

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 09-03F**  
**Z.C. Case No. 09-03F**  
**Skyland Holdings LLC**  
**Modification of Significance to an Approved Planned Unit Development**  
**@ Skyland Town Center (Square 5633, Lot 22)**  
**September 14, 2020**

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on July 23, 2020, to consider the application (the “Application”) of Skyland Holdings LLC (the “Applicant”) for a Modification of Significance (the “Modification Project”) to the approved Planned Unit Development (“PUD”) originally approved by Z.C. Order No. 09-03 (the “Original Order”), as modified by Z.C. Order Nos. 09-03A and 09-03D and as extended by the Commission in 09-03B, 09-03C, and 09-03E, for Lot 22 in Square 5633, known as Skyland Town Center (the “Property”).

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations”, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**Background**

1. Pursuant to the Original Order, the Commission granted the Applicant Consolidated PUD approval for a mixed-use town center featuring community-serving retail and residential uses over a series of five (5) blocks (the “Original Project”).
2. In Z.C. Order 09-03A and 09-03D, the Commission approved modifications of the Original Project, and in Z.C. Orders 09-03B, 09-03C, and 09-03E the Commission approved extensions of the Original Project’s approval.

**Notice**

3. On June 28, 2019, the Applicant mailed a Notice of Intent to file an application for a Modification of Significance to all property owners within 200 feet of the Property, the

Ft. Baker Drive Party, Advisory Neighborhood Commission (“ANC”) 7B and ANC 8B, the “affected ANCs” per Subtitle Z, Section 101.8. (Exhibit (“Ex”) 3C)

4. On May 27, 2020, the Office of Zoning (“OZ”) sent notice of the public hearing to:
  - The affected ANC 7B and adjacent ANC 8B;
  - The affected ANC Single Member District (“SMD”) 7B02;
  - The Office of Planning (“OP”);
  - The District Department of Transportation (“DDOT”);
  - The Department of Consumer and Regulatory Affairs (“DCRA”);
  - The Office of Attorney General (“OAG”);
  - The Department of Energy and Environment (“DOEE”);
  - The DC Council; and
  - Property owners within 200 feet of the Property.(Ex. 17)
5. OZ also published notice of the July 23, 2020 virtual public hearing in the *D.C. Register* on June 5, 2020 (67 DCR 24) as well as through the calendar on OZ’s website. (Ex. 15)
6. Pursuant to Subtitle Z, §402.3, the Applicant posted notice of the hearing on the Property on June 9, 2020 and maintained such notice in accordance with the Zoning Regulations. (Ex. 18A, 28.) The Applicant did request a waiver of the posting requirements to waive the notarization requirements for the postings. (Ex. 6.)<sup>1</sup> Such waiver was granted at the public hearing on July 23, 2020. (July 23, 2020 Public Hearing Transcript (“Tr.”) at 7)

#### Parties

7. The parties to the case were the Applicant, ANC 7B, ANC 8B, and the Ft. Baker Drive Party. There were no additional requests for party status.<sup>2</sup>

#### The Property

8. The Property is an 18.7-acre parcel located at the intersection of Naylor Road, Good Hope Road, and Alabama Avenue SE.
9. The Property is located with residential neighborhoods of Hillcrest and Fairlawn to the east.
10. The Modification Project includes all of the Property except Block 2, which is already under construction and moving forward. Block 2 is not a part of the Modification Project. (Ex. 3)

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<sup>1</sup> The Applicant noted the notarization waiver was due to the ongoing COVID-19 pandemic and its impact on the ability to obtain notarizations due to the District of Columbia not yet having put in place remote notarization protocols. As detailed in the Affirmation of Posting and Affirmation of Maintenance, the Applicant did post and maintain notice of the hearing in accordance with the requirements of the Zoning Regulations.

<sup>2</sup> While ANC 8B is a party as an adjacent ANC and was served copies of all materials, ANC 8B did not participate in this Application. Additionally, the Ft. Baker Drive Party did not file anything in this Application.

## **Application**

### **The Modification Project**

11. The Modification Project continues to provide a town center project based around a central drive, anchored by community-serving retail in the form of a Lidl grocery store, and with a significant retail and residential component. (Ex. 3, 13, 22, 29, [REDACTED])
12. The Modification Project continues to center around Town Center Drive, providing a street-activated pedestrian experience and central thoroughfare through the Property with significant ground-floor retail. The Modification Project also includes the addition of medical office use<sup>3</sup> and includes a first-stage PUD for Block 4 of the Property for a future residential building. (Ex. 3, [REDACTED])
13. The revised site plan includes four new blocks, with Block 2 already under construction. Block 3 will be developed with three single-story retail buildings, the largest being the Lidl. In addition to Lidl, Block 3 will include a Starbucks coffee shop and another in-line retail building. Consistent with the Town Center concept, Block 3 will also consist of a surface parking lot and a drive-through lane for the coffee shop. Block 1 will include a Medical Office Building and adjacent parking garage. Block 4 will be the site of the future residential building. (Ex. 3, 3H, 13, 13D, 22, 22C, [REDACTED]).
14. The Modification Project includes a total gross floor area of 1,170,478 square feet for a floor area ratio (“FAR”) of 1.63, with 0.89 FAR of commercial use, including the improvements in Block 2. The Modification Project, including Block 2, will have building heights ranging from 30-feet up to 62 feet in height. The Modification Project, including Block 2, will have a total of 1,289 parking spaces. (Ex. 22C)

### *Block 3*

15. In Block 3, the Lidl will be approximately 29,436 square feet in size and will be situated adjacent to Town Center Drive. The Lidl is designed as a model Lidl grocery store with an open façade both facing Town Center Drive and the parking lot. The Lidl building will be constructed with brick, spandrel panels, and split-face concrete masonry units. (Ex. 3, 22C, [REDACTED])
16. Block 3 will also contain the Starbucks coffee shop in approximately 2,973 square feet of space and an in-line retail building will include approximately 9,981 square feet of space. The in-line retail building’s architecture pulls from the character and language of Block 2 by using similar architectural motifs and masonry materials. All three Block 3 buildings are 30 feet in height or less. (Ex. 22C, [REDACTED])

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<sup>3</sup> The Applicant noted that it anticipated that the medical office building may include any uses that are defined in the Zoning Regulations as “Medical Care”, including primary and emergency care facilities, doctor and dentist offices, and/or clinics.

17. Between the Lidl and Alabama Avenue SE will be a surface parking lot with associated landscaping consistent with a traditional town center and which satisfies all zoning requirements for a surface parking lot. The parking lot will include approximately 214 parking spaces. This traditional plan will provide ease of access to the Lidl and is consistent with the grocer's site layout requirements. (Ex. 3)
18. The drive-through lane to the Starbucks winds across the edge of this parking area providing ample queuing area and ease of access for the coffee shop as well. (Ex. 22C)
19. The Applicant enhanced the landscaping of trees and plantings to create a green buffer around all of Block 3 will also connect to the significant landscaping around all perimeters of the Property, forming a welcoming, green streetscape. (Ex. 3, 22, 22C)

*Block 1*

20. Block 1 will contain the Medical Office Building and related surface parking garage. The Medical Office Building is the visual entrance to Skyland Town Center from Good Hope Road and Naylor Road. (Ex. 3)
21. The Medical Office Building is situated to fit into this corner of the Property while providing a green, open courtyard on the interior side. The building provides two main entrances on the first floor, with the Naylor Road lobby providing the main pedestrian entry, and the main vehicular entry on the opposite lobby accessed from Town Center Drive. The two lobbies will be connected and will provide access to the upper levels. (Ex. 3, 22C, [REDACTED])
22. The building will be four stories and up to 60 feet in height and will consist of approximately 131,344 square feet on four floors with an adjacent parking garage. (Ex. 22C, [REDACTED])
23. The façade includes a combination of brick and ground faced concrete masonry units at the base and composite aluminum panels, and glass on the façade. The façade design is simplified and consistent across all four sides that pairs with the adjacent parking garage. (Ex. 22C, [REDACTED])
24. The adjacent parking structure will be six levels and 52.5 feet in height, providing approximately 465 spaces. The garage is set back 24 feet from Naylor Road to provide a one-story Arts Walk with shadow boxes to provide rotating installations to activate the streetscape. The surface of the parking garage is covered in solar panels to provide renewable energy and shading for the parking. (Ex. 22C, [REDACTED])
25. The Arts Walk shadow boxes in Block 1 will be filled through a partnership with Building Bridges Across the River and its partnership with other arts organizations. The shadow boxes will provide community art and showcases to activate this area along Naylor Road. (Ex. 22, 22A, [REDACTED])

#### *Block 4*

26. Block 4 will include a building up to 60 feet in height, approximately 312,230 square feet in size, and including approximately 252 multifamily residential units, and 7,140 square feet of ground-floor retail. The building will also contain approximately 157 parking spaces in a partially below-grade garage. (Ex. 3)

#### Changes to Approved Plans and Uses

27. As discussed above, the Modification Project changes the overall site plan, but does not deviate from the previously approved design of a town center based around a central drive with a mix of retail, residential, and other needed uses on an underutilized site in the District long marked for development. (Ex. 3)
28. The Modification Project does not significantly change the uses the Commission previously approved, as follows:
  - a. *Residential Use*: The Original Project approved 540,063 square feet of residential use for a total of 450-500 units, and the Modification Project will provide approximately 540,480 square feet of residential use, including Block 2, for a total of 500-515 units.
  - b. *Retail Use*: The Original Project approved approximately 341,671 square feet of retail, and the Modification Project will provide approximately 154,510 square feet of retail, including a grocery store.
  - c. *Medical Office Use*: The Original Project did not include medical office use, but the Modification Project will provide approximately 131,344 square feet of medical office use in Block 1. (Ex. 3)

#### Changes to Development Flexibility

29. The Original Project included flexibility from the rear yard, side yard, lot occupancy, roof structure, court, and loading requirements under the regulations. (Ex. 3B)
30. As part of the Modification Project, the Applicant requested the following areas of flexibility:
  - a. From 11-C DCMR § 710.2(b)(2) for the location of parking spaces in Block 3 to be in a potential “front yard”;
  - b. From the loading requirements of Subtitle C for the in-line retail building in Block 3; and

- c. From 11-C DCMR § 1502.1 from the roof structure setback requirements for the solar array which serves as shading and sustainable energy for the parking garage in Block 1. (Ex. 3)<sup>4</sup>

### Changes to Public Benefits

31. As part of the Modification Project, the Applicant proposes to generally maintain the commitments to the benefits and amenities required by the Original Order. The Original Order called for monetary contributions totaling \$1,285,000, including support for schools, local parks and libraries, and job training programs. The Applicant has begun paying this benefit, noting that it had provided over \$900,000 in furtherance of these programs. (Ex. 22)
32. The job training program funded as part of the benefits required under the Original Order is the Skyland Workforce Center. The Applicant explained that it had contributed over \$600,000 to the Workforce Center, and that the Workforce Center has completed intake for more than 4,300 individuals, placing over 530 people in jobs, and providing services for over 1,000 individuals using the Center itself. (Ex. 22)
33. The Applicant proposes to reallocate the \$300,000 set aside for a Contractor Loan Fund and the \$75,000 for homebuying and homeownership classes to the job training category for the Skyland Workforce Center based on this success. Further, the Modification Project no longer includes home ownership and the Applicant has not seen a need for the Contractor Loan Fund in the Block 2 construction. (Ex. 22)

### The Modification Project is Not Inconsistent with the Comprehensive Plan

34. In the Original Order, the Commission found the Original Project was not inconsistent with the Comprehensive Plan. (Ex. 3B)
35. The Modification Project is not inconsistent with the Original Project approval or the Comprehensive Plan. Specifically, the Modification Project still includes a town center configured around a central drive with approximately 500 residential units, significant neighborhood-serving retail, and a full-service grocery store. The Modification Project now includes a medical office building that will include medical care uses that will help achieve additional Plan policies and goals. (Ex. 3, 22, 29, [REDACTED])
36. With respect to the maps within the Comprehensive Plan, the Plan notes that the maps provide “generalized guidance” and are “soft-edged,” and not parcel specific. Further, the Framework Element notes that in interpreting the maps, it is also important to interpret them “broadly” and “in conjunction with the text of the Comprehensive Plan, including the Citywide Elements and the Area Elements.” (10 DCMR § 228) (Ex. [REDACTED])

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<sup>4</sup> The Applicant also requested flexibility from the drive through queuing lane setback requirement and the bicycle shower and locker requirements for the Lidl grocery store, but subsequently withdrew those requests. (Ex. 3, 13, 29, [REDACTED]).

### *Future Land Use Map*

37. The Modification Project has a split designation on the Future Land Use Map (“FLUM”). The FLUM includes the majority of the property in the Moderate Density Commercial designation, with small portions of the Property in the Moderate Density Residential designation and the Low Density Residential designation, both in Block 4. (Ex. [REDACTED])
38. The Moderate Density Commercial designation is described as appropriate for “shopping and service areas,” which is directly consistent with the use of the Modification Project. Further, this is described as appropriate with the C-3-A Zone, now known as the MU-7 Zone, to which the Property was rezoned as part of the Original Order. (Ex. [REDACTED])
39. The Moderate- and Low-Density Residential areas are described as appropriate for lower-density residential uses. However, pursuant to the Framework Element of the Comprehensive Plan, the FLUM is not to be considered a zoning map, it is not parcel specific and it is to be viewed as “soft-edged”. Therefore, the small amount of area of the Property designated for these uses are not dispositive to the use or structures within this area. Further, the areas in these solely-residential designations in Block 4 are devoted solely for residential use and there is a significant buffer between this area and the nearest residential use through a ravine and tree preserve. (Ex. [REDACTED])

### *Generalized Policy Map*

40. The Modification Project also has a split designation on the Generalized Policy Map (“GPM”). The GPM designates the majority of the property as a Multi-Neighborhood Center. A Multi-Neighborhood Center is intended to provide significant retail and service uses in addition to housing, and the Skyland Town Center is specifically highlighted as a Multi-Neighborhood Center. The Modification Project represents a quintessential Multi-Neighborhood Center project. (Ex. [REDACTED])
41. A smaller portion of the property in Blocks 3 and 4 is located in a Neighborhood Conservation Area on the GPM. The Neighborhood Conservation Area “does not preclude development” but new development should be “compatible with the existing scale, natural features, and character of each area.” (10 DCMR § 225.5) Additionally, this Neighborhood Conservation Area is juxtaposed directly against the Multi-Neighborhood Center, which are distinctly different designations requiring some transition area. The Modification Project provides appropriate neighborhood conservation by serving as the transitional area from the Multi-Neighborhood Center, stepping down in intensity and use type toward the nearest neighborhood, and providing a significant buffer area with a ravine and tree preserve between the Modification Project and the residential areas nearby.<sup>5</sup> (Ex. [REDACTED])

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<sup>5</sup> The Commission notes that the Court of Appeals recently vacated the Commission’s decision in *Cummins v. D.C. Zoning Commission* (“*Park View*”). In the *Park View* decision, the Court noted that a 90-foot tall building’s intrusion into a Neighborhood Conservation Area raised concerns with the project’s consistency with the Plan and noted the Order did not address this potential inconsistency. The Project is distinguishable in several ways from the *Park* decision. First, the Block 4 building is only 60 feet tall, not 90 feet. The Court noted that its concern was

## Citywide Elements

42. The Modification Project furthers the following policies of the Land Use Element by providing a quintessential Neighborhood Commercial District and Commercial Center project as a new town center focusing the higher-intensity uses along the external streets and providing housing in the area closest to adjacent residential uses: (Ex. [REDACTED])

**LU-2.4: Neighborhood Commercial Districts and Centers:** Many District neighborhoods, particularly those on the east side of the city, lack well-defined centers or have centers that struggle with high vacancies and a limited range of neighborhood-serving businesses. Greater efforts must be made to attract new retail uses to these areas by improving business conditions, upgrading storefronts and the street environment, and improving parking and pedestrian safety and comfort. The location of new public facilities in such locations, and the development of mixed use projects that include upper story housing, can encourage their revival. 312.2

**LU-2.4.1: Promotion of Commercial Centers:** Promote the vitality of the District's commercial centers and provide for the continued growth of commercial land uses to meet the needs of District residents, expand employment opportunities for District residents, and sustain the city's role as the center of the metropolitan area. Commercial centers should be inviting and attractive places, and should support social interaction and ease of access for nearby residents. 312.5

43. The Modification Project furthers the following policies of the housing element by providing new housing and affordable housing where currently none exists: (Ex. [REDACTED])

**H-1.1.3: Balanced Growth:** Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing. 503.4

**H-1.1.4: Mixed Use Development:** Promote mixed use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations. 503.5

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directly with the 90-foot intrusion, not the other 60-foot building that was part of the *Park* project. (Opinion at page 18-19) Further, there is a significant landscape buffer and tree preservation area between the Project and the adjacent residential uses. Finally, the FLUM's overlap with the majority of the Neighborhood Conservation Area is designated for Moderate Density Commercial uses, noting the inconsistency between the maps in the Comprehensive Plan.



**H-1.2.3: Mixed Income Housing:** Focus investment strategies and affordable housing programs to distribute mixed income housing more equitably across the entire city, taking steps to avoid further concentration of poverty within areas of the city that already have substantial affordable housing. 504.8

**H-1.2.5: Workforce Housing:** In addition to programs targeting persons of very low and extremely low incomes, develop and implement programs that meet the housing needs of teachers, fire fighters, police officers, nurses, city workers, and others in the public service professions with wages insufficient to afford market-rate housing in the city. 504.12

44. The Modification Project also furthers the following Economic Development element's focus on providing new grocery stores and medical office use: (Ex. [redacted])

**ED-2.1.6: Local-Serving Office Space:** Encourage the development of small local-serving offices within neighborhood commercial districts throughout the city to provide relatively affordable locations for small businesses and local services (such as real estate and insurance offices, accountants, consultants, and medical offices). § 707.11

**ED-2.2.6: Grocery Stores and Supermarkets:** Promote the development of new grocery stores and supermarkets, particularly in neighborhoods where residents currently travel long distances for food and other shopping services. Because such uses inherently require greater depth and lot area than is present in many commercial districts, adjustments to current zoning standards to accommodate these uses should be considered. § 708.10

45. The Modification Project furthers the Community Services and Facility Element policies, as follows, by providing new medical use in an area where such use is desperately needed: (Ex. [redacted])

**CSF-2.1.1: Primary and Emergency Care:** Ensure that high quality, affordable primary health centers are available and accessible to all District residents. Emergency medical facilities should be geographically distributed so that all residents have safe, convenient access to such services. New or rehabilitated health care facilities should be developed in medically underserved and/or high poverty neighborhoods, and in areas with high populations of senior citizens, the physically disabled, the homeless, and others with unmet health care needs. § 1106.12

**CSF-2.1.2: Public-Private Partnerships:** Develop public-private partnerships to build and operate a strong, cohesive network of community health centers in areas with few providers or health programs. § 1106.13

**CSF-2.1.6: Health Care Planning:** Improve the coordination of health care facility planning with planning for other community services and facilities, and with broader land use and transportation planning efforts in the city. Coordinate

city population and demographic forecasts with health care providers to ensure that their plans are responsive to anticipated growth and socio-economic changes. § 1106.17

46. The Modification Project furthers the following policies of the Transportation Element due to its transportation infrastructure improvements and its transportation demand management plan: (Ex. [redacted])

**T-2.3.1: Better Integration of Bicycle and Pedestrian Planning:** Integrate bicycle and pedestrian planning and safety considerations more fully into the planning and design of District roads, transit facilities, public buildings, and parks. § 409.8

**T-3.1.1: Transportation Demand Management (TDM) Programs:** Provide, support, and promote programs and strategies aimed at reducing the number of car trips and miles driven (for work and non-work purposes) to increase the efficiency of the transportation system. 414.8

**T-3.1.3: Car-Sharing:** Encourage the expansion of car-sharing services as an alternative to private vehicle ownership. 414.10

#### *Area Element*

47. Finally, the Modification Project furthers the explicit goals of the Far Northeast and Southeast Area Element by achieving the development of the Skyland Town Center with an appropriate mix of uses and significant buffering to Ft. Baker Drive: (Ex. [redacted])

**FNS-1.1.2: Development of New Housing:** Encourage new housing for area residents on vacant lots and around Metro stations within the community, and on underutilized commercial sites along the area’s major avenues. Strongly encourage the rehabilitation and renovation of existing housing in Far Northeast and Southeast, taking steps to ensure that the housing remains affordable for current and future residents. 1708.3

**FNS-1.1.3: Directing Growth:** Concentrate employment growth in Far Northeast and Southeast, including office and retail development, around the Deanwood, Minnesota Avenue and Benning Road Metrorail station areas, at the Skyland Shopping Center, and along the Nannie Helen Burroughs Avenue, Minnesota Avenue, Benning Road, and Pennsylvania Avenue SE “Great Streets” corridors. Provide improved pedestrian, bus, and automobile access to these areas, and improve their visual and urban design qualities. These areas should be safe, inviting, pedestrian-oriented places. 1708.4

**FNS-1.1.4: Retail Development:** Support the revitalization of the neighborhood commercial areas listed in Policy FNS-1.1.3 with new businesses and activities that provide needed retail services to the adjacent neighborhoods and that are compatible with surrounding land uses. 1708.5

**FNS-1.1.9: Congestion Management:** Re-examine traffic control and management programs along major Far Northeast and Southeast arterial streets, particularly along Pennsylvania and Minnesota Avenues, East Capitol Street, Benning Road, Branch Avenue, and Naylor Road, and develop measures to improve pedestrian safety and mitigate the effects of increased local and regional traffic on residential streets. 1708.10

**FNS-1.1.0: Transit Improvements:** Improve bus service to the Metrorail stations from neighborhoods throughout Far Northeast and Southeast, particularly in the southern part of the Planning Area. 1708.11

**FNS-1.2.7: Health Care Facilities:** Provide additional facilities to meet the mental and physical health needs of Far Northeast and Southeast residents, including primary care facilities, youth development centers, family counseling, drug abuse and alcohol treatment facilities. Such facilities are vital to reduce crime and promote positive youth development. Specific plans for new social service and health facilities should be developed through needs assessments, agency master plans, strategic plans, and the city's public facility planning process. All plans should be prepared in collaboration with the community, with input from local ANC's and civic associations, residents and businesses, and local community development corporations and non-profit service providers. 1709.7

**FNS-2.7.1: Skyland Revitalization:** Revitalize Skyland Shopping Center as an essential, dynamic community-scale retail center. Together with the Good Hope Marketplace, these two centers should function as the primary business district for adjacent neighborhoods, providing a diverse array of quality goods and services for area residents. 1717.3

**FNS-2.7.B – Fort Baker Drive Buffering:** Work with property owners to develop and maintain a suitable visual, sound and security buffer between Skyland Shopping Center and the adjacent residential areas along Fort Baker Drive. 1717.6

#### Consistency with the Original Order

48. The Modification Project is consistent with the Original Order. The Modification Project refines the overall site plan and uses, but does not materially impact the planning, amenities, benefits, and impacts that formed the basis of the Commission's prior determination that the Original Project complied with the overall PUD evaluation standards. (Ex. 3)
49. The Modification Project does not significantly change the uses the Commission previously approved, noted in FOF 28 above.
50. The Modification Project continues to effectuate the town center concept approved by the Original Order and provides the same benefits and amenities balanced with similar developmental flexibility, all consistent with the Original Order. (Ex. 3, 13, 22, 29,  )

### The Modification Project Has No Unacceptable Impacts

51. The Modification Project does not present unacceptable impacts or a greater number of impacts on the neighborhood than the Original Project given its overall consistency with the town center concept. (Ex. 3)
52. The Applicant prepared a detailed analysis of the potential impacts of the Modification Project, including a Comprehensive Transportation Review (“CTR”). The Modification Project also maintains the significant buffering between the improvements on the Property and adjacent residential properties, mitigating potential adverse impacts, as noted in the Original Order. (Ex. 3B, 20A)
53. The Modification Project further minimizes impacts by reducing the total number of vehicular parking spaces at the Property. (Ex. 20A)
54. Finally, while a large surface parking lot along Alabama Avenue could have adverse impacts on the overall view from a major thoroughfare, the significant landscaping and screening provided by the Modification Project mitigate any potential impact. (Ex. 3, 13)

### Applicant’s Submissions

55. The Application as detailed above was the result of a total of six (6) submissions to the record. In addition to the initial application, the Applicant provided the following submissions, as well as its testimony at the public hearing: (Ex. 1-3H)
  - a. A prehearing submission dated May 20, 2020, respond to OP and the Commission’s requests from setdown (the “Prehearing Submission”); (Ex. 13, 13A-D)
  - b. A submission including the CTR dated June 19, 2020 (the “CTR Submission”); (Ex. 20, 20A)
  - c. A supplemental submission dated July 2, 2020, further addressing comments from OP, DDOT, DOEE, and the ANC (the “Supplemental Submission”); (Ex. 22, 22A-C)
  - d. A submission the day before the hearing addressing comments raised in the OP and DDOT reports (the “Hearing Submission”); (Ex. 29) and
  - e. A post-hearing submission dated September 1, 2020, responding to issues raised at the public hearing (the “Post-Hearing Submission”). (Ex.       )

### *Responses to OP*

56. The Applicant responded to OP’s setdown comments in the Prehearing Submission and in the Supplemental Submission by: (Ex. 13, 22)
  - a. Relocating the loading and trash facilities in Block 3 from the parking lot to the in-line retail building;
  - b. Relocating the drive-through queuing lane to no longer need relief from the 20-foot setback requirement;

- c. Enhancing the landscaping and screening around the Block 3 parking lot;
  - d. Incorporating the shadow boxes in the Arts Walk along Naylor Road in Block 1;
  - e. Improving the public space treatment along Naylor Road;
  - f. Providing additional site-sections showing the Modification Project's relationship to the surrounding properties;
  - g. Providing additional details regarding the entry plaza materials;
  - h. Updating the facades of the Medical Office Building in Block 1; and
  - i. Detailing the operation of the shadow boxes in the Arts Walk.
57. The Applicant responded to OP's hearing report in its Hearing Submission by: (Ex. 29, 29A)
- a. Providing information on the plant sizes associated with the landscaping along Alabama Avenue; and
  - b. Providing the signage standard materials used for Block 2 that will be used for the Modification Project.

*Responses to DDOT*

58. The Applicant responded to DDOT's comments in the CTR Submission, the Hearing Submission, and the Post-Hearing Submission, as well as through public testimony at the hearing (Ex. 20A, 29, [REDACTED]; Tr. at 35-36). The Applicant's response to DDOT included:
- a. Providing a Transportation Demand Management Plan ("TDMP") and Loading Management Plan ("LMP"), including a decrease of parking spaces from the Original Project;
  - b. Increasing the TDMP based on feedback from DDOT, including increasing the Capital Bikeshare station and offering Capital Bikeshare memberships for residents and employees;
  - c. Explaining why the mitigation measures required for overparked sites were not applicable to the Modification Project due to the overall reduction in parking spaces from the Original Project<sup>6</sup>; and

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<sup>6</sup> The Applicant noted that pursuant to ZC Order No. 09-03A (effective 1/14/14), the Skyland Town Center project was approved to include 1,774 parking spaces. In 2017, ZC Order No. 09-03D decreased the total number of parking spaces to 1,406 and that the Modification Project sought to decrease the total number of parking spaces by 117 spaces to 1,289. The Applicant stated that it did not believe that Subtitle C, § 707 (Mitigation for Parking Significantly in Excess of the Minimum Requirement) is applicable to this multi-phased project, so long as the number of parking spaces proposed is less than what was previously approved. The Applicant noted that this analysis is similar to the determination that the Zoning Commission has made regarding the applicability of Inclusionary Zoning ("IZ") to multi-phased projects that were approved prior to the adoption of the IZ requirements. In those cases (see ZC Order No. 06-10D) the Zoning Commission determined that IZ would apply only to the residential units that were in excess of the total number of units that were originally approved. The Applicant believes that same analysis should be applied in this case with regard to the number of parking spaces. For this application, the requirements of Subtitle C, § 707 are only applicable if the Applicant proposes more than 1,406 parking spaces. The Applicant is proposing 1,289 parking spaces, thus Subtitle C, § 707 is not applicable to this application. However, if the Zoning Commission determines that Subtitle C, § 707 is applicable to this application, the Applicant requests relief from those requirements. As discussed below, the Commission agrees with the Applicant's analysis and no flexibility from Subtitle C, § 707 is necessary.

- d. Including a comprehensive set of conditions detailing all of the TDMP and LMP commitments for the Modification Project. (Ex. 32, 33)

### *Responses to DOEE*

59. The Applicant responded to DOEE's comments in the Prehearing Submission and in the Post-Hearing Submission as follows: (Ex. 13A,       )
  - a. The Applicant committed to complying with the Green Area Ratio ("GAR") requirements and provided a GAR scorecard;
  - b. The Modification Project includes 125,000 square feet of landscaped area, the preservation of 235 existing trees, and the planting of 387 new trees;
  - c. The Applicant noted that the Medical Office Building garage included a 25,000 square foot solar array and was being designed to achieve the Green Business Certification Inc.'s "Parksmart" certification;
  - d. The Medical Office Building, the Lidl building, and Block 4 are all being designed to the LEED Silver standard;
  - e. The Lidl grocery building is being designed to the LEED Silver standard; and
  - f. The Applicant committed to installing 18 electric vehicle charging stations throughout the Modification Project.

### Public Hearing

60. At the July 23, 2020, public hearing the Applicant presented two witnesses on behalf of the Applicant and three experts: Cheryl O'Neill as an expert in architecture, Dwight Fincher as an expert in architecture, and Erwin Andres as an expert in transportation analysis and engineering. The Commission had previously accepted all of the experts as experts in their respective fields (Tr. at 7) Therefore, the Applicant's representatives and the experts presented testimony about the Project. (Ex. 31; Tr. at 7-40)

### Post-Hearing Submission

61. Following the public hearing, the Applicant filed a statement responding to the questions and clarifications requested by the Commission, OP, and DDOT by: (Ex.       )
  - a. Clarifying the portion of the Property subject to the consolidated approval requested and the portion of the Property, the Block 4 building, subject to First-Stage PUD approval;
  - b. Responding to the Commission's request for consideration of additional affordable housing by noting that the original affordable housing proffer continues to apply, as long as the total number of residential units remains within the range (450-500 units) that was originally approved<sup>7</sup>;

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<sup>7</sup> The Applicant noted that the total number of residential units approved in the original PUD application has not yet been achieved. ZC Order No. 09-03 approved the development of 450-500 residential units on the entirety of the PUD site. The proposed development of Block 4 will result in the potential creation of 500-515 residential units in the new Skyland Town Center project. The Applicant posited that the Zoning Commission's recent decision in ZC Case No. 06-10D (effective March 20, 2020), which was also a multi-block mixed-use PUD project with residential uses that were approved prior to the adoption of the Zoning Regulations, should be followed in this case. In ZC

- c. Revising the design and exterior appearance of the parking garage in Block 1 to minimize light emission, including underlighting of the solar array;
- d. Withdrawing its request for flexibility from bike parking shower and locker facilities in the Lidl building in Block 3;
- e. Confirming the Arts Walk shadow boxes in Block 1 will be ventilated;
- f. Responding to DOEE’s comments with a reiteration of the sustainability features of the Modification Project, including a commitment to 18 electric vehicle charging stations;
- g. Providing additional details of the retaining wall between Block 4 and Ft. Baker Drive;
- h. Simplifying the tower element in the Block 1 Medical Office Building;
- i. Providing additional details regarding the loading and trash area for the in-line retail building;
- j. Showing alternative materials for the fire access road around Block 4;
- k. Providing additional details regarding parking and loading in Block 4;
- l. Reiterating satisfaction of the PUD balancing required as part the Commission’s review of the Modification Project;
- m. Providing a comprehensive analysis of the Modification Project’s consistency with the Comprehensive Plan; and
- n. Noting the continued dialogue regarding the Modification Project with the community.

## **Reports on and Responses to the Application**

### Office of Planning

- 62. OP submitted two reports to the record in addition to public testimony at the public meeting for setdown and at the public hearing:
  - a. A February 28, 2020, setdown report recommending that the Commission set down the Application for a public hearing and requesting additional information and changes to the Application (the “OP Setdown Report”); and (Ex. 11)
  - b. A July 13, 2020, hearing report that recommended approval of the Modification Project and requested some clarification from the Applicant (the “OP Hearing Report”). (Ex. 25)
  
- 63. The OP Setdown Report recommended the Commission set down the Application for a public hearing but raised concerns and requests for additional information regarding the Modification Project. OP objected to the location of the retail waste and loading area within the Block 3 parking lot and requested it be moved. OP also requested additional screening for the Block 3 parking lot. OP also requested additional operational details for

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Case No. 06-10D, the Zoning Commission determined that IZ requirements should only apply to those units that are in excess of what was originally approved by the Zoning Commission. Applying that decision to the present case, the Applicant should only be required to provide additional units that satisfy the IZ requirements (or residential units at deeper levels of affordability) if the total number of residential units in the entire Skyland Town Center project exceeds 500 residential units.



the Arts Walk and materials details for Block 3. OP also noted it was generally supportive of the flexibility requested. (Ex. 11)

64. The OP Hearing Report recommended the Commission approve the Modification Application without any additional conditions. In the OP Hearing Report, OP requested additional information regarding the signage standards for the Modification Project, responses to DOEE and DDOT's comments, and an explanation for the reduced number of total residential units. (Ex. 25)
65. The OP Hearing Report noted that the Applicant had adequately addressed the concerns raised in the OP Setdown Report. Specifically, OP noted that the Applicant had relocated the retail loading and waste collection area from the Block 3 parking lot, had provided additional landscaping along Alabama Avenue, as well as other hardscaping and material information. OP also noted it was supportive of the final flexibility requested for the Modification Project. (Ex. 25)
66. At the public hearing, OP testified in support of the Modification Project and noted that the Applicant had addressed the issues raised in the OP Hearing Report and continued to recommend approval of the Modification Project. OP noted the Applicant had submitted signage information OP requested, had adequately responded to the issues raised, and noted that the residential units were not decreased by the Modification Project, which was a mistake in the OP Hearing Report. (Tr. 80-83)

#### District Department of Transportation

67. DDOT filed a report dated July 13, 2020, (the "DDOT Report") that stated DDOT had no objections to the Application, subject to additional conditions, including (1) strengthening the TDM plans, (2) installing additional extension plates for the Capital Bikeshare station, (3) providing Capital Bikeshare memberships to residents and employees, and (4) providing the required bicycle parking. (Ex. 26)
68. The DDOT Report also noted DDOT's support for the reduced parking spaces provided at the Modification Project, support for the overall site design, concurrence with the Traffic Impact Analysis, and requesting continued coordination regarding the public space process. (Ex. 26)
69. The DDOT Report also noted the potential need for additional mitigations for a site significantly overparked under the Zoning Regulations, subject to a determination from the Zoning Administrator. (Ex. 26)
70. At the hearing, the Applicant testified that they were in agreement with DDOT with the enhanced conditions requested in the DDOT Report. DDOT also testified that they supported the Modification Project and concurred with the Applicant's confirmation of agreed-upon conditions. (Tr. at 35-36, 83-84)



71. The Applicant's proffered conditions included the agreed upon conditions with DDOT, and the Commission finds this adequately addressed the issues raised in DDOT's report. (Ex. 32, 33)

#### Department of Energy and Environment

72. DOEE submitted a report commenting on the Modification Project, suggesting that the Applicant consider additional sustainability efforts, including (1) energy efficiency, (2) solar panels, (3) electric vehicle charging stations, and (4) compliance with the GAR and Stormwater Management requirements. (Ex. 21)
73. The Commission finds the Applicant addressed DOEE's comments by supplementing the record with additional sustainability information, including a commitment to compliance with GAR and committing to electric vehicle charging stations across the Modification Project. (Ex. 13A, 32; Tr. at 24-25)

#### ANC 7B

74. ANC 7B filed a report in support of the Application, noting that at a regularly scheduled, properly noticed meeting, the ANC voted unanimously to support the Modification Project and did not raise any issues. (Ex. 23)

#### Other Agencies/Persons/Groups

75. Earl Williams on behalf of the Skyland Task Force submitted a letter in support and testified in support of the Modification Project at the public hearing. Both the letter and testimony focused on support for the proposed uses as needed in the community, the site design, and support for the benefits and amenities of the Modification Project, including the reallocation of funds proposed by the Applicant. (Ex. 19, Tr. at 93-96)
76. Robin Marlin also filed a letter in support and testified in support of the Modification Project at the public hearing. Ms. Marlin noted in her letter and testimony that she supports the Modification Project, including the proposed uses, but raised questions and potential concerns regarding the reallocation of benefits. She specifically noted that she wanted to ensure monies dedicated to schools and libraries were not going to be impacted by this modification application. The Applicant clarified that no funds were going to be reallocated from schools or libraries as part of the reallocation of public benefits. (Ex. 30, Tr. at 87-93, 98)
77. The Commission also received letters in support from Building Bridges Across the River, Delmar Freeman III and Natasha Freeman, and Graylin W. Presbury on behalf of the Fairlawn Citizens Association. These letters expressed support for the proposed uses, including the Lidl grocery store, Starbucks coffee shop, and medical office. The letters also noted support for the accessible parking for all of these uses. (Ex. 22A, 24, and 27)

## **CONCLUSIONS OF LAW**

### **MODIFICATION OF SIGNIFICANCE APPROVAL**

1. Subtitle Z, Section 704 authorizes the Commission to review and approve Modifications of Significance to final orders of the Zoning Commission.
2. Subtitle Z, Section 703.5 defines a Modification of Significance as a “modification to a contested case order or the approved plans of greater significance than a modification of consequence.” Subtitle Z, Section 703.6 includes “change in use” and “additional relief or flexibility” as examples of a Modification of Significance.
3. As set forth in Subtitle Z, Section 703.5, Modifications of Significance require a public hearing. Pursuant to Subtitle Z, Section 704.4, the scope of the hearing is limited to the impact of the modification on the subject of the original application.
4. The Commission concludes that the Applicant has satisfied the requirement of Subtitle Z, Section 703.13 to serve the Modification on all parties to the original proceeding, in this case ANC 7B, ANC 8B, and the Ft. Baker Drive party.
5. The Commission concludes that the application qualifies as a Modification of Significance within the meaning of Subtitle Z Sections 703.5 and 703.6, as a request to modify the overall site plan, refine the approved uses and add medical office use, revert Block 4 to Stage One approval, and request different areas of flexibility.

### **Consistent with the Original Order**

6. The Commission concludes that the Modification Project is generally consistent with the Original Order’s approval for a mixed-use town center focused around a central drive with significant housing and community-serving retail opportunities. While the Modification Project includes a reduction in the total amount of retail use (due to the removal of the Wal-Mart), that non-residential use has mostly been replaced with medical care uses that will provide needed services to the surrounding communities of Wards 7 and 8. The Modification Project continues to propose an amount of residential use that is consistent with the Original Order.
7. The Commission credits the submissions and testimony of the Applicant regarding the appropriateness and beneficial aspects of the overall site design, the use mix, including the addition of medical office, and the general Modification Project’s consistency with the town center concept approved in the Original Order. The Commission finds that the new mix of uses continues to be a benefit of the original PUD approval.

### **PUD APPROVAL – FIRST STAGE**

8. The Commission notes that the Modification Project includes a First-Stage PUD approval for Block 4. The Commission concludes that the proposed mixed-use residential building with a small section of ground-floor retail proposed for Block 4 is appropriate in

character, scale, height, use, and the Comprehensive Plan, as discussed further below. The Commission notes that the mixed-use building proposed on Block 4 has been pushed further back from the adjacent property line, compared to the Original Project, and that the number of retaining walls adjacent to Block 4 have been reduced. The Commission further notes that the appearance of the retaining walls will be appropriately visually buffered by plantings and landscaping.

9. The Commission finds that the Original Order approved a total of 450-500 residential units. The Original Order required that the Applicant shall reserve a total of 20% of the residential units as affordable for households having an income not exceeding 80% of the Area Median Income (“AMI”) for the Washington, D.C. Metropolitan Statistical Area (adjusted for family size). The Applicant was also required to reserve an additional 10% of the residential units as affordable for households having an income not exceeding 120% of AMI. These affordable units will be reserved for a term that is consistent with the affordability covenant that will be recorded in the D.C. Land Records against the Skyland Property, as required by the land disposition agreement signed by the Applicant and the District of Columbia.
10. The Modification Project proposes a total number of residential units in the range of 500-515. The Commission concludes that it is not necessary for the Applicant to enhance the affordable housing proffer for Block 4 at this time. The Commission concludes that should the development of Block 4 result in a number of residential units that exceeds 500, the additional residential units in excess of 500 will subject to the IZ regulations applicable at the time of the Second-Stage PUD application for Block 4.

#### **PUD APPROVAL – CONSOLIDATED**

11. Additionally, the Commission notes that as part of the Original Order, the Commission concluded the Project met the PUD requirements overall and the Modification Project continues to satisfy these requirements. The Modification Project continues to meet the PUD balancing test required for approval.
12. The Commission concludes that the Modification Project includes multiple architectural and urban design benefits that make the Modification Project a higher quality development that exceeds a project developed under the matter-of-right standards.
13. The Commission concludes that the Application accords with the PUD process based on the determinations below that the Application is a superior high-quality development and that the Application’s public benefits, development flexibility, and mitigation of any adverse impacts satisfies the PUD balancing test.
14. The Commission therefore concludes that the Modification Project is in accordance with the Zoning Regulations because the Modification of Significance Application complies with the Zoning Regulations, including the PUD requirements and the Original Order.

**Not Inconsistent with the Comprehensive Plan (Subtitle X § 304.3(a))**

15. The Commission concludes that the Modification Project does not materially change the conclusion of the Original Order that the PUD, including the related Zoning Map amendment, was not inconsistent with the Comprehensive Plan. First, the Commission notes that the Modification Project remains not inconsistent with the FLUM and GPM.
  - a. Generally, the Modification Project is not inconsistent with the FLUM designation for Moderate Density Commercial covering the majority of the Property. and the Moderate Density Residential designation covering a small portion of the Property. While a small portions of the Property are located in the Moderate- and Low- Density Residential designation on the FLUM, given the “soft edge” nature of the FLUM, the fact that only residential uses are located in these areas, and the significant buffer between the Block 4 building and adjacent residential uses, the Modification Project is not inconsistent with the overall FLUM.
  - b. The Modification Project is also not inconsistent with the GPM’s designation for the Property as a Multi-Neighborhood Center and a Neighborhood Conservation Area. The Modification Project is directly consistent with the Multi-Neighborhood Center designation. Additionally, the Modification Project is not inconsistent with the Neighborhood Conservation Area designation given the transition area needed between the two designations, the step-down in scale in the Modification Project within the Neighborhood Conservation Area, and the significant buffer area with the ravine and tree preserve area between Block 4 and the adjacent Ft. Baker Drive properties.
16. The Commission further concludes that the Modification Project furthers several important Citywide Element policies, including the Land Use Element’s focus on Neighborhood Commercial District and Commercial Center projects, the Housing Element, Transportation Element, Economic Development Element, and Community Services and Facilities Element, especially given the grocery store and medical office uses as part of the overall town center.
17. Finally, the Commission concludes that the Modification Project is not inconsistent with the Far Northeast and Southeast Area Element. The Modification Project facilitates development of the Skyland project called for by the Element including new retail and providing health care facilities, while also providing buffering for Ft. Baker Drive.
18. Therefore, the Commission concludes that the Modification Project is not inconsistent with the Comprehensive Plan taken as a whole.

**Public Benefits Sufficient to Balance the Requested Development Flexibility (Subtitle X § 304.3)**

19. The Commission concludes that the Application does not change or reduce the public benefits approved by the Original Order, The Commission further concludes the reallocation of the funds from the Contractor Loan Fund and the Homebuying and

Homeownership classes to further fund the Skyland Workforce Center is appropriate given the changes in use at the Modification Project, the experience constructing Block 2 testified by the Applicant, and the success of the Skyland Workforce Center thus far.

20. In regard to whether Subtitle C, § 707 (Mitigation for Parking Significantly in Excess of the Minimum Requirement) applies to the Modification Project, the Commission agrees with the analysis presented by the Applicant. The Commission finds that the mitigation requirements of Subtitle C, § 707 do not apply to the Modification Project given the overall reduction in parking spaces (1,289 spaces rather than the approved 1,406 spaces). Therefore, no flexibility is required from this provision.
21. The commission notes that the Modification Project's requested development flexibility is an improvement on the flexibility for the Original Project for rear yard, side yard, lot occupancy, roof structure, and loading requirements, and allows the Modification Project to have a better design than a matter-of-right Project, and is consistent with the benefits and amenities provided by the Modification Project. Therefore, the Commission concludes that the following development flexibilities are appropriate:
  - a. The location of parking spaces within Block 3;
  - b. The loading requirements for the in-line retail building; and
  - c. The roof structure setback requirements for the solar panels in Block 1.

#### **Potential Adverse Impacts – How Mitigated or Outweighed (Subtitle X §§ 304.3 & 304.4(b))**

22. The Commission concludes that the potential adverse impacts of the Project do not exceed those reviewed by the Commission in approving the Original Project because the proposed uses and overall development density approved in the Original Project are consistent with the Modification Project. The Commission notes that while a large surface parking lot along Alabama Avenue might create an adverse impact, the significant landscaping proposed buffering the parking lot and the overall parking lot design mitigates any adverse impact. The Commission notes that the revised site plan, the addition of medical office use, and the overall proposed use does not create additional adverse impacts that need to be mitigated.

#### **Transportation Management and Mitigation**

23. The Commission concludes that the Application provides sufficient mitigation of the potential adverse transportation impacts, including parking and loading, based on DDOT's finding that the Applicant's proposed parking, loading, and TDM and LMP plans as detailed in the CTR and supplemental filings are sufficient to mitigate any potential adverse impacts, and the Applicant's agreement to all of DDOT's suggested conditions. The Commission credits the analyses of DDOT, OP, and the Applicant that the Project would not have unmitigated potential adverse effects. Nonetheless, the Commission concludes that any unmitigated potential adverse transportation impacts would be outweighed by the public benefits, particularly the additional transportation infrastructure.

### **“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP**

24. Pursuant to § 13(d) 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)) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)
25. The Commission finds persuasive OP’s recommendation that the Commission approve the Modification Project and therefore concurs in that judgement.

### **“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC**

26. Pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) and Subtitle Z §406.2, the Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC. To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).
27. The Commission finds persuasive ANC 7B’s recommendation that the Commission approve the Modification and therefore concurs in that judgment.
28. The Commission notes that ANC 8B, while receiving the materials for the Application, did not submit any materials in the record or testify to the Commission.

### **DECISION**

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a Modification of Significance to modify Z.C. Order No. 09-03f, as modified by Z.C. Orders No. 09-03A, 09-03B, 09-03C, 09-03D, and 09-03E, for the Skyland Town Center, subject to the following conditions and provisions:

The conditions in Z.C. Order No. 09-03, as amended by 09-03A, 09-03B, 09-03C, 09-03D, and 09-03E, remain unchanged and in effect, except Conditions 1, 2, 7, 8, 11, 13, 14, and 17 are updated to the Conditions below, while Conditions 3, 4, 5, 6, 9, 10, 12, 15, 16, 18, and 19 remain in effect without change. All conditions are included below:

1. The Modification Project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit 22C and [REDACTED] of the record in Z.C. Case No. 09-03F, and as further modified by the guidelines, conditions, and standards herein.

2. The Applicant shall make the following financial, or in-kind service, contributions:
- (a) **Financial Support to Schools:** The Applicant shall make in-kind service or financial contributions, with a value of \$200,000, to support schools located within the geographic boundaries of ANCs 7B, 8B, and 8A for aesthetic improvements and to participate in initiatives such as “Buff and Scrub.” The Applicant expects that these in-kind service or financial contributions will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator (“ZA”) and the Office of Zoning (“OZ”) as to whether any in-kind service or financial contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 75% of the total amount of this contribution (\$150,000) (whether in the form of in-kind services, monetary contributions, or a combination of the two) shall be made by the Applicant by September 10, 2018. Notwithstanding Condition No. 17, this Order will expire as of that date if these payments/services have not been provided. The full amount of this contribution (whether in the form of in-kind services, monetary contributions, or a combination of the two) shall be made by the Applicant no later than September 10, 2022, or the date the last application for a building permit is filed for the project, whichever is sooner;
  - (b) **Sponsorship of local community events and programs:** The Applicant shall establish and administer a \$35,000 fund to sponsor community events such as holiday food drives, community festivals, and other community-promoting activities for the area surrounding the project. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 50% of the total amount of this contribution (\$17,500) shall be made by the Applicant within five years of the effective date of this Order. Notwithstanding Condition No. 17, this Order will expire as of that date if these payments have not been provided. The full amount of this contribution must be made by the Applicant no later than 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner;
  - (c) *Omitted.*
  - (d) **Local retailer build-out subsidy:** The Applicant shall establish and administer a \$500,000 fund to subsidize a portion of the build-out costs for Certified Business Enterprise and local retailers opening a store at the Skyland Town Center. The Applicant expects that this contribution will be made over the

entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund. The annual amount of this contribution will be proportionate to the amount of construction activity which occurred in that year. If no construction activity occurred in any given year, the Applicant is not obligated to provide any financial contributions in that year. The full amount of this contribution must be made by the Applicant by December 31, 2030.

- (e) Anacostia and Francis Gregory Libraries: The Applicant shall provide up to \$50,000 to perform capital improvements, upgrade computers, and provide other services for the Anacostia and Francis Gregory Libraries. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 50% of the total amount of this contribution (\$25,000) shall be made by the Applicant by September 10, 2018. Notwithstanding Condition No. 17, this Order will expire as of that date if these payments have not been provided. The full amount of this contribution must be made by the Applicant no later than September 10, 2022, or the date the last application for a building permit is filed for the project, whichever is sooner;
- (f) Pocket Park at 25th Street & Naylor Road: The Applicant shall improve and maintain, at a value of \$50,000, the existing triangular pocket park at 25th Street and Naylor Road. The maintenance of the pocket park will be provided over the entire time period of the development of the project, as discussed in Condition No. 17. The maintenance obligation will commence immediately after the improvements are made. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any improvements were made for this purpose. The work related to the installation of the right turn lane, new sidewalks, and utility improvements will be complete by September 10, 2018. The installation of hardscape and landscape improvements will be completed by May 1, 2020;
- (g) The Applicant shall provide job training programs, at a cost of \$450,000, for residents of Wards 7 and 8 so that they are prepared to apply and interview for jobs with the future retailers at the Skyland Town Center or elsewhere. The Applicant shall maintain a list of trained and qualified job candidates and shall provide that list to all new retailers. The Applicant expects that this program will be conducted over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one



year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to the job training programs that were conducted in the prior year, if any. The extent of the training provided will be proportionate to the amount of construction activity which occurred in that year. If no construction activity occurred in any given year, the Applicant is not obligated to provide job training programs in that year; however, the Applicant must expend \$450,000 for the purpose of providing job training programs prior to 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner; and

(h) *Omitted.*

3. The failure of the Applicant to make any contribution or provide any service by the time specified in Condition No. 2 shall result in the denial of any pending application for a building permit or certificate of occupancy and shall be grounds for the revocation of any building permit.
4. In consultation with DDOT, and contingent upon its approval, the Applicant shall construct and provide space for an 800-1,000 square-foot commuter store adjacent to, or located in, the building on Block 2. The commuter store will offer transit riders SmarTrip cards and Metrobus/Metrorail fare cards, maps, real-time schedules, and transportation options in the Metro Washington area. DDOT will provide for the operation of the store. The Applicant will deliver the commuter store space to DDOT as a warm white shell, with a finished floor, ceiling, lights, etc. The Applicant will not be responsible for the purchase or installation of any equipment or specialty items needed for the operation of the commuter store. The Applicant shall provide the same security and maintenance for the commuter store as it will for the other retail tenants in the project. In the event that DDOT determines that the store is not necessary, the Applicant will not be required to provide or construct such space. DDOT must make this decision by the time of the issuance of a building permit for Block 2.
5. The Applicant shall make the transportation infrastructure and traffic improvements to the area around Skyland Town Center, as provided for in the approved plans and materials: modified traffic signals; reconfiguring existing traffic lanes; restriping; new signs; and the widening of 25th Street. These transportation infrastructure and traffic improvements will be completed prior to the issuance of a Certificate of Occupancy for the Building on Block 1, in accordance with DDOT standards and contingent on DDOT issuing a permit for such improvements.
6. The Applicant shall make the following public space improvements to Naylor Road and Alabama Avenue, as provided for in the approved plans and materials; new DC standard sidewalks, granite curbs, and gutters; paver crosswalks; street trees; irrigation; special pavers; benches; receptacles; bollards; and 16' Washington Globe lighting. The Applicant will provide a landscape buffer on the east side of the Property to screen the project from Hillcrest residents. These public space

improvements must be made by the completion of the last phase of development of the project.

7. **LEED Requirements for the Modification Project**

- (a) **Prior to the issuance of a certificate of occupancy for the Medical Office Building in Block 1**, the Applicant shall provide the Zoning Administrator with evidence that the building has or will achieve the requisite number of prerequisites and points necessary to achieve LEED Silver v4 level for the office building and evidence that the garage has or will achieve the Green Business Certification Inc.'s "Parksmart" certification.
- (b) **Prior to the issuance of a certificate of occupancy for the Lidl grocery store in Block 3**, the Applicant shall provide with evidence that the building has or will achieve the requisite number of prerequisites and points necessary to achieve LEED Silver v4 level.
- (c) The building to be constructed on Block 4 will be designed to achieve a LEED Silver v4 level of certification.

8. **For the life of Modification Project**, the Applicant shall establish a transportation management program ("TMP") and a Loading Management Plan ("LMP") that includes the following:

(a) **Transportation Demand Management Plan**

(i) *Overall Site*

- a. The Applicant will install eight (8) additional docks (two expansion plates) to the existing 11-dock Capital Bikeshare station at the corner of Alabama Avenue and Good Hope Road and ensure it is designed to remain in place.
- b. The Applicant will provide reserved parking locations for carshare and carpool vehicles.
- c. The Applicant will establish a ride-matching program.
- d. The Applicant will implement strategies to evaluate the effectiveness of the transportation management program (TMP).
- e. The Applicant will provide dedicated parking spaces for car-sharing vehicles.
- f. The enhancement of Metrobus service in and around the site which will help encourage residents of the project and the surrounding areas to utilize public transportation.

- g. The Applicant will establish the position of a Transportation Services Coordinator in the property management office who will be responsible for administering and advancing TMP strategies and also monitoring loading and parking practices in the project.

*(ii) Block 1*

- a. The Applicant will unbundle the cost of parking from the cost to lease an office unit.
- b. The Applicant will provide a free parking space for all vehicles that employees use to vanpool to work.
- c. The Applicant will not lease unused parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home residents).
- d. At the initial opening of the building, the Applicant will offer each new employee of a tenant in Block 1 a Capital Bikeshare Bronze Level membership upon their initial employment.
- e. At the initial opening of the building, the Applicant will offer each new employee a Metrocheck or SmartTrip Card with the value of \$20.00.
- f. The Applicant will provide a bicycle repair station in each long-term bicycle parking storage room.
- g. The Applicant will install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles.
- h. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator shall submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case.
- i. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final certificate of occupancy for the Project) summarizing

continued compliance with the transportation and TDM conditions in the Order.

- j. The Applicant will meet ZR16 short- and long-term bicycle parking requirements. Long-term bicycle parking will be provided free of charge to all employees.
- k. The Applicant will meet ZR16 requirements for shower and locker facilities.

*(iii) Block 3*

- a. The Applicant will unbundle the cost of parking from the cost to lease the building or unit.
- b. The Applicant will provide a free parking space for all vehicles that employees use to vanpool to work.
- c. The Applicant will not lease unused parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home residents).
- d. At the initial opening of the buildings, the Applicant will offer each new employee of a tenant in Block 3 a Capital Bikeshare Bronze Level membership upon their initial employment.
- e. At the initial opening of the building, the Applicant will offer each new employee a Metrocheck or SmartTrip Card with the value of \$20.00.
- f. The Applicant will provide a bicycle repair station in each long-term bicycle parking storage room.
- g. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator shall submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case.
- h. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order.

- i. The Applicant will meet ZR16 short- and long-term bicycle parking requirements. Long-term bicycle parking will be provided free of charge to all employees.

*(iv) Block 4*

- a. The Applicant will unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile.
- b. The Applicant will designate two (2) parking spaces for vans to be used by District residents who vanpool to work.
- c. The Applicant will not lease unused residential parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home residents, or sporting events).
- d. At the initial opening of the building, the Applicant will provide each new residential tenant, upon their move-in, a SmarTrip card and one (1) complimentary Capital Bikeshare coupon good for a free ride.
- e. At the initial opening of the building, the Applicant will offer each new employee a Metrocheck or SmartTrip Card with the value of \$20.00. (DDOT Report 09-03A)
- f. The Applicant will provide a bicycle repair station in each long-term bicycle parking storage room.
- g. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator shall submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case.
- h. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order.
- i. The Applicant will meet ZR16 short- and long-term bicycle parking requirements. Long-term bicycle parking will be provided free of charge to all employees.

- j. The Applicant will meet ZR16 requirements for shower and locker facilities, if applicable.

(b) **Loading Management Plan**

*(i) Block 3 – Grocery Store*

- a. A loading manager will be designated by the grocery store who will be on duty during delivery hours. The dock manager will be responsible for coordinating with vendors to schedule deliveries and will work with the community and neighbors to resolve any conflicts should they arise.
- b. The loading manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic along the internal driveways except during those times when a truck is actively entering or exiting loading berth.
- c. The loading manager will schedule deliveries using the berths such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to at a later time when the berth will be available so as to not compromise safety or impede circulation through the Site.
- d. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map ([godcgo.com/freight](http://godcgo.com/freight)).
- e. The loading manager will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading dock as well as notifying all drivers of any access or egress restrictions. The dock manager will also distribute flyer materials, such as the Metropolitan Washington Council of Governments (MWCOG) Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws. The dock manager will also post these materials and other relevant notices in a prominent location within the loading area.

*(ii) Block 3 – In-Line Retail*

- a. A loading manager will be designated by property management who will be reachable during delivery hours. The loading manager will be responsible for coordinating with retail tenants to ensure scheduled

deliveries do not exceed loading area capacity and will work with the community and neighbors to resolve any conflicts should they arise.

- b. The loading manager will ensure truck maneuvers are monitored and vehicular, bike, or pedestrian traffic within the surface lot is not blocked except during those times when a truck is actively entering or exiting the loading area.
  - c. All retail tenants will be required to coordinate and schedule deliveries that utilize the loading area (any loading operation conducted using a truck 20-feet in length or larger).
  - d. In the event that an unscheduled delivery vehicle arrives while the loading space is occupied, that driver will be directed to return at a later time when the space will be available so as to not compromise safety or impede circulation.
  - e. Trucks using the loading area will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map ([godcgo.com/freight](http://godcgo.com/freight)).
  - f. The loading manager will be responsible for disseminating suggested truck routing maps to the retail tenants as well as notifying all retail tenants of any access or egress restrictions. The loading manager will also post MWCOG’s Turn Your Engine Off information and other relevant notices in a prominent location available to retail tenants overseeing deliveries.
9. The Applicant shall enter into a First Source Employment Agreement with the D.C. Department of Employment Services (“DOES”) in conformance with the Agreement included as Exhibit F of the Applicant’s Pre-Hearing Statement submitted into the record. A fully-signed First Source Employment Agreement between the Applicant and DOES must be filed with the ZA prior to the issuance of the first above grade building permit for the project.
10. The Applicant shall enter into a Certified Business Enterprise Utilization Agreement with the D.C. Department of Small and Local Business Development (“DSLBD”) in conformance with the Agreement included as Exhibit G of the Applicant’s Pre-Hearing Statement submitted into the record. A fully-signed Certified Business Enterprise Utilization Agreement between the Applicant and DSLBD must be filed with the ZA prior to the issuance of the first above grade building permit for the project.
11. **For the life of the Modification Project**, the Applicant shall reserve a total of 20% of the residential units as affordable for households having an income not exceeding

80% of the Area Median Income (“AMI”) for the Washington, D.C. Metropolitan Statistical Area (adjusted for family size). The Applicant shall reserve an additional 10% of the residential units as affordable for households having an income not exceeding 120% of AMI. A proportionate amount of affordable housing will be distributed throughout Blocks 2 and 4 except for the two upper stories of each building. These affordable units will be reserved for a term that is consistent with the affordability covenant that will be recorded in the D.C. Land Records against the Skyland Property, as required by the land disposition agreement signed by the Applicant and the District of Columbia.

12. The Applicant shall undertake the construction mitigation measures as stated in Exhibits 112 and 120 of the record. These measures include monitoring construction activity impacts; monitoring of vibrations from construction activity; the Applicant agreeing to take responsibility for damage to adjacent properties and pay for damage caused by the Applicant’s construction activities (note that neither the Commission, nor the ZA, will have any responsibility or duty to determine whether any damage has occurred); providing site management, including fencing and barricades, erosion control measures, continuous rubbish removal, and directing of construction traffic; and provision of a on-site construction representative to hear and respond to concerns from the Ft. Baker Drive residents during construction.
13. **For the life of the Modification Project**, the number of parking spaces permitted in the PUD project shall be a total of 1,289.
14. The Applicant shall have flexibility with the Modification Project in the following areas:
  - a. To reduce the overall size of the building in Block 1 based on the market demand for Medical Office use at the time of construction, provided the revised massing does not require additional zoning relief;
  - b. 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 of the structures and that the shadow boxes along the Naylor Road façade in Block 1 are maintained;
  - c. To vary the final selection of the exterior materials within the color ranges of material types as proposed, based on availability at the time of construction without reducing the quality of the materials;
  - d. To make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, balconies, canopies and trim, or any other changes to



comply with Construction Codes or that are otherwise necessary to obtain a final building permit, such that the refinements do not substantially change the external configuration or appearance of the building;

- e. To vary the number of residential units and the residential unit types by plus or minus 10%, to be finalized at the second-stage review for Block 4;
- f. To reduce the number of parking spaces, provided that no additional relief is required;
- g. To vary the streetscaping and landscaping materials on private property within the Project based on availability and suitability at the time of construction or otherwise in order to satisfy any permitting requirements of applicable regulatory bodies;
- h. To vary the amount, location, and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the Project achieves the minimum GAR requirement and does not reduce the total solar coverage area;
- i. To vary the final design and layout of the mechanical penthouses to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Plans and remain compliant with all applicable penthouse setback requirements;
- j. To vary the final design of the outdoor amenity spaces to reflect their final programming, provided that the use of space, character, and quality of the features and plantings remain in substantial conformance with the concept design shown on the Plans;
- k. To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the Plans and are compliant with the DC signage regulations, and consistent with Exhibit 29A; and; and
- l. To modify the streetscape design and areas in public space in response to DDOT and the public space permitting process.

15. The ZA shall not approve a permit application for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to OAG and the Zoning

Division of DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the Subject Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with OZ for the case record.

16. The change of zoning from the R-5-A, R-5-B, and R-1-B Zone Districts to the C-3-A Zone District shall be effective upon the recordation of the covenant discussed in Condition No. 15, pursuant to 11 DCMR § 3028.9.
17. A building permit for the construction of the buildings on Block 3 shall be filed within one year of the Zoning Commission's approval of the Modification Project and construction will start within two years Zoning Commission's approval of the Modification Project; a building permit for the construction of the building on Block 1 shall be filed within two years of the Zoning Commission's approval of the Modification Project and construction will start within three years Zoning Commission's approval of the Modification Project; and a second-stage PUD application for the development of the mixed-use building on Block 4 shall be filed with the Zoning Commission by December 31, 2025 and a building permit application for Block 4 shall be filed within one year of the Zoning Commission's approval of the second stage PUD application and construction will start within two years of the Zoning Commission's approval of the second stage PUD. .
18. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.
19. The Applicant shall provide a 10-foot wide clear sidewalk along the building face of Block 1 and Block 2 on the Naylor/Good Hope Road frontage on public space or through a combination of public and private space.

**VOTE (September 14, 2020):**

**- - - ([ZCM making motion], [ZCM seconding motion], Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to APPROVE).**

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 09-03F shall become final and effective upon publication in the *DC Register*; that is, on [REDACTED], 2020.

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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

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