal testimony as follows:

- a. The Comprehensive Plan was adopted in 2006 (prior to approval of the first-stage PUD), at which point the Future Land Use and Generalized Policy Map designations were established for the PUD Site. In 2013, upon approval of the first-stage PUD, the Commission found that the overall PUD, including Building 4, was consistent with the Comprehensive Plan, including the Future Land Use Map and Generalized Policy Map designations for the PUD Site. *See* Z.C. Order No. 08-07, FF No. 42, stating that the proposal to “redevelop the PUD Site into a neighborhood center with a mix of office, retail, service, and residential uses is fully consistent with the Future Land Use Map and Generalized Policy Map designations for the PUD Site.” Nothing has changed since 2013 with respect to the Future Land Use or Generalized Policy Map designations for the PUD Site. Accordingly, evaluating this second-stage PUD, OP concluded Building 4 is not inconsistent with the first-stage PUD or with the Comprehensive Plan Future Land Use and Generalized Policy Maps’ designations. *See* OP Report (Ex. 25, p. 11). The Commission concurs with OP’s findings. In addition, the requirement that zoning shall “not be inconsistent with the Comprehensive Plan has been in place since passage of the Home Rule Act, well in advance of the first-stage PUD, and nothing in the Home Rule Act, the Comprehensive Plan, or the Zoning Regulations has changed so as to modify this requirement.

More specifically, the Commission finds that the second-stage PUD for Building 4 continues to be not inconsistent with the Generalized Policy Map. The Site is situated between Martin Luther King Jr. Avenue, SE on the east, which is designated as a Main Street Mixed Use Corridor on the Generalized Policy Map, and the area to the west containing the Anacostia Freeway, Anacostia Metro Station, and Poplar Point, which are designated as Land Use Change Areas and are part of the Central Employment District. The Generalized Policy Map defines Main Street Mixed Use Corridors as traditional commercial business corridors with a concentration of older storefronts along the street. Their common feature is that they have a pedestrian-oriented environment with traditional storefronts, many of which have upper story residential or office uses. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should

support transit use and enhance the pedestrian environment. 10-A DCMR § 223.14. In contrast, the Generalized Policy Map describes Land Use Change Areas as representing areas where change to a different land use from what exists today is anticipated, and which represent many of the city's large development opportunity sites, and other smaller sites that are undergoing redevelopment or that are anticipated to undergo redevelopment. In some cases, the Future Land Use Map depicts the specific mix of uses expected for these areas. Such is the case for the nearby Poplar Point area which is designated as Mixed Use (Institutional, Medium Density Commercial, and High Density Residential).

Based on the above, as well as the Applicant's Statement in Support (Ex. 3), the Applicant's Comprehensive Plan analysis (Ex. 3D), and the OP Report (Ex. 25), the Commission finds that the second-stage PUD is not inconsistent with its designation as a Neighborhood Conservation Area on the Generalized Policy Map. In contrast to the definition of a Neighborhood Conservation Area, the PUD Site (including the Building 4 Site) primarily consists of vacant and underutilized land and is commercial in character. Considering the actual physical surroundings of the Site, and the surrounding Generalized Policy Map designations, the Commission finds that Building 4 will provide an appropriate transition between the lower-scale Martin Luther King Jr. Ave, SE main street corridor to the east and the higher density development contemplated for the Poplar Point area to the south and southwest. The Commission also finds that the Project will carry out the policy goals of the Generalized Policy Map related to the maintenance, conservation, and enhancement of existing land uses and community character.

- b. With respect to DC4RD's claim that Building 4 would have a negative impact on light and air to nearby properties, the Commission finds that Building 4 provides significant setbacks and height step downs in order to minimize its impact to the surrounding area. As shown on Sheet A-30 of the Architectural Drawings (Ex. 21A), the Applicant provided shadow studies showing that Building 4 would not cast shadows on any existing residences for the majority of the year, including the closest existing rowhomes to the south of Building 4 across the alley, and would otherwise not block views. Moreover, the Applicant is widening W Street by 20 feet via a public easement in order to create additional building setbacks and avoid creating a "canyon effect."
- c. Moreover, the Commission previously found that the first-stage PUD "has been designed so that it does not result in unreasonable or unexpected... view obstruction" and "includes a number of elements designed to serve as buffers, including landscaping, height step downs and setbacks, and other architectural and site planning measures that avoid potential conflicts." *See* Z.C. Order No. 08-07, FF No. 39(a)(vii) and (viii). In addition, the Commission previously concluded that the first-stage PUD "complies with the applicable height, bulk and density standards of the Zoning Regulations. The mix of office, retail, service, and residential uses for this project are appropriate for the PUD Site. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved." *See* Z.C. Order No. 08-07, Conclusion of Law No. 5. Building 4 has

been designed to have a consistent height, bulk, and density with the design approved under the first-stage PUD, and therefore the Commission concludes that this Applicant also does not create any unacceptable impacts on the surrounding area and should be approved.

- d. In response to DC4RD’s comments regarding displacement and the need for more affordable housing, the Applicant noted that Building 4 is an office building and therefore has no bearing on providing housing or affordable housing.³ DHCD did not submit a letter to the record commenting on the proposed affordable housing because it is irrelevant to this Application. Moreover, the majority of the PUD Site, including the Building 4 Site, is presently commercial/industrial in use or vacant and used as surface parking. The majority of the buildings approved in the first-stage PUD that will be constructed on the PUD Site are also commercial/industrial in nature. Therefore, no residential displacement will occur as a result of the overall PUD, and more specifically, no displacement will occur as a result of development of Building 4. Furthermore, the Applicant has no control over the District’s policies or laws relating to tax and/or rent abatements or mitigations, and those comments are not properly directed towards nor should they be addressed by this Application.
- e. Regarding FEMS’ evaluation of Building 4 and its impact on emergency response times, the Applicant noted that the cumulative impact of the overall PUD was already carefully reviewed and approved in the first-stage PUD. Moreover, OP noted in its May 4, 2018 setdown report (Ex. 10) that it would consult with FEMS on the Application, and indicated in its July 18, 2018 hearing report (Ex. 25) that it circulated the Application to FEMS. Thus, the Commission finds that FEMS was notified and had an opportunity to provide comments on the Application and declined to do so. Moreover, as a District agency, the Commission finds that FEMS is required to provide fire and emergency medical services to all buildings within the District.
- f. Regarding jobs, the Applicant will (i) enter into a First Source Employment Agreement with DOES that governs project components for which tax increment financing (“TIF”) is being used; (ii) enter into a CBE Agreement applicable to Building 4, as approved and executed by the Department of Small and Local Business Development (“DSLBD”), to contract with CBEs for at least 35% of the contract dollar volume of the entire project for which TIF financing is being used, or otherwise as consistent with applicable law; and (iii) participate in an internship program with DOES. The Applicant has also committed to ANC 8A to undertake certain job training and employment efforts as part of the CBA (Ex. __).
- g. With respect to pedestrian safety, the Applicant carefully evaluated Building 4’s impact on the surrounding transportation network, including the pedestrian network and safety. That analysis was reviewed by DDOT, and in doing so DDOT

³ Building 1, approved pursuant to Z.C. Order No. 08-07A, was approved as a six-story residential building with approximately 71 residential units, 80% of which will be set aside for households earning up to 60% of the area medium income.

determined that Building 4 includes a variety of mitigation measures that will ensure that any negative impacts created by Building 4 are fully mitigated. Moreover, the Applicant has agreed to a CMP that will ensure that pedestrian safety measures are taken throughout construction of Building 4.

74. Based on the foregoing, the Commission finds that the Applicant has fully addressed each of the issues raised by DC4RD at the public hearing. Moreover, consistent with the manner in which it has participated in other recent proceedings, the Commission finds that many of DC4RD's claims are generalized grievances that are not specific to any portion of a particular proposal, including the Applicant's proposal. The Commission finds that DC4RD failed to substantiate any of its claims through fact-based evidence or analysis, including those related to displacement and gentrification. Therefore, based on the foregoing, the Commission concludes that the issues raised by DC4RD are unsubstantiated, generalized grievances, not specific to the Application. To the extent that any of the issues raised are applicable to the Application, the Commission finds that the Applicant fully addressed all of DC4RD's relevant concerns in its rebuttal testimony at the public hearing.

CONCLUSIONS OF LAW

1. 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. 11-X DCMR § 300.1.
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to modify the approved first-stage PUD and to consider an application for approval of a second-stage PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this Application carries out the purposes of 11-X DCMR, Chapter 3 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development. The Application is consistent with the purposes and goals of the Commission's approval in the first-stage PUD.
4. The Application complies with the applicable height, bulk, and density standards of the Zoning Regulations and the first-stage PUD. The mix of uses is appropriate for the Site. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Application should be approved.

5. The Application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
6. The Applicant's requests for zoning flexibility from those standards, requirements, and limitations of the 1958 Zoning Regulations that are specifically prescribed in this Order are consistent with the Comprehensive Plan, and the flexibility requested for certain design aspects of the Project are appropriate. Moreover, the Project's benefits and amenities approved as part of the first-stage PUD and as modified by this second-stage PUD are reasonable trade-offs for the flexibility requested.
7. The validity of the Commission's final approval shall be valid for a period of two years from the effective date of this Order. Within such time, an application for a building permit must be filed for construction of Building 4, and construction of Building 4 shall begin within three years of the effective date of this Order.
8. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required 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 (2001)), to give great weight to OP's recommendations. The Commission carefully considered the OP reports in this case and, as explained herein, finds OP's recommendation to grant the Application persuasive.
10. 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. [INSERT UPDATE FOLLOWING ANC SEPTEMBER 7 FILING.] Therefore, the Commission has given great weight to each of the issues raised by the ANC.
11. The Application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2- 1401 et seq. (2007 Repl.).

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 PUD for the Site, subject to the guidelines, conditions, and standards set forth below:

A. Project Development

1. Building 4 shall be developed in accordance with the Architectural Plans and Elevations dated July 6, 2018 (Ex. 21A), as modified by the revised site plan (L-01) and street sections (L-04) included in the DDOT Response Memo (Ex. 37C), as further revised by the

Architectural Plans and Elevations dated August 27, 2018 (Ex. ___) (collectively, the “Architectural Drawings”), as modified by the guidelines, conditions, standards, and flexibility of this Order.

2. In accordance with the Architectural Drawings, Building 4 shall be a mixed use project with a maximum building height of 90 feet not including penthouses and a maximum density of approximately 287,886 square feet of gross floor area (4.4 FAR). A minimum of 6,644 square feet of gross floor area shall be devoted to retail space and approximately 281,242 square feet of gross floor area shall be devoted to office space. Building 4 shall include approximately 460 total parking spaces, comprised of a minimum of 324 zoning-compliant spaces and approximately 136 tandem spaces (subject to the parking flexibility included as Decision ___ of this Order). Loading facilities for Building 4 shall include three loading berths at 30 feet deep, one 20 foot service/delivery space, and one 400 square foot loading platform.
3. The public space improvements on W Street, Railroad Avenue, and Shannon Place shall be developed in accordance with the Architectural Drawings (Ex. 21A), as modified by the revised site plan and street sections included in the DDOT Response Memo (Ex. 37C) and shall include upgrading Railroad Avenue, SE between Chicago Street and W Street to include a curb on the east and west side and a row of street trees on either side of Railroad Avenue, SE, street trees, landscaping, and bicycle racks. The courtyard design shall be developed in accordance with Sheet C-03 of Exhibit 21A and Sheet L-01 of Exhibit 37C and shall include specialty paving, benches, lighting, security cameras, electric outlets, trash and recycling receptacles, trees, and mixed and bio-retention plantings.
4. The Applicant shall have flexibility with the design of the Project in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, and to vary the size of the retail area, provided that the variations do not change the exterior configuration of the building;
 - b. To vary the number, location, and arrangement of parking spaces in Building 4, provided that the total number of spaces is not reduced below 324 zoning-compliant parking spaces;
 - a. To vary the final selection of exterior building materials within the color ranges of the material types shown at Exhibit 37B (materials board) as modified by Sheet A-01 of the Post-Hearing Submission (Ex. ___), based on availability at the time of construction. Any such variations shall not reduce the overall quality of materials, nor substantially change the exterior appearance, proportions, or general design intent of the building.
 - c. To make minor refinements to exterior details, locations, and dimensions, including curtainwall mullions and spandrels, window frames, doorways, glass types, belt courses, brick shapes, sills, bases, cornices, railings and trim; and any other changes

to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;

- d. To vary the sustainable features of Building 4, provided the total number of LEED points achievable for Building 4 does not decrease below LEED-Gold;
- e. To vary the final design of retail frontages, including the location and design of entrances, show windows, and size of retail units, in accordance with the needs of retail tenants, and to vary the types of uses designated as “retail” use on the approved Architectural Drawings to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)), and to vary the amount of retail space, so long as the total amount is not less than 6,644 square feet and is not devoted to a single retail category;
- f. To vary the retail signage according to the signage guidelines and storefront guidelines shown on Sheet A-47 of the Architectural Drawings (Ex. 21A); and
- g. To provide on-site parking spaces that measure 9 feet x 18 feet.

B. Public Benefits and Amenities

1. **Prior to the issuance of the first certificate of occupancy for the above-grade portion of Building 4**, the Applicant shall demonstrate to the Zoning Administrator that: (a) the Applicant has completed the public space improvements on W Street, Railroad Avenue, and Shannon Place in accordance with Sheets L-01 and C-03 of the Architectural Drawings (Ex. 21A and 37C), which shall include new paving, street trees, landscaping, and bicycle racks; (b) the Applicant has completed the courtyard design in accordance with Sheets L-01 and C-03 of the Architectural Drawings (Ex. 21A and 37C), which shall include specialty paving, benches, lighting, security cameras, electric outlets, trash and recycling receptacles, trees, and mixed and bio-retention plantings; and (c) the DC Council has approved street widening legislation to effectively extend the width of W Street, SE, consistent with the plat included as Sheet C-08 of the Architectural Drawings (Ex. 21A) and S.O. No. 00469.
2. **Prior to the issuance of the first certificate of occupancy for the above-grade portion of Building 4**, the Applicant shall demonstrate to the Zoning Administrator that it has submitted (i) an executed First Source Employment Agreement with DOES that governs project components for which TIF financing is being used. The First Source Employment Agreement shall be consistent with the First Source Employment Agreement Act of 1984 and shall be consistent with the form of agreement utilized at the time the PUD received first-stage approval in 2013; and (ii) an executed CBE Agreement with DSLBD that requires the Applicant to contract with CBEs for at least 35% of the contract dollar volume of the entire project for which TIF financing is being used, or otherwise as consistent with applicable law.

3. **Prior to the issuance of the first certificate of occupancy for the above-grade portion of Building 4**, the Applicant shall demonstrate to the Zoning Administrator that it has created or is participating in an internship program with DOES.
4. **Prior to the issuance of the first certificate of occupancy for the above-grade portion of Building 4**, the Applicant shall demonstrate to the Zoning Administrator that it has:
 - a. Installed approximately 1,000 square feet of solar panels on Building 4 as shown on Sheet A-29 of the Architectural Drawings (Ex. 21A); and
 - b. Designed Building 4 to achieve LEED Gold Certification under the USGBC's LEED v4 for Building Design and Construction rating system and registered Building 4 with the USGBC to commence the LEED Certification process.
5. **Prior to the issuance of the first certificate of occupancy for the above-grade portion of Building 4**, the Applicant shall demonstrate to the Zoning Administrator that the Building 4 courtyard has been constructed:
 - a. To be accessible to persons with disabilities from Shannon Place in accordance with the applicable ADA standards;
 - b. With signage to permit the courtyard to be closed at night; and
 - c. With electric outlets that can be accessed by members of the public.
6. **For the life of Building 4**, the Applicant shall:
 - a. Make Building 4's courtyard accessible to the public during normal daytime hours;
 - b. Maintain the ADA-access to the courtyard from Shannon Place;
 - c. Close the courtyard at night,
 - d. Keep the courtyard clean and well-maintained;
 - e. Permit the courtyard to be available for use by community organizations during evening and weekend hours, subject to a scheduling process to be developed by the Applicant, the property manager, and the signatory organizations to the CBA, included as Exhibit ___; and
 - f. Maintain electric outlets in the courtyard and make them available for use by the public during organized events.

C. Transportation Mitigation Measures

7. **For the life of Building 4 or as otherwise noted below**, the Applicant shall implement the following TDM measures:

- a. The Applicant shall identify a TDM leader (for planning, construction, and operations). The TDM leader shall work with employees of Building 4 to distribute and market various transportation alternatives and options.
- b. The Applicant shall work with DDOT and goDCgo to implement TDM measures at Building 4.
- c. The Applicant shall share the full contact information of the TDM leader for Building 4 with DDOT and goDCgo.
- d. The Applicant shall post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised.
- e. The Applicant shall provide retail employees who wish to carpool with detailed carpooling information and shall refer them to other carpool matching services sponsored by MWCOG.
- f. **Prior to the issuance of the first certificate of occupancy for the above-grade portion of Building 4**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a minimum of 82 long-term and 10 short-term bicycle parking spaces, as shown on the Architectural Drawings.
- g. **Prior to the issuance of the first certificate of occupancy for the above-grade portion of Building 4**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a bicycle repair station in one of the secure long-term bicycle storage rooms in Building 4.
- h. **Prior to the issuance of the first certificate of occupancy for the above-grade portion of Building 4**, the Applicant shall demonstrate to the Zoning Administrator that it has installed six showers and 49 lockers for employees of the retail and office uses in Building 4.
- i. **Prior to the issuance of the first certificate of occupancy for the above-grade portion of Building 4**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a Transportation Information Center Display (electronic screen) within the lobby of Building 4 containing information related to local transportation alternatives.
- j. **Prior to the issuance of the first certificate of occupancy for the above-grade portion of Building 4**, the Applicant shall demonstrate to the Zoning Administrator that it has funded the installation of a 19-dock Capital Bikeshare station within the PUD Site and has set aside funding for one year of maintenance and operations for the station.
- k. **Prior to the issuance of the first certificate of occupancy for the above-grade portion of Building 4**, the Applicant shall demonstrate to the Zoning Administrator that it has funded the expansion of three nearby existing Capital Bikeshare stations to 19 docks at stations located at (i) the intersection of Pleasant Street and Martin

Luther King Jr. Avenue; (ii) the intersection of Good Hope Road and Martin Luther King Jr. Avenue; and (iii) the dead-end portion of Shannon Place.

1. **Prior to the issuance of the first certificate of occupancy for the above-grade portion of Building 4**, the Applicant shall demonstrate to the Zoning Administrator that it has offered two parking spaces within the garage of Building 4 for car-sharing services. If no agreement has been reached with a car share company for either of the two parking spaces prior to the issuance of the first certificate of occupancy for the above-grade portion of Building 4, then the Applicant shall host a transportation event for employees of Building 4 within the first year following the issuance of the first certificate of occupancy for the above-grade portion of Building 4.
- m. **Prior to the issuance of the first certificate of occupancy for the above-grade portion of Building 4**, the Applicant shall demonstrate to the Zoning Administrator that it has dedicated nine parking spaces within the garage of Building 4 as electric vehicle charging stations.

E. Miscellaneous

1. No building permit shall be issued for Building 4 until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. This second-stage PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within that time, the Applicant shall file for a building permit for Building 4 and shall begin construction of Building 4 within three years of the effective date of this Order.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On _____, 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 _____ (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter Shapiro to approve).

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

ANTHONY HOOD
Chairman,
Zoning Commission

SARA B. BARDIN
Director.
Office of Zoning