

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-20
Z.C. Case No. 16-20

Consolidated Planned Unit Development
Application of 3443 Benning LLC
(Square 5017, Lot 839, 840, 841, and 842,
and a portion of the public alley abutting Lots 839 and 840)

[Date of Final Action], 2017

Abstract: Pursuant to notice, the Zoning Commission for the District of Columbia (“**Commission**”) held a public hearing (“**Public Hearing**”) on May 4, 2017 to consider an application (“**Application**”) from 3443 Benning LLC (the “**Applicant**”) for review and approval of a consolidated planned unit development and related Zoning Map amendment (“**Map Amendment**”) from the R-3 zone to the MU-5-A zone (collectively, a “**PUD**”). The Zoning Commission considered the Application pursuant to Title 11 of the District of Columbia Municipal Regulations (“**Zoning Regulations**”), Subtitles X and Z. The Public Hearing was conducted in accordance with the provisions of Chapter 4 of Subtitle Z of the Zoning Regulations. For the reasons stated below, the Zoning Commission hereby approves the Application.

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FINDINGS OF FACT

I. Procedural Summary

1. The property that is the subject of this PUD includes Lots 839, 840, 841, and 842, and a portion of the public alley¹ abutting Lots 839 and 840 in Square 5017 (collectively, the “**Property**”), which is located in Ward 7. Exhibit (“**Exh.**”) 2 at 1. The Property is located mid-block on the 3400 block of Eads Street, NE, less than one block south of Benning Road, NE. The Property is owned by the Applicant and is in the River Terrace neighborhood of Northeast DC. The Property is contiguous and consists of approximately 17,863 square feet, or approximately 0.41 acres. *Id.* The Applicant proposes to redevelop the Property with a multi-family residential building containing 70 affordable age-restricted senior housing units and to provide certain other public benefits associated therewith (collectively, the “**Project**”). *Id.*

2. On May 24, 2016, the Applicant delivered a revised notice of its intent (“**NOI**”) to file a zoning application to all owners of property within 200 feet of the perimeter of the Property as well as to Advisory Neighborhood Commission (“**ANC**”) 7D pursuant to Section 300.7 of Subtitle Z of the Zoning Regulations.² Exh. 2C. The Applicant filed the Application materials (“**Initial Statement**”) on September 13, 2016, Exh. 1, and the Application was accepted as complete by the Office of Zoning (“**OZ**”) by letter dated September 15, 2016. Exh. 4. The Applicant certified the Application satisfied the PUD filing requirements. Exhs. 2D. OZ referred the Application to the ANC, the Councilmember for Ward 7, and the District Office of Planning (“**OP**”), and notice of the filing of the Application was published in the *D.C. Register*. Exhs. 5-9.

3. On November 4, 2016, OP delivered a report (the “**OP Setdown Report**”) on the Application, recommended that this Commission set the Application down for public hearing, and requested additional information from the Applicant. Exh. 10.

4. At a public meeting on November 14, 2016 (“**Setdown**”), OP presented the OP Setdown Report. November 14, 2016 Transcript (“**Tr. 1**”) of the Zoning Commission Regular Public Meeting at 46-53. This Commission then requested additional information from the Applicant. *Id.* See Finding of Fact (“**FF**”) ¶ 41.

5. On March 2, 2017, the Applicant filed its pre-hearing statement (“**PHS**”), which included updated plans and information in response to the requests from OP and this Commission, and paid the requisite hearing fee. Exhs. 12-13. On March 17, 2017, the Applicant filed a comprehensive transportation review for the Project (the “**CTR**”). Exhs. 16-17.

¹ Concurrent with this Application, the Applicant is pursuing the closure of the public alley between Lots 839 and 840.

² The Applicant initially mailed the NOI prior to the September 6, 2016 effective date of the Zoning Regulations. Subsequently, the Applicant sent out a revised NOI to clarify that the Application would proceed under the 2016 Zoning Regulations. Exh. 2C at 2.

6. Notice of the Public Hearing for Z.C. Case No. 16-20 was published in the *D.C. Register* on March 17, 2017, Exh. 14 and 64 *D.C. Reg.* 66531, and was mailed to the ANC and to owners of property within 200 feet of the Property. Exh. 18. On March 23, 2017, the Applicant posted notice of the Public Hearing at the Property. Exh. 19. On April 27, 2017, the Applicant filed an affidavit describing the maintenance of such posted notice. Exh. 27.

7. Pursuant to the Zoning Regulations, 11-X DCMR (“X”) § 405.3,³ OP requested comments on the Project from the District Department of Energy and the Environment (“DOEE”), the District Department of Transportation (“DDOT”), DC Water, and the Department of Housing and Community Development (“DHCD”). Exh. 10 at 11.

8. On April 14, 2017, the Applicant filed a supplemental statement (“**20-Day Statement**”) providing additional information requested from OP and the Commission and providing updated architectural plans, drawings, and renderings. Exhs. 23, 23A.

9. OP and DDOT each submitted a final report (respectively, the “**OP Final Report**” and “**DDOT Report**”). Exhs. 24-25. The Commission accepted the OP Final Report even though it was untimely filed. Comments from DC Water and DHCD were included in the OP Final Report. Exh. 25 at 17-18.

10. On May 4, 2017 this Commission conducted the Public Hearing in accordance with Subtitle Z of the Zoning Regulations. May 4, 2017 Transcript (“**Tr. 2**”) of the Zoning Commission, Public Hearing Case No. 16-20 at 3-5.

11. The ANC is automatically a party to this proceeding. 11-Z DCMR (“Z”) § 403.5(b). The ANC filed its report on this Application on May 3, 2017. Exh. 43 (the “**ANC Report**”). The Commission granted a waiver to accept the late-filed ANC Report. Tr. 2 at 6. No other requests for party status were filed in this proceeding.

12. As a preliminary matter prior to the Applicant’s testimony, the Commission accepted Mr. Mel Thompson and Mr. James Watson, the Applicant’s witnesses in, respectively, architecture and transportation engineering, as experts. *Id.* at 5-6.

13. At the Public Hearing, the Applicant provided testimony from Michael Giuloni, as a representative of the Applicant, Mr. Thompson, and Mr. Watson. *Id.* at 7-41. Ms. Melody Crowder, a representative of the Applicant’s property management company, was available as a witness on behalf of the Applicant and answered questions from the Commission and the ANC. The ANC cross-examined the Applicant’s testimony. *Id.* at 90-105.

14. OP presented its report at the Public Hearing. *Id.* at 106-07. DDOT presented its report as well. *Id.* at 107-08. The ANC cross-examined DDOT. *Id.* at 117-18. No other cross-examination of the agencies was undertaken at the Public Hearing. *Id.*

³ This Application proceeds under the provisions of the Zoning Regulations in effect as of September 6, 2016. Accordingly, the provisions of 11 DCMR §§ 2407.3 and 2408.3 are inapplicable to the instant proceeding.

15. At the Public Hearing, the ANC presented its resolution in opposition to the Application. *Id.* at 118-34. There was no cross-examination of the ANC. *Id.* at 134.

16. No persons or organizations spoke in support of the Application at the Public Hearing. *Id.* at 143. Eight persons spoke in opposition to the Application at the Public Hearing, *id.* at 145-67; others entered written testimony (collectively, the “**Opponents**”). See FF ¶¶ 70-84. No cross-examination was taken of Opponents. Tr. 2 at 167.

17. At the conclusion of the Public Hearing, the Commission closed the record except with respect to those items of information requested. *Id.* at 189.

18. On June 19, 2017, the Applicant filed a written post-hearing submission in response to items requested by this Commission, Exh. 80 (“**Post-Hearing Submission**”) and a consolidated set of plans and drawings reflecting the final revisions to the Project resulting from discussions at the Public Hearing as described in the Post-Hearing Submission (“**Final Plans**”). Exh. 80G. On June 20, the ANC filed an updated report. Exh. 81 (“**Post-Hearing Report**”). On June 27, the Applicant filed a draft order. Exh. [__].

19. On July 10, 2017 the Commission took proposed action (“**Proposed Action**”) on the Application. July 10, 2017 Transcript (“**Tr. 3**”) of the Zoning Commission Regular Public Meeting at [__]-[__]. On July 17, 2017, the Applicant provided draft proffers and conditions pursuant to Subtitle X, Section 308.8. Exh. [__]. On July 31, 2017 the Applicant filed its revised and final list of proffers and conditions pursuant to Section 308.12. Exh. [__].

20. The proposed action of this Commission was referred to the National Capital Planning Commission (“**NCPC**”) pursuant to Subtitle Z, Section 603.1 on [date]. Exh. [__]. NCPC filed a report in the record on [date]. Exh. [__].

21. On [date], 2017, this Commission took final action to approve the Application.

II. Summary of the Property and the Project

22. The Application seeks this Commission’s review and approval for the Project under the standards for a consolidated PUD and related Map Amendment with respect to the development of the Project on the Property. Exhs. 2A1, 2A2. The Map Amendment would change the zoning for the Property from the current R-3 zone to the MU-5-A zone.⁴ *Id.*

Overview of the Property and Surrounding Area

23. The Property is located in Ward 7 in the Northeast quadrant of the District of Columbia, midblock at the 3400 block of Eads Street, NE. Exh. 2 at 7. To the north of the Property are vacant and commercial lots fronting on the eight-lane Benning Road, NE. *Id.* To the east of the Property is a partially overgrown vacant lot owned by the District, and to the south

⁴ The Applicant originally requested a Zoning Map amendment to the MU-7 zone. Following the Public Hearing, and in response to the ANC, the Applicant changed the Zoning Map amendment request to the MU-5-A.

and west of the Property are two-story single-family rowhouses fronting on Eads Street, NE. *Id.* A pair of 20-foot wide public alleys separate the Property from lots to the north fronting on Benning Road, NE and from the adjacent rowhouses to the west along Eads Street, NE. *Id.*

24. The Property is located near the northeastern boundary of the River Terrace neighborhood and the western edge of the Benning neighborhood. *Id.* The Property is within Single Member District (“SMD”) 7D04 of ANC 7D in Ward 7. *Id.* The immediately surrounding River Terrace neighborhood generally consists of single-family rowhouses, but a number of multi-family dwelling unit residential buildings line the periphery of the neighborhood along Kenilworth Ave., NE. Anchor institutions in the immediate neighborhood include the recently-renovated River Terrace Educational Campus, which is part of the DC Public School system, and the Varick Memorial AME Zion Church. Commercial uses predominate along Benning Road, NE to the northeast and northwest of the Property, and the heart of the Benning Road corridor to the east contains the East River Park Shopping Center with a public library, a grocery store and pharmacy as well as other shops and restaurants along Minnesota Ave., NE. *Id.* Approximately 500 feet from the Property, on the north side of Benning Road, NE is Pepco’s 77-acre Benning Service Center. The Benning Service Center is the site of the former Benning Power Plant, which was closed in 2012. Pepco continues to maintain a presence at this location. With the closure of the Plant, there are likely to be significant economic development opportunities on this site near the Property in the future. *Id.*

25. The Property has excellent transit and vehicular access. The Property is slightly greater than a half mile walk to the Minnesota Ave. Metrorail station, which is served by WMATA’s Orange Line. The Property is also served by four WMATA Bus lines (X1, X2, X3, and X9). Additional bus stops along Minnesota Avenue, NE are served by multiple WMATA bus lines and are within one-half mile of the Property. Benning Road, NE is approximately one-half block from the Property, and the Anacostia Freeway has ramps approximately one-quarter mile from the Property. Benning Road, NE is the designated corridor for the anticipated eastward extension of the DC Streetcar One City Line, and the Project would be only a few steps from the streetcar track and nearest proposed stop.

26. The Property consists of approximately 17,863 square feet of land and is roughly rectangular in shape. A fenced, vacant parking lot and a portion of a public alley to be closed in coordination with this Application comprise the existing uses of the Property. There are no structures on the Property other than a temporary storage shed. The Property is generally flat with only a slight variation in topography. The Property slopes down from the eastern to the western side of the site. The Property is not within any historic district.

27. The Property is located near both passive and active recreation opportunities and has great access to the District’s trail system. The Riverwalk Trail connects to the Kenilworth Aquatic Gardens to the north and to a planned extensive trail system along both sides of the Anacostia River. Approximately 15 miles of the planned 28 mile trail system are open to pedestrians and cyclists today.

28. New development in the neighborhoods around the Property has generally been incremental in recent years, and there have not been any PUDs approved for nearby blocks.

29. The existing townhouses fronting on Eads Street, NE to the west and south are subject to a building restriction line requiring a setback of 15 feet from the right of way. Such building restriction line does not apply to the Property.

The Project

30. Overview. The Project includes a new building (“**Building**”) containing 70 affordable residential multi-family dwelling units, exterior landscaping and greenery, 17 enclosed vehicle parking spaces, bicycle parking, and associated loading, amenity, and service space. The Building has exclusively residential uses apart from supporting amenity and service space (including a management office), and all of the residential units are to be affordable to seniors (i.e., those aged 55 and over) earning 50 percent or less of the area median income (“**AMI**”).

31. At ground level, the five-story portion of the Building includes a lobby with the management office serving the Building as well as a community room (“**Community Room**”) to be shared as amenity space for Project residents and with local community organizations. The western portion of the Building contains units facing the street with separate entries. All of the Project’s units have interior entrances from a double-loaded corridor running the length of the Building that is served by a single bank of elevators.

32. Site Plan and Dimensions.

- (a) The Building has a total gross floor area of approximately 68,058 square feet of gross floor area (“**GFA**”), resulting in an overall FAR of approximately 3.81, all of which is devoted to residential uses. For comparison, the MU-5-A zone permits a maximum floor area ratio (“**FAR**”) of 5.04 under the PUD process for a project that complies with the Inclusionary Zoning (“**IZ**”) requirements of the Zoning Regulations. The Building occupies 80 percent of the Property, which percentage is the maximum lot occupancy in the MU-5-A zone. The Project has a Green Area Ratio (“**GAR**”) of 0.35, which is in excess of the MU-5-A zone’s minimum GAR requirements of 0.3.
- (b) At the western edge of the Property, across the 20-foot alley from the existing two-story rowhouses, the Project is proposed to be four stories. Approximately one-quarter of the width of the Property from its western lot line, the Building rises to five stories or a maximum overall height of just less than 58 feet. Under the Zoning Regulations, a PUD in an MU-5-A zone can achieve a maximum height of 90 feet. Under the Height Act, the Project is limited to a maximum height of 70 feet.

- (c) The Building is proposed to have a non-occupiable penthouse for rooftop staircase access and an elevator overrun. The Project has two rooftop mechanical systems that exceed four feet in height and both such units are screened. As originally proposed, the screening was not continuously connected to the elevator penthouse; however, the Final Plans make such screening continuous.
- (d) The Building has a rear yard that varies in depth when measured from the rear wall of the Building to the property line at the rear of the Property. This proposed rear yard is less than the minimum rear yard required in the MU-5-A zone. The Building has a side yard that varies in width along the western boundary of the Property but does not meet the minimum requirements. There is no side yard on the eastern boundary of the Property.

33. The Project is designed to be certified in accordance with the 2015 Enterprise Green Communities (“**Green Communities**”) criteria.

34. Project Design in Response to the Surrounding Context. The Project massing and architecture are designed to respond to the context surrounding the Building:

- (a) The Project’s four-story element at the western end of the Property steps down as a gesture to the existing neighboring two-story rowhouses. The neighboring rowhouses sit atop a substantive grade change, and as result, the four-story portion of the Project represents a relatively minor change in overall rooftop elevation from the neighboring townhouses. In addition, the neighboring rowhouses are separated from the Property by the 20-foot public alley. The gentle increase in height – from the existing two-story rowhouses, to the proposed four-story portion of the Project, to the ultimately five-story portion – reads logically in the urban context as the Project creates a transition out of the River Terrace rowhouse neighborhood to the more urban environment of Benning Road, NE and Minnesota Ave., NE immediately east and northeast of Eads Street, NE. The Applicant provided evidence suggesting that the currently-vacant, District-owned lot immediately east of the Property and the vacant and underutilized commercial lots immediately north of the Property has the potential ultimately to be redeveloped at an intensity that is concomitant with the proximity to the nearby transit access and highway access points. That is, the Benning Road Corridor Framework Plan (“**BRCFP**”), a small-area plan adopted for the area surrounding and including the Property encourages redevelopment of the Property and areas to the north and east at medium density levels of development. Exh. 80G at A-0.5.
- (b) The Project’s two components are further broken up by bays, differentiated colors, and articulation. The Project’s western elevation is similarly broken into multiple smaller elements, each intended to evoke the scale and composition of the nearby townhouses. At the eastern elevation of the Building, the Project is intentionally designed to have a strong rectilinear geometry that invites and encourages the Project’s form to be continued into the immediately adjacent lot.

- (c) At street level, although the Property is not subject to the building restriction line that is applicable to many of the surrounding residential lots, the Building is nonetheless set back approximately 10 to 12 feet from the front lot line to continue the street wall across the entirety of the Property, subject only to articulation necessary to soften the Building's massing. The Project's setback from the street creates opportunities for the ground level landscaping addressed below as well as visual interest keeping with the character of the block.
- (d) The Project is highly designed, and the façade, details, and materials introduce a contemporary vocabulary that is visually compatible with the existing residential context. The Building expresses a façade composed of brick at the lower levels and a dark panel along the penthouse. The Project's clean lines of the metal canopy beams, dark aluminum railings, and grey brick staircase entries together introduce a contemporary design at ground level. The ground level landscape detailing along Eads Street, NE is currently an assortment of aluminum and iron fences and railings and stone. The Project's proposed detailing neither overpowers nor detracts from this context.
- (e) The Building's western and rear elevations are similarly highly-designed with substantial articulation and fenestration. The Applicant expressed an awareness that the Project has a significant visual presence along Benning Road, NE to the north for at least the near term. As a result, the Project is intentionally designed to have a rear elevation that is more mindful of its public prominence than most buildings.

35. Public Realm Improvements. The Project also improves the existing streetscape along the north side of Eads Street, NE with significant plantings and vegetation. Plantings and tree boxes along the curb line in front of the Project continue and enhance the emerging canopy along Eads Street, NE. A vegetated bioretention area in the setback area runs the majority of the five-story portion of the Project, enhances the pedestrian experience along Eads Street, NE, and simultaneously affords stormwater control and visual appeal. The Project's setback from the street and associated vegetation provides a measure of security and privacy for residents of lower level units in the Building and softens the Building's relationship to the street.

36. Parking and Loading. The Project's parking and loading are accessed via an existing public alley through garage and loading bay entrances on the western and rear edges of the Project. The garage contains 17 vehicle parking spaces and 23 long term bicycle spaces, and the at-grade loading bay provides a single loading berth. No new curb cuts are proposed as part of the Project. Instead, with the Applicant's proposed alley closing, an existing curb cut is removed. The garage and loading entrances each include automated doors that mitigate noise and impacts for neighbors and provide security for residents of the Building.

Applicant Community Outreach

37. The Applicant engaged in significant outreach to the surrounding community. Since the Project development process commenced in February 2016, the Applicant has held or presented at numerous public meetings with the ANC, the River Terrace Community Organization (“**RTCO**”) and other civic groups and individuals and responded to questions and received feedback via phone and email. Exh. 46A. The Applicant also met with numerous District agencies including OP, DDOT, DHCD, the Metropolitan Police Department (“**MPD**”), and others. *Id.*

38. The Project reflects the extensive Applicant-led community outreach:

- (a) As a result of the meetings referenced above and the feedback the Applicant has received, the Applicant has redesigned the Project. Exh. 2.
- (b) The Applicant made considerable effort to reach out to a vast cross-section of the community.
- (c) The preferences and desires of numerous community groups and individuals shaped the Project’s package of public benefits (the “**Public Benefits**”).

39. This Commission finds that the all of the Applicant’s filings and testimony were credible and thorough.

Summary of Public Benefits

40. The Applicant has proffered the following Public Benefits: (a) efficient site planning; (b) provision of housing, senior housing, and affordable housing; (c) employment and training opportunities; (d) use of the Community Room by community groups; (e) streetscape improvements; (f) transportation infrastructure improvements; (g) a commitment of \$47,000 towards beautification and community gathering activities for RTCO; and (h) safety and security improvements along Eads Street, NE. Exh. 80 at 8-10; *see also* FF ¶¶ 125-37.

III. Commission Comments and Questions

41. Following review of the Initial Statement, at Setdown this Commission provided comments on the Application and requested that the Applicant: (a) provide information on the size of the units in the Project and (b) reconsider the fiber cement lap siding material at the top of the Project, provide additional information on the use of cementitious siding, reconsider the Project’s exterior color selections, and reconfigure the “townhouse”-style design and peaked roof originally proposed at the western end of the Project. Tr. 1 at 47-53.

42. The Applicant provided in its PHS, 20-Day Statement, and at the Public Hearing responses to the Commission’s questions and comments at Setdown.

- (a) Size of Units. In the PHS and 20-Day Submission, the Applicant provided information that the Project had been redesigned to include a mix of 70 units, of which 68 would be one-bedroom units and two would be studio units. Exhs. 12 and 23.
- (b) Materials, Colors and Design. In the PHS and at the Public Hearing, the Applicant provided plans that addressed the Commissions requests regarding materials, color, and design. Exhs. 12, 12E, and 23A; *see also* Tr. 2 at 42-43 and 62-63.

43. At the Public Hearing, the Commission asked the Applicant: (a) whether the Applicant had agreed to DDOT's Transportation Demand Management ("TDM") requests; (b) whether the Applicant had settled with DDOT the location and configuration of the curbside pick-up/drop-off area; (c) for an update on the alley closing application; (d) about the hours of operation and access to the Community Room; (e) about sustainability measures on the Project's roof; (f) for information about the Project's marketing; (g) for clarification on the Project's internal garage circulation; (h) about the one intersection that in the CTR showed a poor level of service ("LOS"); (i) for additional information about the proposed zone designation under the Map Amendment; (j) about the amount of bicycle parking provided; (k) about the use of the Property as parking for a nearby nightclub and about the timing of parking restrictions on the street; (l) for additional information on vehicular access to and from the Property; and (m) why opposition letters were entered into the record from the community surrounding the Property, what type of outreach the Applicant had engaged in, and whether anyone on the development team was from the community surrounding the Property. Tr. 2 at 41-90.

44. The Commission finds that the Applicant responded completely to the Commission's questions at the Public Hearing:

- (a) TDM Requests. The Applicant confirmed that it had agreed to DDOT's requests. Tr. 2 at 43.
- (b) Pick-Up/Drop-Off Area on Eads Street, NE. The Applicant confirmed that the location was generally along Eads Street, NE in front of the Building entrance and that it would continue to work with DDOT on this item as part of the public space process. The Applicant noted that there would be no net loss of street parking for such an area because parking would be gained back by the alley closure. *Id.*
- (c) Alley Closing. The Applicant summarized that it had received all agency reports needed for the alley closing process except for reports from DDOT and NCPC. *Id.* at 44. DDOT and NCPC were both holding reports pending the PUD process. *Id.*
- (d) Community Room. The Applicant (i) explained the physical design of the Community Room and access considerations, (ii) noted that hours of use had not yet been determined, and (iii) acknowledged that discussions about the Community Room with the ANC and RTCO were ongoing. *Id.* at 44-48.

- (e) Rooftop Sustainability Measures. The Applicant explained: (i) the Project was subject to higher than usual sustainability standards by virtue of its location within the Anacostia Waterfront Development Zone (“**AWDZ**”), and (ii) it exceeded the GAR requirements under the Zoning Regulations and other stormwater requirements. *Id.* at 52-53. These other sustainability objectives as well as budgetary and rooftop load constraints limited the Project’s rooftop sustainability measures. *Id.*
- (f) Marketing. The Applicant confirmed that the Project would be required to complete an affirmative fair housing marketing plan in conjunction with DHCD. *Id.* at 54-55. Such plan would be shared with the ANC before lease-up of the Project. *Id.* The Applicant would make the ANC aware of the application process and dates as well and the ANC would be the first stop. *Id.* at 55 and 73.
- (g) Garage Circulation. The Applicant confirmed that all garage circulation was internal to the Building. *Id.* at 59.
- (h) Intersection with poor LOS. The Applicant explained that the existing intersection with a poor LOS was the exit from the PEPCO facility across Benning Road, NE from the Project. *Id.* at 70-72.
- (i) Map Amendment. The Applicant explained that the originally proposed MU-7 zone was consistent with the split Comprehensive Plan map designation for the Property. *Id.* at 76-77. The Applicant agreed to consider revising the designation to the MU-5-A zone. *Id.*; *see also* Exh. 80 at 4.
- (j) Bicycle Parking. The Applicant explained that the Project’s bicycle parking levels were set in accordance with the Zoning Regulations. *Id.* at 77-78.
- (k) Nightclub Parking. The Applicant explained that it had leases with the owner of a nearby nightclub and confirmed that street parking on Benning Road, NE began at 6:30 p.m. *Id.* at 78-79.
- (l) Vehicular Access. The Applicant described turning maneuvers into and out of River Terrance leading to the Property, including alley maneuvers. *Id.* at 80-83.
- (m) Community Issues. The Applicant explained that it had been working with members of the ANC and community for over a year. *Id.* at 83-86. Only recently before the Public Hearing did concerns from the ANC emerge regarding the Project. *Id.* The Applicant also noted that it designed the Project in accordance with the parameters set forth in the Comprehensive Plan. *Id.* No one from the Applicant’s team is from the surrounding community. *Id.*

45. Following the Applicant’s testimony at the Public Hearing, the Commission requested the Applicant: (a) provide a narrative describing the use of the Project’s Community

Room; (b) provide a narrative or draft of the construction management plan (“**CMP**”), identifying the Applicant’s point of contact during construction; (c) reconsider including an outdoor terrace on the roof of the Project; (d) consider installing solar panels on the roof of the Project; (e) discuss with DDOT whether any upgrades were required for the alley; (f) consider restricting residents of the Project from being eligible to participate in the Residential Parking Program (“**RPP**”); (g) continue to examine the color brick on the Project’s façade; (h) reconsider the materials and screening of the penthouse structures; (i) undertake a parking study of the streets surrounding the Project; (j) commit to marketing the Project to the community as soon as reasonably possible; (k) continue to work with the community on outstanding issues; and (l) provide images of the Project in the context of the neighborhood. Tr. 2 at 41-90.

46. The Applicant has responded completely to the Commission’s questions, comments, and concerns raised at the Public Hearing. In the Post-Hearing Submission, the Applicant provided information in response to the Commission’s requests. Exh. 80.

- (a) Community Room. In its Post-Hearing Submission, the Applicant provided a detailed set of guidelines for the ANC and RTCO to use the Community Room. Exh. 80D.
- (b) CMP. In its Post-Hearing Submission, the Applicant also provided a detailed draft of the CMP. Exh. 80C.
- (c) Outdoor Terrace. In its Post-Hearing Submission, the Applicant declined to provide a rooftop terrace on the Project. Exh. 80 at 2. The Applicant explained that its management company had provided information that such features were not common on other senior affordable buildings that it manages. *Id.* The Applicant also noted that it researched the possibility of nonetheless providing a rooftop feature on the Project but that it was not feasible because of the applicable stormwater management requirements, which are heightened for the portion of the District including the Property. *Id.*
- (d) Solar Panels. The Applicant committed to achieve energy efficiency metrics similar to incorporating solar panels and to install equipment that could support the installation of solar technology at a point in the future. *Id.* at 2-3. The Applicant could not commit to install solar facilities because of the Project’s stormwater management requirements. *Id.*
- (e) Alley Upgrades. The Applicant committed to continue to work with DDOT during the alley closing process to evaluate whether upgrades to the alley system would be required. *Id.* at 5.
- (f) RPP Eligibility. The Applicant agreed to restrict its tenants from participating in the RPP program. *Id.*

- (g) Brick Color. In its Post-Hearing Submission, the Applicant revised the Project to include only two brick colors (rather than the three proposed in the PHS) and to exhibit a revised brick pattern. *Id.* at 2.
- (h) Rooftop Screening. The Applicant also changed the cladding for the penthouse and screen wall to a dark panel and connected each screen wall to the adjacent penthouse, consistent with the Commission’s request. *Id.*
- (i) Parking Study. The Applicant’s Post-Hearing Submission included a supplement to the CTR with a study of parking, curbside management and other existing conditions in the surrounding area. Exh. 80B. Findings regarding the Project’s parking and parking effects are addressed in detail in the “Findings regarding Core Issues” section of this Order (“**Core Issues**”). *See* FF ¶¶ 82-84.
- (j) Marketing Plan. The Applicant committed to engaging with the ANC on marketing efforts for the Project’s lease up. Exh. 80 at 6. The Applicant also committed to host a job fair in partnership with the ANC. *Id.*
- (k) Community Outreach. Following the Public Hearing, the Applicant continued to engage with the ANC on the ANC’s concerns. Exh. 80 at 1; Exh. 80A. *See also* FF ¶¶ 63-68 (findings regarding the ANC’s concerns).
- (l) Context Images. The Final Plans included perspectives showing the Project in context with surrounding existing buildings. *Id.* at 2.

47. The Commission finds that the Applicant has thoroughly addressed the Commission’s comments and provided, in response to the Commission’s questions, answers that are supported by substantial evidence.

48. At the Public Hearing the Commission also asked questions of OP and DDOT regarding possible traffic improvements and actionable items. *Id.* at 109-16. The Commission asked: (a) whether DDOT had reviewed the proposed pick-up/drop-off area; (b) OP to confirm that the OP Final Report erroneously included a reference that the Project was in the Enhancement Area of the Comprehensive Plan’s Generalized Policy Map rather than in the Conservation Area of the Comprehensive Plan’s Generalized Policy Map; (c) whether OP agreed with the Applicant regarding the Map Amendment in light of the Project’s relationship to Eads Street, NE and Benning Road, NE; (d) DDOT about future plans for improving Benning Road, NE; and (e) OP about plans for the District-owned lot adjacent to the Property.

- (a) Pick-Up/Drop-Off. DDOT confirmed that it had reviewed the proposed pick-up/drop-off area and that the proposal for such space would go through a DDOT-led permitting process. *Id.*
- (b) OP Final Report Error. OP confirmed the error in its report. *Id.*

- (c) Map Amendment Analysis. OP confirmed that it agreed with the Applicant's reading of the Zoning Regulations in light of the proposed Map Amendment. *Id.* OP supported the Map Amendment. *Id.*
- (d) Benning Road, NE Plans. DDOT explained that plans for extending the streetcar along Benning Road, NE were underway. *Id.*
- (e) District-Owned Property. OP was unaware of any current plans for the District-owned property. *Id.*

49. At the Public Hearing, the Commission also asked questions of the ANC. Tr. 2 at 135-43. The Commission asked what the ANC and the community opposed about the Project and whether the ANC believed the Project served residents of River Terrace. *Id.* The ANC explained that the community opposed the location and the density and had concerns about safety and parking. *Id.* at 135. The ANC also explained that it believed the Project was not designed to serve residents of River Terrace and could not sustainably do so. *Id.* at 142.

IV. Agency Reports and Testimony

Office of Planning

50. In the OP Setdown Report, OP requested the Applicant provide information regarding: (a) the Project's roof structure setbacks, a rooftop plan and residential amenities proposed for the roof; (b) the length of affordability for the rentals; (c) material composition and discussion about the variety in the façade materials; (d) the Project's benefits and amenities (including the status of a commitment to participate in District hiring and employment programs); and (e) the Project's streetscaping. Exh. 10 at 8 and 11.

51. In response to the OP Setdown Report, the Applicant provided the following information:

- (a) Roof Plans. The PHS included an updated roof plan with information pursuant to OP's request. Exh. 12 at 3.
- (b) Unit Plan and Affordability Information. The PHS also included information on the Project's affordability and unit mix. *Id.* at 4.
- (c) Materials. Plans attached to the PHS depicted the material and design information requested by OP. *Id.*
- (d) Public Benefits. The PHS and the 20-Day Submission included a detailed discussion of the Public Benefits including the District's hiring and employment programs. *Id.* at 5-6; Exh. 23 at 5-6.
- (e) Streetscaping. The PHS included a commitment to follow DDOT's guidelines. Exh. 12 at 5.

52. In the OP Final Report, OP requested the Applicant: (a) provide a materials board at the Public Hearing and (b) provide additional information on the Public Benefits at the Public Hearing. Exh. 25 at 3 and 11. OP noted that the other items requested in the OP Setdown Report had been resolved. *Id.* at 3.

53. In response to the OP Final Report, the Applicant provided the following information:

- (a) Materials Board. The Applicant provided a materials board at the Public Hearing. Exh. 45A at 66.
- (b) Public Benefits. The Applicant also provided detailed information on the Public Benefits at the Public Hearing. Tr. 2 at 39.

54. DHCD provided written comments to OP regarding the Project's affordability commitments. Exh. 25 at 18.

55. DC Water provided written comments to OP that the Project seemed feasible and that DC Water did not see any particular issues. *Id.*

56. This Commission finds that the Applicant satisfactorily addressed all of OP's comments and questions.

57. At the Public Hearing, OP testified in support of the Project. Tr. 2 at 106. OP testified that the Project was not inconsistent with the Comprehensive Plan for the District of Columbia, 10-A DCMR ("10-A") § 100, *et seq.* (the "**Comprehensive Plan**"). *Id.* OP also testified in support of approving the requested zoning flexibility. *Id.*

58. This Commission finds that OP's reports and testimony were thorough and credible and helpful in considering this Application and accordingly gives such testimony the great weight it is entitled.

District Department of Transportation

59. The DDOT Report noted no objection to the Project provided the TDM program is effectively implemented. Exh. 24 at 2. The DDOT Report included numerous findings, which the Commission hereby adopts, and notes the following in particular:

- (a) Sound Methodology. The Applicant used sound methodology to perform the transportation impact analysis in the CTR. *Id.*
- (b) Reasonable Assumptions. The background growth, mode split, and trip generation assumptions proposed by the Applicant are reasonable. *Id.*
- (c) Parking Ratio. The Project's parking ratio is considered high compared to other recent developments. The amount of short-term bicycle parking is appropriate. *Id.*

- (d) Traffic Impacts. The Project is not projected to increase travel delay in the vicinity of the Project. *Id.*
 - (e) Trip Generation. The Project is expected to generate a low number of new vehicle, transit, bicycle, and pedestrian trips. *Id.*
 - (f) Conservative Analysis. The Applicant assumed appropriate number of new vehicle trips as part of its traffic impact analysis. *Id.* at 6.
 - (g) TDM. The proposed TDM plan is appropriate for the action. *Id.* at 2.
 - (h) Continued Coordination. Given the complexity and size of the Project, the Applicant is expected to continue to work with DDOT outside of the Zoning Commission process. *Id.* at 3.
60. The TDM plan includes the following elements. The Applicant must:
- (a) Unbundle the cost of residential parking from the cost of lease or purchase of the units;
 - (b) Install a transportation information center display (electronic screen) within the lobby of the Project, which screen must contain real-time information related to local transportation alternatives;
 - (c) Offer the initial occupant of each residential unit a one-time annual car sharing membership, a one-time annual Capital Bikeshare membership, or credits for use on private commuter shuttles to help alleviate the reliance on personal vehicles;
 - (d) Offer a one-time \$50 SmarTrip card to each initial residential tenant and employee in the Project to encourage non-auto mode usage;
 - (e) Provide a bicycle repair station within the Project;
 - (f) Identify a TDM coordinator to work with the Project's residents and employees to distribute and market transportation alternatives;
 - (g) Provide TDM materials to new residents in the residential welcome package;
 - (h) For the first three years after the Project opening, provide the equivalent value of an annual Capital Bikeshare membership (currently \$85) or credit for a commuter shuttle service equal to the value of an annual bikeshare membership to all new residents; and
 - (i) Provide updated contact information for the TDM coordinator and report TDM efforts and amenities to goDCgo staff once per year.

61. At the Public Hearing, DDOT discussed ongoing study of planned improvements to Benning Road, NE as part of the streetcar extension and offered to work with the Applicant on a parking study. Tr. 2 at 107-08.

62. This Commission finds that DDOT's reports and testimony were thorough and credible and helpful in considering this Application and accordingly gives such testimony its appropriate weight in reviewing the Application.

V. ANC Report, Testimony, and Cross-Examination

63. The ANC Report objects to the Map Amendment as well as the Project's height, density, site plan, and proposal to load passengers from the alley. Exh. 43 at 2-4. The ANC Report also raises concerns with the Project's parking and traffic impacts and questions assumptions in the CTR. *Id.*

64. The ANC Report stated that the ANC had been working with the Applicant since September 2016 and committed to continued dialogue with the Applicant. *Id.* at 1; *see also* Tr. 2 at 139. The ANC Report also noted that it had requested the Applicant focus its engagement efforts on residents of nearby streets. *Id.*

65. At the Public Hearing, the ANC provided oral testimony in opposition to the Project. Tr. 2 at 118-34. The ANC prefaced its comments with an explanation of the River Terrace neighborhood's rich history and heritage as largely a single-family neighborhood. The SMD ANC Commissioner noted that she was newly-elected during the period that the Applicant was engaging in outreach.

66. The ANC's testimony included statements on the following topics:⁵

- (a) Safety Concerns. The ANC raised concerns with safety issues affecting residents of the Project and particularly with any shuttle bus loading of the Project from the rear alley. Tr. 2 at 122-25. The ANC also raised concerns about safety on Eads Street, NE and Benning Road, NE generally. *Id.* These concerns are similar to those raised by Opponents, and additional findings with respect thereto are provided below. *See* FF ¶ 78.
- (b) Target Demographic. The ANC doubted that the Project would attract residents from River Terrace because seniors in that neighborhood would be unlikely to leave their rowhouses in favor of smaller apartments in the Project. Tr. 2 at 122. The ANC expressed concerns that the Project did not serve the middle-class housing needs of Ward 7. *Id.* at 132. *See also* FF ¶¶ 72-73. The Commission notes

⁵ Additional findings responsive to the ANC's comments regarding the Map Amendment, safety, traffic, the CTR, and the Project's target demographic are included in the findings regarding Opponents' comments. *See* FF ¶¶ 70-81. The ANC's height, density, site plan, and parking comments are addressed in the Core Issues.

that the Project is expressly intended to serve low-income individuals and not middle-class housing.

- (c) Traffic Concerns. The ANC noted its opposition to curbside shuttle loading because of the narrow width of Eads Street, NE and objected to the adequacy of the Project's traffic mitigation. Tr. 2 at 123. The ANC also raised concerns about existing traffic conditions in River Terrace. *Id.* at 139-41. In the Post-Hearing Report, the ANC noted that there were no commitments or modifications made by the Applicant with respect to traffic and that it was deficient in many respects. Exh. 81 at 2. The Commission finds that many of the items raised by the ANC in the Post-Hearing Report were thoroughly addressed by the Applicant in the CTR. For instance, the Applicant examined impacts from the Project in its CTR and found that it was unlikely to cause adverse impacts on the community at peak hours given the amount of parking provided and the limited peak hour impact of senior housing use. Exh. 17. The Commission concurs. The Commission finds evidence in the record that there are regional traffic issues that impact congestion along Benning Road, NE but finds that the Applicant has provided substantial evidence that the impact of the Project is only negligible and capable of being mitigated through the TDM measures. Additional findings on traffic issues are discussed below in comments raised by Opponents. *See* FF ¶¶ 76.
- (d) Design. The ANC objected to the Project's overall bulk as well as the brick design. Exh. 81 at 3 and Tr. 2 at 133. The Commission finds that the Project's revisions are attractive and appropriate in light of the commercial context north of the Property along Benning Road, NE. Findings on the Project's density are below in the Core Issues.
- (e) Parking. The ANC noted concerns about the loss of parking on the Property, which parking currently serves the adjacent nightclub. Tr. 2 at 126. The ANC was concerned that if the parking serving the nightclub is lost then there will be spillover effects on nearby streets. *Id.* The ANC also objected to the reduction in garage parking in the Project. *Id.* at 132. The ANC raised concerns that the Post-Hearing Submission was deficient in explaining the implementation of proposed parking mitigation measures. Exh. 81 at 3. On this point, the Commission disagrees. The Applicant provided substantial evidence and explanation for the implementation of the Project's parking mitigation strategy. *See* Exh. 80 and 80B. Additional findings on parking are below in the Core Issues. *See* FF ¶¶ 82-84.
- (f) Non-Tenant Residents. The ANC wondered what would happen if grown children moved in with their senior parents. Tr. 2 at 128. On rebuttal, the Applicant's property manager described the controls it had in place to ensure ineligible residents did not occupy the Project's units after lease-up. Tr. 2 at 169-70.
- (g) Community Recreation Center. The ANC expressed that one of its preferences for the neighborhood was for the development of a recreation or community center

for neighborhood youth and/or a wellness center for seniors. *Id.* at 130-31. The Commission understands that the Project is not of a scale to accommodate a community center and finds the Applicant's proffer of the Community Room to be a meaningful public benefit.

- (h) Precedent. The ANC expressed concern about the Project setting precedent for future development and Benning Road, NE being developed and rezoned lot by lot without a comprehensive view. Tr. 2 at 132-33. The Commission notes that the Project is within the boundaries of the BRCFP, an area planning document that provides a coherent framework for redevelopment along Benning Road, NE. Exh. 2 at 33. The BRCFP specifically calls for redevelopment of the Property and adjacent properties to the north and east at significant levels of density. The Project's consistency with the BRCFP mitigates the ANC's concerns about unplanned, *ad hoc*, piecemeal rezoning and development. Finally, the Commission notes that the Map Amendment, as a PUD-related Zoning Map amendment, is by regulation non-precedential. *See* X § 300.4.
- (i) Renderings. The ANC found the additional perspective renderings provided by the Applicant in response to the Commission's request to be inadequate because such renderings were from a ground level view as opposed to an aerial view. Exh. 81 at 2. The Commission explicitly requested ground-level views rather than aerial views because the ground level perspective shows the Project as it will be viewed from the public realm.
- (j) ANC Dialogue with the Applicant. The ANC noted in its Post-Hearing Report that following the Public Hearing and pursuant to the request of the Commission, it met with the Applicant. Exh. 81 at 1; *see also* Exh. 80 at 1. The Post-Hearing Report noted also that nothing about the Applicant's post-hearing efforts "would warrant continued dialogue." *Id.* at 3. The Commission finds that prior to the Public Hearing, the Applicant demonstrated that it made meaningful changes to the Project in response to ANC and community feedback, including changing the Project to a focus on senior housing and eliminating a level of underground parking to reduce construction impacts. Exh. 46A. The Commission finds that after the Public Hearing the Applicant presented to the ANC a draft "Community Benefits Agreement" that addressed in some measure each item that the ANC raised as a concern with the Project. Exh. 80A ("CBA"). The Commission is concerned that the opportunity for the Applicant and the ANC to work together after the Public Hearing to find mutually acceptable compromises on various aspects of the Project was prejudiced by the ANC's view of the Project generally. At the Public Hearing, the ANC noted that "regardless of how many times these developers have to go back to the table...when they come to me I'm still going to be [in] opposition [to the Project] because I'm sitting here to represent the people [in River Terrace]." Tr. 2 at 131. The purpose of the PUD process is to foster a constructive dialogue between developers and the community, as represented by the ANC. This process requires give-and-take on both sides, and neither party gets

everything they want. The constructive dialogue that the Commission seeks requires some level of compromise. The Commission finds nothing in the ANC's Post-Hearing Report to suggest that there was a cooperative effort on the ANC's behalf to find areas of common interest or to compromise. Contrastingly, the Commission finds that the Applicant set forth ideas and proposals in the draft CBA in response to the ANC's concerns at the Public Hearing.⁶ The Commission gives the ANC's views the great weight they are due. However, the Commission finds that in this case, the ANC declined to engage meaningfully in constructive dialogue after the Public Hearing despite the Applicant's willingness to mitigate impacts and offer additional public benefits in the CBA. Importantly, notwithstanding the ANC's lack of engagement after the Public Hearing, the Applicant still carried forward many of the measures it had proffered in its draft CBA.

ANC Cross-Examination

67. At the Public Hearing, the ANC cross-examined the Applicant's testimony. *Id.* at 90-105.

- (a) The ANC asked about the Applicant's comments during its presentation regarding the availability of affordable housing in Ward 7. The Applicant clarified that it expected that the prices of single-family houses in the area surrounding the Property would increase in the near future. *Id.* at 95; *see also* Exh. 80 at 4. In addition, there are comparatively few multi-family opportunities in the neighborhood and market rents will rise in the area as market rate housing comes in. *Id.* The Project provides long-term affordable housing in the area. *Id.*
- (b) The ANC asked the Applicant to clarify its target demographic and to explain why River Terrace residents might be interested in moving into the Project given that many River Terrace are expected to age in their existing homes. *Id.* The Applicant explained that its target demographic for the Project was seniors aged 55 and above. *Id.* at 96. The Applicant explained that it would market the Project to area residents to give them first-hand information in the event that any wanted to move. *Id.* at 97. The Applicant also noted that its overall marketing strategy for the Project was regional in scope. *Id.*
- (c) The ANC also asked questions regarding vehicular access to the Property. *Id.* at 100. The Applicant explained that seniors generally do not commute at peak times so the Project would be unlikely to have adverse impacts on traffic during peak commuting periods. In addition, the Project's low level of parking would reduce vehicular impacts. *Id.*

⁶ The Commission also notes that the Applicant presented evidence that it had met with the ANC no fewer than fourteen times plus an additional five or more meetings with other community groups and/or neighbors. Exhs. 46A; 80. Nothing about the Applicant's community engagement suggests intransigence or unwillingness to find common ground on the Applicant's part.

- (d) The ANC asked how the Applicant expected its residents would travel to shopping areas and for other trips. *Id.* at 101. The Applicant indicated that residents would either use personal vehicles, if available, or transit, and that the X2 bus line was the most likely line to be used given its frequency of service. *Id.*
- (e) The ANC also asked for additional clarification on the Commission’s question regarding traffic delay at the PEPCO site, and the Applicant provided such clarification. *Id.* at 102-03.
- (f) The ANC made several statements during its cross-examination, including encouraging the Applicant to consider creative parking solutions and objecting to the Project’s scale. *Id.* at 91-105. Findings regarding the Applicant’s response to these comments are included in the Core Issues.

68. At the Public Hearing, the ANC also cross-examined DDOT. *Id.* at 117-18. The ANC asked for details about the planned extension of the streetcar along Benning Road, NE. DDOT committed to looking into the ANC’s questions. *Id.*

VI. Persons in Support

69. Former Ward 7 Councilmember Yvette M. Alexander wrote in support of the Project. Exh. 11. Cm. Alexander wrote that the Applicant had engaged in extensive community outreach and supported the policies and objectives of the Comprehensive Plan with respect to reusing a vacant and underused lot and providing affordable housing to help meet the District’s goals. *Id.*

VII. Opponents’ Concerns and Objections

70. This Commission notes that there is strong opposition to this Application among residents of River Terrace and the ANC. Prior to the closing of the record, Opponents submitted nearly fifty letters or other items of written opposition testimony. Exhs. 28-42, 44, and 47-77 (collectively the “**Opponents’ Letters**”).⁷ At the hearing, eight Opponents provided oral testimony in opposition to the Project. Tr. 2 at 145-67. The Commission has reviewed all of the Opponents’ testimony in the record and finds such testimony to be generally credible. The following Paragraphs 70 through 81 identify and address Opponents’ concerns and objections. These collective concerns and objections are grouped into categories (rather than addressed as individual items of testimony from each Opponent) for review and analysis. A subset of Opponents’ concerns and objections, together with certain of those raised by the ANC, are

⁷ The Commission notes that the letters from Opponents submitted into the record are generally all form in nature. Only Exhs. 36, 48, and 76 differ substantively from the remaining Opponents’ letters, and Exhs. 36 and 76 are themselves nearly identical. However, this does not diminish the consideration that the Commission gives the letters upon review. This note is merely to explain that citations to individual letters from Opponents are generally not provided herein because the concerns and objections summarized herein are generally attributable to all Opponents.

addressed in more detail in the Core Issues section of this Order.⁸ Opponents' concerns that are treated as Core Issues section of this Order are denoted as such below.

71. Lack of Analysis, Mitigation, and Responsiveness to Community Concerns. Opponents alleged that the Applicant "has not facilitated adequate mitigation, site design or analysis for this [P]roject." *See* Opponents' Letters; *see also* Tr. 2 at 148-49, 155, and 157. The Commission disagrees. The Applicant has provided extensive analysis for this Project over the course of more than a year's study and refinement. *See* Exhs. 2, 12, 16-17, 23, and 45-46. Moreover, the Applicant has appropriately mitigated all potential adverse effects of the Project. *See* FF ¶¶ 117-24. Opponents also alleged that the Application has "not addressed or adequately answered many of the concerns of the neighborhood." Exhs. 36 and 76. Again this Commission disagrees. The Commission finds that the Applicant has engaged in extensive outreach and has delivered a significant amount of information to the community, including emails, handouts, and presentations responding to the community's questions and concerns. *See* Exh. 46.

72. Target Market for the Project/Inadequate Demand. Opponents questioned whether sufficient demand exists to fill the Project's units given that many senior residents in the River Terrace neighborhood have expressed a preference to "age in place." *See* Opponents' Letters. The Applicant provided information that demand is high for affordable senior housing. Tr. 2 at 168-69 and 178. The Applicant noted that it would market the Project to residents of River Terrace and also throughout the District more generally. *Id.* at 54-55, 73, 97-98, and 104-05. The Commission notes that the construction of senior and affordable senior housing are priorities expressly enumerated in the Comprehensive Plan and Zoning Regulations. *See* 10-A §§ 504.6, 516.8 and X § 305.5(f). The Commission has little doubt that given the civic priority assigned to such housing that the Project will have little trouble filling with eligible residents. The Commission also finds that the Applicant's experience in developing, owning and (through a third party) managing affordable senior housing gives it a perspective of the housing market sufficient to outweigh the ANC's and Opponents' concerns. There are no potential adverse effects from a putative lack of demand for the Project's residences.

73. Concentration of Affordable Housing in Ward 7. Opponents raised concerns about the over-concentration of affordable housing in Ward 7. Exhs. 36 and 76; Tr. 2 at 152-53, 156, and 161. The Applicant provided evidence that the Comprehensive Plan and Zoning Regulations both prioritize the development of affordable housing, especially housing near transit. Exh 2 at 28 and 40-41. The Applicant and the Opponents appear to agree that the area surrounding the Project is a mix of commercial and single-family residential uses. There is no evidence that the area immediately surrounding the Property contains a concentration, or indeed any, income-restricted housing. Rather, Opponents' concerns tend to focus on affordable housing in the two-mile area around the Property and in Ward 7 more generally. *See* Exhs. 36 and 76. The Applicant provided evidence that the Project's AMI restrictions do not have a discernible effect on income demographics in the census tract containing the Project. Exh. 80 at 6-7; Exh. 80E. The

⁸ The Commission does not suggest that the contested issues addressed in these paragraphs 70 through 81 are immaterial. Rather, the designated Core Issues grouped below all warranted a greater intensity of scrutiny by the Commission and are grouped together with concerns raised by the ANC purely for organizational purposes.

Commission finds that the Applicant's census analysis satisfies the requisite evidentiary standards. Therefore, in the absence of any evidence from the Opponents other than conclusory statements, the Commission finds that Project does not have any adverse effects with respect to the concentration of affordable housing.

74. Zoning Designation. Opponents objected to the proposed re-designation of the Property from the R-3 zone to the MU-7 zone. *See* Opponents' Letters and Tr. 2 at 160-61. Opponents noted that in their view the Zoning Regulations indicate that the MU-7 zone is appropriate for "arterial streets," a description that is not appropriate for to the comparatively smaller Eads Street, NE. *Id.* The Applicant and OP provided testimony to the contrary. Tr. 2 at 30 and 111-12. OP noted that the language cited by Opponents is in the preamble to the development standards for the MU zones and does not have binding regulatory effect. *Id.* at 111-12. OP also noted that the MU-7 zone is not confined to arterials and that the relevant question is not whether the proposed Map Amendment is consistent with the descriptive language in the Zoning Regulations, but rather whether the Map Amendment is consistent with the Comprehensive Plan. *Id.*; *see also* X § 500.3 (directing the Commission to evaluate a map amendment application based on whether such application is not inconsistent with the Comprehensive Plan and providing no instruction to the Commission to consider the prefatory (and precatory) language in the Zoning Regulations). This Commission gives great weight to OP's testimony and analysis and finds that the Map Amendment is appropriately applied in this instance. The Commission notes that after the Public Hearing the Applicant revised its Map Amendment request so that the Property would be re-designated to the MU-5-A zone. Such revision does not affect the Commission's analysis here.

75. Project Density, Height, and Size. Opponents objected to the density, height, and size of the Project given the character of the surrounding community. *See* Opponents' Letters. These concerns are addressed more fully in the Core Issues.

76. Traffic Congestion, Parking, and Adequacy of the CTR. Opponents raised concerns that the Project results in increased traffic congestion and contains inadequate parking that will likely have adverse spillover effects on Eads Street, NE and other nearby streets. *See* Opponents' Letters and Tr. 2 at 149 and 164-65. Opponents also alleged variously that the Applicant failed to provide a transportation analysis or that it was deficient. *Id.* Regarding the transportation analysis, the Commission finds that the Applicant did submit the CTR, Exh. 17, and that DDOT approved of it and found to be reasonable. Exh. 24 at 2. The Commission concurs with DDOT with respect to the CTR for the reasons cited above. *See* FF ¶ 59. The Commission also finds Opponents' concerns regarding traffic congestion to be unavailing. The Applicant has provided adequate evidence in the CTR and in testimony that the Project's traffic congestion impacts are likely to be minor. *See* Exh. 17 and Tr. 2. These concerns are addressed in the Core Issues.

77. Construction Impacts. Opponents raised concerns regarding adverse effects from construction. *See* Opponents' Letters and Tr. 2 at 146, 154, and 166. The Commission finds that these concerns are not unacceptable and are capable of being mitigated. The Applicant has prepared and included in the record the CMP, which is an appropriate and adequate vehicle for

mitigating construction impacts. Exh. 80C. Moreover, the Applicant noted that it had revised the Project to no longer require a below grade garage in order to minimize excavation for the Project and to avoid related construction-period impacts on neighbors. Tr. 2 at 48.

78. Crime Impacts. Opponents also raised concerns about existing crime in the vicinity of the Project and impacts of the Project and on the Project's future residents. *See* Opponents' Letters and Tr. 2 at 150-51, 153-54, and 166. The Applicant provided evidence that it had met with MPD and designed the Project to address safety concerns. Exh. 2 at 4; Exh. 46A at 5; Exh. 80 at 6. The Applicant also provided testimony that the Project is the type of "eyes on the street" development that tends to improve neighborhood safety especially in light of the existing condition of the Project as a vacant lot. Tr. 2 at 33. The Applicant committed to heightened security measures in response to MPD recommendations and community concerns. Exh. 80 at 6. The Commission finds that the Project does not have potential adverse effects with respect to crime and that such impacts are not unacceptable in light of the Public Benefits.

79. Environmental Impacts. One Opponent alleged that there had not been an adequate environmental impact study done to confirm that the Property was suitable for development in light of contamination on nearby properties. Tr. 2 at 148. As part of the Post-Hearing Submission, the Applicant presented evidence that it had conducted an environmental site assessment of the Property, and such review revealed that no further review was required and that no significant non-compliance with environmental statutes would arise from conditions as a result of impacts to the subsurface of the Property. Exh. 80F at ii.

80. Economic Impacts. One Opponent alleged that the Project will reduce surrounding property values and reduces the likelihood of attracting retail offerings. Tr. 2 at 162. The Applicant testified that it expected property values around the Project to increase over time. *Id.* at 95. The Applicant also provided a recent report showing rising Property values in River Terrace. Exh. 80E at 4. The Commission finds that the Project has no potential adverse effects that are not offset by the Public Benefits, most notably, the provision of affordable housing.

81. Neighbor Opposition. Opponents and the ANC point out that the Project is opposed by the River Terrace community. *See* Opponents' Letters and Tr. 2 at 98, 124, 131, and 147. The Commission finds that the Project opponents are generally from addresses in the vicinity of the Project. However, neighbor opposition to a project is only one factor the Commission considers in evaluating an application for a PUD. The PUD Requirements and PUD Evaluation Standards (as such terms are defined below) as well as guidance from the Comprehensive Plan and BRCFP are relevant as well. *See* X § 304.1. On those points, the Commission finds that the Applicant has carried its burden for approval of this Application, notwithstanding the community opposition. *See* FF ¶¶ 99-100 and 105-37.

VIII. Findings regarding Core Issues

82. The Commission finds that the Applicant has responded fully and satisfactorily to each material contested issue raised in this Application. This Commission has reviewed the entire record in this case and finds that two categories of items raised by the ANC, Opponents, and this

Commission are best consolidated in this section as Core Issues. Although the Commission ultimately agrees with the Applicant and affords OP's analysis its requisite great weight, the objections and concerns raised by the ANC and Opponents warrant careful scrutiny. In sum, this Commission resolves these contested questions in favor of the Applicant and finds that the Project is consistent with the Zoning Regulations and the PUD Evaluation Standards.

83. Density, Height and Size. Opponents and the ANC objected to the Project's density and height. *See* Opponents' Letters and Tr. 2 at 147, 149, 155, and 164. In particular, Opponents and the ANC alleged that the Project's height was out of character with the predominantly two-story residences nearby and would significantly increase the population of the block. *Id.* After careful study of the Project and the particular concerns of the ANC and Opponents, the Commission disagrees with the ANC and Opponents. The Commission finds that the Project's density, height, and size are appropriate in light of the Comprehensive Plan, BRCFP, the Public Benefits, the Project's design and context, and the lack of adverse effects.

- (a) Comprehensive Plan. As discussed in more detail below, the PUD and Map Amendment are not inconsistent with the Comprehensive Plan. Indeed, the Map Amendment is appropriate for the Property in light of the Future Land Use Map and BRCFP objectives for the Property. *See* FF ¶¶ 106-16. The Commission appreciates the Applicant's gesture to reduce the Map Amendment request from the MU-7 to the MU-5-A. The Commission also reiterates that the Map Amendment is tied to the dimensions of the Project as shown on the Final Plans (i.e., a height of approximately 58 feet and an FAR of 3.81. *See* X § 300.4. The Project's height and density of the Project are not inconsistent with the relevant planning guidance and the surrounding context.
- (b) Public Benefits. The Public Benefits, and more particularly the Project's provision of senior affordable housing, sufficiently warrants the Project's density, height and size. *See also* FF ¶¶ 103 and 125-37. A reduction in size or density of the Project would necessarily result in the reduction of affordable units. However, the construction of such units is a civic priority. Tr. 2 at 42. The Commission finds that the benefits arising from the Project exceed any adverse effects from a change in character relative to surrounding conditions on Eads Street, NE, particularly when such change is explicitly called for in the Comprehensive Plan and BRCFP.
- (c) Design and Context. The Commission observes that the Project is taller and larger than any existing structure on Eads Street, NE. Although such size and scale is called for from a planning perspective, this Commission is sympathetic to the initial impressions of the ANC and Opponents in opposition to the Project. However, upon careful review, the Project's design and site analysis appropriately address the balance of the proposed bulk and height in the immediate surrounding context.
 - The Property's location in the context of the neighborhood weighs towards allowing greater height and density on the Property. The Project buffers

the industrial and commercial uses and the heavily-trafficked highway corridor to the north and the lower-scale residential uses to the south.

- The Property is on the northern side of Eads Street, NE and to the east of any existing townhouses. As a result, the Project has the minimal possible impact with respect to solar/shadow orientation.
- The Project steps down at its western end to transition to the height of the townhouses opposite the alley from the Project. The Commission notes that the R-3 zoning that applies to the properties to the west and south would allow development to a height of 40 feet and three stories. The Project's stepdown in height to four stories and approximately 43 feet, 8 inches at its western edge is an appropriate transition in height.
- The Project is voluntarily set back from Eads Street, NE in keeping with the building restriction line applicable to the nearby townhouses.
- The Project's quality of architecture and detailing also counsels in favor of allowing the greater height and density because the Building's mass is appropriately articulated and employs high-quality materials.
- The Project has an immediately adjacent alley entrance so that vehicles accessing the Project's garage do not necessarily pass by the rear of other townhouses that share the alley system serving the Project.
- The Project's use exclusively for residential purposes (excepting only the Community Room) also weighs in favor of allowing the additional height and density on an otherwise residential street.
- The Property's existing use as a surface parking lot supports the requested additional height and density made possible by the Project. That is, the Property is already an anomalous condition along Eads Street, NE, and the Project is an improvement over the existing condition.

For the foregoing reasons, the Project's design and context overall weigh in favor of granting the additional height and density sought for the Project.

- (d) Lack of Adverse Impacts. The Commission finds that there are no potential adverse effects from the Project. *See* FF ¶¶ 117-24. Given the absence of such unfavorable conditions, the Commission finds the Project's density, height, and size to be appropriate.

84. Parking. Opponents and the ANC raised concerns regarding the amount of parking proposed to support the Project's residents and guests. *See* Opponents' Letter and Tr. 2 at 146, 152, 155, 158-60, and 164. The ANC also raised concerns about the impact of the Project on

available on-street parking and the loss of parking currently on the Property, which existing parking serves the nearby nightclub. Tr. 2 at 126. The Commission appreciates the concern about the existing parking conditions on Eads Street, NE. However, the Commission finds that the Project does not have potential adverse effects with respect to parking for the following reasons:

- (a) The Project complies with the Zoning Regulations. The Project provides seventeen parking spaces, which exceeds the required twelve parking spaces under the Zoning Regulations. Exh. 80B. These Zoning Regulations are newly-adopted by this Commission, and this Commission engaged in extensive study of such Regulations (including the parking minimums contained therein) before adoption. The Commission is therefore satisfied that the amount of parking required under the Zoning Regulations is appropriate for the Project.
- (b) The Project has robust TDM measures. In addition to exceeding the amount of required parking, the Applicant has agreed to adopt TDM measures to reduce vehicle travel demand (and therefore parking needs) among its residents. Exh. 24. The Applicant further committed to establish a shuttle service to provide transportation to and from typical convenience destinations (e.g., a grocery store or pharmacy as well as direct access to a Metrorail or DC Streetcar station). Exh. 80 at 5.
- (c) The Applicant has elected to make the Project's residents ineligible for RPP. In response to a request from this Commission at the Public Hearing, the Applicant agreed to make the Project's residents ineligible for RPP. Exh. 80 at 5.
- (d) The Applicant has conducted a supplemental parking study of the neighborhood. Again in response to a request from this Commission at the Public Hearing, the Applicant undertook a parking survey of the streets surrounding the Project. The parking survey revealed that there is a sufficient supply of on-street parking in the immediate area to accommodate local residents even after the development of the Project. Exh. 80B. The Commission finds that the Project's parking controls are sufficient to ensure that the Project does not have adverse effects on the surrounding parking supply.
- (e) Parking for the nightclub will continue to be available. The Commission finds that the Project affects only one of the two parking lots that the nightclub uses. The Applicant's CTR supplement finds that there is a sufficient supply of on- and off-street parking to accommodate local businesses, including the nightclub. *Id.* Therefore, the Project does not result in unacceptable impacts to the surrounding areas.

IX. Development Incentives: Map Amendment, Zoning Relief, and Flexibility

85. The PUD process specifically allows greater flexibility in planning and design than is possible under strict application of the Zoning Regulations. Under the Zoning

Regulations, this Commission retains discretion to grant relief from the development standards as a development incentive. X §§ 303.1, 303.11, 303.13. The Zoning Regulations specifically allow the Commission to approve any such zoning relief that would otherwise require the approval of the Board of Zoning Adjustment. Generally, such relief is available at the discretion of the Commission; however, where such relief is available only by special exception ordinarily, the Commission must determine that the relief request satisfies that standard for relief. *Id.* § 303.13.⁹ A Zoning Map amendment is a type of development incentive and accordingly is addressed here. *Id.* § 303.12.

86. As part of the Application, the Applicant requested the Commission grant the following development incentives (collectively, the “**Development Incentives**”):¹⁰ the Map Amendment; special exception relief from the applicable rear and side yard requirements (“**Yard Relief**”) and penthouse enclosure requirements (“**Penthouse Relief**”); relief from the strict application of the parking access and loading requirements (“**Parking and Loading Relief**”); and an exemption from the IZ provisions of the Zoning Regulations (“**IZ Exemption**”). Exh. 23 at 2-4. These items are addressed in turn below.

Map Amendment

87. The Property is currently in the R-3 zone. The Application seeks the Map Amendment to change the designation for the Property to the MU-5-A zone to accommodate the proposed Project. The Map Amendment is not inconsistent with the Comprehensive Plan. *See* X § 500.3. The following factors bear on this Map Amendment request:

- (a) Future Land Use Map/BRCFP. The Property is split between the Mixed-Use Medium Density Commercial/Moderate Density Residential use designation and the Moderate Density Residential use designation. The split occurs roughly down the center of the Property with the Mixed-Use Medium Density designation applicable to the eastern half of the Property and the Moderate Density designation to the western. The Framework Element of the Comprehensive Plan establishes guidelines for interpreting the Map. 10-A § 226(a). This Element provides that Moderate Density Residential use is “characterized by a mix of single-family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings.” *Id.* § 225.4. Medium Density Commercial use is characterized by “Buildings [that] are generally larger and/or taller than those in moderate density commercial areas but generally do not exceed eight stories in height.” *Id.* § 225.6. The requested MU-5-A zone (formerly C-2-B) is expressly identified as corresponding to the Medium Density Commercial designation and it is the lowest density zone in such designation. Given the split nature of the Property, using the lowest density zone under the Medium Density designation is

⁹ Subtitle X, Section 303.13 provides in relevant part that “[a]s part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards.”

¹⁰ In the 20-Day Statement, the Applicant withdrew its request for lot occupancy relief. Exh. 23 at 2.

appropriate. The Comprehensive Plan further provides that density bonuses through the PUD process may exceed the guidance set forth on the Future Land Use Map. *See id.* § 226(c); *see also* FF ¶¶ 106-16. In addition, the Project’s density is directly in alignment with the policy recommendations of the BRCFP.

- (b) Partial Moderate-Density Designation. The Property’s partial designation within the Moderate Density Residential area on the Future Land Use Map does not preclude the Map Amendment. Rather as noted in the Comprehensive Plan itself, “the Future Land Use Map is not a zoning map” and is not “parcel-specific” but is instead intended “to be interpreted broadly.” 10-A § 226(a). In that same vein, the density of any given block on the Future Land Use Map may vary from lot to lot, such that there may be individual lots with densities that are either above or below the designation. *Id.* § 226(c) (“The densities within any given area on the Future Land Use Map reflect all contiguous properties on a block—there may be individual buildings that are higher or lower than these ranges within each area.”). In light of the Project’s consistency with the Medium Density designation and other provisions of the Comprehensive Plan, the Map Amendment is not inconsistent with the Moderate Density Residential use designation. *See also* FF ¶¶ 106-16. Relevant to this analysis is the Project’s design, the Map Amendment must be understood in partnership with the PUD. *See* X § 300.4. That is, the Project is slightly less dense on the portion of the Property that is within such Moderate Density Residential area. This aspect of the Project further balances against any illusion of inconsistency with respect to the Moderate Density designation.
- (c) Surrounding Zones. Approximately half of the block containing the Property is within the MU-4 zone. The blocks surrounding the Property are otherwise also within the R-3 zone. On balance, the Map Amendment would not be anomalous in the current context.
- (d) Below Maximum FAR and Height. The Project is substantially below the maximum FAR allowed in the MU-5-A (i.e., the Project’s FAR is 3.81 and the maximum in the MU-5-A under a PUD is 5.04). Likewise, the Project (at 58 feet) is below the maximum height allowed under the MU-5-A zone designation pursuant to a PUD (90 feet under the Zoning Regulations and 70 feet under the Height Act).

88. The Map Amendment is not inconsistent with the Comprehensive Plan. The Commission makes additional findings regarding the Application’s consistency with the Comprehensive Plan. *See* FF ¶¶ 106-16. Those findings are incorporated here by reference. On balance, the Commission finds that the weight of the factors supporting the Map Amendment, and in particular, the Map Amendment’s lack of inconsistency with the Comprehensive Plan, justify granting the Map Amendment.

Yard Relief and Penthouse Relief

89. The Project requires modest relief from the side and rear yard requirements of the MU-5-A zone and from the strict application of the penthouse enclosure requirements:

- (a) Rear Yard. Under Subtitle G, Section 405.1 of the Zoning Regulations, a rear yard of not less than fifteen feet is required in the MU-5-A zone. The Project's rear yard varies in width but does not satisfy this requirement. Exh. 80G. Subtitle G, Section 409 authorizes relief from this yard requirement as a special exception pursuant to the provisions of Subtitle G, Section 1201.1.
- (b) Side Yard. Under Subtitle G, Section 406.1 of the Zoning Regulations, no side yard is required but if any is provided it must be two inches per foot of building height and not less than five feet in the MU-5-A zone. The Project includes a voluntary side yard on its western end, which also varies in width and also does not satisfy this requirement. Exh. 80G. Subtitle G, Section 409 authorizes relief from this yard requirement as well by special exception.
- (c) Penthouse. Under Subtitle C, Section 1500.6, all penthouse and mechanical equipment must be placed in one enclosure except that a rooftop egress stairwell enclosure not containing any other mechanical space may be contained in a separate enclosure. The Project's stairwell egress enclosure also includes other enclosed mechanical space. Subtitle C, Section 1504.1 authorizes relief from Section 1500.6 by a special exception and the considerations of Section 1504.1(a)-(f).

90. The Commission finds that the Applicant's request for special exceptions for Yard Relief and Penthouse Relief satisfies the relevant criteria for the following reasons:

- (a) Standard of Review for Yard Relief and Penthouse Relief. In reviewing a request for a special exception for Yard Relief and Penthouse Relief, this Commission must determine that the requested special exceptions are (i) in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and (ii) do not tend to affect adversely the use of neighboring property. X § 901.2 (“**Special Exception Standard**”). The general intent and purposes of the Zoning Regulations are, *inter alia*, to promote the “public health, safety, morals, convenience, order, prosperity, and general welfare to (a) provide adequate light and air, (b) prevent undue concentration of population and the overcrowding of land, and (c) provide distribution of population, business, and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.” 11-A DCMR (“**11-A**”) § 101.1 (“**Zoning Purposes**”).

(b) Harmony. The Commission finds that the Yard Relief and Penthouse Relief are in harmony with the Zoning Purposes.

- The yards for which relief is required allow for adequate light and air because both yards adjoin alleys. A side yard is not even required in the MU-5-A zone, and the minimum width requirement is only to ensure no unusually narrow yards are created. Given the adjacent alley, that concern is not present for the Project. Similarly, the rear yard abuts only an alley and fails to comply with the underlying requirement of the MU-5-A zone for only a portion of the width of the Property. Finally, the rear Yard Relief is a function of the Project's voluntary setback from Eads Street, NE to match the surrounding context, which is subject to the building restriction line.
- The Penthouse Relief does not diminish light and air. Rather, the penthouse as proposed provides the least amount of screening wall that encloses all mechanical equipment that is required to be enclosed. A fully compliant screening wall would be larger than that proposed.
- The Project as a whole, including the two items of relief subject to the Special Exception Standard, furthers the second prong of the Zoning Purposes because the Project overall complies with the density limits of the applicable zone and therefore avoids overcrowding.
- Finally, the Project's non-compliant yards create conditions that promote the productive re-use of the Property for the purposes of affordable housing, which is a highly desirable civic priority. The Penthouse Relief is in harmony with the Zoning Purposes for similar reasons.

(c) No Adverse Effects. Neither the Yard Relief nor the Penthouse Relief tend to have adverse effects on the use of nearby properties.

- Any potential adverse effects of the requested rear yard flexibility on neighboring properties are significantly mitigated by: (i) the commercial nature of the lots to the rear (north) of the Property, (ii) the minor amount of relief requested, and (iii) the presence of the rear alley.
- Likewise, any adverse effects of the requested side yard flexibility are mitigated by the small amount of flexibility requested and the width of the alley adjacent to such side yard.
- The flexibility requested for the rooftop enclosures is also modest and allows two air handling units to be spaced apart from each other on the roof to ensure efficient operation. Moving the units closer together reduces efficiencies inside the Project. Creating a single enclosure around the both

units would interfere with rooftop green space and would be excessively large given the total area of the mechanical units that need to be enclosed. Given the height of the units and the enclosure, none are visible from the street. There are no potential adverse effects from such Relief.

(d) Other Conditions. In addition to the elements of the Special Exception Standard set forth above, the rear Yard Relief and the Penthouse Relief are subject to additional considerations.

- With respect to the Yard Relief for the rear yard, Subtitle G., Section 1201.1 includes two additional conditions: (i) no apartment window may be located within 40 feet across from another building, and (ii) adequate provision must be made for service functions. There are no apartment windows on the rear ground level of the Project, and there is only one building directly across the alley to the rear of the Project, but that building is only one story. Therefore, there is no building within 40 feet of a residential window. The Project makes adequate provision for loading and parking. Accordingly, the Yard Relief satisfies the additional conditions of Section 1201.1.
- With respect to the Penthouse Relief, the Commission may include other design and development factors in determining whether to grant such relief. *See* C § 1504.1(a)-(f). The Commission finds that Section 1504.1(c) (“The relief requested would result in a roof structure that is less visually intrusive [than a matter-of-right structure]”) is relevant in this instance. The Penthouse Relief results in a smaller enclosure and therefore less impactful than one that would be fully compliant.

91. For these reasons, the Commission finds that the Yard Relief and Penthouse Relief each satisfy the Special Exception Standard and applicable additional considerations.

Parking and Loading Relief

92. The Project requires modest relief from certain parking access and loading requirements of the Zoning regulations. The Project provides the requisite number of parking spaces, but does not comply with the requirement that each parking entrance accessed from an alley be located at least 12 feet from the center line of that alley. *See* C § 711.7. Only two of the Project’s parking spaces do not comply with this requirement, and the amount of noncompliance is in both instances less than 20 inches.

93. Under the loading requirements, the Project is required to have both a 30-foot loading berth and a 20-foot service/delivery space, and the 30-foot loading berth must, among other things, have 14 feet of vertical clearance. *Id.* §§ 901.1, 905.2. However, the Project includes only a single 30-foot berth, which has a maximum vertical clearance of 12 feet rather than the requisite 14 feet.

94. The Parking Relief is de minimis, and in light of the Property's irregular configuration along the rear alley and the Project's many Public Benefits is readily justified.

95. The Loading Relief is more significant but justifiable in light of the Public Benefits. There is a direct trade-off in the number of affordable housing units for the amount of internal loading provided. The Commission finds that the extra housing provided is a benefit that outweighs the costs of granting the Loading Relief with respect to the delivery space. The two foot reduction in the vertical clearance of the loading berth is warranted in light of the fact that it allows the Building to be two feet lower without any expected adverse effects on loading needs. *See Exh. 24.* Accordingly, the Commission grants the Parking and Loading Relief.

IZ Exemption

96. The Project would ordinarily be subject to the IZ regulations. However, in light of the all-affordable nature of the Project and the proposed rental limits set forth above, *see C § 1001.6*, the Commission finds that the Project need not adhere to the strict application of the IZ regulations for the duration of any affordable housing-related financing applicable to the Project in order to provide the deeper level of affordability that the Applicant proposes.

Development Incentives – Summary

97. The Commission finds that, overall, the Project conforms to the Zoning Regulations, except for the few Development Incentives set forth in the immediately foregoing paragraphs. Where the Project requires relief, the Commission finds that such relief is either minimal in nature or reasonable in light of the proposed uses and Public Benefits and otherwise does not derogate or impair, but rather is in accordance with, the Zoning Purposes.

98. The Project is in harmony with the Zoning Purposes because it protects light and air on the Property and surrounding Properties, prevents overcrowding by providing single-family residential uses and protected open spaces, and promotes land uses that create favorable conditions with respect to recreation, culture, and transportation. The Project is also generally consistent with the height, density, and dimensional aspects of the Zoning Regulations, requiring only modest flexibility to shift density across the Property and to obtain minor relief for rear and side yards and for roof structures. For the reasons set forth above, the Commission grants the requested Development Incentives.

X. PUD Requirements

99. As set forth in the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, provided that the project that is the subject of the PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; (c) protects and advances the public health, safety, welfare, and convenience; (d) is not inconsistent with the Comprehensive Plan and does not result in action inconsistent therewith; (e) does not circumvent the intent and purposes of the Zoning Regulations; and (f) undergoes a

comprehensive public review by the Commission in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits (collectively, the “**PUD Requirements**”). X §§ 300.1, 300.2, and 300.5.

- (a) For the following reasons, the Project is superior to the development of the Property under the matter-of-right standards:
- Amount of Housing. The Project includes a greater amount of housing than would have been feasible under a matter-of-right development.
 - Amount and Level of Affordable Housing. The Project includes a greater amount of affordable housing than would have been feasible under a matter-of-right development. Moreover, the majority of such affordable housing is reserved at a deeper level of affordability than would be required or feasible for a matter-of-right project.
 - Senior Housing. The Project’s provision of housing reserved exclusively for seniors is a public benefit expressly recognized in the Zoning Regulations.
 - Other Public Benefits. The Project includes other Public Benefits, including the Community Room and employment benefits, none of which would be required or feasible under a matter-of-right development.
 - Community Engagement. A matter-of-right development would not have afforded the community as many opportunities to engage with the Applicant and provide feedback. Accordingly, the Project would not have been revised as it was in accordance with community preferences.
- (b) The Public Benefits are commendable in number and quality. The Project’s Public Benefits are enumerated above and discussed in detail elsewhere. *See* FF ¶¶ 40 and 125-37. For the reasons set forth more fully in the Public Benefits findings, the Public Benefits are of a commendable quality. There are eight distinct categories of Public Benefits, an absolute number that the Commission finds to be commendable given the overall small size of the Project. Finally, the Commission finds that the Public Benefits are meaningful. The Public Benefits address the preferences, needs and concerns of community residents, were developed following the Applicant’s robust community engagement process, supported by OP, *see* FF ¶¶ 37-39, and are not inconsistent with the Comprehensive Plan. *See* FF ¶ 136.
- (c) The Project protects and advances the public health, safety, welfare, and convenience.

- Public Health. The Project protects and advances the public health by being designed in a high-quality manner and in compliance with all applicable construction codes. Exh. 2 at 33-35. The Project includes a number of mitigation measures, notably the CMP, that protect and affirmatively advance the public health. The Project also encourages walking and active mobility, measures that advance public health. The Project does not entail any unwarranted overcrowding or overpopulation and is constructed to a height and density below the full amount authorized under the Map Amendment. The Project also complies with enhanced AWDZ environmental performance standards. Exh. 80 at 2.
 - Safety. The Project protects and advances safety: the Project has been designed in a manner that puts “eyes on the street” to promote public realm safety. Finally, the Project’s has been designed in consultation with MPD to ensure adequate safety for Project residents.
 - Welfare. The Project protects and advances the public welfare by providing much-needed housing, senior housing, and affordable housing.
 - Convenience. Finally, the Project protects and advances the public convenience by adding new housing in proximity to transit options and non-residential uses and by providing the TDM measures set forth herein.
- (d) The Project is not inconsistent with the Comprehensive Plan and would not result in any action inconsistent with the Comprehensive Plan. Extensive findings regarding the Project’s lack of inconsistency with the Comprehensive Plan are provided below. *See* FF ¶¶ 106-16.
- (e) The Project does not circumvent the Zoning Purposes. The Project does not circumvent the Zoning Purposes. The general intent and purposes of the Zoning Regulations are, *inter alia*, to promote the “public health, safety, morals, convenience, order, prosperity, and general welfare.” 11-A § 101.1. Findings regarding the Project’s protection and advancement of the public health, safety, convenience, and welfare are provided above. FF ¶ 99(c).
- Morals. The Project promotes morals insofar as the Application was undertaken with extensive community outreach. FF ¶¶ 37-39. The Public Hearing involved comments and discussion from a number of interested parties. The Commission finds that this community dialogue exemplifies the public morals as expressed through the Zoning Regulations.
 - Order. The Project exemplifies orderly, well-planned development that is undertaken on behalf of the best interests of the residents of the District with respect to the above-cited objectives. The Project complies with all of the specific development standards set forth in the Zoning Regulations,

except where flexibility is hereby requested, which flexibility is expressly contemplated as part of the PUD process. X §§ 300.1, 303.1. The Project allows for an appropriate amount of light and air by virtue of its bulk, height, orientation, setbacks and location north and east of existing residences. Finally, the Project follows the guidance set forth in the BRCFP.

- Prosperity. As noted with respect to public welfare above, the Project promotes prosperity by putting to productive use land that is currently vacant. FF ¶ 99(c). The Project provides prosperity to the future residents of the Project. The Project also promotes public prosperity with respect to its future provision of tax revenue to the District.

- (f) The Project has undergone a comprehensive public review by this Commission, which has evaluated the Project's flexibility and incentives in proportion to the Public Benefits. The Commission has reviewed the entirety of the record. The record now includes more than 100 total exhibits, detailed briefings from the Applicant and the Residents, reports from multiple District agencies and the ANC, and dozens of letters of written testimony. The Commission heard presentations on the Application and had the opportunity to ask questions of the Applicant, OP, DDOT, the ANC, and Opponents. In every material way, the Applicant responded satisfactorily to the requests from the Commission. The Applicant has also responded thoroughly to the District agencies (notably OP and DDOT), the ANC, and the many Opponents. The record in this matter is unquestionably full, and the Commission has reviewed it in its entirety.

100. The Commission finds that the Project satisfies the PUD Requirements.

XI. PUD Evaluation Standards

PUD Balancing

101. As set forth in the Zoning Regulations, the Commission must evaluate and grant or deny a PUD application according to the standards of Section 304 of Subtitle X. The Applicant has the burden of proof to justify the granting of the Application according to such standards. X § 304.2

102. The Commission's findings in relation to a PUD must be supported by substantial evidence. *See Howell v. District of Columbia Zoning Comm'n.*, 97 A.3d 579 (DC 2014). The Commission finds that the Applicant has satisfied the relevant evidentiary threshold to carry its burden of proof in the instant proceeding. The Applicant has provided multiple filings containing volumes of evidence all relevant to this proceeding. Exhs. 2, 12, 17, 23, 45A, 46A, and 80 (plus exhibits thereto). This Commission, in its reasonable determination, accepts such filings as containing evidence adequate to support the findings contained herein.

103. Pursuant to Subtitle X, Section 304.3, in deciding this PUD Application the Commission has, according to the specific circumstances of this Application, judged, balanced, and reconciled the relative value of: (a) the Public Benefits and other project amenities offered as part of the Project, (b) the Development Incentives requested by the Applicant (where, pursuant to Subtitle X, Section 303.12, the requested Map Amendment is a type of PUD incentive), and (c) any potential adverse effects (collectively, the “**PUD Balancing Test**”).

- (a) The Public Benefits are numerous and of a high quality. In sum, the Project provides the numerous Public Benefits. A full accounting of the Public Benefits is provided below. *See* FF ¶¶ 125-37.
- (b) The Project’s Development Incentives are comparatively minor and appropriately granted in light of the Public Benefits. The Commission finds that the Applicant requests comparatively minor Development Incentives for the Project, the vast majority of which specifically accommodate the Project’s provision of affordable housing. The Project’s individual Development Incentives are described above. *See* FF ¶¶ 85-98. The most significant, by far, of the Development Incentives is the Map Amendment, which allows the Applicant to construct the Project to a higher density and greater height than is possible as a matter-of-right. However, the Applicant does not utilize the entirety of the additional height and density available under the Map Amendment. In addition, the Map Amendment is expressly called for in the Comprehensive Plan and BRCFP. The Yard Relief, Penthouse Relief and Parking Relief are all either minor and readily mitigated by the alley system surrounding the Project or less intrusive than the matter-of-right requirements. The Loading Relief is slightly more substantial than the three foregoing items of relief, but accommodates construction of additional affordable housing at the cost of not providing redundant internal loading facilities. Finally, the IZ Exemption allows the Project to provide affordable housing for seniors at rates below those required under the IZ regulations. Accordingly, the Development Incentives underlie and indeed make possible the Public Benefits.
- (c) Any potential adverse effects of the Project are appropriately mitigated or outweighed by the Public Benefits. The ANC and Opponents together list numerous potential adverse effects of the Project. *See* FF ¶¶ 63-68 and 70-84. The Applicant separately identified and studied potential adverse impacts of the Project. *See* FF ¶¶ 117-24. Such findings are incorporated herein. As this Commission found in response to each individual articulated concern or objection to the Project, these potential adverse effects are either capable of being mitigated or appropriate in light of the Project’s many Public Benefits.
- (d) The Project’s affordable housing and Public Benefits together outweigh the Project’s potential adverse effects. The Commission returns to a familiar point in its review of the record in this proceeding: the Project provides much-needed affordable housing for seniors at levels of affordability below that required under the Zoning Regulations, and offers the Community Room and employment

commitments and other Public Benefits. These items are the crux of the Project's trade-off for the reasonable additional density sought through the Application.

104. The Commission has reviewed the record, identified the circumstances of the Application, the Property, the Project and the surrounding area, and balanced, reconciled, and judged the Public Benefits against the PUD Incentives and potential adverse effects. In sum, the Commission finds that the Project satisfies the PUD Balancing Test.

PUD Evaluation Standards

105. As set forth in the immediately succeeding paragraphs, the Commission hereby also finds that the Project: (a) is not inconsistent with the Comprehensive Plan or other adopted public policies and active programs (collectively, the "**Plan**") related to the Property; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and amenities, which are not inconsistent with the Plan with respect to the Property (collectively, the "**PUD Evaluation Standards**"). *See X § 304.3.*

The Project Is Not Inconsistent with the Plan

106. Comprehensive Plan Purposes. The purposes of the Comprehensive Plan are to: (a) define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development; (b) guide executive and legislative decisions and matters affecting the District and its citizens; (c) promote economic growth in jobs for District residents; (d) guide private and public development in order to achieve District and community goals; (e) maintain and enhance the natural and architectural assets of the District; and (f) assist in conservation, stabilization and improvement of each neighborhood and community in the District. *See DC Code Section 1-306.01(b).* The Project advances these purposes by furthering social and economic development through the construction of new affordable housing on underutilized land, providing the Community Room, investing in a District neighborhood that seeks new investment, engaging in employment benefits, committing to the implementation of the TDM measures, and improving the urban design and public space surrounding the Property.

107. Comprehensive Plan Guiding Principles. The OP Final Report finds that the Project furthers three of the Comprehensive Plan's "Guiding Principles". *See Exh. 25 at 12 (citing 10-A §§ 217.4, 217.6, and 217.7 as the Guiding Principles that the Project furthers).* The Commission gives the requisite great weight to these OP findings and incorporates them herein.

108. Future Land Use Map and Generalized Policy Map. The Commission finds that the Project (including without limitation the Map Amendment) is not inconsistent with the Future Land Use Map or the Generalized Policy Map. The Framework Element provides guidelines for using the Future Land Use Map and Generalized Policy Map.

- (a) The Framework Element states that the Future Land Use Map should be interpreted “broadly” and notes that the zoning for an area should be guided by the such Map interpreted in conjunction with the text of the entire Comprehensive Plan. 10-A § 226(a). The Framework Element also clearly provides that density and height gained through the PUD process are bonuses that may exceed the typical ranges cited for each category. *Id.* § 226(c). The purpose of the Generalized Policy Map is to categorize how different parts of the District may change up through 2025. *Id.* § 223.1. The Generalized Policy Map makes express reference to the densities set forth in the Future Land Use Map. *Id.* § 223.5.
- (b) The Property is split between the Mixed-Use Medium Density Commercial/Moderate Density Residential use designation and the Moderate Density Residential use designation. The split occurs on a north-south axis roughly through the center of the Property with the Mixed-Use Medium Density designation applicable to the eastern half of the Property and the Moderate Density designation to the western.
- (c) The Framework Element provides that Moderate Density Residential use is “characterized by a mix of single-family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings.” *Id.* § 225.4. Medium Density Commercial use is characterized by “Buildings [that] are generally larger and/or taller than those in moderate density commercial areas but generally do not exceed eight stories in height.” *Id.* § 225.6. The requested MU-5-A zone (formerly C-2-B) is expressly identified as corresponding to the Medium Density Commercial designation.
- (d) The proposed 4- to 5-story Building is not inconsistent with the mix of designations on the Future Land Use Map. In the recent *Friends of McMillan Park v. Zoning Commission*, the D.C. Court of Appeals, citing with approval its recent *Durant* decision, determined that the relevant inquiry is whether a proposed action is inconsistent with the Comprehensive Plan *as a whole*. That is, merely examining one Element, even an Element as central as the Future Land Use Map, is not sufficient to analyze consistency with the Comprehensive Plan. Here, the Moderate Density Residential use designation that underlies the entire Property establishes that a low-rise apartment building is appropriate on the Property, and the higher density Medium Density designation establishes that a higher density is also appropriate. At a density of 3.81 FAR, the Project is comfortably within the moderate- to medium density range. The 4- to 5-story height is also appropriate, particularly given that the Project steps down in height as it moves west into the Moderate Density Residential land use category.
- (e) To the extent that the Project’s proposed height and density is more “medium” than “moderate,” the Comprehensive Plan explicitly anticipates that outcome when a PUD is employed, so the height and density is not inconsistent with the underlying land use designation. The Framework Element also states that “the land use category definitions describe the general character of development in

each area,” but there may be “individual buildings” that deviate from the expressed designations. *Id.* Here, the proposal only applies to a portion of the block, and it is literally at the location where the Comprehensive Plan contemplates a transition from “moderate” to “medium” density. Given that the Future Land Use Map is not intended to be parcel-specific (i.e., the rigid precision of a zoning map should not be imputed on the Future Land Use Map), the Project’s use, height, and density must be read as not inconsistent with the Future Land Use Map designation for the Property as a whole.

- (f) The proposed Zoning Map amendment and the proposed height and density are not inconsistent with the land use designations for the eastern portion of the Property. The Plan notes that the Medium Density Commercial “designation is used to define shopping and service areas that are somewhat more intense in scale and character. . . . The corresponding Zone districts are generally C-2-B [i.e., analogous to the new MU-5-A zone under the 2016 Zoning Regulations], C-2-C, and C-3-A.” *Id.* § 225.9. The proposed Map Amendment is not inconsistent with the Comprehensive Plan in light of the MU-5-A zone (previously C-2-B zone) being expressly listed among the zones designated as appropriate in the Medium Density Commercial area. The Project’s proposed height and density are also not inconsistent with the Comprehensive Plan’s Future Land Use Map. The Medium Density Commercial designation applicable to the Project’s eastern half supports buildings up to eight stories, whereas the Project has a maximum of five. The Project’s proposed density of approximately 3.81 is not inconsistent with the maximum allowed in the zones expressly contemplated in the Plan: the MU-5-A (previously C-2-B) permits a maximum density of 5.04.

- (g) The Map Amendment and the Project’s height and density are not inconsistent with the Moderate Density Residential designation for the western end of the Property. The Comprehensive Plan provides that under the Moderate Density Residential designation, zones other than those expressly listed may be appropriate in some instances. Moderate Density Residential areas immediately adjacent to and partly coincident with Medium Density Commercial areas are among the locales appropriate for such higher intensities of use. While the Comprehensive Plan generally describes the Moderate Density Residential designation as neighborhoods appropriate for low-rise apartment buildings, *id.* § 225.4, the Future Land Use Map permits that “heights [may] exceed the typical ranges” where, as here, density bonuses are granted through a PUD. *Id.* § 226(c). The proposed five-story maximum height on the eastern portion of the Property is not inconsistent with the 60-foot maximum height of the RA-1 (previously R-5-A) and RA-2 (previously R-5-B) pursuant to a PUD. Moreover, the boundaries of the Future Land Use Map are sufficiently imprecise to accommodate any of the five-story portions of the Project in the areas designated Moderate Density Residential where the incremental density was granted through bonuses pursuant a PUD, as in the instant proceeding. The Plan also notes that the R-5-A Zone

District, among others, is generally consistent with the Moderate Density Residential category and that the R-5-B Zone District and “other zones may also apply in some locations.” *Id.* § 225.4.

- (h) The Comprehensive Plan’s Generalized Policy Map designates the Property as a “Neighborhood Conservation Area.” Such areas generally are regarded as having very little vacant or underutilized land and are to be generally conserved at current residential intensities but also to accommodate “some new development and reuse opportunities.” *Id.* § 223.4. Because the Property is both vacant and underutilized, the strict conservation objectives of the Generalized Policy Map designation are inappropriate for the Property especially in light of the Area Element, the BRCFP, and other policy goals and objectives of the Comprehensive Plan. Instead, the Property should be expected to undergo new development and reuse, and therefore the proposed Project is not inconsistent with this Element of the Comprehensive Plan.

109. Land Use (“LU”) Element. The Project is not inconsistent with the LU Element. The Comprehensive Plan devotes a great deal of attention to the importance of transit-oriented development and protecting established single-family residential neighborhoods from inappropriate development.

- (a) First, the LU Element encourages development around Metrorail stations and infill development more generally. Here, the Project’s proximity to the Minnesota Avenue Metrorail station and four Priority Corridor Network Metrobus Routes (X1, X2, X3, X9), the extension of the streetcar, and the infill location in an established neighborhood advance Policies LU-1.3, 1.4.1, and 1.4.2. *See id.* §§ 306.1, 306.4, 307.5, and 307.6. The Project is a transit-oriented infill development.
- (b) Second, the residential use at the Project meets the goals of maintaining a variety of neighborhood types and enhancing and revitalizing neighborhoods. The River Terrace neighborhood, though largely single-family in nature, has a strong backbone of multi-family residential dwellings along its perimeter, which dwellings serve as a buffer from the adjacent arterial roadways. The Project continues this neighborhood feature. In addition, the Project’s overall massing respects the existing setback line of the rowhouse neighborhood while providing a natural transition to the existing to the developing Benning Road, NE corridor to the north. The Project’s location is therefore consistent with Policies LU-2.1.1, 2.1.3. The Project is not inconsistent with the neighborhood conservation policies of the LU Element.
- (c) Third, the LU Element encourages creative parking management to respond to the level of demand generated by the Project and to mitigate congestion. Such Element also encourages projects to enhance the overall aesthetic quality of existing neighborhoods. Here the Project meets the objectives of the Land Use Element by offering an appropriate amount of enclosed, garage parking for

residents, removing a vacant lot, and providing attractive architecture and landscaping in a manner consistent with Policies LU-2.1.11 and 2.2.4.

110. Transportation Element. The Comprehensive Plan emphasizes non-vehicular transportation and creating a strong pedestrian environment. The Plan notes the importance of strengthening the linkage between land use and transportation as new development takes place and of undertaking “smart growth” solutions. 10-A §§ 403.2, 404.8, 405.3. The Project is located near a Metrorail Station and Priority Corridor bus lines, thereby promoting public transportation use. The Project’s design de-emphasizes automobile use and places a priority on pedestrian safety and connections: the Project’s sidewalks are wide and attractive, a curb cut is removed, and the Building is oriented to the sidewalk. *See* 10-A § 410.5. The Project also responds to the Plan’s directive for smart growth as a regional solution. *See* 10-A § 410.5. As a result, the Project has the potential for positive impacts on the region’s traffic, as encouraged by the Comprehensive Plan. Finally, as noted elsewhere, the Applicant provides a TDM that is in keeping with the Plan’s objective of studying transportation effects of new development. Exhs. 17 and 80B; *see* 10-A § 414.8. Accordingly, the Project is not inconsistent with the Transportation Element.

111. Housing Element. The Project is consistent with the Comprehensive Plan’s clear housing directive: build more affordable housing for seniors. *See id.* §§ 501.1, 502.2, 516.8, and 516.9. The Comprehensive Plan focuses on increasing the District’s housing supply and encouraging private sector involvement. *Id.* § 503.2. The Comprehensive Plan articulates a clear need for particular types of housing: affordable and senior housing are both priorities of the Comprehensive Plan. *See id.* §§ 504.6, 516.8. The Project includes 70 units of multi-family housing at a density and in a manner consistent with the Future Land Use Map while still providing a significant addition of new housing for seniors in the District. Finally, the Project advances the Plan’s targets for the type of housing developed. Moreover, the Project is a rare opportunity to expand the pool of housing for seniors without displacing any existing residents. Accordingly, the Project is not inconsistent with the Housing Element. Exh. 2 at 41.

112. Environmental Protection Element. The Project is not inconsistent with this Element as a whole. With respect to environmental protection, the Comprehensive Plan sets forth a comprehensive array of sustainability objectives. The Plan encourages street trees, tree planting, landscaping, permeable surfaces, and greenscaping for stormwater control. *See* 10-A §§ 603.4, 603.5, 603.6, 613.2, 613.3. The Applicant incorporates these objectives into the Project. Exh. 2; Exh. 80G. Likewise, the Plan promotes low impact construction technologies, energy efficiency efforts, and “green” materials and finishes. *Id.* The Project also satisfies the Green Communities standards and satisfies the enhanced controls in the AWDZ. *Id.* The Project’s designers have complied with all best management practices (e.g., erosion controls) in protecting environmental elements during construction. *See* Exh. 2; *see also* 10-A § 605.2.

113. Urban Design (“UD”) Element. The Project is not inconsistent with the UD Element. The Urban Design Element seeks to ensure, conserve and strengthen existing neighborhoods’ visual character. *Id.* §§ 910.6, 910.7, 910.12. The Project accomplishes these objectives because its density, scale, orientation, form, and materials palette strongly relate to

and complement the existing context. The Project's street frontages are highly articulated and offer visually compelling detail for pedestrians. Exhs. 2 and 80G. This slightly higher density on the Project site relative to residential areas to the south and west satisfies the Comprehensive Plan's objective of having gradual transitions in intensity. 10-A § 910.11. As an infill development, the Project attains sufficient density to be economically viable without presenting an overpowering contrast from surrounding residential uses. *See id.* § 910.15. Finally, the Project prioritizes pedestrian and transit access and de-emphasizes vehicle travel. *See id.* § 913.12.

114. Far Northeast and Southeast Area Element. The Property is located in the Far Northeast and Southeast Area of the Comprehensive Plan. Exh. 2 at 42. It is not located within the boundaries of any Policy Focus Area of that Area Element. 10-A § 1710.3. This Element encourages the provision of housing through vacant-lot/infill development as advanced by the Project. *Id.* § 1708.3. The Area Element encourages buffering the existing lower density residential neighborhoods from nearby highways while creating a positive visual statement from such highways. *Id.* § 1708.9. Likewise, the Element encourages development that leverages existing transit-oriented development opportunities around the Minnesota Avenue Metrorail station. *Id.* § 1711.6. The Project achieves such objectives. The Project is the type of compatible infill development encouraged by the Area Element and the Comprehensive Plan as a whole. *Id.*

115. BRCFP. The BRCFP “gives a clear and concise outline for how development can and should happen on Benning Road.” Exh. 2 at 44. The Property is located within “Opportunity Site 2C” in the Corridor Plan, and is identified as appropriate for, among other possible uses, multi-family housing. *Id.* The proposed development of the Project is therefore consistent with this identification in the Corridor Plan. Other general policy objectives of the Corridor Plan include stated desires to: encourage construction of new, mixed-income housing along the corridor, and improve living conditions for existing residents without causing displacement; establish visual consistency and a strong sense of community identity along the Benning Road corridor; create transit oriented development [and] mixed use opportunities around the Benning Metro to promote walkability; Ensure transportation options are efficient, pleasant and readily available; create pleasant, barrier-free streets that reinforce the comfort, convenience, safety and visual interest of pedestrians; support safe, diverse mixed-use opportunities including a variety of housing choices, a variety of land uses (residential, commercial, employment uses) and visually and physically accessible civic spaces (schools and parks and plazas); ensure new development is high quality and compatible with other new development along H Street and Minnesota Avenue. NE; and involve neighborhood communities in the development process to recognize and reward design excellence. *Id.* The Project directly advances each of these objectives. Specifically, the Project adds transit-oriented housing without causing any displacement, improves the surrounding streetscape, and is high quality relative to many other housing options in the area. Because the Project is among the few new developments along this portion of Benning Road, NE, it has been designed to ensure future development can adopt certain design and architectural elements in order to establish a corridor-scale visual identity. Finally, the Applicant has taken significant steps to involve neighbors in the development process. Accordingly, the Project is consistent with the Corridor Plan.

116. The Commission finds that there were no particularized allegations of inconsistency with the Comprehensive Plan raised by the ANC or Opponents. Therefore, for the reasons set forth more fully above the Commission finds that the Application, including the Map Amendment, is not inconsistent with the Plan.

Project Impacts

117. For the following reasons, the Commission finds that the Project does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of Public Benefits.

118. Housing Impacts. This Commission finds that the Project's housing impacts are not unacceptable but are instead favorable for the surrounding neighborhoods and the District as a whole because the Project helps address a dire housing shortage. The Project delivers 70 new units of age-restricted senior affordable housing, a housing type of particular policy focus in the District. Many neighborhoods in the District's Northeast quadrant continue to experience strong demand for housing. As a result, housing prices in the neighborhood have increased in recent years. Exh. 80E. For long-time residents, the recent increase in values has been an opportunity for wealth creation, but for others, the housing price run-up can be a major obstacle to satisfying basic housing needs. The Project contributes to this much-needed housing supply in an incremental and thoughtful way. *Id.* The Project's contribution of affordable senior housing supply signifies a healthy renewal and continuation of investment. Moreover, the Applicant provided evidence that the Project's affordable housing ranges do not impact income ranges in the surrounding context, which allows the Commission to conclude that the Project does not concentrate affordable housing. The Project has an overall favorable impact on the surrounding area and the District as a whole from a housing perspective.

119. Land Use Impacts. The Commission finds that the Project's land uses create no unacceptable impacts on surrounding neighborhoods but are instead generally favorable or acceptable given the quality of the Public Benefits. The Project's proposed residential uses are compatible with existing land use patterns and existing zoning in the vicinity of the Property and creates no unacceptable negative impacts with respect to land use. As noted above, the areas around the Property are generally characterized by a mix of single-family residential and commercial uses. Exh. 2. From a land use perspective, the Project causes no unacceptable impacts because the Project's new residential uses and the surrounding single-family residential uses are compatible. Although the Project's intensity of proposed uses is greater than the existing surrounding uses, such intensity is warranted in light of the Property's Comprehensive Plan designation and designation under the BRCFP. From a zoning perspective, the PUD is consistent with surrounding areas. The proposed MU-5-A zoning is necessary to accommodate the Project's proposed height, density, and lot occupancy. The Comprehensive Plan explicitly lists the proposed zone as consistent with the Future Land Use Map designation. *See* 10-A § 225.9. Additionally, the MU-5-A zone is generally described as one that permits medium density development, with a density incentive for residential development within a general pattern of mixed use development on arterial streets and at rapid transit stops. Given the Property's

proximity to Benning Road, NE, and the Minnesota Avenue Metrorail Station, the MU-5-A zone designation is appropriate for the Property. The proposed rezoning of the Property to the MU-5-A zone across from a lower density R-3 zone has substantial precedent in Ward 7. Therefore, the requested amendment would not create zoning boundary conditions that do not exist elsewhere nearby today. Accordingly, the overall land use impacts of the Project are not unacceptable and are either entirely favorable or acceptable given the quality of the Public Benefits.

120. Transportation Impacts. The Commission finds that this Project's transportation impacts are not unacceptable and are capable of being mitigated subject to the Conditions of this Order. The Applicant has prepared a robust TDM in concert with review and analysis by DDOT. Exh. 17. The proposed Project does not have an adverse impact on the public transportation facilities or roadways that it relies upon for service. Exhs. 17, 24, and 80B. The Project's vehicular traffic impacts are strongly mitigated by its transit options, and the Project achieves the right balance of mobility. Exh. 2 at 25-26. The Property is well-served by transit and vehicular infrastructure, and the Project's relatively small scale does not introduce adverse impacts on either system. Exh. 23. The Minnesota Avenue Metrorail station is slightly greater than a half mile from the Property, and that station is relatively underutilized relative to other stations in the WMATA system. Exh. 2. The expected eastward extension of the One City Line of the DC Streetcar system along Benning Road, NE adds an additional transit option in the future for residents of the Project. *Id.* Numerous Metrobus lines also service the Property, including four Priority Corridor Network routes, and it is expected that many of the Project's residents will use public transit. The Project also contains 17 parking spaces to accommodate the parking demand of residents. Bicycle usage is also coherently integrated into the design of the Project, including long term spaces in a dedicated enclosed storage room along with short term spaces provided elsewhere in public space. The Project's physical form—no new curb cuts, new construction facing the street, on-street parallel parking, a tree-lined streetscape—mitigates traffic impacts by promoting and encouraging active mobility over driving. At the same time, the Project makes reasonable accommodations for those who choose to or must drive without interfering with the parking supply of neighboring residents. The Project provides sufficient new off-street parking to serve new residents, but not so much parking as to induce unnecessary driving. Finally, the Project includes transportation-related Public Benefits that address parking and mobility issues for senior residents in light of neighborhood concerns. The Project's transportation impacts are all either favorable, capable of being mitigated or acceptable given the quality of public benefits in the project, and the Project is designed as a model of infill residential development.

121. Aesthetic, Architectural, and Urban Design Impacts. The Project's proposed height, massing, and architecture produce no unacceptable impacts that are not capable of being mitigated or that are not acceptable in light of the Public Benefits. The Project's site plan and layout are generally consistent with the character of adjacent residential areas. The Project faces existing streets and is set back from the street at a distance similar to houses on most surrounding streets. The Project provides tasteful front landscaping and adds no new curb cuts. Indeed, the Project removes an existing curb cut. Access to the Project's parking and loading is via alleys. The Project's design and its detailing strongly reinforce and strengthen the character of the surrounding areas. The Project replaces an existing surface parking lot with an attractively

designed building that provides a much-needed affordable senior housing use. The Project is taller and denser than surrounding uses but mitigates this density by virtue of its orientation and step down to the western end. *See* FF ¶ 83. This Commission finds that the Project's impact from a public space, architectural, urban design, and massing perspective are capable of being mitigated and not at all unacceptable in light of the Public Benefits.

122. Environmental Impact. The Commission finds the Project's environmental impacts either acceptable or capable of being mitigated. The Project is designed so as to minimize any adverse environmental impacts that would otherwise result from the construction of this Project. The Project has been designed to achieve high levels of on-site stormwater retention. Exh. 2F. The proposed bio-retention areas, green roofs, and other features are designed to meet or exceed DOEE stormwater management retention and detention requirements, and the requisite inlets and closed pipe system are designed to be constructed in compliance with the standards set by DOEE, DC Water, and DDOT. *Id.* The Project is designed to exceed compliance with the District's Building Code with respect to energy efficiency and with the Green Communities standards. *Id.* The Project achieves an environmentally sustainable design.

123. Services and Facilities Impact. The Commission finds that the Project has an acceptable impact on the District's services and facilities given the quality of the Public Benefits. The Project's increase in demand on water and sanitary services can be met by the existing District water system. Exh. 2F. Solid waste and recycling materials generated by the Project will be collected regularly by a private trash collection contractor. *Id.*

124. Other Impacts. The Core Issues section of this Order and findings related to issues raised by Opponents and the ANC together include additional discussion on the Project's impacts and the Commission's balancing thereof. In sum, the Project's impacts are either capable of being mitigated or not unacceptable in light of the Public Benefits.

Public Benefits

125. The objective of the PUD process is to encourage high-quality development that provides public benefits and amenities by allowing greater flexibility in planning and design than may be possible under matter-of-right zoning. X § 305.1.

126. The Project achieves the goals of the PUD process by creating a high quality residential project with significant senior and affordable housing opportunities. The Commission finds that the Project includes the following Public Benefits, which are not inconsistent with the Plan as a whole with respect to the Property.

127. Subtitle X, Section 305.4 requires that a majority of the public benefits of the proposed PUD relate to the geographic area of the ANC in which the application is proposed. Findings with respect to the geographic effect of the Public Benefits are addressed in the following paragraphs. In general, the Public Benefits relate to the area of the ANC.

128. Site Planning. The Project's site plan is superior benefit of the Project. *See X § 305.5(c)*. The benefits of the Project's site plan and efficient land utilization are captured in the Project's balance of density and respect for the surrounding single-family residential context.

- (a) This Commission judges the following items indicative of superior site planning:
- The proposed density of the Project is appropriate for the Property. The Project's overall FAR (3.81) is well within the density standards allowed in the MU-5-A zone. Exh. 80G.
 - The Project makes efficient use of the Property, which is currently used for surface parking. The Project is laid out in the tradition of the surrounding neighborhoods, with a strong street front presence and a modest setback in keeping with the building restriction line applicable to the other structures on the block. *Id.*
 - The Project's site plan improves adjacent sidewalks, adds street trees, and removes an existing curb cut. *Id.*
- (b) For these reasons, the Project's site plan is commendable: it achieves a laudable balance of new housing and contextually appropriate design and massing.
- (c) The Project's superior site planning elements are benefits that accrue primarily to the areas immediately surrounding the Property and therefore are within the boundaries of the affected ANC.

129. Housing and Affordable Housing. Production of senior and affordable housing are public benefits that the PUD process is designed to encourage. *Id.* § § 305.5(f), (g). For the following reasons, the Project's housing and affordable housing benefits are commendable:

- (a) Given the rapid appreciation in value of existing homes in the District, affordable housing is one of the most challenging issues today. Such housing is particularly valued when it is produced at a level above what would be required in a matter-of-right development or when it provides age-restricted senior housing. The Project is an all-affordable senior housing redevelopment of an existing vacant site that creates 70 new affordable housing units for seniors without any displacement of existing residents or businesses.
- (b) The overall amount of housing exceeds what could be provided as a matter of right on the Property.
- (c) The amount of affordable housing significantly exceeds the minimum inclusionary zoning requirements, both in terms of GFA devoted to affordable housing uses and in terms of the levels of affordability. That is, the Project's affordability level is below that required pursuant to the IZ regulations.

- (d) Twenty percent of the Project's units are set aside for households earning up to 30 percent of AMI.
- (e) The remaining 80 percent of the Project's units are set aside for households earning up to 50 percent of AMI.
- (f) All of the Project's units are reserved for seniors. Provision of such age-restricted housing is a specific benefit enumerated in the Zoning Regulations.
- (g) Finally, the Applicant has agreed to include residents of River Terrace and the ANC in the marketing plan for the affordable housing selection for the Project. Accordingly, the Project's housing and affordable housing benefits accrue to the area within the ANC's boundaries.

130. Employment and Training Opportunities. The Applicant has proffered two separate employment and training benefits that are Public Benefits. *Id.* § 305.5(h).

- (a) The Applicant will participate in a First Source Employment Agreement as a part of the construction of the Project. Because such First Source Agreement related to the Applicant's pursuit of public financing for the Project, the Applicant will negotiate and execute such Agreement in conjunction with the Applicant's closing on such public financing.
- (b) In addition, the Applicant will host a job fair in coordination and partnership with the ANC and the appropriate District agencies to identify qualified candidates for construction job openings.
- (c) The latter of these Benefits accrues primarily to the area encompassing the ANC.

131. Building Space for Special Uses. The provision of space for special uses is also a specifically-enumerated public benefit under the PUD provisions. *Id.* § 305.5(i). The Project includes the 1,250-square foot Community Room which is to be available to the ANC, RTCO and other community organizations for meetings and events. The Community Room is designed to be accessed directly by authorized users (such as officers from RTCO) without the need to pass into residential portions of the Project. This Public Benefit accrues primarily to the area encompassing the ANC.

132. Streetscape Improvements. Provision of streetscape improvements is a public benefit. *Id.* § 305.5(l). The Project includes new sidewalks and tree planting zones within the Eads Street, NE right-of-way and also a planting area and amenity zone located in the front setback area that enhances the residential character of the streetscape. The Project's setback area is not required by the Zoning Regulations, a building restriction line, or any other regulations; it is provided solely as a benefit of the Project. This Public Benefit accrues primarily to the area immediately surrounding the Property and therefore falls within the boundaries of the ANC.

133. Transportation Infrastructure. Transportation infrastructure beyond that needed to mitigate any potential adverse impacts of the application including, but not limited to, dedication and/or construction of a public street or alley; maintenance of a street median; or provision of a public easement for a pedestrian walkway that would not otherwise be required are public benefits. *Id.* § 305.5(o). The Project provides transportation improvements to the immediately surrounding area, and those improvements are additional superior aspects of the Project:

- (a) The Applicant agreed to restrict its residents from participating in the District's RPP program through a lease provision or similar mechanism.
- (b) The Applicant committed provide shuttle service for Project residents to and from typical convenience destinations. The shuttle will operate at least twice a week and carry a minimum of ten passengers.

134. Uses of Special Value. Uses of special value to the neighborhood surrounding the Project qualify as a public benefit under the Zoning Regulations. *Id.* § 305.5(q). The Applicant has committed to provide RTCO with a contribution of \$47,000 to support ongoing community beautification and community gathering activities. This Public Benefit accrues primarily to River Terrace and therefore falls within the boundaries of the ANC.

135. Other Public Benefits. Other public benefits that substantially advance policies and objectives of the Comprehensive Plan qualify as public benefits. *Id.* § 305.5(r). The Applicant has offered the two following additional benefits. These two security-related benefits substantially advance "safe streets" policy objectives of the Comprehensive Plan.

- (a) The Project includes security camera equipment intended to help monitor the surrounding neighborhood and provide MPD with access to data from the cameras to assist in improving neighborhood safety.
- (b) The Project also includes exterior lighting to support the effectiveness of the cameras and act as a general deterrent.
- (c) These Public Benefits improve safety along and adjacent to Eads Street, NE and therefore primarily benefit the area within the boundaries of the ANC.

Consistency of the Public Benefits with the Plan

136. The Commission also finds that the Project's Public Benefits are not inconsistent with the Plan because each is an integral part of the Project, which itself is not inconsistent with the Plan. Moreover, such Public Benefits are each tangible, quantifiable, measurable, or capable of being completed or arranged prior to the issuance of a certificate of occupancy for the Project.

137. Accordingly, the Commission finds that the Project satisfies the PUD Evaluation Standards.

CONCLUSIONS OF LAW

Procedural and Jurisdictional Conclusions

1. A PUD application must adhere to certain procedural requirements. X § 307.1; Z §§ 205, 300, 400-08, 600-06. This Commission must hear any PUD case in accordance with the contested case procedures of Subtitle Z, Chapter 4. X § 300.3. This Commission has found and hereby concludes: (i) the Application satisfies the PUD application requirements, and (ii) the Applicant, OZ, OP, and this Commission have satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations. FF ¶¶ 1-21.

2. The minimum area included within a proposed PUD must be no less than 15,000 square feet and all such area must be contiguous. X § 301. The Application satisfies these minimum area and contiguity requirements. FF ¶ 1.

3. The Application is subject to compliance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.* (the “Act”).

Evidentiary Standards

4. The Applicant has the burden of proof to justify the granting of the Application according to the PUD and Map Amendment standards enumerated above. X §§ 304.2, 500.2. The Commission’s findings in relation to a PUD must be supported by substantial evidence. *See Howell v. District of Columbia Zoning Comm’n.*, 97 A.3d 579 (DC 2014). Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support” the conclusions contained herein. *D.C. Library Renaissance Project v. District of Columbia Zoning Comm’n.*, 73 A.3d 107, 125 (DC 2013). The Applicant’s filings, testimony, and expert witness presentations are credible and thorough and reasonably adequate to support the Commission’s analysis and conclusions contained herein. FF ¶¶ 22-49, 51, and 53. Accordingly, the Applicant has provided substantial evidence to demonstrate that the Project satisfies the relevant PUD evaluation standards.

5. The Commission is required to give “great weight” to the issues and concerns of the affected ANC. D.C. Code § 1-309.10(d)(3)(A). This Commission has considered the written and oral testimony from the ANC. FF ¶¶ 63-68. The Commission concludes that the Applicant appropriately engaged in dialogue with the ANC and addressed, to the extent maximum practicable the issues and concerns of the ANC. The Commission affords great weight to the ANC.

6. The Commission is also required to give great weight to the recommendations of OP. D.C. Code § 6-623.04; Z § 405.8. This Commission has reviewed the OP Setdown Report and OP Final Report and heard testimony from OP. FF ¶¶ 50-58. The Commission gives OP’s recommendation to approve the Application great weight, and concurs with OP’s conclusions.

Consistency with the PUD Process, Zoning Regulations, and Plan

7. Pursuant to the Zoning Regulations, the purpose of the PUD process is “to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) Results in a project superior to what would result from the matter-of-right standards; (b) Offers a commendable number or quality of meaningful public benefits; and (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.” X § 300.1. This Commission concludes that the approval of the Application is an appropriate result of the PUD process. The Project is a high-quality development that is superior to what could be constructed on the Property as a matter-of-right via the underlying zoning. *See* FF ¶ 99(a). This Commission has found that the Public Benefits are meaningful and are commendable both in number and quality. FF ¶ 99(b). Finally, this Commission has found that the Project does not injure but instead advances the public health, safety, welfare or convenience, *id.* ¶ 99(c), and is not inconsistent with the Comprehensive Plan. *Id.* ¶¶ 106-16.

8. The PUD process is intended to “provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan.” X § 300.2. This Commission has found that the Project generally conforms to the requirements of the Zoning Regulations except for the few areas of articulated zoning relief, which are nonetheless consistent with the intent and purposes of the Zoning Regulations. FF ¶ 99(e). The Project is not inconsistent with the Comprehensive Plan. *Id.* ¶¶ 106-16. Therefore, this Commission concludes that Project does not circumvent the Zoning Regulations and is not inconsistent with the Comprehensive Plan.

Evaluation Standards

9. The Commission must evaluate the Map Amendment request and approve it only if it is not inconsistent with the Plan. X §§ 500.1, 500.3. The Commission has made extensive findings that the Map Amendment, as it supports the Project, is not inconsistent with the Plan. FF ¶¶ 87, 106-16. Accordingly, the Map Amendment satisfies the relevant standard for approval.

10. As part of a PUD application, the Commission may, in its discretion, grant relief from any building development standard or other standard (except use regulations). X §§ 303.1, 303.11. The Applicant seeks the following elements of relief from the Zoning Regulations: the Parking Relief, Loading Relief, and IZ Exemption pursuant to the Commission’s discretion to grant relief from any development standards of the Zoning Regulations, and the Yard Relief and Penthouse Relief pursuant to the Special Exception Standards and associated conditions. FF ¶¶ 85-98. The Commission has found that these items of relief do not impair the purposes or intent of the Zoning Regulations and are not inconsistent with the Comprehensive Plan. *Id.* The Commission concludes it may exercise its discretion to grant such Development Incentives subject to the Conditions hereof.

11. The Zoning Regulations define public benefits as “superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title.” X § 305.2. Such public benefits must satisfy the following criteria (“**Public Benefit Criteria**”): (a) benefits must be tangible and quantifiable items; (b) benefits must be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) benefits must primarily benefit the geographic boundaries of the ANC; and (d) monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. *Id.* §§ 305.3, 305.4. Based on this Commission’s findings regarding the Public Benefits as well as the Conditions of this Order, FF ¶¶ 125-37, this Commission concludes that the Public Benefits benefit the surrounding neighborhood or the District as a whole to a significantly greater extent than would a matter-of-right development and readily satisfy the Public Benefit Criteria.

12. The PUD provisions require the Commission to evaluate whether the Application: “(a) is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.” *Id.* § 304.4. The Commission has reviewed the entire record and issued findings to support its conclusion that the Application satisfies the PUD Evaluation Standards. *See* FF ¶¶ 105-37. In particular, the Commission concludes the Project is not inconsistent with the Plan as a whole, accepts the entirety of the Applicant’s impact analysis contained in the record and concludes that the Project does not have any unacceptable impacts. The Commission further concludes that the Project includes the Public Benefits, which are also not inconsistent with the Plan.

13. This Commission must undertake a “comprehensive public review” of the PUD application “in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits.” X § 300.5. In deciding on the Application, this Commission must “judge, balance, and reconcile the relative value of the public benefits project and amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” X § 304.3. The Map Amendment is a development incentive against which the Commission must weigh the benefits of the PUD. *Id.* § 303.12.

- (a) This Commission heard the Application at the Public Hearing and followed the contested case procedures of the Zoning Regulations. FF ¶¶ 1-21. This Commission therefore concludes that it has satisfied the procedural requirements in order to review the Application and evaluate the flexibility and Development Incentives requested and potential adverse effects against the proposed Public Benefits, in light of the circumstances of the case.

- (b) The Commission’s review of the Application has been comprehensive. The Commission has reviewed the entire record and has identified and examined the many issues, concerns, and objections to the Project raised by the ANC and Opponents. The Commission has appropriately considered the substantial evidence presented by the Applicant. The Commission grants appropriate weight to the reports and testimony of the various reviewing District and Federal agencies and the ANC. There are no items in the record that the Commission has excluded from its consideration notwithstanding in some instances this Order does not contain precise citation to such items.
- (c) The Project warrants the Development Incentives (including the Map Amendment) and flexibility in light of the Project’s extensive and comprehensive Public Benefits. The Development Incentives are comparatively minor and largely and directly support the Project’s provision of affordable housing. FF ¶ 103(b). The minor and Public Benefit-supporting nature of the Development Incentives affords the Public Benefits ample cushion to offset any potential adverse effects. FF ¶ 103(c). The Project has largely been designed to avoid such effects. However, to the extent such effects exist as a result of the Project—for instance with respect to parking—the magnitude of the Public Benefits and the Applicant’s mitigation efforts provide sufficient justification for the Project notwithstanding such effects. *Id.* Moreover, apart from the provision of affordable housing, the Public Benefits generally accrue most significantly to the area immediately surrounding the Project. FF ¶ 127. Therefore, those most likely to be adversely affected by the Project nonetheless also benefit from it. The Commission concludes that the Project’s Development Incentives are warranted in light of the Public Benefits, when considering the specific nature of the area surrounding the Project and the Project’s overall consistency with the Comprehensive Plan.

14. Accordingly, the Project’s Public Benefits justify the Development Incentives requested even in light of the background concerns of Opponents and the Residents regarding the potential adverse effects of the Project. The Application satisfies the PUD Requirements.

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 review and approval of the consolidated PUD and the related Map Amendment to the MU-5-A zone for the Property that are the subject of the Application. The approval of this PUD is subject to the following guidelines, conditions and standards (“**Conditions**”). For the purposes of these Conditions, the term “Applicant” shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an owner.

A. PROJECT DEVELOPMENT

- A.1. The Project shall be developed in accordance with plans and drawings filed in the record in this case as Exh. 80G (“**Final Plans**”), as modified by the guidelines, conditions, and standards herein.
- A.2. The Project shall consist of approximately 70 residential units, approximately 17 vehicular parking spaces in an enclosed garage, the Community Room, and the provision of exterior and streetscape improvements, all as shown on the Final Plans and as further described herein. The Project shall comply with the height, yard, setback, and other dimensional requirements set forth in the Final Plans. The Project shall include an overall FAR of approximately 3.81 and a maximum lot occupancy of 80 percent.
- A.3. The Project shall have flexibility from the rear yard, side yard, penthouse, parking access, loading, and IZ requirements of the Zoning Regulations all as set forth in the Final Plans.
- A.4. The Property shall be rezoned to the MU-5-A zone.
- A.5. The Applicant shall have flexibility in the following areas:
- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - b. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Final Plans;
 - c. To vary the final streetscape design and materials and the placement of any items in the public right-of-way, as required by District public space permitting authorities;
 - d. To vary the final landscaping components of the Project in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, the Department of Consumer and Regulatory Affairs (“**DCRA**”) or other applicable regulatory bodies; and
 - e. To make minor refinements to exterior details and dimensions, including without limitation to belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems.

B. PUBLIC BENEFITS

B.1. Housing and Affordable Housing.

- a. For so long as the Project is subject to public financing-related affordability restrictions (“**Initial Affordability Period**”):
 - i. No fewer than twenty percent (20%) of the Project’s residential units shall be reserved for residents earning no more than 30 percent AMI;
 - ii. Up to eighty percent (80%) of the Project’s residential units shall be reserved for residents earning no more than 50 percent AMI;
 - iii. One hundred percent (100%) of the Project’s residential units shall be reserved for residents aged 55 and over.
- b. Following conclusion of the Initial Affordability Period, the Project shall reserve no less than eight percent (8%) of the Project’s GFA at 60 percent AMI and otherwise in compliance the IZ provisions of the Zoning Regulations as of the date hereof.
- c. No fewer than ninety (90) days prior to the initial lease-up of the Project, the Applicant or its property manager shall provide information to the ANC about the lease application process for the Project.

B.2. Employment and Training Opportunities. Prior to the issuance of a building permit for the Project, the Applicant shall deliver to the Zoning Administrator, with a copy to the Office of Zoning, evidence that it has:

- a. Entered into a First Source Agreement with the District Department of Employment Services with respect to the Project; and
- b. Hosted a job fair in coordination and partnership with the ANC and the appropriate District agencies to identify qualified candidates for construction job openings, provided the evidence required in satisfaction of this Condition B.2.b may be given by, without limitation, a memorandum accompanied by sworn affidavit.

B.3. Building Space for Special Uses. For the life of the Project, the Applicant shall make available to the ANC, RTCO and other community organizations the 1,250-square foot Community Room for meetings and events, subject to the Community Room Guidelines at Exh. 80D, provided the Applicant shall have the right, from time to time, to amend such Guidelines in accordance with the reasonable needs of the community organizations that use the Community Room.

- B.4. Transportation Infrastructure. For the life of the Project:
- a. Residents of the Project shall be ineligible to participate in the District's RPP program by notice given and enforced through a lease provision or similar mechanism; and
 - b. The Applicant shall provide shuttle service for Project residents to and from typical convenience destinations, provided such shuttle shall operate at least twice a week and carry a minimum of ten passengers.
- B.5. Uses of Special Value to the Neighborhood. Prior to the issuance of a certificate of occupancy for the Project, the Applicant shall:
- a. Deliver to the RTCO a contribution of \$47,000 to support ongoing community beautification and community gathering activities;
 - b. Install security camera equipment to monitor the surrounding neighborhood, the recordings of which camera shall be capable of being delivered to MPD; and
 - c. Install exterior lighting to support the effectiveness of the cameras and act as a general deterrent.

C. Transportation and Construction Mitigation

- C.1. Transportation Demand Management. For the life of the Project (except as expressly set forth below), the Applicant shall:
- a. Unbundle the cost of residential parking from the cost of lease or purchase of the units;
 - b. Install a transportation information center display (electronic screen) within the lobby of the Project, which screen must contain real-time information related to local transportation alternatives;
 - c. Offer the initial occupant of each residential unit a one-time annual car sharing membership, a one-time annual Capital Bikeshare membership, or credits for use on private commuter shuttles to help alleviate the reliance on personal vehicles;
 - d. Offer a one-time \$50 SmarTrip card to each initial residential tenant and employee in the Project to encourage non-auto mode usage;
 - e. Identify a TDM coordinator to work with the Project's residents and employees to distribute and market transportation alternatives and provide TDM materials to new residents in the residential welcome package;

- f. Provide a bicycle repair station within the Project;
 - g. For the first three years after the Project’s opening, provide the equivalent value of an annual Capital Bikeshare membership (currently \$85) or credit for a commuter shuttle service equal to the value of an annual bikeshare membership to all new residents; and
 - h. Provide updated contact information for the TDM coordinator and report TDM efforts and amenities to goDCgo staff once per year.
- C.2. Construction Management Plan. Throughout construction of the Project, the Applicant shall comply with the terms of the CMP as set forth in Exh. 80B, and prior to the issuance of certificate of occupancy for the Project, the Applicant shall deliver to the Zoning Administrator, with a copy to the Office of Zoning, evidence that it has complied with such CMP, provided such evidence may be given by, without limitation, a memorandum accompanied by sworn affidavit.

D. MISCELLANEOUS

- D.1. The Zoning Regulations Division of DCRA shall not issue any building permits for the PUD until the Applicant has recorded a Covenant (the “**PUD 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, 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.
- D.2. The change of zoning to the MU-5-A zone shall be effective upon the recordation of the PUD Covenant.
- D.3. The PUD shall remain valid for a period of two years from the effective date of this Order. The filing for a building permit for the Project pursuant to this Order vests this Order for the entirety of the Project.
- D.4. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On _____, 2017, upon the motion of _____, as seconded by _____, the Zoning Commission **APPROVED** the application for the PUD and related Zoning Map amendment by a vote of _____.

On _____, 2017, upon the motion of _____, as seconded by _____, the Zoning Commission **ADOPTED** this Order to approve the PUD and related Zoning Map amendment by a vote of _____.

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

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING