

GOVERNMENT OF THE DISTRICT OF COLUMBIA



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, at its July 23, 2020, public hearing, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Skyland Holdings LLC (the “Applicant”) that requested approval of a Modification of Significance¹ pursuant to Subtitle Z § 704 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified) to the Planned Unit Development (“PUD”) and related Map Amendment approved by the Commission in 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 Z.C. Order Nos. 09-03B, 09-03C, and 09-03E (collectively with the Original Order, the “Order”), for Lot 22 in Square 5633,² 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, Chapter 4. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT
I. BACKGROUND

PRIOR APPROVALS

1. Pursuant to the Original Order, effective on September 10, 2010, the Commission approved a Consolidated PUD with a map amendment rezoning the Property’s 18.7 acres at the intersection of Naylor Road, Good Hope Road, and Alabama Avenue, S.E. from the R-1-B, R-5-A, and R-5-B zones to the C-3-A zone to construct a mixed-use town center anchored by a main street with:
 - Approximately 314,480 square feet (“sf”) of community-serving retail uses;
 - 20 townhomes and 450-500 residential units above the retail and service uses totaling approximately 538,110 square feet;
 - 1,698 parking spaces totaling approximately 400,038 square feet; and

¹ Pursuant to Subtitle A § 102.4, although the Original Order was vested under the 1958 Zoning Regulations under which it was evaluated and approved, the Application is subject to the current Zoning Regulations to the extent of the modifications.

² Lot 22 in Square 5633 consolidated all of the property subject to the PUD approved by Z.C. Order No. 09-03, as recorded by a plat recorded on November 17, 2014, in the Records of the District Surveyor at Subdivision Book 209, Page 39 (Z.C. Order No. 09-03 referred to Assessment and Taxation (“A&T”) Lots 800 and 801, which were created out of Lot 2 per the plat in A&T Book 3794, Page F, and A&T Lot 819, created out of A&T Lots 815 and 817, in turn created out of the remainder of Lots 8 and 9 per A&T Plats Book Page 2410).

- A total floor area ratio (“FAR”) of 1.54, of which 0.88 FAR is dedicated to commercial uses (Exhibit [“Ex.”] 51 and 121A1 in Z.C. Case No. 09-03 at p. 18).
2. The Original Order divided the PUD, 1,252,628 sf of gross floor area (“GFA”) into five development parcels (“Blocks”) as follows:
 - Block 1 – 242,600 sf;
 - Block 2 – 550,611 sf;
 - Block 3 – 256,230 sf;
 - Block 4 – 168,769 sf; and
 - Block 5 – 34,518 sf.
 3. By Z.C. Order No. 09-03A, effective January 17, 2014, the Commission approved modifications of the Original Order in the following areas:
 - Architectural design and site layout reducing the total GFA to 1,249,438 sf with a FAR of 1.75, of which 0.97 FAR is dedicated to commercial uses, allocated as follows:
 - Block 1 – 179,395 sf;
 - Block 2 – 744,486 sf;
 - Block 3 – 189,818 sf;
 - Block 4 – 117,595 sf; and
 - Block 5 – 18,144 sf;
 - Residential uses – replacing 12 townhomes with six carriage houses on Blocks 3 and 5;
 - Parking – allowing 1,774 parking spaces in a modified distribution across the Property;
 - Transportation network; and
 - PUD Zoning Map vesting – clarifying that the rezoning to the C-3-A zone vested for each Block upon the start of construction of that Block.
 4. By Z.C. Order No. 09-03D³, effective June 30, 2017, the Commission approved modifications of the Original Order as it applies to Block 2 to remove 345 parking spaces on three levels of above-grade parking and architectural design and site layout, with a reduction in the square footage of Block 2 to 534,880 sf.⁴

PARTIES

5. In addition to the Applicant, the parties to the Order were:
 - Advisory Neighborhood Commissions (“ANC”) 7B, which district includes the Property, and ANC 8B, which shares a boundary with the Property, the “affected ANCs” pursuant to Subtitle Z §§ 101.8 and 403.5(b); and
 - The Ft. Baker Drive Party (“FBDP”), granted party status in Z.C. Case No. 09-03.

³ Z.C. Order Nos. 09-03B and 09-03C extended the deadlines for filing a building permit application and for commencing construction.

⁴ Z.C. Order No. 09-03D, and its approved plans and filings did not specify the changed square footage for Block 2, which was instead provided by Ex. 22C, p. G7 of Z.C. Case No. 09-03F.

6. The Commission received no additional requests for party status.

NOTICE

7. On June 28, 2019, the Applicant mailed a Notice of Intent to file the Application to:
- ANCs 7B and 8B; and
 - All property owners within 200 feet of the Property, including Joanne Harris on behalf of FBDP (Ex. 3C).
8. On May 27, 2020, the Office of Zoning (“OZ”) sent the notice of the July 23, 2020 virtual public hearing to:
- Applicant;
 - ANCs 7B and 8B;
 - ANC Single Member District Commissioner 7B02, whose district includes the Property;
 - Office of the ANCs;
 - Office of Planning (“OP”);
 - District Department of Transportation (“DDOT”);
 - Department of Energy and the Environment (“DOEE”);
 - Department of Consumer and Regulatory Affairs (“DCRA”);
 - District of Columbia Housing Authority (“DCHA”);
 - Council of the District of Columbia (“DC Council”); and
 - Property owners within 200 feet of the Property (“200-Footers”). (Ex. 17.)
9. OZ also published notice of the July 23, 2020, virtual public hearing in the June 5, 2020, *D.C. Register* (67 DCR 006737) as well as on the calendar on OZ’s website. (Ex. 15.)
10. The Applicant provided evidence that it had posted and maintained notice of the public hearing on the Property in compliance with Subtitle Z § 402.⁵ (Ex. 18, 18A, 28.)

COMPREHENSIVE PLAN (Title 10A DCMR, the “CP”)

Generalized Policy Map (“GPM”)

11. The CP’s GPM designates the Property in two categories: (Ex. 35B)
- The southwestern portion along Naylor and Good Hope Roads and Alabama Avenue, S.E., as a Multi-Neighborhood Center, which the CP defines⁶ as centers located at major intersections and along key transit routes that might include supermarkets, general merchandise, drug, specialty, and apparel stores, restaurants, and sometimes offices, with redevelopment to provide new retail and service uses as well as housing and job opportunities; and (CP § 225.17.)

⁵ The Applicant requested a waiver from having to notarize the affidavits of posting and maintenance required by Subtitle Z §§ 402.8 and 402.10 due to the ongoing COVID-19 pandemic, which the Commission granted.

⁶ The CP’s Framework Element, which defines the GPM and FLUM designations, was revised effective August 27, 2020 (D.C. Law 23-0217); prior to the Commission’s vote and so applies to its decision in this case.

- The northeastern portion as a Neighborhood Conservation Area, defined by the CP as areas with “little vacant or underutilized land ... [that] are generally residential in character. ... [N]ew development can support conservation of neighborhood character when guided by Comprehensive Plan policies and the Future Land Use Map. ... The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs. ... New development should be compatible with the existing scale, natural features, and character of each area ...” (CP § 225.4-225.5.)

Future Land Use Map (“FLUM”)

12. The CP’s FLUM designates the Property into three categories:
 - Most of the Property for Moderate Density Commercial uses, which the CP defines as predominantly for retail, office and service businesses with density typically ranging between a 2.5 and 4.0 FAR, with the MU-5 and MU-7 zones identified as zones consistent with this designation;
 - The northeastern corner and the easternmost portion, approximately half of the GPM’s Neighborhood Conservation Area, for Low Density Residential uses, which the CP defines as for single family neighborhoods with detached and semi-detached buildings with front, side, and rear yards; and
 - A tiny triangle between in the center of the northern edge, between the Low Density Residential and the Moderate Density Commercial areas, designated for Moderate Density Residential, which the CP defines as generally, but not exclusively for row houses and low-rise garden apartment complexes, with density ranging up to a 1.8 FAR. (Ex. 35B).

Far Northeast-Southeast Area Element

13. The CP’s applicable Area Element specifically identifies the Property as targeted for revitalization as a community scale retail center. (Policy FNS-2.7.)
14. In issuing the Order, the Commission concluded that the PUD it approved was not inconsistent with the Comprehensive Plan.

II. THE APPLICATION

MODIFIED PROJECT

15. The Application did not include or modify Block 2, which is under construction as approved by the Order with occupancy expected in late 2020. (Ex. 3, 11.)
16. The Application proposed to modify the PUD approved by the Order by reconfiguring Block 1, 3, 4, and 5 into new Blocks 1, 3, and 4 by:
 - Dividing Block 1 into two, with the western portion remaining Block 1 and merging the eastern portion into Block 4; and
 - Merging Block 5, along with the southern portion of Block 4 into Block 3, with modifications as described below (the “Modified Project”).

17. The Modified Project remains centered around Town Center Drive, providing a street-activated pedestrian experience and central thoroughfare through the Property with significant ground-floor retail and residential components within the following parameters (including Building 2):
- A reduced total GFA of 1,169,317 sf with a FAR of 1.63, of which 0.89 FAR is dedicated to commercial uses, allocated as follows:
 - Block 1 – 280,978 sf;
 - Block 2 – 534,880 sf;
 - Block 3 – 41,229 sf; and
 - Block 4 – 312,230 sf;
 - The square footage shall be allocated to the following uses:
 - Retail – 533,170 sf;
 - Residential – 533,270 sf;
 - Office – 131,344 sf; and
 - Structured Parking – 351,354 sf;
 - Building heights ranging from 30 to 62 feet; and
 - 1,289 parking spaces. (Ex. 3, 13, 22, 22C, 29, 35.)

Block 1

18. Block 1 will include a Medical Office Building⁷ (“MOB”) and attached parking garage (“MOB Garage”).
19. The MOB, comprised of approximately 131,344 sf over four stories, reaching 60 feet in height, is the visual entrance to Skyland Town Center from Good Hope Road and Naylor Road, S.E. The building provides two main entrances on the first floor, with the main pedestrian entry located in the Naylor Road lobby, and the main vehicular entry located in the lobby on the opposite side of the MOB and accessible from the green, open courtyard on the interior Town Center Drive side. The two lobbies will be connected and will provide access to the upper levels. 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 so that it pairs with the adjacent parking garage. (Ex. 3, 22C, 35.)
20. The MOB Garage will provide approximately 465 spaces on six levels, reaching 52.5 feet in height, with the surface covered in solar panels to provide renewable energy and shading for the parking. The MOB Garage set back 24 feet from Naylor Road to accommodate a one-story Arts Walk consisting of shadow boxes housing rotating installations installed in partnership with Building Bridges Across the River and associated arts organizations. The

⁷ 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.

shadow boxes will provide community art and showcases to activate the streetscape along Naylor Road, S.E. (Ex. 22, 22A, 22C, 35.)

Block 3

21. Block 3 will be developed with three single-story retail buildings, all 30 feet in height or less – a Lidl grocery store, a Starbucks coffee shop, and another in-line retail building – along with a surface parking lot with a drive-through lane for the coffee shop.
22. The Lidl grocery store, approximately 29,436 sf in size, has an open façade fronting on Town Center Drive and the parking lot constructed with brick, spandrel panels, and split-face concrete masonry units. (Ex. 3, 22C, 35.)
23. The Starbucks coffee shop, approximately 2,973 sf in size, and the third in-line retail building, approximately 9,981 sf in size, which uses architectural motifs and masonry materials that echo the architectural character and language of Block 2. (Ex. 22C, 35.)
24. A surface parking lot of approximately 214 parking spaces, with associated landscaping compliant with zoning requirements and consistent with a traditional town center lot separates the Lidl grocery store from Alabama Avenue, S.E. This traditional plan will provide ease of access to the Lidl and is consistent with the grocer’s site layout requirements. A drive-through lane serving the Starbucks coffee shop winds across the edge of this parking area providing ample queuing area for the coffee shop. (Ex. 3, 22C.)
25. A green buffer with trees and landscape plantings on the perimeter of Block 3 connects to the significant landscaping around the Property forming a welcoming, green streetscape. (Ex. 3, 22, 22C.)

Block 4

26. Block 4 will be the site of a future mixed-use building with a maximum height of 60 feet and approximately 312,230 sf composed of:
 - Approximately 7,140 sf of ground-floor retail;
 - Approximately 252 multifamily residential units; and
 - Approximately 157 parking spaces in a partially below-grade garage. (Ex. 3, 3H, 13, 13D, 22, 22C, 35.)

RELIEF REQUESTED

27. The Applicant requested a Modification of Significance to the Order as follows:
 - No change to the Zoning Map amendment to the C-3-A zone or to the PUD for Block 2; and
 - Modifying the Consolidated PUD approval by:
 - Consolidating Blocks 1, 3, 4, and 5 into Blocks 1, 3, and 4;
 - Modifying the layout and uses of:
 - Block 1 for the MOB and MOB Garage;

- Block 3 for the Lidl grocery store, the Starbucks coffee shop, and the in-line retail store with a surface parking lot with 201 spaces; and
- Converting the Consolidated PUD for Block 4 from to a First-Stage PUD and modifying its layout and uses for the mixed-use building;
- Adding zoning flexibility to that approved by the Order:
 - From Subtitle C § 1502.1 – to exempt the solar panels on the MOB Garage roof from the penthouse setback requirements;⁸
 - From Subtitle C § 901 to substitute one 12-foot by 55-foot loading berth and one 200 sf loading platform in place of the required three 10-foot by 30-foot loading berths, one 10-foot by 20 foot delivery space, and two 100 sf loading platforms for Block 3’s grocery store, in-line retail store, and coffee shop; and
 - From Subtitle C § 710.2(b)(2) for Block 3’s surface parking lot if the Commission determined the lot was in the Lidl grocery store’s “front yard”;
- Modifying the allocation, but not the amount, of public benefits imposed by Condition Nos. 2(c), (g), and (h) of the Order to reallocate \$375,000 to the Skyland Workforce Center job training, including construction job training, by removing:
 - \$300,000 no longer needed for construction funding from the Contractor Loan Fund; and
 - \$75,000 from homebuying and homeownership classes no longer needed as the Project no longer included for-sale residential units; and
- Modifying Condition No. 17 to change the phasing and extend the validity of the Order.⁹ (Ex. 3,22.)

JUSTIFICATION FOR RELIEF

28. The Application asserted that the Modified Project complied with the PUD modification requirements because it is (i) not inconsistent with the CP, (ii) not creating unacceptable impacts that are not mitigated or outweighed by public benefits, and (iii) includes public benefits as discussed below.

Not Inconsistent with the CP

29. The Application asserted that the Modified Project remains not inconsistent with the CP as a whole since the Modified Project remains a town center configured around a central drive with approximately 500 residential units, significant neighborhood-serving retail, and a full-service grocery store, but adds a medical office building that will include medical care uses that will help achieve additional CP policies and goals. (Ex. 3, 22, 29, 35.)

⁸ 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, 35.)

⁹ The Commission would ordinarily require the Applicant to file a separate application to extend the time limit of the PUD, but given the extensive nature of the changes to the Modified Project’s phasing, including sending part of the Project back to a first-stage PUD approval, the Commission concluded it was appropriate to consider the extension as part of this modification case.

30. With regards to the potential inconsistencies of the Modified Project with the Property's GPM and FLUM designations, the Application:
- Noted that the CP's Framework Element states that the FLUM is "generalized guidance" that is "soft-edged" and not parcel specific and that these designations should be interpreted "broadly" and "in conjunction with the text of the CP, including the Citywide Elements and the Area Elements;" and (CP § 228)
 - Asserted that the Modified Project furthered other CP policies that outweighed any potential inconsistencies with the GPM and FLUM designations. (Ex. 35B.)

GPM

31. The Modified Project remains not inconsistent with the GPM's designation of the majority of the Property as a Multi-Neighborhood Center project because the Modified Project maintains significant retail and service uses in addition to housing, as the Commission had approved in the Order. (Ex. 35B.)
32. The Modified Project remains not inconsistent with the GPM's designation of the eastern portion of Block 3 and most of Block 4 as a Neighborhood Conservation Area, which "does not preclude development" but calls for new development to be "compatible with the existing scale, natural features, and character of each area." (CP § 225.5.) The Modified Project maintains the transitional elements that the Commission approved in the Order including the step downs in intensity and density from the Multi-Neighborhood Center toward the adjacent residential neighborhood to the northeast, and the separation by a significant buffer area with a ravine and tree preserve. (Ex. 35B.)

FLUM

33. The Modified Project remains not inconsistent with the Moderate Density Commercial designation of the majority of the Property because that designation is appropriate for "shopping and service areas" and specifically identifies the C-3-A zone (the current MU-7 zone), to which the Order rezoned the Property, as zone generally corresponding to this designation. (Ex. 35B.)
34. The Modified Project remains not inconsistent with the Low Density Residential designation for the small portion of the Property including the northern portion of Block 4 because the portions of the mixed-use building that extend into the areas designated for Low and Moderate Density Residential uses are exclusively residential, with the building's ground floor retail uses located only in the areas designated for Moderate Density Commercial uses.

Far Northeast-Southeast Area Element

35. The Modified 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, including housing, retail, and health care facilities, and significant buffering of Ft. Baker Drive as further detailed in specific policies of this Element. (Ex. 35B.)

Land Use Element

36. The Modified Project furthers the policies of the Land Use Element by providing a Neighborhood Commercial District and Commercial Center project as a quintessential new town center focusing the higher-intensity uses along the external streets and providing housing in the area closest to adjacent residential uses as detailed in specific policies of this Element. (Ex. 35B.)

Housing Element

37. The Modified Project furthers the policies of the Housing Element by providing new housing and affordable housing in a mixed-use and mixed-income development where currently none exists as detailed in specific policies of this Element. (Ex. 35B.)

Economic Development Element

38. The Modified Project also furthers the Economic Development Element's focus on providing new grocery stores and medical office uses as detailed in specific policies of this Element. (Ex. 35B.)

Community Services and Facility Element

39. The Modified Project furthers the Community Services and Facility Element policies by providing new medical uses and facilities in an area where such use is desperately needed as detailed in specific policies of this Element. (Ex. 35B.)

Transportation Element

40. The Modified Project furthers the Transportation Element with its transportation infrastructure improvements and its transportation demand management plan as detailed in specific policies of this Element. (Ex. 35B.)

No Unacceptable Impacts

41. The Application asserted that the Modified Project would not create any unacceptable impacts because it maintained the town center concept approved by the Commission as not having unacceptable impacts and because the reduced parking would have a favorable impact in encouraging non-vehicular traffic that would reduce impacts on the surrounding transportation network.

Public Benefits

42. The Application asserted that the Modified Project maintained the same public benefits approved by the Order, with very minor changes to reallocate funds that were no longer needed for contractor funding and homeownership training to instead increase the funding for job training approved by the Order, and to which the Applicant had already paid over \$900,000 out of the total \$1,285,000 in financial contributions included in the Order's public benefits. The Applicant explained that it had contributed over \$600,000 to the job training at the Skyland Workforce Center, which 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.)

APPLICANT'S SUBMISSIONS

43. 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 May 20, 2020, prehearing submission (the "Prehearing Submission") that responded to OP and the Commission's requests from setdown; (Ex. 13, 13A-D.)
 - A June 19, 2020, Comprehensive Traffic Review (the "CTR"); (Ex. 20, 20A.)
 - A July 2, 2020, supplemental submission (the "Supplemental Submission") addressing comments from OP, DDOT, DOEE, and the ANC; (Ex. 22, 22A-C.)
 - A July 22, 2020, submission (the "Hearing Submission") addressing comments raised in the OP and DDOT Reports, as defined below; and (Ex. 29.)
 - A September 1, 2020, post-hearing submission (the "Post-Hearing Submission") responding to issues raised at the public hearing. (Ex. 35.)

Responses to OP

44. The Applicant responded to OP's Setdown Report, as defined below, in the Prehearing Submission and in the Supplemental Submission by:
- Providing additional site-sections showing the Modified Project's relationship to the surrounding properties;
 - Providing additional details regarding the entry plaza materials;
 - Updating the MOB's facades;
 - Improving the public space treatment along Naylor Road, S.E.;
 - Incorporating the shadow boxes, and detailing their operation, in the Arts Walk along Naylor Road, S.E.;
 - Relocating the loading and trash facilities in Block 3 from the parking lot to the in-line retail building;
 - Relocating Block 3's drive-through queuing lane so that it no longer required relief from the 20-foot setback requirement; and
 - Enhancing the landscaping and screening around the Block 3 parking lot. (Ex. 13, 22.)
45. The Applicant responded to OP's Hearing Report, as defined below, in its Hearing Submission by:
- Providing plant size information for the landscaping along Alabama Avenue, S.E.; and
 - Providing the signage standard materials used for Block 2 that will also be used for the Modified Project. (Ex. 29, 29A.)

Responses to DDOT

46. The Applicant responded to DDOT's comments in the CTR, the Hearing Submission, the Post-Hearing Submission, and its public hearing testimony by:
- Providing the Transportation Demand Management Plan ("TDMP") and the Loading Demand Management Plan ("LDMP"), including reducing the number of parking spaces;

- Increasing the TDMP based on the DDOT Report, including increasing the Capital Bikeshare station and offering Capital Bikeshare memberships for residents and employees;
- Addressed DDOT’s concern that the Modified Project might require mitigations for overparked sites by asserting that these requirements did not apply to the Modified Project because it reduced the number of parking spaces previously approved by the Order as compliant with the Zoning Regulations;
- Including a comprehensive set of conditions detailing all of the TDMP and LDMP commitments for the Modified Project; and
- Confirming in its public hearing testimony that it had accepted all of the enhanced conditions requested in the DDOT Report. (Ex. 20A, 29, 32, 33, 35; July 23, 2020 Transcript [“Tr.”] at 35-36.)

Responses to DOEE

47. The Applicant responded to DOEE’s comments in the Prehearing Submission and in the Post-Hearing Submission by committing to:
- Comply with the Green Area Ratio (“GAR”) requirements and providing a GAR scorecard;
 - Provide 125,000 square feet of landscaped area, preserve 235 existing trees, and plant 387 new trees;
 - Include a 25,000 square foot solar array in the MOB Garage, which is designed to achieve the Green Business Certification Inc.’s “Parksmart” certification;
 - Design the MOB, Lidl grocery store building, and Block 4 mixed-use building to the LEED Silver standard; and
 - Install 18 electric vehicle charging stations across the Modified Project. (Ex. 13A, 35.)

Public Hearing Testimony

48. At the July 23, 2020, public hearing, the Applicant presented testimony of:
- 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, all of whom had been previously accepted by the Commission as experts in their respective fields. (Ex. 31; Tr. at 7-40.)

Post-Hearing Submission

49. The Applicant responded to the questions and clarifications requested by the Commission, OP, and DDOT at the public hearing by:
- Clarifying which portions of the Property would remain subject to the Consolidated PUD and which would instead be reverted to a First-Stage PUD approval (Block 4);
 - Responding to the Commission’s request to consider increasing the additional affordable housing for Block 4 by asserting that:
 - Providing additional affordable housing would require additional financial support from the District; and

- The Order vested the approved 500 residential units prior to the adoption of the Inclusionary Zoning (“IZ”) program, which would therefore only apply if the Modified Project and Block 2 combined provide more than these 500 residential units;
- 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;
- Simplifying the MOB’s tower element;
- Revising the design and exterior appearance of the MOB Garage to minimize light emission, including underlighting of the solar array;
- Confirming the Arts Walk shadow boxes in Block 1 will be ventilated;
- Withdrawing its request for flexibility from bike parking shower and locker facilities in the Lidl building in Block 3;
- Responding to DOEE’s comments by reiterating the Modified Project’s sustainability features, including a commitment to 18 electric vehicle charging stations;
- Providing additional details regarding the loading and trash area for the Block 3 in-line retail building;
- Showing alternative materials for the fire access road around Block 4;
- Providing additional details regarding parking and loading in Block 4;
- Providing additional details of the retaining wall between Block 4 and Ft. Baker Drive;
- Reiterating its view that the Modified Project’s satisfied the PUD balancing required as part the Commission’s review of the Modified Project;
- Providing a comprehensive analysis of the Modified Project’s consistency with the CP; and
- Noting the continued dialogue regarding the Modified Project with the community. (Ex. 35.)

III. RESPONSES TO THE APPLICATION

OP

50. OP submitted two reports to the record in addition to testimony at the public setdown meeting and at the public hearing:
- A February 28, 2020, setdown report (the “OP Setdown Report”) recommending that the Commission set down the Application for a public hearing and requesting additional information and changes to the Application; and (Ex. 11.)
 - A July 13, 2020, hearing report (the “OP Hearing Report”) that recommended approval of the Modified Project and requested some clarification from the Applicant. (Ex. 25.)
51. The OP Setdown Report concluded that the Modified Project remained not inconsistent with CP as a whole, generally supported the Application’s requested zoning flexibility and recommended the Commission set down the Application for a public hearing. However, the OP Setdown Report did raise several concerns and requested additional information regarding the Modified Project as follows:

- Objected to the location of the retail waste and loading area within the Block 3 parking lot and requesting it be moved;
 - Requested additional screening for the Block 3 parking lot; and
 - Requested additional information about the:
 - Operational details for the Arts Walk; and
 - Materials for Block 3. (Ex. 11.)
52. The OP Hearing Report:
- Reiterated that the Modified Project remained not inconsistent with CP as a whole;
 - Supported the final flexibility requested for the Modified Project;
 - Agreed that the Applicant had adequately addressed the concerns raised in the OP Setdown Report, including:
 - Relocating the retail loading and waste collection area out of the Block 3 parking lot;
 - Providing additional landscaping along Alabama Avenue; and
 - Provided additional information about hardscaping and material;
 - Requested:
 - Additional information on the signage standards for the Modified Project;
 - Responses to DOEE and DDOT’s comments; and
 - An explanation for the reduced number of total residential units; and
 - Recommended the Commission approve the Modification Application without any additional conditions. (Ex. 25.)
53. At the July 23, 2020, public hearing, OP testified that it continued to recommend approval of the Modified Project and noting that the Applicant had addressed the issues raised in the OP Hearing Report, specifically by:
- Submitting signage information per OP’s request;
 - Responding adequately to the issues raised; and
 - Clarifying that the Modified Project did not propose to decrease the residential units, as had been mistakenly stated in the OP Hearing Report. (Tr. 80-83.)

DDOT

54. DDOT filed a July 13, 2020, report (Ex. 26, the “DDOT Report”) stating that DDOT:
- Supported the Modified Project’s reduction of parking spaces, although it noted that the Property remained overparked and therefore might need additional mitigations, subject to a determination from the Zoning Administrator;
 - Determined that the Modified Project would have mixed-impacts on the transportation network that should be addressed by improving the TDMP;
 - Concluded that DDOT had no objections to the Application, subject to the following conditions design to mitigate the potential adverse impacts of the Modified Project:
 - Strengthening the TDMP by:
 - Installing eight (8) additional docks for the Capital Bikeshare station;
 - Providing Capital Bikeshare memberships to residents and employees of the Modified Project; and

- Providing the required bicycle parking and shower and locker facilities for each Block; and
- Implementing the CTR’s proposed LDMP for Block 3 for the life of the Modified Project; and
- Expected that the Applicant would coordinate during the public space permitting process.

55. DDOT testified at the July 23, 2020, public hearing that:

- The Applicant had:
 - Addressed the DDOT Report’s concern about overparking by reducing the parking in the Modified Project by 117 spaces;
 - Reduced the number of anticipated vehicle trips due to the Modified Project’s changed uses;
 - Constructed substantial roadway improvements;
 - Adequately addressed the concerns raised in the DDOT Report and accepted all of DDOT’s condition, including updating the TDMP; and
- DDOT therefore had no objection to the Modified Project. (Tr. 82-84.)

DOEE

56. DOEE submitted a report (the “DOEE Report”) suggesting that the Application consider improving the Modified Project with additional sustainability efforts in: (Ex. 21.)
- Energy efficiency;
 - Solar panels;
 - Electric vehicle charging stations; and
 - Compliance with the GAR and Stormwater Management requirements.

ANCs

57. ANC 7B filed a June 18, 2020, report (the “ANC 7B Report”) in support of the Application, noting that at a regularly scheduled, properly noticed meeting, the ANC voted unanimously to support the Modified Project and had no issues or concerns. (Ex. 23.)

58. ANC 8B did not submit a report.

FBDP

59. FBDP did not submit any response to the Application.

CONCLUSIONS OF LAW

1. Pursuant to the authority granted by the Zoning Act (June 20, 1938, 52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Rep1.)), the Commission may approve a PUD and modifications to an approved PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 704.

2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
 - (a) *Results in a project superior to what would result from the matter-of-right standards;*
 - (b) *Offers a commendable number or quality of meaningful public benefits; and*
 - (c) *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*

3. Pursuant to Subtitle X § 304.3, in evaluating a proposed PUD, the Commission shall:
Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.

4. Pursuant to Subtitle X § 304.4, to approve a proposed PUD, the Commission must determine that the proposed development:
 - (a) *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - (b) *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
 - (c) *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*

5. A PUD's proposed public benefits must comply with Subtitle X § 305.12:
"A project may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many.

6. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP's purposes as:
 - (1) *To define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
 - (2) *To guide executive and legislative decisions on matters affecting the District and its citizens;*
 - (3) *To promote economic growth and jobs for District residents;*
 - (4) *To guide private and public development in order to achieve District and community goals;*

- (5) *To maintain and enhance the natural and architectural assets of the District; and*
 - (6) *To assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*
7. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)):
- “The Comprehensive Plan is a ‘broad framework intended to guide the future land use planning decisions for the District. (*Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted).) ‘[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.’ (*Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013).) The Comprehensive Plan reflects numerous ‘occasionally competing policies and goals,’ and, ‘[e]xcept where specifically provided, the Plan is not binding.’ *Id.* at 1167, 1168 (internal quotation marks omitted). Thus ‘the Commission may balance competing priorities’ in determining whether a PUD is consistent with the Comprehensive Plan as a whole.’ (*D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013).) ‘[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.’” (*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016) (internal quotation marks and references omitted).)

MODIFICATION OF SIGNIFICANCE - SCOPE OF REVIEW

- 8. Pursuant to Subtitle Z §§ 704.3 and 704.4, the Commission shall evaluate an application to modify a second-stage PUD (including a Consolidated PUD that is a combined first- and second-stage PUD) based on the requirements for a new second-stage PUD, provided that the hearing “shall be limited to the impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision.”
- 9. Pursuant to Subtitle A § 102, the PUD approved by the Order is vested under the 1958 Zoning Regulations under which it was approved and is subject to those rules except that any modification shall be subject to the current Zoning Regulations.
- 10. Since the Application does not propose to change the PUD-related map amendment approved by the Order, it is vested and not subject to additional review by the Commission in this case.

11. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANCs 7B and 8B and FBDP. (Finding of Fact (“FF”) 7.)
12. The Commission concludes that the Application is consistent with the PUD approved by the Order because the Modified Project maintains the redevelopment of Skyland Town Center into a pedestrian-oriented mixed-use town center concept with housing, neighborhood serving retail, and employment opportunities of the PUD approved by the Order while accommodating changes due to changing tenants and real estate market conditions.
13. The Commission concludes that the Application meets the requirements of Subtitle X §§ 304 and Subtitle Z § 704 because Modified Project – to the extent it modifies the PUD approved by the Order - is not inconsistent with the Comprehensive Plan, will not cause any new unacceptable impacts that are not mitigated or outweighed by the proffered public benefits, which balance out any additional requested zoning flexibility, as discussed below.

CONSISTENCY WITH THE CP AND PUBLIC POLICIES (Subtitle X § 304.4(a))

14. The Commission concludes that the Modified Project is not inconsistent with the CP, when considered in its entirety, based on the analyses of the Applicant and OP, and as further discussed below. (FF 29-40, 51-53.)
15. The Commission acknowledges the following portions of the Property are potentially inconsistent with parts of the CP’s GPM and FLUM designations: (Ex. 35B at 8-9.)
 - **GPM’s Neighborhood Conservation Area:**
 - Block 3** - northeastern portion, including approximately 50% of the Lidl grocery store; and
 - Block 4** - approximately 90% of the mixed-use building;
 - **FLUM**
 - **Low Density Residential:**
 - Block 3** - eastern portion, which has no building; and
 - Block 4** - northeastern portion, including approximately 12% of the mixed-use building; and
 - **Moderate Density Residential:**
 - Block 4** - a tiny triangle in the northern portion, including approximately 4% of the mixed-use building.
16. In considering these potential GPM and FLUM inconsistencies, the Commission notes that:
 - The CP’s Framework Element directs the Commission to use these CP maps, particularly the FLUM, for “generalized guidance” that should be “interpreted broadly,” with the FLUM density ranges describing general character of the overall area within which individual buildings may be larger or smaller than these density ranges; and (CP § 228.1.)

- The GPM and FLUM boundaries between designations are “fuzzy,” tend to follow the contours of adjacent streets at a uniform depth, rather than follow the shape and size of the terrain or lot boundaries, and extend into the PUD Site in irregular patterns that do not correspond to the natural terrain or lot boundaries so that the GPM and FLUM shading lacks the granularity to track these areas precisely.

17. Based on the record, and the CP’s Framework Element’s guidelines for using the GPM and FLUM, and considering the irregular shapes of the GPM and FLUM shading and fuzzy edges, the Commission concludes that the Modified Project is not inconsistent with the GPM and FLUM in these areas for the reasons articulated by the Applicant and OP and specifically because:

- **GPM’s Neighborhood Conservation Area (NCA):**

- ***Block 3***

- The majority of the NCA-designated portion of Block 3 is undeveloped, most of which is a landscape buffer that screens and protects the neighboring residential areas to the east, with the portion that is a parking lot furthest away from the residential area along Fort Baker Drive, S.E.;
 - The part of the Lidl grocery store that extends into the NCA portion is the furthest removed from these adjacent residential areas and is shielded from the residential areas to the east by the transitional landscape buffer; and
 - The Lidl grocery store is only one story and 25 feet 8 inches tall and so will be easily screened by the intervening trees and so will not visually intrude into the adjacent residential neighborhoods; (Ex. 22C3.)

- ***Block 4***

- The entire eastern edge of Block 4 is a landscaped buffer along the ravine that screens the mixed-use building from the adjacent residential areas;
 - The eastern façade of the mixed-use building is broken up into four smaller wings separated by landscaped terraces that substantially reduces the visual impact to the adjacent residential neighborhood to the east; (Ex. 22C2.)
 - The eastern façade does not have any loading or exposed parking facilities facing the adjacent residential neighborhood;
 - All of the portions of the mixed-use building in the NCA area are exclusively dedicated to residential uses and so enhances the existing residential character; and
 - The definition of NCA in the CP’s Framework Element explicitly acknowledges that development is not precluded in an NCA “particularly to address city-wide housing needs” which this mostly-residential mixed-use building does;

- **FLUM**

- ***Low Density Residential:***

- **Block 3** – eastern portion

- All of the portion in this FLUM designation is used exclusively as a landscape buffer and so has no density;

Block 4 - northeastern portion (approximately 12% of the mixed-use building)

- Most of the portion of Block 4 in this FLUM designation (approximately 80%) is open and undeveloped so that the overall density of this FLUM designation is less than 1.0 FAR, albeit in a multi-story building; and
- The part of the building in this FLUM designation is used exclusively for residential uses (the retail portions of the mixed-use building are located in the Moderate Density Commercial area); and

○ **Moderate Density Residential:**

Block 4 - the tiny triangle in the center of northern portion (approximately four percent of the mixed-used building)

- Most of the portion of Block 4 in this FLUM designation (approximately 75%) is open and undeveloped so that the overall density of this FLUM designation is less than 1.0 FAR, below the maximum 1.8 FAR anticipated for this FLUM designation;
- Although this portion of the building is four stories, more than is typical for this FLUM designation, that designation allows for increased density for PUDs and IZ developments, and the Modified Project is a PUD with a significant affordable housing contribution; and
- The part of the building in this FLUM designation is used exclusively for residential uses (the retail portions of the mixed-use building are located in the Moderate Density Commercial area).

18. The Commission concludes that these potential inconsistencies, which are minor in relation to the Modified Project, are insufficient to make the Modified Project inconsistent with the GPM and FLUM as a whole, given the CP's directive that these maps are to be interpreted broadly as general guidance.

19. The Commission concludes that even if these potential inconsistencies were to be deemed to make the Modified Project inconsistent with the GPM and FLUM, these inconsistencies are outweighed by other CP policies, as detailed by the Applicant and OP in the case record, which the CP specifically identifies are to be viewed in conjunction with the FLUM, including the following: (CP § 228.1.)

• ***Far Northeast and Southeast Area Element***

- *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; (CP § 1708.3.)*
- *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; and (CP § 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; (CP § 6.)*
- **Land Use Element**
 - *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; and (CP § 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; and (CP § 312.5.)*
- **Housing Element**
 - *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; and (CP § 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. (CP § 503.5.)*

20. The Commission concludes that the CP, considered in its entirety including the GPM and FLUM as well as the Area and Citywide Elements, outweighs the potential inconsistency with the GPM and FLUM because the CP calls for the site to be developed as a commercial town center, including a significant housing component, with a suitable buffer to protect the adjacent residential neighborhoods to the north. The Commission approved the original PUD in the Order based on its conclusion that it had complied with these CP principles and concludes that the Modified Project also meets these same principles and provides adequate buffering.

POTENTIAL ADVERSE IMPACTS – HOW MITIGATED OR OUTWEIGHED (Subtitle X § 304.4(b))

21. The Commission concludes that while the Modified Project may create the following potentially adverse impacts separate from those analyzed and determined to be acceptable by the Order (including the impacts on the Fort Baker and Akron Drives, S.E.), the

Modified Project mitigates these new potential impacts and renders them acceptable, as asserted by the Applicant and OP, based on the following measures, which have been incorporated in a comprehensive set of conditions in this Order: (FF 41, 46, 51-53.)

- The potential adverse impacts on traffic, loading and parking are mitigated by the Modified Project's TDMP and LDMP as well as the Applicant's reduction of parking by 117 spaces per DDOT's request, which DDOT agreed would address these potential adverse impacts; (FF 54-55.)
- The potential adverse impact of the large surface parking lot along Alabama Avenue, S.E., in Block 3 is mitigated with significant landscaping and screening; and (Ex. 3, 13.)
- The potential adverse impact of the MOB Garage's long blank wall along Naylor Road, S.E. in Block 1 is mitigated by the Arts Walk, which will break up and enliven this space. (Ex. 20.)

PUBLIC BENEFITS AND PROJECT AMENITIES BALANCED AGAINST DEVELOPMENT INCENTIVES AND POTENTIAL ADVERSE EFFECTS (Subtitle X §§ 304.4(c) and 304.3)

22. The Commission concludes that the Modified Project does not reduce the public benefits approved by the Order, as asserted by the Applicant and OP, because the Application only proposes to reallocate, without reducing the financial contribution, funds no longer needed to for the Contractor Loan Fund and the Homebuying and Homeownership classes to increase the original public benefit funding for Skyland Workforce Center's job training. (FF 42, 51-53.)
23. As stated above, the Commission concludes that the Modified Project's mitigations adequately address the potential adverse impacts to make them acceptable without requiring any public benefits to outweigh these potential adverse impacts.
24. The Commission concludes that the limited additional zoning flexibility/development incentives requested are sufficiently minor and improve the Modified Project that they are properly outweighed by the overall public benefits approved by the Order, as follows: (FF 27.)
 - **Setback Requirements for the Block 1 MOB Garage's solar panels (Subtitle C § 1502.1);**
 - This relief allows the maximization of solar panels to further the sustainability of the Modified Project by shading the upper parking level in addition to generating renewable energy.
 - **Loading requirements for Block 3's in-line retail building (Subtitle C § 901);**
 - This relief, which was supported OP and approved by DDOT as not causing adverse impacts in coordination with the LDMP, reflects the Modified Project's providing a larger than required berth for the Lidl grocery store and the limited loading needs of the in-line retail building and Starbucks coffee shop, as well as the ample space in the adjacent surface parking lot.

- **Parking location limits for Block 3’s surface lot (Subtitle C § 710.2(b)(2))**
 - This relief, supported by OP, allows the Lidl grocery store to face onto Town Center Drive, and as discussed above, the potential adverse visual effects of this surface parking lot are mitigated by the substantial landscaping that screens the parking from Alabama Avenue, S.E.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

25. The Commission must give “great weight” to the recommendations of OP 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. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
26. The Commission finds persuasive OP’s recommendation that the Commission approve the Application based on OP’s determination that the Modified Project is not inconsistent with the CP in its entirety, and concurs in that judgement.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

27. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.); see Subtitle Z § 406.2) To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
28. Although the ANC 7B Report did not identify any issues or concerns raised by the Application, the Commission notes ANC 7B Report’s support for the Application and concurs in that judgment.
29. Since ANC 8B did not file a written report in response to the Application, the Commission has nothing to which it can accord “great weight”.

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 for a Modification of Significance pursuant to Subtitle Z § 704 to revise Z.C. Order No. 09-03, as modified by Z.C. Orders No. 09-03A and 09-03D and as extended by Z.C. Order Nos. 09-03B, 09-03C, and 09-03E, as follows:

- The Consolidated PUD shall remain in effect for Blocks 1-3, as defined in this Order No. 09-03F;
 - The Consolidated PUD shall revert to only a First-Stage PUD approval for Block 4, as defined in this Order No. 09-03F; and
 - The conditions in Z.C. Order No. 09-03, as amended by Z.C. Order Nos. 09-03A, and 09-03B, are replaced (former Condition Nos. 3-6, 9, 10, 12, 15, 16, 18, and 19 remain unchanged but renumbered; former Condition Nos. 1, 2, 7, 8, 11, 13, 14, and 17 are updated; and a new Condition No. 16 is added) to read as follows:
1. The PUD project shall be developed as modified by the guidelines, conditions, and standards of this Order as follows:
 - For Block 2 - in accordance with the plans and materials submitted by the Applicant, marked as Exhibits 3A, 15A, 49A, and 52A of the record in Z.C. Case No. 09-03A, as modified by Exhibit 2C of the record in Z.C. Case No. 09-03D, (the “Block 2 Approved Plans”); and
 - For Blocks 1, 3, and 4, as defined in this Order No. 09-03F (the “Modified Project”) - in accordance with the plans and materials submitted by the Applicant, marked as Exhibit 22C and 35A of the record in Z.C. Case No. 09-03F, (the “Blocks 1, 3, and 4 Approved Plans,” and collectively with the Block 2 Approved Plans, the “Approved Plans”);
 2. (Former Condition No. 14) The Applicant shall have design flexibility from Condition No. 1’s requirement to develop the PUD project with the Approved Plans in the following areas:
 - For all Blocks –
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures and that the shadow boxes along the Naylor Road façade in Block 1 are maintained;
 - b. 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; and
 - c. 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;

- Blocks 1, 3, and 4 (the Modified Project) shall have the following additional design flexibility –
 - d. 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;
 - 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 Approved 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 Approved Plans and are compliant with the DC signage regulations, and consistent with Exhibit 29A; and;
 - l. To modify the streetscape design and areas in public space in response to DDOT and the public space permitting process.
3. (Former Condition No. 2) The Applicant shall make the following financial, or in-kind service, contributions:
- a. Financial Support to Schools (former Condition No. 2(a)): 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. 19. 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. 19, 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 (former Condition No. 2(b)): 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. 19. 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. 19, 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. Local retailer build-out subsidy (former Condition No. 2(d)): 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. 19. 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;

- d. Anacostia and Francis Gregory Libraries (former Condition No. 2(e)): 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. 19. 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. 19, 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;
- e. Pocket Park at 25th Street & Naylor Road (former Condition No. 2(f)): 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. 19. 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;
- f. Job Training (former Condition No. 2(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. 19. 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.

4. (Former Condition No. 3) The failure of the Applicant to make any contribution or provide any service by the time specified in Condition No. 3 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.
5. (Former Condition No. 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.
6. (Former Condition No. 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.
7. 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.
8. LEED Requirements (former Condition No. 7):
 - a. For Block 2, the project shall be designed to obtain a certified level in the LEED-for-Homes, or other equivalent standard, for mixed-use retail and residential projects (including, but not limited to Green Communities). The Applicant shall provide

- evidence to the ZA, from a LEED-certified professional, of the satisfaction of this condition in the building permit application materials submitted for each building;
- b. The Applicant will provide two green roofs in the Project on the Property; and
 - c. For Blocks 1, 3, and 4:
 - i. **Prior to the issuance of a certificate of occupancy for the Medical Office Building in Block 1**, the Applicant shall provide the ZA 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;
 - ii. **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; and
 - iii. The building to be constructed on Block 4 shall be designed to achieve a LEED Silver v4 level of certification.
9. **Transportation Management** (Former Condition No. 8):
- a. For Block 2, The Applicant shall establish a transportation management program ("TMP") that includes the following:
 - i. A transportation services coordinator, through the property management office, who will develop and administer the TMP strategies;
 - ii. Rerouting of Metrobuses, placement of bus stops at more convenient locations, and enhancement of passenger access and safety to encourage the use of public transit. This shall be done in collaboration with DDOT and WMATA;
 - iii. Request employers at Skyland Town Center to provide employees with Metro checks or SmarTrip cards;
 - iv. Provide designated parking locations along the internal street system for shared vehicles (i.e., ZipCar). The number of cars and locations will be determined by the Applicant and the shared vehicle company;
 - v. Provide landscaped and lit shared pedestrian and bicycle paths between key locations within the project and Metrobus stops;
 - vi. Provide traffic calming features, such as special pavers and sidewalk bump-outs, on internal streets;
 - vii. Provide bicycle parking in the amount of at least five percent of the required automobile off-street parking (the amount required by DDOT);
 - viii. Establish and maintain a ridesharing and ride-matching program for residents and employees of Skyland Town Center; and
 - ix. Monitor and regularly evaluate the TMP;

- b. For Blocks 1, 3, and 4, **for the life of Modified Project**, the Applicant shall establish a transportation management program (“TMP”) and a Loading Management Plan (“LMP”) that includes the following:

Transportation Demand Management Plan

a. *Overall Site*

- i. 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;
- ii. The Applicant will provide reserved parking locations for carshare and carpool vehicles;
- iii. The Applicant will establish a ride-matching program;
- iv. The Applicant will implement strategies to evaluate the effectiveness of the transportation management program (TMP);
- v. The Applicant will provide dedicated parking spaces for car-sharing vehicles;
- vi. 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; and
- vii. 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;

b. *Block 1*

- i. The Applicant will unbundle the cost of parking from the cost to lease an office unit;
- ii. The Applicant will provide a free parking space for all vehicles that employees use to vanpool to work;
- iii. 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);
- iv. 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;
- v. 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;
- vi. The Applicant will provide a bicycle repair station in each long-term bicycle parking storage room;
- vii. 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;

- viii. 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;
 - ix. 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 years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order;
 - x. 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; and
 - xi. The Applicant will meet ZR16 requirements for shower and locker facilities;
- c. *Block 3*
- i. The Applicant will unbundle the cost of parking from the cost to lease the building or unit;
 - ii. The Applicant will provide a free parking space for all vehicles that employees use to vanpool to work;
 - iii. 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);
 - iv. 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;
 - v. 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;
 - vi. The Applicant will provide a bicycle repair station in each long-term bicycle parking storage room;
 - vii. 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;
 - viii. 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; and

- ix. 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.
- d. *Block 4*
- i. 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;
 - ii. The Applicant will designate two parking spaces for vans to be used by District residents who vanpool to work;
 - iii. 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);
 - iv. At the initial opening of the building, the Applicant will provide each new residential tenant, upon their move-in, a SmartTrip card and one complimentary Capital Bikeshare coupon good for a free ride;
 - v. 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.)
 - vi. The Applicant will provide a bicycle repair station in each long-term bicycle parking storage room;
 - vii. 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;
 - viii. 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 years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order;
 - ix. The Applicant will meet the short- and long-term bicycle parking requirements of the Zoning Regulation in effect as of the effective date of this Order No. 09-03F;
 - x. Long-term bicycle parking will be provided free of charge to all employees; and
 - xi. The Applicant will meet the shower and locker facilities required by the Zoning Regulations as of the effective date of this Order No. 09-03F, if applicable;

Loading Management Plan

- e. *Block 3 – Grocery Store*
- i. 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;

- ii. 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;
- iii. 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;
- iv. 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, § 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); and
- v. 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 (MWCOC) 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; and

f. *Block 3 – In-Line Retail*

- i. 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;
- ii. 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;
- iii. 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);
- iv. 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;
- v. 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, § 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); and

- vi. 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.
10. (Former Condition No. 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.
 11. (Former Condition No. 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.
 12. (Former Condition No. 11) **For the life of the 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. Any residential units provided on the Property in excess of the 500 residential units approved by Z.C. Order No. 09-03F shall be subject to the Inclusionary Zoning requirements in effect at the time of building permit issuance for those residential units in excess of 500.
 13. (Former Condition No. 12) The Applicant shall undertake the construction mitigation measures as stated in Exhibits 112 and 120 of the record in Z.C. Case No. 09-03. 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 an on-site construction representative to hear and respond to concerns from the Ft. Baker Drive residents during construction.

14. (Former Condition No. 13) **For the life of the Modified Project**, the number of parking spaces permitted in the PUD project shall be a total of 1,289.
15. (Former Condition No. 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.
16. **Prior to the issuance of a Certificate of Occupancy for parking structure in Block 1**, the Applicant shall construct the Arts Walk with shadow boxes. **For the life of the Project**, the Applicant shall maintain the Arts Walk with community art and showcases.


Phasing and Expiration

17. (Former Condition No. 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 Administrator. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with the Order No. 09-03, or amendment thereof approved by the Commission. The Applicant shall file a certified copy of the covenant with OZ for the case record.
18. (Former Condition No. 16 and 17) The change of zoning from the R-5-A, R-5-B, and R-1-B Zone to the C-3-A Zone District shall be effective upon the recordation of the covenant discussed in Condition No. 17, pursuant to § 3028.9 of the 1958 Zoning Regulations, after which the applicable map amendment for each block shall vest upon the start of construction of the block and shall not revert to the underlying zone district for so long as the PUD improvements on the block remain.
19. **Validity of Order** (former Condition No. 17):
 - a. A building permit for the construction of the buildings on Block 3 shall be filed within one year of the effective date of this Order No. 09-03F and construction will start within two years of the effective date of this Order No. 09-03F.
 - b. A building permit for the construction of the building on Block 1 shall be filed within two years of the effective date of this Order No. 09-03F and construction will start within three years of the effective date of this Order No. 09-03F.


- c. 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. The first-stage PUD for Block 4 will expire if the second-stage PUD application has not received Commission approval by December 31, 2027.

VOTE (September 14, 2020): 5-0-0 (Peter A. Shapiro, Michael G. Turnbull, Robert E. Miller, Anthony J. Hood, and Peter G. May 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 January 8, 2021.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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., (THE "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 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. 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.