



2018120903-44

**PLANNED UNIT DEVELOPMENT COVENANT**

**Z.C. CASE NO. 15-02**

**(MS-Brookland, LLC and The Redeptorists - Approval of a Planned Unit Development @ Square 3645, Lot 4<sup>1</sup>)**

THIS PLANNED UNIT DEVELOPMENT COVENANT (this “Covenant”), is made as of this 22<sup>nd</sup> day of MARCH, 2018, by and between **MS-Brookland, LLC**, a District of Columbia limited liability company, and **The Redeptorists**, a Maryland corporation (collectively with MS-Brookland, LLC, the “Owner”), and the **DISTRICT OF COLUMBIA**, a municipal corporation (the “District”).

**WITNESSETH:**

WHEREAS, Owner collectively owns in fee simple the property currently known as Lot 4 in Square 3645 (the “PUD Site”), and is more particularly described in Zoning Commission Case No. 15-02 and in Exhibit A attached hereto and incorporated herein;

WHEREAS, Owner filed an application for a Consolidated planned unit development for the PUD Site (the “Application”) pursuant to Chapter 24 of the version of Zoning Regulations of the District of Columbia in effect at the time (the “1958 Zoning Regulations”).

<sup>1</sup> The PUD application references Square 3645, Lots 802, 804; Square 3648, Lot 804 and Parcel 132/89. Record lot 4 in Square 3645 has since been established on the Property, terminating the former tax lots and parcel.

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WHEREAS, on September 6, 2016, the 1958 Regulations were repealed and replaced by a new set of regulations (the “2016 Zoning Regulations”); and

WHEREAS, Because the Application was set down for a hearing prior to the repeal of the 1958 Zoning Regulations, the Zoning Commission for the District of Columbia (the “Zoning Commission”) approved the Application pursuant to the Chapter 24 standards, and did so by Zoning Commission Order No. 15-02, dated December 15, 2016, which became final and effective on October 20, 2017 (the “Order”);

WHEREAS, Subtitle X § 311.3 of the 2016 Zoning Regulations requires that Owner enter into this Covenant with the District of Columbia assuring Owner’s (and its successors in title) development and use of the PUD Site as approved by the Zoning Commission in the Order and all modifications, alterations or amendments thereto (all subsequent citations to zoning regulations made herein are to the 2016 Zoning Regulations.)

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed between the parties hereto as follows:

1. Approved Plans, Terms and Conditions. The terms and conditions of the Zoning Commission’s approval of the PUD for the PUD Site in the Order (as

the same may be amended and/or modified from time to time), are incorporated herein by reference and made a part hereof as Exhibit B and shall be considered a part of this Covenant. The PUD Site shall be developed and used in accordance with the plans approved by the Order and in accordance with the conditions and restrictions contained in the Order, subject to such changes thereto as the Zoning Administrator of the District of Columbia may authorize pursuant to Subtitle A § 304.5, or changes made by the Zoning Commission pursuant to Subtitle Z §§ 703 or 704. Owner covenants that it shall use the PUD Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time, subject to the terms and conditions contained herein and the provisions of Subtitle X Chapter 3 of the Zoning Regulations.

2. Additional Time to Construct PUD. If Owner should fail to file for a building permit for the approved PUD within the time specified in Subtitle Z §§ 702.2 or commence construction of the approved PUD with the time specified in the Order<sup>2</sup> (the “Applicable Timeframes”), the Zoning Commission may duly consider an application for an extension of time for good cause in accordance with and subject to the limitations of Subtitle Z § 705.

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<sup>2</sup> The second paragraph of Condition E.1 of the Order states that construction of the 22 townhomes must begin within three years of the effective date of the Order. In the event the Applicant phases construction of the townhomes, construction of at least five townhomes shall commence within three years of the effective date of this Order (the “Minimum Construction Requirement”) and construction of the remaining townhomes shall commence within five years of the effective date of this Order. Satisfaction of the Minimum Construction Requirement shall vest the Project for purposes of allowing a future conversion of the Holy Redeemer College to residential use.

3. Default. In the event that Owner fails to file for a building permit for and/or to commence construction of the approved PUD within the Applicable Timeframes, or within any extension of time granted by the Zoning Commission for good cause shown pursuant to Subtitle Z § 705, the benefits granted by the Order shall terminate pursuant to Subtitle Z § 702.6 and this Covenant shall be deemed null and void.

4. Future Conveyance. Owner covenants that if any conveyance of all or any part of the PUD Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns, to develop and use the PUD Site in accordance with the terms and conditions of this Covenant and the grantee, its successors and assigns shall be considered a declarant to this covenant.

5. Covenants to Run with the Land. The covenants and restrictions contained herein shall be deemed real covenants running with the land and shall bind the parties hereto, their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the PUD Site. The District shall have the right to enforce all covenants, conditions, and restrictions contained herein.

6. Recordation. Owner shall record this Covenant, as fully executed by the parties hereto, among the land records of the District of Columbia (the “Land

Records”), and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. Rescission/Alteration of Chapter 24 Covenant. If the Order is modified or amended by the Zoning Commission, no formal amendment of this Covenant shall be required, provided that Owner, or its successors or assigns, records a notice of modification in the Land Records together with a copy of the written order authorizing the modification or amendment. No other amendment of the obligations created by this Covenant is permitted without the written consent of the District and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Zoning Commission.

**[SIGNATURES ON FOLLOWING PAGES]**

IN WITNESS WHEREOF, MS-BROOKLAND, LLC, has caused this Covenant to be executed and delivered under seal as of the date first written above by

Madison Homes, Inc. its duly authorized Manager.

OWNER:

**MS-BROOKLAND, LLC**

a District of Columbia limited liability company

By: Madison Homes, Inc., its Manager

By: [Signature]  
Russell S. Rosenberger, Jr  
President

DISTRICT OF COLUMBIA, to wit:

This Covenant was acknowledged before me on the 28<sup>th</sup> day of March, 2018, by Russell S. Rosenberger, Jr. the President of Madison Homes, Inc., the duly appointed Manager of MS-BROOKLAND, LLC.

WITNESS my hand and official seal this 28<sup>th</sup> day of March, 2018.

[Signature]

Notary Public

[Notarial Seal]

My Commission Expires: January 31, 2022



**THE REDEMPTORISTS,**  
a Maryland corporation

By: *V. Paul J. Borowski*

Name: **V. Rev. Paul J. Borowski, C.Ss.R.**  
Title: **Provincial Superior**

**DISTRICT OF COLUMBIA, to wit:**

This Covenant was acknowledged before me on the 22<sup>nd</sup> day of MARCH, 2018, by V. REV PAUL J BOROWSKI, the duly appointed PROVINCIAL Superior of THE REDEMPTORISTS.

**WITNESS** my hand and official seal this 22 day of March, 2018.

RUSKIN PIEDRA  
Notary Public, State of New York  
No. 01PI6116176  
Qualified in Kings County  
Commission Expires Sept. 20, 20 20  
[ Notarial Seal ]

*Ruskin Piedra*  
Notary Public

My Commission Expires: September 20, 2020

IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D.C., who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

**DISTRICT:**

**DISTRICT OF COLUMBIA,**  
a municipal corporation

By: [Signature]  
Secretary of the District of Columbia

[CORPORATE SEAL]

DISTRICT OF COLUMBIA, ss:

I, Arletha Thompson, a Notary Public in and for the District of Columbia, do hereby certify that Lauren C. Vaughan, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant, and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

GIVEN under my hand and seal this 3 day of December 2018

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Arletha Thompson





Notary Public, D.C.

[ Notary Seal ]

My commission expires: 09/14/2021.

APPROVED:

*Matthew Zejt*

10-24-18

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Zoning Division, Department of  
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:

A handwritten signature in blue ink, appearing to read "Ma Beyer", is written above a horizontal line.

Assistant Attorney General  
Office of the Attorney General  
for the District of Columbia

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF THE PUD SITE**

All that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as Lot 4 in Square 3645, as recorded in Subdivision Book 213 at Page 69 among the Records of the Office of the Surveyor of the District of Columbia and containing 119,215 square feet or 2.7368 acres of land.

**EXHIBIT B**

**ZONING COMMISSION ORDER NO. 15-02**

[appended]

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



November 21, 2018

**Re: Z.C. Case No. 15-02 (MHI-Brookland, LLC & The Redemptorists)**

To Whom It May Concern:

I hereby certify that attached hereto, and bearing my initials in red ink in the lower right corner of each page, is a true copy of Z.C. Order No. 15-02 (Exhibit 73) – consisting of 30 pages – of the official record of the Zoning Commission for the District of Columbia in Z.C. Case No. 15-02.

A handwritten signature in blue ink that reads "Sharon S. Schellin". The signature is written in a cursive style and is positioned above a horizontal line.

SHARON S. SCHELLIN  
SECRETARY TO THE ZONING COMMISSION

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 15-02

Z.C. Case No. 15-02

MHI-Brookland, LLC and The Redemptorists  
(Consolidated PUD @ Square 3645, Lots 802 & 804;  
Square 3648, Lot 804; and Parcel 132/89)

December 15, 2016

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on October 29, 2015 and December 15, 2016, to consider an application from MHI-Brookland, LLC and The Redemptorists (collectively "Applicant") for review and approval of a consolidated planned unit development ("PUD") for Lots 802 and 804 in Square 3645; Lot 804 in Square 3648; and Parcel 132/89 (collectively, "Property"). The application proposes a residential development consisting of 22 townhomes and institutional use, with flexibility to convert the institutional use to multi-family in the future (the "Project"). The Commission considered the application pursuant to Chapters 24 and 30 and § 102 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").<sup>1</sup> The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application with conditions.

**FINDINGS OF FACT**

**Application, Parties, and Hearing**

1. The project site consists of Lots 802 and 804 in Square 3645, Lot 804 in Square 3648, and Parcel 132/89 and is approximately 2.73 acres in size. (Exhibit ["Ex "] 2.)
2. The Property is located to the east of the Chancellor's Row development (a PUD approved by Z.C. Order No. 07-27), immediately south of Jackson Street, north of a multifamily residential building north of Hamlin Street, and to the west of 7<sup>th</sup> Street. It is located in the southwest corner of the intersection 7<sup>th</sup> and Jackson Streets in Northeast D.C. (Ex. 2.)
3. The Property is located in the D/R-5-A Zone District. It is within the boundaries of Advisory Neighborhood Commission ("ANC") 5E. (Ex. 2.)

<sup>1</sup> Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016. Chapter 24 was replaced by Chapter 3 of Subtitle 11-X. However, because this application was set down for hearing prior to that date, the Commission's approval was based upon the standards set forth in Chapter 24.

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4. On February 3, 2015, the Applicant filed an application to the Commission for the review and approval of a PUD and PUD-related map amendment to rezone the Property from the D/R-5-A Zone District to the R-5-B Zone District. (Ex. 2-2G.)
5. On June 18, 2015, the Office of Planning (“OP”) submitted a setdown report recommending that a public hearing be held on the application. It requested the following information prior to the public hearing:
  - Revised site plan that eliminates the surface visitor parking spaces along the access driveways, and introduces appropriate lawn or landscaping, minimizes the width of drive aisles, and provides information on bike parking facilities;
  - A more detailed stormwater management, site, and landscaping plan indicating how the proposal meets stormwater management requirements;
  - Additional detail regarding the environmental benefits, including how the 0.4 GAR requirement will be met;
  - More detailed elevations that show design and materials for all units and that provide for the following: fully designed end units for all units and not just “high profile” units; revised treatment of the cornice at the intersection of the third and fourth floors; and high-quality, fully-designed rear elevations;
  - Updated Affordable Dwelling Unit (“ADU”) Location Plan that better distributes the location of the units and provides larger units with a three-bedroom option;
  - Additional information regarding the extent of employment and training opportunities; and
  - A refined amenities package commensurate with the requested flexibility.

(Ex. 13.)

6. On June 29, 2015, the Commission set the application down for a public hearing, asking the Applicant to consider the following:
  - Eliminate a unit along Jackson;
  - Redistribute the affordable units so they are not clustered;
  - Modify the depth of the affordable units so they are the same as the market rate units;
  - Rethink the number of 14-foot-wide units;
  - Provide a site plan with greater context, including the existing building;
  - Fully design each elevation and reconsider the materials; and



- Provide additional perspectives of site.

(Ex. 14.)

7. The Applicant filed its prehearing statement on August 21, 2015, including responses to OP's and the Commission's comments above. (Ex. 16-16A5.)
8. Notice of the public hearing was published in the *D.C. Register* on September 11, 2015, and was mailed to ANC 5E and to owners within 200 feet of the Property on September 4, 2015. (Ex. 19, 21.)
9. Both OP and the District Department of Transportation ("DDOT") filed reports recommending approval of this application. (Ex. 30, 31.)
10. A public hearing was held on October 29, 2015, during which the Applicant provided its presentation and responded to questions. The Applicant proffered, and the Commission accepted, Christian Lessard as an expert in architecture, Frank Kea as an expert in landscape architecture, and Daniel Van Pelt as an expert in transportation engineering. The Applicant proffered Shawn Frost as an expert in engineering; however, the Commission opted not to accept him as an expert for purposes of the hearing.
11. The Applicant and the ANC were the only parties to the case. The ANC filed a resolution in support of the Application. (Ex. 32, 34, 37.)
12. Single Member District representative, Debbie Steiner, testified in support of the application at the public hearing. ANC 5E Chairman Quin testified in support of the application on behalf of the ANC.
13. Donna Hartley submitted two letters in opposition to the application accompanied by a petition in opposition signed by neighbors living primarily in Chancellors Row. (Ex. 15, 36)
14. Derek Shultz and Julie Johnson submitted testimony noting concerns with the application. (Ex. 39.)
15. Michael Clark testified in opposition to the application at the public hearing as a representative of the Edgewood Civic Association; Tracy Caswell and Duane Desiderio, residents of Chancellors Row, testified in opposition to the application; and Derek Schultz, a neighboring property owner testified in opposition to the application at the public hearing. (Ex. 38, 41.)
16. At the conclusion of the October 29, 2015 public hearing, the Commission asked the Applicant to consider further modifications of the application. The Commission noted that further analysis of the northern portion of the site was warranted: the Applicant should determine if townhomes are the appropriate product type for the space, it should reevaluate the number of units it is proposing, and reconsider the depth of the units so that they are set back more from the Holy Redeemer College. The Commission also

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suggested that the proposed landscaping of the northern end of the site should be studied further. The Commission further asked the Applicant to reconsider the 14-foot-wide units and instead introduce wider townhomes. It also requested additional clarity regarding the future use of the Holy Redeemer College. The Commission noted that it believed a further hearing would be necessary to evaluate the application and left the record open for the Applicant to modify its application.

17. The Applicant submitted a modified application into the record on August 25, 2016. The submission reduced the number of townhomes from 39 to 22, removed all townhomes previously located along Jackson Street, maintained the existing landscaping on the northern portion of the property, and eliminated all 14-foot-wide units. The application no longer required a PUD-related map amendment but would rather retain the existing zoning of the site, D/R-5-A. (Ex. 42-42A3.)
18. OP and DDOT submitted reports recommending that the modified application be approved on December 5, 2016. OP requested that additional items be provided prior to the public hearing, including a tree inventory and preservation plan, a commitment to include the open space at the northern end of the property in the PUD Covenant, response to the Commission's concerns regarding recreation space for residents, and accessibility of the units. DDOT stated that it did not object to Applicant's PUD proposal, subject to Applicant's continued coordination during the public space permitting process to finalize the entrance and driveway design, as well as adherence to the proposed transportation demand management ("TDM") plan and requisite bicycle parking. (Ex. 53, 54)
19. The ANC submitted a resolution in support of the application, conditioned on modifications to be made to benefits and amenities package. (Ex. 56.)
20. The Applicant submitted supplemental information in response to OP's report prior to the public hearing on December 14, 2016. (Ex. 58-61.)
21. Donna Hartley submitted a third letter into the record in opposition to the application, stating concerns regarding the loss of trees. (Ex. 57.)
22. The Sierra Club Environmental Justice Committee submitted a letter in opposition to the application, noting that the tree canopy in the District needs to be enhanced and it was concerned that the project would reduce the canopy in Ward 5. (Ex. 52.)
23. Michael Clark, the President of the Edgewood Civic Association, submitted a letter in support of the application, noting the Association's support for the contribution to the Edgewood Recreation Center. (Ex. 63.)
24. Barbara Deutsch, a resident in the community, submitted a letter in opposition to the application. Ms. Deutsch's concerns centered on the reduction in the tree canopy and on the longevity of the new plantings. Ms. Deutsch requested that the Applicant be required to set aside a fund to maintain trees and remove any that die within five years of the completion of construction. (Ex. 64.)

25. Derek Schultz submitted a second letter into the record confirming that he no longer objected to the Project in light of the changes that had been made to the site plan. He specifically noted his appreciation for the developer listening to community comments and improving the materials used on the townhomes, improving the preservation of trees on the property, and eliminating the number of 14-foot-wide units. He also stressed the importance of maintaining passive open space on the property, specifically along Jackson Street. (Ex. 66.)
26. Helen Schietinger testified at the public hearing in opposition to the application, stating concerns with the removal of mature trees on site. She noted her concern for the impact construction has on the tree canopy generally in the District. (Ex. 65.)
27. Kristin Taddei of Casey Trees, testified in opposition to the application at the public hearing, also voicing concerns with removal of mature trees on site and a reduction in the tree canopy. (Ex. 69)
28. Edward Garnett testified in support of the application at the hearing noting that he appreciated the Applicant's modifications to the site plan, namely removing the townhomes along Jackson Street and overall reduction in the number of units. He encouraged the Applicant to continue to maximize the number of trees it can preserve onsite. (12/15/2016 Transcript ["Tr."])
29. The Applicant proffered and the Commission accepted Brian Ruhl, an expert in landscape architecture during the hearing, to testify in response to tree preservation concerns. (Ex. 67.)
30. At the conclusion of the December 15, 2016 public hearing, the Commission closed the record and took a five-minute recess. Upon its return, the Commission voted to take final action on the application. (12/15/2016 Tr.)

## **THE MERITS OF THE APPLICATION**

### **Description of Property and Surrounding Areas**

31. The PUD Site is composed of approximately 2.73 acres or approximately 119,215 square feet of area. It is situated in the Brookland/Edgewood neighborhood and is currently improved with the Holy Redeemer College, a four-story masonry structure used for institutional purposes, including religious, residential, and accessory office use. It was constructed in 1934 and is located less than one-half mile from the Brookland/Catholic University of America Metrorail Station.
32. The Property is located in the D/R-5-A Zone District. Directly to the north and west is property that was rezoned to the R-5-B Zone District through the PUD process and is known as the Chancellors Row development. Directly to the east and south of the Property, there are properties in the R-4 and R-5-D Zone Districts.

33. The Property is located in the northeast quadrant of the District of Columbia. It is bounded by Jackson Street to the north, 7<sup>th</sup> Street to the east, Chancellors Row to the west, and by a multifamily development to its south.
34. It is in Single Member District 5E01 of ANC 5E in Ward 5.

### **The Initial Proposal**

35. The initial proposal submitted to the Commission proposed 41 townhomes on the Property. The proposal was subsequently modified and the project presented to the Commission at the first public hearing on October 29, 2015, contemplated redevelopment of the parcels of land to the north and south of the Holy Redeemer College with a total of 39 townhomes. The townhomes varied in width from 14 feet to 18 feet with a typical depth of 37 feet. Each unit was four stories in height and included two-three bedrooms. The ground floor included an interior garage accommodating at least one car (two cars for the 18-foot-wide homes) and accessory den space. The fourth floor included loft space that could be utilized as a bedroom or recreation space, depending on the desires of the homeowner.
36. The façades of the townhomes were designed in a traditional brick vernacular in a variety of color schemes. The townhomes had a flat roof style, which incorporated a roof terrace that provided private outdoor space for residents.
37. The northern townhomes were accessed via a single 24-foot-wide curb cut from Jackson Street. This curb cut served as the sole entrance and exit for the 13 townhomes on the northern parcel. Access to the private parking garages for those homes was from a 20-foot drive aisle along the rear of the townhomes. Access to the southern parcel was via a 24-foot-wide curb cut on 7<sup>th</sup> Street. Those homes were organized along two private 20-foot alleys, which provided access to the private garages from the rear of the townhome. The site plan for the southern parcel was arranged so that the easternmost string of townhomes faced 7<sup>th</sup> Street. The two middle strings of townhomes faced each other across a 28-foot-wide mews. A sidewalk ran the length of the mews, providing access to each of the homes as well as providing gathering spaces for interaction with fellow residents. Finally, the western most string of townhomes faced the landscaped lawn at the rear of the Property.
38. The application retained the four-story Holy Redeemer College and allowed for its continued use as a religious institution. It also contemplated the potential future conversion of the College into 46 multifamily residential units or other uses permitted in the R-5-B Zone District with a parking demand of 23 spaces. Vehicular traffic for the College would enter on Jackson Street and exit on 7<sup>th</sup> Street.
39. The proposal included a formally landscaped park in the northeast corner of the site.

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### The Approved Project

40. After the public hearing in October 2015, the Applicant modified its proposal in response to comments made by the Commission and members of the community. The modified proposal reduced the number of approved townhomes from 39 to 22. The 13 townhomes previously proposed along Jackson Street were removed and the northern portion of the site would not be modified by the PUD, with the exception of modifications made to the existing drive aisle.
41. The number of townhomes located to the south of the Redeptorists' building was also reduced from 26 to 22, increasing the distance between the Redeptorists' building and the proposed townhomes. This resulted in a more organic site plan that provides a clear distinction between the Redeptorists' property and the townhomes.
42. The modified proposal eliminated the 14-foot-wide units. The Applicant removed all 14-foot-wide units and proposed 16-foot-wide units in their place. Each string of townhomes is comprised of 16-foot-wide interior townhomes, capped by 18-foot-wide homes at the ends. The additional width of the townhomes allowed for a more spacious and practical floorplan.
43. The façades of the townhomes are still designed in the traditional brick vernacular that is predominant in the area, but the exterior design was changed to lower the roofline and present a more residential style. The brick is carried through each elevation so that each façade reads as a high-quality 'face' to the project. To add variation and articulation to the homes, front porches are included on certain units and first floor decks are optional on the rear of the units.
44. The landscape plan was modified to embrace the natural elements of the property. The area formerly proposed as a pocket park in the northeast corner of the site now remains untouched along with the entire frontage along Jackson Street. The updated plan relies on the existing contours of the property rather than imposing a formal landscaped area. The gradual rise in grade of the existing topography effectively highlights the Redeptorists' building and need only be enhanced with local plantings. Further, with the redesign of the site plan and the creation of more open space, the required stormwater management facilities are less visible and intrusive.
45. The Holy Redeemer College will remain on-site and continue to be used for institutional purposes, including religious, residential and accessory office use. The College may be converted in the future to a multifamily residential building. It will retain the existing parking area that is used exclusively for the Holy Redeemer College and use those parking spaces to serve any future residential use. However, the Applicant withdrew the requested rezoning to R-5-B and is therefore requesting the flexibility to convert the building to a multi-family residential use, which is only permitted in the R-5-A Zone District by special exception.
46. The Applicant submitted a Comprehensive Transportation Review ("CTR") dated October 16, 2015 into the record, which analyzed the impacts of the initial, more

intensive proposal. The report concluded that the site is well served by regional and local transit services such as Metrorail, Metrobus, and Circulator. The site is less than 0.4 miles from the nearest Brookland-CUA Metrorail Station portal located at the Monroe Street and 9<sup>th</sup> Street intersection. Metrobus stops are located within a block of the site along 7<sup>th</sup> Street. Although the Brookland Townhomes development will be generating new transit trips on the network, the existing facilities have enough capacity to handle the new trips. The Brookland-CUA Metrorail station does not have existing capacity concerns and is not expected to as a result of the planned development. Some nearby Metrobus lines do have existing capacity concerns, but the small amount of transit trips added to the network as a result of the planned development will not exacerbate existing conditions by a significant amount. (Ex. 29.)

47. The CTR studied the adequacy of pedestrian facilities and determined that the site is surrounded by a well-connected pedestrian network. Most roadways within a quarter-mile radius provide sidewalks and acceptable crosswalks and curb ramps, particularly along the primary walking routes. There are some pedestrian barriers surrounding the site such as limited connectivity due to the railroad tracks to the east. As a result of the planned development, pedestrian facilities along the perimeter of the site will be improved where necessary. The development will ensure that sidewalks adjacent to the site meet DDOT requirements and provide an adequate pedestrian environment. (Ex. 29.)
48. The CTR reviewed the adequacy of the bicycle facilities and found that many trails, bike lanes, and signed bike routes exist near the site such as the Metropolitan Branch Trail to the east, north-south bike lanes along 4<sup>th</sup> Street, N.E., and east-west bike routes along Irving Street. The site is also served by the Capital Bikeshare program, which provides an additional cycling option for residents, employees, and patrons of the Brookland Townhomes development. On site, the planned development will provide short-term bicycle parking along the perimeter of the site. (Ex. 29.)
49. Finally, the CTR concluded that the site is well connected to regional roadways such as US Route 1, US Route 29, US Route 50, and Interstate 395, as well as primary and minor arterials such as Michigan Avenue and an existing network of collector and local roadways. In order to determine if the proposed development would have a negative impact on this transportation network, the report projected future conditions with and without the development of the site and performed analyses of intersection delays. The delays were compared to the acceptable levels of delay set by DDOT standards to determine if the site would negatively impact the study area and the analyses conclude that the planned development will not have adverse impacts on the surrounding transportation network. (Ex. 29.)
50. The Applicant submitted an updated report confirming that the updated, less intensive plan of 22 units, would similarly not have an adverse effect on the transit network. (Ex. 50.)
51. The Applicant submitted civil drawings into the record that reflected the use of bioretention facilities as a means for managing the stormwater runoff on the Property.

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The facilities will help mitigate stormwater impacts from the development of the Project. (Ex. 42A3.)

52. The Applicant submitted a tree inventory, which confirmed that 21 trees would be removed during the course of constructing the Project; however, 42 existing trees would remain on site. The Applicant testified that it would replace each of the trees being removed in kind with a comparable species where possible and submitted a plant palette listing the species that would be used. It testified that the future tree canopy on the Property, once the trees matured, would exceed the existing canopy on site. (Ex. 42A2, 60; 12/15/2016 Tr.)

#### **PUD Flexibility Requested**

53. New residential development: The Applicant requests relief from § 353 to allow the development of the townhomes and the conversion of the Holy Redeemer College to residential use.
54. Multiple buildings on a single record lot: The Applicant requests relief from § 2516 to allow multiple buildings on a single record lot. The Applicant also requested relief from the setbacks required under § 2516.5 for front, side, and rear yard and from the FAR and lot occupancy requirements of § 2516.4.
55. Side yard: The Applicant requests relief from the side yard requirements of § 405 for the townhomes on the southern end of the site.
56. Convert Holy Redeemer College: The Applicant sought flexibility to convert the Holy Redeemer College to residential use in the future. The number of units in the College shall be determined by the number of parking spaces required and provided.
57. Materials: The Applicant seeks flexibility to vary the final selection of the exterior colors and materials within the color ranges and general material types proposed, based on availability at the time of construction without reducing the quality of materials.
58. Exterior Details: The Applicant seeks flexibility to make minor refinements to exterior details and dimensions, including sills, bases, cornices, railing and trim, and any other changes to comply with the Building Codes or that are otherwise necessary to obtain final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems.
59. Northern Drive Aisle: The Applicant seeks flexibility to coordinate with DDOT during the public space process to determine the location of the drive aisle on the northern portion of the site that will be used to access the Property from Jackson Street.

#### **Project Amenities and Public Benefits**

60. As detailed in the Applicant's testimony and written submissions, the proposed PUD will provide the following project amenities and public benefits:

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61. Exemplary Urban Design, Architecture, and Open Spaces. The Project employs the basic elements that have characterized urban form in Washington, D.C. for decades. Pedestrian-friendly streets are defined by elements such as buildings close to the street, front porches, street trees, residential garages accessed from alleys, and narrow, low-speed travel lanes. By bifurcating the Project site, the homes respond directly to the public streets and adjacent community; the development is not a self-contained suburban-style village.

The architecture and land use patterns of the Project are derived from the building traditions of the District's oldest neighborhoods by placing high value on the quality of the public realm which reinforces the urban nature of the site. Buildings are simple, well-proportioned, and defer to one another to define the overall fabric. The façades of the majority of the townhomes have been designed in a traditional brick vernacular that is predominant in the area with a mix of color schemes and architectural elements such as front porches and bays.

The Project also maintains the existing features of the northern and eastern lawns of the Holy Redeemer College. These spaces will remain open under the plans approved with this PUD, maintaining the existing views of the Holy Redeemer College from the north and west.

- a. Site Planning and Efficient Land Utilization. The proposed density of the Project is appropriate for the Property. The FAR and lot occupancy of the Project are well within the matter-of-right standards for the R-5-A Zone District. The site plan is designed so the Project reads as an organic infill development. The PUD plan serves the broader community by linking adjoining neighborhoods through activation of an underutilized site. The program improves the pedestrian experience with street trees, a comfortable sidewalk width, and infill development.
- b. Housing and Affordable Housing. Production of housing and affordable housing is a public benefit that the PUD process is designed to encourage. In support of this important goal, the proposed PUD project will add 22 new, for-sale residential townhouse units to the neighborhood. The Project will include three townhomes of affordable housing, which exceeds the inclusionary zoning requirement. Two of the townhomes will be provided to households with an annual income not exceeding 50% of the Area Median Income ("AMI") and the third will be reserved for a household with an annual income not to exceed 80% of AMI. The affordable commitment is set forth in the chart below:

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AFFORDABLE REQUIREMENTS					
Residential Unit Type	Residential GFA / Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	53,532 sf				NA
Market Rate	46,628 sf/87%	Market	NA	NA	NA
IZ	2,300 sf/4%	80% AMI	Life of project	For-sale	NA
IZ	4,600 sf/9%	50% AMI	Life of project	For-sale	NA

In the event the Holy Redeemer College is converted to residential use, it will provide the required amount of affordable housing under the inclusionary zoning program in place at the time of conversion.

Additionally, Homes for an Inclusive City: A Comprehensive Housing Strategy for Washington, D.C. sets forth a 15-year plan for improving the District's housing and affordable housing; the proposed development is consistent with these objectives. Below are core recommendations of this Strategy:

- “The District of Columbia should adopt a plan to . . . increase[e] residential development and preservation throughout the city”;
  - “The District should increase the net supply of housing by at least 55,000 units by 2020 to reduce upward pressure on housing prices and rents and accommodate a growing population”;
  - “The location of new production envisioned by the task force should support a balanced growth policy, which will allow increases in population density”; and
  - “Both assisted and market-rate housing produced in the District of Columbia should adhere to high architectural and urban design standards, providing housing with amenities and access to transportation for all neighborhood residents.”
- “The District should accelerate its efforts to preserve and increase high-quality affordable housing for both owners and renters”

62. Effective and Safe Vehicular and Pedestrian Access and Transportation Demand Management Measures. The Project will provide vehicular access to the Holy Redeemer College from Jackson Street and access to and from the townhomes from 7<sup>th</sup> Street. The internal access drives are straightforward and encourage low speeds, minimizing any conflicts with pedestrians. They have also been reduced in width to minimize the hardscape on the Property and to discourage additional parking on site.

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The Project will provide safe and ample sidewalks that are lined with street trees. The sidewalk will meander past homes that are designed with porch stoops that will interact with public realm as well as the grand green lawn in front of the Redemptorists' building.

63. Uses of Special Value. The Applicant is offering the following benefits and amenities as uses of special value, in addition to those items referenced above:

- a. Edgewood Recreation Center – The District Department of Parks and Recreation (“DPR”) is rebuilding the Edgewood Recreation Center located within one-half mile of the property. The Applicant will contribute \$20,000 to outfit the new recreation center with equipment, based on input from the Edgewood Civic Association. The Applicant will provide the requested equipment prior to the final inspection of the homes before occupancy;
- b. Edgewood/Brookland Family Support Collaborative – The Applicant will contribute \$10,000 to the Workforce Development program, which focuses on providing educational and employment readiness opportunities, increasing job placements and post-employment retention, and providing supportive services to remove barriers to success. This contribution will be made prior to the commencement of construction of the first home. Failure to provide such evidence shall be grounds for the issuance of a stop work order on the Project, which, if issued, shall remain in place until such evidence is provided;
- c. OCASE Foundation – The Applicant will contribute \$5,000 to the Backpack School Supply program, which provides basic school supplies to schoolchildren in Ward 5. This contribution will be made prior to the commencement of construction of the first home. Failure to provide such evidence shall be grounds for the issuance of a stop work order on the Project, which, if issued, shall remain in place until such evidence is provided;
- d. Landmark Application – The Redemptorists, in coordination with MHI-Brookland, LLC, will file a landmark application and pursue a landmark designation for the existing Holy Redeemer building. They will file the application prior to the commencement of construction of the first home. Failure to provide such evidence shall be grounds for the issuance of a stop work order on the Project, which, if issued, shall remain in place until such evidence is provided;
- e. Transit Welcome Package – In an effort to encourage residents of the development to use alternative modes of transportation so as to minimize the number of vehicle trips to and from the site, the Applicant agrees to provide each purchaser (one per unit) with the following:
  - Information on local transit routes;
  - One-year membership in Capital Bikeshares (up to \$85);

- SmarTrip Card with \$50 preloaded;
  - ZipCar membership plus \$50 preloaded; and
  - The Applicant will also preclude residents from participating in the Residential Parking Permit Program; and
- f. **Signage** – The Applicant will contribute \$2,500 to the Edgewood Civic Association’s preferred vendor for the design, construction and/or installation of welcome signs around the Civic Association area. This contribution will be made prior to the commencement of construction of the first home. Failure to provide such evidence shall be grounds for the issuance of a stop work order on the Project, which, if issued, shall remain in place until such evidence is provided. In the event the Edgewood Civic Association has not chosen a preferred vendor for the design, construction and/or installation of the signs prior to commencement of construction of the first home, the Applicant shall place \$2,500 in an escrow fund until such time as the Edgewood Civic Association selects a vendor. In such a scenario, evidence of the contribution to an escrow account will serve to satisfy this condition.

**Compliance with PUD Standards**

64. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects.” The Commission finds that the development incentives for the height, density, use and flexibility are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines set forth in the Applicant’s statement, the DDOT report, and the OP report.
65. The Commission credits the testimony of the Applicant and its experts as well as OP, the ANC, and DDOT, and finds that the superior design, site planning and residential use are uses of special value, and all constitute acceptable project amenities and public benefits.
66. The Commission finds that the PUD as a whole is acceptable in all proffered categories of public benefits and project amenities. The proposed benefits and amenities are superior as they relate to urban design, landscaping, housing and affordable housing, effective and safe transportation access, and uses of special value to the neighborhood and the District as a whole.
67. The Commission finds that the character, scale, massing, and design of the PUD are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high-quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant and the Applicant’s

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architectural and transportation planning witnesses that the PUD represents an efficient and economical redevelopment of a strategic and transit-oriented parcel within a half mile of a Metrorail station.

68. The Commission credits the testimony of OP noting that the PUD will provide benefits and amenities of substantial value to the community and the District commensurate with the additional height sought through the PUD process.
69. The Commission credits OP and DDOT's testimony that the impact of the PUD on the level of services will not be unacceptable.
70. The Applicant's CTR confirmed that the PUD would not have a detrimental impact to the surrounding transportation network. The report evaluated whether the project would generate a detrimental impact to the surrounding transportation network based on a technical comparison of the existing conditions, background conditions, and total future conditions.
71. It analyzed the impacts of the Project on vehicular, pedestrian and bicycle networks.
72. The Applicant submitted an updated CTR on November 15, 2016, which concluded that because the revised program generates fewer trips than were analyzed in the October 2015 CTR, the findings of the October 2015 CTR conducted for the Brookland Townhomes PUD in support of its application to the Commission applied to the new revised development program. (Ex. 29, 50.)
73. The Commission credits the testimony of the Applicant's traffic consultant, who submitted a CTR that concluded that the PUD would not have adverse effects due to traffic or parking. The Applicant is providing a TDM package, that DDOT supports, which will mitigate impacts from the project. Specifically, the Applicant will improve pedestrian circulation around the Property and encourage use of alternative modes of transportation. Any traffic, parking, or other transportation impacts of the PUD on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD.
74. The water and sanitary service usage resulting from the Project will have an inconsequential effect on the District's delivery systems. The site is currently served by all major utilities. The Project's proposed storm water management and erosion control plans will minimize impact on the adjacent properties and existing storm water systems. (Ex. 2-2B12.)
75. The Commission credits the testimony of the Applicant's landscape architect that the Applicant will plant more trees on-site than it is removing and that once mature, the future tree canopy on site will exceed the existing tree canopy.



### Compliance with the Comprehensive Plan

76. The Project furthers the following Guiding Principles of the Comprehensive Plan, as outlined and detailed in Chapter 2, the Framework Element: (Ex. 2, 13.)
- a. Change in the District of Columbia is both inevitable and desirable. The key is to manage change in ways that protect the positive aspects of life in the city and reduce negatives such as poverty, crime, and homelessness; (217.1.)
  - b. Redevelopment and infill opportunities along corridors and near transit stations will be an important component of reinvigorating and enhancing our neighborhoods. Development on such sites must not compromise the integrity of stable neighborhoods and must be designed to respect the broader community context. Adequate infrastructure capacity should be ensured as growth occurs; (217.6.)
  - c. Growth in the District benefits not only District residents, but the region as well. By accommodating a larger number of jobs and residents, we can create the critical mass needed to support new services, sustain public transit, and improve regional environmental quality; and (217.7.)
  - d. The recent housing boom has triggered a crisis of affordability in the city, creating a hardship for many District residents and changing the character of neighborhoods. The preservation of existing affordable housing and the production of new affordable housing both are essential to avoid a deepening of racial and economic divides in the city. Affordable renter- and owner-occupied housing production and preservation is central to the idea of growing more inclusively. (218.3.)
77. The Future Land Use Map ("FLUM") includes the Property in the Institutional land use category. The Project is consistent with this designation and with the existing land uses that surround the site. The Project is consistent with its zoning classification and seeks limited relief from the zoning requirements.
78. The Generalized Policy Map ("GPM") includes the Property in the Institutional land use category. Again, the Project is consistent with this designation. The Comprehensive Plan is instructive that the institutional designation must consider surrounding uses in determining the compatibility of a use; residential uses are consistent with adjacent uses.
79. The Commission credits the testimony of the Applicant and OP regarding the compliance of the PUD with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide, and area elements of the plan as follows:
- a. The Commission finds that the proposed PUD is not inconsistent with the written elements of the Comprehensive Plan and promotes the policies of its Land Use,



Transportation, Housing, and Urban Design Citywide Elements and its Upper Northeast Area Element;

- b. The project implements Land Use Element policies that encourage growth and revitalization on an underutilized site in proximity to a Metrorail station. Providing residential uses near a Metrorail station is not inconsistent with the Comprehensive Plan;
- c. The project implements Transportation Element policies that promote transit-oriented development and discourages auto-centric practices. The TDM program encourages use of alternative modes of transportation;
- d. The project implements Housing Element policies that encourage expansion of the city's supply of high-quality, family-size, market-rate, and affordable housing, including affordable housing units that provide deeper affordability limits. The expansion of residential uses is especially supported in the Northeast Area;
- e. The project implements Urban Design Element policies that call for enhancing the aesthetic appeal and visual character of areas around community resources. The PUD significantly improves an underutilized parcel of land in proximity to a Metrorail station. The PUD also enhances the streetscape along 7<sup>th</sup> Street; and
- f. The project advances several objectives of the Northeast Area Element, including the development of residential uses in proximity to a Metrorail Station and enhancing community resources.

#### Agency Reports

- 80. By report dated December 5, 2016, OP recommended approval of the application subject to additional information being entered into the record, including:
  - a. Providing an updated color and materials board;
  - b. Providing any additional affordable housing that may be required should the Redemptorists' building be redeveloped as residential units;
  - c. Recording a covenant to memorialize the open space as unbuildable area;
  - d. Providing an inventory of trees on the property indicating which trees would be preserved and which trees would be removed;
  - e. Submitting a landmark nomination for the Redemptorists' building that would be finalized before occupancy of the townhomes; and
  - f. Addressing the Commission's questions about Play Space, Fair Housing Act standards, and administration of funds proffered for DPR use to purchase equipment for Edgewood Recreation Center.

(Ex. 53.)

81. The Applicant filed a response to OP's report on December 15, 2016. It noted that:
- a. It would provide an updated color and materials board at the public hearing;
  - b. It agreed that in the event the Holy Redeemer College is converted to residential uses in the future that it will comply with all applicable inclusionary zoning requirements;
  - c. The Applicant agreed to record a PUD covenant against the entire Redemptorists' property, including the open space, which states that the property may only be developed in accordance with the PUD-approved plans, unless modified in the future, as modified by the conditions of this Order;
  - d. It provided a tree inventory in the record and testified to the same at the public hearing;
  - e. The Applicant committed to submitting a landmark nomination for the Redemptorists' building prior to the occupancy of the townhomes but it could not commit to it being finalized prior to occupancy of the townhomes; and
  - f. It provided additional information regarding Play Space, Fair Housing Act standards and the administration of funds for the proffered benefits and amenities.

(Ex. 58-61.)

82. The OP report concluded that the requested PUD would support the written elements of the Comprehensive Plan and would not be inconsistent with the Future Land Use and General Policy Maps. It found the Project to be consistent with the residential uses neighboring the Property.
83. By report dated October 19, 2015 and supplemented on December 5, 2016, DDOT recommended approval of the application contingent on adherence to the TDM and requisite bicycle parking. It further noted that it had no objections to the Project provided the Applicant continue to work with DDOT regarding the design of the entrance driveway from Jackson Street. (Ex. 31, 54.)

**Advisory Neighborhood Commission Reports**

84. ANC 5E submitted a resolution in support of the application on October 20, 2015, and supplemented by a second resolution in support submitted into the record on December 12, 2015. (Ex. 34, 37, 56.)

85. The ANC's support, as detailed in the latter resolution, was contingent on modifying the benefits and amenities package. More specifically, the ANC requested the benefits and amenities package reflect the following:
- a. \$20,000 contribution to the Edgewood Recreation Center;
  - b. \$17,000 to the Edgewood/Brookland Family Support Collaborative for Workforce Housing;
  - c. \$10,000 to OCASE Foundation for school supplies;
  - d. \$10,500 for neighborhood signage;
  - e. \$2,500 for Edgewood Civic Association Signage;
  - f. Processing the landmark application for the Holy Redeemer College;
  - g. Utilize a minority owned business entity to handle the construction management of the Project;
  - h. Utilize a Ward 5 broker to sell the townhomes; and
  - i. Utilize a member of the Ward 5 community to provide the required signage.

**Parties in Support and in Opposition**

86. Other than the ANC, which was automatically a party to this application, there were no additional parties to this application, either in support or in opposition.

**Persons and Organizations in Support or Opposition**

87. Donna Hartley submitted two letters in opposition to the initial application heard on October 29, 2015; one letter was accompanied by a petition in opposition signed by neighbors living primarily in Chancellors Row. Her primary concern centered on the loss of trees that would result from development of the site. (Ex. 15, 36.) Ms. Hartley submitted a third letter into the record prior to the hearing on December 15, 2016, reiterating her concerns regarding tree preservation. (Ex. 57.)
88. Derek Schultz and Julie Johnson submitted a letter noting concerns with the initial application heard on October 29, 2015. They noted concerns with the proposed height of the homes as being out of context with residential uses north of Jackson Street. They also voiced concerns with the proposed park in the southwest corner of Jackson Street and 7<sup>th</sup> Street. Mr. Schultz testified at the public hearing on October 29, 2015. (Ex. 39.)
89. Derek Schultz and Julie Johnson submitted a second letter into the record prior to the hearing on December 15, 2016, noting that they appreciated the changes the Applicant made to the Project and withdrawing their prior objections to the application. (Ex. 66.)



90. Michael Clark testified in opposition to the initial application at the public hearing on October 29, 2015, as a representative of the Edgewood Civic Association. He noted that the benefits and amenities did not respond to the needs of the community. (Ex. 38.)
91. Mr. Clark submitted a letter in support of the application prior to the public hearing on December 15, 2016; noting support for the modifications made to the application and to the proposed benefits and amenities plan. (Ex. 63.)
92. Tracy Caswell and Duane Desiderio, residents of Chancellors Row testified in opposition to the initial application heard at the hearing on October 29, 2015. Ms. Caswell testified to the quality of the homes and the desire to provide a wider housing type. Mr. Desiderio testified to the need to reduce the number of homes located along Jackson Street, as well as to reduce their heights. He testified to a desire to maintain the viewshed of the Holy Redeemer College. (Ex. 41.) Neither individuals testified at the public hearing on December 15, 2016.
93. Ed Garnett submitted a letter of opposition to the application on October 14, 2015, noting concerns with the proposed site plan, namely the proposed circulation patterns, a desire for heightened sensitivity to tree preservation and concerns regarding the proposed park in the northeast corner of the site (Ex. 27.) He testified at the public hearing on December 15, 2016, noting that he appreciated the Applicant's modifications to the site plan, namely removing the townhomes along Jackson Street and overall reduction in the number of units. He encouraged the Applicant to continue to maximize the number of trees it can preserve onsite.
94. The Sierra Club Environmental Justice Committee submitted a letter in opposition to the modified application, noting that the tree canopy in the District needs to be enhanced and it was concerned that the project would reduce the canopy in Ward 5. (Ex. 52.)
95. Barbara Deutsch, a resident in the community, submitted a letter in opposition to the modified application. Ms. Deutsch's concerns centered on the reduction in the tree canopy and on the longevity of the new plantings. Ms. Deutsch requested that the Applicant be required to set aside a fund to maintain trees and remove any that die within five years of the completion of construction. (Ex. 64.)
96. Helen Schietinger testified at the public hearing on December 15, 2016, in opposition to the application, stating concerns with the removal of mature trees on-site. She noted her concern for the impact construction has on the tree canopy generally in the District. (Ex. 65.)
97. Kristin Taddei of Casey Trees, testified in opposition to the application at the public hearing on December 15, 2016, also voicing concerns with removal of mature trees on-site and a reduction in the tree canopy. (Ex. 69.)

## CONCLUSIONS OF LAW

1. Pursuant to Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number of quality of public benefits, and that it protects and advances the public health, welfare, and convenience.” (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the application as a consolidated PUD. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.
3. The Property meets the minimum area requirements of Chapter 24 of the Zoning Regulations.
4. Proper notice of the proposed PUD was provided in accordance with the requirements of the Zoning Regulations and as approved by the Commission.
5. The development of the PUD will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, massing, and design of the proposed PUD is appropriate. The proposed redevelopment of the Property capitalizes on the Property’s transit-oriented location and is compatible with citywide and area plans of the District of Columbia.
6. The Commission has 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, and concludes approval is warranted for the reasons detailed below.
7. The PUD complies with the applicable height and bulk standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The residential uses for this PUD are appropriate for the Property’s location. The Project’s height, bulk, and uses are consistent with the District’s planning goals for the surrounding neighborhood. The Commission notes that the PUD process secures two-seven feet of additional height of the development; the density of the Project is otherwise permitted as a matter of right.
8. The PUD provides superior features that benefit the surrounding neighborhood to a significantly greater extent than the matter-of-right development on the Property provides. The Commission finds that the urban design, site planning, public space improvements, efficient and safe transportation features and measures, housing and



affordable housing, and uses of special value are all significant public benefits. The impact of the PUD is acceptable given the exceptional quality of the public benefits of the PUD.

9. The Commission notes that the impact of the PUD on the surrounding area and the operation of city services is not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed PUD will not create adverse traffic, parking, or pedestrian impacts on the surrounding community nor will it create adverse impacts on the capacity of the road network. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated. The Commission credits the Applicant's and DDOT's reports for these conclusions. It determines that any transportation-related impacts of the Project may be mitigated by the TDM management program proposed by the Applicant and deemed by DDOT as being sufficient.
10. Approval of the PUD is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed PUD is consistent with the Property's Institutional designation on the Future Land Use Map and furthers numerous goals and policies of the written elements of the Comprehensive Plan. It further credits the Office of Planning and the Applicant with its determination that the site plan, circulation plan, massing of the homes, and the proposed design relate appropriately to the surrounding uses.
11. The Commission concludes that the Project provides affordable housing on a site where housing is not otherwise provided. This Project will increase the inventory of for-sale, family-sized affordable housing units. It further notes that two of the affordable units will be available to households with an annual income no greater than 50% of the area median income. Affordable units available at the 50% AMI level would not otherwise be required for the Project, thus this Project introduces a level of affordability that would not otherwise be present on this site.
12. The Commission concludes that the proposed PUD is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
13. The PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
14. The Applicant proposed improvements for the public space immediately abutting its property and while the Commission does not have jurisdiction over the development of public space, it supports the proposed improvements. It understands the Applicant will work with DDOT regarding the specific improvements to the public space, including the drive aisle accessing the Property from Jackson Street.



15. The Commission acknowledges the ANC's resolution in support being contingent on an enhanced benefits and amenities package. The Commission appreciates the ANC's input on the application; however, it finds that the benefits and amenities package proposed by the Applicant is commensurate with the flexibility the Project secures through the PUD process. The Project is well within the FAR permitted on the Property as a matter-of-right. The PUD process simply affords additional height for the townhomes. The Commission finds that the proposed benefits and amenities, particularly the increase in the amount of affordable housing and providing affordable housing for households with an annual income no greater than 50% AMI, to be commensurate with the flexibility secured through the PUD process.
16. The Commission acknowledges the opposition's argument that the Comprehensive Plan supports establishing parkland and preserving trees. The Commission first notes that the sections of the Comprehensive Plan cited by the opponents refer primarily to preserving publicly owned property for public use and would not be consistent with this application since it is privately owned property. Nevertheless, the Commission notes that this application is consistent with many aspects of the Comprehensive Plan, including but not limited to:
  - a. Policy E-1.1.1: Street Tree Planting and Maintenance - Plant and maintain street trees in all parts of the city, particularly in areas where existing tree cover has been reduced over the last 30 years. Recognize the importance of trees in providing shade, reducing energy costs, improving air and water quality, providing urban habitat, absorbing noise, and creating economic and aesthetic value in the District's neighborhoods;
  - b. Policy E-1.1.2: Tree Requirements in New Development - Use planning, zoning, and building regulations to ensure that trees are retained and planted when new development occurs, and that dying trees are removed and replaced. If tree planting and landscaping are required as a condition of permit approval, also require provisions for ongoing maintenance;
  - c. Policy E-1.1.3: Landscaping - Encourage the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity;
  - d. Policy LU-1.2.7: Protecting Existing Assets on Large Sites - Identify and protect existing assets such as historic buildings, historic site plan elements, important vistas, and major landscape elements as large sites are redeveloped;
  - e. Policy LU-1.2.7: Protecting Existing Assets on Large Sites - Identify and protect existing assets such as historic buildings, historic site plan elements, important vistas, and major landscape elements as large sites are redeveloped;
  - f. Policy LU-1.3.2: Development Around Metrorail Stations - Concentrate redevelopment efforts on those Metrorail station areas which offer the greatest opportunities for infill development and growth, particularly stations in areas with

weak market demand, or with large amounts of vacant or poorly utilized land in the vicinity of the station entrance. Ensure that development above and around such stations emphasizes land uses and building forms which minimize the necessity of automobile use and maximize transit ridership while reflecting the design capacity of each station and respecting the character and needs of the surrounding areas;

- g. Policy LU-2.1.1: Variety of Neighborhood Types - Maintain a variety of residential neighborhood types in the District, ranging from low-density, single-family neighborhoods to high-density, multi-family mixed-use neighborhoods. The positive elements that create the identity and character of each neighborhood should be preserved and enhanced in the future;
- h. Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods - Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to “create successful neighborhoods” in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others;
- i. Policy LU-1.3.3: Housing Around Metrorail Stations - Recognize the opportunity to build senior housing and more affordable “starter” housing for first-time homebuyers adjacent to Metrorail stations, given the reduced necessity of auto ownership (and related reduction in household expenses) in such location;
- j. Policy H-1.1.3: Balanced Growth - Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing;
- k. H-1.1 Expanding Housing Supply - Expanding the housing supply is a key part of the District’s vision to create successful neighborhoods. Along with improved transportation and shopping, better neighborhood schools and parks, preservation of historic resources, and improved design and identity, the production of housing is essential to the future of our neighborhoods. It is also a key to improving the city’s fiscal health. The District will work to facilitate housing construction and rehabilitation through its planning, building, and housing programs, recognizing and responding to the needs of all segments of the community. The first step toward meeting this goal is to ensure that an adequate supply of appropriately zoned land is available to meet expected housing needs;
- l. Policy H-1.1.1: Private Sector Support - Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives;

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- m. Policy H-1.1.5: Housing Quality - Require the design of affordable housing to meet the same high-quality architectural standards required of market-rate housing. Regardless of its affordability level, new or renovated housing should be indistinguishable from market rate housing in its exterior appearance and should address the need for open space and recreational amenities, and respect the design integrity of adjacent properties and the surrounding neighborhood;
  - n. Policy UD-1.2.4: View Protection - Recognize and protect major views in the city, particularly characteristic views of city landmarks, and views from important vantage points. Recognize the importance of views to the quality of life in the city and the identity of Washington and its neighborhoods;
  - o. Policy UD-2.2.1: Neighborhood Character and Identity - Strengthen the defining visual qualities of Washington's neighborhoods. This should be achieved in part by relating the scale of infill development, alterations, renovations, and additions to existing neighborhood context;
  - p. Policy UD-2.2.7: Infill Development - Regardless of neighborhood identity, avoid overpowering contrasts of scale, height and density as infill development occurs; and
  - q. Policy UD-2.2.9: Protection of Neighborhood Open Space - Ensure that infill development respects and improves the integrity of neighborhood open spaces and public areas. Buildings should be designed to avoid the loss of sunlight and reduced usability of neighborhood parks and plazas.
17. The project effectively balances the priorities of the Comprehensive Plan. The project does indeed preserve trees. The Applicant has made efforts to shift sidewalks and drive aisles to avoid removing trees; it has removed an entire string of townhomes along the northern end of the site, all with the effect of preserving trees on the property. Further, the tree preservation plan submitted by the Applicant confirms that the Applicant will replace more trees than it is removing. Per the Applicant's testimony, once those trees mature, the canopy onsite will exceed what is there today.
18. The Commission concludes that the Comprehensive Plan did not intend for tree preservation to trump all other considerations under the Plan. It did not intend to preserve trees at the cost of providing more housing, including family-sized affordable housing, or promoting transit-oriented development or infill development. Rather, it requires balancing these considerations and the Project does just that.
19. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of OP in all zoning cases. The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.

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20. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the positions of ANC 5E in support of approving the application and concur in its recommendation of approval. The Commission credits the ANC with understanding the needs and wants of the community and give weight to its testimony that the PUD responds to those needs and wants. As detailed in paragraph 14, the Commission did not find the ANC's request for more benefits and amenities to be persuasive. The proposed benefits and amenities package is commensurate with the flexibility provided through the PUD process.
21. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for the review and approval of a Consolidated Planned Unit Development for the Property for the residential development described herein, subject to the following conditions:

#### **A. Project Development**

1. The Project will be developed in accordance with the architectural drawings submitted into the record as Exhibits 51B1 and 51B2, as modified by Exhibit 61 and the guidelines, conditions, and standards herein (collectively, the "Plans").
2. The Zoning Commission simultaneously reviewed this Project for its consistency with the Zoning Regulations and grants approval and flexibility under the following sections of the Zoning Regulations:
  - a. Section 353: special exception relief to allow residential uses on the Property;
  - b. Section 2516: special exception relief to allow multiple buildings on a record lot and relief from the setback requirements of §§ 2516.4 and 2516.5; and
  - c. Section 405: variance relief from the side yard requirements.
3. The Applicant will have flexibility with the design of the PUD in the following areas:
  - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms,

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provided that the variations do not change the exterior configuration or appearance of the structure;

- b. To vary final selection of the exterior colors and materials within the color ranges and general material types approved, based on availability at the time of construction;
- c. To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
- d. To convert the Holy Redeemer College to residential use in the future. The number of units in the College shall be determined by the number of parking spaces provided. There are currently 23 parking spaces proposed for the Holy Redeemer College;
- e. To coordinate with DDOT during the public space process to determine the location of the drive aisle on the northern portion of the site that will be used to access the Property from Jackson Street; and
- f. To coordinate with DDOT on all public space matters, including the final design of all improvements in public space along 7<sup>th</sup> Street.

**B. Transportation**

1. **For the life of the Project (except as otherwise stated)**, the Applicant shall abide by the terms of the TDM plan, which requires compliance with the following:
  - a. The Applicant shall identify a TDM Leader (for planning, construction, and operations). The TDM Leader will distribute and market various transportation alternatives and options;
  - b. The Applicant shall establish a TDM marketing program that provides detailed transportation information and promotes walking, cycling, and transit. This information will be compiled in a brochure for distribution to residents. The marketing program should utilize and provide website links to [CommuterConnections.com](http://CommuterConnections.com) and [goDCgo.com](http://goDCgo.com), which provide transportation information and options for getting around the District;
  - c. The Applicant shall encourage all alternative transportation modes including bicycling. Bicycling will be promoted with the provision of on-site outdoor temporary bicycle parking spaces;

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- d. The Applicant shall provide “Welcome Packages” to each resident (one per townhome unit) that will include: (1) information on transit local routes, (2) a \$50 Metro SmarTrip card, (3) a one-year membership to Capital Bikeshare up to \$85, and (4) a one-year membership and \$50 to Zipcar (or similar car sharing service); and
- e. The Applicant shall include language in the Homeowner Association documents that precludes residents from securing Residential Parking Permits.

**C. Construction**

- 1. The Applicant shall abide by the terms of the Construction Management Plan submitted into the record as Exhibit 51A.

**D. Benefits and Amenities**

- 1. Housing and **Affordable Housing**. The Applicant shall provide the following housing and affordable housing:
  - a. The Applicant shall construct approximately 53,550 square feet of residential gross floor area;
  - b. **For the life of the Project**, the Applicant shall reserve 13% of the residential gross floor area, or approximately 6,900 square feet of residential gross floor area, as inclusionary units pursuant to 11 DCMR Chapter 26:
    - i. Reserve at least 66% (approximately 4,600 square feet) of this set aside as inclusionary units for eligible households with a median income no greater than 50% of the Area Median Income;
    - ii. Reserve the remainder of the inclusionary units for eligible households with an annual income no greater than 80% of the Area Median Income; and
    - iii. Provide the affordable housing in accordance with the chart below;

Affordable Requirements				
Residential Unit Type	Residential GFA / Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type
Total	53,532 sf			
Market Rate	46,628 sf/87%	Market	NA	NA
IZ	2,300 sf/4%	80% AMI	Life of project	For-sale
IZ	4,600 sf/9%	50% AMI	Life of project	For-sale

- c. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this Condition.
2. In the event the Holy Redeemer College is converted to residential use, the Applicant shall provide the required amount of affordable housing under the inclusionary zoning program in place at the time of conversion. The Applicant shall amend the aforementioned inclusionary zoning covenant to reflect this change.
3. **Edgewood Recreation Center.** The Applicant shall purchase equipment for the Edgewood Recreation Center, with a minimum value of \$20,000. The necessary equipment will be determined in consultation with the Edgewood Civic Association. The equipment will be purchased prior to the commencement of construction of the first home. Failure to provide such evidence shall be grounds for the issuance of a stop work order on the Project, which, if issued, shall remain in place until such evidence is provided. In the event the Recreation Center has not been constructed prior to the commencement of construction of the first home, the Applicant shall place \$20,000 in an escrow fund and purchase the required equipment upon completion of the Center.
4. **Edgewood/Brookland Family Support Collaborative.** The Applicant will contribute \$10,000 to the Workforce Development program of the Edgewood/Brookland Family Support Collaborative to provide employment services and support for District residents. Evidence of this payment, and that the employment services and support services have been or are being provided, will be provided to the Zoning Administrator prior to the commencement of construction of the first home. Failure to provide such evidence shall be grounds for the issuance of a stop work order on the Project, which, if issued, shall remain in place until such evidence is provided.
5. **OCASE Foundation.** The Applicant will purchase school supplies, valued at a minimum of \$5,000, for the OCASE Foundation. Evidence of this purchase shall be made prior to the commencement of construction of the first home. Failure to provide such evidence shall be grounds for the issuance of a stop work order on the Project, which, if issued, shall remain in place until such evidence is provided.
6. **Landmark Application.** The Applicant shall file a landmark application a landmark designation for the existing Holy Redeemer building prior to the commencement of construction of the first home. Failure to provide such evidence shall be grounds for the issuance of a stop work order on the Project, which, if issued, shall remain in place until such evidence is provided.
7. **Transit Welcome Package.** As noted in Condition B(1)(d), the Applicant agrees to provide each purchaser (one per unit) with the following:

- Information on local transit routes;
  - 1 Year membership in Capital Bikeshares (up to \$85);
  - Metro SmarTrip Card with \$50 preloaded;
  - ZipCar membership (or similar car sharing service) plus \$50 preloaded; and
  - The homeowners' association documents prepared by the Applicant will also preclude residents from participating in the Residential Parking Permit Program.
8. **Signage.** The Applicant shall contribute \$2,500 to the Edgewood Civic Association's preferred vendor for the design, construction and/or installation of welcome signs around the Civic Association area. Evidence of this payment, and that the funds have been used for the design, construction and/or installation of the signs, shall be provided prior to the commencement of construction of the first home. Failure to provide such evidence shall be grounds for the issuance of a stop work order on the Project, which, if issued, shall remain in place until such evidence is provided. In the event the Edgewood Civic Association has not chosen a preferred vendor for the design, construction and/or installation of the signs prior to commencement of construction of the first home, the Applicant shall place \$2,500 in an escrow fund until such time as the Edgewood Civic Association selects a vendor. In such a scenario, evidence of the contribution to an escrow account will serve to satisfy this condition.

**E. Miscellaneous**

1. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

Except as provided in the next sentence, construction, of the 22 townhomes must begin within three years of the effective date of this Order. In the event the Applicant phases construction of the townhomes, construction of at least five townhomes shall commence within three years of the effective date of this Order (the "Minimum Construction Requirement") and construction of the remaining townhomes shall commence within five years of the effective date of this Order. Satisfaction of the Minimum Construction Requirement shall vest the Project for

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purposes of allowing a future conversion of the Holy Redeemer College to residential use.

2. In accordance with the DC Human Rights Act of 1977, as amended, DC Official Code §§ 2-1401 01 et al (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, familial 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.

For the reasons stated above, the Commission concludes that the Applicant has met its burden, and it is hereby **ORDERED** that the application be **GRANTED**.

On December 15, 2016, upon the motion of Vice Chairman Miller, as seconded by Commissioner May, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at the conclusion of the hearing by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter Shapiro not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on October 20, 2017.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

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

  
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**ANTHONY J. HOOD**  
CHAIRMAN  
ZONING COMMISSION

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

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WASH DC RECORDER OF DEEDS IDA WILLIAMS

RECORDING FEES	\$25.00
SURCHARGE	\$6.50

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