



## 1A ADVISORY NEIGHBORHOOD COMMISSION 1A

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SMD 1A04 – Matt Goldschmidt  
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SMD 1A03 – Zach Rybarczyk  
SMD 1A06 – Angelica Castañon  
SMD 1A09 – Michael Wray  
SMD 1A12 – Jason Clock

July 8, 2020

### VIA EMAIL

Office of Zoning  
441 4th Street NW Suite 200S  
Washington, DC 20001

**Re: ZC 16-11: ANC1A Response to Procedural Order Reflecting the Zoning Commission's Oral Request for Parties' Responses to Court of Appeals' Remand**

Dear Members of the Zoning Commission:

As a party to the above referenced case, ANC1A appreciates the Zoning Commission's June 29, 2020, decision to allow parties in ZC 16-11 to submit responses to the seven (7) areas of concern that the District of Columbia Court of Appeals (the "Court") identified in their remand of Order No. 16-11 to the Zoning Commission in order to assist the Commission in responding to the Court's opinion.

ANC1A understands that our response must be related directly to the seven areas of concern, must not introduce new information, is limited to the existing record in Z.C. Case No. 16-11, and that the record remains closed except for party response to the remand.

With this in mind, following are the Court's concerns and ANC1A's responses to each:

**1) Take into account that the ninety-foot-high building protrudes into a Neighborhood Conservation Area;**

ANC1A did provide testimony into the record discussing the relationship to the neighborhood in consideration of the ninety-foot-high building and how the placement, spacing, and step downs are a mitigation of this concern.

The scale of the apartment and senior buildings and their relationship to the surrounding residential community is important. The ANC recognizes that a 90 ft. building is much larger than the typical 35 ft. high rowhouse. Keeping this in mind, we do feel that the scale, massing, and location of the buildings are appropriate.

The separation of the 90 ft. apartment building from the surrounding row houses by Irving Street on the north and a new street and 60 ft. high senior building to the

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west shows a sensitivity to the need to scale the development back as it nears the existing residential neighborhood. It also compares favorably to what was accomplished when the first phase of Park Morton was constructed. In that instance, "The Avenue" was constructed at 3506 Georgia Avenue at a height of 73 ft. It is located directly across Newton Place from very modest rowhouses of approximately 30 ft. in height. It is also separated from more substantial 35 ft. rowhouses to the west by an alley. As Irving Street is wider than Newton Place, the scale, massing, and location of the proposed senior building is far more compatible to the surrounding community than what currently exists four blocks to the north. (Exhibit 198, p.3)

Testimony was also received during the hearing as documented in the transcript on 12-8-2016 (pp. 40-41), that the placement of the ninety-foot building on the site was the outcome of community concerns in relationship to the planned park.

Ms. Alexander: I heard from many community members was that again, that the shade from the building would have shaded the park. And as opposed to where our building is located on the northern half of the park, the park gets sunlight. And while our building of course still does cast a shadow, it casts a shadow primarily on the street, across the street from it, and not on any public park space.

**2) Take into account that the areas adjacent to the western portion of the PUD are designated moderate-density residential, not medium-density residential;**

ANC1A is of the opinion that the confusion between moderate-density residential, not medium-density residential, is due to sloppiness and lack of attention to detail in the original Zoning Order. As such, we recommend that this clerical error be corrected in the response to the Court.

The error aside, this issue is a red herring and trivial to the overall development. The moderate-density residential RF-1 Zone immediately abuts the commercial parcels along the entirety of the Georgia Avenue corridor. Because the commercially zoned property along the Georgia Avenue corridor between Columbia Road (south) and Shepherd (north) is zoned for taller buildings and more density, the density proposed for the Bruce Monroe Site PUD does not propose a unique relationship between dense, commercially zoned development and the moderate-density zoned residential property. This is a common relationship between the two zones in the immediate area.

**3) Take into account that the ninety-foot-high building and the sixty-foot-high building are not generally consistent with, respectively, the medium-density-commercial and moderate density-residential designations in the FLUM;**

Discussion of the FLUM and related density is in the case record. We remind the Zoning Commission to review the Office of Planning Report (Exhibit 43, pp. 3-10), in which OP

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stated that the PUD is consistent with the Generalized Policy Map and the FLUM. In particular, we wish to highlight that the subject property was formerly an institutional and local public site (i.e., the location of the Bruce-Monroe School, since razed). OP specifically addresses this in the following excerpt:

*The FLUM also states under Guidelines for Using this Map, “This map does not show density or intensity on institutional and local public sites. If a change in use occurs on these sites in the future (for example, if a school becomes surplus or is redeveloped), the new designations should be comparable in density or intensity to those in the vicinity...” In this case the proposed apartment building on Georgia Avenue, at a height of 90 feet and an FAR of 5.8, would be similar to other approved PUDs nearby, including ZC 13-10 (height 87 feet, FAR 5.95) and ZC 10-26 (height 90 feet, FAR 5.37) which have a designation of medium density residential /moderate density commercial (Exhibit 43, p. 9)*

In addition to the written OP Report (Exhibit 43), it is significant that Office of Planning staff member, Stephen Mordfin, also reiterated this position under oath during the December 5, 2016, hearing. Mr. Mordfin stated:

The site was formerly a public school and under the guidelines for using the future land use map it does state that if a change in use occurs on these sites in the future, and it does mention a school as an example, the new designations should be comparable in density or intensity.

So, based on that OP finds that, one, it is a change of use which is permitted and that the density and intensity is similar to other PUDs that have been approved along Georgia Avenue in recent years, some of which have been constructed. Therefore, we find it to be in conformance with the comprehensive plan and the future land use map (Transcript of 12/5/2016 hearing, pp. 95-96)

- 4) **Either identify record support for the statement that the senior building “mimics many other apartment houses that have been built as infill developments in the area” or forgo reliance on that consideration;**

ANC1A did provide testimony in the record, that supports this consideration given that other PUDs of similar size were approved by the Commission prior to case 16-11:

Contextually, the requested height for the building on Georgia Avenue is consistent with planned new development on Georgia Avenue. Similar PUDs that the Zoning Commission has already approved in close proximity to this site include two notable examples - 3333 Georgia Avenue (ZC10-26) located at Georgia Avenue and Morton Street; and 3212-3216 Georgia Avenue (ZC13-10) located between Lamont and Kenyon streets. The height requested and approved by the Zoning Commission for 3333 Georgia was for a 90 ft. building with an 18

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ft. penthouse structure - for a total of 108 ft. In the case of 3212-3216 Georgia Avenue, the Zoning Commission approved a building that will be 87 ft. which contains a penthouse that is 18 ft. 6 in. in height - for a total height of 105 ft. 6 in. By comparison, the proposed height of the building in this case is 90 ft. with a 20 ft. penthouse structure, for a total of 110 ft. - which is 5 ft. taller than 3212-3216 Georgia and 2 ft. taller than 3333 Georgia. The difference in heights between these projects is slight. Due to the precedent already set by earlier PUDs on the corridor, the proposal before us today is in keeping and consistent with the development we expect on Georgia Avenue in the future. (Exhibit 198, p.3)

**5) Independently analyze and discuss whether the PUD is inconsistent with specific policies, or would have adverse effects, timely identified before the Commission;**

ANC1A recognizes that the Court’s instruction is to analyze and discuss whether the PUD is inconsistent with specific policies in the Comprehensive Plan. As has been recognized on many occasions, the Comprehensive Plan has priority areas that are in conflict with each other and are of the opinion that the Court has already recognized the significant areas where inconsistency exists in items one through three above. Therefore, our response to these areas are provided above and we leave it to the Z.C. and other parties to identify other areas where the PUD may be inconsistent with the Comprehensive Plan.

From ANC1A’s perspective, the issue should not be whether or not the PUD is inconsistent with a specific Comprehensive Plan policy, but instead it needs to focus on where the PUD is consistent with Comprehensive Plan policies. Only by reviewing, analyzing, and weighing the outcomes for where the PUD is consistent and inconsistent with the Plan can the Z.C. determine if they should grant or deny approval due to the overall benefit or detriment that this project will have in meeting the Plan’s objectives comprehensively.

With this in mind, we are submitted the following excerpts from ANC1A’s record testimony to illustrate where the PUD is consistent with Comprehensive Plan policies, priorities, or actions.

**A. Comprehensive Plan priorities & policies in the Mid-City Element:**

- a. Action MC-2.1.D: Park Morton New Community: Pursue redevelopment of Park Morton as a “new community”, replacing the existing public housing development with an equivalent number of new public housing units, plus new market-rate and “workforce” housing units, to create a new mixed income community. Consider implementing this recommendation in tandem with plans for the reuse of public land on Spring Road. Ensure that every

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effort possible is made to avoid permanent displacement of residents if this action is followed (Mid-City Element, p. 20-19)

**ANC1A Response:** Unlike any other PUD application considered within ANC1A’s Commission area, the redevelopment of Park Morton is specifically included in the plan as an action item (see above). The Comprehensive Plan specifically outlines that “every effort” must be employed to avoid displacement of residents. Recognizing the high priority of redeveloping Park Morton in the Comprehensive Plan, ANC1A submitted the following testimony to the record:

The Project's most significant benefit is the creation of new housing, including public housing replacement units and additional new affordable housing units, consistent with the goals of the Zoning Regulations, the Comprehensive Plan, the New Communities Initiative, and the Mayor's housing initiative. The Project will provide 90 off-site replacement housing units for the redevelopment of Park Morton, allowing new public housing to be built prior to the demolition of existing public housing (Exhibit 32, page 3)

- b. Policy MC-1.1.7: Protection of Affordable Housing: Strive to retain the character of Mid-City as a mixed income community by protecting the area’s existing stock of affordable housing units and promoting the construction of new affordable units.

And,

Policy MC-1.2.1: Cultural Diversity: Maintain the cultural diversity of Mid-City by encouraging housing and business opportunities for all residents, sustaining a strong network of social services for immigrant groups, and retaining affordable housing within the Planning Area.

**ANC1A Response:** The PUD accomplishes these two Mid-City Policies in the Comp Plan. The following excerpt from ANC1A testimony in Z.C. 16-11 notes the preservation and expansion of affordable housing. It also strives to retain the character of Mid-City as a mixed income community. The following is from the ANC1A submission in the record:

We are of the opinion that the amenities that will result from this project are significant, meaningful, and critical to the long-term health and development of the lower Georgia Avenue corridor. The most significant benefits this project will bring are 90 housing replacement units for low income households, 111

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units designated for moderate income households, and 72 Market rate units for a total of 273 new housing units. Additionally, 78 low- and moderate-income units will be reserved for senior housing (Exhibit 198, p. 1).

- c. Policy MC-1.2.4: New Parks: Explore the possibility for new neighborhood parks within the Mid-City area, particularly in the area around the proposed Howard Town Center, and on the McMillan Reservoir site. Additionally, pocket parks and plazas such as those planned for the Columbia Heights Metro station area should be encouraged elsewhere in the Planning Area, particularly near higher density development. The dearth of parks in the Mid-City area is a serious problem that must be addressed as its population grows—all recreation areas must be retained and new recreation areas must be provided wherever possible

And,

Policy MC-1.2.5: Neighborhood Greening: Undertake neighborhood greening and planting projects throughout the Mid-City Area, particularly on median strips, public triangles, and along sidewalk planting strips.

**ANC1A Response:** The neighborhood around the Bruce Monroe site does not have adequate park space. There is much testimony in the record that documents the tension between retaining the site in its entirety as a permanent park and debate on just how large a development that retains park space should be. It was clear during the hearings and in reviewing the Comprehensive Plan for the Mid-City area that new parks are encouraged and desired. It is also noted that Neighborhood Greening in general is strongly encouraged by the Plan. While this topic was much discussed in public meetings and at the ANC1A meetings, below are excerpts from ANC1A’s submitted testimony that relate to the importance of the permanent park and the tradeoff between park space or building height that makes the park possible.

This project will also lead to the improvement and maintenance of a permanent 44,404 sq. ft. public park adjacent to the development. Both the park space and housing that is affordable to families of all sizes and income levels is extremely important to our Commission (Exhibit 198, p. 1).

It is also important to consider that the entire site is 2.74 acres, which could easily accommodate the planned 273 housing units required for the redevelopment of the New Communities Park Morton Redevelopment effort without requesting Zoning Relief from the 50 ft.

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height, but this would require developing the entire site for housing. This is something that the community and Advisory Neighborhood Commission 1A would strongly oppose. The lower Georgia Avenue community currently lacks adequate park space and developing a permanent well-maintained park is strongly supported by the Commission. Therefore, the establishment of a permanent 44,404 sq. ft. park on the southern half of the property is a reasonable trade-off for taller buildings on the northern half of the site. (Exhibit 198, p. 2)

**B. Comprehensive Plan priorities & policies in Citywide Elements:**

- a. Transportation Element: Policy T.2.5.1: Creating Multi-Modal Corridors: Transform key District arterials into multi-modal corridors that incorporate and balance a variety of mode choices including bus or streetcar, bicycle, pedestrian and auto.

**ANC1A Response:** We note that the Commission in support of a community priority, entered into the record the following commitments to expand the Capital Bikeshare program as part of the PUD as well as other transit related commitments:

Incorporate and Expand Capital Bikeshare. As the Capital Bikeshare station located on Columbia Road at Georgia Avenue is inadequate to the needs of the community and currently sits on the public sidewalk, the Applicant will work with DDOT to incorporate the Bikeshare station within the design of the property. Furthermore, it will site the station in such a way so that it can be expanded to meet increasing demand for the service (Exhibit 32, p. 4)

Include Transit Smart Screens in Multifamily buildings. The large multifamily buildings will have real time transportation/smart screens installed in their lobbies to provide residents with updates on the weather, Metro rail and bus, Circulator availability, and other transit options (Exhibit 32, p. 4)

Include Car Sharing. The Applicant agrees to include no fewer than two (2) spaces for car share vehicles on site (Exhibit 32, p. 4)

- b. There are several Policies in the Environmental Element that are relevant to the PUD. the Environmental Elements related to this PUD are:
- i. 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,

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- improving air and water quality, providing urban habitat, absorbing noise, and creating economic and aesthetic value in the District’s neighborhoods
- ii. 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.
  - iii. 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.
  - iv. Policy E-1.5.2: Protected and Rare Species: As required by the federal Endangered Species Act, protect endangered, threatened, and other special status species from the adverse effects of construction and development.
  - v. Policy E-1.5.3: Habitat Management on Private Land: Encourage environmentally sound landscaping and gardening techniques by DC homeowners and institutional landowners to maximize the habitat value of privately owned land. Such techniques should include reduction of herbicide and pesticide use; the selection of disease, drought-resistant, and native species; the removal of invasive plants; the use of rain gardens to reduce urban runoff; and landscaping that provides food and cover for wildlife.

**ANC1A Response:** There were several areas in ANC1A’s testimony that reference PUD outcomes that would protect and enhance the environmental conditions of the building site. These include:

Develop the Permanent Park. The Applicant will engage in a community process, or support a community process, to develop the new park. The process will include design charrettes and programing layouts (Exhibit 32, p. 3)

Incorporate Bird Friendly Design. As the apartment structure will have a maximum height of 90 ft. and includes a green roof, the Project will be designed and constructed in a manner that will reduce bird injury and mortality from in-flight collisions with buildings as outlined in the U.S. Green Building Council’s LEED Pilot Credit 55 guidelines (Exhibit 32, p. 3)

Reduce hardscape along Columbia Road and increase tree cover. The Project will create new tree boxes in the public space along Columbia Road as well as along both sides of



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the new street connecting Columbia Road and Irving Street in compliance with DDOT standards (Exhibit 32, p. 4)

Plant Native Trees and shrubs. The Applicant agrees to restrict landscaping on the site to native trees and plants, furthering the environmental goals of the District of Columbia (Exhibit 32, p. 4)

- c. There are also Policies in the Parks, Recreation and Open Space Element that are relevant to the PUD. the PROS Policies related to this PUD are:
- i. Policy PROS-4.3.2: Plazas in Commercial Districts: Encourage the development of outdoor plazas around Metro station entrances, in neighborhood business districts, around civic buildings, and in other areas with high volumes of pedestrian activity. Use the planned unit development process to promote such spaces for public benefit and to encourage tree planting, public art, sculpture, seating areas, and other amenities within such spaces.
  - ii. Policy PROS-4.3.3: Common Open Space in New Development: Provide incentives for new and rehabilitated buildings to include “green roofs”, rain gardens, landscaped open areas, and other common open space areas that provide visual relief and aesthetic balance.

**ANC1A Response:** As already documented previously in this response, ANC1A considered the creation of a 44,404 sq. ft. permanent park a significant community benefit and outcome of this project and it was timely submitted into the original record. It is noted that policy PROS 4.3.2 specifically directs the use of planned unit developments to promote such spaces. Specifically, to ensure a quality park, ANC1A documented the agreement of the parties to engage in a community process and long-term commitment thusly:

The Applicant will engage in a community process, or support a community process, to develop the new park. The process will include design charrettes and programing layouts. The applicant further commits to work with the community and ANC1A during construction and to address long-term maintenance and oversight issues, including but not limited to the following:

- Feasibility of establishing a Park Partners group, which would help ensure community involvement and participation in long term maintenance and programing initiatives;
- Development of a long-term maintenance plan to ensure that the park remains clean and in good repair;
- Consider including amenities such as public restrooms or security cameras based on need and outcome of community process; and,

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- Establish and clarify the roles of ANC1A and the community in reviewing organized community events and future changes to the park's programming (Exhibit 32, p. 3).

**6) Determine whether, in light of the Commission's conclusions on these issues, the Commission should grant or deny approval of the PUD; and**

ANC1A has no comment on this item. In our opinion, only the Z.C. can comment on its rationale for its own conclusions.

**7) Explain the Commission's reasoning in granting or denying approval.**

ANC1A has no comment on this item. In our opinion, only the Z.C. can explain its reason for granting or denying the approval.

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**Certification:**

After providing sufficient notice for and with a quorum of 12 present at its July 8, 2020, meeting, Advisory Neighborhood Commission 1A voted, with 11 Yeas, 0 Nos and 1 Abstentions, to adopt the above resolution.



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Kent C. Boese  
Chairperson, ANC 1A



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Zach Rybarczyk  
Secretary, ANC 1A