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February 20, 2018

## **VIA IZIS AND EMAIL**

Zoning Commission of the  
District of Columbia  
441 4<sup>th</sup> Street, N.W., Suite 210S  
Washington, D.C. 20001

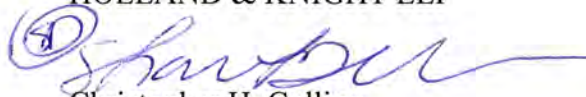
**Re: Z.C. Case No. 16-23**  
**Valor Development, LLC – Voluntary Design Review**  
**Draft Findings of Fact and Conclusions of Law**

Dear Members of the Zoning Commission:

On behalf of Valor Development, LLC (the “Applicant”), we hereby submit the attached draft finding of fact and conclusions of law. At the conclusion of the public hearing on January 25, 2018, the Commission indicated that it intends only to discuss the project on February 26, 2018, and may have additional questions and/or request additional information as a result of its discussion. In that event, and should the Commission schedule action on the project at a later date, the Applicant respectfully requests the opportunity to submit revised draft findings of fact and conclusions of law.

Respectfully Submitted,

HOLLAND & KNIGHT LLP



Christopher H. Collins

cc: Advisory Neighborhood Commission 3E (via email)  
Advisory Neighborhood Commission 3D (via email)  
Edward L. Donohue, Donohue & Stearns, PLC, representing Citizens for  
Responsible Development (via email)  
Barbara & Sheldon Repp, Citizens for Responsible Development (via email)  
Jeff Kraskin, Spring Valley Opponents (via email)  
William Clarkson, Spring Valley Neighborhood Association (via email)  
John H. Wheeler, Ward 3 Vision (via email)

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 16-23**  
**Z.C. Case No. 16-23**  
**Valor Development, LLC**  
**(Voluntary Design Review @ Square 1499, Lots 802, 803, 806, and 807)<sup>1</sup>**  
**[DATE]**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held public hearings on January 11 and 25, 2018, to consider an application for voluntary design review of a proposed mixed-use development project in the MU-4 zone district filed by Valor Development, LLC ("Applicant"), on behalf of FW DC-Spring Valley Shopping Center LLC, Apex Real Estate Company, and American University. The Commission considered the application pursuant to Subtitle X § 601.2 of the 2016 Zoning Regulations of the District of Columbia ("ZR16"), Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11-Z DCMR, Chapter 4. For the reasons stated below, the Commission hereby **APPROVES** the application.

**FINDINGS OF FACT**

**The Application, Parties, and Hearings**

1. On October 26, 2016, the Applicant, on behalf of FW DC-Spring Valley Shopping Center LLC, owner of Lots 802 and 803 in Square 1499, and Apex Real Estate Company, owner of Lot 807 in Square 1499, filed an application for voluntary design review pursuant to Subtitle X, Chapter 6 of ZR16 (11-X DCMR Chapter 6), and specifically pursuant to 11-X DCMR § 601.2, which permits property owners to voluntarily apply for design review of a proposed development (Exhibit [Ex.] 1 – 3) ("Application"). On September 8, 2017, the Applicant revised the Application to include Lot 806 in Square 1499 in the project boundary, which is owned by American University (Ex. 67). The Applicant was duly authorized in writing by the respective owners of Lots 802, 803, 806, and 807, to submit the Application on their behalf (Ex. 3J and 67D). As such, the project boundary for the Application encompasses Lots 802, 803, 806, and 807 in Square 1499 ("Project Site").
2. The Application also included a request for flexibility from the rear yard requirements of 11-G DCMR § 405.2, which can be requested as part of a [voluntary] design review application pursuant to 11-X DCMR § 603.1, which allows the Commission to grant relief from development standards for height, setbacks, lot occupancy, courts, and building transitions; as well as any specific design standards of a specific zone.<sup>2</sup> Except for height,

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<sup>1</sup> The initial application filed by the Applicant in this case only included Lots 802, 803, and 807 in the project boundary. The Applicant, Valor Development, LLC, is the contract purchaser of Lot 807, which is currently owned by Apex Real Estate Company. Lots 802 and 803 are owned by FW DC-Spring Valley Shopping Center LLC. The Applicant was duly authorized in writing by both Apex Real Estate Company and FW DC-Spring Valley Shopping Center LLC to submit the application on their behalf. Subsequent to the initial filing, the Applicant modified the application to include Lot 806 in the project boundary, which is owned by American University. As part of its request to modify the project boundary the Applicant submitted a letter from American University duly authorizing the Applicant to act on its behalf with respect to the application.

<sup>2</sup> When the current versions of Subtitles G and X were first proposed, the applicable minimum rear yard

the amount of relief is at the discretion of the Commission, provided the relief is required to enable the applicant to meet all of the standards of 11-X DCMR § 604. *See* 11-X DCMR 603.1 and 603.2.<sup>3</sup>

3. The notice of public hearing for the Application, as initially filed, was published in the *D.C. Register* on December 16, 2016 (Ex. 7). On December 2, 2016, the notice of public hearing was mailed to all owners of property located within 200 feet of the initial project boundary (Lots 802, 803, and 807), and to Advisory Neighborhood Commission (“ANC”) 3E and 3D, collectively the Affected ANC (Ex. 14)
4. On December 14, 2016, at the request of ANC 3E, the Applicant submitted a request to postpone the public hearing (Ex. 11). The Commission granted the request for postponement. On December 30, 2016, the notice of rescheduled public hearing was published in the *D.C. Register* (Ex. 12). On December 21, 2016, the notice of rescheduled public hearing was mailed to all owners of property located within 200 feet of the initial project boundary (Lots 802, 803, and 807) and to the Affected ANC (Ex. 15).
5. On February 16, 2017, the Applicant submitted a second request to postpone the public hearing (Ex. 22). The Commission granted the second request for postponement. On March 10, 2017, the notice of rescheduled public hearing was published in the *D.C. Register* (Ex. 23). On March 1, 2017, the notice of rescheduled public hearing was mailed to all owners of property located within 200 feet of the initial project boundary (Lots 802, 803, and 807) and to the Affected ANC (Ex. 26).
6. On August 17, 2017, the Applicant submitted a third request to postpone the public hearing (Ex. 65). The Commission granted the third request for postponement. On September 29, 2017, the notice of rescheduled public hearing was published in the *D.C. Register* (Ex. 71).
7. On September 8, 2017, the Applicant filed a request to revise the Application boundary to include Lot 807 in Square 1499 (Ex. 67).
8. On November 24, 2017, a notice of corrected public hearing was published in the *D.C. Register* to accurately reflect the properties within the Project Site (Ex. 84). On November 13, 2017, the notice of corrected public hearing was mailed to all owners of

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requirement was referred to as a “rear setback.” This terminology was later replaced with the traditional reference to a “minimum rear yard” in current Subtitle G, but the reference to “setbacks” in 11-X DCMR § 603.1 was not similarly revised.

<sup>3</sup> While 11-X DCMR §§ 603.1 and 603.2 contain the term “relief” in describing the Commission’s authority to grant “flexibility” under Subtitle X, Section 603 (Design Review Flexibility), the Commission is not required to apply any special exception and/or variance criteria that would otherwise be applicable in order to grant flexibility for those development standards specifically enumerated in 11-X DCMR §§ 603.1 and 603.2. However, pursuant to 11-X DCMR § 603.3, the Commission can hear requests for relief from other development standards not listed under 11-X DCMR § 603.1, and that would otherwise require approval from the Board of Zoning Adjustment (“BZA”), simultaneously with a design review application. Such requests are subject to all applicable special exception criteria and variance standards.

property located within 200 feet of the Project Site (Lots 802, 803, 806 and 807) and to the Affected ANC (Ex. 86).

9. On December 5, 2016, Revive 3E submitted a request for party status in support of the Application (Ex. 8). On January 7, 2017, Revive 3E withdrew its request for party status and instead submitted comments in support of the Application (Exs. 141 and 142).
10. On September 7, 2017, Citizens for Responsible Development (“CRD”) submitted a request for advanced party status in opposition to the Application (Exs. 66, 66A, and 79). The Applicant did not object to CRD’s party status request in advance of the public hearing pursuant to 11-Z DCMR § 404.9. The Commission considered and granted CRD’s party status request at its public meeting on November 13, 2017. During its consideration of CRD’s party status request, the Commission requested CRD to submit a list of its members to the record, which CRD submitted as part of its January 9, 2018, supplemental submission (Ex. 149)
11. On December 22, 2017, Spring Valley-Wesley Heights Citizens Association, Neighbors for a Livable Community, and Spring Valley West Homes Corporation submitted a joint request for party status in opposition (Ex. 115).
12. On December 24, 2017, Ward 3 Vision submitted a request for party status in support (Ex. 118).
13. On December 26, 2017, Milton Buchler II, owner of the property at 4713 Windom Place, NW, submitted a request for party status in opposition (Ex. 119).
14. On December 28, 2017, Spring Valley Neighborhood Association (“SVNA”) submitted a request for party status in support (Ex. 125).
15. On January 2, 2018, the Applicant submitted its opposition to the joint party status request submitted by Spring Valley-Wesley Heights Citizens Association, Neighbors for a Livable Community, and Spring Valley West Homes Corporation, and to the party status request submitted by Milton Buchler II (Exs. 131 and 132).
16. On December 11, 2017, the Applicant submitted its Comprehensive Transportation Review (“CTR”). The CTR includes an evaluation of the project’s potential transportation impacts, as well as a proposed Loading Management Plan (“LMP”) and Transportation Demand Management (“TDM”) Plan containing measures to mitigate potential transportation impacts (Ex. 107).
17. On December 21, 2017, the Applicant submitted its prehearing submission, which included a revised set of architectural plans and drawings (the “Plans and Drawings”) and a revised Comprehensive Plan analysis (Ex. 114).

18. On January 2, 2018, the Office of Planning (“OP”) submitted a report to the Commission recommending approval of the Application, subject to the Applicant providing the additional information (“OP Report”) (Ex. 130). The Applicant submitted the additional information on January 10, 2018 (Ex. 152). *See* Office of Planning Report section beginning at Finding of Fact 118 -122.
19. On January 2, 2018, the District Department of Transportation (“DDOT”) submitted a report expressing no objection to the Application subject to certain conditions, and provided certain revisions are made to the Applicant’s LMP and TDM Plan (“DDOT Report”) (Ex. 133). *See* DDOT Report section beginning at Finding of Fact 123 - 126.
20. At its December 7, 2016, regularly scheduled meeting, which was duly noticed and at which a quorum was present, ANC 3D voted 6-1 to oppose the Application for a variety of reasons, which are set forth in its report dated December 12, 2016 (Ex. 9). At its December 6, 2017, regularly scheduled meeting, which was duly noticed and at which a quorum was present, ANC 3D voted 5-4-0 to rescind its previous report in opposition to the Application (Ex. 108). At the same public meeting on December 6, 2017, ANC 3D voted 8-1-0 in support of the Application (Ex. 109). *See* ANC 3D Report section beginning at Finding of Fact 135 - 140.
21. At a meeting held on January 3, 2018, which was duly noticed and at which a quorum was present, ANC 3E voted 4-1-0 to support the Application. *See* ANC 3E Report section beginning at Finding of Fact 127 - 134.
22. At the January 11, 2018, public hearing, the Commission considered the joint party status request submitted by Spring Valley-Wesley Heights Citizens Association, Neighbors for a Livable Community, and Spring Valley West Homes Corporation, as well as the party status requests submitted by SVNA, Ward 3 Vision, and Milton Buchler II. The Commission granted party status to Spring Valley-Wesley Heights Citizens Association, Neighbors for a Livable Community, and Spring Valley West Homes Corporation (“Spring Valley Opponents”); SVNA; and Ward 3 Vision. The Commission denied party status to Milton Buchler II.
23. The Commission held public hearings on the application on January 11 and 25, 2018. The parties in support of the Application were the Applicant, ANC 3E, ANC3D, SVNA, and Ward 3 Vision. The parties in opposition to the Application were CRD and Spring Valley Opponents.

24. At the public hearing on January 11, 2018, the Applicant presented four witnesses in support of the Application: Will Lansing, on behalf of Valor Development, LLC; Sarah Alexander, Torti Gallas Urban; Erwin Andres, Gorove/Slade Associates, Inc.; and Shane Dettman, Holland & Knight LLP. Based upon their professional experience and qualifications, Ms. Alexander was recognized as an expert in architecture; Mr. Andres as an expert in transportation engineering and planning; and Mr. Dettman as an expert in land use planning and zoning.
25. At the public hearing on January 11, 2018, SVNA and Ward 3 Vision presented testimony in support of the Application. In addition, individual and organizations presented testimony in support of the Application.
26. At the January 11, 2018, public hearing, Elisa Vitale, Development Review Specialist at OP, and Aaron Zimmerman of DDOT testified in support of the Application.
27. At the public hearing on January 25, 2018, CRD presented 4 witnesses in opposition of the Application: Sheldon Repp; Sandra Mills; Laura Ivers; and Michael Stover. In addition, Spring Valley Opponents, party in opposition, and individuals and organizations presented testimony opposed to the Application. The testimony provided in opposition to the Application expressed concerns primarily relating to.
28. At the public hearing on January 25, 2018, the Applicant presented its rebuttal testimony. For its rebuttal, the Applicant's witnesses included Mr. Lansing, Mrs. Alexander, Mr. Andres, and Mr. Dettman. In addition, Mrs. Emily Eig, EHT Traceries, provided testimony on matters relating to historic preservation, and Mr. Brad Glatfelter, Bowman Consulting, provided testimony on matters relating to the topography of the Project Site and 48<sup>th</sup> Street and; and the history of the location of Murdock Mill Creek. Based on their professional experience and qualifications, Mrs. Eig was recognized as an expert in historic preservation, and Mr. Glatfelter was recognized as an expert in civil engineering.
29. Approximately 110 letters were submitted to the record for the Application, of which approximately 37 were in support and 73 were in opposition.
30. The record was closed at the conclusion of the January 25, 2018, public hearing, except to receive additional specified information from the Applicant and other parties, as requested by the Commission, and responses thereto.

#### **Post-hearing Submissions, Motions, and Actions**

31. On January 31 and February 12, 2018, CRD submitted its post-hearing submissions which included a transfer of density summary and updated visual impact study (Exs. 208 and 213).

32. On February 8, 2018, CRD submitted a request for designation of expert witness status for witnesses that were not proffered as experts during the public hearing held on the Application (Ex. 209). The Applicant opposed CRD's request (Ex. 216). The Commission considered CRD's request at its public meeting on February 26, 2018, and [denied/granted] the request.
33. On February 12, 2018, Spring Valley Opponents submitted information regarding membership within their respective organizations that was requested by the Commission at the January 25, 2018, public hearing (Ex. 210).
34. On February 12, 2018, the Applicant submitted its post-hearing submission which included: a transfer of density summary; an evaluation of adding solar panels; additional renderings; and information related to the project's LEED rating, Inclusionary Zoning ("IZ"), and retail signage (Ex. 211).
35. At its public meeting on February 26, 2018, the Commission deliberated on the Application.

#### **Description of the Project Site and Surrounding Area**

36. The Project Site is located in the AU Park/Spring Valley neighborhood of Upper Northwest, Washington, DC, and consists of Assessment and Taxation ("A&T") Lots 802, 803, 806, and 807 in Square 1499. Collectively, the Project Site consists of approximately 160,788 square feet of land area, and is generally bounded by Yuma Street on the north; Massachusetts Avenue on the south; 48th Street on the east; and the Spring Valley Exxon station on the west.
37. The Project Site is a transitional site that is bordered by two-story single-family residential dwellings to the north and east, and 1 to 5 story institutional and retail buildings located to the south and west along Massachusetts Avenue, including the AU Building and SVSC, which form a neighborhood-serving commercial center (Ex. 114A1, Sheets G02 & G03). The surrounding context, with the exception of the AU Building, is generally characterized by Colonial Revival style architecture.
38. The Project Site is currently improved with the historic Spring Valley Shopping Center (Lots 802 and 803) ("SVSC"), which consists of approximately 16,922 square feet of gross floor area ("GFA") of retail and service uses; the former American University Law School building (Lot 806) ("AU Building"), which has a height of approximately 60 feet, not including the penthouse, and contains approximately 179,302 GFA of commercial uses; and a vacant grocery store building, retail uses (restaurant and salon), and surface and below-grade parking (Lot 807) ("Valor Lot").<sup>4</sup> Lot 807 has a substantial grade change that

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<sup>4</sup> The historic name of the Spring Valley Shopping Center is actually the Spring Valley Parking Shops. The historic name of the shopping center located on the opposite side of Massachusetts Avenue is actually the Spring Valley

slopes down from east to west approximately 26 feet. Collectively, Lots 806 and 807 make up Record Lot 9.

39. The SVSC (Lots 802 and 803) is separated from Record Lot 9 (Valor Lot and AU Building) by a 20-foot public alley that runs north-south through Square 1499 connecting Yuma Street to Massachusetts Avenue, NW. The existing condition of the alley is characterized by several trash dumpsters and receptacles, most of which are located within the public alley, unscreened HVAC equipment, and other utilities/equipment associated with the SVSC (Ex. 114A6, Sheets CL02 - CL03, & CL05).

## **Background**

40. The Project Site has a unique zoning history. Lots 806 and 807, which as stated above are located within Record Lot 9, were created in the 1970s for purposes of allocating the nonresidential density needed to construct the AU Building on Lot 806. The zoning in effect at the time allowed a maximum density of 2.0 FAR, all of which could be devoted to nonresidential use. Based upon the land area of Record Lot 9, this amounted to approximately 242,544 GFA that was available to allocate between Lots 806 and 807. Through a recorded Declaration of Easement and Agreement that remains in effect (the "Allocation Agreement"), 179,302 GFA was allocated to Lot 806 for purposes of constructing the AU Building, and 63,242 GFA was allocated to Lot 807. In addition, the Allocation Agreement grants an easement to the owner of Lot 806 (currently American University) non-exclusive access to not less than 236 parking spaces located on Lot 807.
41. Subsequent to the development of Lots 806 and 807, the zoning regulations were amended and the maximum permitted density on Record Lot 9 increased from 2.0 to 2.5 FAR; however, the maximum permitted nonresidential density decreased from 2.0 to 1.5 FAR. Consequently, as a result of the zoning amendment, while the overall amount of density permitted on Record Lot 9 increased from 242,544 to 303,180 GFA, the permitted amount of nonresidential density decreased from 242,544 to 181,908 GFA, or by 60,636 GFA. Thus, as a result of the zoning amendment and the prior allocation of GFA under the Allocation Agreement, the total matter-of-right density available to Lot 807 increased to 123,878 GFA, but due to the reduction in permitted nonresidential density only 2,606 GFA can be devoted to nonresidential uses.
42. Currently under ZR16, all of Square 1499 is zoned MU-4 (formerly C-2-A), including the Project Site. The maximum permitted density in the MU-4 zone continues to be 2.5 FAR overall, and 1.5 FAR for nonresidential uses. However, under the existing Inclusionary Zoning ("IZ") regulations, the maximum permitted overall density in the MU-4 zone is increased to 3.0 FAR for developments that are subject to IZ, with the maximum permitted nonresidential density remaining at 1.5 FAR. Accordingly, a total of 363,816 GFA can be constructed on Record Lot 9, of which no more than 1.5 FAR, or 181,908 GFA, can be

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Shopping Center. However, over time it appears both of these shopping centers have generally become known as the Spring Valley Shopping Center.



devoted to nonresidential uses. After taking into account the nonresidential GFA of the AU Building, there is currently 184,514 GFA available as a matter-of-right to Lot 807, of which still only 2,606 GFA can be devoted to nonresidential uses.

### **Description of the Project**

43. The Applicant proposes to construct a new mixed-use development on Lot 807, and aesthetic and circulation improvements along the north-south public alley separating Lot 807 from the SVSC.
44. On Lot 807, the proposed development includes two new buildings consisting of a mixed-use residential building located on the northern portion of the lot (“Building 1”), and a second all-residential building on the southern portion of the lot (“Building 2”) (Ex. 114A1, Sheet A01).
45. The overall concept of the two proposed buildings is focused on integration with the surrounding context. Thus, the architectural styles of proposed Buildings 1 and 2 contain revival-style characteristics and detailing such as three-part composition, symmetry, and cornices.
46. The Applicant is also proposing improvements to pedestrian circulation and safety, including the relocation of all parking and loading access to the existing public alley system, the closing of approximately 80 linear feet of curb cuts along Yuma and 48th Streets, and the construction of a HAWK signal along Massachusetts Avenue.

### **Building 1**

47. Building 1, the larger of the two proposed buildings, will contain a full-service grocery store of approximately 13,660 – 15,800 GFA, and approximately 200 residential dwelling units on four- to five-stories with a maximum height of 50 feet, not including the penthouse. Consistent with ZR16 and the 1910 Height of Buildings Act, the height of the building will be measured from the level of the curb opposite the middle of the front of the building on 48th Street to top of the parapet. The building will have a penthouse containing habitable (residential and communal) and mechanical space. As permitted under ZR16, the portion of the penthouse containing habitable space will have a maximum height of 12’-0” above the roof above which it is located, and the portion containing mechanical space will have a maximum height of 15’-0” above the roof upon which it is located. The penthouse will meet all setbacks required under ZR16.
48. The main pedestrian entrance to the grocery store will be located at the northwest corner of the building along Yuma Street, set back approximately 17 feet from the adjacent sidewalk. Due to the grade along Yuma Street the grocery store entrance is also approximately two feet lower than the adjacent sidewalk. The main residential lobby will also be located along Yuma Street closer to 48th Street. The entrance to the additional

retail/amenity space will be located at the southwest corner of Building 1 in close proximity to Massachusetts Avenue. and the SVSC retail and service uses.

49. Building 1 is designed in two distinctive architectural styles and contains substantial step downs in height and reductions in massing along 48<sup>th</sup> and Yuma Streets. In response to the lower-density residential uses to the north and east of the Project Site, the massing of the building has been substantially reduced through lower initial heights; substantial upper-level setbacks; large courtyards, terraces, and public plazas; and context-sensitive articulation and architectural styles.
50. Along 48th Street, the massing of the building is substantially reduced at the property line through the use of three- and four-story pavilions that have a height of approximately 40 feet, and are separated by 40-foot deep, 43-foot wide landscaped courtyards that open onto 48th Street. The height of the pavilions is further reduced in scale through the use of lower bay projections that are similar in scale to the height of the residential dwellings across 48th Street, which has a right-of-way width of approximately 90 feet (Ex. 114A2, Sheet A29). Due to the deep courtyards provided between the pavilions, the distance between the lower-height residential dwellings to the east and the 50-foot portion of Building 1 along 48th Street is approximately 136 feet, with the penthouse further separated through adherence to the required 1:1 setback (Ex. 114A2, Sheet A30).
51. Along Yuma Street, where there is a substantial drop in grade from east to west, the massing of Building 1 is also substantially reduced to ensure the building relates to the residential dwellings to the north. Due to the change in the grade, as a matter-of-right the height of Building 1 at the property line along Yuma Street could range from approximately 55 feet on the east to approximately 73 feet on the west. However, in response to the surroundings, the initial height of Building 1 at the property line will step down along Yuma Street and range between approximately 40 feet to 51 feet. The Yuma Street facade will be further reduced through ground-level terraces and plazas, and deep upper-level setbacks.
52. The eastern portion of the Yuma Street façade has a classical three-part composition, is composed of two, lower-height pavilions separated by the residential entry courtyard, shares the same architectural style as along 48th Street. Above the pavilions, the fifth-floor is setback approximately 27 feet. The western portion of the façade along Yuma Street possesses a similar three-part composition, but has a lower initial height at the property line and a distinct architectural style established through the use of a different material palette and window pattern (Ex. 114A2, Sheets A22 & A36). The western portion of the façade is also set back from the property line approximately 17'-0" to create an open public plaza outside the entry to the grocery store, and the fourth and fifth floors are further set back an additional 21 feet. As a result of these large upper-level setbacks, the distance between the residential dwellings along the north side of Yuma Street and the upper portions of Building 1 will range from approximately 120 – 158 feet, with the penthouse further separated through either providing the required 1:1 setback or, as is the case along

the western portion of the façade, elimination of the penthouse all together (Ex. 114A2, Sheet A33)

53. The west and south facades of Building 1 are designed in the same architectural style as the street-facing facades, and will be treated with the same high-quality materials. Along the west, adjacent to the north-south public alley between Lot 807 and the SVSC, Building 1 will be set back from the property line approximately 10 feet at the lower level to ensure adequate and safe vehicular and pedestrian circulation in the alley (Ex. 114A2, Sheet A34). The setback will increase another 20 feet, for a total of 30 feet from the property line, above the lower level along the majority of the west façade.

### Building 2

54. Building 2 will be located along 48th Street to the south of Building 1, and contain approximately 19 residential dwelling units on four-stories with a maximum height of approximately 48 feet. Consistent with ZR16 and the 1910 Height of Buildings Act, the height of the Building 2 will be measured from the level of the curb opposite the middle of the front of the building on 48th Street to top of the parapet. The building will have a penthouse containing habitable (residential and communal) and mechanical space. As permitted under ZR16, the portion of the penthouse containing habitable space will have a maximum height of 12'-0" above the roof above which it is located, and the portion containing mechanical space will have a maximum height of 15'-0" above the roof upon which it is located. The penthouse will meet all setbacks required under ZR16.
55. The architectural style of Building 2 is differentiated from Building 1, while still being compatible with Building 1 and the colonial character of the surroundings. Despite the differentiation in architectural style, the overall massing, scale, and proportions of Building 2 reflect colonial style characteristics found on Building 1 and adjacent neighborhood.

### Landscape Plan / Alley Improvements

56. The project incorporates several landscape improvements including publicly accessible open spaces and plazas, and several private courtyards and terraces. The most notable landscape improvement proposed is Windom Walk, a publicly accessible open space between Buildings 1 and 2 that will provide a new pedestrian extension through the Project Site between 48th Street and the SVSC. Windom Walk will be an approximately 40-foot wide pedestrian connection that is lined with substantial plantings, seating, and other decorative site features. To accommodate the approximately 16-foot elevation difference between the sidewalk along 48th Street and the public alley, a stairway is proposed at the western end of Windom Walk. The staircase will lead pedestrians down to a landscaped area and sidewalk that can be used to access the retail space Building 1 and the SVSC. Plantings along Windom Walk will include shade trees, evergreen shrubs, flowering perennials, and groundcovers.

57. At the northwest corner of Building 1, an open public plaza is proposed that provides a forecourt to the grocery store, and provides opportunities for outdoor seating and small gatherings (Ex 114A4, Sheets L3 - L4). The plaza will be approximately 1700 square feet in area, and located approximately two feet lower than the adjacent sidewalk due to the grade along Yuma Street. The plaza will be paved in a pattern that relates to the architectural detail of Building 1, and is designed to provide a variety of social settings for people to interact through the use of both fixed and movable seating. To accommodate the grade difference between the sidewalk and the plaza, a series of steps and planted slopes are proposed along the sidewalk. Plantings in the plaza will include shade trees, evergreen shrubs, flowering perennials, and groundcovers, in formal patterns to reflect the formal elevation of the architecture.
58. Several private landscaped courtyards and terraces are proposed as amenities to the residential dwelling unit in Buildings 1 and 2. Building 1 will contain a large, central courtyard with substantial landscaping, a paved plaza, and a swimming pool (Ex. 114A4, Sheet L9). The central courtyard will also contain a number of private outdoor terraces belonging to first-floor residential units. Around the exterior of Building 1, several large open courtyards are proposed facing 48th and Yuma Streets. Specifically, there will be two large courtyards separating the pavilions along 48th Street which will be landscaped and contain residential terrace space. In addition, the residential entry courtyard along Yuma Street will contain landscaping and seating.
59. Buildings 1 and 2 will contain rooftop terrace amenity space, as well as substantial green roof areas to meet Green Area Ratio (GAR), District storm water, and LEED requirements. For Building 1, a fourth floor outdoor terrace is proposed at the northwest corner of the building that will contain planters, several flexible seating areas, and other amenities (Ex. 114A4, Sheet L12). The remainder of the Building 1 roof levels, including the main roof and penthouse roof, are primarily reserved for green roof areas (intensive and extensive). Building 2 will contain a small rooftop terrace in the northeast corner of the building that will be paved and provide flexible seating areas.
60. Along the existing north-south public alley between the Lot 807 and the SVSC, the Applicant proposes to reduce the number of trash containers and place them in enclosures that will be designed in coordination with SVSC ownership (Ex 114A6, Sheets CL04 & CL06). The distance between the SVSC east property line and the historic SVSC building is only approximately five feet, which is not enough space for the SVSC's dumpsters and other equipment. Therefore, the proposed trash enclosures will extend approximately 12 feet from the rear wall of the SVSC building, or approximately seven feet into the north-south public alley, which will require a public space permit. To accommodate the trash enclosures and ensure adequate vehicular and pedestrian circulation along the alley, Building 1 will be set back approximately 10 feet from the west property line of Lot 807. This will result in a full 20 feet of circulation space for vehicles, the same width as the existing public alley, plus an additional three feet for a new pedestrian sidewalk along the length of Building 1. In addition to the above described physical improvements to the alley,

the Applicant is working with SVSC ownership to consolidate trash operations to further improve efficiency within the alley and reduce the overall number of trash pick-ups.

### Parking and Loading Facilities

61. Buildings 1 and 2 will be constructed over a common lower level and below-grade garage that will contain the new full-service grocery store, additional retail / amenity space, and parking and loading facilities. Due to the substantial change in grade across Lot 807, the majority of the lower level/G2 level, and the eastern portion of the G1 garage level will be below grade and not visible to neighboring residential uses (Ex. 114A1, Sheets G08, A02 – A03, A11). A third level of parking (G3) will also be provided that is fully below grade.
62. The Building 1 loading facilities and access to the below-grade garage will be located along the south side of Building 1 adjacent to the east-west public alley between Lot 807 and the AU Building and neighboring bank building. This location was chosen by the Applicant in order to minimize views and the potential for noise-related impacts on residential uses to the north and east, and improve circulation by locating these facilities closer to the Massachusetts Avenue corridor and away from the trash enclosures and other SVSC-related mechanical equipment located along the north-south alley.
63. The below-grade garage will contain approximately 370 vehicle parking spaces, inclusive of the 236 spaces mandated by the recorded Allocation Agreement. The G-1 level of parking will be located directly off of the east-west public alley and will contain approximately 85 parking spaces that will be devoted to the Building 1 and 2 residential uses. The G-2 level will contain approximately 106 vehicle parking spaces and, at minimum, the required number of bicycle parking spaces for the proposed residential, grocery store, and other retail use. The G-3 level will contain approximately 179 vehicle spaces.
64. Building 1 will contain separate dedicated residential and retail loading facilities. In compliance with the minimum loading requirements of 11-C DCMR § 901.1, the Building 1 residential loading facilities will consist of a 30-foot loading berth and a 20-foot delivery space, and the grocery store / retail loading facilities will consist of a 55-foot loading berth, a 30-foot loading berth, and a 20-foot delivery space. Building 2 does not have a minimum loading requirement because it will have less than 50 dwelling units. However, to minimize impacts to alleys, streets, and the surrounding neighborhood, Building 2 will contain space for service and loading activities located adjacent to the 20-foot private alley on Lot 806 along the north side of the AU Building.

### Design Review Process

65. The Applicant submitted the project for design review by the Commission pursuant to the design review provisions of Subtitle X, Chapter 6, and specifically pursuant to 11-X DCMR § 601.2, which permits property owners to voluntarily apply for design review of a proposed development.

66. The purpose of the design review process is to, among other purposes, permit some projects to voluntarily submit themselves for design review under this chapter in exchange for flexibility because the project is superior in design but does not need extra density; promote high-quality, contextual design; and provide for flexibility in building bulk control, design, and site placement (11-X DCMR § 600.1).
67. The design review process is intended to be shorter and less intensive than the Planned Unit Development (“PUD”) process and allow less deviation from matter-of-right zone standards (11-X DCMR 600.2).
68. A map amendment or an increase in density shall not be permitted as part of a design review application (11-X DCMR § 600.5).
69. Requests for voluntary design review must satisfy the minimum area requirements prescribed in 11-X DCMR §§ 601.3 and 601.4. The minimum area required for voluntary design review, including the area of public streets or alleys proposed to be closed, is two acres for proposals located in any R, RF, or RA zone. There is no minimum area requirement for any other zone (11-X DCMR § 601.3). Further, all property included in a design review shall be contiguous, except that the property may be separated by a public street, alley, or right-of-way (11-X DCMR § 601.4)
70. Pursuant to the design review flexibility provisions of 11-X DCMR § 603, as part of the design review process the Commission may grant relief from the development standards for height, setbacks, lot occupancy, courts, and building transitions, as well as any specific design standards of a specific zone (11-X DCMR § 603.1). Except for height, the amount of relief is at the discretion of the Commission, provided that the relief is required to enable the applicant to meet all of the standards of Subtitle X § 604. The Commission may grant no greater height than that permitted if the application were a PUD (11-X DCMR § 603.2).
71. In addition to the areas of flexibility that can be granted by the Commission as part of the design review process, the Commission may also simultaneously hear requests for special exception and/or variance relief that would otherwise require approval by the Board of Zoning Adjustment. In contrast to requests for flexibility, requests for special exception and variance relief are subject to all applicable special exception criteria and variance standards (11-X DCMR 603.3).
72. The Commission finds that the Application can be properly reviewed pursuant to the design review process of Subtitle X, Chapter 6. Pursuant to 11-X DCMR § 601.3, there is no minimum land area requirement since all of the property within the Project Site is zoned MU-4. Further, all of the property within the Project site is contiguous with the exception of the existing 20-foot north-south public alley between the SVSC (Lots 802 and 803) and Record Lot 9 (Lots 806 and 807) which is expressly permitted under 11-X DCMR § 601.4. Finally, the Commission finds that the Applicant’s request for relief from the minimum

rear yard requirement for Building 1 can be reviewed as flexibility pursuant to 11-X DCMR § 603.1.

### **Design Review Standards (11-X DCMR § 604)**

73. The Commission must evaluate the project according to the design review standards of 11-X DCMR § 604, which require the Commission to find that the proposed project is not inconsistent with the Comprehensive Plan (11-X DCMR § 604.5), will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of Subtitle X, Chapter 9 (11-X DCMR § 604.6), and that the project meets the urban design criteria of Subtitle X § 604.7 in a way that is superior to any matter-of-right development possible on the site (11-X DCMR § 604.8). Based on the following, the Commission finds that the project meets each of these standards.

#### **Consistency with the Comprehensive Plan (11-X DCMR § 604.5)**

74. Based on the following set of findings, the Commission finds that overall the project is not inconsistent with the guiding principles, policies, and goals of the Comprehensive Plan, including the “Neighborhood Commercial Center” designation assigned to the Project Site on the Comprehensive Plan Generalized Policy Map (“GPM”), and the “Low Density Commercial” land use designation assigned to the Project Site on the Comprehensive Plan Future Plan Use Map (“FLUM”).
75. The substantive policies of the Comprehensive Plan are organized into 12 Citywide Elements that each address a specific topic that is citywide in scope, and ten Area Elements that focus on issues that are unique to a particular part of the District, and are intended to provide a sense of local priorities and to recognize the different dynamics at work in each part of the city. Although they focus on a specific area of the District, the policies contained within the Area Elements are still general in nature and do not prescribe specific uses or design details (10-A DCMR 104.4 – 104.6). The Area Elements also do not repeat policies that already appear in the Citywide Elements; however, this does not mean all Comprehensive Plan policies are mutually exclusive from each other. On the contrary, the Comprehensive Plan specifically recognizes the overlapping nature among and between the Comprehensive Plan elements, and that an element may be tempered by one or more of the other elements where there may be a need to balance competing policies (10-A DCMR § 2504.6). In those instances, the Comprehensive Plan states that “[b]ecause the Land Use Element integrates the policies and objectives of all the other District Elements, it should be given greater weight than the other elements as competing policies in different elements are balanced” (10-A DCMR § 300.3).
76. Due to the wide range of topics addressed in the Comprehensive Plan, some Citywide Elements oftentimes are not necessarily applicable to a project, or are applicable to only a minor degree. Such is the case for the project where the Commission finds the Parks, Open Space, and Recreation; Community Services and Facilities; Infrastructure; and the Arts and

Culture Elements to have little to no applicability to the project; and therefore, do not necessitate a detailed set of findings in support of the Commission's determination that the project overall is not inconsistent with the Comprehensive Plan.

77. Generalized Policy Map: The Commission finds that the project is not inconsistent with the Project Site's "Neighborhood Commercial Center" designation on the Generalized Policy Map ("GPM"), which is an adopted part of the Land Use Element. A "Neighborhood Commercial Center" is described in the Framework Element as an area that meets the day-to-day needs of residents and workers in adjacent neighborhoods with a service area of approximately one mile. Typical uses within a Neighborhood Commercial Center include, among others, convenience stores, supermarkets, branch banks, restaurants, basic services, and office space for small businesses (10-A DCMR § 223.15). New development and redevelopment within Neighborhood Commercial Areas must be managed to conserve the economic viability of these areas while allowing additional development that complements existing uses (10-A DCMR § 223.16). The project is not inconsistent with the GPM as it will provide a new mixed-use development, including a new full-service grocery store, that will make it easier for existing and new residents and workers to meet their day-to-day needs, and that is designed in a manner that is context-sensitive and effectively manages and mitigates vehicle trips to the Project Site. The project will complement and expand upon nearby neighborhood-serving commercial offerings by providing a new full service grocery store, and will contribute to the economic viability of nearby commercial uses on both sides of Massachusetts Avenue by adding additional residential within close proximity.
78. Future Land Use Map: The Commission finds that the project is not inconsistent with the Future Land Use Map ("FLUM"). The FLUM, which is adopted as part of the Land Use Element, depicts future land uses across the District and is intended to represent the land use policies set forth in the Land Use Element. It is well established, and is specifically stated in the Framework Element, that the FLUM is not a zoning map, and does not specify allowable uses or dimensional standards. By definition, the FLUM is to be interpreted broadly (10-A DCMR 226(a)). Further, the densities within any given area on the FLUM are intended to reflect all contiguous properties on a block, there may be individual buildings that are higher or lower than these ranges within each area, and the land use category definitions are intended to describe the general character of development in each area (10-A DCMR § 226(c)). In addition, because of the scale of the FLUM, many of the areas shown purely as "Commercial" may also contain other uses, including housing, while other areas shown as purely "Residential" may contain existing incidental commercial uses (10-A DCMR § 225.20).
79. The FLUM designates the Project Site as Low Density Commercial. According to the Framework Element, the Low Density Commercial land use designation is used to define shopping and service areas that are generally low in scale and character, with retail, office, and service businesses being the predominate uses. Areas that have the low-density commercial designation can range from small business districts that draw primarily from



the surrounding neighborhoods to larger business districts that draw from a broader market area, and are commonly comprised primarily of one- to three-story commercial buildings (10-A DCMR § 225.8).

80. The Project Site is zoned MU-4 (formerly C-2-A under the 1958 Zoning Regulations), which is expressly stated in the Framework Element as corresponding to the Low Density Commercial land use category on the FLUM. Under ZR16, the C-2-A zone was renamed to MU-4. Other than the change in name, no changes were made to the primary development standards that controlled matter-of-right development on the Project Site. Thus, by definition the Project Site's existing MU-4 zoning is not inconsistent with the Comprehensive Plan. Indeed, the MU-4 zone, which is described under Subtitle G of ZR16 as being appropriate in "low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers," is commonly found throughout the District in areas that are designated as Neighborhood Commercial Centers on the GPM and have similar surrounding contexts as the Project Site.
81. The project is not inconsistent with the portion of the FLUM definition for Low Density Commercial areas that states a common feature of these areas "is that they are comprised primarily of one- to three-story commercial buildings." First, the Applicant is not proposing to construct any buildings that are solely devoted to commercial use on the Project Site, but rather is proposing a mixed-use residential building containing ground level retail and services uses (Building 1), and a second all residential building (Building 2), both of which are expressly stated as being appropriate within areas designated as commercial on the FLUM (10-A DCMR 225.20). This interpretation is consistent with the plain meaning of the Comprehensive Plan, as drafted, and the legislative history related to the relationship between the Comprehensive Plan and zoning, and in particular the meaning of the "inconsistency" standard. Specifically, the legislative history states that "if the [Comprehensive] Plan is silent on a particular subject, there cannot be an inconsistency" (Committee of the Whole Report to the D.C. Council, dated January 17, 1984, on the Comprehensive Plan Act of 1984, reaffirmed in Committee of the Whole Report to the D.C. Council, dated October 3, 1989, on the District of Columbia Comprehensive Plan Amendments Act of 1989). In this case, the language of the Comprehensive Plan is unambiguous, and expressly qualifies the language regarding the number of stories in Low Density Commercial areas as relating to commercial buildings.
82. Secondly, the "Guidelines for Using the Generalized Policy Map and the Future Land Use Map" contained within the Framework Element specifically contemplate that densities and heights within any given area on the FLUM reflect all contiguous properties on the a block, and there could be individual buildings that are higher or lower than the ranges stated for each area (10.A DCMR § 226). Thus when viewed within the context of the Guidelines, it is apparent that the mixed-use residential and residential buildings proposed on the Valor Lot are not inconsistent with the FLUM as they will sit within a block (Square 1499) that is currently comprised of commercial buildings that range in height and density from one-

to two-stories (SVSC, PNC Bank, Spring Valley Exxon) to six stories (AU Building).

83. The Commission has previously found the C-2-A zone to be not inconsistent with the Low Density Commercial land use designation of the Comprehensive Plan FLUM, and that the Comprehensive Plan specifically states that housing is explicitly permitted in commercial land use categories and permits height and density beyond the typical range of one to three stories (*See* Z.C. Order No. 08-15). Further, these findings have been upheld by the D.C. Court of Appeals (*See* Wisconsin-Newark Neighborhood Coalition, et al v. District of Columbia Zoning Commission, DCCA 33 A.3d 382)
84. Land Use Element: The Commission finds that the project is not inconsistent with the objectives and policies of the Land Use Element. The Land Use Element of the Comprehensive Plan establishes the basic policies guiding the physical form of the city, and provides direction on a range of development, conservation, and land use compatibility issues (10-A DCMR § 300.1). The goal of the Land Use Element is to: “[e]nsure the efficient use of land resources to meet long-term neighborhood, citywide, and regional needs; to help foster other District goals; to protect the health, safety, and welfare of District residents and businesses; to sustain, restore or improve the character and stability of neighborhoods in all parts of the city; and to effectively balance the competing demands for land to support the many activities that take place within District boundaries” (10-A DCMR § 302.1). The Project will redevelop a long underutilized and vacant property with a mixed-use infill project that complements the established character of the surroundings and provides an appropriate transition between the lower-scale residential neighborhood to the north and east and the larger-scale AU Building. Further, the flexibility in building bulk control provided through the voluntary design review process will allow for the return of a full-service grocery store to the neighborhood which currently is not possible due to the lack of available nonresidential density on Record Lot 9 (Policy LU-1.4.1, LU-1.4.2, LU-2.2.4). The project design, together with the separation provided by Yuma and 48th Streets (both 90 foot wide rights-of-way), successfully integrate the project into the surrounding context in a way that protects the character of the neighborhood to the north and east, while also establishing a transition to the commercial center and larger-scale AU Building to the south and west (Policy LU-2.1.5, LU-2.3.3). Finally, the project will support the economic vitality and continued growth of the Spring Valley neighborhood commercial center through the new neighborhood-serving, full-service grocery store on Lot 807, and the addition of new residences in close proximity to the commercial center (Policy LU-2.4.1, LU-2.4.2, LU-2.4.5)
85. Transportation Element: The Commission finds that the Project is not inconsistent with the objectives and policies of the Transportation Element. The overarching goal for transportation in the District is to create a safe, sustainable, efficient multi-modal transportation system that meets the access and mobility needs of District residents, the regional workforce, and visitors; supports local and regional economic prosperity; and enhances the quality of life for District residents (10-A DCMR § 401.1). The project will help achieve this goal. First, in analyzing the potential transportation impacts of the project

that Applicant conducted a thorough CTR that was based upon multi-modal standards to more accurately measure and more effectively mitigate impacts on the transportation network (Policy T-1.1.2). The results of the CTR were used to develop the Applicant's TDM Plan and LMP, which were coordinated with DDOT, and which will effectively mitigate potential impacts on the transportation network (Policy T-3.1.A, T-3.1.1, T-3.2.D). The project will also provide several improvements that will increase pedestrian circulation and safety. In addition to the wide range of TDM strategies that will be implemented, the project will result in the removal of approximately 80 linear feet of curb cuts, the creation of new pedestrian connections through and around the site, construction of pedestrian curb extensions at select intersections, and the construction of a High-Intensity Activated Crosswalk ("HAWK") signal along Massachusetts Avenue (T-1.1.B, T-1.2.3, T-2.2.2, T-2.4.1, T-2.4.2).

86. Housing Element: The Commission finds that the project is not inconsistent with the objectives and policies of the Housing Element. The overarching goal of the Housing Element is to "[d]evelop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia" (10 DCMR § 501.1). The Applicant will help the District achieve this goal by redeveloping a long underutilized property in a highly desirable area of the city with a mixed-use project containing approximately 219 new residential dwelling units, including a substantial number of larger-sized units that can accommodate the District's growing number of families. In addition, the project will bring a substantial number of affordable dwelling units to Ward 3, which, as testified at the January 11, 2018, public hearing by the Coalition for Smarter Growth, substantially lags behind the rest of the city in terms of accommodating new housing, including affordable housing (Policy H-1.1.1, H-1.1.3, 1.1.4, 1.2.3).
87. Environmental Protection Element: The Commission finds that the project is not inconsistent with the objectives and policies of the Environmental Protection Element. The overarching goal for environmental protection in the District is to protect, restore, and enhance the natural and man-made environment, taking steps to improve environmental quality, prevent and reduce pollution, and conserve the values and functions of the District's natural resources and ecosystems (10-A DCMR § 601.1). The project will help achieve this goal by replacing the vacant grocery store and vast surface parking lot on Lot 807, both of which are completely impervious and lack any form of sustainable storm water management, with a number of new landscaped areas, shade trees, and green roof areas that will provide numerous environmental benefits, including reductions in storm water runoff (Policy E-3.1.2). Furthermore, additional environmental benefits will be provided through the Applicant's commitment to achieve LEED Gold certification (Policy E-3.2.1).
88. Economic Development Element: The Commission finds that the project is not inconsistent with the objectives and policies of the Economic Development Element. The overarching goal of the Economic Development Element is to strengthen the District's economy through, among other things, revitalizing neighborhood commercial centers. The project will help achieve this goal by bringing additional shopping opportunities to an existing

neighborhood shopping center, including the return of a full-service grocery store, a use that has long existed in this area and is highly desired by the community. The project will also promote the vitality of the existing neighborhood commercial center by expanding upon nearby neighborhood-serving commercial offerings, and increasing the number of residents living in close proximity to the commercial center (Policy ED-2.2.3, ED-2.2.6, ED-3.3.1)

89. Parks, Recreation, and Open Space Element: The Parks, Recreation, and Open Space Element addresses the future of parks, recreation, and open space in the District of Columbia. It recognizes the important role parks play in recreation, aesthetics, neighborhood character, and environmental quality. It includes policies on related topics such as recreational facility development, the use of private open space, and the creation of trails to better connect the city's open spaces and neighborhoods (10-A DCMR § 800.1). The overarching goal for parks, recreation and open space is to preserve and enhance parks and open spaces within the District of Columbia to meet active and passive recreational needs, improve environmental quality, enhance the identity and character of District neighborhoods, and provide visual beauty in all parts of the national capital. 10-A DCMR § 801.1. The Commission finds that the project is not inconsistent with the Parks, Recreation, and Open Space Element.
90. Urban Design Element: The Commission finds the project to be not inconsistent with the objectives and policies of the Urban Design Element. The goal of the Urban Design Elements is to enhance the beauty and livability of the city by protecting its historic design legacy, reinforcing the identity of its neighborhoods, harmoniously integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and security of streets and public spaces. The project will replace an unsightly and underutilized vacant grocery store and expansive surface parking lot with a new mixed-use development that is compatible with the surrounding context. The height, mass, architectural design, and access of the proposed buildings are informed by the context that exists around the Project Site. The project successfully relates to the residential uses to the north and east through the use of lower initial building heights, large upper-level setbacks, courtyards and terraces, multiple buildings, façade articulations, compatible materials, and architectural style (Policy UD-2.2.1, UD-2.2.5, UD-2.2.8). The project also establishes an appropriate transition between the residential area to the north and east, and the AU Building and other commercial uses to the south and west (Policy UD-2.2.4).
91. Historic Preservation Element: The Commission finds that the project is not inconsistent with the objectives and policies of the Historic Preservation Element. The goal of the Historic Preservation Element is to preserve and enhance the unique cultural heritage, beauty, and identity of the District of Columbia by respecting the historic physical form of the city and the enduring value of its historic structures and places, recognizing their importance to citizens of the District and the nation, and sharing mutual responsibilities for their protection and stewardship. The project will help achieve this goal by redeveloping Lot 807 in a manner that is sensitive to the surrounding context. The project successfully

relates to the scale of the single family neighborhood to the north and east, which is not historic, through the use of lower initial building heights, large upper-level setbacks, reductions in mass using courtyards and terraces, compatible materials, and architectural style. At the same time, the Project also respects and complements the scale and historic context of the SVSC through façade articulation and compatibility in architectural style and materials (Policy HP-2.4.3). In addition, the Historic Preservation Element promotes the development of specialized incentives to support preservation of historic properties that have exceptional communal value through a variety of tools that can reduce development pressure on these resources. The flexibility in building bulk control permitted under the ZR16 voluntary design review process provides such an incentive. Through this flexibility, the Applicant will transfer unused density from the SVSC to Lot 807 in order to constructed proposed Buildings 1 and 2, which in turn will protect the historic SVSC from future additional development pressure (Policy HP-3.1.2).

92. Community Services and Facilities Element: The Community Services and Facilities Element provides policies and actions on health care facilities, child care and senior care facilities, libraries, police stations, fire stations, and other municipal facilities such as maintenance yards. A well-balanced and adequate public facility system is a key part of the city’s drive to sustain and enhance the quality of life for its residents. 10-A DCMR § 1100.1. The Comprehensive Plan goal for community services and facilities is to provide high-quality, accessible, efficiently managed, and properly funded community facilities to support the efficient delivery of municipal services, protect public health and safety, and enhance the well-being of current and future District residents (10-A DCMR § 1101.1). The Commission finds that the project is not inconsistent with the Community Services and Facilities Element.
93. Educational Facilities Element: The Educational Facilities Element addresses the location, planning, use and design of the District’s educational facilities and campuses. It includes policies and actions related to primary, secondary, and higher educational facilities. The Element focuses on the efficient use of school property, and the relationship between schools and the communities that surround them. For District public schools, it focuses on school modernization and the right-sizing of school facilities to meet existing and long-term educational needs (10-A DCMR § 1200.1). The overarching goal for educational facilities in the District is to transform the educational environment in the District of Columbia, providing facilities that inspire excellence in learning, create a safe and healthy environment for students, and help each individual achieve his or her fullest potential (10-A DCMR § 1201.1). The Commission finds that the project is not inconsistent with the Educational Facilities Element.
94. Infrastructure Element: The Infrastructure Element provides policies and actions on the District’s water, sanitary sewer, storm water, solid waste management, energy, and telecommunication systems. Investments in these systems are essential to our city’s future, both to meet the demands of existing users and to accommodate future change and development (10-A DCMR § 1300.1). The overarching goal for infrastructure is to provide

high-quality, efficiently managed and maintained, and properly funded infrastructure to serve existing development, as well as future change and growth (10-A DCMR § 1301.1). The Commission finds that the Project is not inconsistent with the Infrastructure Element.

95. Arts and Culture Element: The Arts and Culture Element provides policies and actions dedicated to the preservation and promotion of the arts in the District of Columbia. Its focus is on strengthening the role of the arts in shaping the physical form of our city (10-A DCMR § 1400.1). The overarching goal for arts and culture is to support and encourage arts and cultural venues, programs and learning experiences in the District of Columbia that inspire a vibrant cultural life for all segments of the population. Enhance the city's diverse artistic and cultural traditions through decisions affecting the physical environment (10-A DCMR § 1401.1). The Commission finds that the Project is not inconsistent with the Arts and Culture Element.
96. Rock Creek West Area Element: The project is not inconsistent with the objectives and policies of the Rock Creek West Area Element, and specifically those policies pertaining to infill development and promotion of neighborhood-serving retail. The Rock Creek West area encompasses 13 square miles in the northwest quadrant of the Washington, DC, area contains some of the District's most highly sought after neighborhoods, public schools, and most important natural and cultural resources. It also contains some of the most vibrant retail areas. Regarding infill development, the Rock Creek West Area Element recognizes the opportunity for infill development within the areas designated for commercial land use on the FLUM.
97. The project is exactly the type of mixed-use development that is promoted by this policy as it involves mixed-use, infill development on an underutilized site that is designated for low-density commercial uses on the FLUM and a designated Neighborhood Commercial Center on the GPM. Further, infill development is encouraged at heights and densities that are informed by, and relate to, the scale and character of the surroundings. The project has been carefully designed, and extensively refined, in response to community input, such that the proposed buildings successfully relate in scale to the nearby single family neighborhood to the north and east. The proposed design of the buildings, together with the substantial separation provided by Yuma and 48th Streets (both 90 foot wide rights-of-way), successfully integrate the project into the surrounding context in a manner that protects the character of the neighborhood while also establishing an appropriate transition to the larger-scale AU Building and commercial center to the south (Policy RCW-1.1.1, RCW-1.1.4). Finally, the policies of the Rock Creek West Element promote the protection of neighborhood commercial centers and compatible new uses such neighborhood-serving retail as multi-family housing "to meet affordable housing needs, sustain neighborhood-serving retail and small businesses, and bring families back to the District." The project is not inconsistent with these policies as it will provide a new neighborhood-serving full-service grocery store and approximately 219 new residential dwelling units, including numerous larger-sized units, that will help families move into the neighborhood, allow long-term residents to remain in the neighborhood, and help address the growing demand

for affordable housing in an area of the city that has very few affordable dwelling units (Policy RCW-1.1.3, RCW-1.1.5)

Special exception criteria of Subtitle X, Chapter 9 (11-X DCMR § 604.6)

98. The Commission finds that the project will not tend to affect adversely the use of neighboring property, and meets the general special exception criteria of Subtitle X, Chapter 9.
99. The project is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. The stated purpose and intent of the existing MU-4 zone, which covers the entire Project Site, is to permit mixed-use development; provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and be located in low- to moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers (11-G DCMR § 400.3). The project is consistent with these purposes as it will provide a new mixed-use (residential / retail) development, including a full-service grocery store, in close proximity to the existing retail and service uses along Massachusetts Avenue, including those at the SVSC. Furthermore, the project is well within the matter-of-right development standards of the MU-4 zone, as measured in accordance with 11-C DCMR § 302.4, and the flexibility in building bulk control provided in the design review process under 11-X DCMR, Chapter 6.
100. The project will not adversely affect the use of neighboring property. The height and massing of Buildings 1 and 2 have been substantially reduced, with substantial setbacks, in order to relate to the surrounding context. Rather than a single building mass, the Applicant is proposing two separate buildings on Lot 807 that are separated by Windom Walk. The scale of Building 1 has been significantly reduced at the street-level through the use of three- and four-story pavilions, projecting bays, and large courtyards. In addition, the upper-levels of Building 1 have been set back considerably along north and east sides such that the building massing is pulled as far away as possible from the adjacent residential uses.
101. The substantial efforts made to reduce the scale and massing of the proposed buildings are evident in the shadow study prepared by the Applicant (Ex. 114A3, Sheets A46 - A47). The shadow study shows that for more than eight months of the year the project may have minimal solar effect on the surroundings compared to existing conditions. In the late-winter months, the project could affect the residential uses to the north for a relatively short period during the morning hours. During the late-afternoon / early-evening hours (beginning between 3:00 – 4:00 pm), the project may affect the residential uses to the east. Furthermore, as testified and shown by the Applicant's expert in architecture at the January 11, 2018, public hearing, a matter-of-right development built to a height of 50 feet at the property line along Yuma and 48th Streets would have greater shadow patterns than the proposed project.

Design Review Criteria (11-X DCMR § 604.7)

102. Pursuant to 11-X DCMR § 604.7, the Commission must review the project according to the criteria set forth in 11-X DCMR § 604.7(a) – (f), and, pursuant to 11-X DCMR § 604.8, must find that these criteria are met in a way that is superior to any matter-of-right development possible on the Project Site. Based on the following, the Commission so finds.
103. Street frontages are designed to be safe, comfortable, and encourage pedestrian activity (11-X DCMR § 604.7(a)) – The project will increase pedestrian access and safety through the use of multiple pedestrian access points both to the proposed buildings and through Lot 807. The Project Site will also be made more visually and physically porous by the integration of Windom Walk, and the proposed improvements to the north-south public alley. Further, all access to parking and loading for Buildings 1 and 2 will be located off of existing alleys, and pedestrian safety and the quality of adjacent public space along 48<sup>th</sup> and Yuma Streets will be significantly improved through the reconstruction of the public space which will include elimination of two large existing curb cuts.
104. The design of Buildings 1 and 2 will also contribute to safe and comfortable pedestrian activity. The facades of both buildings have been thoughtfully designed to relate to the surrounding context in massing and articulation, architectural character, and through the use of high-quality materials. Further, the extent of commercial ground floor presence is limited to only the northwest and southwest corners of Building 1, which minimizes visual impact on the surrounding neighborhood, and is designed to be clear, inviting, and complementary to the neighborhood. To minimize the visual presence of the grocery store, the entrance is set back approximately 17 feet from the sidewalk, and, due to the grade along Yuma Street, is located approximately two feet lower than the adjacent sidewalk. To further minimize the grocery store entrance, its façade design has been kept simple so that it blends in with the residential portion of the building as much as possible, and the amount of signage has been kept to a minimum.
105. Public gathering spaces and open spaces are encouraged (11-X DCMR § 604.7(b)) – The project will provide two new public gathering spaces. First, Windom Walk, a publicly-accessible open space between Buildings 1 and 2 will provide a new pedestrian connection through Lot 807 between 48th Street and the SVSC. In addition, a new plaza will be provided outside the grocery store that will provide opportunities for seating and small gatherings. The project also incorporates substantial improvements to the public space surrounding the Project Site.
106. New development respects the historic character of Washington’s neighborhoods (11-X DCMR § 604.7(c)) - The project respects the historic character of the SVSC and the historic shopping center across Massachusetts Avenue, as well as the character of the residential neighborhood to the north and east. The height and massing of Building 1 has been significantly restrained from what is permitted as a matter-of-right under the MU-4 zone,



and has been significantly set back from the adjacent residential uses along Yuma and 48th Streets through substantial reductions in massing and substantial upper-level setbacks. Specifically, while Building 1 could be constructed as a matter-of-right to the north and east property line to a maximum height of 50 feet, the proposed design breaks down the initial mass of the building through the use of lower-height pavilions, recessed facades that are separated by large open courtyards, and substantial setbacks ranging between approximately 27 – 40 feet at the fifth floor level.

107. The western portion of Building 1 along Yuma Street, where the grade elevation is lowest, has been set back approximately 17 feet from the property line to further reduce its massing. In addition, the fourth and fifth floors have been set back an additional 22 feet (39 feet total from the property line), and the penthouse footprint has been reduced such that it substantially exceeds the required 1:1 setback. The height and massing of Building 2 has also been restrained compared to what is permitted as a matter-of-right, and the architectural styles of Buildings 1 and 2 both respect the character of the surrounding neighborhood and the historic SVSC, while establishing their own identity. The surrounding neighborhood predominately reflects colonial and colonial revival styles of architecture, and is characterized by rectangular massing; symmetrical compositions; and the use of brick, multi-paned windows, and bays and dormers. Each of these elements have successfully been incorporated into the design of the proposed buildings.
108. Buildings strive for attractive and inspired façade design (11-X DCMR § 604.7(d)) - Buildings 1 and 2 will have a high-quality, attractive design that takes cues from the surrounding context while establishing its own identity. The facades of the proposed buildings incorporate architectural elements that are commonly found throughout the surroundings. These elements include, among others, symmetrical façade design, multi-paned windows, and bay projections. Buildings 1 and 2 will also be constructed using a range of high-quality materials that are also common in the surrounding context. These materials include cast stone, brick, cementitious panel, metal awnings, and decorative railings.
109. Sites are designed with sustainable landscaping (11-X DCMR §604.7(e)) – The project includes several landscaped courtyards, Windom Walk, and green roof areas that will provide sustainable storm water management, new habitat, and urban heat island reduction. The project will replace the vacant grocery store building and vast surface parking lot that currently exist on Lot 807, both of which are completely impervious and lack any form of sustainable storm water management, with an environmentally sustainable development that includes landscaped areas with a soil depth of 24-inches or more, several new shade trees, and both intensive and extensive green roof systems.
110. Sites are developed to promote connectivity both internally and with surrounding neighborhoods (11-X DCMR § 604.7(f)) – As a result of the project, pedestrian circulation through and around the Project Site will be vastly improved. Windom Walk will provide a new safe and aesthetically pleasing pedestrian connection between the residential

neighborhood to the north and east and the commercial node along Massachusetts Avenue, including the SVSC. In addition, the substantial improvements to the streetscape surrounding Lot 807, including the elimination of two large curb cuts, and along the north-south public alley will improve connectivity and pedestrian safety. The proposed HAWK signal will also provide additional pedestrian connectivity between the Project Site and the other retail and service uses located along Massachusetts Avenue. The project will also incorporate several transit and bicycle facilities that will further promote connectivity with surrounding neighborhood, and that would not be required under a matter-of-right development. These include the provision of Capital Bikeshare and car sharing incentives to new residents, and the installation of transit information display panels in residential lobbies.

### **Technical Zoning Flexibility**

111. Pursuant to 11-X DCMR § 603.1, as part of the design review process the Commission may grant flexibility from the development standards for height, setbacks, lot occupancy, courts, and building transitions; as well as any specific design standards of a specific zone. Except for height, the amount of relief granted is at the discretion of the Commission, provided the relief is required to enable an applicant to meet all of the design review standards. The only flexibility being requested by the Applicant is from the rear yard requirement for Building 1 to allow a ten foot rear yard where a minimum 15 feet is require.
112. The extent of the requested five feet of rear yard flexibility is limited to two small portions of the west façade of Building 1. Specifically, for the first 20-feet of building height the 15-foot required rear yard will be provided, and in fact exceeded, since the rear yard can be measured from the centerline of the north-south public alley. Above 20 feet, where the rear yard must be measured from the rear property line, the rear yard flexibility is only necessary along a small portion of the northwest and southwest corners of the building, and only for certain levels of the building that a located above the height of the SVSC.
113. The need for rear yard flexibility is necessary due to the 10 foot set back along the public alley provided to accommodate the proposed trash enclosures and pedestrian sidewalk while maintaining 20 feet for vehicular circulation, as well as the numerous other setbacks provided along Yuma Street in response to the residential uses to the north.
114. The Commission finds the request for rear yard flexibility for Building 1 to be appropriate, and necessary to enable the Applicant to meet all of the standards of 11-X DCMR § 604. Further, the Commission finds the extent of the rear yard flexibility to be *de minimus*, and far outweighed by the numerous positive improvements and superior design and program of the project.

### **Minor Design Flexibility**

115. As part of its prehearing submission, the Applicant requested minor flexibility for specific

components of the project (Ex. 114)

116. In response to comments from OP regarding the flexibility relating to the number of residential dwelling units and vehicle parking spaces, the Applicant modified the language of these two areas of requested flexibility (Ex. 152). As part of its posthearing submission, the Applicant further refined its request for minor design flexibility as it relates to the project's LEED rating and retail signage (Ex. 211). Based on these refinements, the Applicant is requesting the following areas of minor design flexibility for the project:
- a. To vary the location and design of interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration or appearance of the building; and
  - b. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, venting, window mullions and spacing, and any other changes that otherwise do not substantially alter the exterior design to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit. Such refinements shall not substantially change the exterior configuration, appearance, proportions, or general design intent of the building; and
  - c. To vary the final selection of exterior building materials within the color ranges of the material types shown in the [approved plans] based on availability at the time of construction. Any such variations shall not reduce the overall quality of materials, nor substantially change the exterior appearance, proportions, or general design intent of the building; and
  - d. To vary the final selection of landscaping materials utilized based on availability at the time of construction; and
  - e. To vary the number, size, extent, and type of sustainable design elements within the Project provided all applicable Green Area Ratio ("GAR") and District storm water requirements are fully met, and the project achieves a LEED Gold (v. 4) certification with no less than 60 points;
  - f. To increase the final number of residential units on Lot 807 by no more than 10% above the total number shown on the [approved plans] to respond to program demand, or to decrease the final number of residential units within the approved residential gross floor area of the project to accommodate demand for larger units, provided that the number of parking spaces that are solely devoted to the residential uses on Lot 807 is equal to the greater of the minimum required under the Zoning Regulations or 85 parking spaces;
  - g. To vary the number and location of affordable dwelling units provided the amount of affordable gross floor area contained within the project is, at minimum, equal to the amount shown on the [approved plans]; and

- h. To vary the amount of floor area devoted to retail uses within the project provided the amount of floor area devoted to a full-service grocery store is, at minimum, equal to 13,600 square feet; and
  - i. To vary the types of uses designated as “retail” use on the [approved plans] to include the following use categories, provided the amount of floor area devoted to a full-service grocery store is, at minimum, equal to 13,600 square feet: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j));
  - j. To vary the garage layout and the number, location, and arrangement of vehicle and bicycle parking spaces provided the numbers of vehicle spaces that are solely devoted to residential and retail uses on Lot 807 are not reduced below 85 and 49 spaces, respectively. Any increase in the number of vehicle spaces solely devoted to residential or retail use on Lot 807 that exceeds two times the minimum required under the Zoning Regulations for that particular use shall require the Applicant to comply with the excess parking requirements of Subtitle C, Section 707. Further, the number of bicycle parking spaces solely devoted to residential and retail uses on Lot 807 shall meet or exceed the minimum bicycle parking requirements of Subtitle C, Section 802 at all times.
  - k. To vary the final design of retail frontages, including the design of entrances, show windows, and signage, in accordance with the needs of retail tenants. Such refinements shall not substantially change the exterior configuration, appearance, proportions, or general design intent of the building, and all signage shall be designed and located in accordance with the Signage Plan and Guidelines contained in the [approved plans].
117. The Commission finds the range of minor flexibility requested by the Applicant to be appropriate and consistent with what is commonly granted by the Commission to address unanticipated issues that may arise during permitting and construction of a project.

**Office of Planning Report**

118. By report dated January 2, 2018, OP recommended approval of the Application provided the Applicant submit the following: (i) Information regarding the nature of grocery tenant based on the proposed square footage, (ii) Street level rendered perspective of the retail at the southwest corner of Building 1, (iii) Elevation of green wall on the south façade of Building 1, (iv) Additional details on how/whether building amenities would be shared between Building 1 and Building 2, (v) Revised garage and loading façade to ensure pedestrian comfort and safety, (vi) Breakdown of unit mix, (vii) Complete Inclusionary Zoning (“IZ”) summary table, and (viii) Full analysis of requested rear yard relief against the criteria of G § 1201.1 (Ex. 133.).

119. In its report, OP found the proposed project to be not inconsistent with the Comprehensive Plan, and that the proposed project would result in a development that would be superior to any matter-of-right development on the site.
120. On January 10, 2018, the Applicant provided responses to each of the requests in the OP Report (Ex. 152).
121. At the public hearing on January 11, 2018, OP testified that it had reviewed the Applicant's response, and still would like to receive an alley level perspective of the retail at the southwest corner of Building 1. OP also stated it needed additional information on the design of Building 1 along the alley relative to pedestrian experience and safety, and additional detail on retail signage. Finally, OP requested additional clarification on IZ relative to tenure type and penthouse generated requirements. The Applicant provided this additional information as part of its February 12, 2018, posthearing submission. The Commission finds the Applicant's responses to OP's requests and comments to be satisfactory.
122. On February 12, 2018, OP submitted a supplemental report addressing whether the ability to aggregate density was permitted under the design review process ("OP Supplemental Report") (Ex. 215). This issue is further addressed under the "Contested Issues" section of this order.

### **DDOT Report**

123. DDOT submitted a report dated January 2, 2018 (Ex. 133), noting that it had no objection to the Application subject to certain conditions, and provided certain revisions are made to the Applicant's LMP and TDM Plan.
124. At the public hearing on January 11, 2018, Mr. Andres, the Applicant's expert in transportation engineering and planning, testified that the Applicant was in agreement with all of DDOT's recommended conditions with one clarification regarding the proposed Loading Management Plan. Mr. Andres clarified that the Applicant committed to coordinate with DDOT and the SVSC to achieve a consolidated loading management plan (tr. p. 43-44).
125. Mr. Aaron Zimmerman, DDOT, testified in support of the Application at the January 11, 2018, public hearing. Mr. Zimmerman reiterated the Applicant's commitment to all of DDOT's conditions, and stated that DDOT was satisfied with the Applicant's clarification regarding the proposed Loading Management Plan as it related to coordination with the SVSC (tr. p. 144).
126. Based on the analysis included in the DDOT report, and the implementation of DDOT's stated conditions, and the Applicant's TDM Plan and Loading Management Plan, as revised and clarified in response to the DDOT report, the Commission finds that any

potential adverse transportation impacts that may result from the project will be effectively minimized and/or mitigated.

### **ANC 3E Report**

127. At a meeting held on January 3, 2018, which was duly noticed and at which a quorum was present, ANC 3E voted 4-1-0 to support the Application. The ANC 3E submitted a resolution documenting its vote on January 4, 2018 (“ANC 3E Report”) (Ex. 138).
128. The ANC 3E Report notes that the Applicant is not requesting additional height or density, but is requesting flexibility for rear yard.
129. The ANC 3E Report states that the community believes that returning a portion of the site to a grocery store use is a net benefit to the community, that the project includes significant improvements to the currently unattractive and pedestrian-unfriendly alley, improvements to Massachusetts Avenue in the form of a HAWK signal that will improve pedestrian safety and connectivity in the Spring Valley area, and a public green space in the form of Windom Walk that will enhance the porosity and attractiveness of the site.
130. The ANC 3E Report acknowledges concerns raised by the community regarding the size of the proposed buildings and the transitions to the residential homes on 48th Street and Yuma Street. However, ANC 3E notes that “as a “matter of right” the Applicant could construct a building with the following measurements using MU-4 zoning with the IZ formula: a maximum height of 50 feet plus a 12 to 15 foot penthouse, a FAR (Floor Area Ratio) of 3.0, a lot occupancy of 75 percent for residential use, rear yard setbacks of 15 feet, Green Area Ratio of 0.30, and side setbacks of 2 in wide for each 1 foot of height or approximately 11 feet. A “matter of right” proposal would also prevent a grocery store from being included in the design. In addition, the “matter of right” allows for only 89 vehicle parking spaces versus the proposed 370 spaces and 91 bicycle parking spaces versus the 110 spaces in the proposed design.”
131. Based on the assumptions above, ANC 3E states that “the proposed design appears to the ANC to be a better fit for the community in how it integrates with the surrounding neighbors, meets parking demands, and accommodates the desire for a full-service grocery store.”
132. ANC 3E’s report was accompanied by a Memorandum of Understanding (“MOU”) that has been executed with the Applicant, which describes various commitments/conditions that have been negotiated between the Applicant and ANC 3E regarding the proposed grocery store, restaurant venting, waste management, affordable housing, transportation improvements and mitigations, alley improvements, LEED, landscaping, and construction management.
133. The ANC 3E Report requests the Commission to incorporate each and every provision in the MOU into any order issued in connection with the Application. The Commission notes

that the MOU constitutes a private agreement between the Applicant and ANC 3E, and that the Commission's jurisdiction is limited to the powers enumerated in the Zoning Act, see D.C. Code § 6-641.01 et seq., which does not confer upon the Commission the authority to enforce a private document among parties. Notwithstanding, upon review of the MOU the Commission finds that the many of its provisions relate to zoning or other issues that are typically part of the Commission's review of a project, such as transportation impacts. As such, as part its review the Commission has given great weight to the provisions of the MOU, and, where appropriate and within the Commission's jurisdiction, has incorporated certain provisions from the MOU as conditions to this order. The Commission notes that its decision to include, or not include, provisions of the MOU as conditions in this order does not in any way reduce, eliminate, or modify any legal obligation that the Applicant has under the terms of the MOU with ANC 3E, or the enforceability of the MOU under other District laws.

134. At the January 11, 2018, public hearing, Commissioner Jonathan McHugh, Single Member District 3E05, testified in support of the Application on behalf of ANC 3E.

### **ANC 3D Report**

135. At a regularly scheduled meeting held on December 7, 2016, which was duly noticed and at which a quorum was present, ANC 3D voted 6-1 to oppose the Application. The ANC 3D submitted a resolution documenting its vote on December 12, 2016 ("ANC 3D Opposition Resolution") (Ex. 9).
136. The ANC 3D Opposition Resolution was based upon the Applicant's initial application which, as stated in the ANC 3D Opposition resolution, "proposes to build two new buildings on the site: one a mixed use residential building and the second an all-residential building – combined consisting of 230 new residential units (rental apartments and condos); 60,000 gsf of retail, including a 55,000 gsf grocery store; and three levels of underground parking containing approximately 460 parking spaces – only 77 of which will be reserved for residential parking and another 147 for retail parking (the remainder being set-aside for American University under a prior agreement)."
137. Based on the plans included in the Applicant's initial application, the ANC 3D Opposition Resolution states that the project is inconsistent with the Comprehensive Plan and the low density character of the surrounding neighborhood, and raises concerns regarding the project's density, amount of parking, impacts to neighborhood on-street parking, access to loading, traffic, impacts to the historic SVSC, and the architectural style of the project.
138. By letter dated December 7, 2017, ANC 3D informed the Commission that at a regularly scheduled meeting held on December 6, 2017, which was duly noticed and at which a quorum was present, ANC 3D voted 5-4 to rescind its December 7, 2016, resolution in opposition to the project (Ex. 108). According to its letter, the basis for ANC's vote to rescind its opposition to the project was that the Applicant has substantially changed the

project to reduce the number of residential units and the amount of non-residential space, provide more dedicated parking to residents, expand and improve the existing public alley behind the SVSC, and provide additional community amenities and mitigation efforts. The ANC's letter states that "[t]he current proposal is ZC 16-23 is substantially different enough, with substantially different enough implications, as to render our previous report inapplicable. Moreover, updated data on several of the arguments buttressing the ANC's original opposition suggest our previous conclusions are no longer supported by the facts."

139. At the same December 6, 2016, duly noticed public meeting that ANC 3D voted to rescind its opposition to the Application, ANC 3D also voted 8-1 in support of the Application, based upon the updated plans and drawings that the Applicant submitted as part of its prehearing submission. The ANC 3D submitted a resolution documenting its vote in support of the Application on December 12, 2018 ("ANC 3D Support Resolution") (Ex. 109).
140. The ANC Support Resolution states that ANC 3D finds the proposed development to be superior in design than a by-right development at the site, and supports the Application based upon the Applicant's commitments to, among other various commitments: (i) returning a full service grocery store to the site; (ii) funding and coordinating installation of a HAWK light; (iii) reorganizing, cleaning and expanding the existing public alley; (iv) providing Windom Walk; (v) including several courtyards and setbacks from the property line; and (vi) providing lower height along property lines across from residential homes. ANC 3D requested that the commitments made by the Applicant be memorialized as conditions in the Commission's final order.

### **Citizens for Responsible Development**

141. On January 4, 2018, Citizens for Responsible Development submitted its prehearing statement in opposition ("CRD Statement") (Ex. 137). On January 9, 2018, CRD submitted a supplemental prehearing statement ("CRD Supplemental Statement") (Ex. 149). Collectively, the CRD Statement and CRD Supplemental Statements are referred to herein as the "CRD Statements."
142. The CRD Statements claim that the Application fails to meet the requirements for design review. First, CRD argues that the project calls for an increase in density. CRD states that according to the Applicant's prehearing statement, the maximum amount of gross floor area available on Lot 807 is 184,514 GFA. CRD further states that the project appears to include 277,278 GFA on Lot 807, which is 92,764 more GFA than allowed as a matter-of-right. Thus, CRD states that "it would defy the letter and spirit of the design review standards for the Commission to conclude that design review is appropriate for a 277,278 GFA project that adds density to a lot capped at 184,514 GFA."



143. CRD also argues that the project seeks more relief than could be secured under a PUD. According to the CRD Statement, “[u]nder a PUD, a developer may add 20% of GFA. Assuming that this increase applies to Lot 807 in the abstract (as opposed to accounting for the reduced GFA available for Lot 807), Valor could add up to 47,773 GFA through a PUD...Valor could therefore pursue a PUD project with up to 232,287 GFA...At 277,278 GFA on Lot 807, the project would utilize 44,991 more GFA than could be secured under a PUD on that Lot, thus violating § 600.2 of the Design Review Regulations.”
144. CRD also states in the CRD Statements that the project fails to meet the design review standard at 11-X DCMR § 604.7(c) as it undermines the historic character of Spring Valley Shopping Centers and surrounding neighborhood. In support of this statement, CRD submitted a report prepared by Mr. Stephen Hansen, architectural historian, regarding the historic preservation of the Spring Valley shopping area and the impact of the proposed development on these landmarked properties and the surrounding neighborhood (“Hansen Report”).
145. In addressing 11-X DCMR § 604.7(c)(1), based upon the findings of the Hansen Report, CRD states that “the proposed development contradicts the existing urban form of the neighborhood, which was built based on a model neighborhood scheme in which community and retail facilities formed a ‘village like’ complex of complementary styles and proportions.” CRD claims that the Applicant has not demonstrated how the projects fits into this historic urban form.
146. Regarding 11-X DCMR § 604.7(c)(2), CRD argues that the project does not respect the architectural character of the neighborhood since it does not give consideration to the architecture of the SVSC’s rear elevations relative to their relationship to the residential building across the street. Further, CRD states that “the proposed Beaux-Arts and Second Empire architectural styles of the two proposed buildings are inconsistent with each other, and clash with the Colonial Revival architecture of the shopping centers and the surrounding neighborhood.”
147. Regarding 11-X DCMR § 604.7(c)(3), CRD states that the development does not respect and protect key landscape vistas and axial views of landmarks and important places. CRD states that “the proposed project would adversely impact the visual effect of the two National Register of Historic Places – *i.e.*, the listed shopping centers.” CRD claims that the Applicant has failed to include adequate buffers, setbacks, landscaping, height steps downs, and that the Applicant’s depictions of the project are deceptive in that they “selectively provide views looking toward the project site but do not include the surrounding setting of smaller-scale residences and the landmarked shopping center.” CRD further claims that the Applicant has failed to provide cone of vision studies to provide a truer sense of the visibility of the upper recessed floors.” In support of its statements regarding the accuracy of the Applicant’s depictions of the project, CRD conducted its own visual impact analysis which included as an attachment to the CRD Statement (“CRD

Visual Study”). CRD also presented its visual impact analysis during its presentation at the January 25, 2018, public hearing.

148. The CRD Statements state that the project circumvents the Zoning Regulations and would be inconsistent with the Comprehensive Plan and Future Land Use Map. In support of these statements, CRD argues that neither the Zoning Regulations or the FLUM permits the Applicant to erect a seven-story, “medium-density” building on Lot 807. CRD states that the project “would be five stories tall on the side facing 48<sup>th</sup> Street, NW and seven stories tall (with its penthouse) at its highest point (89 feet) facing Yuma Street, at the corner of the alley that connects Yuma Street to Massachusetts Avenue. It is therefore a higher density building than allowed by the Comprehensive Plan, the FLUM, and the MU-4 designation.” The CRD Statements also addresses the project’s consistency with specific elements and policies of the Comprehensive Plan.

### **Contested Issues**

#### **Transfer / Aggregation of Density**

149. In its January 4, 2018, submission, the CRD Statement, CRD states that there are no provisions in Chapter 6 of Subtitle X that allow for the transfer of development rights or combined lots. CRD states that the only allowance for combined lots to allow for flexibility in distribution of residential/non-residential FAR applies only to MU-10 zones. In addition, CRD states that credit trade areas (formerly TDR or CLD zones under the 1958 Zoning Regulations) only exist under the 2016 Zoning Regulations in the downtown zones.
150. At the January 11, 2018, public hearing, the Commission requested the Applicant to submit a one-page report summarizing the Commission’s authority to aggregate density across a project site as part of the design review process. The Commission also afforded an opportunity to the parties in the case to submit their own report on the same question.
151. On January 31, 2018, CRD submitted its one-page transfer of density summary (“CRD Transfer Summary”) (Ex. 208). The CRD Transfer Summary provides background on the zoning history of the Record Lot 9, and specifically information regarding the allocation of density that occurred in the early 1970s within Record Lot 9 between Lots 806 and 807 to facilitate the construction of the AU Building. The CRD Transfer Summary also includes a set of calculations showing the amount of density that currently remains on Record Lot 9 and available to Lot 807 (184,514 GFA), and the amount that the Applicant is proposing on Lot 807 (277,278 GFA). Based on these calculations, CRD states that “the Application calls for an increase in density, which is not permitted under sections § 600.1(c) and (e) and sections 600.5 of the Design Review Regulations.”
152. As part of its posthearing submission filed on February 12, 2018, the Applicant submitted its report summarizing the Commission’s authority to aggregate density as part of the design review process (“Applicant Transfer Summary”)(Ex. 211C). In its report, the

Applicant states that the Commission has the authority to aggregate density in a design review application pursuant to 11-X DCMR § 600.1(e) which provides “flexibility in building bulk control, design, and site placement without an increase in density or a map amendment .” Further, the Applicant states that pursuant to 11-X DCMR § 601.4, density can be aggregated across the public alley separating the SVSC from Record Lot 9 since the property in a design review application “may be separated...by a public street, alley or right of way.”

153. The Applicant Transfer Summary states that the Commission can approve aggregation/transfer of density under its broad Zoning Act authority (See 11-Z DCMR § 100), which has been upheld by the D.C. Court of Appeals. *See* Zoning Commission Order No. 101; Dupont Circle Citizens Association v. Zoning Commission, 355 A.2d 550, 556-57 (DC 1976). In that case, the Court upheld the Commission’s approval of a PUD which included a transfer of density from the site of a historic landmark to an adjacent development site. Citing the Commission’s “broad general authority” under the Zoning Act, the Court found that “there is no impediment to permitting payment for the transfer of such rights from one building owner to another within the same project when agreed to by the parties”.
154. Similar to the CRD Transfer Summary, the Applicant Transfer Summary also includes calculations showing the amount of density that currently remains on Record Lot 9 and available to Lot 807, and the amount that the Applicant is proposing on Lot 807, which are the same amounts stated in the CRD Density Transfer. However, the Applicant Transfer Summary also includes calculations that demonstrate how the distribution of density across the Project Site is effectuated through the flexibility in building bulk control that is permitted under the voluntary design review process, and that through this flexibility the overall project is consistent with the overall permitted density, and the maximum permitted nonresidential density in the MU-4 zone.
155. As stated above, OP submitted a supplemental report addressing the transfer / aggregation of density. According to the OP Supplemental Report, during the development of ZR16 a design review case was initially considered by the Commission as a “Type I PUD” with no density increase or map amendment, and that nowhere in the case record for Z.C. 08-06-12 or 08-06A is there any suggestion that FAR aggregation would be limited to one “type” of PUD. As such, OP states that “it is appropriate to conclude that FAR aggregation would be permitted in all types of PUDs.
156. Based on the information submitted to the record on this issue, the Commission finds that it has the authority to approve aggregation/transfer of density under its broad Zoning Act authority outside of areas that are designated in the Zoning Regulations as credit trade areas. As discussed in the OP Supplemental Report, as testified to by Mr. Dettman, the Applicant’s expert in land use planning and zoning, during the development of ZR16 the voluntary design review process was originally referred to as a “Type I PUD,” where no additional density would be permitted but the flexibility allowed under a PUD would be

available. As the ZR16 process evolved, the Commission decided against having multiple types of PUDs, and instead moved the “Type I PUD” / design review process to a separate chapter within Subtitle X. Notwithstanding this organizational change to the zoning regulations, the Commission’s intent to allow aggregation of density through the design review process, and specifically through the flexibility in building bulk control permitted under 11-X DCMR §§ 600.1(e) and 603.1, continues to be available.

### Building Height Measurement

157. The January 4, 2018, CRD Submission argues that the Zoning Regulations do not permit the Applicant to take its maximum height measurement from 48<sup>th</sup> Street on the basis that it violates the 1910 Height of Buildings Act (Height Act”), that the front of the building site is on Yuma Street, and that the proposed measuring point is an artificial embankment that cannot be used to measure building height under the Zoning Regulations. Similar testimony was presented by Michael Stover at the January 25, 2018, public hearing.
158. Regarding the measurement of building height under the Height Act, Mr. Dettman, the Applicant’s expert in land use planning and zoning, testified in rebuttal that the project’s building height is being measured in accordance with the Height Act. Specifically, Mr. Dettman stated that under Section 5 of the Height Act, the maximum building height permitted under the Height Act is equal 110 feet, which is derived by adding 20 feet to the width of either 48<sup>th</sup> Street or Yuma Street – both of which as 90-foot rights-of-way. As such, since the proposed height of the Buildings 1 and 2 are well below 110 feet, the projects proposed building height is in compliance with the Height Act.
159. Regarding the location of the building height measuring point (“BHMP”), Mr. Dettman also testified that the proposed BHMP is also in compliance with the Height Act, as well as the Zoning Regulations. Mr. Dettman stated that under Section 7 of the Height Act building height must be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof, and that where a building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit the greater height. As such, Mr. Dettman stated that Building 2 is proposed to be measured from the middle of the front along 48<sup>th</sup> Street since that is the only street frontage of the building. Regarding Building 1, Mr. Dettman stated that since this building has more than one front, the Height Act states that the building shall be measured from the elevation of the front that will permit the greater height, which in this case is 48<sup>th</sup> Street.
160. Regarding the location of BHMP under the Zoning Regulations, Mr. Dettman testified that pursuant to Subtitle B § 307 (Rules of Measurement for Building Height: Non-residential Zones), building height is measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet for buildings having only one front. For a building that fronts on more than one street, the Zoning Regulations state that any front may be used to determine the maximum height of the building, but the basis for the height of the building shall be determined by the width of the street selected as the

front of the building. Mr. Dettman further stated that with regard to the measurement of number of stories, the Zoning Regulations stipulate that the number of stories is to be counted from the point at which the building height is measured. Based on the express language of Subtitle B of ZR16, Mr. Dettman stated that the height and number of stories of Buildings 1 and 2 are being measured in a manner that is in full compliance with the Zoning Regulations.

161. Regarding the elevation of the proposed measuring point along 48<sup>th</sup> Street, CRD claims that the level of curb along 48<sup>th</sup> Street was artificially elevated at a point in time to accommodate the establishment of 48<sup>th</sup> Street. As such, CRD states that the Applicant is prevented from using 48<sup>th</sup> Street to measure building height. Rather, due to the alleged artificial elevation of 48<sup>th</sup> Street, the Applicant must measure building height in accordance with Subtitle B §307.7, which specifically addresses measurement of building height when the curb grade has been artificially changed by a bridge, viaduct, embankment, ramp, abutment, excavation, tunnel, or other type of artificial elevation or depression.
162. Mr. Glatfelter, the Applicant's witness in civil engineering, presented testimony stating that based upon an analysis of United States Geological Survey topographic maps the elevation of the proposed BHMP for Building 1 and 2 along 48<sup>th</sup> Street has generally existed at its current elevation since the early 1900s. Based on his analysis of historical topographic data, Mr. Glatfelter stated that in his expert opinion the retaining wall on Lot 807 retains in situ soil; and therefore, the elevation has not been artificially changed along 48<sup>th</sup> Street.
163. The Commission finds that based upon the expert testimony provided by Mr. Dettman and Mr. Glatfelter, the manner in which the height of proposed Buildings 1 and 2 is proposed to be measured is in compliance with the rules of measurement under Subtitle B of ZR16. The Commission credits the analysis of Mr. Glatfelter regarding the historic topographic elevation of 48<sup>th</sup> Street, and finds that the analysis establishes that the elevation of 48<sup>th</sup> Street has generally existed at its current elevation for decades, and possibly as far back as the early-1900s, well before 48<sup>th</sup> Street even existed.

### **CONCLUSIONS OF LAW**

1. The application was submitted pursuant to 11-X DCMR § 601.2 for voluntary design review and approval by the Commission. The Commission concludes that the Applicant has met its burden of proof.
2. The Commission provided proper and timely notice of the public hearing on the Application by publication in the D.C. Register and by mail to the Affected ANC, OP, and owners of property within 200 feet of the Project Site.
3. Pursuant to 11-X DCMR § 604.5, and in reliance upon Findings of Fact 74 – 94, the Commission concludes that the project is not inconsistent with the Comprehensive Plan.

4. Pursuant to 11-X DCMR § 604.6, and in reliance upon Findings of Fact 98 - 101, the Commission concludes that the project will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of Subtitle X, Chapter 9.
5. Pursuant to 11-X DCMR § 604.8, and in reliance upon Findings of Fact 102 - 110, the Commission concludes that the urban design of the site and buildings within the proposed project meet the criteria of 11-X DCMR § 604.7 in a way that is superior to any matter-of-right development that would be possible on the Project Site.
6. The Commission concludes that the Applicant's request for rear yard flexibility for Building 1 is *de minimus*, and required to enable the Applicant to meet all of the standards of Subtitle X § 604.
7. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1- 309.10(d)) to give great weight to the issues and concerns raised in the written report of the Affected ANC. The Affected ANC in this case includes ANC 3E and ANC 3D. The Commission carefully considered both ANC 3E and 3D recommendations for approval and concurs with these recommendations.
8. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP Report and, as explained in this decision, finds its recommendation to grant the application persuasive.
9. Based upon the record before the Commission, including witness testimony, submission from parties in support and opposition, the reports submitted by OP, DDOT, ANC 3E, ANC 3D, and the Applicant's submissions, the Commission concludes that the Applicant has met the burden of satisfying the applicable design review standards under 11-X DCMR §§ 604 of ZR16.

## DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application consistent with this Order. Unless otherwise stated, the term "Applicant" shall mean the person or entity holding title to the Valor Lot. If there is more than one owner, the obligations under the 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 the order; however, that party remains liable for any violation of any condition that occurred while an owner. This approval is subject to the following guidelines, standards, and conditions:

1. The Commission's approval of the Project shall apply to all properties contained within the Project Site, currently Lots 802, 803, 806, and 807 in Square 1499, and shall continue to apply regardless of any subdivision, division of lots, or transfer of ownership.
2. The project shall be constructed in accordance with the architectural plans and drawings at Ex. 114A of the case record, dated December 21, 2017, as modified by Ex. 211A, dated February 12, 2018, and the guidelines, conditions, and standards below.
3. The Project shall achieve LEED Gold (v.4) certification, in accordance with the following:
  - *Prior to issuance of a building permit for the project*, the Applicant shall demonstrate to the Zoning Administrator that it has registered the project with the USGBC to commence the LEED certification process under the USGBC's LEED v. 4 rating system.
  - *Prior to the issuance of a Certificate of Occupancy for the Buildings 1 or 2*, the Applicant shall furnish a copy of its LEED certification application submitted to the USGBC to the Zoning Administrator. The application shall indicate that the project has been designed to include at least the minimum number of points necessary to achieve LEED Gold certification under the USGBC's LEED v. 4 standards.
  - The Applicant shall complete the USGBC's process for certifying the project at the LEED Gold level, and maintain the project as such.
4. *Beginning on the date a certificate of occupancy is issued for Building 1*, the Applicant shall devote a minimum of 13,000 square feet of gross floor area of retail space to be used solely by a "Full-Service Grocer," as defined by the District of Columbia Alcoholic Beverage Regulation Administration (ABRA), for a period of at least ten (10) years.
5. The Applicant shall run any kitchen exhaust venting from any grocery store or eating and drinking establishments within Building 1 to the roof of Building 1.
6. *For the life of project*, the Applicant shall implement the following TDM measures for Buildings 1 and 2:
  - a. Exceed zoning requirements to provide bicycle parking/storage facilities at the proposed development. This includes secure parking located on-site and short-term bicycle parking around the perimeter of the site;
  - b. Unbundle the cost of residential parking from the cost of lease or purchase of each residential dwelling unit. The unbundled cost of costing will be based upon, at minimum, the average market rate within a quarter mile of the Project Site;
  - c. Identify TDM Leaders (for planning, construction, and operations). The TDM Leaders will work with residents and employees within the Project Site to distribute and market various transportation alternatives and options;

- d. Provide TDM materials to new residents in the Residential Welcome Package materials.
  - e. Provide residents and grocery/retail employees that wish to carpool with detailed carpooling information and references to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG).
  - f. Install a Transportation Information Center Display (electronic screen) within the residential lobbies containing information related to local transportation alternatives.
  - g. Offer either a one-year membership to Capital Bikeshare or a one-year membership to a car-sharing service to each residential unit for the initial lease up of each unit.
  - h. Provide a bicycle repair station within each long-term bicycle storage room.
  - i. Dedicate four (4) parking spaces in the below-grade parking garage for car-sharing services to use with right of first refusal. If an agreement has not been reached with a car sharing service to occupy the four (4) dedicated car sharing spaces in the garage then the Applicant will provide an additional year of Capital Bikeshare memberships to new residents;
  - j. Restrict residents of the building from obtaining a Residential Parking Permit (“RPP”), with penalty of lease termination.
  - k. Prohibit free parking to any resident, employee, student, or otherwise. Only daily, weekly, and monthly rates shall be made available for purchase;
  - l. Provide one shopping cart for every 30 residential dwelling units
7. The Applicant shall implement the following additional transportation mitigations:
- a. Fund and construct a new HAWK (High-Intensity Activated Crosswalk) signal on Massachusetts Avenue between 48th Street and 49th Street, subject to DDOT approval.
  - b. Fund and construct upgrades to substandard curb ramps, missing crosswalk striping, and installation of curb extensions, subject to DDOT approval, at the following intersections:
    - 49th Street and Yuma Street NW
    - 49th Street and Yuma Street NW
    - 48th Street and Windom Place NW
    - 48th Street and Warren Street NW
8. *For the life of project*, the Applicant shall implement the following Loading Management Plan for Buildings 1 and 2:



- a. A loading dock manager shall be designated by the building management. The loading dock manager shall coordinate with vendors and tenants to schedule deliveries and will be on duty during delivery hours.
  - b. The loading dock manager(s) shall schedule deliveries such that the loading dock capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while all loading facilities are occupied, the delivery driver shall be directed to return at a later time when a loading berth or delivery space is available so as not to impede the drive aisle passing in front of the loading dock.
  - c. The loading dock manager shall monitor inbound and outbound truck maneuvers and ensure that trucks accessing the loading dock do not block vehicular traffic except during those times when a truck is actively entering or exiting the alley.
  - d. The loading dock manager shall monitor the alley to keep the designated loading facilities clear for deliveries, keep the alley from being blocked due to vehicle loading/unloading activity, and enforce any applicable no parking restrictions.
  - e. All tenants shall be required to schedule deliveries that utilize the loading docks – defined here as any loading operation conducted using a truck 20’ in length or larger.
  - f. Commercial deliveries shall be scheduled between 7 AM – 7 PM (7 days a week), and be discouraged after 4 PM on weekdays
  - g. Waste collection (both commercial & residential) shall take place between 7 AM – 4 PM (7 days a week)
  - h. Residential move-ins/outs shall take place between 9 AM – 4 PM (7 days a week)
  - i. Trucks using the loading dock shall not be allowed to idle and must follow all District guidelines for heavy vehicle operation, including but not limited to, 20 DCMR § 900 (Engine Idling), the regulations set forth in DDOT’s Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System.
  - j. Coordinate with DDOT and SVSC (Lot 802 and 803) to achieve a consolidated loading management plan, if possible. As part of this coordination, trucks traveling to the SVSC will be directed not to pick-up or drop-off on Yuma Street, and will be directed to use the public alley network.
9. The Applicant shall relocate all trash bins and dumpsters belonging to the SVSC (Lots 802 and 803) located along Yuma Street to the alley and placed within the proposed trash enclosures.
  10. The Applicant shall have minor flexibility with the design of the project in the following areas:

- a. To vary the location and design of interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration or appearance of the building; and
- b. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, venting, window mullions and spacing, and any other changes that otherwise do not substantially alter the exterior design to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit. Such refinements shall not substantially change the exterior configuration, appearance, proportions, or general design intent of the building; and
- c. To vary the final selection of exterior building materials within the color ranges of the material types shown in Ex. 114A1 – 114A7 based on availability at the time of construction. Any such variations shall not reduce the overall quality of materials, nor substantially change the exterior appearance, proportions, or general design intent of the building; and
- d. To vary the final selection of landscaping materials utilized based on availability at the time of construction; and
- e. To vary the number, size, extent, and type of sustainable design elements within the Project provided all applicable Green Area Ratio (“GAR”) and District storm water requirements are fully met, and the project achieves a LEED Gold (v. 4) certification with no less than 60 points;
- f. To increase the final number of residential units on Lot 807 by no more than 10% above the total number shown on the [approved plans] to respond to program demand, or to decrease the final number of residential units within the approved residential gross floor area of the project to accommodate demand for larger units, provided that the number of parking spaces that are solely devoted to the residential uses on Lot 807 is equal to the greater of the minimum required under the Zoning Regulations or 85 parking spaces;
- g. To vary the number and location of affordable dwelling units provided the amount of affordable gross floor area contained within the project is, at minimum, equal to the amount shown in Ex. 114A1 – 114A7 ; and
- h. To vary the amount of floor area devoted to retail uses within the project provided the amount of floor area devoted to a full-service grocery store is, at minimum, equal to 13,600 square feet; and

- i. To vary the types of uses designated as “retail” use on the [approved plans] to include the following use categories, provided the amount of floor area devoted to a full-service grocery store is, at minimum, equal to 13,600 square feet: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j));
  - j. To vary the garage layout and the number, location, and arrangement of vehicle and bicycle parking spaces provided the numbers of vehicle spaces that are solely devoted to residential and retail uses on Lot 807 are not reduced below 85 and 49 spaces, respectively. Any increase in the number of vehicle spaces solely devoted to residential or retail use on Lot 807 that exceeds two times the minimum required under the Zoning Regulations for that particular use shall require the Applicant to comply with the excess parking requirements of Subtitle C, Section 707. Further, the number of bicycle parking spaces solely devoted to residential and retail uses on Lot 807 shall meet or exceed the minimum bicycle parking requirements of Subtitle C, Section 802 at all times.
  - k. To vary the final design of retail frontages, including the design of entrances, show windows, and signage, in accordance with the needs of retail tenants. Such refinements shall not substantially change the exterior configuration, appearance, proportions, or general design intent of the building, and all signage shall be designed and located in accordance with the Signage Plan and Guidelines contained in the [approved plans].
11. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.1 et seq. (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 identification, 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 that 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. Violations will be subject to disciplinary action.

On [DATE], upon the motion of \_\_\_\_\_, as seconded by \_\_\_\_\_, the Zoning Commission APPROVED the application and **ADOPTED** this Order at its public meeting by a vote of 5-0-0 (Anthony J. Hood, Robert E. Miller, Peter Shapiro, Peter G. May, and Michael G. Turnbull to approve and adopt).

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