GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 12-16
Z.C. Case No. 12-16
CG Marketplace, LLC
(Consolidated PUD & Related Map Amendment
for Various Lots @ Squares 5276, 5272, 5273, 5277, and 5246)
September 30, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on June 20, 2013 to consider applications from CG Marketplace, LLC (the "Applicant") for review and approval of a consolidated Planned Unit Development ("PUD") and related map amendment from the R-2 and R-5-A Zone Districts to the C-2-A Zone District for Square 5276, Lots 812, 813, and 23-121; Square 5272, Lot 51; Square 5273, Lot 67; Square 5277, Lots 22-33 and 805; and Square 5246, Lot 110 (the "PUD Site"). The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). 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

1. On August 29, 2012, the Applicant submitted an application and supporting materials with the Commission requesting consolidated review of a PUD and related map amendment to rezone the PUD Site from the R-2 and R-5-A Zone Districts to the C-2-A Zone District (the "Initial PUD Submission").

2. The Applicant is a single purpose entity controlled by the D.C. Housing Authority ("DCHA"), which owns the site, and an affiliate of A&R Development Corp. ("A&R"). DCHA is the owner of the PUD Site.

3. The subject property consists of Square 5276, Lots 812, 813, and 23-121; Square 5272, Lot 51; Square 5273, Lot 67; Square 5277, Lots 22-33 and 805; and Square 5246, Lot 110. The PUD Site is located in southeast Washington and has a total area of approximately 521,734 square feet or 11.9 acres.

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4. The proposed project, known as Capital Gateway Marketplace (the "project"), is a mixed-use development comprised of a large-format retail store; a mixed-use building with approximately 288 residential units (plus or minus 10%) and approximately 23,500 square feet of ground floor retail uses; and an 8,400 square foot sit-down restaurant site.

5. On February 4, 2013, the Applicant submitted a revised Statement in Support, which includes revised Architectural Plans and Elevations and sets forth in detail the proposed development, project design, requested areas of zoning and design flexibility, and a detailed analysis indicating how the Applicant meets the applicable standards set forth in the Zoning Regulations. (Exhibit ["Ex."] 12, 13.)

6. On March 29, 2013, the Office of Planning ("OP") recommended that the Commission schedule a public hearing on the application. (Ex. 14.) At its public meeting held on April 8, 2013, the Commission voted to schedule a public hearing on the application.

7. On April 10, 2013, the Applicant submitted a Prehearing Statement. (Ex. 17.) The Prehearing Statement included the information requested by OP and the Commission, including additional plan sheets and development information; confirmation of the Applicant's affordable housing commitment; and a detailed analysis of how the project complies with the special exception standards of § 2516 of the Zoning Regulations. (Ex. 17, 17A.)

8. On May 31, 2013, the Applicant submitted a Supplemental Prehearing Statement. (Ex. 23.) The Supplemental Prehearing Statement included a set of Revised Architectural Plans and Elevations incorporating changes to address the concerns raised by OP and the Commission, and that improve the design and sustainability of the overall development. (Ex. 23A1-10.) For example, the Applicant removed the office building initially proposed as a project component in response to concerns raised including siting/visibility of the proposed building, the need for excessive retaining walls to support the development, and uncertainty regarding demand for office space in the neighborhood. The Applicant also made additional improvements to its proposal including a more defined architecture for the restaurant and mixed-use buildings, reduction in the height and number of retaining walls, the addition of more open/green space, and an increase in the amount of pervious surfaces.

9. After proper notice, the Commission held a public hearing on the application on June 20, 2013.

10. The parties to the case were the Applicant and the Advisory Neighborhood Commission ("ANC") 7C. ANC 7C submitted a motion, and requested at the public hearing on June 20, 2013, that the Commission keep the record open for the ANC to submit its comments. (Ex. 24.) ANC 7C submitted a letter dated July 18, 2013 stating the ANC's opposition to

the application. (Ex. 48.) The Commission re-opened the record to receive the Applicant's response to the report, submitted on July 23, 2013. (Ex. 50.) The contents of the ANC 7C's letter and the Applicant's response, are discussed below.

11. OP and the District Department of Transportation ("DDOT") testified in support of the project at the public hearing.

12. At the hearing, the Applicant submitted a copy of its PowerPoint presentation; a copy of the project's materials board; updated architectural plan sheets; and a report prepared by Mr. Sher. (Ex. 37A1-37A3, 38-40.)

13. A number of groups and individuals submitted letters in support of the application, including the Northeast Boundary Civic Association, the Capital Gateway Community Resident Association, Councilmember Yvette Alexander, Ronald Streff, Mary Gaffney, and Mary D. Jackson. (Ex. 25-29, 33.) The Capitol View Civic Association submitted a letter of conditional support. The letter expressed support of the project, but recommended that the project include less affordable housing. (Ex. 35.)

14. Five principal witnesses testified on behalf of the Applicant at the public hearing, including Feras Qumseya, on behalf of the Applicant; Derek Warr, on behalf of Perkins & Will Architects, as an expert in architecture; Gabriel Massa of MMA Architects, as an expert in architecture; Scott Delgado, on behalf of Bowman Consulting Group, as an engineering expert; and Erwin N. Andres, an expert in transportation planning and analysis, on behalf of Gorove/Slade Associates. Based on their professional experience, as evidenced by the resumes submitted for the record, Mr. Warr, Mr. Massa, Mr. Delgado, and Mr. Andres were qualified by the Commission as experts in their respective fields. Mr. Bruno P. Carvalho of Carvalho Good, PLLC was also qualified by the Commission as an expert in landscape design.

15. On June 13, 2013, ANC 7E submitted a letter to the Commission expressing their strong support for the application, and requesting expeditious approval of the application. (Ex. 34.) ANC 7E stated that the proposed development is a critical step in implementing the overall Capitol Gateway Estates development. ANC 7E indicated that it worked very hard with the Applicant over a period of many years and that the project reflects the community desires for a sit-down restaurant, retail uses in Ward 7, and for the proposed large-format retailer. ANC 7E further indicated that the residential units would add stability and strength to the community.

16. Michael Kroopnick of G. Macy Nelson, LLC and Chris Otten on behalf of Create for Community testified at the public hearing in opposition to the application. (Ex. 41, 42.) As discussed in more detail below, the Commission finds that the Applicant has adequately addressed the issues raised by Mr. Kroopnick and Mr. Otten.

17. On July 11, 2013, the Applicant submitted a Post-Hearing Submission. (Ex. 45.) The Post-Hearing Submission addressed the comments raised at the public hearing on June 20, 2013, including revised plans detailing a number of refinements to the mixed-use building to address the comments raised by the Commission, a justification for the proposed density on the restaurant parcel and a revised parking lot design, and a commitment by the Applicant to construct pedestrian safety amenities at the intersection of East Capitol Street and Southern Avenue as requested by DDOT.

18. At its public meeting held on July 29, 2013, the Commission took proposed action to approve the application and requested further information from the Applicant regarding the Applicant's First Source commitment, the project's phasing insofar as it affects the delivery of the project's affordable housing component, and the design of the western façade of the retail building.

19. Pursuant to 11 DCMR § 2403.15 through 2403.20, the Applicant submitted a list of the public benefits of the project, and proposed draft conditions for the final order on August 5, 2013, and in response to the comments provided by the District's Office of the Attorney General, the Applicant submitted its revised list of public benefits of the project and draft conditions on August 15, 2013. (Ex. 52, 53.)

20. On September 16, 2013, the Applicant responded to the Commission's requests for information made when it took proposed action. (Ex. 54.)

21. The application was referred to the National Capital Planning Commission ("NCPC") for review of any impacts on the federal interest under the Comprehensive Plan. By delegated action September 6, 2013, the Executive Director of NCPC found that the application was not inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 55.)

22. The Commission took final action to approve the application on September 30, 2013.

<u>The PUD Site and Area</u>

23. The PUD Site consists of two vacant parcels which are divided by 58th Street, N.E. along the north frontage of East Capitol Street. The primary site, located to the east of 58th Street, consists of Square 5276, Lots 812, 813, and 23-12; Square 5272, Lot 51; Square 5273, Lot 67; and Square 5277, Lots 22-33 and 805. The west parcel, which will be developed to include a sit-down restaurant, consists of Lot 110 in Square 5246 and has a land area of 61,817 square feet or 1.4 acres.

24. The PUD Site fronts on East Capitol Street, which is a major corridor providing access to the Downtown central business district. As noted in the Comprehensive Plan, East Capitol Street is one of the major boulevards into the city, but needs new development and improved urban design. The surrounding area is generally residential in character and is characterized by single family and duplex houses. Immediately to the north of the PUD Site is the 151-unit senior building that was developed by the Applicant pursuant to the overall Capitol Gateway Estate PUD. To the northwest and south of the PUD Site, existing housing types include single-family, duplex, and small walk-up multifamily buildings also developed pursuant to the Capitol Gateway Estates PUD.

Description of the PUD

25. The proposed project includes a full-service, large-format retail store; a mixed-use building with approximately 288 residential units (plus or minus 10%) and approximately 23,500 square feet of ground-floor retail use; and an 8,400-square-foot sit-down restaurant. The project includes approximately 114,900 square feet of green space, which is approximately 22% of the PUD Site's area. In addition, the project will include approximately 39,000 square feet of permeable pavers, which is approximately 7.5% of the PUD Site's area. Overall, approximately 30% of the PUD Site is permeable.

26. *Mixed-Use Building Site*. As the first building visible upon entering the District of Columbia from the east, the mixed-use building and site function as a symbolic and literal gateway and landmark. The building consists of four residential stories above a podium that includes two levels of parking. Retail space and the residential lobby line the parking structure's southern façade, and address the site's natural grade through a series of outdoor terraces along East Capitol Street. The site's natural grade is also incorporated into the building's design to provide separate entrances and parking areas for the retail and residential components. Loading and other services are located along the building's east side.

27. A variety of materials and finishes are employed in order to minimize the bulk of the building into a smaller, more residential scale. The eastern half of the building also steps back substantially to create an urban plaza and additional retail frontage. Façade materials on the southern side of the building include metal panels and a variety of sizes and finishes of masonry and cementitious cladding systems. The building includes a "tower" element at the southeast corner of the building, forming a landmark "anchor" which engages the various building volumes and serves as a focal point for the overall building mass.

28. *Large-Format Retailer Site*. Located at the corner of two major public streets, the large format retail building has been designed to physically mark the corner at the intersection of East Capitol Street and 58th Street while simultaneously helping to create an inviting

and comfortably defined street space. The design incorporates vegetation buffers on the street edge, pedestrian amenities in areas of circulation, and the use of glass along the main portions of the building. The glazing shares the multiple functions of separating the store from public gathering areas and providing voids within the mass.

29. The building mediates the considerable change in grade on the PUD Site by locating a parking garage under the building. Much of the parking, therefore, will be below grade and hidden from views along the eastern perimeter of the building. The building design also uses the natural slope of the site to create pedestrian entrances at both the high and low ends of the site. The scale of the façade along East Capitol Street is further reduced by the use of a variety of building materials and colors such as brick, aluminum, glazing, and Trespa panels. The materials were selected to fit within the context of the surrounding community and within the overall development itself.

30. The architectural massing, scale, and façade materials are appropriate to meet the requirements of maintaining a strong corner. The aesthetic composition of the massing, scale, and materials has also been composed in a manner that meets the needs of a neighborhood made up of primarily single, low-density and multi-family housing. The large format retail building will have a maximum height of approximately 56 feet (from the lowest point on the site to the highest point on the building) and a gross floor area of approximately 135,551 square feet.

31. *Restaurant Site*. The project includes a sit-down restaurant site in response to requests from the community for a sit-down restaurant in the neighborhood, as stated in numerous community meetings, and as noted in the Comprehensive Plan. The restaurant pad forms the western end of the PUD Site, and is composed of a single-story restaurant building of approximately 8,400 square feet and surface parking located behind the building.

32. The restaurant building faces East Capitol Street, both to complete the project's continuous urban façade and engage the public realm, and to screen the surface parking lot from view. The exterior finish palette (masonry or cementitious cladding with metal panels used as accents and at focal points) complements the overall material palette of the project without attempting to compete with the other buildings included in the development. Moreover, the Applicant has designed the restaurant site to include a number of sustainability features and to be consistent with the design of the overall development. In addition, the Applicant has revised the design of the porous pavers in the restaurant's parking lot to make the transition between pervious and impervious paving more intentional and strategic. The revised paving design will facilitate better practical maintenance and will ensure the durability of the proposed paving without compromising the overall stormwater management strategy for the restaurant site. (Ex. 23A1-10, Sheet C.03-02.)

33. The slope of the restaurant site is the most complicated of all the parcels in this development since the restaurant site slopes in more than three directions. However, instead of utilizing retaining walls, the site will utilize rain gardens, garden walls, planted hedge systems, interlocking grass pavers, plaza areas, and other landscaping features. This design will capture all of the rain water from the roof as well as the site by utilization of sustainable site features incorporated into the design. In addition, outdoor seating has been added to the design and now connects the exterior to the interior and provides for an exciting and vibrant environment both during the day and evening. (Ex. 23A1-10, Sheets A04-42 and 43 and A04-51.)

Zoning Flexibility Requested

34. The Applicant requested flexibility from several provisions of the Zoning Regulations, including the loading requirements (§ 2201.1), the building height requirements (§ 2405.1), limitations on roof structures (§§ 411, 770), and special exception approval to permit Prepared Food Shops and Fast Food Establishments, and to permit more than one principal building on al lot of record.

35. Loading for the Mixed-Use Building. The Applicant requested relief from the off-street loading requirements for the mixed-use building included in the project. Subsection 2201.1 of the Zoning Regulations includes the following applicable requirements: (a) For a retail establishment in the C-2-A Zone District with more than 20,000 to 30,000 square feet of gross floor area, two loading berths at 30 feet deep, two loading platforms at 100 square feet, and one service/delivery loading space; and (b) for an apartment house or multiple dwelling with 50 or more dwelling units, one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep.

36. The proposed mixed-use building includes 23,500 square feet of the retail gross floor area and 288 residential units, which yields a loading requirement of two loading berths at 30 feet deep (retail), two loading platforms at 100 square feet (retail), one service/delivery loading space (retail), one loading berth at 55 feet deep (residential); one loading platform at 200 square feet (residential); and one service/delivery space at 20 feet deep (residential). However, due to the anticipated needs of the residential and retail uses, the Applicant is seeking flexibility to provide the following loading facilities for the mixed-use building: two loading berths at 30 feet deep; one loading platform at 100 square feet; one loading platform at 200 square feet; and two service/delivery spaces.

37. The Commission finds that this requested flexibility is in accordance with the Comprehensive Plan's recommendations to consolidate loading areas within new developments and to minimize curb cuts and pedestrian conflicts to the greatest extent possible. Given the nature and size of the residential units, it is unlikely that the building will be served by 55-foot tractor-trailer trucks. In addition, the loading areas are likely to

be used by the residents primarily when they move in or out of the building, and any subsequent use by residents is likely to be generally infrequent and can be coordinated to ensure that the loading facilities are well-managed. Likewise, the use of the retail loading facilities will be coordinated in a manner that causes the least amount of conflict. Therefore, the loading facilities provided will be able to accommodate both the residential and retail uses, and there will not be a need for additional loading spaces since the Applicant can coordinate deliveries.

38. Building Height for Mixed-Used Building. The Zoning Regulations permit a maximum matter-of-right height of 50 feet with no limit on the number of stories in the C-2-A Zone District, and a maximum height of 65 feet with no limit on the number of stories under the PUD regulations. (11 DCMR §§ 770.1 and 2405.1.) As shown on the elevations for the mixed-use building, the building has a height of 62'-9" as measured to the top of the roof, but the Applicant is requesting flexibility pursuant to § 2405.3 of the Zoning Regulations to increase a portion of the building to a maximum height of 67'-3" feet as measured to the top of the parapet.

39. The Commission finds that the requested additional height is not being used to increase the floor area or habitable space of the building, but is rather being requested in order to reinforce the building's role as a prominent and symbolic architectural gateway into the District of Columbia from Maryland. The area of increased parapet height occurs at the southeast corner of the building, which is the most prominent and dramatic architectural component of the building. The length of the raised parapet area accounts for less than 12% of the building's perimeter. Accordingly, the Commission finds that approving this requested relief will not have any adverse impacts, is necessary to the successful functioning of the building to reinforce the building's role as architectural gateway, and is appropriate when balanced against the superior public benefits and amenities of the project.

40. Roof Structures for Mixed-Use Building. The Applicant initially requested flexibility from the roof structure requirements of the Zoning Regulations because, as shown on the roof plan sheets included in the plans, the mixed-use building includes multiple roof structures (§§ 411.3 and 770.6(a)), and the roof structures cannot be set back from all exterior walls a distance equal to their height above the roof (§§ 411.2 and 770.6(b)). The Applicant revised the project's plans to eliminate the need for setback relief, but still requires relief to have multiple roof structures.

41. Based upon the plans and the evidence of record in this case, the Commission finds that each roof structure is a necessary feature for the proposed buildings. The multiple roof structures have been separated due to the building code requirement to provide separate means of egress for buildings, as well as the desire to break up massing on the roof. The location and number of the roof structures for the mixed-use building is driven by the

layout and design of the residential units within the building. In addition, the Applicant is providing the greatest setbacks possible given the size of the roof and the internal configuration of the proposed building. The requested roof structure designs will not adversely impact the light and air of any adjacent buildings since the roof elements have been located to minimize their visibility. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected.

Special Exception Approvals

To Permit Prepared Food Shops and Fast Food Establishments.

42. The Applicant proposes to include approximately 23,500 square feet of ground-floor retail use in the mixed-use building. The Applicant intends to market the proposed retail areas to a mix of nationally recognized chains as well as locally based chains and smaller specialty stores -- such as eating establishments, coffee shops, branch banks, barbershops, and similar uses -- which will help to improve the mix of goods and services available to residents in the surrounding neighborhood. Among the potential tenant would be such establishments as FroZenYo, Panera Bread, and Starbucks.

43. The Applicant is concerned that these or similar uses could fall within the definition of "Prepared Food Shop" and "Fast Food Restaurant" in § 199 of the Zoning Regulations. Therefore the Applicant is seeking approval pursuant to §§ 712.1 and 733.1 of the Zoning Regulations in order to enable the Applicant to potentially lease a portion of the retail space to a tenant type such as FroZenYo, Panera Bread, Starbucks, or similar tenants if such retailers express interest in the space once this building is competed.

44. Subsection 712.1 of the Zoning Regulations provides that a prepared food shop with more than 18 seats for patrons shall be permitted in a C-1 Zone District as a special exception if approved by the Board of Zoning Adjustment ("BZA") under § 3104 provided that no drive-through shall be permitted. Moreover, pursuant to § 733.1 of the Zoning Regulations, the BZA is authorized to approve as a special exception under § 3104, fast food establishment uses, subject to the provisions of § 733.

45. Subsection 2405.7 of the Zoning Regulations provides that in approving PUDs, the Commission also has the authority to approve any use that is permitted as a special exception and that would otherwise require approval by the BZA. Moreover, § 2405.8 of the Zoning Regulations provides that approval by the BZA is not required for any such use approved by the Commission under § 2405.7, and that the Commission is not be required to apply the special exception standards normally applied by the BZA.

46. The Applicant requested that the Commission exercise its authority to hear and decide special exceptions. Although the Commission is not required to apply the standards of § 733, however, the Commission finds that the Applicant complies with applicable specific special exception standards as follows, which having been met also prove compliance with the general standard set forth at 11 DCMR § 3104.1:

a) 733.2 - No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a Residence District unless separated therefrom by a street or alley. As shown on the plans in the record, the mixed-use building includes three proposed retail areas, ranging in size from 5,026 square feet to 7,693 square feet. Any of these spaces could accommodate a potential prepared food shop or fast food restaurant use. The retail spaces are located on the East Capitol Street frontage of the building. Although the property to the north of the PUD Site is zoned R-5-A, the lot upon which the proposed uses are located is separated from the residential district by a proposed private street. The residentially zoned properties to the east and west of the PUD Site are separated from the PUD Site by 61st Street and East Capitol Street, respectively. Thus, the Commission finds that the Applicant meets the requirements of § 733.2. The Commission also finds that the space for a potential prepared food shop or fast food restaurant use is located within the building, and the space is over 250 feet away from the R-5-A zone boundary to the north. Moreover, the nearest actual residential uses to the closest edge of space for the potential prepared food shop or fast food restaurant use are approximately 650 feet to the north (across a park); approximately 300 feet to the east (across 61st Street); approximately 600 feet to the west (across the large-format retail parcel and across 58th Street); and approximately 275 feet to the south (across East Capitol Street);

b) 733.3 - If any lot line of the lot abuts an alley containing a zone district boundary line for a Residence District, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line. The brick wall shall not be required in the case of a building that extends for the full width of its lot. As shown on the civil sheets in the record, no part of the mixed-use building lot abuts an alley containing a zone district boundary line for a residence district. Thus, § 733.3 is not applicable;

c) 733.4 - Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face a Residence District. As shown on the plans included in the record, the trash rooms for the retail and the potential prepared food shop or fast food restaurant use are located inside the mixed-use building, and the trash room entrances are all located within the building. The trash will be collected utilizing the proposed

loading facilities also located within the building. Therefore, the proposed trash rooms will have no adverse impacts on any adjacent residential uses, and thus comply with § 733.4;

d) 733.5 - The use shall not include a drive-through. As shown on the plans included in the record, the mixed-use building does not include a drive-through and thus complies with § 733.5;

e) 733.6 - There shall be no customer entrance in the side or rear of a building that faces a street or alley containing a zone district boundary line for a Residence District. As shown on the plans included in the record, the customer entrances for the retail spaces and the potential prepared food shop or fast food restaurant use are located on East Capitol Street, "Private Street 1", and "Private Street 2". None of these entrances are located on a street or alley that contains a zone district boundary line for a residence district. Thus, the Applicant meets the requirement of § 733.6;

f) 733.7 - The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions. The potential prepared food shop or fast food restaurant use will be located within a new building and that has been sited so as not to become objectionable to neighboring properties. Given the location of the potential uses within the new building, the potential prepared food shop or fast food restaurant use will not create any excessive noise, sounds, odors, lights, or other conditions that would impact any neighboring properties. Moreover, the closest residential properties range from 275 feet to 650 feet away from the space for the potential prepared food shop or fast food restaurant use. Therefore, the Applicant meets the requirement of § 733.7;

g) 733.8 - The use shall provide sufficient off-street parking, but not less than that required by § 2101.1, to accommodate the needs of patrons and employees. The proposed retail gross floor area yields an off-street parking requirement of 68 parking spaces. As shown on the Zoning Tabulations sheet included in the plans of record, the mixed-use building includes 79 off-street parking spaces for the retail and potential prepared food shop or fast food restaurant use this building. Therefore, the Applicant meets the requirement of § 733.8;

h) 733.9 - The use shall be located and designed so as to create no dangerous or other objectionable traffic conditions. The proposed mixed-use building has been located and designed so as to create no dangerous or other objectionable traffic conditions. Moreover, DDOT has submitted a report reviewing the overall development, and the Applicant has agreed to implement a number of the

mitigation measures identified in the DDOT report. Therefore, the Applicant meets the requirements of § 733.9;

i) 733.10 - There shall be adequate facilities to allow deliveries to be made and trash to be collected without obstructing public rights-of-way or unreasonably obstructing parking spaces, aisles, or driveways on the site. As shown on the plans in the record, the loading facilities in the mixed-use building are accessed from Private Street 1, which ensures that deliveries can be made and trash collected without obstructing public rights-of-way or unreasonably obstructing parking spaces, aisles, or driveways on the site. Thus, the Applicant meets the requirements of § 733.10;

j) 733.11 - The Board may impose conditions pertaining to design, screening, lighting, soundproofing, off-street parking spaces, signs, method and hours of trash collection, or any other matter necessary to protect adjacent or nearby property. The Commission finds that additional conditions regarding the potential prepared food shop or fast food restaurant use are not necessary in this case; and

k) 733.12 - An applicant for special exception under this section may request the Board to modify the conditions enumerated in §§ 733.2 through 733.4; provided that the general purposes and intent of this section are complied with. As described above, the Commission finds that the Applicant meets the special exception standards of § 733, and thus there is no need for the Commission to modify the conditions enumerated in § 733.2 through 733.4.

To permit more than one principal building on a single lot within 25 feet of a residence district.

47. Subsection 2517.1 of the Zoning Regulations permits two or more principal buildings or structures to be erected as a matter-of-right on a single subdivided lot that is not located in, or within 25 feet of, a residence district. The eastern portion of the PUD Site includes Square 5276, Lots 812, 813, and 23-121; Square 5272, Lot 51; Square 5273, Lot 67, and Square 5277, Lots 22-33 and 805. The Applicant will ultimately subdivide the eastern portion of the PUD Site into a single lot of record to be occupied by the large-format retailer building and the mixed-use building. Because the PUD Site is within 25 feet of a residence district, the Applicant must obtain a special exception pursuant to § 2516 to permit the two buildings to occupy the single lot contemplated.

48. The Commission finds that the Applicant complies with the applicable requirements of § 2516 as follows:

a) The PUD Site Is Located within 25 Feet of a Residence District (§ 2516.2). The PUD Site is currently zoned R-2 and R-5-A, and the Applicant is seeking to

rezone the PUD Site to the C-2-A Zone District. As shown on the Zoning Map included with the application, the PUD Site is located within 25 feet of a residence district;

b) The Applicant Has Filed Copies of All Required Landscaping, Grading, and Site Plans (§ 2516.3). The Applicant has submitted all of the plans required under § 2516.3 of the Zoning Regulations. As required under those sections, the plans of record include typical floor plans and elevations, landscaping and grading plans, and a site plan that illustrates all new rights-of-way within the project;

c) The Applicant Has Requested Variance Relief from the Building Height Requirement for the Mixed-Use Building in Order to Proceed with this Development (§ 2516.4). Subsection 2516.4 of the Zoning Regulations provides that the "number of principal buildings permitted by this section shall not be limited; provided, that the applicant for a permit to build submits satisfactory evidence that all the requirements of this chapter (such as use, height, bulk, open spaces around each building, and limitations on structures on alley lots pursuant to § 2507), and §§ 3202.2 and 3202.3 are met." (11 DCMR § 2516.4.) However, the Applicant is seeking flexibility from the Zoning Regulations, which permit a maximum building height of 65 feet, since a portion of the mixed-use building has a height of 67'-3" feet as measured to the top of the parapet. This additional height is not being used to increase the floor area or habitable space of the building. The area of increased parapet height occurs at the southeast corner of the building, which is the most prominent and dramatic architectural component of the building, and the length of the raised parapet area accounts for less than 12% of the building's perimeter;

d) The Commission finds that § 2516.5 is not applicable since the proposed large-format retail building and the mixed-use building will both have frontage on a public street;

e) The Proposed Development Complies with the Requirements of § 2516.6. Subsection 2516.6 of the Zoning Regulations provides that the Board shall require the following in providing for net density pursuant to § 2516.11:

(i) The area of land that forms a covenanted means of ingress or egress shall not be included in the area of any theoretical lot, or in any yard that is required by this title;

(ii) Notwithstanding any other provisions of this title, each means of vehicular ingress or egress to any principal building shall be twenty-five feet (25 ft.) in width, but need not be paved for its entire width;

(iii) If there are not at least two (2) entrances or exits from the means of ingress or egress, a turning area shall be provided with a diameter of not less than sixty feet (60 ft.); and

(iv) The requirements of paragraphs (b) and (c) of this subsection may be modified if the Board finds that a lesser width or diameter will be compatible with, and will not be likely to have an adverse effect on, the present character and future development of the neighborhood; provided, that the Board shall give specific consideration to the spacing of buildings and the availability of resident, guest, and service parking;

The Commission finds that the land devoted to the private roadways will not be included in calculating the area of any theoretical building site within the proposed development. Second, the vehicle entrances for the buildings will be at least 25 feet in width at all points. Moreover, as shown on the circulation diagrams included with the plans of record, there is sufficient circulation space for passenger vehicles, fire trucks, and trash/service vehicles. Therefore, the Commission is utilizing the authority granted pursuant to § 2516.6(d) to approve the site plan as proposed by the Applicant;

f) The Height of Each Building in the Proposed Development Has Been Measured from the Finished Grade at the Middle of the Front of the Building (§ 2516.7). The building height for each building to be located on a theoretical lot has been measured from the finished grade at the middle of the front of each proposed building. The large-format retail building has a building height of 40'-10" and the mixed-use building has a building height of 62'-9" to the top of the roof and 67'-3" to the top of the highest parapet. Both the large-format retail building and the mixed-use building front on East Capitol Street, which has a width of 80 feet, which would permit a building height of 100 feet under the 1910 Height Act. However, the Applicant is seeking flexibility from the Zoning Regulations, which permit a maximum building height of 65 feet, since a portion of the mixed-use building has a height of 67'-3" feet as measured to the top of the parapet. This additional height is not being used to increase the floor area or habitable space of the building. The area of increased parapet height occurs at the southeast corner of the building, which is the most prominent and dramatic architectural component of the building, and the length of the raised parapet area accounts for less than 12% of the building's perimeter;

g) The Proposed Development Will Comply with the Substantive Provisions of the Zoning Regulations and Will Have No Adverse Effects on the Present Character or Future Development of the Surrounding Neighborhood (§ 2516.9). With the exception of the specific areas of relief requested by the Applicant, the

Commission finds that the project will comply with all substantive provisions of the Zoning Regulations. In addition, the project will have no adverse effects on the present character or future development of the surrounding neighborhood. Overall, the project will significantly improve the existing area by virtue of the exceptional architectural design and the replacement of vacant parcels with new restaurant, retail, and residential uses that will increase the vitality of the neighborhood. In addition, the project's design carefully considers the nearby uses and accordingly, will have a minimal impact on the surrounding area. Moreover, the project will not have an unacceptable impact on traffic, will provide adequate parking for the proposed uses, and will add to the walkability and vitality of East Capitol Street. The project will introduce a new streetscape experience, while activating what is currently a dormant, under-utilized portion of East Capitol Street;

h) This Application Has Been Referred to the Office of Planning for Review and Is Consistent with the Requirements and Standards Set Forth in § 2516.10(a) through 2516.10(e). This application has been referred to OP and a number of other District agencies for review. The Commission finds that the Applicant has worked closely on the project with OP and DDOT. As discussed below, each of the considerations set forth in § 2516.10 provides further support for the application:

(i) The Relationship of the Proposed Development to the Overall Purpose and Intent of the Zoning Regulations and Other District Policies (§ 2516.10(a)). The project is consistent with the purpose and intent of the Zoning Regulations and Zoning Map and with a number of the policies and objectives set forth in the District's Comprehensive Plan as described in detail in the Applicant's submissions in this case and the OP reports:

(1) Public Safety Relating to Police and Fire Concerns (§ 2516.10(a)(1)). The Commission finds that the project will have no adverse impacts on public safety. In fact, the development of this vacant site is likely to increase public safety by establishing a stable mixed-use community on the PUD Site;

(2) The Environment Relating to Water Supply, Water Pollution, Soil Erosion, and Solid Waste Management (§ 2516.10(a)(2)). The Commission finds that the new water and sanitary sewer systems for the project will be constructed to D.C. Water ("DC Water") standards and specifications, and the proposed storm drainage and storm water management systems will be constructed to District Department of the Environment ("DDOE"), DDOT, and DC Water

standards and specifications. The private construction of this infrastructure by the Applicant will further Policy IN-6.1.3 of the Infrastructure Element of the District's Comprehensive Plan, which provides that "developers should contribute to the cost of extending utilities to the project site or upgrading existing utilities to the specifications necessary for their proposed project"; (10 DCMR § 1317.5.)

(3) Public Education (§ 2516.10(a)(3)). The PUD Site is located within close proximity to a number of public schools. Two public schools – the Evans Middle School and the Maya Angelou Charter School are located on East Capitol Street to the west of the PUD Site. Given the existing and projected student enrollment in the District's public school system, the Commission finds that the project is unlikely to impose an unreasonable burden on that system;

(4) Recreation (§ 353.3 and § 2516.10(a)(4)). The Commission finds that the PUD Site is located within reasonable proximity to a number of public recreation facilities. For example, the Watts Branch Park, which includes the Watts Branch Playground, primarily defines the north-northeastern edge of the PUD Site;

(5) Parking, Loading, and Traffic (§ 2516.10(a)(5) and § 2516.10 (c)). The Commission finds that the project will not have an unacceptable impact on traffic, will provide adequate parking for the proposed uses, and will add to the walkability and vitality of East Capitol Street, as indicated in the report submitted by the Applicant's traffic expert and the report submitted by DDOT in this case;

(6) Urban Design (§ 2516.10(a)(6)) and Site Planning Considerations (§ 2516.10 (b)). The Commission finds that the project has a number of urban design and architectural benefits, and will assist in the further development of East Capitol Street into an enhanced neighborhood center with high-quality restaurant, retail, and residential uses. The overall design and configuration of the project responds to its unique identity as a gateway to the District of Columbia from Maryland, creating a vibrant, urban experience for residents and visitors alike. A large, open plaza situated at the southeast corner of the PUD Site will frame a landmark piece of artwork signifying entry to the District, and will serve as a

gathering place for the many residents, guests, and retail patrons that the project will attract. This plaza also serves as the main entry point to the mixed-use building, and is ringed with retail spaces opening directly onto the plaza and East Capitol Street; and

(7) Historic Preservation and Visual Impacts on Adjacent Parkland (§ 2516.10(a)(7)). The PUD Site is currently vacant and is not located within any historic district. In addition, the proposed development will not have any visual impacts on the adjacent parkland;

i) Impact on Neighboring Properties (§ 2516.10 (d)). The project is not expected to have any adverse impact on the use or enjoyment of neighboring properties. The properties to north, south, east, and west will be separated from the project by significant distances, streets, and open space. Thus, the proposed development will not have any significant impact on other properties in the surrounding area;

j) Recommendations of District Agencies (§ 2516.10 (e)). The OP setdown report indicated that the proposed development is not inconsistent with the goals, objectives, and policies of the District of Columbia Comprehensive Plan. OP and DDOT also submitted final reports recommending approval of the applications;

k) Conditions Necessary to Protect the Overall Purpose and Intent of the Zoning Regulations (§ 2516.11). Subsection 2516.11 provides that the "Board may impose conditions with respect to the size and location of driveways; net density; height, design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations." (11 DCMR § 2516.11.) The Commission finds that additional conditions or safeguards are not necessary to protect the overall purpose and intent of the Zoning Regulations in this case; and

l) The Requested Special Exception Relief Will Be in Harmony with the General Purpose and Intent of the Zoning Regulations and Map and Will Not Tend to Affect Adversely the Use of Neighboring Property (§ 3104.1). The Commission finds that the proposed development is consistent with each of the general purposes described in § 6-641.02 of the D.C. Code and § 101 of the Zoning Regulations, as well as the Comprehensive Plan. The Future Land Use Map of the Comprehensive Plan designates the majority of the PUD Site for Low Density Commercial uses, and the corresponding zone districts identified in the Comprehensive Plan are C-1 and C-2-A. (10 DCMR § 224.13.) The proposed map amendment to C-2-A will allow the matter-of-right development of residential and commercial uses on the PUD Site and is consistent with the PUD

Site's designation on the Future Land Use Map. Moreover, the Generalized Policy Map designates the PUD Site within a Neighborhood Enhancement Area and as an Enhanced/New Neighborhood Center. The Applicant's proposal to rezone the PUD Site to C-2-A and to develop the PUD Site with a full-service large-format retail store, a mixed-use building with approximately 288 residential units (plus or minus 10%) and approximately 23,500 square feet of retail use, and a sit-down restaurant site is fully consistent with and will help to implement the policies for the PUD Site as both a Neighborhood Enhancement Area and an Enhanced/New Neighborhood Center as specified in the Generalized Policy Map.

Development Flexibility Requested

49. Phasing of Development. The Applicant intends to move forward with the development and construction of the project in multiple phases due to market conditions. The Applicant would like to move forward with as many of the project components as quickly as possible. Accordingly, the Commission finds that the following phasing plan provides flexibility to address market conditions and is appropriate for the project:

    a) Phase 1- Phase 1 includes the building pad for the large-format retail building, all associated infrastructure work including underground utilities, streets (stone base and asphalt binder course), overhead electric poles and lines, the stormwater management basin, retaining walls, curbs, and vertical construction of the large-format retail building. The Applicant anticipates filing a building permit for Phase 1 no later than December 1, 2015, and starting construction no later than December 1, 2016; and

    b) Phase 2- Phase 2 includes construction of the mixed-use building, restaurant, and all associated sidewalks, parking lots, the urban plaza, and associated hardscape and landscaping features. The Applicant will maintain this portion of the PUD Site as seeded, balanced, and secured until construction of the Phase 2 components commence. The Applicant anticipates filing a building permit for Phase 2 no later than December 1, 2016, and starting construction no later than December 1, 2017.

50. The Applicant also requests flexibility in the following other areas:

    a) To be able to provide a range in the number of residential units and the corresponding residential floor area of plus or minus 10% from the 288 depicted on the Plans;

    b) To reallocate or reconfigure the number of parking spaces provided, so long as the total amount of parking provided meets the applicable Zoning Regulations;

c) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;

d) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;

e) To vary the final selection of landscaping materials utilized, based on availability and suitability at the time of construction; and

f) To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

51. Restaurant Design Flexibility. The Applicant is requesting flexibility to permit the restaurant operator to make minor adjustments to the approved plans, without the need to return to the Commission for approval, provided that the adjustments do not materially differ from the approved plans and the overall design of the development, and are consistent with the following guidelines:

a) *Building Envelope* - The building footprint shown on plans include 8,400 square feet of gross floor area, whereas, restaurant operators can range in size from as small as 4,000 to as large as 9,000 square feet. Therefore, the Applicant requested flexibilty to reduce the building envelope by reducing the building's length along East Capitol Street or 58th Street;

b) *Building Materials* - The plans include a range of materials to ensure that the overall development has a consistent palette. The Applicant anticipates that the restaurant operator might desire flexibility to adjust the façade treatments within the range of materials and colors as shown on the plans. The Applicant has provided a list of materials and color palettes utilized in the entire development to aid the future tenant in branding its restaurant to be more in line with its corporate requirements; and

c) *Signage* - The approved plans identify the general location, size, and parameters of the signage. Most restaurant operators have specific signage packages. Therefore, the Applicant is requesting flexibility such that the final signage can be

located in the general areas identifed on the plans. All signage will comply with the District's sign regulations.

52. The Commission determined that although the Applicant cannot make the proposed changes without coming back to the Commission, changes within the scope described above could be treated as a minor modification by the Commission in the future.

Public Benefits and Amenities

53. *Architecture and Landscaping*. The project will assist in the further development of East Capitol Street into an enhanced neighborhood center with high-quality restaurant, retail, residential, and office uses. The configuration of the project responds to its unique identity as a gateway to the District of Columbia from Maryland, creating a vibrant, urban experience for residents and visitors alike. A large, open plaza situated at the southeast corner of the PUD Site will frame a landmark piece of artwork signifying entry to the District, and will serve as a gathering place for the many residents, guests, and retail patrons that the project will attract. This plaza also serves as the main entry point to the mixed-use building, and is ringed with retail spaces opening directly onto the plaza and East Capitol Street.

54. As the first visible component of the project when entering the District from the west, the mixed-use building acknowledges its status through the incorporation of rich materials, generous windows, and sensitive massing that maximizes views for residents and responds to its urban context. The mixed-use building has also been designed in a manner that will help to create a continuous and active urban façade spanning several blocks along the north side of East Capitol Street. The PUD Site offers a number of additional amenities to residents and visitors, including, for example, a generously landscaped pedestrian promenade situated between the large-format retailer and the mixed-use building.

55. The project is further activated by a restaurant at the western portion of the PUD Site, which completes the continuous retail façade along East Capitol Street. The restaurant building is oriented to face East Capitol Street and is situated as close to the sidewalk as possible in order to fully engage the urban realm. The building's massing and material palette complement those of the other buildings onsite, and a generous, landscaped outdoor seating area further integrates the building into the surrounding urban fabric.

56. *Transportation Features (§ 2403.9(c)*. The proposed development will include a number of elements designed to promote effective and safe vehicular and pedestrian access, transportation demand management ("TDM") measures, and connections to public transit services. The project includes a total of 126 bicycle spaces located throughout the PUD

Site. The Applicant has committed to implementing the following transportation demand management measures:

- The Applicant will maintain or coordinate relocation of any existing bus stops during construction of the development;

- The Applicant will comply with zoning requirements to provide bicycle parking/storage facilities. This includes secure parking located in the garage for retail employees and long-term storage for residents;

- The Applicant will unbundle all parking costs from the cost of lease or purchase of residential units. Parking costs will be set at no less than the charges of the lowest fee garage located within one-quarter mile;

- The Applicant will post all TDM commitments on-line, publicize availability, and allow the public to see what commitments have been promised;

- The Applicant will identify separate TDM Leaders for the mixed-use and large-format retail building portions of the site (for planning, construction, and operations) and provide this information to DDOT and Zoning Enforcement;

- The Applicant will install a transportation kiosk in the residential lobbies, which will contain printed materials related to local transportation alternatives and will maintain a stock of materials at all times;

- The Applicant will provide website links to CommuterConnections.com and goDCgo.com on developer and property management websites;

- The Applicant will dedicate two spaces on site for car-sharing services to use with right of first refusal;

- The Applicant will provide reserved spaces for carpools and vanpools that are conveniently located with respect to the elevators serving the buildings;

- The Applicant will provide an on-site business center available to residents, which will provide access to copier, fax, and internet services;

- The large-format retail building will provide a Capital Bikeshare station and ongoing funding for the program;

- The Applicant will also provide a one-year Capital Bikeshare membership for each new resident;

- The Applicant agrees to host transportation mobility fair six months after the development has opened. The transportation fair will be advertised to all retail workers and residents. The onsite TDM coordinator will work with DDOT's goDCgo team to organize representatives that are experts in the non-auto transportation options that serve the site. Each person that attends the event will be educated on the various options and representatives will work with attendees to help them tailor the use of non-auto options to their specific transportation needs. Based on the turnout of the transportation fair and feedback gleaned by the onsite TDM coordinator, a determination will be made if the event will be repeated the following year; and

- Two years after the project is 90% occupied, the Applicant will perform a monitoring study of site trip generation. The site trips will be compared to the projected trip generation contained in this report. If the measured trip generation exceeds the projections, the Applicant will supplement the above TDM measures with additional ones, such as those from in *Incorporation of Transportation Demand Management (TDM) into the Development Review Process* suggested for a project of this size not listed above.

57. *Employment and Training Opportunities (§ 2403.9(e))*. Expanding employment opportunities for local residents is a priority of the Applicant. Therefore, the Applicant will be entering into a First Source Employment Agreement with the Department of Employment Services.

58. *Housing and Affordable Housing (Section 2403.9(f))*. The single greatest benefit to the area, and the city as a whole, is the creation of new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan and the Mayor's housing initiative. The mixed-use component of the project includes 288 residential units (plus or minus 10%). As indicated in the Applicant's Prehearing Submission, the residential units will be financed through a Low Income Housing Tax Credit ("LIHTC") financing offering and will therefore be requesting the Zoning Administrator to grant an exemption from the Inclusionary Zoning requirements pursuant to § 2602.3(f) and 2602.7 of the Zoning Regulations. All of the residential gross floor area in the mixed-use building will be designated as affordable housing units for households earning up to 60% of the Area Median Income. The affordable controls will remain in place as to 90% of the residential gross floor area for 15 years. Pursuant to § 2602.7, the affordable units comprising the remaining 10% of residential gross floor area will remain affordable to households earning up to 60% of the Area Median Income for as long as the project exists. This substantially exceeds the amount of affordable housing that would be required under the

Inclusionary Zoning requirements set-forth in § 2603.1 of the Zoning Regulations. Under the LIHTC program, the Applicant anticipates that monthly rents for residential units in the project will be $1,129 for studio/efficiency units, $1,209 for one-bedroom units, and $1,452 for two-bedroom units based upon the rates established by the D.C. Department of Housing and Community Development. (See http://dhcd.dc.gov/service/home-and-lihtc-rent-program-limits.) These rates will be dictated by the LIHTC program and the market, and thus may change from time to time. Rental rates and per square foot rents are below DC averages in Ward 7 and the 20019 zip code. Generally, current rental rates in Ward 7 and the 20019 zip code average approximately $925 per month for a one-bedroom apartment (ranging between $775 and $1,100) and $1,170 per month for a two-bedroom apartment (ranging between $900 and $1,200). These rental rates will help to continue to support property values in the existing neighborhood.

59. *Environmental Benefits (§ 2403.9(h))*. The project exhibits many characteristics of urban design and green building practices, and demonstrates the Applicant's commitment to utilizing innovative sustainable design practices. Specifically, the Applicant has focused on streetscape improvements and enhancements to the public space, vehicular and pedestrian improvements, TDM measures, environmental benefits, the reduction of retaining walls, and the provision of special features such as rain gardens, linear bioswales along streetscapes, native vegetation, and porous pavers where feasible. The project will include approximately 114,900 square feet of green space, which is approximately 22% of the PUD Site's area. In addition, the project will include approximately 39,000 square feet of permeable pavers, which is approximately 7.5% of the PUD Site's area. Overall, approximately 30% of the PUD Site is permeable. The following is a summary of the sustainable features incorporated into the overall PUD Site's design:

a) Restaurant Parcel:

- Porous grass pavers covering 5,000 square feet (or 20%) of the restaurant's surface parking lot, and a total of 12,970 square feet of the restaurant site is green space;

- Large bioswales along the East Capitol Street frontage which capture 100% of the parking lot and roof run off from the restaurant site;

- Landscaped islands throughout the parking lot to further capture runoff and provide added canopy coverage to the site;

- Landscape perimeter planting providing a visual buffer to the north and west of the site; and

- Active corner plaza engaging the East Capitol Street and 58th Street intersection with outdoor seating, planting, decorative porous paving, and lighting;

b) Large-Format Retail:

- Native planting areas and decorative porous paving along the East Capitol Street frontage consistent with the other parcels along East Capitol Street;

- Large bio-retention areas along the 58th Street frontage and at the northeast corner of the site, and porous pavers along the East Capitol Street frontage, will capture runoff from the roof and site, capturing approximately 85% of the site's run-off;

- Capital Bike-Share station provided on parcel site; and

- Street trees along all surrounding streets (58th Street, Private Street 1, and Private Street 2).

c) Mixed-Use Building:

- Signature gateway plaza at southeast corner to mark the entrance into the site and symbolically into the City with paving and planting consistent with the other parcels. The plaza design further softens the space with enlarged planning areas and additional shade trees;

- Bio-retention areas throughout the plaza, along the frontages of the building, at the northeast corner of the site, and porous pavers along the East Capitol Street frontage will capture approximately 85% of the runoff from the roof and site;

- Attractive interior courtyard amenity with over 50% green area;

- Outdoor seating with shade for residents, retail patrons, and the general public; and

- The building has been designed to achieve a minimum of 52 points as shown on the theoretical LEED checklist included in the record which is the equivalent of LEED Silver designation.

Office of Planning Reports

60. OP reviewed the Applicant's proposal to rezone the PUD Site to the C-2-A District and submitted reports dated March 29, 2013 and June 10, 2013. (Ex. 14, 31.) OP indicated that it is supportive of the project, and the proposed map amendment is not inconsistent with the goals, objectives, and policies of the Comprehensive Plan.

61. By report dated June 10, 2013, OP stated that it is supportive of the development and indicated that the proposal is not inconsistent with Comprehensive Plan which recommends the site for Low Density Commercial mixed use and specifically for a Neighborhood Commercial Center. OP recommended that the Commission approve the proposal, subject to the submission of additional information from the Applicant. OP stated at the public hearing that the Applicant submitted the requested information. OP indicated that the C-2-A Zone District is an appropriate designation for this PUD Site, as it intended to provide for facilities for shopping and business needs, housing, and mixed uses for areas outside of the central core. OP further indicated that the proposed C-2-A zone is not inconsistent with the Comprehensive Plan, which recommends low density commercial for the majority of the site. OP included a detailed analysis of the elements of the Comprehensive Plan, and concluded that the proposed map amendment and the proposed development fulfills many of the Comprehensive Plan's objectives and policies listed in the Land Use Element, Housing Element, Transportation Element, Environment Element, Economic Development Element, Urban Design Element, and the Far Northeast & Southeast Area Element. OP, therefore, recommend approval of the PUD and the map amendment.

DDOT Report

62. On June 10, 2013, DDOT submitted a report to the Commission stating that it supported the application provided that the Applicant incorporate the following conditions: (1) extend the median on East Capitol Street; (2) review and update if necessary the signal software and hardware on 58th Street; (3) construct a direct path from the Marvin Gaye Trail to the site; (4) provide pedestrian safety amenities at the intersection of East Capitol and Southern Avenue; (5) relocate existing bus stops on East Capitol Street; (6) install a real-time transit information screen at the residential lobby entrance; and (7) provide required bicycle parking ratios. (Ex. 32.)

63. DDOT requested at the public hearing that the Applicant continue to work with DDOT to: (1) explore the feasibility of constructing a direct connection to the Marvin Gaye Trail connecting to the PUD Site, and (2) discuss DDOT's recommendation that the Applicant construct pedestrian amenities at the intersection of East Capitol Street and Southern Avenue.

64. The Applicant had extensive discussions with DDOT after the public hearing. Regarding the trail connection, DDOT and the Applicant have determined that constructing a direct connection to the Marvin Gaye Trail connecting to the PUD Site currently is not feasible since the Applicant does not own or otherwise control the land area between the Marvin Gaye Trail and the northern boundary of the PUD Site, and since there currently is no pedestrian bridge providing access from the trail across the Watts Branch. Thus, there is currently no practical way for a connection to be made from the Marvin Gaye Trail to the PUD Site. Nonetheless, the Applicant has begun discussions with the D.C. Department of Parks and Recreation ("DPR") and will be working with DPR during the permitting process for the project to potentially grade along the easternmost boundary of the PUD site in an effort to eliminate the proposed retaining wall along the eastern boundary of the PUD Site. If the Applicant and DPR reach an agreement allowing the Applicant to grade along the eastern property line, then the Applicant will develop the grading on DPR's property in a manner that will enable the District to construct a connection from the Marvin Gaye Trail down to East Capitol Street in the future. With respect to DDOT's recommendation that the Applicant construct pedestrian safety amenities at the intersection of East Capitol Street and Southern Avenue, the Applicant agreed with DDOT on a scope of the proposed improvements, which will include the Applicant completing the following work: (a) excavation and installation of a concrete island/sidewalk extension of approximately 1,360 square feet along the northwest corner of East Capitol Street and Southern Avenue, and (b) modifying the existing crosswalks on the westbound lane of East Capitol Street that lead to the northwest corner of the intersection at East Capitol Street and Southern Avenue.

Organizations in Opposition

65. At the public hearing on June 20, 2013, Chris Otten testified that he was testifying on behalf of Create for Community, Washington D.C. Mr. Otten also submitted a statement to the Commission. (Ex. 44.) Mr. Otten indicated he was concerned that the project's affordable housing component is not inclusive because it is targeted to people making more than $50,000 a year. Mr. Otten also stated that large-format retailer had negative employment practices and negative social implications.

66. Michael Kroopnick, of the law office of G. Macy Nelson, LLC, testified at the hearing, and submitted a statement and letter to the Commission stating that he was testified on behalf of his law firm and on behalf of Forward 7 and the Joint Labor and Management Fund ("JLM"). (Ex. 41, 46.) Mr. Kroopnick stated that Forward 7 and JLM opposed the application because: (1) the PUD application does not include an annotated table of the public benefits and amenities; (2) the Applicant has made a number of changes to the development scheme through the PUD process and has not identified the proposed restaurant or retail operators; (3) the application does not include an analysis of how the project meets the applicable special exception standards; (4) the proposed public benefits

are not significantly greater than that which would stem from development permitted under existing zoning; (5) the project does not include adequate affordable housing; (6) the application fails to demonstrate that the project will substantially advance the major themes and other policies and objectives of any of the elements of the Comprehensive Plan; (7) the project does not employ efficient and economical land utilization; and (8) the project fails to implement effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts. (Ex. 41, 46.)

67. The Commission has carefully reviewed the arguments raised by the Organizations in Opposition, and the Commission finds that the Applicant has met all of the applicable standards for approval of the applications, as follows:

a) Identification of Public Benefits and Amenities. The Commission finds that the Applicant has submitted, and the record contains, a clear description of the public benefits and amenities generated by this project, as identified in Exhibits 13, 14, 31, 40, 52, and 53 in the record of this case, and as described in this Order;

b) Revisions to Plans and Identification of Restaurant or Retail Operators. The Commission finds that the project's plans have been revised throughout the PUD process, as is often the case, to address comments raised by the Commission, OP, DDOT, and other stakeholders throughout the process, and to further improve the design of the project. The Commission further finds that the Zoning Regulations do not require applicants to identify the restaurant or retail operators during the PUD process. Thus, the Commission concludes that the Applicant's changes to the development scheme and not identifying the proposed restaurant or retail operators are not a basis to deny the applications;

c) Analysis of Compliance with Applicable Special Exception Standards. The Commission finds that the Applicant has submitted a detailed analysis of how the project complies with the applicable special exception standards, as identified in Exhibits 17 and 40 in the record of this case, and as described in this Order;

d) Affordable Housing. The Commission finds that the project includes a substantial amount of affordable housing. The mixed-use component of the project includes 288 residential units (plus or minus 10%). All of the residential gross floor area in the mixed-use building will be designated as affordable housing units for households earning up to 60% of the Area Median Income. The affordable controls will remain in place as to 90% of the residential gross floor area for 15 years and the remaining 10% of residential gross floor area will remain affordable to households earning up to 60% of the Area Median Income for as long as the project exists. This substantially exceeds the amount of affordable housing that

would be required under the Inclusionary Zoning requirements set-forth in § 2603.1 of the Zoning Regulations. The Commission further finds that the Applicant is appropriately balancing the goals of providing affordable housing, but respecting the community's desire that the proposed rental rates will help to continue to support property values in the existing neighborhood; and

e) Compliance with PUD and Map Amendment Evaluation Standards. The Commission finds that the record in this case clearly establishes that the Applicant meets the PUD and map amendment standards, that the project will result in a number of important public benefits and amenities, and the Applicant has taken a number of steps to ensure that the project will not have any unmitigated impacts, as indicated by the Applicant's Exhibits 13, 17, 23, 37, 40, and 45 in the record; the OP and DDOT reports (Ex. 14, 31, 32) and testimony at the public hearing on the applications; the multiple letters in support of the project; and as described in this Order. The Commission further finds that the concerns raised regarding the large-format retailer's employment and social implications are beyond the jurisdiction of the Commission.

Compliance with PUD Standards

68. The Commission finds that the project advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan.

69. The purposes of the Comprehensive Plan are six-fold: (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. (D.C. Official Code §1-245(b) (¶ 1-301.62).)

70. The Commission finds that the project significantly advances these purposes by promoting the social, physical and economic development of the District through the provision of a high-quality mixed-use development that will increase the housing supply, add new retail uses, create additional employment opportunities, and generate significant tax revenues for the District.

71. The Commission also finds that the project is consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful

neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities.

72. The Commission finds that the proposed PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as follows:

a) *Managing Growth and Change*. The guiding principles of this element are focused on ensuring that the benefits and opportunities of living in the District are equally available to everyone in the city. The project is fully consistent with a number of the goals set forth in this element. Specifically, the project will help to attract a diverse population with the inclusion of a mix of housing types for households of different incomes. (§ 217.2 and 217.3.) The Applicant's proposal to develop a significant amount of residential and retail use is also consistent with the Comprehensive Plan's acknowledgement that the growth of both residential and non-residential uses is critical, particularly since non-residential growth benefits residents by creating jobs and opportunities for less affluent households to increase their income. (§ 217.4.) In addition, the Commission further finds that the rest of the neighborhood and the overall urban fabric benefits by developing a vibrant mixed-use development on East Capitol Street; (§ 217.5 and 217.6.)

b) *Creating Successful Neighborhoods*. The guiding principles for creating successful neighborhoods include both improving the residential character of neighborhoods and encouraging commercial uses that contribute to the neighborhood's character and make communities more livable. (§ 218.1 and 218.2.) In addition, the production of new affordable housing is essential to the success of neighborhoods. (§ 218.3.) Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. (§ 218.8.) The project furthers each of these guiding principles with the construction of market-rate and affordable housing, as well as commercial uses that will create additional housing, retail, and employment opportunities. In addition, as part of the PUD process, the Applicant worked with ANCs 7C and 7E, the Capitol View Civic Association, Northeast Boundaries, and the Ward 7 Councilmember to ensure that the development provides a positive impact to the immediate neighborhood;

c) *Increasing Access to Education and Employment.* The Increasing Access to Education and Employment element includes a number of policy goals focused on increasing economic activity in the District, including increasing access to jobs by

District residents (§ 219.1); encouraging a broad spectrum of private and public growth (§ 219.2); supporting land development policies that create job opportunities for District residents with varied job skills (§ 219.6); and increasing the amount of shopping and services for many District neighborhoods. (§ 219.9.) The project is fully consistent with these goals since the proposed retail area will help to attract new jobs to the District, as well as to this specific neighborhood;

d) *Connecting the City*. The project will help to implement a number of the guiding principles of this element. The project includes streetscape improvements to provide improved mobility and circulation through the project, as well as the overall neighborhood. (§ 220.2.) In addition, the access points for the required parking and loading facilities have been designed to appropriately balance the needs of pedestrians, bicyclists, transit users, autos, and delivery trucks as well as the needs of residents and others to move around and through the city. *Id.* Moreover, the project and streetscape improvements along East Capitol Street will also help to reinforce and improve this portion of the city; and (§ 220.3.)

e) *Building Green and Healthy Communities*. The proposed development is fully consistent with the guiding principles of the building green and healthy communities element since the project's proposed landscaping plan will help to increase the District's tree cover, and the proposed development will minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (§ 221.2 and 221.3.) In addition, the project, which includes LEED elements, will also help to facilitate pedestrian and bicycle travel.

73. The PUD Site is located within the Capitol View/Northeast Boundary Policy Focus Area of the Far Northeast & Southeast Area Element of the Comprehensive Plan. As indicated in the Comprehensive Plan:

- Many residents in this area must travel long distances for shopping, education, and basic services; (10 DCMR § 1700.4.)

- The area needs a variety of new housing choices and more density is appropriate on land within one-quarter mile of the Capitol Heights Metro station; and (10 DCMR § 1707.2(b) and § 1713.2.)

- The neighborhood is underserved by retail stores and services, including the "basics" such as sit-down restaurants, banks, hardware stores, drug stores, and movie theaters. (10 DCMR § 1707.2(c).)

Moreover, Policy FNS-1.1.2: Development of New Housing, calls for encouraging 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. (§ 1708.3.) In addition, Policy FNS-2.3.1: Northeast Boundary Neighborhood, recommends leveraging the development of the Capitol Gateway Estates PUD to achieve additional reinvestment in the Northeast Boundary neighborhood, particularly the rehabilitation of existing housing and the development of new mixed-income family housing on vacant lots. (§ 1713.4.)

74. The Commission finds that the project is consistent with and will help to address and implement a number of the policy goals identified in the Far Northeast & Southeast Area Element since the development will include a full-service large-format retail store which includes a much desired grocery component that will offer fresh produce; a mixed-use building with approximately 288 residential units (plus or minus 10%) and approximately 23,500 square feet of retail use; a 8,400 square foot sit-down restaurant site; and new streetscape improvements that will help to activate this portion of the East Capitol Street corridor.

75. The Commission also finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:

a) *Land Use Element.* For the reasons discussed above, the project supports the following policies of the Land Use Element:

(i) Policy LU-1.2.2: Mix of Uses on Large Sites. The project, which includes restaurant, residential, retail, and office uses on a large site, is consistent and compatible with adjacent uses and will provide a number of benefits to the immediate neighborhood and to the city as a whole. In addition, as discussed above, the proposed mix of uses on the PUD Site is consistent with the Comprehensive Plan Future Land Use Map's designation of the PUD Site;

(ii) Policy LU-1.3: Transit-Oriented and Corridor Development. The PUD Site is steps from the Capitol Heights Metrorail station which is to the east of the site. Further, Metrobus routes 96, 97 & U8 (DC buses) and A12 & A14 (serving DC and Maryland) operate along East Capitol Street and Southern Avenue (Blue Line). The project includes restaurant, residential, retail, and office uses, as well as a great design, all of which will help to increase the vitality of this portion of East Capitol Street. In addition, the project is consistent with the following principles:

- A preference for mixed residential and commercial uses rather than single-purpose uses, particularly a preference for housing above ground-floor retail uses;

- A preference for diverse housing types, including affordable units; and

- A priority on attractive, pedestrian-friendly design;

(iii) Policy LU-1.3.4: Design to Encourage Transit Use. The project has been designed to encourage transit use and helps to enhance the safety, comfort, and convenience of passengers walking to local buses along East Capitol Street since the project incorporates streetscape improvements, including lighting and landscaping, and includes ground-floor retail uses that will activate and animate the street frontages;

(iv) Policy LU-1.4.1: Infill Development. The project is consistent with the goal of encouraging infill development on vacant land within the city, particularly in areas where there are vacant or underutilized lots that create gaps in the urban fabric and detract from the character of a commercial or residential street. The development complements the established character of the area and does not create sharp changes in the physical development pattern;

(v) Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods. In designing the project, and consistent with this policy element, the project architect has sought to balance the housing supply in the area and expand neighborhood commerce with the parallel goals of protecting the neighborhood character, and restoring the environment;

(vi) Policy LU-2.2.4: Neighborhood Beautification. Policy LU-2.2.4 encourages projects to improve the visual quality of the District's neighborhoods. As shown on the plans included in the record, the project includes a number of neighborhood beautification elements, such as landscaping and tree planting. Moreover, development of the PUD Site will be an improvement to the current condition with the addition of new, well-designed buildings. In addition, the proposed uses will help activate the street level of the project and, importantly, remove several large vacant lots;

(vii) Policy LU-2.3.2: Mitigation of Commercial Development Impacts. The project has been designed so that it does not result in unreasonable or

unexpected traffic, parking, litter, view obstruction, odor, noise, or vibration impacts on surrounding residential areas; and

(viii) Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods. In designing the project, and consistent with this policy element, the project architect has sought to balance the housing supply in the area and expand neighborhood commerce with the parallel goals of protecting the neighborhood character and restoring the environment.

b) *Transportation Element*. The PUD Site is located on East Capitol Street which is a major transit corridor. Thus, in light of its location, the proposed project is uniquely situated to help further several policies and actions of the Transportation Element of the Comprehensive Plan, including:

(i) Policy T-1.1.4: Transit-Oriented Development. The project includes various transportation improvements, including the construction of new mixed-uses along a major transportation corridor, bicycle parking and storage areas, and sidewalk improvements;

(ii) Policy T-2.3.1: Better Integration of Bicycle and Pedestrian Planning. As shown on the plans included in the record, the project architect has carefully considered and integrated bicycle and pedestrian planning and safety considerations in the development of the project; and

(iii) Action T-2.3-A: Bicycle Facilities. This element encourages new developments to include bicycle facilities. The Applicant proposes to include secure bicycle parking and bike racks as amenities within the development that accommodate and encourage bicycle use. Specifically, the Applicant will be providing a total of 126 bicycle parking spaces located throughout the project;

c) *Housing Element*. The overarching goal of the Housing Element is to "[d]evelop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia." (10 DCMR § 501.1.) The Commission finds that the project will help achieve this goal by advancing the following policies:

(i) Policy H-1.1.1: Private Sector Support. The project helps to meet the needs of present and future District residents at locations consistent with District land use policies and objectives. Specifically, the project will contain approximately 278,086 square feet of gross floor area devoted to residential uses, plus or minus 10%, which represents a substantial contribution to the District's housing supply. The provision of new

housing at this particular location, moreover, is fully consistent with the District's land use policies; and

(ii) Policy H-1.1.4: Mixed Use Development. The project is consistent with the goals of promoting mixed use development, including housing on commercially zoned land, particularly in neighborhood commercial centers. This project represents exactly the type of mixed-use development contemplated by Policy H-1.1.4.

d) *Environmental Protection Element*. The Environmental Protection Element addresses the protection, restoration, and management of the District's land, air, water, energy, and biologic resources. This element provides policies and actions on important issues such as energy conservation and air quality, and specific policies include the following:

(i) Policy E-1.1.1: Street Tree Planting and Maintenance - encourages the planting and maintenance of street trees in all parts of the city;

(ii) Policy E-1.1.3: Landscaping - encourages 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;

(iii) Policy E-2.2.1: Energy Efficiency - promotes the efficient use of energy, additional use of renewable energy, and a reduction of unnecessary energy expenses through mixed-use and shared parking strategies to reduce unnecessary construction of parking facilities; and

(iv) Policy E-3.1.3: Green Engineering - has a stated goal of promoting green engineering practices for water and wastewater systems.

As discussed in both the Environmental Benefits and Building Green and Healthy Communities sections of this order, the Commission finds that the project includes street tree planting and maintenance, landscaping, energy efficiency, methods to reduce stormwater runoff, and green engineering practices, and is therefore fully consistent with the Environmental Protection Element.

e) *Economic Development Element*. The Economic Development Element of the Comprehensive Plan indicates that the addition of 125,000 jobs during the next 20 years will create the demand for a number of uses, including real use, in a variety of settings with a variety of building types. (§ 706.1.) The Economic Development Element also includes a number of policy recommendations regarding the promotion of retail development, including the following:

(i) Policy ED-2.2.3: Neighborhood Shopping. The project is consistent with this principle since the development includes the creation of additional shopping opportunities in a neighborhood commercial district that will help to better meet the demand for basic goods and services. In addition, the proposed development of appropriately-scaled retail development on the PUD Site will help to create new and unique shopping experiences; and (§ 708.7.)

(ii) Policy ED-2.2.5: Business Mix. The Applicant intends to market the proposed retail areas to a mix of nationally recognized chains as well as locally based chains and smaller specialty stores, which will help to reinforce existing and encourage new retail districts in the immediate neighborhood and help to improve the mix of goods and services available to residents; (§ 708.9.)

f) *Urban Design Element*. The goal of the Comprehensive Plan's Urban Design Element is to "[e]nhance the beauty and livability of the city by protecting its historic design legacy, reinforcing the identify of its neighborhoods, harmoniously integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and security of streets and public spaces." (10 DCMR § 901.1.) In keeping with this objective, the Commission finds that the Applicant has gone to great lengths to integrate the proposed construction with the character of the surrounding neighborhood. For example, consistent with Policy UD-2.1.3, the project incorporates variations in height, massing, and architectural quality to ensure that the project respects the scale of adjacent residential neighborhoods. (§ 909.10.) The architects have also incorporated greater architectural detailing at the ground-floor retail levels to help improve the visual image of the streetscape. (§.909.12.) In addition, the project includes attractive, visually interesting and well-designed building facades that eschew monolithic or box-like forms, or long blank walls which detract from the human quality of the street. See Policy UD-2.2.5, §310.12. Also, the Applicant has provided significant setbacks along East Capitol Street.

Zoning Map Amendment Application

76. The PUD site is currently zoned R-2 and R-5-A. R-2 is a low-density single family residential zone and R-5-A is a low-density apartment house zone.

77. The Future Land Use Map of the Comprehensive Plan designates the majority of the PUD site for Low Density Commercial uses, and the corresponding zone districts identified in the Comprehensive Plan are C-1 and C-2-A. (10 DCMR § 224.13.)

78. The Generalized Policy Map designates the PUD Site within a Neighborhood Enhancement Area and as an Enhanced/New Neighborhood Center. The Generalized Policy Map also designated the PUD Site within an Enhanced/New Neighborhood Center Area. The Applicant's proposal to rezone the PUD Site to C-2-A and to develop the PUD Site with a full-service large-format retailer store, a mixed-use building with approximately 288 residential units (plus or minus 10%) and approximately 23,500 square feet of retail use, a sit-down restaurant site is fully consistent with and will help to implement the policies for the PUD Site as both a Neighborhood Enhancement Area and an Enhanced/New Neighborhood Center as specified in the Generalized Policy Map.

79. The Commission finds that the proposed map amendment to C-2-A will allow the matter-of-right development of residential and commercial uses on the PUD Site, and is consistent with the PUD Site's designation on the Future Land Use Map. The C-2-A Zone District is a moderate density commercial zone designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core. (11 DCMR § 720.2.) The C-2-A Zone District is appropriate in this location near the Capital Heights Metrorail Station and the surrounding low- and medium-density residential uses. The C-2-A Zone District permits a maximum height of 50 feet, with no limit on the number of stories, and a maximum FAR of 2.5. (11 DCMR § 770.1, 770.2.) Under the PUD provisions, a maximum height of 65 feet with no limit on the number of stories, and a maximum FAR of 3.0, all of which may be devoted to residential use, but not more than 2.0 of which may be devoted to non-residential uses. (11 DCMR §§ 2602.1, 2604.1.)

80. Based upon the testimony and evidence presented, as well as the OP reports, the Commission finds that the proposed rezoning is consistent with numerous elements of the Comprehensive Plan Amendment Act of 2006 (D.C. Law 16-300, March 8, 2007), as amended by the Comprehensive Plan Amendment Act of 2010 (D.C. Law 18-361, April 8, 2011), as described above in this order. The Commission also finds that the proposed map amendment would create favorable conditions for the District and satisfies each of the statutory standards applicable to map amendments.

ANC 7C Report

81. ANC 7C submitted a report dated July 18, 2013. (Ex. 48.) The report indicated that it voted to oppose the Application, and expressed the following issues and concerns:

    1. The application does not meet the PUD evaluation standards with respect to public benefits and amenities because the only public benefit of the project is the proposed restaurant;

2. The proposed affordable housing should not be treated as an amenity because the anticipated rental rates exceed existing rental rates in the area;

3. The project is inconsistent with the Comprehensive Plan because it conflicts with Policy FNS-2.3.1 which "precludes, "Capital Gateway should generate additional development within the community"; and

4. The large format retail component of the project does not include an effective hiring policy for ex-offenders.

82. The Applicant submitted a response to the ANC report on July 23, 2013. (Ex. 49.) The Applicant responded to the ANC's issues and concerns as follows:

a) The project will result in a number of public benefits and amenities, in addition to the proposed restaurant, as described in detail in the OP report recommending approval of the application, and that these benefits and amenities are sufficient to satisfy the PUD requirements of Chapter 24 of the Zoning Regulations;

b) The affordable housing component of the project exceeds the amount required by the Zoning Regulations under existing matter-of-right zoning and thus counts as a public benefit or the project;

c) Policy-FNS-2.3.1 recommends leveraging the development of the Capitol Gateway Estates PUD to achieve additional reinvestment in the Northeast Boundary neighborhood, including the development of new housing. The project is consistent with this policy because it will promote reinvestment in the neighborhood by delivering a high-quality development that includes a large-format retail store, a mixed-use building with approximately 288 residential units and approximately 23,500 square feet of retail space, a 8,400 square foot restaurant site, and new streetscape improvements that will help to activate this portion of the East Capitol Street corridor; and

d) All retailers within the development will comply with all applicable local and federal employment laws.

83. With respect to the ANC's issues and concerns, the Commission finds as follows:

a) As discussed above, the project contains public benefits in several of the categories established by the PUD regulations, in addition to the restaurant. These benefits justify approving the PUD application;

b) The affordable housing included in the project exceeds the amount of affordable housing required by the existing matter-of-right zoning and therefore counts as a benefit;

c) The project complies with the Comprehensive Plan as a whole, and with FNS-2.3.1; and

d) The project does not have an obligation to address the needs of any particular sub-group of the population, including ex-offenders, in order to qualify for approval. The fact that the project does not do more to assist the needs of one particular group should not count against the application.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (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 of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments, which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The PUD seeks an increase in height of the building, as permitted under § 2405.3 of the Zoning Regulations. The increase is not being used to increase the building's floor area, but rather is used to increase the height of the parapet at the southeast corner of the building, and is necessary to the successful functioning of the building to reinforce the building's role as architectural gateway, and is appropriate when balanced against the superior public benefits and amenities of the project.

5. The retail, restaurant and residential uses for this project are appropriate for the PUD Site. The impact of the project on the surrounding area and the operation of city services is acceptable, given the quality of the public benefits in the project. Accordingly, the project should be approved.

6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

7. The Applicant's request for flexibility from the Zoning Regulations is not inconsistent with the Comprehensive Plan. The Commission also concludes that the project benefits and amenities are reasonable trade-offs for the requested development flexibility.

8. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

9. The proposal to rezone the Property from the R-2 and R-5-A Zone Districts to the C-2-A Zone District is not inconsistent with the Property's designation on the Future Land Use Map and the Generalized Policy Map.

10. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to issues and concerns expressed in the affected ANC's written recommendation. In this case, ANC 7C submitted a report stating it was opposed to the application, and stated a number of issues and concerns. The ANC's issues and concerns, and a discussion as to why the Commission did not find them persuasive are set forth above in findings of fact 81 to 83 above.

11. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. The Commission concurs with the OP's recommendation for approval, and has given the recommendation the great weight to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for review and approval of a consolidated PUD and related map amendment from the R-2 and R-5-A Zone Districts to the C-2-A Zone District for Square 5276, Lots 812, 813, and

23-121; Square 5272, Lot 51; Square 5273, Lot 67; Square 5277, Lots 22-33 and 805; and Square 5246, Lot 110 (the "PUD Site"). For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the PUD Site. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the PUD Site, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner. The approval of this PUD is subject to the guidelines, conditions and standards set forth below.

A. <u>Project Development</u>

1. The development shall be developed in accordance with the Architectural Plans & Elevations, dated May 31, 2013 (Ex. 23), as supplemented by the Updated Architectural Plan sheets, dated June 20, 2013 (Ex. 39) the Applicant's Post-Hearing Submission plan sheets, dated July 11, 2013 (Ex. 45), and the Revised 58th Street elevation sheet submitted on September 16, 2013, (Ex. 54) and as modified by the guidelines, conditions and standards of this Order.

2. In accordance with the plans, the PUD shall be a mixed-used project consisting of approximately 507,618 square feet of gross floor area. Approximately 135,551 square feet of gross floor area will be devoted to a large-format retail use; approximately 363,667 square feet of gross floor area shall be devoted to a mixed-use building with residential uses, retail use, and parking; and a restaurant site with approximately 8,400 square feet of gross floor area. Each building shall include the uses shown on the Architectural Plans and Elevations.

3. The PUD shall have a maximum density of 1.0 FAR.

4. The PUD shall be constructed to a maximum height of 23'-4" for the restaurant building, 4'-10" for the large-format retail building, and 67'-3" as measured to the top of parapet for the mixed-use building.

5. The PUD shall provide parking for no less than 805 vehicles and 126 bicycle parking spaces.

6. The Applicant shall have zoning flexibility with the PUD in the following areas:

   (i) To be able to provide a range in the number of residential units and the corresponding residential floor area of plus or minus 10% from the 288 depicted on the Plans;

(ii) To reallocate or reconfigure the number of parking spaces provided, so long as the total amount of parking provided meets the applicable Zoning Regulations;

(iii) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;

(iv) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;

(v) To vary the final selection of landscaping materials utilized, based on availability and suitability at the time of construction; and

(vi) To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

7. The Applicant shall have the flexibility to construct the project in accordance with the following phasing plan:

a) Phase 1 includes the building pad for the large-format retail building, all associated infrastructure work including underground utilities, streets (stone base and asphalt binder course), overhead electric poles and lines, the stormwater management basin, retaining walls, curbs, and vertical construction of the large-format retail building; and

(ii) Phase 2 includes construction of the mixed-use building, restaurant, and all associated sidewalks, parking lots, the urban plaza, and associated hardscape and landscaping features. The Applicant will maintain this portion of the PUD Site as seeded, balanced, and secured until construction of the Phase 2 components commence.

B. Public Benefits and Mitigation Measures

1. Public Space Improvements. Subject to approval by DDOT, the PUD shall provide public space improvements as shown on the Plans dated May 31, 2013, including the urban plaza and public space improvements on East Capitol Street.

2. During the life of the project, the Applicant shall implement to following Transportation Demand Management ("TDM") measures:

   a) Maintain or coordinate relocation of any existing bus stops during construction of the development;

   b) Provide a minimum of 126 bicycle parking/storage facilities. This includes secure parking located in the garage for retail employees and long-term storage for residents;

   c) Unbundle all parking costs from the cost of lease or purchase of residential units. Parking costs will be set at no less than the charges of the lowest fee garage located within one-quarter mile;

   d) Post all TDM commitments on-line, publicize availability, and allow the public to see what commitments have been promised;

   e) Identify separate TDM Leaders for the mixed-use and large-format retail building portions of the site (for planning, construction, and operations) and provide this information to DDOT and Zoning Enforcement prior to the issuance of the Certificate of Occupancy for each building;

   f) Install a transportation kiosk in the residential lobbies, which will contain printed materials related to local transportation alternatives and will maintain a stock of materials at all times;

   g) Provide website links to CommuterConnections.com and goDCgo.com on developer and property management websites;

   h) Dedicate two spaces on site for car-sharing services;

   i) Provide reserved spaces for carpools and vanpools that are located within 40 feet of the elevator serving the buildings;

   j) Provide an on-site business center available to residents, which will provide access to copier, fax, and internet services;

   k) Provide a one-year Capital Bikeshare memberships for each new resident upon initial move-in;

   l) Host a transportation mobility fair six months after the development has opened. The transportation fair will be advertised to all retail workers and residents. The onsite TDM Leader will work with DDOT's goDCgo team

to organize representatives that are experts in the non-auto transportation options that serve the site. Each person that attends the event will be educated on the various options and representatives will work with attendees to help them tailor the use of non-auto options to their specific transportation needs. Based on the turnout of the transportation fair and feedback gleaned by the onsite TDM Leader, a determination will be made if the event will be repeated the following year; and

m) Two years after the Project is 90% occupied, perform a monitoring study of site trip generation. The site trips will be compared to the projected trip generation contained in this report. If the measured trip generation exceeds the projections, the Applicant shall supplement the above TDM measures with additional ones, such as those from in *Incorporation of Transportation Demand Management (TDM) into the Development Review Process* suggested for a project of this size not listed above.

3. During the life of the project, the Applicant shall include in the lease for the Large-Format Retail operator a provision requiring the Large-Format Retail operator to provide a Capital Bikeshare station on the Large-Format Retailer's parcel, and to provide ongoing funding for the program as necessary to maintain the Bikeshare program.

4. LEED Qualification: The mixed-use building in the PUD shall be designed to meet a LEED-Silver rating, consistent with the score sheets submitted with the Plans. The Applicant shall put forth its best efforts to design the PUD so that it may satisfy such LEED-Silver standards but the Applicant shall not be required to obtain the certification from the United States Green Building Council. During the life of the project, each building shall include the following features , as shown on the Architectural Plans and Elevations, and as specified below as applicable:

a) Restaurant Parcel

- Porous grass pavers covering 5,000 square feet (or 20%) of the restaurant's surface parking lot, and a total of 12,970 square feet of the restaurant site is green space;

- Large bioswales along the East Capitol Street frontage which capture 100% of the parking lot and roof run off from the restaurant site;

- Landscaped islands throughout the parking lot to further capture runoff and provide added canopy coverage to the site;

- Landscape perimeter planting providing a visual buffer to the north and west of the site; and

- Active corner plaza engaging the East Capitol Street and 58th Street intersection with outdoor seating, planting, decorative porous paving, and lighting.

b) Large-Format Retail:

- Native planting areas and decorative porous paving along the East Capitol Street frontage consistent with the other parcels along East Capitol Street;

- Large bio-retention areas along the 58th Street frontage and at the northeast corner of the site, and porous pavers along the East Capitol Street frontage, will capture runoff from the roof and site, capturing approximately 85% of the site's run-off;

- Capital Bike-Share station provided on parcel site; and

- Street trees along all surrounding streets (58th Street, Private Street 1, and Private Street 2).

c) Mixed-Use Building:

- Signature gateway plaza at southeast corner to mark the entrance into the site and symbolically into the City with paving and planting consistent with the other parcels. The plaza design further softens the space with enlarged planning areas and additional shade trees;

- Bio-retention areas throughout the plaza, along the frontages of the building, at the northeast corner of the site, and porous pavers along the East Capitol Street frontage will capture approximately 85% of the runoff from the roof and site;

- Attractive interior courtyard amenity with over 50% green area;

- Outdoor seating with shade for residents, retail patrons and the general public; and

- The building has been designed to achieve a minimum of 52 points as shown on the theoretical LEED checklist included in the record which is the equivalent of LEED Silver designation.

5. The Applicant shall abide by the terms of the First Source Employment Agreement between the Applicant and the D.C. Department of Employment Services included as Exhibit 54A1 in the record of this case.

6. Prior to the issuance of a certificate of occupancy for the mixed-use building, the Applicant shall submit to the Department of Consumer and Regulatory Affairs ("DCRA") evidence that the Applicant has funded the construction of the following pedestrian safety amenities at the intersection of East Capitol Street and Southern Avenue: (a) excavation and installation of a concrete island/sidewalk extension of approximately 1,360 square feet along the northwest corner of East Capitol Street and Southern Avenue, and (b) modifying the existing crosswalks on the westbound lane of East Capitol Street that lead to the northwest corner of the intersection at East Capitol Street and Southern Avenue.

7. All of the residential gross floor area in the mixed-use building will be designated as affordable housing units for households earning up to 60% of the Area Median Income. The affordable controls shall remain in place as to 90% of the residential gross floor area for 15 years after the first certificate of occupancy for the mixed-use building is issued. The affordable units comprising the remaining 10 % of residential gross floor area shall be "Exempt Affordable Units" within the meaning of § 2602.7 and pursuant to that subsection shall remain affordable to households earning up to 60% of the Area Median Income for as long as the project exists.

C. <u>Miscellaneous</u>

1. 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, that is satisfactory to the Office of the Attorney General and the Zoning Division, 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 Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 12-16. Within such time, an application must be filed for a building permit for the construction of Phase 1. Construction of Phase I must commence within three years of the effective date of this order. The Applicant will maintain the Phase 2 portion of the PUD Site as seeded, balanced, and secured until construction of the Phase 2 components commence. The Applicant shall file a building permit for Phase 2 within four years from the effective date of this Order. Construction of Phase 2 must commence within five years of the effective date of this order.

3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On July 29, 2013, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the Application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On September 30, 2013, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this order shall become final and effective upon publication in the *D.C. Register*; that is on November 8, 2013.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA BARDIN
DIRECTOR
OFFICE OF ZONING