

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-26
Z.C. Case No. 16-26
Wisconsin Owner LLC
(Consolidated PUD and Related Map Amendment @ Square 1732, Lots 45 and 49)

_____, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“**Commission**”) held a public hearing on September 28, 2017 to consider an application from Wisconsin Owner LLC (“**Applicant**”) for review and approval of a consolidated planned unit development (“**PUD**”) and related amendment to the Zoning Map from the MU-4 Zone District to the MU-7 Zone District (together, “**Application**”). The Commission considered the Application pursuant to Title 11 of the District of Columbia Municipal Regulations (“**Zoning Regulations**”), Subtitles X and Z. The public hearing was conducted in accordance with the provisions of Chapter 4 of Subtitle Z of the Zoning Regulations. For the reasons stated below, the Zoning Commission hereby approves the Application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The property that is the subject of the Application consists of Lots 45 and 49 in Square 1732 (“**Property**”) and is located at 4620-4624 Wisconsin Avenue, NW. (Ex. 2.)
2. On November 21, 2016, the Applicant filed an application for consolidated review and approval of a PUD and related Zoning Map amendment from MU-4 Zone District to MU-7 Zone District. (Ex. 2)
3. During its public meeting on March 13, 2017, the Commission unanimously voted to set down the Application for a public hearing. Notice of the public hearing was published in the *D.C. Register* on August 11, 2017, in Volume 64, Issue 32, and was mailed to Advisory Neighborhood Commission 3E (“**ANC 3E**”) and to owners of property within 200 feet of the Property. (Ex. 20, 22)
4. On August 15, 2017, the Applicant caused notice of the Public Hearing to be posted at the Property and on September 25, 2017, the Applicant filed an affidavit describing the maintenance of such posted notice. (Ex. 25, 36)

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5. The Application was further updated by pre-hearing submissions filed on June 27, 2017, August 21, 2017, and September 8, 2017. (Ex. 17, 28, 29, 30).
6. A public hearing was conducted on September 28, 2017. The Applicant provided testimony from Laurence Caudle of Hickok Cole Architects, Jami Milanovich of Wells + Associates, and Brook Katzen of Urban Investment Partners.
7. In addition to the Applicant, ANC 3E was automatically a party in this proceeding and submitted a report and testimony in support of the Application. (Ex. 34, 35, 48.)
 - a. Revive 3E and Ward 3 Vision submitted requests for party status in support of the application. (Ex. 9, 12.) At the public hearing, the Commission approved Ward 3 Vision as a party in support, but denied Revive 3E status because it had failed to appear at the public hearing. Ward 3 Vision provided testimony in support of the project at the public hearing along with other organizations and persons in support of the application (collectively “**Proponents**”). (Ex. 37, 38, 39, 41, 44, 45, 46.) The Proponents included two neighbors who live within the same block as the Project. (Ex. 39, 45.)
 - b. Tenleytown Neighborhood Association (“**TNA**”) and Bruce Lowrey (“**Lowrey**”) submitted requests for party status in opposition. (Ex. 10, 13, 27 (TNA); Ex. 14, 15, 19, 24 (Lowrey).) At its public meeting on July 24, 2017 the Commission approved TNA as a party in opposition. At its public meeting on September 11, 2017 the Commission approved Lowrey as a party in opposition. Lowrey later withdrew his party status in opposition and indicated that he had no objections to the Project. (Ex. 40.) TNA provided testimony in opposition to the project at the public hearing along with other persons in opposition to the application (collectively “**Opponents**”). (Ex. 49, 50 (TNA); Ex. 32, 51, 54.) The Opponents raised concerns regarding the consistency of the application with the Comprehensive Plan, the sufficiency of the amenities package, and the transportation impacts of the Project. These concerns are enumerated and addressed in detail throughout this Order.
8. At the close of the hearing, the Commission asked the Applicant to address certain aspects of the north façade design and design flexibility conditions related to exterior design. The Applicant addressed those issues and concerns in a post-hearing submission dated October 12, 2017. (Ex. 55).

Overview of the PUD Site

9. The Property consists of approximately 23,741 square feet of land area and consists of properties known as 4620-4624 Wisconsin Avenue, NW, located mid-block on the 4600 block of Wisconsin Avenue in Ward 3. (Ex. 2)
10. The Property is located in the MU-4 Zone District. Property to the north, south, and east is also located in the MU-4 Zone District, although the parcel immediately to the south was rezoned to the MU-7 Zone District through a PUD approved in Z.C. Order No. 10-23. (Ex. 2)
11. Property further to the south is located in the MU-7 Zone District. Property to the west, across the alley, is located in the R-2 Zone District. (Ex.2)
12. The Property is located approximately 2 blocks north of the Tenleytown-American University Metrorail station. (Ex.2)
13. The Future Land Use Map of the Comprehensive Plan designates the Property in the Mixed-Use Medium Density Residential / Moderate-Density Commercial Land Use category. The Generalized Policy Map of the Plan designates the Property as a Main Street Mixed-Use Corridor. (Ex. 2)

Project Description

14. The Applicant will adaptively reuse and expand an existing building on the Property into a new mixed-use development with ground-floor retail uses and approximately 146 residential units (“**Project**”). (Ex. 2, 17, 30.)
15. The architectural design, height, and mass of the eight-story Project is consistent with and sensitive to the surrounding context.
 - a. Overall, the Project uses a combination of high-quality materials and architectural design details and features to adaptively reuse and expand the existing building at 4620 Wisconsin Avenue into an attractive, exemplary new building.
 - b. Along Wisconsin Avenue, the architectural design includes a more pedestrian-friendly streetscape as well as a deliberate stepping of the façade to match the change in grade from south to north.
 - c. Along the rear of the Property, the Applicant has set back and stepped down the mass and scale of the building to appropriately transition the Project’s mass into the

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neighborhood properties to the rear. The overall mass is set back from the public alley, and then steps further back at the second and again at the fifth floor. In addition, the northern wing maintains an alignment along Wisconsin Avenue and is therefore set further back from the alley and residential neighborhood to the west.

- d. Overall, the Project meets or exceeds the rear yard and lot occupancy limitations for the proposed MU-7 Zone except at the ground floor, where the Applicant has proposed a minor encroachment, based on the footprint of the existing structure to be retained, in order to create additional residential units along the rear of the Project that will incorporate windows to articulate and soften the building appearance. The Project will occupy approximately 90% of the lot on the ground level, but will step back to occupy 66% at the second floor, 62% at the fifth floor, and 57% at the 8th floor.
- e. The initial application included a 20-foot tall occupiable penthouse above the roof of the Project. In response to community comments, the Applicant later removed the penthouse story from the Project to lower the building height.

(Ex. 2, 17, 30.)

16. All parking and loading for the Project will be accessed from the public alley adjacent to the west side of the Property. The Project will include approximately 58 vehicular parking spaces and approximately 60 long-term bicycle parking spaces within the garage, as well as 10 short term bicycle parking spaces located in the streetscape along Wisconsin Avenue.

(Ex. 2, 17, 30.)

17. In total, the Project will feature approximately 135,942 square feet of total gross floor area, with 10,984 square feet for retail use and 146 residential units with a total residential gross floor area of approximately 117,527 square feet. The residential units include a mix of studio, one-bedroom, and two-bedroom apartments. (Ex. 30A.)

18. The Applicant will set aside ten percent (10%) of the residential gross floor area, or approximately 11,753 square feet of gross floor area, as affordable housing at 60% of Median Family Income (“MFI”). (Ex. 30A.)

19. The Project will be constructed to a FAR of approximately 5.73 and a height of approximately 88’4”. (Ex. 30A.)

Zoning Map Amendment

20. The MU-4 Zone District permits a maximum height of 50 feet as a matter of right, a maximum density of 2.5 FAR as a matter of right (3.0 FAR for residential developments that trigger inclusionary zoning), and a maximum lot occupancy for the residential portions of the development of 60% as a matter of right (75% for residential developments that trigger inclusionary zoning).
21. The Applicant requested a PUD-related amendment to the Zoning Map to the MU-7 Zone District to permit the Project to achieve the requested mix of uses, height, and density. For a residential development that triggers inclusionary zoning, the maximum height permitted in the MU-7 Zone District under the PUD guidelines is 90 feet, the maximum density under the PUD guidelines is 5.76 FAR, and the maximum lot occupancy for the residential portions of the Project is 80%.

PUD Flexibility

22. The Applicant requested approval to construct a building to a maximum height of 88'4" and density of 5.73 FAR, which are within the PUD standards set forth in Subtitle X, Chapter 3 for a PUD in the MU-7 Zone District. The Applicant also requested flexibility from the rear yard and lot occupancy requirements to accommodate the ground-floor level of residential units within the Project, and flexibility from the penthouse structure uniform height requirements, as outlined in the Office of Planning's ("OP") Final Report and detailed in the Applicant's written submissions and testimony at the public hearing. (Ex. 30, 30A, 33.)

Project Amenities, Public Benefits, and Sufficiency of the Amenities Package

23. As detailed in the Applicant's testimony and written submissions, the proposed Project will implement the following project amenities and public benefits:
 - a. Superior Urban Design and Architecture. The Project exhibits many characteristics of exemplary urban design. Specific features include the use of a variety of public spaces, well-designed sidewalks with street trees and active storefronts along Wisconsin Avenue, massing that is shaped to flow within the existing density of the surrounding properties, and well-located and carefully designed parking garages and loading zones for the Project.
 - b. Creation and Preservation of Open Spaces. The Applicant will close a one-way street segment of Brandywine Street between 42nd Street and River Road, located one block

- from the Project, and construct a new park on this closed section. The Applicant will ensure the maintenance of the new park for the life of the Project.
- c. Site Planning and Efficient and Economical Land Utilization. The Property is currently underutilized and fails to fully capitalize on its prominent Wisconsin Avenue location. The Property currently contains commercial office buildings and accessory parking in a design that discourages pedestrian activity. The proposed Project has been designed to provide residents, customers, employees, and visitors with open and inviting public and private spaces for entertainment and relaxation. The proposed Project will transform an underutilized and dated site into an attractive 21st-century mixed-use development.
 - d. Housing. The Project will create approximately 146 new residential units in a zone where no residential use is required. The proposed Project will provide 117,527 square feet of gross floor area of residential use, which is over 50,000 more square feet of housing than would be provided as a matter-of-right at the Property.
 - e. Affordable Housing. The Applicant will provide 10% of the gross residential area in the proposed building for affordable dwelling units at 60% of the MFI. This will result in approximately 11,753 square feet of affordable housing, which is a significant commitment in itself and exceeds the baseline requirement by over 2,000 square feet. Also, at least one affordable unit will be a two-bedroom unit. The commitment is particularly significant because a matter-of-right redevelopment of the property under the existing MU-4 zoning would yield only 2,500 square feet of affordable housing. This is because the bulk of the development would be a conversion of an existing office building, which is exempt from inclusionary zoning.
 - f. Environmental and Sustainable Benefits. The Applicant will achieve a minimum of Gold certification under the LEED-2009 rating system. The Project will also integrate other sustainable design features, including solar panels as a renewable energy source on the roof of the Project. The Project will also include 5 electric vehicle charging stations in the parking garage, with conduit to accommodate an additional 5 future charging stations.
 - g. Streetscape Plans. The existing streetscape lacks pedestrian activity and attractive landscaping that would otherwise enliven the sidewalks. The Applicant proposes streetscape improvements that will better integrate the retail spaces with the adjacent public space, therefore enhancing the pedestrian experience. Specific improvements include new street trees and other plantings to create more defined, attractive

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pedestrian access. As part of the streetscape enhancement, the Applicant will underground the utility lines along Wisconsin Avenue in front of the Property.

h. Uses of Special Value

- i. Chesapeake House. The Applicant will renovate the Chesapeake House, a historic but vacant structure owned by the National Park Service (“NPS”) and located across the street from the Property, to a “warm, lit shell” condition. The renovated structure will then be used as a community-serving space and provide a historic, attractive addition to the neighborhood. To facilitate the proposed use, the Applicant has also and will continue to facilitate discussions with ANC 3E, NPS, and other stakeholders regarding the use of Chesapeake House following the completion of renovations.
- ii. Restaurant and Other Retail Commitments. In response to community feedback, the Applicant has committed to reserving a minimum of 3,500 square feet of retail space for a full-service restaurant. Additionally, the Applicant has committed to restricting certain retail and service uses from the Project even though these uses are permitted in the MU-7 Zone, unless ANC 3E specifically approves the proposed use.

(Ex. 2, 17, 30.)

Government Agency Reports

24. By report dated September 18, 2017 and by testimony at the public hearing, OP recommended approval of the application and concluded that the Applicant had addressed previous concerns raised by OP and the Commission, including traffic impacts, building height, affordable housing, sustainable design features, architectural design, and additional renderings. OP concluded that the proposed PUD and related rezoning was not inconsistent with the Comprehensive Plan as a whole, including the Future Land Use Map, the Generalized Policy Map, and the Citywide and Area Elements. OP evaluated the PUD and related rezoning under the evaluation standards set forth in Subtitle X, Chapter 3 of the Zoning Regulations and concluded that the Project's benefits and amenities were appropriate given the size and nature of the PUD and related requests for rezoning and flexibility. (Ex. 33.)

25. By report dated September 13, 2017 and by testimony at the public hearing, DDOT expressed no objection to the PUD. DDOT found that the Project would have minimal impact on the existing roadway network and concluded that the proposed amount of vehicle

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and bicycle parking was sufficient given the Project's location and other features. DDOT expressed support for the proposed closure of Brandywine Street, subject to further design revisions that would be coordinated during the public space permitting process. DDOT also noted that it would work with the Applicant on other streetscape design details through the public space permitting process. (Ex. 31.)

26. At a regularly-scheduled and duly-noted public meeting on September 19, 2017, with a quorum present, ANC 3E voted to support the proposed PUD and related rezoning, based on a comprehensive Memorandum of Understanding between the Applicant and ANC 3E regarding the proposed public benefits and project mitigation measures offered by the Applicant. ANC 3E specifically concluded that the proposed height, density, and rezoning were appropriate given the proposed transportation mitigation measures and "substantial suite of additional amenities." (Ex. 34, 35, 48 (ANC testimony in support).)

Compliance with the PUD Regulations and Contested Issues

27. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects." The Commission finds that the development incentives for height, density, flexibility, and related rezoning to the MU-7 Zone District are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines as set forth in the Applicant's statements and the OP report.
28. The Commission finds that the character, scale, mix of uses, and design of the Project are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high-quality developments that provide public benefits.

Sufficiency of the Amenities Package

29. The Commission credits the testimony of the Applicant and its architectural expert as well as OP, DDOT, ANC 3E, and the Proponents regarding the proposed benefits and amenities, and finds that the superior architectural design, site planning, housing and affordable housing, sustainable design, and uses of special value of the Project all constitute acceptable project amenities and public benefits.
30. The Opponents alleged generally that the proposed public benefits were insufficient. Contrary to the assertion of the Opponents, the proposed public benefits are meaningful

commitments that will satisfy District and neighborhood desires and priorities, as evidenced by the OP Report, ANC 3E Report, the letter from the Coalition for Smarter Growth regarding the dearth of affordable housing west of Rock Creek Park, the District Department of Transportation (“**DDOT**”) Report regarding the proposed closure of Brandywine Street, and the letter from NPS regarding the proposed improvements to the Chesapeake House. (Ex. 2H, 30, 31, 33, 34, 41.)

- a. The Opponents alleged that the proposed housing was not a significant public benefit because of the predominant unit types within the Project. The Opponents conceded that the proposed amount of housing exceeded the matter-of-right amount of housing that could be constructed, which by definition meets the test under the Zoning Regulations for housing to qualify as a benefit. Contrary to the Opponents’ assertion that the Project’s emphasis on studios and one-bedroom units was somehow less of a benefit than other unit types, the Zoning Regulations do not discredit or undervalue certain types of housing.
- b. The Opponents alleged that the architectural design of the Project did not constitute superior design. The Commission disagrees. For the reasons set forth elsewhere in this Order, the Commission finds that the Project utilized a number of well-recognized architectural design approaches to mitigate the apparent height and scale of the Project to fit within its context.
- c. The Opponents allege that the recognition of the proposed Chesapeake House benefit is unwarranted because of a lack of binding agreement or plan. To the contrary, the Commission credits not only the letter from NPS acknowledging the benefit but also the testimony of the Applicant as well as ANC 3E that substantial discussions have occurred regarding the proffer. Furthermore, the Applicant testified that it has already invested substantial time and resources in moving forward with the renovation through existing agreements with NPS, meaning that the proposed benefit is more than just “wishful thinking.” See Foggy Bottom Association v. D.C. Zoning Comm’n, 979 A.2d 1160, 1171-73 (2009) (concluding that proffered historic district, streetscape plans, and retail corridor were properly valued as amenities based on evidence of negotiations and discussions with affected agencies).
- d. The Opponents claimed that the proposed Brandywine Street closure should not count as a public benefit because it was proximate to and would enhance the value of another property owned by an affiliate of the Applicant. The Commission concludes that the proposed Brandywine Street closure, which was identified in a DDOT planning study, recommended by ANC 3E, and supported by the Proponents, constitutes substantial evidence that the closure is considered to be a public benefit.

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For similar reasons, the Commission concludes that the proffered restaurant use is a public benefit, since it was provided in response to a direct request by ANC 3E and is supported by the Proponents.

31. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities relating to exemplary design, site planning, housing and affordable housing, sustainable design, and uses of special value. The Commission credits the testimony of OP, ANC 3E, and the Proponents that the benefits and amenities are of substantial value to the community and the District commensurate with the additional density and height sought through the PUD.

Consistency with the Comprehensive Plan

32. The Commission credits the testimony of the Applicant, OP, ANC 3E, and the Proponents regarding the consistency of the Project with the Comprehensive Plan, and concludes that the PUD and related rezoning is not inconsistent with the Plan. The Opponents challenged the consistency of the proposed PUD and Zoning Map Amendment with the Future Land Use Map and certain goals and policies of Comprehensive Plan. The Applicant, OP, ANC 3E, and the Proponents provided testimony and evidence rebutting each allegation of inconsistency. Based on the substantial evidence in the record, the Commission concludes that the proposed PUD and Map Amendment is not inconsistent with the Comprehensive Plan, for the reasons described in detail below.
33. Broadly, the Commission finds that the proposed Map Amendment to the MU-7 Zone District is not inconsistent with the Comprehensive Plan or the character of the surrounding area. The proposed MU-7 zoning is consistent with the Property's transit-oriented location on the Wisconsin Avenue corridor proximate to the Tenleytown Metrorail Station. The rezoning will also facilitate the redevelopment of a strategic but underutilized commercial site with a pedestrian-oriented development with substantial amounts of housing. Finally, the rezoning is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public benefits and amenities against the requested zoning flexibility.
34. The proposed PUD and related rezoning to the MU-7 Zone District is not inconsistent with the Property's designation as Mixed-Use Medium Density Residential / Moderate Density Commercial land use category on the Future Land Use Map given the language in the Plan as well as the description of the MU-7 Zone in the Zoning Regulations. (Ex. 2, 30, 33.)

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- a. The C-3-A Zone District, which is the predecessor to the MU-7 Zone District, is expressly listed as a zone that is consistent with the Moderate-Density Commercial land use designation of the Property on the Future Land Use Map in the Plan's Framework Element. (10A DCMR § 225.9.)
- b. The MU-7 Zone is described in the Zoning Regulations as a zone intended for medium-density mixed-use development located on arterial streets, in uptown centers, and at rapid transit stops, and it is therefore entirely appropriate for the Property given its land use designation in the Plan. (11-G DCMR § 400.6.)
- c. The Mixed-Use designation of the Property indicates a desire to encourage the development of "substantial amounts of housing," which further supports rezoning to the MU-7 Zone District. (10A DCMR 225.18) So, too, do other elements of the Plan, including in particular provisions of the Rock Creek West Element that identify the Property as an opportunity area for new housing. (10A DCMR §§ 2312.4, 2314.5; RCW-1.1.4; RCW-1.1.6).

See Wisconsin-Newark Neighborhood Coalition v. D.C. Zoning Comm'n, 33 A.3d 382, 395-396 (2011) (concluding that rezoning was not inconsistent given language in the Plan and description of the proposed zone).

35. The proposed PUD and rezoning is not inconsistent with the Property's designation as a Main Street Mixed-Use Corridor on the Generalized Policy Map. Specifically, the Project will support transit use and enhance the pedestrian experience along Wisconsin Avenue, which furthers the goals for Main Street Mixed-Use Corridors. (Ex. 2, 30, 33.)
36. The proposed PUD and rezoning is not inconsistent with the Land Use Element of the Plan. The Land Use Element calls for denser development on commercially-zoned properties along transit-oriented corridors and near Metrorail stations. The Land Use Element notes that height, mass, and scale of development should be appropriate and compatible with surrounding areas and not unreasonably impact surrounding residential areas. The Project is also consistent with many of the Plan's major elements, including the Housing, Transportation, Urban Design, and Economic Development element. It will deliver housing and affordable housing as well as improved neighborhood-serving retail within an enhanced pedestrian-focused environment. (Ex. 2, 30, 33.)
37. The Project will not conflict with the policies of the Rock Creek West Area Element. The PUD will promote provisions of the RCW Element that call for infill development of underutilized commercially zoned sites along Wisconsin Avenue. The Project has also been sensitively designed to incorporate setbacks, materials, and architectural design features that

transition from the Wisconsin Avenue corridor to the nearby residential neighborhoods. (Ex. 2, 30, 33.)

38. The Opponents alleged that the proposed 8-story Project was inconsistent with the designation of the Property for Mixed-Use Medium Density Residential / Moderate Density Commercial use on the Future Land Use Map, based on language in the Framework Element of the Comprehensive Plan that describes the Medium Density Residential category as primarily 4-7 stories and describes the Moderate Density Commercial category as up to 5 stories. The Opponents also alleged that the proposed height and density of the Project is inappropriate and inconsistent with the nearby low-density residential neighborhoods.
- a. The Framework Element of the Plan describes the Medium Density Residential category as primarily four- to seven-story buildings and describes the Moderate Density Commercial category as up to five story buildings. However, the Framework Element also lays out “interpretation guidelines” for the Future Land Use Map that convey that the typical building heights and densities discussed above describe the “general character” of the area and state that the “granting of density bonuses [through PUDs] may result in heights that exceed the typical ranges cited” in those descriptions. Therefore, these descriptions are general parameters for the overall area and do not require that each building, or even each block, rigidly adhere to their limitations. Rather, heights and densities beyond the ranges may be appropriate when secured through the PUD process. See Wisconsin-Newark at 395-96 (concluding that the Plan does not require each block to “strictly correspond with the general description” and concluding that property is “appropriate for denser development because it was along the Wisconsin Avenue corridor”).
 - b. Here, the proposed eight-story Project will exceed the cited range by just one story, which is appropriate given the use of the PUD process. Moreover, as in Wisconsin-Newark, the remainder of the Mixed-Use Medium Density Residential / Moderate Density Commercial area will continue to be primarily commercial buildings below five stories in height and mixed-use residential buildings below seven stories in height and therefore consistent with the overall description of the Mixed-Use Medium Density Residential / Moderate Design Commercial category.
 - c. Through elevations and contextual drawings, the Applicant also demonstrated that, given changes in topography within the area, the proposed height of the Project was comparable in absolute height to other nearby buildings. (Exhibit 30A, page A10.) Similarly, the Applicant demonstrated that the height of the Project was mitigated by its relative scale and distance from the nearby residential neighborhoods. (Exhibit 30A, pages A38-A40.)

- d. For similar reasons, the Commission also concludes that the Project is not inconsistent with the provision in the Rock Creek West Element (10A DCMR § 2312.6) that calls for an “emphasis” on low to mid-rise buildings rather than high-rise towers.
 - e. This application is distinct from Durant v. D.C. Zoning Comm’n, 139 A.3d 880 (2016) (“**Durant III**”). In Durant III, the Court concluded that a proposed rezoning was inconsistent with the Property’s land use designation on the Future Land Use Map. However, in that case the proposed zone, height, and density was not specifically listed as one consistent with the applicable land use designations; rather, the Commission had relied heavily on the suggestion that certain zoning “may also apply.” Id. at 884. Here, the Project is within the height and density parameters for a PUD in the MU-7 zone, and that zone is specifically listed as consistent with the Moderate Density Commercial land use category.
39. The Opponents alleged that the proposed Map Amendment to the MU-7 Zone was inconsistent with the Comprehensive Plan, based on the Commission’s 1988 order (Z.C. Order No. 530), which downzoned the Property from the C-3-A Zone to the C-2-A Zone after finding that the C-3-A Zone (now the MU-7 Zone) was inconsistent with the Comprehensive Plan. The Commission does not agree. The 1989 downzoning was based on the provisions of the Comprehensive Plan that were in effect at that time. The Comprehensive Plan has since been amended and supplemented many times, culminating in the adoption of a new Comprehensive Plan in 2006. The changes to and language within the 2006 Comprehensive Plan individually and collectively provide ample basis to conclude that the proposed Map Amendment is appropriate. See Wisconsin-Newark at 394-395 (concluding similarly that the 2006 Comprehensive Plan provided “sound reason” for the Commission to change its position from the earlier 1989 downzoning along Wisconsin Avenue).
40. The Opponents alleged that the proposed Project was inconsistent with provisions of the Rock Creek West Element that call for the conservation of and transition to low density neighborhoods. (10A DCMR §§ 2308.2, 2312.6, and 2312.12; RCW-2.2.5.) To the contrary, the Commission concludes that the Project respects and furthers these provisions of the RCW Element, including the provisions cited by the Opponents.
- a. Policy RCW-2.2.5 envisions a number of means to ensure compatibility between the Wisconsin Avenue commercial corridor and the nearby residential neighborhood, including architectural design, stepping down of building heights, landscaping, and other improvements. As the Applicant’s architectural expert testified at the hearing,

- the Project uses a combination of architectural design elements (such as a simple, compatible design, articulation through windows, and a lack of exterior features such as balconies) combined with setbacks and stepdowns to achieve the goals of this Policy for architectural sensitivity. Accordingly, the Project is appropriately scaled given its separation from nearby residential structures due to the public alley and lot depths of the residences themselves.
- b. The Project also specifically furthers many provisions and policies of the RCW Element that call for the adaptive reuse and redevelopment of underutilized commercially-zoned sites along this stretch of Wisconsin Avenue with new retail and housing. (10A DCMR §§ 2312.4, 2312.5, 2312.6; RCW-1.1.4; RCW-1.1.6; Action RCW-2.2C.) The Project will also further other goals of these policies, such as upgraded streetscape, improved walkability, and reduced traffic and parking impacts. Many of these provisions also call for scale, height, buffering, and transition to the adjacent neighborhoods. For the reasons articulated above, the Project achieves these goals, both in themselves and on balance with the other provisions of the Plan, including the RCW Element, that specifically advocate for the development of the Property as proposed by the Applicant.
41. Finally, the proposed housing provided by the Project does further the goals and policies of the Plan regarding housing, and it is not inconsistent with H-1.3.1, which promotes housing for families as a goal of the Plan. Both the Applicant and Proponents testified that the surrounding neighborhoods around the Project have an abundance of family-style housing, but lack rental apartment housing for smaller households. The Project will deliver a housing type that is currently undersupplied in the neighborhood and therefore meets the overall goal of Section H-1.3 of the Plan, which is to ensure a diversity of housing type that meets the “wide spectrum” of housing needs. (10A DCMR § 505.3.)

Project Impacts

42. The Commission credits testimony from OP, DDOT, ANC 3E, and the Proponents that the impact of the PUD on the surrounding neighborhood, infrastructure, and levels of service will not be unacceptable.
43. The Commission credits the testimony of the Applicant's traffic consultant and DDOT and finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of public benefits of the PUD.

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- a. The Project is located proximate to the Tenleytown Metrorail Station as well as multiple bus lines that serve the Wisconsin Avenue corridor, a well-connected urban network of pedestrian sidewalks and paths, and a connected network of arterial, collector, and local streets. (Ex. 2, 17B, 28A.)
 - b. The Applicant's traffic expert submitted a detailed comprehensive transportation review ("CTR") that concluded that the proposed Project, including the proposed closure of Brandywine Street, would not generate an adverse traffic impact on the surrounding roadway network or cause objectionable impacts to the surrounding neighborhood due to traffic or parking impacts. The Applicant's traffic expert also concluded that the number of parking and loading spaces, as well as the location of parking and loading access from the public alley, would accommodate the needs of the Project and not generate adverse or objectionable impacts on neighborhood property. (Ex. 17B, 28A.)
 - c. DDOT submitted a report recommending approval of the Project. DDOT concurred with the scope, methodology, and findings of the Applicant's CTR and agreed that the Project would have minimal impact on the surrounding roadway network. DDOT supported the Project's proposed vehicle parking, bicycle parking, and loading, as well as the Applicant's proposed transportation demand management ("TDM") and loading management plan ("LMP") measures. (Ex. 31.)
44. The Opponents alleged that the use of the public alley for parking and loading access was inappropriate. DDOT and the Applicant's traffic expert both testified that public alleys are intended to be used for vehicular access; District policy mandates the use of public alleys for parking and loading access when available, and DDOT and the Applicant demonstrated that the Project's parking and loading access was otherwise appropriate.
45. The Opponents alleged that the Project would burden area parking and in particular residents who use the residential permit parking ("RPP") program. The Applicant's traffic expert and DDOT both testified that the amount of parking within the Project exceeded the minimum requirements and was otherwise appropriate given the Property's transit-oriented location. The Property is excluded from the RPP program because it is located on a block that is commercially-zoned and specifically listed as not eligible for RPP.¹ Furthermore, since the Property is a mid-block lot, it is unable to claim an address or frontage on a side street that could be eligible for RPP. Finally, at the request of ANC 3E, the Applicant agreed to restrict residents of the Project from participating in the residential permit parking ("RPP") program and enforce this prohibition through a lease provision or similar mechanism.

¹ This distinguishes the Property from the other examples cited by the Opponents. (See Ex. 51.)

46. The Opponents alleged that the Project's LMP would be insufficient to address adverse impacts from truck traffic. The Applicant's traffic expert demonstrated, however, that the LMP would actually improve and enhance existing protections for the surrounding residential neighborhoods. While truck traffic is only prohibited on some surrounding residential streets, the Applicant would direct service and delivery traffic to avoid all residential streets and instead enter and exit the block via Wisconsin Avenue. The Applicant's proposed dock manager would also be responsible for enforcing compliance with the LMP, including designated truck routes.
47. The Opponents alleged that the proposed streetscape improvements on Wisconsin Avenue in front of the Project could impede accessibility to the Project. To the contrary, the Applicant's architectural expert demonstrated that the streetscape improvements would ensure and improve accessibility to both the residential and retail entrances.
48. The Opponents alleged that the Applicant's proposed implementation of the Brandywine Street closure would cause adverse and unsafe conditions. On rebuttal, the Applicant's traffic expert demonstrated that, to the contrary, the existing street creates unsafe conditions and the proposed changes would improve pedestrian and vehicular safety.
49. Based on the foregoing, the Commission concludes that the Project will not cause unacceptable impacts on vehicular or pedestrian traffic, as demonstrated by the testimony and reports provided by the Applicant's traffic expert and DDOT. The traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD.
50. The Opponents alleged that the Project would generate shadows and otherwise "loom" over the surrounding residential neighborhood. The Applicant's architectural expert submitted shadow studies that demonstrated the proposed Project would cast minimal additional shadow compared to a matter of right project and, further, the shadow impact would be limited to the immediate block on the west and street and open space on the east. (Exhibit 30A, pages A27-A28.) None of the individuals impacted by this shadow spoke in opposition to the Project and in fact one such resident submitted a letter in support. Similarly, the Applicant's architectural expert submitted view studies that demonstrated the Project would not visually intrude into the surrounding neighborhood and would in fact appear no taller than other nearby buildings along Wisconsin Avenue. (Exhibit 30A, pages A10, A38-A40.)
51. Based on the foregoing evidence, the Commission concludes that the Project will not impose unacceptable adverse shadow or visual impacts on the surrounding neighborhood.

Other Alleged Errors and Inconsistencies

52. The Opponents raised allegations of error regarding the compliance of the Project with the inclusionary zoning requirements. The Applicant's initial commitment exceeded the minimum inclusionary zoning requirement in effect at the time of the application.² After the inclusionary zoning requirements changed, the Applicant revised its proffer to align with and exceed the new minimum requirements, with a commitment to set aside 10% of the residential gross floor area, or 11,753 square feet of gross floor area, which clearly exceeds the minimum requirement of 9,496 square feet.³ The Applicant's commitment is clearly stated, and the proffered 11,753 square feet as shown on the Plans corresponds to this commitment. (Ex. 30A, pages A25-A26.) Moreover, the Applicant conveyed that the proffer would result in 15 affordable housing units, which similarly represents 10% of the 146 units in the Project.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the purpose of the PUD process is "to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) Results in a project superior to what would result from the matter-of-right standards; (b) Offers a commendable number or quality of meaningful public benefits; and (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan." 11-X DCMR § 300.1. The PUD process is intended to "provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan." 11-X DCMR § 300.2.
2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. 11-X DCMR § 302.1. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking loading, yards, and courts. 11-X DCMR §§ 300.6, 303.1, 303.11.

² The Applicant's initial proffer was 8% of the residential gross floor area, with 50% of the units at 80% MFI and 50% of the units at 50%, which represented a lower MFI than otherwise required. The number stated in the initial application represented the net, rather than gross, area of affordable housing, but the Applicant's initial submission clearly demonstrates consistency with the 8% requirement. (Ex. 2, page 14.)

³ Contrary to the assertion of the Opponents, the Applicant did correctly state the requirement in its Supplemental Submission. (Ex. 30, page 2.)

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3. The Commission concludes (i) the application satisfies the PUD application requirements and (ii) the Applicant, Office of Zoning, OP, and the Commission have satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations.
4. The minimum area included within a proposed PUD must be no less than 15,000 square feet and all such area must be contiguous. 11-X DCMR § 301. The Application satisfies these minimum area and contiguity requirements.
5. The development of the Project will implement the purposes of Subtitle X, Chapter 3 of the Zoning Regulations to encourage higher quality development through flexibility in building controls, including height and density, for superior projects that exceed matter-of-right standards. Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate, and the proposed construction results in an attractive mixed-use building that capitalizes on the Property's transit-oriented location and exceeds the quality of what would be developed as a matter-of right.
6. The Applicant seeks a PUD-related zoning map amendment to the MU-7 Zone District, height and density bonuses permitted for the MU-7 Zone District under a PUD, and flexibility from the rear yard, lot occupancy, and penthouse height requirements, which is permitted under the Zoning Regulations. 11-X DCMR §§ 300.4, 303.1. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested (including the proposed map amendment), and any potential adverse effects, and concludes the approval of the PUD is warranted for the reasons detailed below.
7. The PUD is within the applicable height and bulk standards of the Zoning Regulations. The proposed height, density, and other PUD-related flexibility will not cause an adverse effect on nearby properties, is consistent with the height and bulk of surrounding and nearby properties, and will create a more appropriate and efficient utilization of land at a significant transit-oriented location. The mix of residential and retail uses are also appropriate for the site's location.
8. The impact of the Project on the surrounding area and the operation of city services is not unacceptable. The Commission concludes that the Project will not create adverse traffic, parking, or pedestrian impacts on the surrounding community. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area for the Project will be mitigated.

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9. The project provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property. The Project also offers a commendable number and quality of public benefits, including the urban design and architecture, open spaces, site planning, housing, affordable housing, environmental benefits, streetscape plans, and uses of special value, which are all significant public benefits. The impact of the Project is acceptable given the quality of the public benefits of the Project, and the proposed public benefits are not inconsistent with the Comprehensive Plan.
10. Approval of the PUD and rezoning is not inconsistent with the Comprehensive Plan. The Commission finds that the proposed Project, including its proposed height and density, is consistent with the Property's Mixed-Use Medium Density Residential / Moderate Density Commercial designation on the Future Land Use Map and furthers numerous goals and policies in the Land Use, Housing, Economic Development, and other citywide elements and policies as well as policies in the Rock Creek West Area Element.
11. The Commission concludes that the proposed PUD-related Zoning Map amendment for the Property from the MU-4 to the MU-7 Zone District is not inconsistent with the Comprehensive Plan, including the Property's designation as Mixed-Use Medium Density Residential / Moderate Density Commercial on the Future Land Use Map, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
12. The PUD and rezoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
13. The Commission is also required to give great weight to the recommendations of OP. D.C. Code § 6-623.04; 11-Z DCMR § 405.8. The Commission has reviewed the OP reports and heard testimony from OP. The Commission gives OP's recommendation to approve the Application great weight, and concurs with OP's conclusions.
14. The Commission is required to give "great weight" to the issues and concerns of the affected ANC. D.C. Code § 1-309.10(d)(3)(A). The Commission has considered the written and oral testimony from ANC 3E and in so doing fully credited the unique vantage point that ANC 3E holds with respect to the impact of the proposed application on the ANC's constituents. The Commission concludes that the Applicant extensively engaged in dialogue with ANC 3E and thoroughly addressed the issues and concerns of ANC 3E. The Commission affords great weight to ANC 3E's recommendation for approval of the Application, and concurs with ANC 3E's recommendation.

15. The Application is subject to compliance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq..

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated approval of a PUD and related rezoning from the MU-4 Zone District to the MU-7 Zone District for property consisting of Lots 45 and 49 in Square 1732 (“Property”). This approval is subject to the following guidelines, conditions, and standards of this Order.

A. Project Development

1. This project shall be developed in accordance with the plans marked as Exhibit 30A and Exhibit 52A of the Record, as modified by the guidelines, conditions, and standards herein (collectively, “**Plans**”).
2. The Property shall be rezoned from MU-4 to MU-7. Pursuant to 11-X DCMR §311.4, the change in zoning shall be effective upon the recordation of the covenant discussed in Condition No. D.1.
3. The Project shall include a mixed-use building containing approximately 146 residential units; approximately 10,984 square of use devoted to one or more of the following uses: retail; general service; eating and drinking establishments; or entertainment, assembling, and performing arts (“**Ground-Floor Uses**”); and approximately 58 parking spaces, as shown on the Plans, provided:
 - a. Any kitchen exhaust venting for the Ground-Floor Uses shall be run to the roof of the Project; and
 - b. The following uses shall not be permitted unless approved by ANC 3E through a formal resolution, after a finding by ANC 3E that such use would provide a substantial value to the community: a sexually-oriented business establishment, a check-cashing establishment, a pawnbroker, a bank, a nightclub, a mattress store, a convenience store such as a 7-Eleven, a professional office, a drug store such as CVS, and any “chain” retail, service, or eating and drinking establishment (a “chain” being defined as a business with either at least 10 stores within the District of Columbia or at least 50 stores nationwide).

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4. The Applicant shall be permitted to construct the Project to a maximum height of 88'4" and a maximum density of 5.73 FAR and shall have flexibility from the rear yard, lot occupancy, and penthouse uniform height requirements of the Zoning Regulations, as shown on the approved Plans.
5. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the building;
 - b. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Plans;
 - c. To make minor refinements to exterior details and dimensions, including without limitation to sills, bases, mullions, coping, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems that otherwise do not significantly alter the exterior design as shown on the Plans;
 - d. To vary the final number of residential units plus or minus 5%, and accordingly adjust the number and location of affordable units to reflect the final unit mix of the Project, provided that the distribution of affordable units by floor will remain consistent with the Plans;
 - e. To vary the final streetscape design and materials in the public right-of-way, in response to direction received from District public space permitting authorities;
 - f. To vary the final landscaping materials of the Project based on availability and suitability at the time of construction or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, Department of Energy and Environment, Department of Consumer and Regulatory Affairs, or other applicable regulatory bodies;
 - g. To vary the final design of the ground-floor retail space frontage as shown on the Plans, including the number, size, design, and location of retail windows and entrances, signage, awnings, canopies, and similar features, to accommodate the needs of the

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specific retail tenants and storefront design within the parameters set forth in the Storefront and Signage Guidelines; and

- h. To vary the design of the north façade as shown on the Plans in the event that a structure is built adjacent to the Property that requires windows to be blocked.

B. Public Benefits

1. Sustainable Design.

- a. Prior to the issuance of a certificate of occupancy for the Project, the Applicant shall provide the Zoning Administrator with evidence that the Project is on track to secure Gold certification or higher from the U.S. Green Building Council under the LEED-2009 rating system. Within 12 months after the issuance of the certificate of occupancy for the Project, the Applicant shall submit evidence that it has secured such Gold certification.
- b. For the life of the Project, the Applicant shall provide solar panels as shown on the Plans.
- c. For the life of the Project, the Applicant shall provide a minimum of 5 electric car charging stations within the garage as shown on the Plans.

2. Affordable Housing. For the life of the Project, the Applicant shall set aside a minimum of 10% of the residential gross floor area of the Project (approximately 11,753 square feet of gross floor area) for households earning up to 60% of the Median Family Income.

3. Chesapeake House.

- a. Prior to the issuance of a certificate of occupancy of the Project, the Applicant shall demonstrate that it has renovated the Chesapeake House to a “warm, lit shell” condition for use as a community-serving space for residents of ANC 3E (“**Work**”)
- b. To confirm that ANC 3E’s proposed community-serving use will be permitted, Applicant will take all reasonable steps to facilitate a collaborative process among ANC 3E, the National Park Service, and other stakeholders, to be led by ANC 3E, with the goal of reaching agreement on a use of the House prior to the commencement of the Work.
- c. If the House has not been opened for a community-serving space for the residents of ANC 3E before a certificate of occupancy is issued for the Project, the Applicant shall consult with ANC 3E regarding a substitute amenity, and shall seek

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- modification of the PUD to substitute said amenity, which shall be of equivalent or better value to the community.
4. Restaurant Use. For the life of the Project, the Applicant shall set aside a minimum of 3,500 square feet on the ground floor of the Project for a restaurant, as that term is defined in the Zoning Regulations.
 5. Streetscape Improvements.
 - a. Prior to the issuance of a certificate of occupancy for the Project, the Applicant shall demonstrate that it has constructed the streetscape improvements along the perimeter of the Project as shown on pages L1 to L3 of the Plans. The final design of such improvements shall be subject to the approval of the appropriate District public space permitting authorities.
 - b. Prior to the issuance of a certificate of occupancy for the Project, the Applicant shall demonstrate that it has undergrounded or caused to be undergrounded the existing above-ground utility lines along Wisconsin Avenue in front of the Property. Undergrounding means the construction of underground vaults; installation of the utility lines presently located above ground on existing utility poles and other appurtenant equipment in those vaults; reconnection of said lines to the Project; and removal of all utility poles, in cooperation with PEPCO and other utility providers using the poles, such as Comcast or RCN.
 - i. The Applicant shall also demonstrate that it has made all reasonable efforts to obtain permission from the owners of the remaining three lots on the block extending north to Chesapeake Street to permit the Applicant to underground the utility lines in front of those lots, and has undergrounded said lines if such permission has been received. As part of such efforts, the Applicant shall share with ANC 3E all communications it has had with representatives of the owners of the remaining three lots.
 - ii. If the owner of the property immediately adjacent to the Project permits such undergrounding, the Applicant shall underground such utility lines regardless of whether the owner of the next adjacent property has permitted such undergrounding.
 6. Brandywine Street and Park.
 - a. Prior to the issuance of a certificate of occupancy of the Project, the Applicant shall demonstrate that it has: (i) closed the segment of Brandywine Street NW between 42nd Street and River Road; (ii) sought approval to turn the new three-way "T"

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- intersection of 42nd Street and Brandywine Street into an all-stop intersection, and constructed and installed signage and striping as required; and (iii) designed and constructed a new park on the closed street segment and adjacent triangular park.
- b. The design and use of the park shall be developed based on input from ANC 3E, but the design and construction of the park and related streetscape improvements shall be subject to review and approval by the appropriate District public space permitting authorities. As a part of the improvements, the Applicant shall design and construct modifications to safely and effectively route pedestrians, bicyclists, and vehicles around and through the new park (such as modifications to crosswalks and curb extensions) as directed by District public space permitting authorities.
 - c. The Applicant shall maintain the park or fund such maintenance for the life of the Project.
 - d. If the Applicant cannot complete the improvements described above prior to the issuance of a certificate of occupancy for the Project, the Applicant shall consult with ANC 3E regarding a substitute amenity, and shall seek modification of the PUD to substitute said amenity, which shall be equivalent or better value to the community.

C. Mitigation Measures

1. RPP Restrictions. For the life of the Project, the Applicant shall prohibit residents of the Project from participating in the District's Residential Permit Parking ("**RPP**") program through a clause in emphasized type in all leases for residents that prohibits residents from applying for obtaining RPPs, or using an RPP guest pass within one mile of the Property, upon pain of mandatory lease termination, to the full extent permitted by law. Furthermore, Applicant shall oppose any effort by residents of the Project or others to add the Property to the list of properties eligible for RPP. Finally, should the Applicant sell any units in the Property, the Applicant will incorporate a covenant that runs with the land into the deed for the units that prohibits residents from applying for or obtaining RPP.
2. Transportation Demand Management Measures. For the life of the Project, the Applicant shall provide the following transportation demand management ("**TDM**") measures:
 - a. Designate a member of the property management team as the Transportation Management Coordinator, who shall be responsible for ensuring that transportation information is disseminated to the tenants of the Project;
 - b. Include information on transportation programs and services on the property management website;

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- c. Include a real-time electronic transportation information display in a common, shared space in the Project; and
 - d. Provide at least 60 convenient and covered bicycle parking spaces within the Project as shown on the Plans.
3. Loading Management Measures. For the life of the Project, the Applicant shall designate a loading dock manager to:
 - a. Coordinate with vendors and tenants in order to make sure that deliveries occur from 9:00 AM to 5:00 PM;
 - b. Ensure that all deliveries take place at the loading dock and that the dock's capacity is not exceeded;
 - c. Redirect drivers to return at a later time if the dock is full;
 - d. Monitor inbound and outbound maneuvers;
 - e. Notify truck drivers of any access or egress restrictions;
 - f. Provide DDOT's Freight Management and Commercial Vehicle Operation document to drivers; and
 - g. Direct all truck drivers to utilize the Truck Routing Plan shown on Exhibit 30C of the Record.
4. Limitations on Adjacent Development. For the life of the Project, to the extent that the Applicant or its affiliates acquire the rights to and redevelop any or all of the adjacent properties at 4626, 4632, and 4652-54 Wisconsin Avenue NW, the Applicant shall limit the height of any development to no more than six stories plus a penthouse level. Should the Applicant or its affiliates undertake such redevelopment, Applicant shall underground the utilities along the remainder of the 4600 block of Wisconsin Avenue, to Chesapeake Street, in connection with such redevelopment.

D. Miscellaneous

1. No building permit shall be issued for this project until the owner of the Property has recorded a covenant among the land records of the District of Columbia between the owner and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the owner of the Property and all successors in title to construct

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on or use the Property in accordance with this Order and any amendment thereof by the Commission.

2. The application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for the building permit as specified in 11-Z DCMR §702.2. Construction must begin within three years after the effective date of this Order for the PUD to remain valid.
3. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.
4. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01, et seq. ("Act") and this Order is conditioned on full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.