

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-14E

Z.C. Case No. 13-14E

McMillan Parcel 2 Owner, LLC & McMillan Parcel 4 Owner, LLC
(Modification with Hearing to a Consolidated, 1st-Stage, & 2nd-Stage PUDs
@ Square 3128, Lots 809, 814, & 815)
July 31, 2025

Pursuant to notice, at its July 31, 2025 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of McMillan Parcel 2 Owner, LLC and McMillan Parcel 4 Owner, LLC (the “Applicant”) requesting review and approval of a Modification with Hearing to the Consolidated, First-Stage, and Second-Stage Planned Unit Developments (“PUD”) for Lots 809, 814, and 815 in Square 3128 (the “Property”) approved in Z.C. Orders No. 13-14(6), 13-14A, and 13-14B. The Applicant proposes to modify the approvals for Parcels 2 and 4 (the “Project”) of the former McMillan Reservoir Slow Sand Filtration Site, now known as the Reservoir District.

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

FINDINGS OF FACT
I. BACKGROUND

OVERALL PUD SITE, PROPERTY, AND PRIOR APPROVALS

1. Pursuant to Z.C. Order No. 13-14(6), effective June 8, 2018 (the “Original Order”), the Commission approved a First-Stage and Consolidated PUD (the “Overall PUD”) for the Reservoir District (all of Square 3128) (the “Overall PUD Site”).¹
2. Also pursuant to the Original Order, the Commission approved a PUD-related Zoning Map amendment that rezoned the northern portion of the Overall PUD Site from unzoned to the C-3-C (now MU-9B) zone for a depth of 277 feet as measured from the center of the curb

¹ Z.C. Order No. 13-14 was originally published in 2015 and appealed to the D.C. Court of Appeals. In 2016, the D.C. Court of Appeals vacated and remanded Order No. 13-14 in *Friends of McMillan Park v. D.C. Zoning Comm’n*, 149 A.3d 1027 (D.C. 2016), so Order No. 13-14(6) is the Order on remand.

at Michigan Avenue, N.W., and the remainder of the Overall PUD Site from unzoned to the CR (now MU-10) zone.

3. The Overall PUD Site contains approximately 24.69 acres of land area and is bounded by North Capitol Street, N.W. on the east, Michigan Avenue, N.W. on the north, First Street, N.W. on the west, and Channing Street, N.W. on the south.
4. The Overall PUD is a large mixed-use development divided into seven parcels that will contain medical office buildings, retail and service uses, multifamily residential buildings, townhouses, a community center, and a park.
5. Parcel 2 is located on the west side of the Overall PUD Site and contains approximately 66,654 square feet of land area. It is bounded by First Street to the west, North Service Court to the north, Olmstead Court to the east, and Parcel 5 to the south. It is bisected by Platt Court.
6. Parcel 2 was approved as a First-Stage PUD for a mixed-use, multi-family building containing ground floor retail (the “Parcel 2 Building”), and was rezoned to the CR (now MU-10) zone.
7. Parcel 4 is located on the east side of the Overall PUD Site and contains approximately 84,462 square feet of land area. It is bounded by North Service Court to the north, Gatehouse Court to the south, North Capitol Street to the east, and Hazen Court to the west.
8. Parcel 4 was approved as a Consolidated PUD for a mixed-use, multi-family building with a ground floor grocery store (the “Parcel 4 Building”) and was rezoned to the CR (now MU-10) zone.
9. Pursuant to Z.C. Order No. 13-14A, effective April 22, 2016 (the “Second-Stage Order”), the Commission approved a Second-Stage PUD for Parcel 2. As approved, the Parcel 2 Building contained approximately 235,513 square feet of gross floor area (“GFA”), or a maximum density of approximately 4.89 floor area ratio (“FAR”), and a maximum height of approximately 82’-6”. The approved Parcel 2 Building contained approximately 18,259 – 24,359 square feet of GFA for retail use, approximately 233 residential apartments, and approximately 222 underground parking spaces.
10. Pursuant Z.C. Order No. 13-14B, effective June 17, 2016 (the “Modification Order”), the Commission approved a modification to the Parcel 4 Building to accommodate programmatic requirements for the specific grocery store tenant at the time. The modifications included: (a) the introduction of a modest-sized interior mezzanine and outdoor terrace to support an accessory café space; (b) modifications to the location and configuration of the parking garage entrance and loading facilities; (c) revisions to the previously approved loading management plan to adjust loading hours and other restrictions; (d) modification to the approved roof plan to accommodate the grocery store mechanical penthouses; and (e) other minor architectural and plan refinements. The approved modified Parcel 4 Building included approximately 310,283 square feet of GFA,

or a maximum density of approximately 3.23 FAR, and a maximum height of approximately 78'-8". The approved Parcel 4 Building contained approximately 58,705 square feet of GFA for a grocery store, approximately 196 market rate apartments (+/-10%), 85 senior affordable apartments (+/-10%) (reserved for seniors earning at or below 50% - 60% of the median family income ("MFI")), and approximately 329 underground parking spaces.

PARTIES

11. Pursuant to Subtitle Z § 403.5(a), the Applicant is automatically a party to the Application.
12. Pursuant to Subtitle Z §§ 101.8 and 403.5(b), Advisory Neighborhood Commissions ("ANC") 5E and 1E are automatically parties to the Application. ANC 5E is the ANC in which the Property is located, and ANC 1E is located across 1st Street to the west and is an affected ANC.
13. The Commission did not receive any requests for party status.

NOTICE AND SETDOWN

14. Pursuant to Subtitle Z §§ 300.7 and 300.8, on August 30, 2024, the Applicant mailed to all property owners within 200 feet of the Property and to ANCs 5E and 1E, a "Notice of Intent to File a Zoning Application" pertaining to the Application (Exhibit ["Ex."] 3M).
15. Pursuant to Subtitle Z § 300.9, prior to filing the Application with the Commission, the Applicant presented the Application to ANC 5E at its July 16, 2024 and September 17, 2024, public meetings and to ANC 1E at its September 25, 2024, public meeting (Ex. 3J).
16. Pursuant to Subtitle Z §§ 400.9-400.12, on March 27, 2025, at its duly noticed public meeting, the Commission considered the Application and voted to set the case down for a public hearing.
17. Pursuant to Subtitle Z §§ 402.1-402.2 and 402.6, on May 9, 2025, the Office of Zoning ("OZ") sent notice of the July 17, 2025 public hearing concerning the Application to:
 - a) The Applicant;
 - b) ANC 5E;
 - c) The ANC 5E05 and 5E06 Single Member District Commissioners;
 - d) ANC 1E;
 - e) The Office of the ANCs;
 - f) The Ward 5 Councilmember, in whose district the Property is located;
 - g) The Office of Planning ("OP");
 - h) The District Department of Transportation ("DDOT");
 - i) The Department of Buildings ("DOB");
 - j) The Department of Energy and Environment ("DOEE");
 - k) The Office of Zoning Legal Division ("OZLD");
 - l) The Chair and At-Large Members of the D.C. Council; and
 - m) The owners of property within 200 feet of the Property. (Ex. 15, 15A).

18. Pursuant to Subtitle Z § 402.1(a), OZ published notice of the July 17, 2025 public hearing concerning the Application in the May 16, 2025, issue of the *District of Columbia Register* (72 DCR 005924) as well as on the calendar on OZ’s website (Ex. 14).
19. Pursuant to Subtitle Z §§ 402.3-402.4, 402.8-402.10, on June 5, 2025, the Applicant submitted evidence that it had posted notices of the public hearing on the Property and on July 14, 2025, submitted evidence that it had thereafter maintained such notices (Ex. 18, 25).

CURRENT ZONING

20. Pursuant to the Overall PUD, the Property is zoned CR under the 1958 Zoning Regulations in effect at the time of approval, which is now designated as the MU-10 zone under the current (2016) Zoning Regulations. The Property was previously unzoned, so it does not have any underlying zoning.

COMPREHENSIVE PLAN (TITLE 10-A DCMR)

21. The Commission’s initial review and approval of the Overall PUD occurred when the 2006 Comprehensive Plan (“Comp Plan”) was in effect.
22. Pursuant to the Original Order, the Commission concluded that the Overall PUD was not inconsistent with the Comp Plan and with other adopted public policies and active programs related to the subject site (*See* Original Order at Conclusions of Law (“CL”) 7). In drawing this conclusion, the Commission “evaluated the specific public benefits and project amenities of the proposed development in the context of the [Comp Plan] and found that these benefits and amenities, including, but not limited to, the additional market-rate and affordable housing; the provision of substantial open space, recreation, and parks in the site; the restoration of key above-ground historic elements; the retention of Cell 14 and the partial retention of Cell 28; the permanent and full-time jobs created; the provision of significant neighborhood-serving retail; the establishment of at least 860,000 square feet of healthcare uses; and the \$5,000,000 worth of community benefits advance the related [Comp Plan] policies to a degree that few if any planned unit developments have achieved.” (*See* Original Order at CL 8).
23. In 2021, pursuant to the D.C. Law L23-0217 (Comprehensive Plan Amendment Act of 2017) and D.C. Law 24-0020 (Comprehensive Plan Amendment Act of 2020), including the Generalized Policy Map (“GPM”) and Future Land Use Map (“FLUM”) (D.C. Resolution R24-0292), the D.C. Council adopted amendments to the Comp Plan (the “2021 Comp Plan”), which included amendments to the Overall PUD Site’s FLUM designation and amendments to several Citywide and Area Element policies that are applicable to the Overall PUD Site.

Generalized Policy Map

24. The Overall PUD Site, including Parcels 2 and 4, is located within a Land Use Change Area on the GPM, which is the same designation that existed when the Overall PUD was approved under the 2006 Comp Plan.

25. The Framework Element describes Land Use Change Areas as “areas where change to a different land use from what exists today is anticipated.” (10-A DCMR § 225.9). The guiding philosophy in Land Use Change Areas is to encourage and facilitate new development and promote adaptive reuse of existing structures. These areas have the capacity to become mixed-use communities containing housing, retail shops, services, workplaces, parks, and civic facilities. The Comp Plan FLUM and applicable Area Element policies provide guidance on development and redevelopment within Land Use Change Areas, including the desired mix of uses (10-A DCMR § 225.11).

Future Land Use Map

26. Under the Original Order, the Commission determined that the Overall PUD was not inconsistent with the 2006 Comp Plan FLUM (*See* Z.C. Order No. 13-14(6) at pp. 3-4).
27. Under the Original Order, the Overall PUD is permitted a maximum overall density of 1.92 FAR (*See* Z.C. Order No. 13-14(6), Condition A.2).
28. Under the 2021 Comp Plan, the FLUM designation for the northern portion of the Overall PUD Site, including Parcels 2 and 4, was changed from Mixed Use (Moderate Density Commercial, Medium Density Residential, and Parks, Recreation, and Open Space) to Mixed Use (Medium Density Commercial, Medium Density Residential, and Parks, Recreation, and Open Space).

Mid-City Area Element

29. The Overall PUD Site, including Parcels 2 and 4, is located within the Mid-City Area Element of the Comp Plan (“MC Area Element”), and within the McMillan Sand Filtration Site policy focus area.
30. The MC Area Element includes numerous policies, including the following of which most are specific to the McMillan Sand Filtration site and relevant to the Application:
 - a) Strive to retain the character of Mid-City as a mixed-income community by preserving the area’s existing stock of affordable housing units and promoting the construction of new affordable units. Give attention to the most rapidly changing neighborhoods and encourage the use of historic preservation tax credits to rehabilitate older buildings for affordable housing (10-A DCMR § 2008.8);
 - b) Restore key above-ground elements of the site and explore the preservation or adaptive reuse of some of the underground cells as part of the historic record of the site. Preservation poses a challenge given the collapse of most cells. The cultural significance of this site and its importance to Washington, DC’s history should be recognized as it is developed, reopened to the public, and reused. Consideration should be given to interpretive features as part of the site design (10-A DCMR § 2016.5);
 - c) Ensure that any development on the site is designed to reduce parking, traffic, and noise impacts on the community; be architecturally compatible with the surrounding community; and improve transportation options to the site and surrounding neighborhood. The new Planned Unit Development (PUD) calls for 290,650 square feet of medical use. Any change in use on the site should increase connectivity between

- northwest and northeast neighborhoods, as well as the Washington Hospital Center and Armed Forces Retirement Home to the north (10-A DCMR § 2016.6);
- d) Be responsive to community needs and concerns in development and reuse planning for the site. Amenities that are accessible to the community and respond to neighborhood needs should be included (10-A DCMR § 2016.7); and
 - e) Recognize the substantial potential of the McMillan Sand Filtration site to address multiple planning and development priorities and that development of the site is necessary to stabilize the site and provide the desired open space and amenities. Development of the site should consist of residential, retail, office, and recreational uses. Residential development should include a mix of units and housing types for persons of various incomes; new buildings should be planned and designed in a manner that is informed by the height, mass, scale, and uses of existing and planned buildings in the surrounding area, as appropriate. Other uses may include health care facilities that provide connectivity to the Washington Hospital Center. Compatible with the rules governing PUDs, the density for the McMillan Sand Filtration Site shall be calculated for the site as a whole. Individual buildings may have greater height than is typically associated within a specific land use designation. New buildings should be planned and designed in a manner that is informed by the height, mass, scale, and uses of the surrounding context, as appropriate (10-A DCMR § 2016.8).

II. THE APPLICATION

THE PROJECT - PARCEL 2

- 31. The Application, as amended, modifies the Parcel 2 Building as follows:
 - a) Removal of the bridge over Platt Court and separation into two buildings: Parcel 2 East and Parcel 4 West.
 - b) A maximum building height of 83 feet, plus a penthouse with a maximum height of 19 feet;
 - c) Approximately 255,000 total square feet of GFA, or an overall FAR of approximately 4.18, including approximately 238,000 square feet of residential space and between 15,000-17,000 square feet of ground-floor retail space;
 - d) Approximately 266 residential units, with 141 senior affordable units (39 reserved for households earning up to 30% of the median family income (“MFI”), 86 units for households earning up to 50% MFI, and 16 units reserved for households earning up to 60% MFI) in Parcel 2 East, and 125 market rate units in Parcel 2 West;
 - e) An overall lot occupancy of approximately 60%;
 - f) Approximately 122 vehicle parking spaces in one below-grade garage level;
 - g) One 30-foot loading berth and one 20-foot service/delivery space each in Parcel 2 East and Parcel 2 West; and
 - h) Approximately 92 long-term bicycle parking spaces.(Ex. 3G, 28A, 36A).

- 32. As part of the Application, the Parcel 2 Building includes the following flexibility:
 - a) Include lodging use in Parcel 2 West for 120-226 guest rooms, and as related to that use, change loading facilities to meet zoning requirements and to reduce the building height by two stories;

- b) Reduce the number of senior affordable units in Parcel 2 East to 88 (25 units for households earning up to 30% MFI, 53 units for households earning up to 50% MFI, and 10 units for households earning up to 60% MFI) only if the District does not award financing, and as related to that change, to reduce the building height by two stories and provide additional non-senior affordable units (some units for households earning up to 80% MFI and 2 units for households earning up to 50% MFI) in Parcel 2 West and/or Parcel 4;²
 - c) Provide the ground floor retail in only Parcel 2 West or in both Parcel 2 West and Parcel 2 East;
 - d) Allow uses in the retail, daytime care, private education, entertainment / assembly / performing arts, and general service use categories to occupy the ground floor retail area;
 - e) Include residential units on the ground floor, provided that the retail floor area minimum is provided;
 - f) Increase the building height by up to five feet;
 - g) Vary the number of residential units by +/- 10%;
 - h) Change the locations of the entrances for the residential lobby, retail, loading, and parking;
 - i) Vary the number of automobile parking spaces between minimum required under Subtitle C § 701 of the Zoning Regulations and the number that would be significantly in excess of the minimum requirement as defined in Subtitle C § 707 of the Zoning Regulations;
 - j) Vary the number of loading berths and service delivery spaces, provided the minimum number required under Subtitle C § 901 of the Zoning Regulations are provided; and
 - k) Change some of the building's exterior materials, subject to approval by the Historic Preservation Review Board ("HPRB") / Historic Preservation Office ("HPO").
(Ex. 3G, 12, 19, 28A, and 36A).
33. The Parcel 2 site plan will remain largely the same as previously approved. Ground floor retail entrances will be on the north side of Parcel 2 fronting on North Service Court to ensure pedestrian activity. Residential lobby, parking, and loading entrances will be from Platt Court, which is a change from the previous approval, but it will allow for the North Service Court to better function as an active pedestrian throughway. Parking for all of Parcel 2 will be accessed via one entrance in the Parcel 2 East Building, and both Parcel 2 Buildings will have their own loading entrances (Ex. 3, 3G).
34. The ground floors of both the Parcel 2 East and West Buildings will contain the residential entrances and lobbies, amenities, and back of house areas for retail, and bicycle parking. In addition, residential units would be located on the southern end of the ground floors and extending to the north end of the Parcel 2 East building if it does not include any retail (Ex. 3, 3G).

² If the Applicant uses this flexibility, then the total number of non-senior affordable units that will be provided will be based on the final total GFA for the Overall PUD, so that at least 20% of the residential GFA across the Overall PUD will be devoted to affordable housing, in accordance with the requirement stated in Finding of Fact No. 56 in Order No. 13-14(6).

35. In the scenario where Parcel 2 East is entirely residential, and all of the retail is in Parcel 2 West, then the Parcel 2 East loading entrance would move to the southern end of that building, adjacent to the parking entrance, to minimize curb cuts, combine back of house functions, and create a more efficient residential program on the 1st floor. The Parcel 2 West residential lobby entrance would move slightly further north to minimize direct overlap with the Parcel 2 East loading facility while maintaining a safe distance from the Parcel 2 West loading facility (Ex. 3G, 19A).
36. The architectural design and massing of Parcel 2 will remain predominantly the same as previously approved and will maintain the design intent. The pedestrian bridge over Platt Court will be removed, thereby reducing the overall massing of Parcel 2. The West and East buildings will continue to have a horseshoe shape, with courtyards opening to the west and east, respectively. The building heights will increase slightly by approximately five feet but will not change the overall appearance or design intent from the original approval, and the change will allow for better accommodation of the use mixes in the buildings. The height will still remain well below the maximum of 110 feet permitted in the MU-10 zone. The overall FAR will increase slightly, but the change is mostly attributable to a change in the lots against which the FAR is measured, since the GFA of the buildings will be only slightly larger than currently approved. Finally, the balconies will be removed from the east, west, and south elevations of the Parcel 2 East building (Ex. 3G, 12B).
37. The rooftop plans will change slightly from the previous approval to accommodate elevator overruns and stair towers, as well as mechanical equipment, in both buildings, with penthouses located on both the north and south “wings” of each building. The roof of the northern part of Parcel 2 West also may include an outdoor terrace (Ex. 3G, 12B).
38. The minimum number of automobile parking spaces will decrease from the current approval, but the final number of spaces will be sufficient for demand and will satisfy the minimum requirement under the Zoning Requirements in any event, ensuring that there will not be undue adverse impacts on the neighboring streets (Ex. 3, 3G).
39. Some of the exterior materials on the Parcel 2 buildings may change due to cost and supply challenges, but the overall appearance of the buildings will remain substantially similar to the current approval. Parcel 2 will continue to have a contemporary, articulated appearance consistent with the design intent and material quality as currently approved (Ex. 3G, 12B).
40. The Application requested zoning flexibility and relief from the following MU-10 development standards:
 - a) *Side yards under Subtitle G § 208.2*: The Parcel 2 Buildings will be set back from the north (side) property line by one foot and from the south (side) property line by four feet. Since side yards will be provided, per Subtitle G § 208.2, the required width ranges from 13'-10" to 14'-8" for the north and south side yards on both buildings. The ZC previously granted side yard relief for the Parcel 2 Building in Order No. 13-14A;
 - b) *Plaza under Subtitle G § 212.1*: The Parcel 2 Building will not provide 8% of the lot area adjacent to the main entrance of the buildings, and it will not provide any transitional space between the street and the buildings in accordance with the plaza

standards. However, with the decreased lot occupancy of 60% for Parcel 2 and the adjacent North Service Court, the intent of the plaza requirement will be satisfied. This flexibility request was only to specifically identify and memorialize what is currently already approved for Parcel 2. The plaza is not provided in the previous approval for Parcel 2, and this flexibility will not change or exacerbate that;

- c) *Penthouse single enclosure under Subtitle C § 1503.1*: Both the Parcel 2 West and East Buildings each will have two mechanical penthouses on opposite sides of the buildings, and they will not be part of a single enclosure. These two penthouses are required under Building Code and necessary to accommodate the mechanical equipment for the particular uses in the buildings below but enclosing them in a single enclosure on each building would result in an unnecessarily large and visually intrusive structure that is counter to the intent of the penthouse regulations. By allowing two penthouses on each building, the rooftop mechanical equipment will be in the most compact and efficient configuration as possible; and
- d) *Penthouse setback under Subtitle C § 1504.1*: The Parcel 2 West Building's north penthouse will not be set back from the west-facing wall for the full 1:1. This setback flexibility will be for a very small part of the penthouse that will confront a corner where two building walls intersect: the setback will be 10 feet at this location, where a setback of approximately 18.5 feet is required. The flexibility will allow the penthouse to provide the lobby and access from the elevator and stairwell to the potential rooftop terrace.

(Ex. 3).

THE PROJECT - PARCEL 4

- 41. The Application, as amended, proposed the Parcel 4 Building as follows:
 - a) A maximum building height of 84 feet, plus a penthouse with a maximum height of 18.5 feet;
 - b) Approximately 350,000 total square feet of GFA, or an overall FAR of approximately 4.14, including approximately 291,000 square feet of residential space and between 43,500-59,000 square feet of ground-floor retail space, of which at least 22,500 square feet will be for a grocery store;
 - c) Approximately 324 residential units;
 - d) A maximum residential lot occupancy of approximately 62%;
 - e) Approximately 311 automobile parking spaces in two below-grade levels;
 - f) Two 40-foot loading berths, one 75-foot loading berth, and one 20-foot service/delivery space;
 - g) Approximately 114 long-term bicycle parking spaces;
 - h) Relocation of the senior affordable units to Parcel 2 East; and
 - i) Addition of partial residential floor on second level at rear of building, where a previous double-height space was provided.

(Ex. 3F, 28A, 36A).

- 42. As part of the Application, the Parcel 4 Building included the following flexibility:
 - a) Allow temporary lodging use for up to 20% of the residential units only during the building's initial lease up;

- b) Allow uses in the retail, daytime care, private education, entertainment / assembly / performing arts, and general service use categories to occupy the ground floor retail area other than the grocery store area;
- c) Increase the building height by up to five (5) feet;
- d) Vary the number of residential units by +/- 10%;
- e) Change the locations of the entrances for the residential lobby, retail, loading, and parking;
- f) Vary the number of automobile parking spaces between minimum required under Subtitle C § 701 of the Zoning Regulations and the number that would be significantly in excess of the minimum requirement as defined in Subtitle C § 707 of the Zoning Regulations;
- g) Vary the number of loading berths and service delivery spaces, provided the minimum number required under Subtitle C § 901 of the Zoning Regulations are provided; and
- h) Change some of the building's exterior materials, subject to approval by the HPRB/HPO.

(Ex. 3F, 28A, 36A).

- 43. The Parcel 4 site plan will change only to accommodate a smaller grocery store and to include other retail space. The grocery store will be located at the northeast corner of the building, with the entrance located on the north side of the building fronting on North Service Court. Ground floor retail entrances will be on the north and west sides of Parcel 4 fronting on North Service Court and Hazen Court, respectively, to ensure pedestrian activity and connectivity. The residential lobby entrance will be at the southwest corner of the building on Hazen Court to ensure retail is at the north (front) of the building. Parking and loading entrances will be from Gatehouse Court to the south, which is the same as the current approval (Ex. 3, 3F).
- 44. In addition to the grocery store and retail, the ground floor of the Parcel 4 Building will contain the residential entrance and lobby, back of house areas for the retail and grocery store, and bicycle parking. Loading facilities for both the residential and retail/grocery uses will be in adjacent spaces, and all below-grade parking will be accessed from a single entrance (Ex. 3, 3F).
- 45. The architectural design and massing of Parcel 4 will remain predominantly the same as previously approved and will maintain the design intent. The building will continue to have an "E" shape above the ground floor, with courtyards opening to the east. The building height will increase slightly by approximately five (5) feet but will not change the overall appearance or design intent from the original approval, and the change will allow for better accommodation of the use mixes in the building. The height will still remain well below the maximum of 110 feet permitted in the MU-10 zone. The overall FAR will increase slightly, but the GFA increase will not change the massing of the building since most of it is attributable to the addition of a second floor where there previously was not one. Bay windows on the west, south, and east elevation will be converted to balconies, and the ground floor retail spaces will have windows fronting on North Service Court, where previously there are none since the retail was all grocery store (Ex. 3F).

46. The rooftop plans will change slightly from the previous approval to accommodate larger penthouses with elevator overruns and stair towers, as well as mechanical equipment, with penthouses located on each of the three “wings” of building. The southwest corner of the roof also may include a small outdoor terrace for building residents (Ex. 3F).
47. The minimum number of automobile parking spaces will decrease slightly from the current approval, but the final number of spaces will be sufficient for demand and will satisfy the minimum requirement under the Zoning Requirements in any event, ensuring that there will not be undue adverse impacts on the neighboring streets (Ex. 3, 3F).
48. Both the residential and retail/grocery store uses will have their own dedicated loading facilities – congregated in the same area at the south of the building – to ensure that loading needs will be adequately addressed within the building and without causing adverse spillover impacts on neighboring streets (Ex. 3F).
49. Some of the exterior materials on the Parcel 4 Building will change due to cost and supply challenges, but the overall appearance of the building will remain substantially similar to the current approval. Parcel 4 will continue to have a contemporary, articulated appearance consistent with the design intent and material quality as currently approved (Ex. 3, 3F).
50. The Application requested zoning flexibility and relief from the following MU-10 development standards:
 - a) *Side yards under Subtitle G § 208.2*: The Parcel 4 Building is set back from its north (side) property line by one (1) foot and from its south (side) property line by three (3) feet. Since side yards are provided, per Subtitle G § 208.2, the required widths range from 13’-3” to 14’-10” for the north and south side yards, respectively. Importantly, the building is still separated from all other building by streets in any event, so the intent of the side yards is still satisfied;
 - b) *Plaza under Subtitle G § 212.1*: The Parcel 4 Building will not provide 8% of the lot area adjacent to the main entrance of the buildings and it will not provide any transitional space between the street and the building in accordance with the plaza standards. However, with the adjacent North Service Court and Hazen Court offering ample open space, the intent of the plaza requirement will be satisfied. This flexibility request was only to specifically identify and memorialize what is currently already approved for Parcel 4. The plaza is not provided in the current approval for Parcel 4, and this flexibility will not change or exacerbate that;
 - c) *Penthouse single enclosure under Subtitle C § 1503.1*: The Parcel 4 Building will have multiple mechanical penthouses on different parts of the building roof, and they will not be part of a single enclosure. These mechanical penthouses are required to accommodate the differing mechanical needs of both the grocery store and the residential units below, but enclosing the penthouses in a single enclosure would result in an unnecessarily large and visually intrusive structure that is counter to the intent of the penthouse regulations. Accordingly, the flexibility will allow for smaller visual impact from the penthouses; and
 - d) *Penthouse setback under Subtitle C § 1504.1*: The Parcel 4 Building’s south penthouse will not be set back from the east facing wall of the courtyard for the full 1:1, as

required. The setback will be 10 feet at this location, where a setback of 18.5 feet is required. The relief will allow the penthouse to provide the lobby access from the elevator and stairwell to access the potential rooftop terrace. This modest setback relief will be for a very small part of the penthouse that confronts a corner where two walls intersect, so it will not create adverse visual impacts as a result.
(Ex. 3).

APPLICANT'S REVISIONS, SUBMISSIONS, AND TESTIMONY

51. Initial Application. On December 23, 2024, the Applicant filed its initial application materials, which included a statement of support of the modifications and flexibility as well as justifications relating to the PUD evaluation criteria; a set of architectural plans and elevations; an analysis of the Comprehensive Plan as viewed through a racial equity lens; and procedural materials as required by Zoning Regulations (Ex. 1-3).

52. Prehearing Submission. On April 11, 2025, the Applicant filed a prehearing submission and supporting materials responding to the issues and comments raised by the Commission at the March 27, 2025, public meeting and by OP in its March 17, 2025 report (*see* Ex. 10, Ex. 12-12D). Such issues, comments, and responses are summarized as follows:
 - a) Clarification of Parcel 2 Retail. In response to OP's request, the Applicant provided more information regarding the retail floor area and the flexibility for the amount and location of the ground-floor retail;
 - b) Operational and Transportation Impacts of Lodging in Parcel 2 West. The Applicant provided additional information regarding the potential operations of lodging use, and confirmed an analysis of transportation impacts would be provided before the hearing;
 - c) Relocation of Loading Facilities in Parcel 2 East. The Applicant provided additional information in response to OP's request regarding the location of Parcel 2 East's loading facilities and explained that it would further study relocating the loading facilities;
 - d) Reduction in the Overall Retail Program in both Parcels 2 and 4. The Applicant provided additional justification for the reduced retail program and the requested flexibility that could further decrease the amount of retail in the Parcels, highlighting, in particular, the significantly changed retail market conditions since the Original PUD was approved 10+ years previously. In addition, the Applicant explained that its requested flexibility range for the grocery store would accommodate an adequate grocery store, based on examples of known grocery store brands and the sizes of the spaces that they occupy;
 - e) Changes to Affordable Housing and Flexibility. The Applicant provided additional information regarding the proposed relocation to Parcel 2 East of the senior affordable units, the increase in the number of senior affordable units from 85 to 141, and an analysis of the affordable housing that would be provided in the Overall PUD if flexibility were exercised to reduce the number of senior affordable units to 88 if District financing were not awarded. Importantly, the Applicant demonstrated that the Project would result in more affordable housing at deeper levels of affordability, and even with the flexibility, the amount of affordable housing would not fall below what is currently approved;

- f) Lodging Uses Effect on Overall Residential Program. The Applicant explained that the proposed flexibility for lodging uses at Parcel 2 West and Parcel 4 (temporary during initial building lease up) would change the approved housing program for the Overall PUD only if the Applicant utilized the full extent of the lodging flexibility, which is very unlikely. Importantly, even with the lodging uses, the Overall PUD would continue to be a vibrant mixed-use development – made more diverse with the addition of lodging – with an overall number of residential units (493-546) consistent with the intent of the Overall PUD, and the proposed amount of affordable housing provided in Parcels 2 and 4 would not be affected because of potential lodging uses;
- g) Prior Balancing of Public Benefits and Development Incentives. The Applicant explained that the proposed modifications and flexibility will maintain the Commission’s prior balancing of benefits and development incentives, and that they potentially will enhance the public benefits. The Applicant demonstrated that the only public benefits that are altered by the Application are the housing, affordable housing, and retail benefits. As explained above, the overall housing benefit would remain consistent with the intent of the Original PUD and the amount of affordable housing would be greater (or no less than) the current amount of affordable housing. Regarding retail and retail flexibility, the Applicant explained that the overall proposed retail program would still provide a significant amount of retail consistent with market demand and could result in more residential units, which are a public benefit;
- h) Additional Flexibility. The Applicant requested additional flexibility regarding the number of lodging rooms in Parcel 2 West (from approximately 205 rooms to approximately 120-226 rooms), if it were to include lodging use, flexibility to reduce building sizes for both Parcel 2 West and East (removal of 1 or 2 floors) in the case of fewest units/rooms provided;
- i) Timing of Permit Submission and Phasing. The Applicant requested a change to the timing of permit application submission and construction phasing to align with the land disposition and development agreement (“LDDA”), so that a building permit application must be submitted within two years of the effective date of the Order, with construction to begin within three years of the effective date, and then the Parcel 2 East, Parcel 2 West, and Parcel 4 buildings could be constructed simultaneously or in phases, provided that construction of all buildings is completed within 12 years of the effective date of the Order; and
- j) Expert Resumes. The Applicant included resumes of the experts it was proffering. (Ex. 12-12D).

53. Applicant’s Transportation Report. On June 17, 2025, the Applicant filed a Comparison Transportation Memo (“Transportation Memo”), prepared by Gorove Slade regarding the proposed modifications and flexibility. The Transportation Memo’s analysis included the requested flexibility to reduce the retail in Parcels 2 and 4 and the requested flexibility for the Parcel 2 West building to become lodging. In particular, the Transportation Memo documented the proposed changes to Parcels 2 and 4; reviewed and updated the previously adopted Transportation Improvement Plan (“TIP”) in response to the proposed changes; provided an updated Transportation Demand Management (“TDM”) plan for Parcels 2 and 4; and provided an updated Loading Management Plan (“LMP”) for Parcels 2 and 4. The Transportation Memo concluded that the proposed modifications to Parcels 2 and 4 will

reduce potential traffic impacts, as compared to the current approval, and it found that the previously established transportation commitments are actively being implemented (Ex. 19E).

54. Applicant's Supplemental Pre-Hearing Submission. On June 17, 2025, the Applicant filed a supplemental submission that included the following:
- a) Executive Summary. The Applicant provided an up to date one-sheet summary of the requested modifications, flexibility, affordable housing, and zoning relief in the Application;
 - b) Update on Community Outreach. The Applicant provided an update on its community outreach and engagement since the Application was filed;
 - c) Revised and Clarified Summary of Flexibility Requests. The Applicant provided summary of all the design and use flexibility requested in the Application;
 - d) Brand Examples of Grocery Stores By Store Sizes. The Applicant explained that should the Applicant need to find another grocery store tenant for Parcel 4, then it needs the requested flexibility to reduce the grocery store size to as little as 10,000 square feet to accommodate the widest range of potential grocers. The Applicant further explained that even with the smaller floor area devoted to a grocery store, an adequate grocery store could be accommodated through its provision of specific grocer brand examples at various size ranges. The Applicant illustrated that multiple established grocer brands at various size ranges, including between 10,000–15,000 square feet, could both satisfy the regular grocery shopping needs of the community and the original PUD's intent to provide a grocery store;
 - e) Further Evaluation of Parcel 2 Loading Locations. The Applicant explained that it studied the loading configurations and locations for the scenario where both Parcel 2 West and Parcel 2 East contain retail, and the Applicant determined that the loading must be located directly behind the retail spaces in order to efficiently serve them; therefore, the loading facilities must be located further north in the buildings, as shown in the project plans in the record. However, in the alternate scenario where Parcel 2 East does not include retail, the loading facility would move to the southern end of that building adjacent to the parking entrance to minimize curb cuts, combine back of house functions, and create a more efficient residential program on the 1st floor. The Parcel 2 West loading facility would remain in the original proposed location to serve the retail, but the Parcel 2 West entrance would move slightly further north to minimize direct overlap with the Parcel 2 East loading facility while maintaining a safe distance from the Parcel 2 West loading facility. The Applicant noted that in either scenario, the proximity of the loading facilities to the residential lobby entries will require the design of the loading doors to be carefully selected to coordinate with the greater building design and minimize impacts. The Applicant concluded that it withdrew its request for relief from the loading requirements for Parcel 2; and
 - f) Expert Resume. The Applicant submitted an additional resume for its proffered expert witness in retail leasing.
- (Ex. 19-19F).
55. Applicant's Direct Presentation. In advance of the July 17, 2025, public hearing for the Application, the Applicant filed a presentation and an updated retail program and grocery

store commitment for Parcel 4 (Ex. 28A, 29). At the public hearing, the Applicant presented the Application and addressed questions and objections raised by the Commission and others who testified.

- a) The Applicant provided testimony from five witnesses:
 - i. Ruth Hoang, Senior Vice President of Development at Jair Lynch Real Estate Partners, as a representative of the Applicant;
 - ii. Ben Becker of KNLB, as the Applicant's retail broker, admitted as an expert;
 - iii. Kalinda Gathinji of MV&A, as the Applicant's architect, admitted as an expert;
 - iv. Shane Dettman of Goulston and Storrs, as the Applicant's land use planner, admitted as an expert; and
 - v. Robert Schiesel of Gorove Slade, the Applicant's transportation engineer, also appeared on behalf the Applicant and was accepted as an expert but was not called upon to testify;
- b) The Applicant's presentation included a summary of the Overall PUD's background; the history of Parcels 2 and 4 and the challenges with being able to proceed with construction, including delays from appeals, construction material cost increases, and changes in retail market; the reasons for and explanation of the modification and flexibility requests; an explanation for the proposed smaller grocery store and flexibility to reduce its size further only if the current grocery store tenant's lease were terminated; an explanation of the affordable housing changes and increases; and a summary of the Applicant's engagement with the community and the ANCs (July 17, 2025 Public Hearing Transcript ("Tr.") at 14-23);
- c) The Applicant's presentation also included testimony from Ben Becker regarding the retail leasing market and the considerations for and challenges with leasing the retail space in Parcels 2 and 4. The testimony included how retail demand and consumer habits have changed. Specifically, the testimony described how grocery stores have changed, including what they carry for consumers, what needs they satisfy for consumers, and the smaller spaces the grocery stores require as a result (Tr. at 23-26);
- d) The Applicant's presentation further included a detailed review from the Applicant's architect Kalinda Gathinji of the proposed modifications to Parcels 2 and 4, including how the buildings would differ with the proposed flexibility (Tr. at 26-30); and
- e) Finally, the Applicant's presentation included a summary from its land use planner Shane Dettman of the Application's evaluation against the PUD standards and consistency with the Comprehensive Plan. The Applicant further explained how the proposed modification advances numerous policies in the Comprehensive Plan, particularly regarding retail and housing. The Applicant concluded by describing how the Overall PUD's benefits and amenities remain largely unaffected with the proposed modification and flexibility (Tr. at 30-37).

56. Applicant's Post-Hearing Submission. On July 21 and July 23, 2025, the Applicant filed a post-hearing submission (Ex. 35, 35A, 36A) with responses to requests from the Commission at the public hearing as well as a further modified retail program and grocery store commitment.

- a) Increased Retail and Grocery Store Commitment. The Applicant limited its flexibility for the retail space in Parcel 4 to 24,000-59,000 square feet of which at least 13,000 square feet would be for a grocery store only if the current grocery store lease were

terminated, and it must show that it tried to lease the space before reducing the grocery store below 22,500 square feet. The Applicant also increased its retail commitment in Parcel 2 to 6,500-17,000 square feet;

- b) Sequencing of Building Construction Proposed by Office of the Attorney General (“OAG”). In response to the condition proposed by OAG that the Parcel 2 East building be constructed before or concurrently with the Parcel 2 West and Parcel 4 Buildings, the Applicant stated that it was unable to commit because of the complexities of affordable housing public financing. The Applicant explained the financing process and timing for the affordable units in Parcel 2 East creates uncertainties about when construction could begin, which could then hold up the other buildings if the condition were adopted. However, the Applicant agreed to provide a financing status update annually;
- c) Tenure of Affordable Housing. The Applicant affirmed that the tenure of the affordable housing in Parcels 2 and 4 would be as already stated in in Z.C. Order No. 13-14(6): for so long as the project is in existence;
- d) Rebuttal of Testimony Regarding Clarity of Flexibility Request. At the Commission’s request, the Applicant provided a rebuttal to testimony from two people claiming that communication about the requested flexibility for the retail floor area was unclear or misleading. The Applicant stated that was an inaccurate characterization. The Applicant began engaging with the community in June 2024 about the proposed modifications and flexibility, and it had been clear and forthcoming about the wide range of flexibility it was seeking for the retail floor area. The Applicant repeated this extensive flexibility request clearly for over a year in its numerous engagements with and presentations to the ANCs, community organizations (such as the McMillan Advisory Group (“MAG”) and Bloomingdale Civic Association (“BCA”)), and individual community residents. The Applicant included the range of flexibility it in all its presentation slides to the community;
- e) Rebuttal to Opposition Testimony. In response to the Commission’s request, the Applicant rebutted opposition testimony presented at the public hearing as follows:
 - i. *Amount of Retail*: The statement that current approvals for Parcels 2 and 4 mandate a minimum of 74,000 square feet of retail and could shrink to 26,000 with the Project is not accurate. The proposed total retail for both Parcels 2 and 4 is 76,000 square feet. The requested flexibility in the extreme and only under the previously described circumstances of grocery store lease termination would result in 30,500 square feet of total retail space;
 - ii. *Elimination of Retail Jobs*: The statement that there would be a potential elimination of 80-100 retail jobs is not substantiated. The baseline is zero jobs since currently nothing is built at Parcels 2 and 4, and these buildings and the jobs that would follow them cannot be realized without the requested modifications and flexibility. The potential hotel on Parcel 2 West will provide another source of jobs, including indirect jobs in services that would support the hotel; and
 - iii. *Relief from MU-10 Plaza Requirement*: The Applicant reiterated what it stated at the public hearing, which is that it requested flexibility only to specifically identify and memorialize what is already approved. When the original PUD was approved in 2014, the PUD regulations did not require an applicant to expressly request and identify every area of zoning flexibility. Rather, the flexibility was granted by virtue

of the plans approved by the Commission. However, when the new Zoning Regulations were adopted in 2016, a requirement was added to the PUD regulations that requires an applicant to expressly request and be granted every area of zoning flexibility and relief. *See* Subtitle X § 310.1 (Ex. 35);

- f) Proposed Conditions of Approval: At the Commission's request, the Applicant filed proposed conditions of approval, as they change and add to the conditions for the Original, Second-Stage, and Modification Orders (Ex. 35A); and
- g) Final and Increased Retail and Grocery Store Commitment. The Applicant submitted a further updated and final increased retail and grocery store commitment such that Parcel 4 will include 43,500-59,000 square feet of retail, of which at least 22,500 square feet will be for a grocery store, and Parcel 2 will include a total of 15,000-17,000 square feet of retail (Ex. 36A).
(Ex. 35, 35A, 36A).

- 57. Draft Findings of Fact and Conclusions of Law. Pursuant to Subtitle Z § 601.1, on September 5, 2025, the Applicant submitted its proposed findings of fact and conclusions of law (Ex. 40).

JUSTIFICATION FOR RELIEF

RELIEF REQUESTED

- 58. The Application requested the Commission approve a Modification with Hearing to the approved Consolidated, and First- and Second-Stage PUDs for the Property. The modifications would reconfigure the retail floor areas in both Parcels, decrease the size of the grocery store in Parcel 4, change the number of residential units, change the number of parking spaces, relocate and increase the senior affordable units, and change some of the exterior details of both Parcels, all as described in more detail above in Findings of Fact ("FF") Nos. 31, 41.
- 59. The Application also requested that the Parcels have flexibility with regard to number of residential units and parking spaces, lodging use in Parcel 2 West, heights of the buildings, reducing the number of senior affordable units if no financing is awarded, changing locations for entrances, and changing some of the exterior materials, all as described in more detail above in FF Nos. 32, 42.
- 60. The Application further requested additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1 from minimum side yard requirements, plaza requirements, penthouse setback requirements, and penthouse multiple enclosure requirements, as well as flexibility on the phasing of constructing the buildings, all as described above in FF Nos. 40, 50, 52.

PUD BALANCING TEST (SUBTITLE X § 304.3)

- 61. The Application asserted that the modification and flexibility requests for Parcels 2 and 4 satisfy the PUD balancing test by not fundamentally altering the originally approved buildings, by providing nearly the same amount of public benefits and amenities, by providing a nearly identical mix and amount of uses (retail, residential), by not materially increasing the development incentives, and by not resulting in new or different adverse impacts (Ex. 3, 12; Tr. at 30-37).

CONSISTENCY WITH THE COMPREHENSIVE PLAN AND OTHER ADOPTED PUBLIC POLICIES RELATED TO THE PROPERTY (SUBTITLE X § 304.4(A))

62. Pursuant to Subtitle X § 302.2(a), a First-Stage PUD involves “a general review of [a] site’s suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of [] uses proposed; and the compatibility of the proposed development with the [Comp Plan], and city-wide, ward, and area plans of the District of Columbia, and the other goals of [a] project.” [Emphasis added].
63. Pursuant to Subtitle X § 302.2(b), a Second-Stage PUD involves “a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and [the Zoning Regulations].”
64. Since the Application includes modifications to aspects of the Parcel 2 Building and Parcel 4 Building that are ordinarily evaluated as part of a First-Stage PUD, and a First-Stage PUD addresses “compatibility of the proposed development with the [Comp Plan],” the Applicant conducted an evaluation of the Application’s consistency with the 2021 Comp Plan (the “Applicant Comp Plan Evaluation”).
65. Pursuant to Subtitle Z § 704.4, the scope of a hearing for a “Modification with Hearing” “shall be limited to impact of the modification on the subject of the original application and shall not permit the Commission to revisit its original decision.”
66. Consistent with the scope of the Commission’s review of the Application, the Applicant Comp Plan Evaluation was limited to the consistency of the proposed modifications to the Parcel 2 Building and Parcel 4 Building and, if at all, how the proposed modifications impact (positively or negatively) the Commission’s prior Comp Plan determination for the Overall PUD Site made in the Original Order.
67. The Applicant Comp Plan Evaluation considered the consistency of the Project with the FLUM, GPM, applicable Comp Plan policies, and potential Comp Plan inconsistencies.
68. The Applicant Comp Plan Evaluation found the Project to be not inconsistent with the Comp Plan, and that the Overall PUD will remain not inconsistent with the Comp Plan when read as a whole and when viewed through a racial equity lens. Compared to what was previously approved on Parcels 2 and 4, the Applicant Comp Plan Evaluation found the proposed Project will advance several policies contained within the Land Use, Housing, Urban Design, and Historic Preservation Elements of the Comp Plan. The Applicant Comp Plan Evaluation did not identify any instances where the Project would be inconsistent with any applicable Comp Plan policies (Ex. 3, 3I).

GPM

69. The Applicant Comp Plan Evaluation stated that the Project will not be inconsistent with the Overall PUD Site’s designation of Land Use Change Area, which is the same GPM designation that existed under the 2006 Comp Plan. Land Use Change Areas are “areas

where change to a different land use from what exists today is anticipated.” (10-A DCMR § 225.9). The guiding philosophy in Land Use Change Areas is to encourage and facilitate new development and promote adaptive reuse of existing structures. These areas have the capacity to become mixed-use communities containing housing, retail shops, services, workplaces, parks, and civic facilities. The Comp Plan FLUM and applicable Area Element policies provide guidance on development and redevelopment within Land Use Change Areas, including the desired mix of uses (Ex. 3I).

70. The Applicant Comp Plan Evaluation asserted that the Project will not impact the Commission’s prior determination regarding the Overall PUD’s consistency with the GPM. Consistent with the FLUM and the Commission’s prior approval, both Parcels 2 and 4 will continue to be improved with mixed-use buildings containing retail and residential uses, including a grocery store, that will contribute to the overall wide range of new uses provided in the Overall PUD that will address the community’s housing, retail, healthcare, open space, and recreation needs. The proposed height, massing, sustainable features, and exterior materials of the modified Parcel 2 and Parcel 4 buildings will be consistent with the Commission’s prior approval, and in fact will be more consistent with the Commission’s preference with the removal of the Parcel 2 Building pedestrian bridge over Platt Court. Further, even with the flexibility being requested by the Applicant, the affordable housing program provided with the Project will be an improvement compared to the prior approval, and it will maintain the overall percentage of affordable housing across the Overall PUD (Ex. 3, 3I).

FLUM

71. The Applicant Comp Plan Evaluation stated that the Project will not be inconsistent with the FLUM. The Overall PUD Site is located within an area designated for Mixed Used development, which is the same general designation that existed under the 2006 Comp Plan when the Commission approved the Overall PUD. As part of the 2021 Comp Plan amendment process the Council made a change to the FLUM designation for the northern portion of the Overall PUD Site, including Parcels 2 and 4. Previously, the Overall PUD Site was designated Mixed Use (Moderate Density Commercial, Medium Density Residential, and Parks, Recreation, and Open Space), with which the Commission previously determined that the Overall PUD is not inconsistent. *See* Z.C. Order No. 13-14(6) at pg. 3-4. Under the 2021 Comp Plan, the Council increased the contemplated intensity of commercial development for the northern portion of the Overall PUD Site, including Parcels 2 and 4, by changing the FLUM to Mixed Use (Medium Density Commercial, Medium Density Residential, Parks, Recreation, and Open Space) (Ex. 3, 3I).
72. Based on current Framework Element guidance, typical [matter-of-right] densities in areas on the FLUM designated for medium-density (commercial and residential³) mixed-use development range between 4.0 FAR – 6.0 FAR, with greater density possible when complying with Inclusionary Zoning (“IZ”) or a PUD (Ex. 3, 3I).

³ The Medium Density Commercial FLUM category anticipates a density range of 4.0-6.0 FAR and the Medium Density Residential FLUM category anticipates a density range of 1.8-4.0 FAR, with greater density possible when complying with IZ or a PUD (*See* 10-A DCMR §§ 227.12, 227.7).

73. The Applicant Comp Plan Evaluation asserted that the proposed PUD modification will not impact on the Commission's prior determination regarding the Overall PUD's FLUM consistency. While the density on Parcel 4 could increase by approximately 25,000 square feet of GFA, and on Parcel 2 by approximately 5,000 square feet of GFA, the resulting density on both of these parcels, individually and across the Overall PUD Site, will remain well below what is contemplated for a medium density mixed-use PUD under the Comp Plan (Ex. 3, 3I).
74. Under the Original Order, the Overall PUD Site was rezoned to the CR zone (now known under the 2016 Zoning Regulations as MU-10), which currently permits under a PUD a maximum height of 110 feet and a maximum FAR of 8.64, of which no more than 4.02 may be non-residential (Subtitle X §§ 303.3(b), 303.7). Under the prior approvals, the Overall PUD is permitted a maximum density of 1.92 FAR, as measured in accordance with the PUD regulations aggregated across the entire Overall PUD Site (*See* Z.C. Order No. 13-14(6), Condition 2). With the additional approximately 30,000 square feet of GFA proposed on Parcels 2 and 4, the overall density across the Overall PUD Site will increase to approximately 1.95 FAR, an increase of approximately 0.03 FAR. (Ex. 3, 3I).
75. MC Area Element. The Applicant Comp Plan Evaluation stated that the Project will not be inconsistent with applicable policies of the MC Area Element. The scale of development and mix of uses on Parcels 2 and 4, and across the Overall PUD Site, will remain consistent with what is already approved, and will continue to address multiple planning and development priorities set by the District. The Project will continue to be responsive to community needs and provide uses and amenities that are accessible to the community. Further, the overall amount of affordable housing proposed for the Project will be increased and devoted to deeper levels of affordability than what was previously required. The overall amount of parking on Parcels 2 and 4 will be reduced, resulting in fewer peak hour trips regardless of the development program flexibility being requested. Finally, the Parcel 2 Building and Parcel 4 Building will continue to be architecturally compatible with the surrounding community, and with the historic character of the McMillan Sand Filtration site (Ex. 3, 3I; *See* 10-A DCMR §§ 2008.8, 2016.5-2016.8).
76. Land Use Element. The Applicant Comp Plan Evaluation stated that the proposed PUD modification will not be inconsistent with applicable policies of the Land Use Element. The Project will continue to recognize the potential of the Overall PUD Site to address a wide range of planning and development priorities, including enhancement of racial equity. As related to Parcels 2 and 4, this means the provision of new housing choices, including substantial affordable housing; increasing access to quality shops and services that meet day-to-day needs; providing safe and engaging gathering places; and providing employment opportunities. The Project will help facilitate the continued redevelopment of the Overall PUD Site that is already well underway with the recent completion of the community center and park on Parcel 6, and the ongoing construction of the 146 for-sale townhomes on Parcel 5. Not only will the mix of uses on Parcels 2 and 4 remain consistent with the FLUM and applicable MC Area Element policy guidance, the mix of uses and scale of development will remain consistent with the Commission's prior approvals, and

compatible with surrounding uses and neighborhoods (Ex. 3, 3I; *See* 10-A DCMR §§ 306.6, 306.8, 306.11-306.13, 307.14, 310.7, 310.10).

77. Transportation Element. The Applicant Comp Plan Evaluation stated that the proposed PUD modification will not be inconsistent with applicable policies of the Transportation Element (Ex. 3, 3I). The Transportation Memo demonstrated that the programmatic changes proposed for the Project will generate fewer peak hour trips than what was previously approved on these two parcels (Ex. 19E; see FF No. 53). Using a multimodal approach, the Transportation Memo included updates on implementation of the overall TIP and transportation performance plan (“TPP”) that are approved under the Original Order, and also includes updates to the transportation demand management TDM plan and LMP for both Parcels 2 and 4 (*Id.*; *See* 10-A DCMR §§ 403.8, 415.10).
78. Housing Element. The Applicant Comp Plan Evaluation stated that the Project will not be inconsistent with applicable policies of the Housing Element, and therefore, the Overall PUD will remain not inconsistent with the Comp Plan when read as a whole (Ex. 3, 3I). Parcels 2 and 4 will continue to provide a substantial amount of new market rate housing and affordable housing on a former underutilized District-owned large site. The Project will contain approximately 590 total housing units, including 141 senior affordable units. Not only will the number of affordable units be increased regardless of the flexibility requested (i.e., to reduce the number of senior affordable units and provide additional non-senior affordable units), but the affordable units will also be devoted to deeper levels of affordability (FF Nos. 31, 32). Importantly, the amount of affordable housing provided across the Overall PUD will continue to meet or exceed the requirement under the LDDA (Ex. 3, 3I; *See* 10-A DCMR §§ 503.3, 503.5, 503.6, 503.9, 503.11, 504.8, 504.9, 504.12, 504.13, 504.15, 504.17, 504.19, 505.8, 505.9, 510.10).
79. Environmental Protection Element. The Applicant Comp Plan Evaluation stated that the Project will not be inconsistent with applicable policies of the Environmental Protection Element. The Project will not have any impact on the previously planned sustainable features of the buildings on Parcels 2 and 4, and it will not create any environmental impacts beyond what has already been thoroughly evaluated for the Overall PUD. As required under the Overall PUD, the Parcel 2 Building and Parcel 4 Building will be certified at least LEED-Silver or its equivalent. Each building will utilize cool and green roofs to help reduce urban heat island effects, as well as incorporate sustainable landscape practices around the perimeter of each building and within landscaped building courtyards. Both buildings will also employ energy and water efficient windows, electrical, mechanical, and plumbing systems in support of District sustainability and climate change goals (Ex. 3, 3I; *See* 10-A DCMR §§ 603.6, 605.7, 612.9, 615.4, 616.3, 618.3, 620.18, 628.5).
80. Economic Development Element. The Applicant Comp Plan Evaluation stated that the Project will not be inconsistent with applicable policies of the Economic Development Element. The Project’s commercial program will continue to address known gaps in access to neighborhood commercial amenities, including the lack of grocery store access in this part of the city, and allow the Overall PUD to continue to maximize the Overall PUD Site’s

potential as a source for economic growth and advancement of housing and commercial equity in the District. Although the size of the grocery store will be reduced to 22,500 square feet, it will continue to provide the categories and quantities of food products that are typical of a full-service grocery store, and its size is consistent with post-COVID trends in urban grocery store size both generally, and within the District. The proposed commercial program for the Project will also continue to bring new retail, service, and eating establishment to the surrounding community. Further, the flexibility to allow a limited amount of lodging on these two parcels has the potential to support the District's hospitality industry, promote and celebrate the history of the McMillan site and the culture of a part of the District outside of the monumental core, and bring additional jobs and opportunities for District residents (Ex. 3, 3I; *See* 10-A DCMR §§ 703.8, 708.6, 708.8, 708.10, 708.11, 709.5, 709.7, 709.8, 709.13, 713.5, 714.13, 717.9, 717.14, 717.15, 717.20).

81. Urban Design Element. The Applicant Comp Plan Evaluation stated that the Project will not be inconsistent with applicable policies of the Urban Element. The Project will maintain the overall site plan, mix of uses, height, massing, and high-quality building design that has already been approved by the Commission, as well as by the Historic Preservation Review Board ("HPRB"), on Parcels 2 and 4 and across the Overall PUD Site. Only minor adjustments are proposed to building height to accommodate retail tenant needs and improve overall dwelling unit quality. Notwithstanding this adjustment, the proposed building height will remain well below that which is permitted in the CR (MU-10) zone. The removal of the pedestrian bridge connecting the two blocks of the Parcel 2 Building over Platt Court, which was generally disfavored by both the Commission and HPRB during the initial review, will open up an important north-south visual connection along Platt Court, between the North and South Service Courts, thus further reinforcing the compatibility of the Overall PUD with the character-defining features of the historic site (Ex. 3, 3I; *See* 10-A DCMR §§ 906.3, 906.10, 909.6, 909.8, 909.11, 914.3, 918.3, 918.6, 918.9).
82. Historic Preservation Element. The Applicant Comp Plan Evaluation stated that the Project will not be inconsistent with applicable policies of the Historic Preservation Element. The bulk of Project will involve programmatic modifications that will have a limited impact on the previously approved exterior design of the Parcel 2 and Parcel 4 Buildings. Any resulting exterior changes will have favorable impacts as they relate to the character of the historic McMillan Slow Sand Filtration site. The removal of the pedestrian bridge over Platt Court on Parcel 2 will increase north-south connectivity between the North and South Service Courts, which was an important consideration in both the HPRB and Mayor's Agent approvals of the Overall PUD (Ex. 3, 3I; *See* 10-A DCMR § 1014.9).
83. Racial Equity⁴. The Applicant Comp Plan Evaluation concluded that the Project would not be inconsistent with the Comp Plan when viewed through a racial equity lens as it would

⁴ At the time of the Original Order approval, the 2006 Comp Plan in effect did not require the Commission to evaluate Comp Plan consistency through a racial equity lens. The 2021 Comp Plan requires such analysis (*See* 10-A DCMR §§ 2501.4-2501.6, 2501.8). The Applicant provided a Comp Plan consistency analysis through a racial equity lens, specifically for the Project's proposed modifications to Parcels 2 and 4, in accordance with the Commission's current Racial Equity Tool. Consistent with Comp Plan guidance, the Commission's Racial Equity Tool requires submissions from applicants and the Office of Planning

further numerous Comp Plan racial equity goals and objectives of the MC Area Element and Citywide Elements, as discussed above. Specifically, the Project would facilitate redevelopment of an underutilized property with mixed-use development, including services uses and a grocery store to meet resident needs and provide employment opportunities; housing, including a substantial amount of affordable housing for seniors; and overall development of a scale compatible with the surrounding neighborhood (Ex. 3, 3I).

- *Community Outreach and Engagement* – The Applicant provided evidence that it initiated community outreach and engagement efforts regarding the Project in June 2024, met with ANC 5E and ANC 1E, attended meetings of McMillan Advisory Group and Bloomingdale Neighborhood Civic Association, and engaged with nearby civic associations and residents of the surrounding neighborhoods (Ex. 3). The Applicant also provided a detailed summary of its responses to the questions and feedback it received during its community outreach and engagement efforts (Ex. 3J); and
- *Displacement* – The Applicant stated that the Project will not result in direct physical displacement of residents or businesses as Parcels 2 and 4 are currently vacant. The Applicant stated that new development in any area has the potential to increase assessed value of surrounding properties, which may result in increased property taxes and indirect displacement. The Applicant noted that this issue was thoroughly analyzed by the Commission during the remand proceedings for the Overall PUD, and based on OP and expert testimony, the Commission concluded that the Overall PUD would not destabilize land values and would not cause displacement (*See* Z.C. Order No. 13-14(6), FF Nos. 221-234). Rather, the substantial amount of housing to be constructed on this site would logically take pressure off excess housing demand in the District and relieve development pressure on adjacent neighborhoods (*Id.*; Ex. 3).

NO UNACCEPTABLE PROJECT IMPACTS ON THE SURROUNDING AREA OR THE OPERATION OF CITY SERVICES (SUBTITLE X § 304.4(B))

84. The Applicant asserted that the Project would not result in unacceptable impacts on the surrounding area or on city services that are not capable of being mitigated or acceptable given the public benefits of the Overall PUD (and Parcels 2 and 4 specifically). The Application requests some changes to the sizes and locations of the uses in these two Parcels as well as some small changes to the building’s exteriors, but the Application did not propose a fundamental change to the program, mix of uses, overall appearance, or design intent of Parcel 2 and 4, as previously approved. Further, the Applicant’s Transportation Memo found that the modified Parcels 2 and 4 would not create adverse impacts on parking, traffic, or pedestrians since they generate fewer vehicular trips than those originally approved and would implement effective mitigation plans (Ex. 3, 19E).
85. The Commission previously found that the impact of the Overall PUD was not unacceptable given the quality of the public benefits provided, and it further found that the impact of the Overall PUD on the surrounding area and the operation of city services was

analyzing the zoning action’s consistency with the Citywide and Area Elements of the Comp Plan, and Small Area Plans, if applicable (Part 1); a submission from applicants including information about their community outreach and engagement efforts regarding the zoning action (Part 2); and a submission from the Office of Planning including disaggregated race and ethnicity data for the Planning Area affected by the zoning action (Part 3).

capable of being mitigated or was favorable. Since the Project will not materially change the impacts of Parcels 2 and 4 and the Overall PUD, the impact analysis remains the same, and the impacts of the Overall PUD, including the modified Parcels 2 and 4, will continue to be not unacceptable, capable of being mitigated, or favorable (*See* Z.C. Order No. 13-14(6), CL 6-9; Ex. 3, 19E).

PUBLIC BENEFITS AND PROJECT AMENITIES (SUBTITLE X § 304.4(C))

86. The Applicant demonstrated that the Project will include specific public benefits and project amenities that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the Overall PUD Site.
87. The proffered public benefits and project amenities for the Overall PUD fall within the categories urban design, architecture, and site planning; parks, open space, and landscaping; public art; historic preservation; housing and affordable housing; retail; training and employment opportunities; environmental benefits; and uses of special benefit to the community and city. These benefits and amenities included but are not limited to additional affordable and market-rate housing; provision of significant recreational and open space; creation of permanent and full-time jobs; provision of significant neighborhood-serving retail; and \$5,000,000 worth of community benefits (Ex. 12A; *See* Z.C. Order No. 13-14(6), CL 8).
88. The Commission previously found that the Overall PUD’s benefits and amenities “advance the related Comprehensive Plan policies to a degree that few if any planned unit developments have achieved” and that the value of the public benefits is “exceedingly high, the zoning flexibility comparatively modest, and the potential adverse impacts capable of being mitigated.” (*See* Z.C. Order No. 13-14(6), CL 8-9).
89. The Application did not propose any material changes to the approved public benefits and project amenities, and nearly all the public benefits and project amenities from the Overall PUD would be unaffected. As modified, Parcels 2 and 4 will provide new market rate housing in numbers commensurate with the current approval, and the amount of affordable housing will increase above the prior approval. The overall amount of retail, including a grocery store, will remain consistent with the prior approval. Notably, even though the proposed grocery store will be smaller than originally approved, it would still satisfy regular grocery shopping needs for neighborhood consumers and be appropriately sized for the current market conditions; therefore, the modified grocery store will still deliver this important public benefit to the community (Ex. 12, 12A; Tr. at 23-26).

III. RESPONSES TO THE APPLICATION

OP

90. On March 17, 2025, OP filed a report recommending that the Commission set the Application down for a public hearing. (Ex. 10, the “OP Setdown Report”). The OP Setdown Report included the following comments on the application:
 - a) OP requested clarification about the location of the retail in Parcel 2 if it were reduced to 5,000 square feet;

- b) OP requested operational and transportation details about the potential lodging use in Parcel 2 West;
 - c) OP requested that the Applicant evaluate, with DDOT, the planned location of the loading dock in Parcel 2 East;
 - d) The OP Setdown Report also stated that OP supported all the Application’s requested modifications and areas of flexibility, with the clarifications identified above;
 - e) The OP Setdown Report analyzed the Application under the Comprehensive Plan, including evaluating it through a racial equity lens, and concluded that the Application is not inconsistent with the Comprehensive Plan’s maps or Citywide Elements and that it would further Area Element statements and policy objectives, citing provisions of the Urban Design Element (e.g., UD-2.2.2, UD-2.2.5); as well as various other policies and objectives affecting the Overall PUD Site; and
 - f) Regarding racial equity, in response to Part 3 of the Racial Equity Tool⁵, the OP Setdown Report stated that: “The proposed modifications would allow for additional opportunities for housing. The modifications would allow for an increased number of units, affordable units and in particular housing which would be affordable to seniors, a category of residents for whom market rate housing is outside their reach.”
- (Ex. 10).

91. The Applicant fully responded to all the comments and requests for information in the OP Setdown Report in its prehearing submission (*See* FF Nos. 52-54; Ex. 12-12B, 19).

92. On July 7, 2025, OP filed a hearing report recommending that the Commission approve the Application, stating: “On balance, the requested modifications would not be inconsistent with the Comprehensive Plan or with the McMillan Master Plan; nor would they negatively impact the intent of the approvals granted under Order Nos.13-14(6), 13-14A and 13-14B” and recommended that the Zoning Commission approve the requested modifications and flexibility in the Application. (Ex. 22, the “OP Hearing Report”).

- a) The OP Hearing Report stated OP’s support for the following modifications and flexibility to Parcel 2:
 - i. Removal of the pedestrian bridge;
 - ii. Reduction in amount of retail and range of flexibility of 5,000-17,000 square feet;
 - iii. Number of residential units and relocation of the senior affordable units to Parcel 2 East and flexibility to reduce the senior affordable units if financing is not secured;
 - iv. Flexibility for lodging use in Parcel 2 West, subject to a recommendation from DDOT;
 - v. Reduction in the amount of vehicle parking and flexibility in the range of parking spaces, provided DDOT is also supportive;
 - vi. Changes to the building design, dimensions, and flexibility for loading dock locations; and

⁵ OP’s Setdown Report provided a Comp Plan consistency analysis through a racial equity lens, in accordance with the Commission’s Racial Equity Tool, which requires disaggregated race and ethnicity data for the Planning Area in which the Property is located. However, the data included in the OP Setdown Report was older data for the 2018-2022 time period while the OP Hearing Report provided more current data for the 2019-2023 period and is discussed below in FF No. 92.

- vii. Changes to some of the exterior materials;
 - b) The OP Hearing Report stated OP's support for the following modifications and flexibility to Parcel 4:
 - i. Decrease in size of grocery store and related flexibility to reduce size to 10,000 square feet;
 - ii. Number of residential units and relocation of senior affordable units to Parcel 2 East;
 - iii. Ability to temporarily include lodging use for up to 20% of the units;
 - iv. Reduction in the amount of vehicle parking and flexibility in the range of parking spaces, provided DDOT is also supportive;
 - v. Changes to the loading facilities and related flexibility;
 - vi. Changes to the building design, dimensions, and flexibility for loading dock locations; and
 - vii. Changes to some of the exterior materials;
 - c) The OP Hearing Report also stated OP's support for zoning flexibility from the side yard, plaza, and penthouse setback and single enclosure requirements for both Parcels and for the proposed construction phasing;
 - d) The OP Hearing Report summarized OP's comments on the Application and the Applicant's responses;
 - e) The OP Hearing Report summarized the proposed modifications to the benefits and amenities, which OP stated would increase the number of housing, affordable housing, and senior housing units; and
 - f) The OP Hearing Report again concluded that the Application is not inconsistent with the Comprehensive Plan's maps or Citywide Elements, including when viewed through a racial equity lens, and that it would further Area Element statements and policy objectives. In response to Part 3 of the Racial Equity Tool, the OP Hearing Report included more current disaggregated race and ethnicity data, for the Mid-City Planning Area in which the Property is located, than the OP Setdown Report. The data showed a decrease in both White and Black populations but increases in other minority populations for the 2019-2023 period; higher median income than Districtwide but uneven gains across racial groups and a decrease in income for American Indian and Alaska Native for the 2019-2023 period; and fewer owner households than Districtwide with disparity among racial groups for the 2019-2023 period. Again, OP concluded that the modifications would create more housing opportunities, including affordable housing opportunities for seniors
- (Ex. 22).

93. At the July 17, 2025 public hearing, OP testified in support of the Application and summarized its comments in its prior reports. OP noted the appeals and delays that affected the market since the Overall PUD was approved. OP also testified that the Application would still maintain the residential and commercial uses, including the grocery store, that are part of the previous approval. OP stated that the Applicant responded adequately to its questions in the OP Setdown Report. OP testified that when viewed through a racial equity lens, the proposed modifications and flexibility would not be inconsistent with the Comprehensive Plan and would provide significant housing and affordable housing. OP

noted that the significant amount of flexibility requested would allow the development of Parcels 2 and 4 to proceed and adjust to the marketplace (Tr. at 65-68).

DDOT

94. On July 7, 2025, DDOT filed a report (Ex. 23) (the “DDOT Report”), expressing no objection to the Application subject to the Applicant implementing the revised TDM Plan and revised LMP and continuing to work with DDOT and WMATA to revise the TIP, as proposed by the Applicant in the Transportation Memo (Ex. 19E).
95. At the July 17, 2025 public hearing, DDOT testified that it supported the Application, subject to two conditions to which the Applicant agreed. DDOT noted that the relevant parties are working on the updated TIP (Tr. at 63-64).

OTHER DISTRICT AGENCIES

96. Office of Attorney General (“OAG”).
 - a) On July 7, 2025, OAG submitted a letter (Ex. 21) (“OAG Letter”) supporting the Application subject to two conditions: (1) that the senior affordable units in Parcel 2 East be constructed concurrently with or before constructing the market rate housing in Parcel 2 West and Parcel 4 and (2) that the potential lodging use be limited to a term. The OAG letter stated that modified Parcels 2 and 4 would deliver significant additional market rate and affordable housing in the Mid-City planning area, consistent with equitable development and affordable housing requirements in the Comprehensive Plan;
 - b) At the July 17, 2025 public hearing, OAG testified in support of the Application and summarized the arguments and conditions described in the OAG Letter (Tr. at 58-61); and
 - c) On July 28, 2025, OAG submitted a supplemental letter (Ex. 37, “OAG Supplement”) responding to the Applicant’s explanation about why it cannot commit to specific timing of the construction of Parcel 2 East due to the challenges and uncertainty of affordable housing public financing. The OAG Supplement stated a revised condition, to which the Applicant agreed, that the Applicant will file a letter annually with the Zoning Administrator describing the status of the affordable housing financing for Parcel 2 East.

ANCs

97. On March 26, 2025, ANC 5E submitted a report stating that at its properly noticed public meeting on March 18, 2025, at which a quorum was present, the ANC voted 6-0-0 in support of the Application, noting that the transportation plans will provide adequate pedestrian, bicycle, and vehicle access (Ex. 11) (“ANC 5E Report”). The ANC 5E Report did not identify any concerns with or objections to the Project.
98. On July 24, 2025, ANC/SMD 5E05 Commissioner Alice Thompson filed a letter in the record indicating that ANC 5E remains in support of the Application and stated that the Applicant worked with and was responsive to the community to address concerns regarding the retail flexibility (Ex. 39).

99. On July 3, 2025, ANC 1E submitted a report stating that at its properly noticed public meeting on June 25, 2025, at which a quorum was present, the ANC voted 7-0-0 in support of the Application, noting that they did not have any concerns about the Project (Ex. 20) (“ANC 1E Report”).

ORGANIZATIONS AND INDIVIDUALS IN SUPPORT

100. Cheryl Cort, on behalf of the Coalition for Smarter Growth, testified in support of the Application. Ms. Cort praised the deeper levels of affordability for the affordable housing and noted that a 9,000 square foot grocery store, in her experience, is sufficient for regular grocery shopping needs. She also requested that affordable housing be required to exist in perpetuity (Tr. at 72-74).

ORGANIZATIONS AND INDIVIDUALS IN OPPOSITION

101. Chris Mahony, a nearby resident, testified in opposition to the Application. He stated that he is generally in favor of the development. He claimed that the Applicant’s presentations about proposed size of and flexibility for the size of the grocery store were misleading, and he expressed concern that the proposed grocery store and flexibility – down to 12,000 square feet – would result in a grocery store being too small to adequately serve the shopping needs of neighborhood residents, especially those with limited mobility, so it should be at least 20,000 square feet. He also stated that non-senior affordable housing should be included in the proposal (Tr. at 77-82).
102. Chris Otten, on behalf of D.C. For Reasonable Development, testified in opposition to the Application. He stated that the additional number of residential units was too much density and that the proffered public benefits of retail and grocery store to serve the new residents would be reduced too much. He also claimed that the Project would cause additional traffic and create safety hazards with respect to loading, and it would overly burden emergency services. He stated that more planning and analysis was needed, and that the Application undercuts the goal of a livable and walkable community (Tr. at 84-88).
103. Peter Stibbins, a member of the Save McMillan Park Action Coalition, testified in opposition to the Application. He expressed concern over the loss of the amount of retail and grocery store shrinkage. He stated that a smaller grocery store – like Streets – would be inadequate and that there is a need for the largest possible grocery store (Tr. at 88-89).
104. Annie Jones, a Ward 5 resident, testified in opposition to the Application. She questioned what is intended by affordable housing in the proposal (Tr. at 91-92).
105. Kevin Rapp, a nearby resident and previous ANC SMD Commissioner for the Property, testified and filed a letter in opposition to the Application. His opposition concerned the flexibility requests, communication about the flexibility was allegedly misleading, and that the proposed modifications would undermine some of the previously proffered public benefits and would alter the nature of the Overall PUD. His additional objections were as follows:
- a) That the maximum proposed flexibility would reduce the retail to well below the previously intended amount and would result in the loss of jobs, thus a minimum of

- 14,000 square feet of retail should be maintained on Parcel 2 with protection against residential conversion;
- b) To granting the zoning flexibility from the MU-10 plaza requirements, which would result in a loss of community benefit of public open space, thus the MU-10 plaza requirement should be maintained;
 - c) No prior indication of potential loss of parking;
 - d) Misleading and ambiguous communication from the Applicant about the extent of the retail flexibility;
 - e) Consideration of ANC 1E; and
 - f) The Applicant's need for flexibility to reduce the grocery store to 10,000 square feet was unsubstantiated and too small to serve the grocery shopping needs of residents, and that the minimum grocery store size should be 20,000 square feet plus a minimum of 21,000 square feet of other retail on Parcel 4 (Tr. at 93-99; Ex. 34).
106. Daniel Wolkoff, testified in opposition to the Overall PUD (and Application) claiming adverse pollution effects and the loss of open space (Tr. at 100-101).
107. Four people and one organization filed letters in opposition to the Application: Alex Hecht, Eli Keene, Matthew Kastner, Save McMillan Action Coalition, and Kevin Rapp. Mr. Hecht opposed the reduced grocery store and retail footprint; the separation of affordable and market housing, which undermines inclusivity; the reduction of parking minimums; and the removal of the pedestrian bridge. Mr. Hecht believes these changes are a departure from the developer's promise to deliver long-term livability and inclusivity (Ex. 16). Mr. Keene opposed the proposed reduction in the size of the grocery store, with flexibility to 10,000 square feet, stating that it is inconsistent with the Overall PUD and that a grocery store of 10,000 square feet is insufficient for the community (Ex. 24, 26). Mr. Kastner stated that he supported the Application except he opposed the proposed flexibility to reduce the size of the grocery store to 10,000 square feet, as it would be a loss of benefit for the community (Ex. 30). Save McMillian Coalition opposed the Application and stated that the Application is being decided prematurely without second-stage PUD approval for the Master Development Plan, which risks increased density without proper planning; the Application will result in greater reliance on cars and a smaller scale grocery store; and the Application will not provide truly affordable housing opportunities as the income levels are out of reach for working people (Ex. 33). Mr. Rapp opposed the Application, cited various concerns about the proposed modifications, his opinion of poor communication from the Applicant about the proposal, and suggested revisions to the proposal; Mr. Rapp's oral testimony and his opposition letter are fully summarized above in Finding of Fact No. 105 (Ex. 34).
108. No other persons, agencies or organizations filed written comments in the record or testified at the public hearing.

CONCLUSIONS OF LAW

AUTHORITY

1. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may

approve a PUD and a modification with hearing pursuant to Subtitle X, Chapter 3 and Subtitle Z § 704, and related zoning flexibility pursuant to Subtitle X § 303.1.

2. PUD Purpose. Pursuant to Subtitle X §§ 300.1 and 300.2, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits and project amenities; (c) protects and advances the public health, safety, welfare, and convenience; and (d) does not circumvent the intent and purposes of the Zoning Regulations.
3. Comprehensive Plan. Pursuant to Subtitle X §§ 300.1, 300.2, and 304.4, the Commission must find that the PUD “is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.” The Commission is directed to review the Application against the Comprehensive Plan “as a whole.”⁶ The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the Comprehensive Plan’s purposes are:
 - a) To define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;
 - b) To guide executive and legislative decisions on matters affecting the District and its citizens;
 - c) To promote economic growth and jobs for District residents;
 - d) To guide private and public development in order to achieve District and community goals;
 - e) To maintain and enhance the natural and architectural assets of the District; and
 - f) To assist in conservation, stabilization, and improvement of each neighborhood and community in the District.
4. Impacts. Pursuant to Subtitle X § 304.4(b), the Commission must find the Application “does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project.”
5. Benefits and Amenities. Pursuant to Subtitle X § 304.4(c), the Commission must find the PUD “[i]ncludes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.” Pursuant to Subtitle X §§ 305.2, 305.3, 305.4, and 305.12, the PUD’s benefits and amenities must “benefit the

⁶ *Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016) (“The Comprehensive Plan is a broad framework intended to guide the future land use planning decisions for the District. Even if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan *as a whole*. The Comprehensive Plan reflects numerous occasionally competing policies and goals and except where specifically provided, the Plan is not binding. Thus, the Commission may balance competing priorities in determining whether a PUD is consistent with the Comprehensive Plan as a whole. If the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.”) (internal citations and quotations omitted).

surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions,” in majority part “relate to the geographic area of the Advisory Neighborhood Commission in which the application is proposed,” and “meet the following criteria: (a) Benefits shall be tangible and quantifiable items; (b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) Benefits may primarily benefit a particular neighborhood or area of the city or service a critical city-wide need.” Moreover, a PUD “may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many.”

6. PUD Balancing Test. Pursuant to Subtitle X § 304.3, in reviewing a PUD application, the Commission must: “Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” Pursuant to Subtitle X §§ 303.11 and 303.12: “The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission”, and “[a] PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD.”
7. Second-Stage PUD. Pursuant to Subtitle X § 302.2, “[a] two-stage application has two parts: (1) The first-stage application involves general review of the site’s suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with the Comprehensive Plan, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project; and (2) The second-stage application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and this title.” Pursuant to Subtitle X § 309.2, if the Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Commission’s decision.
8. Modification Standards. Pursuant to Subtitle Z § 704.3, an application for a modification of a second-stage PUD “shall meet the requirements for, and be processed as, a second-stage PUD application.” Pursuant to Subtitle Z § 704.4, the scope of the Commission’s hearing to evaluate a modification with hearing “shall be limited to the impact of the modification on the subject of the original application and shall not permit the Commission to revisit its original decision.”
9. Evidentiary and Evaluative Standards. Pursuant to Subtitle X § 304.2, “the applicant shall carry the burden of justifying” the Application according to the applicable standards. Moreover, “the Commission must address each material contested issue of fact.”⁷

⁷ *Barry Farm Tenants and Allies Ass’n. v. D.C. Zoning Comm’n.*, 182 A.3d 1214, 1224 (D.C. 2018).

**CONSISTENCY WITH THE COMPREHENSIVE PLAN AND OTHER ADOPTED PUBLIC POLICIES
RELATED TO THE PROPERTY (SUBTITLE X § 304.4(A))**

10. For the reasons explained above in FF Nos. 22, 24-30, and 68-83, and based on OP's analysis the OP Setdown Report and OP Hearing Report, the Commission concludes that, pursuant to Subtitle X §§ 300.1, 300.2, and 304.4(a), the Application, when viewed through a racial equity lens, is not inconsistent with the Comprehensive Plan and with other public policies and active programs, when the Comprehensive Plan is considered as a whole. The Commission concludes that the Application complies with the GPM and FLUM designations for the Property, as discussed above, and achieves the objectives of the Mid-City Area Element and Citywide Elements of the Comprehensive Plan (FF Nos. 68-83, 90-93). The Commission concludes that the racial equity analyses of the Application provided by the Applicant and OP are responsive to the components of the Commission's Racial Equity Tool, and inclusive of community outreach and engagement information from the Applicant and disaggregated race and ethnicity data for the Mid-City Planning Area from OP (FF 83, 90, 92). The Commission finds that the Applicant conducted sufficient community outreach and engagement regarding the proposed modifications to Parcels 2 and 4, including meetings with the affected ANCs, surrounding community organizations, and immediate community members (FF 51, 54, 83, 105, 107). The Commission notes that, in response to concerns expressed by the opposition, the Applicant ultimately increased its retail and grocery store commitments from what was originally proposed in the Application (FF 55, 56(a), (g)). However, the Commission acknowledges that the Applicant's outreach efforts and overall transparency about the Application fell short for some community members (FF 101, 105, 107). The Commission finds the disaggregated race and ethnicity data for the Mid-City Planning Area provided by OP demonstrates racial disparities with respect to median income and homeownership. The Commission is encouraged that the provision of a 22,500 square foot grocery store, retail uses with potential for employment opportunities, and new housing, including affordable housing for seniors, will benefit the surrounding community and advance Comprehensive Plan racial equity goals overall, as discussed above (FF 68-83, 90-93). The Commission notes that the Application will not result in any direct displacement of residents as Parcels 2 and 4 are currently vacant; the Commission finds that indirect displacement impacts were fully analyzed during the remand proceedings for the Overall PUD (FF 83; *See* Z.C. Order No 13-14(6)). The Commission further notes that the Applicant and OP did not identify any Comprehensive Plan policies that were categorically inconsistent with the Application (FF 68, 90, 92). Thus, to the extent the Application is potentially inconsistent with any Comprehensive Plan policies, the Commission finds such inconsistencies to be outweighed by the numerous policy goals and objectives that would be advanced by the Application, as discussed above (FF 68-83, 90-93).

11. Benefits and Amenities. As discussed above, the Application will not materially change, and in some instances will increase, the proffered benefits and amenities in the Overall PUD and those associated with Parcels 2 and 4. In particular, the Project will deliver 58,500-76,000 total square feet of retail, of which at least 22,500 square feet will be devoted to a grocery store, which is consistent with the total amount of retail provided in the approved Parcels 2 and 4. Further, the Project will include more affordable residential

units than the prior approval, and the total number of residential units will be commensurate with or greater than the prior approval. Otherwise, the Project will not affect the proffered benefits and amenities in the Overall PUD or as associated with these Parcels in particular (FF 52(g), 61, 86-89).

PROJECT IMPACTS - FAVORABLE, MITIGATED, OR ACCEPTABLE (SUBTITLE X § 304.4(B))

12. Based on the case record and the Findings of Facts above, the Commission concludes that for the reasons given below, the Project will not result in any unacceptable impacts on the surrounding area or District services or facilities that cannot be mitigated or that are not acceptable given the Overall PUD's benefits and amenities.

13. As set forth in Finding of Fact Nos. 84-85 above, the Commission previously found that impacts of the Overall PUD were acceptable given the quality of the public benefits provided, and that the impacts of the Overall PUD on the surrounding area and operation of city services were not unacceptable. Further, the Commission previously found that the Overall PUD would not create adverse traffic, parking, or pedestrian impacts on the surrounding community, and that the Overall PUD, including Parcels 2 and 4, was approved with conditions to ensure that any potential adverse effects on the surrounding area from the development would be mitigated. The Application requested changes to the locations of uses and the use mix within Parcels 2 and 4; minor changes to the exterior details and dimensions of the Parcel 2 and 4 buildings; and flexibility for both Parcels 2 and 4 regarding number of units, number of parking spaces, and entrances. As described above in the FF Nos. 31-50, 52, 54, and 58-60, these modifications and areas of flexibility do not materially deviate from the approved Overall PUD and the approved Parcels 2 and 4. The Commission notes that several persons and organizations submitted testimony and testified in opposition at the public hearing regarding the proposed modifications to Parcels 2 and 4 (FF 101-107). Generally, the opposition argued that the proposed modifications to Parcels 2 and 4 are a departure from what was originally promised and will result in impacts that do not benefit the community, primarily a significantly smaller grocery store, less retail and community serving uses, and less parking (*Id.*). The Commission finds that the Applicant's submissions provide sufficient reasoning and additional clarification for the proposed modifications to Parcels 2 and 4, including the design changes and flexibility requested (FF 51, 52, 54, 55). The Commission also finds that the Applicant's post-hearing submissions adequately respond to the opposition testimony raised and notes the increased grocery store and retail commitments from what was originally proposed in the Application (FF 56). Accordingly, the Commission finds that the impacts of the Overall PUD, and Parcels 2 and 4, as proposed to be modified, will not result in unacceptable impacts on the surrounding area or on the operation of city services and facilities, and is generally not persuaded by the opposition arguments raised. The main opposition issues are noted below followed by the Commission's response to the issue:
 - a) Size of Grocery Store. The Commission understands the concerns about the reduced grocery store size and concludes that the provision of a grocery store in Parcel 4 that is at least 22,500 square feet will satisfy the intent of the Original PUD and will provide the same public benefit as the larger grocery store in the previously approved Parcel 4. At the proposed size, the modified grocery store will satisfy the concerns of opponents who sought a grocery store of at least 20,000 square feet. Also, based on the Applicant's

- expert testimony and Findings of Fact above, the Commission is persuaded that the size demands of grocery stores, including for Parcel 4, has decreased since the Original PUD's approval and that the regular grocery shopping needs of residents will be satisfied with a grocery store of at least 22,500 square feet, thereby delivering the same public benefit (FF 55(c), 56(g), 89);
- b) Retail Size and Flexibility. The Commission understands the concerns about the retail and flexibility and concludes that the proposed amount of retail in the modified Parcels 2 and 4 – 15,000 -17,000 square feet and 43,500-59,000 square feet, respectively – will satisfy the intent of the Overall PUD and will provide the public benefit and project amenity as the previously approved Parcels 2 and 4. The proposed amount of retail for the modified Parcels 2 and 4 will be able to deliver the types and varieties of community serving retail as intended by the previous approval. The Commission is persuaded by the Applicant's testimony that the types of retail that are community-serving have evolved since the Original PUD was approved and finds that even with less retail square footage, Parcels 2 and 4 will provide retail that serves the current shopping needs of consumers. The Commission further finds that the opponents' objections about the extent of flexibility for the retail floor area, including their allegations that the Applicant was unclear or misleading and that there would be a loss of retail jobs, are mollified by the Applicant's latest retail commitment with limited flexibility that is commensurate with the amount of retail in the previous approval (FF 55, 56(g), 89);
- c) Elimination of Employment Opportunities. The Commission is not persuaded that the Application will result in fewer employment opportunities due to the reduction in retail size. The Commission believes the number of employment opportunities resulting from the Application will ultimately depend on various unknown factors, including what retail tenants the Project attracts and whether the Applicant utilizes the flexibility to convert to lodging use (FF 56(e));
- d) Non-Senior Affordable Housing. The Commission finds that the absence of non-senior housing in the modified Parcels 2 and 4 does not detract from the significant affordable housing public benefit that is provided. The modified Parcels 2 and 4 will provide more affordable housing units than the current approvals, so the Commission finds that even without non-senior affordable units, the Application will result in a greater public benefit than the previous approval. In addition, the flexibility in the Application may result in some non-senior affordable units, and the Overall PUD will still provide non-senior units in any event in the for-sale townhouses. Therefore, the Commission concludes that the affordable housing public benefit proffered in the Overall PUD will be unchanged or improved with the Project (FF 32(b), 78, 87, 89);
- e) Public Facilities and/or District Services Impacts. The Commission concludes that the Application will not result in any unacceptable negative impacts to public facilities and infrastructure or District services, including emergency services. The Commission considered, but does not find persuasive, the opposition testimony that the potential increase in the number of residential units in the modified Parcels 2 and 4, with the flexibility in unit count utilized, will result in too much density that would create a burden on public facilities or services. Rather, the Commission finds that the number of housing units in the Application does not materially differ from the previous approval, and the proposed number of housing units satisfies numerous District goals and policies for additional housing in the area and at the Reservoir District, which

would offset any potential adverse impacts. The Commission is persuaded by the Applicant's testimony – with which, OP concurred – that no additional impacts on public facilities and services would result from the number of housing units in the Application because of its close alignment with the previous proposal. Thus, the Commission confirms that the difference in the number of total residential units as compared to the prior approval would not result in adverse impacts to public facilities and/or District services that the Commission had not already considered as part of the Overall PUD (FF 55, 87, 89, 92-93);

- f) Traffic, Parking, and Loading Impacts. The Commission finds that the Application will not result in adverse impacts, including unsafe or hazardous conditions, regarding parking, loading, or traffic. The Commission considered the opponent's testimony that burdensome traffic and hazardous loading conditions would result, but it was not persuaded. The Commission agrees with the analysis in the Applicant's Transportation Memo that no additional adverse parking, loading, or traffic impacts would result from the Application, and they will be mitigated by the TDM plan, LMP, and TIP in any event. The Commission is further persuaded by the report and testimony from DDOT that the Application would not result in unacceptable impacts due to mitigations from the agreed-upon updated TDM plan, LMP, and TIP (FF 53, 94, 95);
- g) Open Space and Pollution. The Commission finds that the Application will not result in the loss of additional open space or create additional pollution. The massing, mix of uses, and density of the modified Parcel 2 and 4 buildings will be nearly identical to the previous approvals, and the Commission made significant findings regarding open space in the Overall PUD, which the Application will not disturb. Further, the Commission is not persuaded that additional pollution will occur as a result of the Application. The Overall PUD struck a careful balance between development and open space, and that balance will not change with the Application since it does not materially change the massing, mix of uses, or number of housing units from the previous approval. Furthermore, any adverse potential pollution impacts that would result from the Application will be offset by the many policies and goals for additional housing and a mixed-use community that will be advanced through the construction of the Parcels 2 and 4. (See Z.C. Order No. 13-14(6), CL 6-9); and
- h) Flexibility From MU-10 Plaza Requirement. The Commission finds that the Project's flexibility from the MU-10 plaza requirement will not result in adverse impacts. The Commission considered the opponent's testimony that the flexibility from the plaza requirement would be detrimental, but the Commission is not persuaded (FF 105). The Commission agrees with the Applicant's testimony that previous approvals for Parcels 2 and 4 already did not provide the required plaza and that the flexibility request in the Application results solely from the change in the Zoning Regulations that requires it to be specifically identified (FF 40(b), 50(b), 56(e)(iii)). The Commission already considered the potential impacts from the absence of the required plaza, and the Application will not disturb this. Further, the modified Parcels 2 and 4 will have open space consistent with the intent of the plaza requirement with the North Service Court, as described above (*Id.*).

14. The Commission notes that, in her oral testimony in support of the Application, Cheryl Cort of a Coalition for Smarter Growth requested that the Commission require the

affordable housing in the Project to exist in perpetuity (FF 100). The Commission concludes that the tenure of the affordable housing in the Project is for as long as the development exists, the same as was conditioned in the Original Order; thus, the Commission finds no reason to deviate from that established condition.

15. For the reasons stated herein, the Commission finds that the Application will not result in a change to the potential adverse impacts of the Overall PUD that the Commission previously considered, and any new potential impacts will be mitigated or will be acceptable given the quality of the public benefits and amenities.

PUD BALANCING AGAINST BENEFITS AND AMENITIES (SUBTITLE X §§ 304.3, 304.4(C))

16. The Commission previously determined that the Overall PUD included significant public benefits and project amenities that advance Comprehensive Plan policies “to a degree that few if any planned unit developments have achieved.” In deciding whether to again grant the Overall PUD application, the Commission judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects. The Commission concluded that, “The balance weighs overwhelmingly in favor of [again] granting this application. The value of the public benefits is exceedingly high, the zoning flexibility comparatively modest, and the potential adverse impacts capable of being mitigated.” (See Z.C. Order No. 13-14(6), CL 8-9).
17. The Application does not propose any changes to the approved public benefits other than reducing the size of the grocery store, introducing flexibility in amount of retail space and number of residential units, and increasing the number of affordable housing units. The Application requests flexibility for Parcel 2 and 4 with regard to number of residential units and parking spaces; for lodging use in Parcel 2 West; for heights of the buildings; to reduce the number of senior affordable units if no financing is awarded; to change locations for entrances; and to change some of the exterior materials, as well as flexibility on the phasing of constructing the buildings (FF 59, 60). The Application also requests additional PUD flexibility from some MU-10 zoning development standards, but as explained above in the Findings of Fact Nos. 40 and 50, such flexibility will have limited or no impact as compared to the previous approval or is no change from the previous approval (FF 40, 50, 60). Therefore, when the PUD flexibility is weighed against the proffered public benefits, the Commission continues to find that the Overall PUD, and Parcels 2 and 4 specifically, includes significant public benefits and amenities that considerably outweigh such flexibility and warrant approval of the Application (FF 32, 40, 42, 50, 61, 84-89, 92-93).
18. The Commission concludes that the Applicant has carried its burden of justifying the request set forth in the Application by providing substantial evidence, reasonably acceptable, as to each element of the Commission’s review of the Application as set forth above.
19. In addition, the Commission has made findings on “each material contested issue of fact.” In particular, the Commission notes that its function is to evaluate whether the Application satisfies the applicable standards (including whether it “results in unacceptable project

impacts on the surrounding area” and that, for a modification with hearing, the Commission’s evaluation “shall be limited to impact of the modification on the subject of the original application”). The Commission has made findings regarding contested issues involving the Application’s potential impacts and the interpretation and application of various applicable provisions of the Comprehensive Plan and Zoning Regulations.

GREAT WEIGHT TO RECOMMENDATIONS OF OP

20. The Commission is required to give “great weight” to the recommendation of OP pursuant to Section 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 (2018 Repl.) and Subtitle Z § 405.9 (See *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).
21. The Commission finds OP’s detailed analysis of the Application, its overall conclusion that the Application, including the proposed modifications and flexibility, satisfies the PUD modification requirements and is not inconsistent with the Comprehensive Plan when viewed through a racial equity lens, and its ultimate recommendation to approve the Application persuasive and concurs with OP’s recommendation (FF 90-93).

GREAT WEIGHT TO THE WRITTEN REPORTS OF ANCS 5E AND 1E

22. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANCs pursuant to Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances (*Metropole Condo. Ass’n*, 141 A.3d at 1087). The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978)) (citation omitted).
23. The Commission finds persuasive and concurs with ANC 5E’s support for the Application. The Commission notes that the ANC 5E Report did not list any issues or concerns (FF 97).
24. The Commission finds persuasive and concurs with ANC 1E’s support for the Application. The Commission notes that the ANC 1E Report did not list any issues or concerns and supports recommendations from ANC 5E (FF 99).

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia **ORDERS APPROVAL** of the Application for the review and approval of the Modification with Hearing to an approved Consolidated, First-Stage, and Second-Stage PUD for Parcel 2 and Parcel 4 of the Reservoir District. The Commission hereby approves the changes below to Z.C. Order Nos. 13-14(6), 13-14A, and 13-14B. To the extent there are conflicts between the conditions contained in this Order No. 13-14E and Order

Nos. 13-14(6), 13-14A, and 13-14B, the conditions contained in this Order shall govern; all other provisions of said prior Orders shall remain in effect:

Parcel 4 Building

1. **Condition B (Consolidated PUD Parameters), Paragraph 2 (Parcel 4) of Z.C. Order No. 13-14(6), as modified by Condition 1 of Z.C. Order No. 13-14B, is deleted in its entirety and replaced with the following:**

Parcel 4: Parcel 4 shall be developed substantially in accordance with the plans filed at Exhibits 3F and 12B in the record of Case No. 13-14E (the “Parcel 4 Building Modification Plans”), as modified by the guidelines, conditions, and standards herein.

- a. Parcel 4 shall have an approximate total gross floor area of 350,000 square feet, or an approximate density of 4.14 FAR, including 43,500-59,000 square feet of floor area devoted to retail use (“Parcel 4 Retail Space”), of which a minimum of 22,500 square feet of floor area shall be devoted to a grocery store (“Parcel 4 Grocery Store Space”);
 - b. The maximum building height on Parcel 4 shall be 84 feet, measured from the level of the curb opposite the middle of the front of the building along North Capitol Street;
 - c. Parcel 4 shall contain 311 off-street vehicle parking spaces, and a minimum of 114 long-term bicycle parking spaces;
 - d. Parcel 4 shall include 324 residential units; and
 - e. Loading facilities on Parcel 4 shall be provided as shown on the “proposed design” on the Parcel 4 Building Modification Plans.
2. **Condition B (Consolidated PUD Parameters), Paragraph 6 of Z.C. Order No. 13-14(6), as modified by Condition 2 of Z.C. Order No. 13-14B, which lists the permitted areas of design flexibility for the Overall PUD, is modified as follows (additions in **bold underline** text and deletions in ~~strikethrough~~ text):**
- a. To provide a range in the number of residential units on Parcel 4 of plus or minus 10% ~~from the number depicted on the plans dated April 11, 2014, marked as Exhibit 32A, and supplemented by drawings submitted on June 23, 2024, marked as Exhibit 832A in the record;~~
 - q. The Applicant shall have flexibility with the design of the Parcel 4 Building ~~from the uniform height requirement for penthouse mechanical space, consistent with the proposed roof plan included in Ex. 27A2 of Z.C. Case No. 13-14B~~ **as follows:**
 - i. **To increase the building height by no more than five (5) feet, for a maximum height of 89 feet;**
 - ii. **From the penthouse setback and single enclosure requirements consistent with the Parcel 4 Building Modification Plans;**
 - iii. **From the side yard requirements consistent with the Parcel 4 Building Modification Plans;**
 - iv. **From the plaza requirements consistent with the Parcel 4 Building Modification Plans;**
 - v. **To vary the locations of the entrances for the retail, residential, parking, and loading areas;**

- vi. To vary the total number of vehicle parking spaces, provided the number is not less than minimum required under Subtitle C § 701, and not more than the number triggering the excess parking requirements under Subtitle C § 707;
- vii. To vary the layout, number, and size of the loading facilities, provided that they satisfy the minimum requirements for the building under Subtitle C, Chapter 9;
- viii. To devote up to 20% of residential units to lodging use for a period not to exceed five (5) years from the date of issuance of the first certificate of occupancy for the residential portion of the building;
- ix. To vary the final selection of the exterior materials within the color ranges and material types consistent with the Parcel 4 Building Modification Plans, subject to approval by the Historic Preservation Office or Historic Preservation Review Board; and
- x. To vary the allowed uses within the “retail”- or “commercial”-designated areas on the Parcel 4 Building Modification Plans with retail, daytime care, private education, entertainment/assembly/performing arts, and general service uses.

3. **Condition C (Public Benefits) Paragraphs 5, 6, and 12 of Z.C. Order No. 13-14(6), are modified as follows (additions in **bold underline** text and deletions in ~~strikethrough~~ text):**

- 5. Housing: **Subject to approved flexibility**, the PUD shall provide approximately 924,583 square feet of GFA devoted to residential uses, or approximately 674 units of new housing in single-family and apartment houses, for both rental and ownership opportunities.
- 6. Affordable Housing: A portion of the total square feet of GFA devoted to housing shall be set aside for affordable housing, as follows: On Parcel **2, subject to approved flexibility**, ~~4~~, a minimum of 67,018 square feet of GFA of the total new housing provided, or approximately 85 **141** units shall be set aside as senior housing (55 years of age or older) for households earning 50% **30%** to 60% of **MFI** AMI. ~~An additional 25 units, or approximately 21,341 square feet of total GFA devoted to housing shall be set aside on Parcel 2 for households earning 80% of the AMI.~~ Finally, 22 of the single-family rowhouses on Parcel 5 shall be set aside as affordable housing. Nine of the affordable rowhouses will be made available to households earning no more than 50% of the AMI and the remaining affordable rowhouses will be made available to households earning no more than 80% of the AMI. The affordable housing units shall be constructed prior to or concurrently with the market-rate units on a given parcel, except that if the development is phased, the affordable units shall be constructed at a pace that is proportional with the construction of the market-rate units. All affordable units will remain subject to the applicable rental or price controls for so long as the project is in existence.
- 12. **Subject to approved flexibility**, the Applicant will provide a total of approximately ~~97,770~~ **97,600** square feet of GFA devoted to retail and service uses on the PUD Site. The retail space will include a full-service grocery store **on Parcel 4**.

4. **Condition D.1 (Transportation Mitigation Measures) paragraph (b) of Z.C. Order No. 13-14(6), as modified by Condition 3 of Z.C. Order No. 13-14B, is deleted in its entirety and replaced with the following:**

- b. **For the life of the Project**, the Applicant shall implement the following loading and curbside management plan:
- i. The Applicant shall implement the curbside management plan as set forth in Exhibit 832F2 of the record in Case No. 13-14; and
 - ii. The Applicant shall implement the Loading Management Plan (“LMP”) and Transportation Demand Management (“TDM”) Plan for Parcel 4 as set forth in Exhibit 19E of the record for Z.C. Case No. 13-14E, which shall supersede all other LMP and TDM commitments contained in Order Nos. 13-14(6) and 13-14B.

Parcel 2 Building

5. **Condition A (Project Development) of Z.C. Order No. 13-14A, is deleted in its entirety and replaced with the following:**

1. Development on Parcel 2 shall be developed substantially in accordance with the plans filed in record as Exhibits 3G and 12B in Case No. 13-14E (collectively, the “Parcel 2 Building Modification Plans”), as modified by the guidelines, conditions, and standards herein.
2. Development on Parcel 2 shall comprise two (2) separate buildings (the “Parcel 2 West Building” and “Parcel 2 East Building”) that collectively contain approximately 255,000 square feet of gross floor area, or an approximate density of 4.18 FAR (based on the land area of Lot 815 only), including 15,000-17,000 square feet of floor area devoted to retail use (“Parcel 2 Retail Space”), which retail may be located entirely in the Parcel 2 West Building or in both Parcel 2 Buildings.
3. The maximum height of the Parcel 2 West Building and Parcel 2 East Building shall be 83 feet, measured from the level of the curb along First Street, N.W.;
4. The Parcel 2 Buildings shall contain a total of 122 off-street vehicle parking spaces, and a minimum of 92 long-term bicycle parking spaces;
5. The Parcel 2 Buildings shall contain a total of 266 residential units; and
6. Loading facilities for the Parcel 2 East Building shall be provided as shown on the “proposed design” on Sheet 14 of the Parcel 2 Building Modification Plans, provided, however, that the loading facilities for the Parcel 2 East Building may be provided as shown in the “proposed design flexibility” plan on Sheet 26 of the Parcel 2 Building Modification Plans should the Parcel 2 East Building be constructed without ground floor retail pursuant to the flexibility under Condition 2 above.
6. The Applicant shall have flexibility from the Zoning Regulations in the following areas:
 - a. From the penthouse setback and single enclosure requirements, consistent with the Parcel 2 Building Modification Plans;
 - b. From the side yard requirements of the Parcel 2 West Building and Parcel 2 East Building consistent with the Parcel 2 Building Modification Plans; and
 - c. From the plaza requirements of the Parcel 2 West Building and Parcel 2 East Building consistent with the Parcel 2 Building Modification Plans.

7. The Applicant shall have flexibility with the design of the Parcel 2 Buildings in the following areas:
 - a. To vary the number of residential units by plus or minus ten percent (+/- 10%);
 - b. To convert the Parcel 2 West Building from residential to lodging use containing 120 - 226 guest rooms;
 - c. To increase the height of the Parcel 2 West Building and Parcel 2 East Building by no more than five (5) feet, for a maximum height of 88 feet, or to remove up to two (2) stories from the Parcel 2 West Building and/or Parcel 2 East Building, consistent with the Parcel 2 Building Modification Plans, and consistent with the flexibility to convert the Parcel 2 West Building to lodging use, and with the flexibility to reduce number of senior affordable units in the Parcel 2 East Building;
 - d. To vary the location and configuration of affordable dwelling units within the Parcel 2 West Building (if any). Except for the affordable senior dwelling units in the Parcel 2 East Building, the proportion of studio, efficiency, and one-bedroom affordable units to all affordable units shall not exceed the proportion of studio, efficiency, and one-bedroom market-rate units to all market-rate units, and the affordable dwelling units shall not be overly concentrated in any one portion of the building;
 - e. To vary the below-grade garage layout, including the location and arrangement of vehicle parking spaces on Parcel 2;
 - f. To vary the total number of vehicle parking spaces on Parcel 2, provided the number is not less than minimum required under Subtitle C § 701, and not more than the number triggering the excess parking requirements under Subtitle C § 707;
 - g. To vary the layout, number, and size of the loading facilities, provided that they satisfy the minimum requirements for the buildings under Subtitle C, Chapter 9;
 - h. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings as shown on the Parcel 2 Building Modification Plans;
 - i. To vary the locations of the entrances for the retail, residential, parking, and loading areas;
 - j. To vary the final selection of the exterior materials within the color ranges and material types consistent with the Parcel 2 Building Modification Plans, subject to approval by the Historic Preservation Office or Historic Preservation Review Board;
 - k. To make minor refinements to exterior details and dimensions that do not substantially alter the exterior configuration of the building or design shown on the Parcel 2 Building Modification Plans, or any other changes to comply with the District of Columbia Constructions Codes, the recommendations of the D.C. Historic Preservation Review Board or the Mayor's Agent for

Historic Preservation, or that are otherwise necessary to obtain a final building permit;

- l. To vary the final design of retail frontages, including locations of doors, design of show windows and size of retail units, to accommodate the needs of specific retail tenants;
- m. To design and locate building signage, including all retail signage, in accordance with the sign guidelines approved as part of the Master Plan and the District of Columbia sign regulations in effect at the time of permit;
- n. To vary the allowed uses within the “retail”- or “commercial”-designated areas on the Parcel 2 Building Modification Plans with retail, daytime care, private education, entertainment/assembly/performing arts, and general service uses; and
- o. To vary the location, attributes, and general design of the streetscape within public space to comply with the requirements of and the approval by the District Department of Transportation.

6. **Condition B (Transportation Mitigation Measures) of Z.C. Order No. 13-14A, is modified by deleting paragraphs 1 and 2 in their entirety and adding the following paragraphs 1 and 2:**

1. *TDM Program:* **For the life of the project**, the Applicant shall implement the Transportation Demand Management (“TDM”) Plan for Parcel 2 as set forth in Exhibit 19E of the record for Z.C. Case No. 13-14E, which shall supersede all other TDM commitments contained in Z.C. Order Nos. 13-14(6) and 13-14A.
2. *Loading Restriction and Guidelines:* **For the life of the project**, the Applicant shall implement the Loading Management Plan (“LMP”) for Parcel 2 as set forth in Exhibit 19E of the record for Z.C. Case No. 13-14E, which shall supersede all other LMP commitments contained in Z.C. Order Nos. 13-14(6) and 13-14A.

7. **Condition C.1 (Public Benefits – Affordable Housing) of Z.C. Order No. 13-14A, is modified as follows (additions in bold underline text and deletions in strikethrough text):**

1. *Affordable Housing:* **Notwithstanding Condition C.6 of Z.C. Order No. 13-14(6), for so long as the project exists**, the Applicant shall set aside **141 units for senior housing (55 years of age or older) for households earning 30% - 60% MFI in the Parcel 2 East Building (39 units @ 30% MFI, 86 units @ 50% MFI, and 16 units at 60% MFI). However, if the Applicant is unable to obtain the public financing for all 141 units, then the Applicant shall then set aside:** ~~the following number of units and approximate amount of gross floor area for affordable dwelling units:~~
 - a. **A minimum of 88 units to senior housing (55 years of age or older) for households earning up to 30% - 60% MFI in the Parcel 2 East Building (25 units @ 30% MFI, 53 units @ 50% MFI, and 10 units @ 60% MFI); and**
 - b. ~~A minimum of 25 dwelling units of varying size and unit type comprising approximately 22,095 square feet of gross floor area, as~~ **Non-age-restricted** affordable dwelling units for households earning up to 80% **MFI** of the AMI, and two **(2)** affordable dwelling units ~~comprising approximately~~

~~1,392 square feet of gross floor area as~~ **non-age-restricted** affordable dwelling units for ~~targeted to households earning up to 50% MFI of the AMI.~~ **The total number of non-age-restricted units required under this condition depends on the final total residential GFA in the Overall PUD, so that at least 20% of the Overall PUD's residential GFA will be devoted to affordable housing, in accordance with Z.C. Order No. 13-14(6). The non-age-restricted affordable dwelling units required under this condition may be located on Parcel 2, Parcel 4, or distributed between both Parcels.**

All affordable dwelling units **required under this condition** shall remain subject to the applicable rental or price controls for so long as **the buildings in which they are located are in existence** ~~the Parcel 2 Building is in existence~~⁸. The affordable dwelling units shall be constructed prior to or concurrently with the market-rate units, except that if development is phased, the affordable units shall be constructed at a pace that is proportional with the construction of the market rate units, **or as otherwise approved by the Commission.**

8. **The Zoning Commission's approval of this Application is subject to the following conditions:**

1. Notwithstanding Conditions B.7 and E.2 of Z.C. Order No. 13-14(6) and Condition D.1 of Z.C. Order No. 13-14A, the Applicant shall have the option to construct the Parcel 2 West Building, Parcel 2 East Building, and/or Parcel 4 Building simultaneously or in phases (in no particular order), as follows:
 - a. A building permit application must be submitted for the first phase within two (2) years of the effective date of this Order No. 13-14E, with construction of the first phase commencing within three (3) years of the effective date of this Order No. 13-14E;
 - b. A letter describing the status of obtaining public financing for the Parcel 2 East Building shall be filed with the Zoning Administrator within one (1) year of the effective date of this Order No. 13-14E and each year following until the filing of the building permit application for the Parcel 2 East Building; and
 - c. Construction of all phases (Parcel 2 West Building, Parcel 2 East Building, and Parcel 4 Building) shall be completed within 12 years of the effective date of this Order No. 13-14E.
2. No above-grade building permits shall be issued for the modified Parcel 2 or Parcel 4 until the Applicant has recorded a Notice of Modification in the land records of the District of Columbia.
3. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the 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

⁸ The Applicant intends to seek an exemption from the Inclusionary Zoning ("IZ") Regulations set forth in Subtitle C, Chapter 10 of the Zoning Regulations. If the exemption is not granted, the Applicant shall nevertheless abide by the requirements of this condition, unless IZ Regulations impose more restrictive standards.

discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

VOTE (July 31, 2025): 5-0-0 (Gwen Wright, Robert E. Miller, Anthony J. Hood, Joseph S. Imamura, and Tammy Stidham to approve.)

In accordance with the provisions of Subtitle Z § 604.9, this Order 13-14E shall be final and effective upon publication in the *District of Columbia Register*; that is, on December 26, 2025.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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