

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-13
Z.C. Case No. 11-13
Consolidated Planned Unit Development and Zoning Map Amendment
TC/CSG St. Matthews, LLC
222 M Street, S.W. (Square 546, Lot 301)
June 11, 2012**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held public hearings on March 5 and March 19, 2012 to consider an application from TC/CSG St Matthews, LLC (the "Applicant") for consolidated review and approval of a planned unit development ("PUD") and related Zoning Map amendment. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing and Post-Hearing Record

- 1 The project site consists of Lot 301 in Square 546 ("Subject Property" or "Property"). The Subject Property is zoned R-3. The Subject Property includes approximately 50,000 square feet of land area and is located within the boundaries of Advisory Neighborhood Commission ("ANC") 6D (Exhibit ["Ex "] 4).
- 2 On June 13, 2011, the Applicant submitted an application seeking review and approval of a consolidated PUD and related Zoning Map amendment to the CR Zone District for a new multifamily apartment building, church, and community center (Ex 4).
- 3 By memorandum dated December 2, 2011, and through testimony at the public meeting held on December 12, 2011, the Office of Planning ("OP") recommended that the Zoning Commission set down the application for public hearing on the application for a consolidated PUD and related Zoning Map amendment to the CR Zone District (Ex. 15; 12/12/11 Transcript ["Tr "] 23-26).
- 4 At its December 12, 2011 public meeting, the Commission set the case down for a public hearing as a contested case.

- 5 On December 23, 2011, the Applicant filed a pre-hearing submission, and a public hearing was scheduled for March 5, 2012. On February 14, 2012, prior to the public hearing, the Applicant supplemented its application with additional information, including updated public benefits and amenities; an updated traffic impact study, a traffic demand management program, and responses to other questions raised by OP (Ex 17, 23)
- 6 Notice of the public hearing was published in the *D C Register* on January 13, 2012, was mailed to ANC 6D and to owners of all property within 200 feet of the Property in accordance with 11 DCMR § 3015.3, and was posted on signs at the Property at least 40 days before the hearing
- 7 The public hearings on the application were conducted on March 5 and March 19, 2012. Notice of the hearings was provided in accordance with the provisions of 11 DCMR §§ 3014 and 3015, and the hearings were conducted in accordance with the provisions of 11 DCMR § 3022
- 8 In addition to the Applicant, ANC 6D was automatically a party in this proceeding. ANC 6D submitted a report and resolution in support of the application, as well as a letter in support of the application. The ANC also provided testimony in support of the application at the public hearing. (Ex 29, 31, 3/5/12 Tr 255-263)
- 9 The Commission received party status requests in support from the Carrollsburg Square Condominium Association (“CSCA”) and from two residents (Joan Carmichael and Brenda Tobe) of the CSCA living within 200 feet of the Property. The Commission granted party status to the CSCA and joined all requests into one party in support. (Ex 24, 28, 3/5/12 Tr 10-21.)
- 10 The Commission received three party status requests in opposition from Catherine Herridge, Michael Krause, and Robert Weller. The Commission combined Catherine Herridge and Michael Krause into one group and granted them party status. The Commission also granted party status to Robert Weller. (Ex 25-27, 30, 3/5/12 Tr 22-33)
- 11 At the public hearing, the Commission heard testimony and received a report from OP in support of the application. (Ex 35; 3/5/12 Tr 203-206)
- 12 At the public hearing, the Commission heard testimony and received a report from the District Department of Transportation (“DDOT”) in support of the application. (Ex 37; 3/5/12 Tr. 207-212)
- 13 At the March 5, 2012 hearing, the Applicant presented evidence and testimony from St Matthew’s Pastor Phil Huber, on behalf of the Church as the property owner and a member of the development team, Shalom Baranes, qualified as an expert in architecture,

Dan Van Pelt, qualified as an expert in traffic engineering, and Josh Dix, a member of the development team (3/5/12 Tr 39-79)

- 14 On March 6, 2012, the Applicant submitted additional information in response to issues and questions raised at the March 5th public hearing. The submission included changes to the building's penthouse, contextual photographs of existing building relationships, an additional enhanced shadow study, a revised transportation demand management program, and a discussion of on-street parking availability in the neighborhood (Ex 57)
- 15 On March 26, 2012, the Applicant submitted additional information in response to the Commission's requests at the March 19th public hearing. The submission included information about sidewalk width and a meeting with party-opponent Catherine Herridge and Michael Krause (Ex 89)
- 16 On March 26, 2012, OP submitted a supplemental report concerning the Project's open space (Ex 90)
- 17 On March 26, 2012, DDOT submitted a supplemental report concerning responses to questions from the Commission at the March 5th hearing (Ex 91)
- 18 At a public meeting held on April 30, 2012, the Commission took proposed action to approve the application. The Commission left the record open for the Applicant to address CSCA's request that the Commission include six conditions in its approval of the Application, and for the parties to respond to the Applicant's submission. The Commission also issued a procedural order requiring the Applicant to submit a final list of its proffers and draft conditions, and for various government agencies and the parties to comment. Finally, the Commission requested that the Applicant meet with Ms. Herridge to discuss reasonable precautionary measures to protect her child's health during and after the construction of the Project, and left the record open to receive information regarding this request.
- 19 On March 14, 2012 the Applicant responded to CSCA's proposed conditions (Ex 105) CSCA noted that they agreed with the Applicant in all respects save the tree protection agreement, and that they expected to conclude an agreement on that issue as well. (Ex. 110)
- 20 The Applicant submitted its list of proffers and draft conditions on March 7th, and a revised list on March 21 (Ex 102, 109)
- 21 On June 11, 2012, the Applicant submitted a copy of the tree protection agreement (Ex. 113)

- 22 The Applicant and Ms Herridge submitted progress reports indicating that they had met, but had not reached an agreement regarding protective measures for Ms. Herridge's son (Ex 106, 108, 114)
- 23 At a public meeting on June 11, 2012, the Commission took final action to approve the application in Z C Case No 11-13, subject to conditions

The Subject Property and Surrounding Area

24. The Property is located at the northeast corner of Square 546 in Southwest Washington. The Property is bounded by M Street, S W to the north, Delaware Avenue, S.W to the east, and the Carrollsburg Square Condominium Association and Carrollsburg A Condominium complex to the south and west The Property is unimproved It was once the site of St Matthew's Church, but that structure was razed in 2008 (Ex. 4, p. 1.)
- 25 The condominium complexes to the west and south of the Property consist of two and three story townhouses (CSCA) surrounding nine story residential towers (Carrollsburg A Condominium). The residential towers are centered in the condominium complex, and the townhouses are scattered on the periphery of the site M Street in the vicinity of the Property is characterized by taller buildings (Ex 4, p 8, 3/5/12 Tr 52, 55-56)
- 26 The Property is located among both residential and commercial properties. Across Delaware Avenue to the east is the Greenleaf Senior apartment building, which is a medium density residential tower Directly across M Street is the Greenleaf Gardens public housing complex, which is a series of moderate-density townhouses and garden-style apartment buildings Across M Street to the northwest are a series of medium- and high-density residential towers. Just to the west of those residential buildings are new mixed-use commercial buildings with ground-floor retail and offices above Two 127-foot buildings have been approved for the intersection of 4th and M (Ex 4, pp 8-9, Ex 4A, pp. 1-6)
- 27 The Property is encompassed by higher density zones The Carrollsburg A Condominium residential towers to the south and west are included in the R-5-D Zone District. The Greenleaf Gardens complex immediately to the north across M Street is located entirely in the R-5-A Zone District, and the Greenleaf Senior apartment building to the east across Delaware Avenue is in the R-5-B Zone District The properties located to the northwest, particularly the residential towers and offices are located in the R-5-D and C-3-C Zone Districts, respectively The large area flanking 4th Street between M and K Streets, including the two mixed-use buildings on 4th Street northwest of the Property, are located in the C-3-C Zone District (Ex 4A, p 3, 3/5/12 Tr 55-56.)

28. The Property is located in the Medium-Density Residential category on the District of Columbia Future Land Use Map. The Applicant requested a PUD-related rezoning of the Subject Property to the CR Zone District. (Ex. 4, p. 24.)

Description of the PUD Project

29. The project will be a mixed-use building with residential apartments, a new sanctuary for St. Matthew's Church, a community center (with accessory uses and programming), and underground parking and loading ("Project"). The Project will have a gross floor area of approximately 208,489 square feet, which equates to a floor area ratio ("FAR") of 4.17. This density is significantly less than what is permitted as a matter-of-right for an inclusionary development (7.2 FAR) or for a PUD (8.0 FAR) in the CR Zone District. At its tallest point, the building will have a height of 110 feet, not including the penthouse (Ex. 4, pp. 10-12, Ex. 4A, 3/5/12 Tr. 53-67.)
30. The project will have two components: a residential component on the western side of the Property and a new church sanctuary at the northeast corner of the Property. In response to community concerns, the residential component of the building will be set back from the M Street property line by two feet. The majority of the building's height and density will be concentrated along M Street away from the adjacent nearby residential properties to the west and south. The residential component will be comprised of two double-loaded corridor wings in an "L" shape. One wing will be an 11-story wing parallel to and fronting on M Street, and it will step down to a perpendicular wing eight stories tall at the rear, forming an "L" shape to the building. The 11-story wing of the residential structure will rise to a height of 110 feet, while the eight-story wing will have a height of 80 feet. The rear wing will have a lower height to transition to the lower buildings on the adjacent property to the south and west, and the entire residential structure has been shifted away from the western property line to minimize impacts to the west. The corner of Delaware Avenue and M Street, S.W. will contain the church sanctuary. The sanctuary volume will be partially separated from the apartment component volume, providing an open sky backdrop for the church. To the south of the sanctuary and to the east of the eight-story portion of the apartment component will be a large outdoor courtyard open to the public and shared by the church, community center, and apartment complex. (Ex. 4, pp. 10-11, 3/5/12 Tr. 53-67.)
31. A large outdoor courtyard will be located at the southeast portion of the Property, with the building lining the northern and eastern portion of the site. The courtyard will be open to Delaware Avenue to the east for public access from dawn till dusk, and it will be atop the underground parking and loading facilities for the entire project. The courtyard will contain approximately 1/3 of an acre in area, and it will be landscaped with trees, other plantings, benches, and a water feature. (Ex. 4, pp. 10-11, 3/5/12 Tr. 53-54.)

32. The residential component of the project will include approximately 217 residential units located on all 11 floors. The main entrance to the residential units will be located on M Street. The residential units will consist of a mix of studio, one-bedroom, and two-bedroom units. (Ex 4, pp 10-11)
33. The project will include approximately 138-164 parking spaces, which includes 25 for the church and the remainder for the residential units. All parking will be located on two underground levels accessed via a ramp from Delaware Avenue. Similarly, all loading facilities will be underground and located on the first level of the underground garage accessed via the same driveway on Delaware Avenue. Further, the Project will include approximately 81 bicycle parking spaces, 12 of which will be located near the front entrances to the residential structure and the church and the remainder in the underground garage. (Ex 4, 16, 23)
34. The residential structure will be characterized by a tiered and modulated use of one or two-story bays, projections or loggias articulated with metal frames, glazed areas and metal clad panels. The architectural aesthetic will reflect many of the adjacent or neighboring residential towers through its simple repetition of façade elements within a simple overall form. The residential structure's end façades will be stepped giving the building a slender, vertical appearance. Perforated metal screens will further articulate the façade. These formal devices (tower segmenting, façade screens) are found among the neighboring residential towers designed in the 1960's and 70's. (Ex. 4, p. 11; Ex 17A)
35. The church sanctuary will be located at the site's primary corner with an eased, three-story high wall of stacked natural stone. The church entrance will be marked by the gap formed between the sanctuary and residential structure and will be embellished with a balanced and proportioned distribution of refined materials, glazing and symbols. The street-level façade will extend in an uninterrupted manner between the church and apartment entrances, thereby maximizing views because of the glass that will extend most of its length. (Ex 4 p 11, Ex 17A)

Flexibility Requested

36. The Applicant requested flexibility from the strict application of the rear yard requirements in § 636 2 of the Zoning Regulations. The building will rise to a height of 80 feet at its rear, so the required rear yard is 20 feet. The Project will provide a rear yard that ranges from 10 feet to approximately 100 feet (at the courtyard). The Commission has the authority to grant this flexibility pursuant to § 2405.5. (Ex. 4, p. 12.)
37. The Applicant requested flexibility from the open court width requirements in § 638 1 of the Zoning Regulations. The required width of the open court on the western side of the building is 27 5 feet, and the provided width is approximately 20 feet. The provided open

court satisfies the intent of the open court requirements because it provides sufficient air and light through its large area, particularly since the area to the west of the building is surface parking and a drive aisle. The Commission has the authority to grant this flexibility pursuant to § 2405.5 (Ex 23.)

- 38 The Applicant requested flexibility from the public space requirement in § 633 of the Zoning Regulations. The Project will provide approximately 1145 square feet (2.2%) of the total lot area for public space adjacent to the main entrance. Since 10% is required, the Applicant requests flexibility from 7.8% of the requirement. The large amount of landscaped public space in the area in front of the building will give the appearance of a conforming amount of public space adjacent to the main entrance. The rear public courtyard, at approximately 13,800 square feet, will be more than 10% of lot area, so the Project will satisfy the intent of open public space requirement. The Commission has the authority to grant this flexibility pursuant to § 2405.7 (Ex 23.)
- 39 The Applicant requested flexibility from the roof structure setback requirement in § 400.7(b). The southeast corner of the roof structure will not satisfy the setback requirement. The roof structure's significant setback from all lot lines to the south and west will minimize all adverse impacts from the roof structure. The Commission has the authority to grant this flexibility pursuant to § 2405.7 (Ex 17, 23, 57.)
- 40 The Applicant requested flexibility from the strict application of the loading requirements in § 2201.1 of the Zoning Regulations to provide a 55-foot loading berth. Accommodating a 55-foot truck in the underground facility would be nearly impossible. The proposed loading facilities (one 30-foot berth, one 200-square foot loading area, and one 20-foot deep space) will be able to satisfy the loading needs of this project. Given the sizes of the apartment units, it is very unlikely that a resident would ever use a 55-foot truck. On those rare occasions, special accommodations would be made. The Commission has the authority to grant this flexibility pursuant to § 2405.6. (Ex 4, pp 13-14.)
- 41 No other flexibility from the strict application of any other Zoning Regulation was requested or granted,

Benefits and Amenities

- 42 Based on the Applicant's written submissions and testimony before the Commission, the following benefits and amenities will be created as a result of the Project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403. The PUD will provide superior public benefits and amenities in the following proffered categories from 11 DCMR § 2403.9

- A *Housing and Affordable Housing* – The Project will provide approximately 217 residential units in an area of the District that is rapidly growing, and the Applicant will provide 10% of the units as affordable to individuals/families making at or below 80% of the Area Median Income. This amounts to two percent more affordable housing (or approximately 4,000 square feet) than is otherwise required. The demand for housing in the Southwest Waterfront neighborhood continues to increase, and this new Project will satisfy some of that demand. In addition, the provision of more residential units will assist in the redevelopment of an area that the District has targeted for new residences, office, and retail uses (Ex 4, p 21, Ex 17)
- B *Urban Design, Architecture, Landscaping, or Creation of Open Spaces* – The Project will exhibit many characteristics of exemplary urban design, including infill redevelopment, thoughtful integration into the neighborhood, innovative architecture, the use of high-quality materials, sustainable landscape and hardscape improvements, visually appealing landscaping features, large open space, and other “green” features. Indeed, the building has been designed to minimize impacts on neighboring properties while emulating the development pattern that already exists. Further, the courtyard will provide 1/3 of an acre of public open space and landscaping that will enhance the neighborhood (Ex 4, p 19)
- C *Site Planning, and Efficient and Economical Land Uses* – The creation of new housing, a church, and a community center along a major corridor within two blocks of a Metro station will be appropriate site planning and efficient and economical land use as a project amenity. The existing site is under-utilized and fails to fully capitalize on the site’s location along a major transit corridor and within two blocks of a Metrorail station. In addition, it is close to offices, retail, and a supermarket. The Project will provide a far more efficient utilization of this strategic transit-oriented site, and it appropriately will focus height and density at the front of the site, so as not to disrupt the lower-scale residential uses to the rear. (Ex 4, p 19)
- D *Effective and Safe Vehicular and Pedestrian Access* – The Applicant is proposing a simple circulation plan for the Project, which will diminish vehicular and pedestrian conflicts. All vehicular and loading traffic will enter and exit the parking garage from Delaware Avenue. By locating the loading underground, the impacts of the loading noise will be removed from the residences on Delaware Avenue. Also, Delaware Avenue is a L’Enfant Plan street, and in order to preserve vistas, the Applicant has set back the residential component from Delaware Avenue and has moved most of the building mass away from Delaware Avenue. As the traffic impact study (“TIS”) indicates, the transportation demand will be

managed by the site's location near transit, the mix of uses in the Project, reduced parking demand, car-sharing spaces, bicycle parking, pedestrian facilities, and the provision of a transportation demand management program (Ex 4, pp 19-20, Ex 23A, 3/5/12 Tr 68-72)

The preparation of the TIS resulted in the following conclusions (Ex 23A)

- i The off-street loading facilities will adequately accommodate the Project,
- ii Local traffic near the site will not be negatively affected by site-generated traffic,
- iii Commuter traffic along M Street will not be negatively affected by site-generated traffic, and
- iv The proposed redevelopment of the Property will not have a detrimental impact on the surrounding transportation network

In order to mitigate any possible adverse impacts from traffic generated by the project, the Applicant proposed the following transportation demand management ("TDM") plan (Ex 23, Ex 57)

- i Parking costs will be unbundled from residential units. Leased units will not include a parking space as part of rent;
- ii Twelve bicycle parking spaces will be provided near site entrances outside the building. Sixty-nine secured bicycle parking spaces will be provided in the parking garage for use by residents,
- iii Information on transportation options will be presented to residents via a transportation kiosk in the lobby of the residential building. The kiosk will contain information promoting walking, cycling and transit,
- iv A website for the residential building will be established including similar information as the kiosk, with links to www.godcgo.com and similar websites,
- v A member of the property management group will be designated as the Project's TDM coordinator, and will be responsible for coordinating, implementing and monitoring the TDM program. This includes establishing a marketing program and maintaining the information kiosk and website,

- vi. The Applicant will host a transportation mobility fair six months after the residential building has opened to new residents. The on-site TDM coordinator will work with DDOT's goDCgo team to organize representatives to present non-auto transportation options to all fair attendees in the residential building and the church,
- vii. In the residential lobby and in an appropriate location in the church near its entrance, provisions will be incorporated into the design that will allow placement of flat screen monitors with the intent of having these monitors be used to display up-to-date transit information, and
- viii. The Applicant will maintain or relocate existing bus stops adjacent to the property during construction

In response to community concerns about the adequacy of on-street parking in the vicinity of the Project, the Commission finds that the Project's parking supply will be able to accommodate the expected demand. In particular, the Applicant's traffic expert's analysis concluded that the proposed number of provided parking spaces is typical of residential projects with close proximity to Metro stations. Further, the unbundling of parking spaces from the dwelling units, the voluntary removal of the Project from the RPP program, the enhanced RPP program in the neighborhood, and the dedicated on-site car sharing spaces will reduce demand for cars and will ensure that building residents will have sufficient off-street parking to avoid adverse neighborhood impacts. With respect to concerns about insufficient parking for Sunday church services, the Project will provide the amount required under the Zoning Regulations, which is also the anticipated demand for typical services. In the event that demand is greater than 25 spaces, there are sufficient parking spaces within a five minute walk of the Property. Two public parking garages are available for Sunday church patrons, and the operator of these garages is interested in working with the Church to accommodate excess demand. While the enhanced RPP program will act as a disincentive to on-street parking, the church will also work with its congregation to discourage on-street parking. (Ex 57, pp 2, 3/19/12 Tr. 244-250.)

- E. *Environmental Benefits* – The Applicant has committed to design the Project such that it can attain a LEED Certified rating and will aim to qualify for a LEED Silver rating. The Applicant's preliminary LEED scorecard illustrates the Applicant's goal of 50 points, which is the minimum to attain a LEED Silver rating. The Project will incorporate many additional environmentally sensitive design features that do not earn LEED points. Such environmentally sensitive design features include the following.

- i Preserving lot-adjacent existing trees along the Property's southern and eastern edges through careful foundation design and parking ramp location,
- ii Reducing the "shadowing" of adjacent properties by placing the majority of the mass northward towards M Street,
- iii Utilizing a massing concept which maximizes open area at grade and provides excellent day-lighting and views for all residential units,
- iv Providing a 1/3 acre "green roof" (the landscaped courtyard) above the parking garage, which will reduce runoff and "heat island" effects, and
- v Relocating loading facilities to underground, which will minimize noise and noxious odors (Ex 17)

F *Uses of Special Value* – Many years prior to the filing of the PUD and Zoning Map Amendment application, representatives of the Applicant's team engaged in significant outreach to the neighboring community. The Applicant and its design team have held meetings with, and made presentations to, ANC 6D, the Southwest Neighborhood Assembly, the CSCA, and other members of the community. In addition, the Applicant hosted open community meetings to discuss the Project. The Applicant requested input from community residents about the public amenities and project benefits package. The project's community amenities and public benefits were the result of the Applicant's extensive outreach and community engagement. (Ex 4, 17, 23, 3/5/12 Tr 78-79, 3/19/12 Tr 250-252)

The Applicant's community amenities package includes the following (Ex 23)

- i **Affordable Housing:** The Project will dedicate more affordable residential units than is otherwise required under the Zoning Regulations. The Applicant will dedicate 10% of the building's gross floor area being devoted to residential use for families/individuals making 80% or less of the Area Median Income. This amounts to two percent more affordable housing (or approximately 4,000 square feet) than is required under the Zoning Regulations. The total amount of affordable housing in the Project will amount to approximately 20 units,
- ii. **Public Green Space:** The Project will include a 1/3 acre landscaped courtyard open to the public. The courtyard will provide trees, pathways, benches, water features, and other landscaping amenities that will create a large green respite in the city. The courtyard will be open to the public.

from dawn to dusk every day, and patrons will access the courtyard via a 12-foot wide opening from Delaware Avenue. The low fence and wide entrance opening will welcome the public and create a sense of a truly public space;

iii. **Relocated Underground Loading:** All loading for the Project will occur in an underground facility accessed via Delaware Avenue. This loading facility will minimize potential pedestrian conflicts as well as noise, odors, and other possible adverse loading impacts;

iv. **Community Center and Programming:** The new St. Matthew's Church will include the Thurgood and Cecilia Marshall Southwest Community Center. This community center will be open to the public and operated by Transforming Southwest CDC, an arm of St. Matthew's Evangelical Lutheran Church. The new community center will offer community-based programming as well as a computer lab, community outreach center and coffee shop. The neighborhood coffee shop will be a community gathering place and may provide employment training for local residents in the food service industry. Any member of the public may use the community center, and members of the community may host events and other gatherings at the community center. Further, ANC 6D will be welcome to host meetings at the community center. Based on the presently assessed needs of the community and available Church resources, the Church anticipates offering the following community-based programs at the community center:

- After school programming/Adult Computer Training/Reverse Mentoring,
- T'ai Chi/Yoga/Wellness programming,
- Seniors Morning Out (Weekly),
- Gallery to support and show local artists, and
- Free Wi-Fi in and around the building.

Additional community-serving programming is anticipated to be offered at the community center based on ongoing conversations with and the expressed needs of the community, but all programs are subject to change based on community needs and available resources. Staffing, hours of operation, and other details will be decided once the programs have been established;

v. **Fencing for School Vegetable Gardens:** The Applicant will support KidPowerDC and their Veggie Time program in the Southwest community

located at Amidon-Bowen Elementary School. The Applicant will pay up to \$5,000 for the fencing around up to three of KidPowerDC's vegetable gardens at Amidon-Bowen Elementary School,

vi **Trees in Public Space:** The Applicant will pay for 10 trees and their installation on the M Street median across from the Project site (Square 546, Lot 301) by Casey Trees, subject to approval by DDOT. If DDOT does not approve such trees or their installation is otherwise infeasible, then the Applicant will pay for 10 trees and their installation by Casey Trees on other public space in the vicinity of the Project,

vii **Funds for Community Benefits Coordinating Council:** The Applicant will donate \$20,000 to the Community Benefits Coordinating Council ("CBCC"). The CBCC is an 11-member board that includes leaders of many of the major community organizations in Southwest and near Southeast Washington. The Applicant's contribution will help fund the organization's ongoing support of community programs. CBCC's top priorities are

- Development of a community center including programs for workforce development,
- Maintaining and increasing the diversity for housing options for all income levels,
- Establishing a community fund for the ongoing support of programs, and
- Advocating for neighborhood/resident oriented retail and local small business opportunities

In addition, Transforming Southwest CDC will commit to provide a board member to sit on the board of the CBCC to help coordinate the provision of programs and benefits to the Southwest community,

viii **Dedicated Car-Sharing Spaces:** The Applicant will provide a minimum of two parking spaces for a car-sharing service. The exact number will be determined by the car-sharing service's requirement for this location,

ix **Dedicated Electric Car Charging Spaces:** The Applicant will provide four 240-volt spaces for charging electric cars in the underground parking garage, and

x **Prohibition on RPP:** The Applicant will agree to prohibit Residential Permit Parking permits for residents of the Project

Comprehensive Plan

- 43 The Commission finds that the PUD advances the goals and policies in the Land Use, Environmental Protection, Housing, Urban Design and Lower Anacostia Waterfront Near Southwest Area Elements of the Comprehensive Plan
- 44 The Comprehensive Plan's Land Use Element includes the following pertinent policies that the Project will support
- ***Policy LU-1.3.2: Development Around Metrorail Stations:*** Concentrate redevelopment efforts on those Metrorail station areas which offer the greatest opportunities for infill development and growth, particularly stations in areas with weak market demand, or with large amounts of vacant or poorly utilized land in the vicinity of the station entrance. Ensure that development above and around such stations emphasizes land uses and building forms which minimize the necessity of automobile use and maximize transit ridership while reflecting the design capacity of each station and respecting the character and needs of the surrounding areas,
 - ***Policy LU-1.3.4: Design To Encourage Transit Use:*** Require architectural and site planning improvements around Metrorail stations that support pedestrian and bicycle access to the stations and enhance the safety, comfort and convenience of passengers walking to the station or transferring to and from local buses. These improvements should include lighting, signage, landscaping, and security measures. Discourage the development of station areas with conventional suburban building forms, such as shopping center surrounded by parking lots,
 - ***Policy LU-1.4.1: Infill Development*** Encourage infill development on vacant land within the city, particularly in areas where there are vacant lots that create "gaps" in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern;
 - ***Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods:*** Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to "create successful neighborhoods" in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others;
 - ***Policy LU-2.1.10: Multi-Family Neighborhoods*** Maintain the multi-family residential character of the District's Medium and High-Density residential areas.

Limit the encroachment of large scale, incompatible commercial uses into these areas, and make these areas more attractive, pedestrian-friendly, and transit accessible, and

- ***Policy LU-2.3.6: Houses of Worship*** Recognize churches and other religious institutions as an important part of the fabric of the city's neighborhoods. Work proactively with the faith-based community, residents, ANCs, and neighborhood groups to address issues associated with church transportation needs, operations, and expansion, so that churches may be sustained as neighborhood anchors and a source of spiritual guidance for District residents.

The Commission finds that the Project is not inconsistent with the land use element and will advance its policies. Since the Project will provide a new residential building and church on a vacant site just two blocks from a Metro station, it will advance the policies of the land use element. The Project will provide additional housing options for residents of the District and will encourage a friendly pedestrian environment and transit use through its location and design. In addition, the Project will both enhance and conserve the neighborhood by infusing it with new residents and by providing a new home to St. Matthew's Church to allow it to remain in the community.

45. The Comprehensive Plan's Housing Element includes the following policies that are supported by the Project:

- ***Policy H-1.1.1: Private Sector Support:*** Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives,
- ***Policy H-1.1.5: Housing Quality:*** Require the design of affordable housing to meet the same high-quality architectural standards required of market-rate housing. Regardless of its affordability level, new or renovated housing should be indistinguishable from market rate housing in its exterior appearance and should address the need for open space and recreational amenities, and respect the design integrity of adjacent properties and the surrounding neighborhood, and
- ***Policy 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.

The Commission finds that the Project is not inconsistent with the housing element and will advance its policies. The Project will offer new medium density market-rate and affordable housing along a prominent transportation corridor. In addition, the Project

will contribute to the District's housing supply by providing new housing on a vacant parcel that is in an area that has not generated significant new housing in the recent past. The Project will provide new housing in an emerging employment and entertainment node of the District. The Project's architecture is of superior quality, and the affordable units will meet the same high-quality standards as the market-rate units.

46 The Environmental Protection Element of the Comprehensive Plan includes the following policies that are supported by the Project:

- ***Policy E-1.1.3: Landscaping:*** Encourage the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity;
- ***Policy E-2.2.1: Energy Efficiency*** Promote the efficient use of energy, additional use of renewable energy, and a reduction of unnecessary energy expenses. The overarching objective should be to achieve reductions in per capita energy consumption by DC residents and employees;
- ***Policy E-3.1.1: Maximizing Permeable Surfaces:*** Encourage the use of permeable materials for parking lots, driveways, walkways, and other paved surfaces as a way to absorb stormwater and reduce urban runoff; and
- ***Policy E-3.2.1: Support for Green Building:*** Encourage the use of green building methods in new construction and rehabilitation projects, and develop green building methods for operation and maintenance activities.

The Commission finds that the Project is not inconsistent with this element and will advance its policies. The Project incorporates many environmentally-sensitive features that will allow it to secure a LEED Certified rating. Most importantly, the provision of extensive landscaping and 1/3 acre courtyard will promote permeable surfaces on the Property. Further, the Project will incorporate as many energy-efficient systems as possible.

47 The Project supports the following policies of the Urban Design Element of the Comprehensive Plan:

- ***Policy UD-1.4.1: Avenues/Boulevards and Urban Form:*** Use Washington's major avenues/boulevards as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character. Focus improvement efforts on avenues/ boulevards in emerging neighborhoods, particularly those that provide important gateways or view corridors within the city;

- ***Policy UD-1.4.3: Avenue/Boulevard Vistas and View Corridors:*** Protect views and view corridors along avenues/boulevards, particularly along streets that terminate at important civic monuments or that frame distant landmarks. Vistas along such streets should be accentuated by creating more well-defined street walls, improving landscaping, and requiring the highest architectural quality as development takes place,
- ***Policy UD-2.2.1: Neighborhood Character and Identity*** Strengthen the defining visual qualities of Washington's neighborhoods. This should be achieved in part by relating the scale of infill development, alterations, renovations, and additions to existing neighborhood context,
- ***Policy UD-2.2.4: Transitions in Building Intensity*** Establish gradual transitions between large-scale and small-scale development. The relationship between taller, more visually prominent buildings and lower, smaller buildings (such as single family or row houses) can be made more pleasing when the transition is gradual rather than abrupt. The relationship can be further improved by designing larger buildings to reduce their apparent size and recessing the upper floors of the building to relate to the lower scale of the surrounding neighborhood,
- ***Policy UD-2.2.5: Creating Attractive Facades*** Create visual interest through well-designed building facades, storefront windows, and attractive signage and lighting. Avoid monolithic or box-like building forms, or long blank walls which detract from the human quality of the street,
- ***Policy UD-2.2.7: Infill Development:*** Regardless of neighborhood identity, avoid overpowering contrasts of scale, height and density as infill development occurs; and
- ***Policy UD-2.2.2: Areas of Strong Architectural Character:*** Preserve the architectural continuity and design integrity of historic districts and other areas of strong architectural character. New development within such areas does not need to replicate prevailing architectural styles exactly but should be complementary in form, height, and bulk.

The Commission finds that the Project is not inconsistent with this element and will advance its policies. The Applicant carefully designed the project to achieve strong architectural character that respects and was influenced by the existing style in an area of the District that is attracting new development. The Project will be situated along a major east-west corridor (M Street) in Southwest Washington with vistas to the Potomac River. The building's design will help connect the waterfront to the neighborhoods to the east by closing a gap (a vacant parcel) in the urban fabric. In addition, the exemplary design and attractive exterior materials will help create a notable building in the neighborhood,

helping to enhance the neighborhood character. The building reflects the existing development pattern of high-rise residential buildings surrounded by lower residential townhouses. The building transitions to a lower height at its rear to avoid overwhelming and adversely impacting the lower-scale residential development to the south. (3/5/12 Tr 50-67)

48 The Project supports the following policies of the Lower Anacostia Waterfront Near Southwest Area Element of the Comprehensive Plan

- ***Policy AW-1.1.1: Conservation of Established Waterfront Neighborhoods:*** Revitalize and preserve established neighborhoods in the Waterfront Planning Area. Continued investment in the existing housing stock and in established local commercial areas should be strongly encouraged,
- ***Policy AW-2.1.1: Mixed Use Development*** Support the redevelopment of the Southwest Waterfront with medium to high-density housing, commercial and cultural uses, and improved open space and parking. The development should be designed to make the most of the waterfront location, preserving views and enhancing access to and along the shoreline, and
- ***Policy AW-1.1.2: New Waterfront Neighborhoods*** Create new mixed use neighborhoods on vacant or underutilized waterfront lands, particularly on large contiguous publicly-owned waterfront sites. Within the Lower Anacostia Waterfront/Near Southwest Planning Area, new neighborhoods should be developed at the Southwest Waterfront, Buzzard Point, Poplar Point, Southeast Federal Center and Carrollsburg areas. These neighborhoods should be linked to new neighborhoods upriver at Reservation 13, Poplar Point, and Kenilworth-Parkside. A substantial amount of new housing and commercial space should be developed in these areas, reaching households of all incomes, types, sizes, and needs

The Commission finds that the Project is not inconsistent with this element and advances its policies. The Project will advance the goal of creating a new Southwest Waterfront neighborhood. By providing new medium density housing, a new church, and a new community center only a few blocks from the Southwest Waterfront, the Project will strengthen the overall neighborhood with additional residents who will enliven the streets and patronize businesses while further enhancing a strong sense of a community. The Project will bring a mix of residents to the neighborhood by providing both market-rate and affordable units. In addition, the Project will help retain the neighborhood by providing a new home to the St. Matthew's Church, which has had a long presence in the neighborhood.

- 49 Based on the evidence and testimony from the Applicant and OP, the Commission finds that the proposed PUD-related Zoning Map amendment to the CR Zone District is not inconsistent with the Property's designation on the Future Land Use Map. The CR Zone District in this case is congruent with the Medium-Density Residential Land Use category in the Comprehensive Plan. (See Future Land Use Map and Categories § 225.5.) The Framework Element of the Comprehensive Plan provides guidelines for using the Future Land Use Map. This Element states that the Future Land Use Map is not a zoning map and "by definition is to be interpreted broadly" (See Guidelines for Using the Generalized Policy Map and the Future Land Use Map § 226.) It also states that zoning for an area should be guided by the Future Land Use Map interpreted in conjunction with the text of the Comprehensive Plan and that "a range of densities and intensities applies within each category and the use of different zone districts within each category should reflect this range." When the Project's comparatively low FAR of 4.17 (as compared to a 7.2 as a matter-of-right), the 1/3 acre of open space, the building's height, the Project's benefits and amenities, and the prevailing character of the area are all considered, the CR Zone District is appropriate for medium density residential use on the Property.
- 50 Based on evidence and testimony from the Applicant and OP, the Commission finds that the Project is consistent with medium-density residential development because of its combined massing, height, density, open space, and neighborhood context. The Commission considered the testimony of the opponents to the contrary, but the Commission was not persuaded because of the facts and analysis presented herein. The Framework Element of the Comprehensive Plan clearly provides that density and height gained through the PUD process are bonuses that may exceed the typical ranges cited for each land use category. The Framework Element, with respect to the Medium-Density Residential designation, states, "This designation is used to define neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use .. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space." (See Future Land Use Map and Categories § 225.5.) By the Comprehensive Plan's own terms, it should be used only as guidance and not as a definitive source for appropriate uses, heights, or densities. (See Guidelines for using the Generalized Policy Map and the Future Land Use Map § 226.) In this case, it is significant that the nearby properties with the same land use designations are included in higher-density Zone Districts and have commensurate heights and densities.
- 51 Based on evidence and testimony from the Applicant and OP, the Commission finds that the balance of the Project's height, density, and open space results in a development that is medium density in character. The Project's 110-foot height allowed by the CR Zone District is necessary to concentrate the massing away from the neighboring properties and thereby minimize impacts on such properties. This height will be only for the residential portion of the Project furthest from the neighboring residential properties. Indeed, the

tallest portion of the project will be further from many of the nearby townhouses than some of those townhouses are from existing nine-story residential highrises. Also, the height of the Project will be offset by its comparably low density and significant open space. The Project's density of 4.17 FAR is less than what is permitted for a matter-of-right inclusionary development in the R-5-D Zone District (4.2 FAR), a matter-of-right inclusionary development in the CR Zone District (7.2 FAR), and a PUD in the CR Zone District (8.0 FAR). The Commission concludes that the Project's design characteristics will result in negligible adverse impacts on light and air to the neighboring properties, and that ample light and air will be available to such properties after the Project is constructed. Given all of these considerations, the Project is consistent with medium density residential development.

52. Based on evidence and testimony from the Applicant and OP, the Commission finds that Project's height and massing are not inconsistent with the Future Land Use Map. The interpretation guidelines in the Comprehensive Plan for the Future Land Use Map are explicit that the Future Land Use Map is not a zoning map and does not specify allowable uses or dimensional standards. The interpretation guidelines also indicate that the "typical building heights and densities included in the land use category simply describe the 'general character' of the area, and state that the 'granting of density bonuses [through PUDs] may result in heights that exceed the typical ranges cited here.' Finally, the Guidelines indicate that the Future Land Use map designations are not parcel-specific and should be interpreted in conjunction with the text of the Plan." Accordingly, the Commission finds that in the context of the overall Comprehensive Plan and the Project, the PUD-related Zoning Map amendment, and height of the Project allowed by it are not inconsistent with the Future Land Use Map.
53. Based on evidence and testimony from the Applicant and OP, the Commission finds that the Project and PUD-related rezoning to the CR zone is not inconsistent with the Property's designation as a neighborhood conservation area on the Generalized Policy Map. The Project will provide a multi-family residential building and a new church in a neighborhood characterized by churches and multifamily residential buildings. While townhouses are characteristic of parts of the Southwest neighborhood close to the Property, multifamily residential buildings similar in height and scale to the Project comprise the predominant residential character of the neighborhood. Thus, the Project is compatible with the surrounding residential neighborhood and conserves its character as such.

Government Agency Reports

54. By report dated February 24, 2012, OP recommended, subject to further clarification from the Applicant about some of the amenities, that the proposed PUD and related

Zoning Map amendment should be approved. In its testimony at the public hearing, OP reiterated its recommendation for approval. (Ex 35, 3/5/12 Tr. 203-206)

- 55 OP determined that the Project and related Zoning Map amendment would not be inconsistent with the Comprehensive Plan. In its report, OP stated, "The proposed CR zoning, which is intended to accommodate a medium density residential project and church use is generally consistent with the medium density residential use designation" (Ex 35)
- 56 OP determined that the Project is consistent with medium density residential development. OP testified, "This application meets the definition of medium density development. Medium density can include development that is seven stories in height. It can go higher than that as well. The Comprehensive Plan sets out a number of zones that are consistent with medium density, and that includes CR. [The] height [the Applicant is] proposing is at the high end of medium density. The density is certainly in the mid level of what is considered medium density, possibly even towards the low end of medium density." (3/5/12 Tr. 232-235)
- 57 By its report dated February 24, 2012, DDOT supported approval of the PUD and related Zoning Map amendment, with conditions and recommendations. At the public hearing, DDOT reiterated its support. DDOT stated, "DDOT finds the proposed number of parking spaces adequate (based on requirements of 11 DCMR § 2101) and appropriate for the type, size, and location of the proposed development." DDOT agreed with the conclusion in the Applicant's TIS that parking and local and commuter traffic will not be adversely affected because of the Project and stated, "DDOT reviewed the analyses that were provided in the Applicant's TIS, and found the methodology for data collection, analysis tools, forecasting and various assumptions used in the TIS acceptable and in accordance with the current DDOT standards, guidelines, and practices." Further, with respect to the TDM measures, DDOT stated, "DDOT agrees with the general TDM measures, as proposed by the Applicant," but it also recommended pre-loaded SmarTrip cards and an information TV/monitor at a common area of the building to inform residents of up-to-date transit information. (Ex 37, 3/5/12 Tr. 207-212)

ANC 6D Report

- 58 On February 16, 2012, ANC 6D submitted a letter and resolution in support of the application. The letter stated that, on February 13, 2012, at a duly noticed meeting with a quorum present, the ANC voted to support the PUD and related Zoning Map amendment application. The resolution included conditions of support. (Ex 29)
- 59 On February 16, 2012, ANC 6D submitted a letter in support because of the benefits that will accrue to the community as a result of the Project. The letter cited the following benefits: the community center and associated programming; community meeting space

at the community center; the coffee shop in the community center; additional affordable housing, public open space the courtyard, support of KidPowerDC's Veggie Time program, new neighborhood trees in the M Street median, and neutral parking impact on the community (Ex 31.)

- 60 At the public hearing, Roger Moffatt and Ron McBee testified in support on behalf of ANC 6D. During his testimony, Mr. Moffatt stated that the Applicant had agreed to all of the ANC's conditions of support. Further, Mr. Moffatt testified, "The applicants have met with the community and affected parties on multiple occasions to listen to and attempt to address concerns." He also stated, "[We] believe that overall tabulation for the project is that it will be beneficial to the community..." (3/5/12 Tr. 255-263.)

Parties in Support

- 61 CSCA testified as a party in support of the application. CSCA testified that the CSCA board voted to support the application because the proposed project reflected changes requested by the CSCA and was the best development proposed on the site, including the large courtyard and the concentration of the height and massing on M Street away from the CSCA townhouses. The CSCA also testified that the Applicant was responsive to their concerns about increasing distance between the Project and the townhouses. The CSCA stated that is in support of the application but that their support is based on five conditions. CSCA stated that the Applicant adequately responded to their concerns and satisfied all but one of the conditions of support, which concerned granting CSCA residents access to the Project's pool and fitness center. (Ex. 67, 3/19/12 Tr. 12-32.)

Persons in Support

- 62 At the public hearing, 17 persons testified in support of the PUD and related CR Zoning Map amendment. Supporters included many members of the community in close proximity to the Property. Supporters cited many reasons for their support of the application. Reasons cited for support of the project included responsiveness of the Applicant; the importance of the Project to allow the Church to remain in the community, the superior public amenities and benefits that will result from the Project and the Church's continued presence in the neighborhood, including the community center; the additional affordable housing, the many benefits of the Church's presence in the community, including programs and services, the Church's history as a good neighbor and neighborhood asset; use of the Property for the benefit of the community, the Church's verification that the soil is safe for the community garden on the Property, and the Applicant's outreach to the community regarding the Project. In addition, one supporter, a resident of Carrollsburg A Condominium, testified that the design of the Project is consistent with the neighborhood and the height is comparable with others in the neighborhood, and that the Project will be an enhancement to the neighborhood with no objectionable visual impacts. (3/19/12 Tr. 68-108.)

- 63 The Commission received 10 letters of support for the project, many of which were from residents of CSCA. The letters expressed support of the Project based on its consistency with development pattern in the neighborhood, particularly with respect to the distances between taller apartment buildings and shorter townhouses, its provision of ample air and light to neighboring properties, particularly the nearby townhouses, the superior benefits and public amenities, including the open courtyard, the appropriate height for the site, the exemplary architecture that reflects the existing buildings in Southwest, the openness and responsiveness of the Applicant, the extensive outreach by the Applicant, the enhancement to the neighborhood that will result from the Project and the additional residents, and the importance of the Church in the community (Ex 12-14, 56, 59, 60, 61, 62, 63, 86)

Parties in Opposition

- 64 Michael Krause testified in opposition on behalf of the Herridge/Krause party. Mr Krause testified that he believed the Project would increase parking problems in the neighborhood and crime, particularly along the western side of the Property. He testified that he believed environmental and health problems would result from the Project, including the likely death of large trees along the property line and health issues from toxic mold and sewage backups and decreased sunlight to adjacent properties. He further testified that the Project's design, height, and massing are not consistent with the neighborhood and that the Project will obstruct views. Finally, he testified that he believed that adjacent residents relied on the zoning for the Property not changing and have an implied contract with the District for zoning not to change (Ex 77, 3/19/12 Tr 110-120.)
- 65 Catherine Herridge testified in opposition on behalf of the Herridge/Krause party. Ms Herridge testified that the streets in the vicinity of the Property could not accommodate the additional demand from the Project and that on Sundays parking is particularly problematic and would be exacerbated by that. She also testified that the Project would create conditions optimal for the growth of toxic mold that could endanger nearby residents and her son in particular given his medical condition. She testified that the Applicant's shadow study is not credible since it showed a building that does not exist. Further, she testified that the Project would reduce direct sunlight on her property (Ex 78, 3/19/12 Tr 120-136.)
- 66 Robert Weller testified as a party in opposition. Mr Weller testified that he did not receive adequate notice of the hearing and Project. Also, Mr Weller testified that he believed the Project would not be in character with the neighborhood and that it would be too tall and not be set back adequately from M Street. Also, he testified that he believed that the Project would not provide sufficient open space. Further, he testified that on-street parking would be adversely affected by the Project. Finally, Mr Weller testified

that the Project would obstruct views and result in decreased property values. (3/19/12 Tr 170-180)

Persons in Opposition

- 67 At the public hearing, 11 people testified in opposition to the Project. Reasons cited for opposition to the project included the Project not being in character with the neighborhood; insufficient setback from M Street, adverse impacts on traffic; insufficient open space, a resulting overburden on the infrastructure and traffic in the neighborhood, instability of the neighborhood because of more renters, loss of property values, inadequate notice of the hearing; unattractive design of the new church; that the CSCA does not represent the opinion of the residents; concern about toxic mold from the Property, concern about loss of sunlight from the Project, and concern about the loss of trees adjacent to the Property (3/19/12 Tr 190-233)
- 68 The Commission received seven letters in opposition to the project. Opponents cited the following reasons for their opposition to the Project: obstruction of views, decrease in property values, adverse effects on on-street parking, Project is out of scale with and uncharacteristic of the neighborhood, insufficient setbacks from property lines creating an unfriendly pedestrian environment, insufficient notice of meetings about Project, casting of shadows on neighboring properties, Project is inconsistent with the Comprehensive Plan because it is not medium density; reliance by neighboring property owners that zoning would not change, increased potential for crime along the western edge of the Property, an overbearing visual appearance due to its excessive height, loss of property values because of too much housing in neighborhood, inadequate open space, and loss of neighborhood character (Ex 41, 42, 45, 58, 65, 66, 102)

Satisfaction of the PUD and Zoning Map Amendment Approval Standards

- 69 In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” (11 DCMR § 2403.8.) The Commission finds that the Applicant developed a comprehensive amenities package that reflects the community’s desires and that the Applicant put forth a great effort to develop a package that reflected input from many members of the community. Given the significant amount and quality of the project amenities and public benefits included in this PUD and related Zoning Map amendment application, the Commission finds that the development incentives to be granted for the project and the related rezoning are appropriate and that the application satisfies the requirements for a PUD under Chapter 24 of the Zoning Regulations. The Commission also finds that the requested areas of flexibility from the requirements are consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations and are fully justified by the superior benefits and amenities offered by this project.

- 70 Based on evidence and testimony submitted by the Applicant, the Commission finds that the project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to land use, urban design, housing, site planning, transportation, environment, and uses of special value to the neighborhood and District as a whole
- 71 The Commission credits the written submissions and testimony of the Applicant that the PUD, related map amendment, and community amenities package resulted from significant and inclusive community outreach and input over many years. Indeed, the Commission acknowledges the many changes to the Project that resulted from community feedback. The Commission is not persuaded by testimony from opponents that they were not made aware of the Project, that the Applicant did not engage them, or that they did not have the opportunity to provide feedback on the project. The Commission finds that the Applicant engaged in extensive public outreach during the planning for the Project and that no person or organization was ever deliberately excluded (3/5/12 Tr 74-75, 3/19/12 Tr 250-253)
- 72 The Commission finds that the Applicant provided adequate public notice of this case and hearing commensurate with the notice requirements in the Zoning Regulations. The Applicant provided the names and addresses of all property owners within 200 feet of the Property to the Office of Zoning as required in § 3015.3 of the Zoning Regulations. In the case of 240 M Street, S W, which is a residential condominium with 25 or more dwelling units, the Applicant provided the name and address of the condominium association that represents the owners to the Office of Zoning, as permitted in § 3015.3(a). The Applicant also posted public hearing notice signs on the Property at least 40 days in advance of the hearing, commensurate with the requirements in § 3015.4 (Ex 47, 52, 3/5/12 Tr 98-99)
73. The Commission credits the written submissions and testimony of the Applicant and OP that the PUD and related rezoning to the CR Zone District is appropriate and that the proffered amenities and benefits are adequate for the project. The Commission also credits the testimony of the Applicant and OP that the proposed PUD project and rezoning of the Property are not inconsistent with the Comprehensive Plan or the Future Land Use Map. The Project and related rezoning are consistent with medium density residential development and advance numerous policies of the Comprehensive Plan.
- 74 The Commission finds that approval of the proposed PUD is appropriate given the superior features of the Project. Such features include the high-quality architecture, the transition to the adjacent townhouses, the significant landscaping, and context-sensitive design. In addition, the project will include superior features related to transportation, including its location in close proximity to many forms of public transit; dedicated car-sharing spaces, dedicated electric car charging spaces, the provision of numerous bicycle

parking facilities; and underground loading facilities. Further, the provision of a new sanctuary for St. Matthew's Church and the new community center are superior features of the Project. The Commission's conclusion is consistent with OP's recommendations to approve the project and the PUD-related Zoning Map amendment.

- 75 The Commission finds that through the Applicant's testimony at the March 5th hearing and through its submissions, the Applicant satisfied OP's requests for more information about amenities. (3/5/12 Tr. 74-79.)
- 76 The Commission finds that, through the Applicant's rebuttal testimony at the March 19th hearing and through its March 16th submission, the Applicant sufficiently responded to DDOT's conditions and recommendations in its report and demonstrated that the Project will have negligible adverse impacts on parking. The Commission concludes that the Applicant satisfied DDOT's conditions and recommendations such that DDOT's full support for the Project and related Map amendment can be accorded. With respect to the TDM recommendations, the Applicant agreed to provide the TV/monitor in the residential and church lobbies, and the Applicant justified that its transit fair would be more likely to encourage the use of transit as much, if not more, than pre-loaded SmarTrip cards. Further, the Applicant agreed to replace deteriorated sidewalks according to DDOT standards. Finally, based on the appropriate amount of parking provided in the Project and the negligible impacts of the Project on on-street parking, the Commission finds that restricting the Project's parking to only building residents is unnecessary (Ex 57, 3/19/12 Tr 244-250.)
- 77 From evidence and testimony presented at the March 19th hearing, the Commission finds that the Applicant adequately addressed questions raised at the March 5th hearing and that the PUD and related Zoning Map amendment will not have material adverse impacts on neighboring properties. The Commission finds that the Applicant's revised penthouse design will minimize visual impacts on properties to the west. The Applicant's illustration depicts the limited view impact of the rooftop condenser units on one other residential highrise building to the southwest. The Applicant's documentation of the distances between the Project and the nearby buildings and those between the existing townhouses and highrise buildings to demonstrate that the distances between the existing highrises and townhouses are, in some cases, smaller than those between the Project and the nearby townhouses. The Applicant's photographic illustrations of the close physical relationships between the existing townhouses and highrises near to the Property to demonstrate that the Project will not adversely affect light and air availability to the existing townhouses. Also, the Commission finds that the Applicant's shadow study illustrates the negligible impact that the Project will have on nearby properties because of shadows being cast. Finally, based upon the Applicant's analysis of the availability of parking, the Commission concludes that residents will be discouraged from parking on

the street and that sufficient parking is available in the Project and, when necessary, in the near vicinity of the Property (Ex 57, 3/19/12 Tr 238-244)

- 78 The Commission finds that the Applicant's submission on March 26, 2012 adequately addressed questions raised during the March 19th hearing. The Commission credits the Applicant's explanation of sidewalk widths and its effort to meet with party-opponent Catherine Herridge (Ex 89)
- 79 The Commission finds that the Herridge/Krause party did not establish a nexus between the presence of mold in the former St. Matthews Church on the Subject Property and the formation of mold as a result of the Project. The opponents presented no scientific evidence concerning the presence of toxic mold on the Property and an increased likelihood of toxic mold resulting from the Project, or the likelihood of sewage backups or health problems resulting from the Project.¹

CONCLUSIONS OF LAW

- 1 Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities" (11 DCMR § 2400.1). The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience" (11 DCMR § 2400.2.)
- 2 Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD (11 DCMR § 2402.5). The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, and yards and courts.
- 3 The development of the PUD project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.

¹ Nevertheless, the Commission requested that the Applicant meet with Ms. Herridge and Mr. Krause regarding precautionary measures the Applicant could take to mitigate adverse health consequences to Ms. Herridge's son and left the record open to receive reports regarding the outcome of that meeting. When the Commission took final action to approve the Application, it encouraged the Applicant to continue its dialogue with Ms. Herridge and to put in place reasonable precautionary measures to minimize the health consequences of the Project and its construction to Ms. Herridge's son.

- 4 The application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
- 5 The application meets the contiguity requirements of § 2401.3
- 6 The proposed height and density of the buildings in the Project will not cause a significant adverse effect on any nearby properties and does, in fact, comport with District goals for development of an infill parcel near a Metro station. Any impact of the Project on the surrounding area and adjacent properties is deemed to be not unacceptable. As demonstrated in the Traffic Impact Study submitted by the Applicant and supported by DDOT, as well as the Applicant's supplemental report and testimony, the project will not cause adverse traffic or parking impacts.
- 7 Based upon case law, the Commission concludes that a property owner does not enjoy any right to a view across a neighbor's property. *See Ash v Tate*, 73 F.2d 518, 519 (Ct. App. D.C. 1934), *Hefazi v Stiglitz*, 862 A.2d 901, 911 (D.C. 2004). Accordingly, opponent assertions that the Project will diminish views are immaterial to the Commission's considerations of this PUD's impact on light and air available to neighboring properties.
- 8 The Commission finds that an environmental impact assessment was not required for this application and that the environmental impacts of the Project need not be considered by the Commission. *See Foggy Bottom Ass'n v D.C. Zoning Commission*, 979 A.2d 1160, 1165-67 (D.C. 2009); *Foggy Bottom Ass'n v D.C. Bd. of Zoning Adjustment*, 791 A.2d 64, 73 (D.C. 2004). Such environmental impacts will be better and more appropriately assessed during the permitting phase of the Project and before construction begins so that they can be considered in light of the project and conditions approved by the Commission. *Id.* Furthermore, the Commission finds that the opponents presented no scientific evidence concerning, but not limited to, the presence of toxic mold on the Property and an increased likelihood of toxic mold resulting from the Project, and the likelihood of sewage backups or health problems therefrom resulting from the Project.
- 9 The application also seeks flexibility from the Zoning Regulations regarding rear yard, open court, open space, loading, and roof structure setback requirements. The Commission finds that the benefits and amenities provided by the project are significant, and the project will offer superior features that will benefit the neighborhood to a greater extent than a matter-of-right development would. Thus, granting the development incentives proposed in this application is appropriate.
10. The Commission finds that residents do not have an implied "zoning contract" with the District of Columbia that zoning will not change. Provided that the rezoning is not inconsistent with the Comprehensive Plan and Future Land Use Map, the Commission may rezone the Property under its authority to do so.

- 11 The Commission finds that approval of the PUD and change in zoning is not inconsistent with the Comprehensive Plan, Future Land Use Map, or Generalized Policy Map. The Commission finds that the PUD-related rezoning of the Property to CR is not inconsistent with the Future Land Use Map when it is considered in the context of the PUD and the interpretation guidance in the Comprehensive Plan because the Future Land Use Map should be interpreted broadly and in context, so the CR zone is appropriate for a project at this location with this height, massing, and density.
- 12 Based on the Findings of Fact concerning the Project's height, massing, density, and context, the Commission finds that the Project is consistent with medium density residential development as set forth in the Comprehensive Plan because taller heights are appropriate when a building is surrounded by large amounts of open space, as is the case for the Project.
13. The Commission finds that the PUD is not inconsistent with the Comprehensive Plan and advances the goals and policies in the elements of the Comprehensive Plan, as stated in Findings of Fact Nos. 48-53. The PUD is not inconsistent with the major themes and citywide elements of the Comprehensive Plan, including the Land Use, Housing, Urban Design, Environmental, and Area Elements.
- 14 The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21, D.C. Official Code § 1-309.10(d)) to give "great weight" to the written recommendation of the affected ANC. As reflected in the Findings of Fact, ANC 6D voted to support the application, and its written recommendation stated its reasons for supporting the application. By virtue of the preceding discussion, the Commission has accorded ANC 6D the great weight to which it is entitled. In so doing, the Commission fully credited the unique vantage point that ANC 6D holds with respect to the impact of the proposed PUD on the ANC's constituents.
- 15 The Commission is also required to give "great weight" to the recommendations of OP under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04). The Commission gives OP's recommendation to approve the PUD and related Zoning Map amendment to the CR Zone District great weight and concurs with its conclusions.
- 16 The PUD project and the rezoning of the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of this application for Consolidated Review of a Planned Unit Development and related Zoning Map amendment to the CR Zone District for the Subject Property (Lot 301 in Square 546) The approval of this PUD is subject to the following conditions:

A. Project Development

- 1 The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 17A, 23B, 23E, 48, and 57A1 of the record, as modified by the guidelines, conditions, and standards of this Order

B. Public Benefits

- 2 The Applicant shall dedicate 10% of the building's gross floor area being devoted to residential use for households making 80% or less of the Area Median Income. All of this affordable housing will be part of the Project's Inclusionary Zoning affordable units, so all of the affordable units will be administered by the Department of Housing and Community Development pursuant to the regulations in 14 DCMR § 2200 *et seq.*
- 3 The Delaware Avenue access to the courtyard will be open to the public every day from dawn till dusk
- 4 The Applicant shall provide all loading facilities underground, subject to possible modifications in layout in final design
5. St Matthew's Church shall include a community center operated by Transforming Southwest CDC, an arm of the St Matthew's Evangelical Lutheran Church The community center shall be open to the public The community center shall provide community-based programming as well as a computer lab, community outreach center and coffee shop St Matthew's Church shall provide a community center operated by Transforming Southwest CDC, an arm of the St. Matthew's Evangelical Lutheran Church. The community center shall be open to the public The community center shall provide community-based programming as well as a computer lab, community outreach center and coffee shop. Annually (on or before July 1 of each year, beginning on the first date after the certificate of occupancy for the church is issued), the Applicant will provide a listing and schedule of programs at the Community Center to the Zoning Administrator ("ZA") and the Office of Zoning ("OZ")
- 6 The Applicant shall make available a minimum of two parking spaces for a car-sharing service in the underground parking garage The exact number will be

determined by the car-sharing service's requirement for this location Prior to the issuance of a Certificate of Occupancy ("CO") for the residential portion of the Project, the Applicant shall provide evidence of an agreement or efforts to secure an agreement with a car-sharing program to the ZA and OZ

- 7 The Applicant shall provide four 240-volt spaces for charging electric cars in the underground parking garage Prior to the issuance of a CO for the residential portion of the Project, the Applicant will provide proof of installation of the charging facilities for the parking spaces to the ZA and OZ.
- 8 The Applicant shall prohibit Residential Permit Parking ("RPP") permits for residents of the Project by voluntarily removing the Property from the list of properties eligible for RPP permits Prior to the issuance of a CO for the residential portion of the Project, the Applicant will provide proof of RPP ineligibility to the ZA and OZ
- 9 Prior to the issuance of the building permit for the Project, the Applicant shall make the following financial contributions
 - A \$5,000 to KidPowerDC and their Veggie Time program for fencing around up to three vegetable gardens at Amidon-Bowen Elementary School;
 - B The cost of ten (10) trees and their installation to Casey Trees for such trees on the M Street median across from the Property (Square 546, Lot 301), subject to approval by DDOT If DDOT does not approve such trees or their installation is otherwise infeasible, then the Applicant will pay for ten (10) trees and their installation by Casey Trees on other public space in the vicinity of the Project, and
 - C \$20,000 to the Community Benefits Coordinating Council ("CBCC") to help fund the organization's ongoing support of community programs
- 10 Pursuant to the terms and conditions of the Tree Protection Agreement ("TPA") between the CSCA and the Applicant and submitted into the record, the Applicant will replace the tree(s) (as defined in the TPA) that died as a result of construction activity with the same species and a three-inch to five-inch caliper, or as otherwise defined in the final TPA The appropriate caliper will be determined by the Arborist (as defined in the TPA) based upon the selection available at the time of replacement A representative of the CSCA may accompany the Arborist to select the replacement tree(s) If, as determined by the Arborist, the lost tree(s) cannot be replaced with the same species, then the replacement tree(s) will be a species to be determined by the Arborist in consultation with both the Applicant and CSCA

- 11 The fence along the Property's southern property line will contain a gate that will allow residents of the CSCA to enter the courtyard
- 12 The Project shall be designed to satisfy a LEED Certified rating, and the Applicant shall put forth its best efforts to design the Project so that it may satisfy a LEED Silver rating. However, the Applicant shall not be required to obtain LEED Certified or LEED Silver certification from the United States Green Building Council
- 13 The Applicant shall establish a transportation demand management ("TDM") program that includes the following
 - A. Parking costs will be unbundled from residential units. Leased units will not include a parking space as part of rent;
 - B. Twelve bicycle parking spaces will be provided near site entrances outside the building. Sixty-nine secured bicycle parking spaces will be provided in the parking garage for use by residents,
 - C. Information on transportation options will be presented to residents via a transportation kiosk in the lobby of the residential building. The kiosk will contain information promoting walking, cycling, and transit,
 - D. A website for the residential building will be established including similar information as the kiosk, with links to www.godcgo.com and similar websites,
 - E. A member of the property management group will be designated as the Project's TDM coordinator, and will be responsible for coordinating, implementing and monitoring the TDM program. This includes establishing a marketing program and maintaining the information kiosk and website,
 - F. The Applicant will host a transportation mobility fair six months after the residential building has opened to new residents. The on-site TDM coordinator will work with DDOT's goDCgo team to organize representatives to present non-auto transportation options to all fair attendees in the residential building and the church,
 - G. In the residential lobby and in an appropriate location in the church near its entrance, the design will incorporate provisions that will allow placement of flat screen monitors with the intent of having these monitors

be used to display up-to-date transit information. The Applicant will work with DDOT on how to best import and display this information, and

- H The Applicant will maintain or relocate existing bus stops adjacent to the Property during construction

C. Miscellaneous

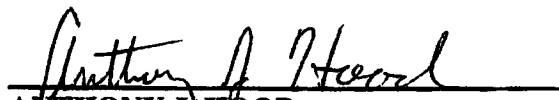
- 14 The Applicant shall have flexibility with the design of the PUD in the following areas
 - A To vary the location and design of all interior components, including, but not limited to, partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structure,
 - B To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on the availability at the time of construction,
 - C To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, façade patterns and articulation, railings and trim, or any other changes to comply with the Construction Codes or that are otherwise necessary to obtain a final building permit, and
 - D To vary the number of residential units between 189-231
- 15 No building permit shall be issued 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, which is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs (“DCRA”). Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
- 16 The change of zoning from the R-3 Zone District to the CR Zone District shall be effective upon the recordation of the covenant discussed in Condition No. 15, pursuant to 11 DCMR § 3028.9.

- 17 The PUD shall be valid for a period of two years from the effective date of this Order. Within such time, an application for a building permit must be filed as specified in 11 DCMR § 2409.1, the filing of the building permit application will vest this Order
18. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On April 30, 2012, upon the motion of Commissioner May, as seconded by Vice Chairman Schlater, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to approve)

On June 11, 2012, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony H. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt, 3rd Mayoral appointee position vacant, not voting)

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on July 6, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 11-13

As Secretary to the Commission, I hereby certify that on **JUL 5 2012** copies of this Z.C. Order were mailed first class, postage prepaid or sent by inter-office government mail to the following

- | | |
|---|---|
| 1. <i>D C Register</i> (via e-mail) | 7 DDOT (Martin Parker) |
| 2 Allison Prince and Cary Kadlecsek, Esqs
Goulston & Storrs
1999 K Street, N W Suite 500
Washington, D C 20006 | 8 Melinda Bolling, Acting General Counsel
DCRA
1100 4 th Street, S W
Washington, D C 20024 |
| 3 ANC 6D
1101 4 th Street, S W W130
Washington, D C 20024 | 9 Office of the Attorney General (Alan
Bergstein) |
| 4 Commissioner Roger Moffatt
ANC/SMD 6D05
1301 Delaware Ave , S W # 717
Washington, D C 20024 | 10 Carrollsburg Square Condominium Assoc
Board of Directors - Kathleen Beeton
c/o The New Washington Land Company
1804 T Street N.W , Suite 1
Washington, D C 20009 |
| 5 Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N W
Washington, D C 20004 | 11 Catherine Herridge/Michael Krause
220 M Street, S W
Washington, D C 20024 |
| 6 Councilmember Tommy Wells | 12 Robert Weller
240 M Street, S W Apr 515
Washington, D C 20024 |

ATTESTED BY:



Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning