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April 14, 2017

VIA IZIS

Chairman Anthony Hood  
District of Columbia Zoning Commission  
441 4th Street NW, Suite 200  
Washington, DC 20001

Re: ZC Case No. 16-20 – Consolidated PUD Application for 3450 Eads Street, NE (“Property”) – Supplemental Submission of 3443 Benning LLC (“Applicant”)

Dear Chairman Hood and Members of the Commission:

This letter and attached materials supplement materials filed in the initial application and the pre-hearing statement for the above-mentioned case. Briefly, the Applicant proposes to rezone the property from the R-3 to the MU-7 Zone District in order to facilitate the construction of a new apartment building located one block from the Benning Road corridor (“**Project**”). All of the units in the apartment building will be set aside as affordable housing, with 20% of units set aside for households earning up to 30% of the area median income and the remaining 80% of units set aside for households earning up to 50% of the area median income. Furthermore, a minimum of 80% of the units will be set aside for seniors (55 years of age or older).<sup>1</sup>

### Minor Modifications to Plans

Since the filing of the pre-hearing submission, the Applicant has continued to refine the design of the Project. Revised plans attached as Exhibit A (“**Revised Plans**”). As shown on the Revised Plans, the Applicant has:

- Updated the floor plans to show seventy (70) units rather than sixty-nine (69) units;
- Relocated the rooftop trash chutes to comply with setback requirements;

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<sup>1</sup> The amount set aside for seniors is an increase from the 60% minimum stated in the pre-hearing submission.

- Revised the overall footprint of the building so that lot occupancy relief is no longer required;
- Refined the design and dimensions of the parking and loading areas.

The Revised Plans include a complete set of updated plans, drawings, and renderings. Although not a change from previous filings, by way of clarification, the Applicant notes that the ramps and stairs serving the front of the Project from Eads Street, NE are located entirely on private property.

### **Flexibility from the Zoning Regulations**

In the initial application as well as in the pre-hearing statement, the Applicant enumerated specific areas of flexibility that have been requested from the Zoning Regulations. Since the filing of the pre-hearing statement, the Applicant has further reviewed and revised the plans, which has further changed the requested areas of flexibility. For the Commission's convenience, a summary of all areas of flexibility is provided below:

- *Rezoning* – the Applicant proposes to rezone the Property from the R-3 to the MU-7 Zone District in order to permit the construction of the proposed apartment building. The height and density of the Project is within the matter-of-right limits for the MU-7 Zone District. The proposed MU-7 Zone District is not inconsistent with the Comprehensive Plan, for the reasons described below.
- *Lot Occupancy* – the revised plans no longer require flexibility from this requirement.
- *Rear Yard* – a rear yard of 2.5 inches per foot of building height (not less than twelve feet) is required. The Project's rear yard varies in width but does not satisfy this requirement. The rear of the building abuts a 20-foot wide alley and commercial buildings are beyond that. The alley will facilitate allowing light and air into the Project and adjoining properties.
- *Side Yard* – no side yard is required, but where one is required it must be two inches per foot of building height but not less than five feet. The Project has a side yard at its western boundary that is not compliant with the width requirement. As with the rear yard requirement, this yard abuts an alley that will facilitate allowing light and air into the Project and adjoining properties.

- *Penthouse Regulations: Multiple Structures* – under the penthouse requirements of the Zoning Regulations, all rooftop mechanical equipment greater than four feet in height must be enclosed within a single structure. The Project proposes to have two separate, enclosed rooftop mechanical structures. The structures are separated on the roof, and it would be inefficient and unnecessarily large to create an enclosure to contain both systems. The exterior of the enclosures harmonizes with the main structure with respect to architectural character, material, and color. All other aspects of the penthouses comply with the Zoning Regulations.
- *Parking Access* – the building provides the required number of parking spaces, but under Subtitle C, Section 711.7 of the Zoning Regulations, parking entrances accessed from an alley must be located at least 12 feet from the center line of that alley. Here, the individual entrances to each parking space generally conform to this requirement. However, in two locations a portion of the parking entrance is reduced to less than 12 feet. (As shown on Plan A-0.8, one parking entrance is 10’7” and another is 11’2” from the center line of the alley.) This is due to the relationship between the rectilinear form of the building and the unique angular shape of the property line and alley.
- *Loading* – under the Zoning Regulations’ loading requirements, the Project is required to have both a 30-foot loading berth and a 20-foot service/delivery space. However, the Applicant only proposes to provide a 30-foot deep loading berth. Given the relatively small size of the building (70-units) and the lack of any other use in the building (such as ground-floor retail or service uses), the service/delivery demands on the building are light and should be able to be accommodated within the loading berth during hours in which the berth is not needed for move-in and move-out activity. The loading has been located on the side alley, and given the relative narrowness of the lot (which is further exacerbated by the setback from Eads Street), there is no space to accommodate the additional service/delivery space. The space would either require the elimination of residential units along the front of the building or parking spaces at the rear of the building.

In addition, the Applicant requests flexibility from the 14 feet of vertical clearance required for the 30-foot loading berth. The Applicant proposes 12 feet of vertical clearance, which fits within the proposed floor-to-floor heights for the first floor of the building. Compliance with this requirement would require that the Applicant design the entire first floor to have a minimum height of 14 feet, which unnecessarily raises the height of the entire building by two feet. The Applicant filed a Comprehensive Transportation Review (“CTR”) on March 20, 2017. The CTR noted that the reduced

vertical clearance is likely to be sufficient for the largest rentable moving trucks and that the project's 30-foot berth would meet the Project's loading requirements.

- *Inclusionary Zoning* – under the Zoning Regulations, the Project would normally be required to set aside 8% of its gross floor area at households earning a minimum of 80% of the area median income. Here, entirety of the Project will be set aside at levels below the 80% minimum for the duration of the low income housing tax credit financing (40 years). To the extent that providing deeper levels of affordability requires flexibility from the Zoning Regulations, the Applicant requests that flexibility for the duration of the LIHTC financing.

The requested items of relief are minor or readily mitigated and necessary to provide the level of affordability and other benefits contemplated by the Project.

### **Community Outreach**

The Applicant has and continues to work with ANC 7D and the River Terrace Community Organization regarding the proposed PUD and its related benefits and impacts. For over a year, the Applicant has worked with the ANC and RTCO to solicit feedback and address concerns regarding the Project. The current design of the Project reflects significant changes made in response to community concerns, including:

- (1) the commitment to set aside much of the units for seniors;
- (2) the elimination of the below-grade parking level (to address concerns about excavation impacts);
- (3) the integration of a community room into the Project; and
- (4) the commitment to make a contribution to RTCO's engagement and beautification efforts.

The Applicant presented the Project to the full ANC and interested community members at the ANC's April 11, 2017 meeting, and the ANC voted to hold a special meeting on April 19, 2017 with RTCO to consider and vote on the Project. The Applicant will provide a further update on these discussions at the public hearing.

### **Benefits and Amenities Package**

To summarize, the Project will provide the following public benefits and project amenities:

- Housing and affordable housing (X § 305.5(f) & (g)): The redevelopment of the Property provides signature benefits for housing and affordable housing in the District of Columbia in multiple ways:
  - The overall amount of housing exceeds what could be provided as a matter of right on the Property
  - The amount of affordable housing significantly exceeds the minimum inclusionary zoning requirements, both in terms of amount of setaside and in terms of the levels of affordability:
    - 20% of the units will be set aside for households earning up to 30% of the area median income
    - The remaining 80% of the units will be set aside for households earning up to 50% of the area median income.
  - The project reserves at least 80% of its units for seniors, which is a specific benefit enumerated in the Zoning Regulations.
- Site planning and efficient and economical land utilization (X § 305.5(c)): The redevelopment of the Property represents a significant improvement over existing conditions (a surface parking lot). Among other features, the Applicant has voluntarily set back the building from the property line in order to create additional perceived space for the streetscape along the Project's frontage, which provides a transition to the building restriction line-mandated setback across the alley to the west.
- Employment and training opportunities (X § 305.5(h)). The Applicant will participate in a First Source Employment Agreement as a part of the construction of the Project. Note that the First Source Agreement is also tied to the Applicant's public financing on the Project. As such, the Applicant expects to negotiate and execute such Agreement in conjunction with the Applicant's closing on public financing to undertake the Project.

- Building space for special uses (X § 305.5(i)). The Project includes a 1,250-square foot community room that will be available to RTCO and other community organizations for meetings and events. This space has been provided in direct response to community concerns about the cost of meeting space in other available venues. For example, meeting space at the River Terrace Educational Campus is available, but costs \$300 per meeting. The community room has been designed so that it can be accessed directly by authorized users (such as officers from RTCO). The estimated value of this proffer is approximately \$7,000 - \$15,000 per year, assuming 2-4 meetings per month.
- Streetscape improvements (X § 305.5(l)): The Project will include not only new sidewalks and tree planting zones within the Eads Street right-of-way but also a planting area and amenity zone located in the front setback area that enhances the residential character of the streetscape. This 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.
- Uses of special value (X § 305.5(q)): The Applicant has agreed to provide RTCO with a contribution of \$47,000 to support ongoing community beautification and community gathering activities.

These amenities and benefits are commensurate with the height, density, and development flexibility requested for the Project. To the extent that the public benefits and amenities are further supplemented through discussions with ANC 7D and RTCO, the Applicant will provide an update at the public hearing.

#### **Additional Information regarding Consistency with the Comprehensive Plan**

In its initial application, the Applicant included a detailed analysis explaining that the Project—including the proposed rezoning to the MU-7 Zone District as well as the height and density of the Project—is not inconsistent with the Comprehensive Plan and other adopted policies and programs that relate to the Property. To further assist the Commission in the consideration of this application, the Applicant supplements that analysis as follows:

- *Future Land Use Map* – 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 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 DCMR



§ 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-7 zone (formerly C-3-A) is expressly identified as corresponding to the Medium Density Commercial designation.

The proposed 4- to 5-story apartment 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 court, 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*.<sup>2</sup> 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.

Other provisions in the Framework Element lend support for the Applicant’s position that the Project is not inconsistent with the Comprehensive Plan as a whole. The Framework Element provides that the Future Land Use Map should be interpreted “broadly” and that density and height gained through the PUD process are bonuses that may exceed the typical ranges cited for each category. *Id.* § 226(c). To the extent that the proposed height and density is more “medium” than “moderate,” the Comprehensive Plan explicitly anticipates that outcome when a PUD is employed, and 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

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<sup>2</sup> *Friends of McMillan Park v. District of Columbia Zoning Comm’n.*, Nos. 15-AA-0493, 15-AA-0525, 15-AA-0536, 15-AA-0572, and 15-AA-1008 [Lexis] at \*8-9 (D.C. Dec. 8, 2016) (“[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself preclude the Zoning Commission from concluding that the action would be consistent with the Comprehensive Plan *as a whole*.” (Citations omitted; emphasis added); *Durant v. District of Columbia Zoning Comm’n.* (Durant I), 65 A.3d 1161, 1168 (D.C. 2013).

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.

- *Generalized Policy Map* – The Property is within a “Neighborhood Conservation Area” on the Generalized Policy Map. 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, it falls under the type of property that is expected to be reused and redeveloped under this designation, especially in light of the Area Element, the Benning Road Corridor Redevelopment Framework Plan, and other policy goals and objectives of the Comprehensive Plan.
- *District Elements* – The Applicant’s initial application noted that the Project directly advanced more than two dozen individual policies of the various District Elements. In particular, the Project advances policies that call for affordable housing as a civic priority (H-1.2) and specifically contemplate density bonuses for the construction of such affordable housing (H-1.2.7).

The Project will also specifically advance policies that call for affordable housing choices for seniors (H-4.2.2) and for multi-family senior housing in neighborhoods characterized by large numbers of seniors living alone in single-family homes, so that the senior residents have an opportunity to remain in the neighborhood (H-4.2.3). To implement these policies, the Comprehensive Plan states that density bonuses and other incentives should be provided to stimulate the development of housing for seniors (Action H-4.2.B). According to the District of Columbia’s “Age-Friendly DC 2016 Progress Report,” the 2010-2014 American Community Survey indicates that the immediate River Terrace census tract has a population of 501-750 seniors, with a similar number of seniors in the census tract to the immediate east. Therefore, the proposed Project will directly further these policies and goals, and the proposed density bonus is appropriate.

Moreover, the Project contradicts no specific policies in the District elements. These policies all further a reading that the Project is clearly not inconsistent with the Comprehensive Plan as a whole.



- *Area Elements* – Lending further support to the Project’s overall consistency with the Comprehensive Plan are the individual Far Northeast and Southeast Area Element policies that the Project advances. Among these are development of new housing (especially proximate to transit nodes), improvement of buffering from Benning Road to the surrounding lower density neighborhoods, and the creation of a mix of uses around the Minnesota Avenue Metrorail Station. As with the District Elements, the Project is not inconsistent with any policies of the Area Element and instead furthers policies in a manner supportive of an understanding that the Project is not inconsistent with the Comprehensive Plan as a whole.
- *Benning Road Corridor Framework Plan* – The Project is also not inconsistent with other adopted policies related to the subject site. For instance, the Project is within the study area of the Benning Road Corridor Redevelopment Framework Plan (“**Corridor Plan**”) prepared by the Office of Planning and approved by the DC Council on July 15, 2008. The Property is located within “Opportunity Site 2C” in the Corridor Plan, and is identified as appropriate for, among other possible uses, **mixed-income housing**. The specific guidance from the Corridor Plan further guides the interpretation that the Project is not inconsistent with the Comprehensive Plan as a whole.

### Conclusion

The materials included in this supplemental submission address the comments and requests for additional information that have been provided in this case to date. The Applicant looks forward to presenting this application to the Zoning Commission on May 4, 2017.

Sincerely,



David M. Avitabile



David A. Lewis

Enclosures

## Certificate of Service

The undersigned hereby certifies that copies of the foregoing document will be delivered by electronic mail, first-class mail, or hand delivery to the following addresses on April 14, 2017.

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