

**LEGAL ANALYSIS:  
INCONSISTENCIES OF THE PUD PROPOSAL WITH THE COMPREHENSIVE PLAN**

**Executive Summary**

The proposed PUD is inconsistent with the Future Land Use Map (FLUM), which designates the site as “institutional.” Since the project is not institutional, it would need a land use change from the FLUM, which “in all cases” require formal public hearings before the City Council. No such hearing has been held or requested. This alone is sufficient to require denial of the PUD application. In addition, the site is in an area designated on the FLUM as moderate density residential, but the project is medium density and mixed use, both of which are inconsistent with the site’s FLUM designation and would require a land use change.

The Generalized Policy Map (GPM) designates the site as both institutional and within a Neighborhood Conservation Area, where “maintenance of existing land uses and community character is anticipated over the next 20 years.” The proposed PUD is thus inconsistent with the GPM, as it would change both the land use and the community’s character. The GPM states that any infill should be small in scale, while the proposal is far out of scale to adjacent properties.

The PUD proposal is inconsistent with the Framework Element of the Comprehensive Plan, which cites protecting the residential character of existing neighborhoods a guiding principle. In addition, the proposed mixed use development would be in an area that does not meet any of the three circumstances described in the Framework Element as applying to mixed use.

The proposal would contravene fundamental aspects of the Land Use Element, which must be given greater weight than other elements. The Land Use Element has multiple provisions on the need to promote neighborhood conservation and especially to protect row house neighborhoods. The Land Use Element also has mandatory language requiring new development adjacent to the Central Employment Area (as the site is) to be consistent with the existing pattern and to protect the integrity and historic scale of adjacent neighborhoods; the proposed PUD does neither. The Land Use Element seeks to reduce the number of nonconforming uses in residential neighborhoods, but the PUD would introduce a new nonconforming use.

The PUD proposal is inconsistent with the Area Elements of the Comprehensive Plan for Lower Anacostia/Near SW, which emphasize the conservation of established waterfront neighborhoods, including mandatory language that the scale and integrity of existing neighborhoods must be respected. The proposal is also inconsistent with the Southwest Small Area Plan, which states explicitly that the land use designation of the site would have to be changed for the project, and explicitly does not recommend a change in view of broad community opposition.

The PUD application makes numerous untrue statements and misrepresentations.

Overall, the proposed PUD’s inconsistencies with the FLUM, the GPM, and other elements of the Comprehensive Plan, including with several mandatory provisions, are so extensive that there is no reasonable option but to deny the application. **End Summary**

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According to the Comprehensive Plan, “the zoning of any given area should be guided by the Future Land Use Map (FLUM), interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans” (10A DCMR § 226.1(k)). The proposed PUD is inconsistent with all of these portions of the Comprehensive Plan in respect to both use and density, as well as in many other ways, including a number of mandatory provisions of the Plan.

**I. The PUD cannot be approved before the City Council has held a public hearing on the request for a land use change**

1. The PUD proposal would require a land use designation change from the FLUM and the Generalized Policy Map (GPM), both of which currently designate the property as “institutional.” The Southwest Small Area Plan states explicitly that “the land use designation would need to be changed” for this site to accommodate a mixed use building consisting primarily of apartments (page 97). The Comprehensive Plan requires that for land use changes, “in all cases, such changes require formal public hearings before the DC Council, and ample opportunities for formal public input” (10A DCMR § 226.1(k), emphasis added,). There have been no public hearings before the DC Council and none are planned. On this basis alone, the PUD proposal must be denied. The Zoning Commission does not have the discretion or the authority to approve a PUD that changes the land use designations in the FLUM.
2. The developers acknowledge the need for a land use change since they proposed an amendment to the Comprehensive Plan seeking a change, from the current institutional category to “mixed-use moderate density residential/low density commercial” (see: “Proposed Amendments to the Generalized Policy Map and Future Land Use Map During Open Call, DC Office of Planning document, tracking number 2101). If they believed it was not necessary to change the Comprehensive Plan to allow their development to go forward, there would have been no reason to propose such an amendment.
3. Exhibit 32 provides a more detailed legal analysis of the requirement for a City Council meeting before a land use change from the “institutional” category.

**II. The PUD proposal is inconsistent with the Future Land Use Map**

1. As set out above and in Exhibit 32, the PUD proposal cannot move forward without a land use change since the FLUM designates the site as institutional and the proposed development does not meet the Comprehensive Plan’s definition of institutional. The Comprehensive Plan states that “This designation [institutional] includes land and facilities occupied and used by colleges and universities, large private schools, hospitals, religious organizations, and similar institutions. Smaller institutional uses such as

churches are generally not mapped, unless they are located on sites that are several acres in size” (10A DCMR § 225.16). The PUD proposal for a building consisting primarily of condominiums and other residences (about 77% of the overall square footage, with all of one building and four of five floors of the other building devoted to residences) – does not meet the Plan’s definition of “institutional.” In addition, the Zoning Handbook explicitly states that the institutional “category does not include uses which more typically would fall within...performing arts” (<http://handbook.dcoz.dc.gov/use-categories/institutional-general/>).

2. On June 30, 2016, the Office of Planning, in its “Preliminary Report – ZC 16-04 – Consolidated PUD and Related Map Amendment at 501 I Street, S.W., Square 498, Lot 52” (Exhibit 12 of Case 16-04), concluded unequivocally that “The proposed PUD is inconsistent with the Comprehensive Plan, with respect to both use and density” (paragraph 1 of the report, emphasis added). In the current PUD, the density of the project has changed, but the proposed uses remain identical to the proposed uses in the previous version. It stands to reason, therefore, that the planned uses are still inconsistent with the Comprehensive Plan. It is incomprehensible, therefore, why the Office of Planning did not reach the same conclusion in its “Preliminary Report on Zoning Commission Case No. 17-21” of January 19, 2018 (Exhibit 15). Instead, that report resorts to circumlocution and strained reasoning to suggest, but never actually to conclude in so many words, that the uses in the proposed PUD are somehow not inconsistent with the FLUM’s institutional designation of the site. By definition, an apartment building, combined with offices and performing arts uses – as described in the PUD – are not institutional uses. The PUD proposal to use the site for these purposes is therefore clearly inconsistent with the FLUM.
3. The FLUM explicitly designates the specific areas of the city where mixed land use is encouraged, by setting them out in striped patterns (10A DCMR § 225.18). The PUD site is not in an area where the FLUM encourages mixed use. This is yet another way in which the PUD proposal is inconsistent with the FLUM.
4. The PUD site is in an area designated on the FLUM as “moderate density residential.” Under the FLUM categories, this term “is used to define the District’s row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings. In some of the older inner city neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all)” (10A DCMR § 225.4). In contrast, the FLUM categories define 4-7 story buildings such as the two in the PUD proposal as “medium density residential,” a separate category (10A DCMR § 225.5). Since the buildings proposed in the PUD do not meet the legal definition in the FLUM of moderate density residential, their construction in an area designated in the FLUM as moderate density residential would be contrary to the FLUM. The PUD documents erroneously refer to the proposed construction as moderate density

(Exhibit 2, pages 8, 16), while in fact they fall into the law's definition of medium density.

5. The FLUM designates the land to the north, south, east, and west of the site as appropriate for moderate-density residential uses and local public facilities. Only on the southwest corner of 6th and I Streets, kitty-corner from the site, does the FLUM show a different – but still residential – use as appropriate. The PUD would introduce commercial uses, including offices and other activities, into an area designated on the FLUM as residential. This proposed land use change, like the change in institutional designation, would require a formal hearing before the DC Council.
6. The PUD proposal states that “The Project generally represents a Mixed Use Moderate Density Residential/Low Density Commercial land use for the Property, which is consistent with surrounding uses and the guidance in the Small Area Plan” (Exhibit 2, p. 22). This statement is a misrepresentation not only of “moderate density residential” as defined by the FLUM, but also of “low density commercial” and of the SW Small Area Plan. The FLUM categories define “low density commercial” as buildings whose “common feature is that they are comprised primarily of one- to three-story commercial buildings” (10A DCMR § 225.8). Both of the buildings proposed by the PUD are five stories high, and therefore do not meet the law's definition of “low density commercial.” Contrary to the applicant's assertion, moreover, there are no surrounding uses that are commercial; the site is entirely surrounded by residential zones. In addition, contrary to the PUD submission's claim, there is nothing in the Small Area Plan that suggests low density commercial would be an appropriate designation for the site. To the contrary, the Small Area Plan explicitly did not recommend a land use change for the site (Small Area Plan, p. 97).
7. The requested MU-4 zone is a mixed-use zone intended to be applied throughout the city consistent with the density designation of the Comprehensive Plan (11-G DCMR §400.1, emphasis added). Since the site is designated in the FLUM as moderate density residential and the PUD proposal is for a medium density development (4-7 floors), the PUD proposal is inconsistent with the FLUM.
8. The Comprehensive Plan states that the FLUM “does not show density or intensity on institutional and local public sites. If a change in use occurs on these sites in the future (for example, a school becomes surplus or is redeveloped), the new designations should be comparable in density or intensity to those in the vicinity, unless otherwise stated in the Comprehensive Plan Area Elements or an approved Campus Plan” (10A DCMR § 226.1(h)). The PUD proposal is not comparable in density or intensity to those in the immediate vicinity. In the first instance, the site is neighbored on two sides by open space – a city park and an elementary school playground. In addition, the proposed development would be five stories tall throughout, 40% more than the neighboring 3-story apartments and row houses, and 60% higher than the school. The proposed development would top out at 62 feet, more than 50% higher than the 40 feet maximum under the current designation. The PUD proposal requests relief from the required 15 foot

rear yard, and the required 8 foot setback so its buildings can be built directly on the property lines or closer to them than required, in sharp contrast to all surrounding properties. It would occupy a far greater proportion of its lot than the neighboring structures, 79% at ground level and 100% underground. It would provide no green space and no setbacks. While there is a taller, R-5-D zoned apartment building on the southwest corner across from the proposed development, that building is consistent with the FLUM designation for its site; it is part of a complex including extensive open space and green space; and it was erected before the current zoning regulations came into force. All of the existing buildings surrounding the PUD-proposed development site are consistent with their FLUM designations, while the PUD proposal would not be.

### **III. The PUD proposal is inconsistent with the Generalized Policy Map**

1. The GPM should be the basis for land use decisions in conjunction with the FLUM and the Comprehensive Plan (10A DCMR § 223.2). The site of the PUD proposal is designated on the GPM as “institutional.” Therefore, for all the reasons cited above in connection with the FLUM, the PUD proposal is also inconsistent with the GPM.
2. In addition, the site is designated on the GPM as part of a Neighborhood Conservation Area. The Comprehensive Plan states that Neighborhood Conservation Areas “are primarily residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years” (10A DCMR § 223.4). The Comprehensive Plan was adopted in 2006 and amended in 2011, so we are still well within the 20 year period in which the community can expect maintenance of existing land uses and community character. The PUD proposal, however, would change both the land use and the character of the surrounding row house and open space community, in contravention of both the 20 year window and the law governing Neighborhood Conservation Areas, in a manner inconsistent with the GMP and the Comprehensive Plan.
3. The Comprehensive Plan states that where change occurs in a Neighborhood Conservation Area, it “will be modest in scale and will consist primarily of scattered site infill housing, public facilities, and institutional uses” (10A DCMR § 223.4). The PUD proposal to put over 100 housing units (69 condominiums, 18 four-bed room apartments for temporary use by actors, and 18 dormitory units), plus offices and other facilities, in two five-story buildings on a lot less than an acre in size, with no setbacks, is far from modest in relation to the surrounding area. The PUD site is bordered on the west and north by row houses, on the east by an elementary school playground and two-story school, and on the south by a city park. The PUD proposal is far out of scale with these surroundings, and is therefore also inconsistent with the GPM and the Comprehensive Plan on this basis.
4. The Comprehensive Plan sets out three elements that define the nature of Neighborhood Conservation Areas: “The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. Limited development and redevelopment opportunities do exist within these areas but they are small in scale. The

diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area” (10A DCMR § 223.5). The PUD proposal flies in the face of this guiding philosophy on all three of the stipulated conditions: (1) it would transform rather than conserve an established neighborhood; (2) it would change rather than maintain the diversity of land uses and building types; and (3) it would not be compatible with the existing scale or architectural character of its surroundings. The PUD proposal is therefore inconsistent with the guiding philosophy of GPM and the Comprehensive Plan in regard to Neighborhood Conservation Areas.

#### **IV. The PUD proposal is inconsistent with the Framework Element of the Comprehensive Plan**

1. One of the guiding principles set out in the Framework Element of the Comprehensive Plan is that “The residential character of neighborhoods must be protected, maintained and improved. Many District neighborhoods possess social, economic, historic, and physical qualities that make them unique and desirable places in which to live. These qualities can lead to development and redevelopment pressures that threaten the very qualities that make the neighborhoods attractive. These pressures must be controlled through zoning and other means to ensure that neighborhood character is preserved and enhanced.” (10A DCMR § 218.1.) The proposed PUD at 501 I Street SW is a quintessential example of a desirable neighborhood threatened by the very qualities that make it attractive. Amid burgeoning development in SW, the PUD threatens to transform the character of one of the last remaining quiet enclaves of single family homes in the quadrant.
2. The PUD proposal seeks to change an area designated in the Plan as residential into a mixed use area. The Framework Element of the Comprehensive Plan describes the circumstances that should apply to mixed developments, as follows:
  - a. Established, pedestrian-oriented commercial areas which also include substantial amounts of housing, typically on the upper stories of buildings with ground floor retail or office uses;
  - b. Commercial corridors or districts which may not contain substantial amounts of housing today, but where more housing is desired in the future. The pattern envisioned for such areas is typically one of pedestrian-oriented streets, with ground floor retail or office uses and upper story housing; and
  - c. Large sites (generally greater than 10 acres in size), where opportunities for multiple uses exist but a plan dictating the precise location of these uses has yet to be prepared.” (10A DCMR § 225.18.)

None of these three circumstances applies to the PUD site. In regard to (a), the site is surrounded on all sides by residential areas; it is not located in nor does it even touch on a commercial area. In regard to (b), the site is not part of a commercial corridor or district. In regard to (c), the site is less than an acre in area, not a large site of ten acres or more. A change of the site to mixed use, including the MU-4 zoning proposed in the PUD, would

therefore be inconsistent with the general characteristics of the mixed use category, as set out in the Framework Element of Comprehensive Plan.

3. In addition, the Framework Element states that for sites shown as “institutional” on the FLUM, “zoning designations vary depending on surrounding uses” (10A DCMR § 225.16, emphasis added). The PUD site is entirely surrounded by areas designated as residential. A change to MU-4 zoning, with commercial and other uses as proposed in the PUD documents, would be inconsistent with surrounding uses and therefore inconsistent with the Framework Element.

**V. The PUD is inconsistent with the Land Use Element of the Comprehensive Plan, which should be given greater weight than other elements**

1. The very first “critical land use issue” identified in the Comprehensive Plan is “promoting neighborhood conservation” (10A DCMR § 300.2). Another critical issue is “minimizing adverse impacts” of development on residential areas (10A DCMR § 300.2). Under the Comprehensive Plan, Land Use Elements “should be given greater weight” than other elements of the Plan (10A DCMR § 300.3). The PUD proposal for a multi-use office/apartment development would transform rather than conserve an existing neighborhood of row houses and low-rise garden apartments, and would result in adverse impacts to the surrounding residential area. It is thus inconsistent with “critical land use issues” of the Comprehensive Plan.
2. The Land Use Element of the Comprehensive Plan sets out the need to “protect the character of row house neighborhoods by requiring the height and scale of structures to be consistent with the existing pattern” (10A DCMR § 309.12, emphasis added). As described above, two new 5-story buildings, including over 100 housing units, offices and other uses on a small lot would be entirely out of scale with the existing pattern of row houses and a two-story school. The use of the term “existing pattern” in this provision of the Plan goes beyond the issue of the density categories in the FLUM. Even if the PUD application’s claim that the density of the project is appropriate were accepted, the project would still be inconsistent with the existing pattern, and thus inconsistent with this required Land Use Element aimed at protecting the character of row house neighborhoods.
3. The PUD site is adjacent to – directly across I Street from – the Central Employment Area (see CEA map: [http://dcra.dc.gov/sites/default/files/dc/sites/dcra/publication/attachments/eisf\\_fsize2012june.pdf](http://dcra.dc.gov/sites/default/files/dc/sites/dcra/publication/attachments/eisf_fsize2012june.pdf)). The Land Use Element of Comprehensive Plan highlights the need for “the retention of the established residential neighborhoods adjacent to the Central Employment Area” (10A DCMR § 304.13). The Plan states that it is “required...along the edges of the CEA to protect the integrity and historic scale of adjacent neighborhoods and to avoid creating sharp visual distinctions between existing and new structures” (10A DCMR § 304.13, emphasis added). The law’s use of the word “required” makes clear that adhering to the integrity and historic scale of the adjacent neighborhood is not an option but a legal obligation. Unlike most other elements of the Comprehensive Plan, this

is a requirement that cannot be balanced or traded off against other, competing elements of the Plan. Moreover, this requirement of law goes beyond the FLUM categories to specify that is the “integrity and historic scale” of the adjacent neighborhood that must be adhered to, not only the “moderate density residential” designation. The historic scale of the adjacent neighborhood is two-to-three stories with significant setbacks from the street. The PUD proposal does not adhere to this scale, and introducing two large apartment buildings and commercial uses to the site does not adhere to the integrity of the adjacent neighborhood. In addition, the absence of setbacks and green space in the PUD proposal would create a sharp visual distinction with existing structures. The law’s use of the term “adjacent” neighborhoods rather than “vicinity,” “surrounding area” or some other term, makes clear that it is referring to the buildings immediately adjacent to the CEA, as the PUD would be. Since the PUD proposal is inconsistent with these very specific Comprehensive Plan requirements to protect the integrity and historic scale of the adjacent neighborhood, the Zoning Commission must deny the PUD application.<sup>1</sup>

4. One of the policies of the Land Use Element of the Comprehensive Plan is to “Maintain zoning regulations and development review procedures that: (a) prevent the encroachment of inappropriate commercial uses in residential areas; and (b) limit the scale and extent of non-residential uses....” (10-A DCMR § 311.3). Under the proposed PUD, commercial uses would encroach into a residential area, and do so in manner out of scale with the existing residential uses, contrary to policies of the Land Use Element.
5. Policy LU-2.3.3 of the Land Use Element deals with “Buffering Requirements,” as follows: “Ensure that new commercial development adjacent to lower density residential areas provides effective physical buffers to avoid adverse effects. Buffers may include larger setbacks, landscaping, fencing, screening, height step downs, and other architectural and site planning measures that avoid potential conflicts” (10-A DCMR § 311.5, emphasis added). The PUD proposal falls far short of these requirements for new commercial development adjacent to lower density residential areas. Rather than providing larger setbacks, there is no setback from the property line on three sides, while on the fourth, the developers have requested flexibility to reduce the required 15 foot setback to just 8 feet. There is no fencing or screening and barely any landscaping that would provide buffering from adjacent properties.
6. Another policy of the Land Use Element is to “Reduce the number of nonconforming uses in residential areas...” (10-A DCMR § 311.10). In this instance, the PUD would introduce a new non-conforming use to a residential area. In regard to non-conforming institutional uses, the Comprehensive Plan states: “In the event such uses are sold or cease to operate as institutions, encourage conformance with existing zoning and

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<sup>1</sup> In the case *Barry Farms Tenants v. District of Columbia Zoning Commission*, the DC Court of Appeals ruled that “The Commission can approve a PUD that is inconsistent with one or more such provisions if the provisions at issue are worded in mandatory terms, only if the Commission (1) concludes that disregarding one such provision is necessary to comply with one or more other such provisions and (2) explains why it is deciding to favor one such provision over the other such provision. The Commission cannot simply disregard some provisions of the Comprehensive Plan on the ground that a PUD is consistent with or supported by other provisions of the Comprehensive Plan.” (Case No. 15-AA-1000, decided April 26, 2018, ZC case number 14-02.)



continued compatibility with the neighborhood.” (10-A DCMR § 311.9) In this instance, however, the PUD would not conform to existing zoning.

7. The PUD is thus clearly inconsistent with the Land Use Element of the Comprehensive Plan. Moreover, “because 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” (10A DCMR § 300.3).

## **VI. The PUD is inconsistent with the Area Elements of the Comprehensive Plan**

1. The very first guiding policy set out in the Comprehensive Plan’s “Area Element” for Lower Anacostia/Near SW DC, where the PUD site is located, is “conservation of established waterfront neighborhoods” (10A DCMR § 1908.2, emphasis in original). The PUD proposal, however, would change the unique character of a long-established SW neighborhood in the waterfront area by erecting an office/apartment complex in an area zoned for townhouses, and introducing commercial activities to a residential neighborhood.
2. The Lower Anacostia/Near SW DC area element stresses that development in the SW Waterfront area “must be designed to respect the scale and integrity of adjacent neighborhoods” (10A DCMR § 1907.2, emphasis added). As in the case of the law’s requirements in respect to neighborhoods adjacent to the Central Employment Area (paragraph V.3, above), the law’s use of the words “must” and “adjacent neighborhoods” creates a legal requirement with no wiggle room: developments must respect the scale and integrity of adjacent neighborhoods. The PUD proposal, which includes commercial uses and over 100 housing units crowded into two five-story buildings on a lot less than an acre in size, with no setback from the property lines, is significantly out of scale with the surrounding townhomes, school, and park. The proposed size of the buildings, absence of setbacks, and introduction of commercial uses does not respect the integrity of the adjacent neighborhood. Since this provision of the Comprehensive Plan is worded in mandatory terms, the Zoning Commission has no option but to find the PUD application inconsistent with the Comprehensive Plan.
3. The Lower Anacostia/Near SW DC area element states that “revitalizing the waterfront must not be done at the expense of the established communities” (10A DCMR § 1907.2, emphasis added). The proposal in the PUD would be at the expense of the established adjacent community, rezoning the last undeveloped plot in all of SW DC currently zoned for row houses, upending the neighborhoods’ expectation of stability over the twenty years indicated in the Comprehensive Plan, permanently blocking sunlight from neighboring houses and the neighboring elementary school playground, blocking light and views from neighboring apartments and their balconies, exacerbating an already dire parking problem, increasing traffic, raising safety issues especially for children at the neighboring school, bringing unacceptable levels of truck traffic, noise, and congestion, especially to four quiet, residential blocks of 6<sup>th</sup> and H Streets, and placing a further strain on public utilities and infrastructure, all at the expense of an established community just two short blocks from the waterfront. Again, this is a mandatory provision of the

Comprehensive Plan that does not leave the Zoning Commission any option but to deny the PUD application.

4. The PUD is clearly inconsistent with key elements of the Lower Anacostia/Near SW DC Element of the Comprehensive Plan, including two mandatory provisions.

## **VII. The PUD proposal is inconsistent with the SW Small Area Plan**

1. The SW Small Area Plan, adopted unanimously by the City Council in 2015, notes the “institutional designation” of the site and explicitly states that “the land use designation would need to be changed” for the project proposed by the developers to proceed (p. 97). As noted in section I. above, any land use change would require “formal public hearings before the DC Council, and ample opportunities for formal public input” (10A DCMR § 226.1(k)). There have been no such hearings and none are planned.
2. In addition, the SW Small Area Plan states explicitly that it considered whether to recommend changing the land use designation of the site but in view of community opposition decided not to recommend a change (page 97). The Small Area Plan recommended land use changes only for three church sites in SW and for public land owned by either the District of Columbia government or its Housing Authority. The PUD proposal for a land use and zoning change for the site is therefore clearly inconsistent with the SW Small Area Plan’s explicit decision not to recommend a change for the site.
3. The PUD application ignores and/or distorts the negative impacts the project will have on several key concepts that are fundamental elements of the SW Small Area Plan, including especially preserving neighborhood character (Small Area Plan, pp. 2, 10, 79). The introduction of a mixed use, office/apartment complex into one of SW’s remaining row house neighborhoods would seriously undercut rather than preserve the neighborhood’s character. Matter-of-right development, in contrast, would preserve the character of the neighborhood.
4. A key concept of the SW Small Area Plan is maintaining SW as a “Green Oasis” (pp. 85-92). The PUD proposal flies in the face of this concept. It would provide no public green space, on a lot that has historically provided green setbacks and a public plaza with trees and benches. The PUD buildings would be built with no setback from the property line – in fact, the proposal is to build on and over public land – in contrast to the Small Area Plan’s explicit goal that new developments should have larger setbacks to allow for more tree planting (GO.8, p. 91) The Small Area Plan’s goal is to “increase the tree canopy” in SW, but the developers have already removed many large trees from the property and propose to remove the three remaining large trees as well. Although the artists’ conceptions in the PUD proposal show many trees, the PUD text makes clear there are no plans to plant any trees (Exhibit 20D6, p. 4.7). The proposed development’s buildings would cover the property from corner to corner, with the exception of driveways and sidewalks. The proposed development would not even provide the open space usually required by the requested MU-4 zoning – the developers propose to build on 79% instead

of 75% of the property. In contrast, matter-of-right development would limit buildings to 60% of the property, more in line with the Plan goal to maintain SW as a green oasis.

5. The PUD proposal runs contrary to the Small Area Plan's key concept of maintaining Southwest as a "modernist gem" and adhering to specific design guidelines and principles. The developers have already violated one important recommendation of the Plan, the "adaptive reuse of existing buildings in Southwest to promote the preservation of the community's architectural character" (MG.3, p. 80). Instead of adaptive reuse, they chose to demolish the existing structure, even before applying for a PUD. The PUD proposal also disregards the Plan's design guidelines (pp. 81-84). Instead of varying building height and providing setbacks and green space, the PUD proposes two buildings that are five stories throughout, one of them shoebox-shaped, with no setbacks or green space at all. The principal building would be built up to or over the property line on three sides, while the annex is proposed to be so close to the property line on the fourth side that the PUD seeks relief to build it closer to the property line than would otherwise be permitted even under the requested MU-4 zoning.
6. The Southwest Small Area Plan places a premium on creating housing units sized for families in Southwest (pp. 4, 47, 49, 63, 71, 75, 122). It points out that SW has a smaller proportion of families than other areas of the city (p. 47) and a smaller proportion of 3, 4, and 5 bedroom units than other quadrants of the city (p. 49). The Plan specifically recommends that "As part of a community benefits package through the PUD process for new construction, prioritize affordable units above the Inclusionary Zoning requirement or fewer affordable units, but larger in size (e.g., three bedrooms) to better serve families" (MC.6, p.75). The PUD proposal, as modified by the Prehearing Submission, would have no three bedroom or larger units, either within the IZ requirement or exclusive of it. (Exhibit 20). In contrast, matter-of-right construction could provide up to 20 three or four bedroom row houses (see separate exhibit, to be added to case file), an approach more in line with the Plan goal of creating family housing.

### **VIII. The developers are seeking to circumvent the Comprehensive Plan through the PUD Process, in contravention of the Southwest Small Area Plan**

1. The Southwest Small Area Plan, adopted by the City Council in 2015, states explicitly that Shakespeare Theatre Company should pursue its proposed development at 501 I Street through "dialogue with the Southwest community through the upcoming Comprehensive Plan Amendment Process" (SW Small Area Plan page 97). The developers acknowledged this in their submission to the Office of Planning seeking a land use change, stating: "Finally, the Southwest Neighborhood Plan Small Area Plan specifically calls for the Site's FLUM designation to be determined in the upcoming Comprehensive Plan amendment process" (Application for Amendment to the Comprehensive Plan's Future Land Use Map for 501 I Street SW (Square 498, Lot 52), page 6). Despite this explicit provision of the SW Small Area Plan, as acknowledged by the developers, the developers are nonetheless seeking to move ahead through the PUD process, circumventing the Comprehensive Plan amendment process.

2. At the same time, the developers have not consulted meaningfully with the Southwest community in regard to their plans, as explicitly called for in the SW Small Area Plan. The developers have not held a single public meeting in which community members could comment on either the PUD proposal submitted in November 2017, or the revised plan submitted in September 2018. Their last public meeting on any version of their development plan was in May 2016, almost three years ago, on their previous PUD proposal, which they later withdrew. At that meeting, the developers insisted on focusing only on community benefits and refused to discuss the community's broader concerns on concept, zoning, height, density, or any other issues. The meeting was such a fiasco that even the developers' hand-chosen moderator walked out in protest of the developers' approach.
3. Although the developers have met recently with ANC representatives and other selected interlocutors, this is not a substitute for genuine public consultations, at which members of the public are free to speak out, express their concerns on all aspect of the development, and be heard. Moreover, the private meetings have focused on mitigations and community benefits, not on the issues of fundamental concern to the community. As a recent example, on December 18, 2018, the same day that the developers sent a letter to the Zoning Commission stating that they wished to "work collegially and collaboratively with United Neighbors of Southwest (UNSW), the ANC, and the agencies to address issues and concerns" (Exhibit 27), the attorney for the developers wrote to UNSW saying they were prepared to discuss only "mitigating transportation and design impacts, addressing construction management, developing a more robust public benefits package, and the like." The letter said the developers would not consider UNSW's proposal to discuss ending neighborhood opposition in return for reducing the size of the buildings, saying such a design change would not enable them "to accommodate the programmatic and financial goals the project needs to meet." In addition to undercutting their assertion of wanting to work collegially and collaboratively with UNSW, this statement is a frank admission that the developers purchased a property zoned unsuitably to meet their programmatic and financial goals.
4. The developers have deliberately avoided public meetings since the last one in May 2016, because they are well aware of the extent and intensity of public opposition to their project. Public opposition to the current PUD proposal remains as strong and widespread as it was when the project was first floated in 2014 (see, for example, Exhibits 11, 12, 13, 14, 18).
5. The PUD regulations state that "the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, nor to result in action that is inconsistent with the Comprehensive Plan" (11 DCMR Subtitle X, § 300.2). In this instance, it is clear that the developers are using the proposed PUD to circumvent the intent and purpose of the Comprehensive Plan, both in terms of pursuing their development through a PUD rather than the Comprehensive Plan Amendment Process, as specified in the SW Small Area Plan, and through their failure to pursue meaningful dialogue with the community.

**IX. The PUD submission misrepresents provisions of the Comprehensive Plan and the submission's compliance with the Plan**

1. Despite the heavy evidence to the contrary, the PUD submission states that the proposed project “is fully consistent with the goals and policies of the Comprehensive Plan” (Statement in Support, p. 12). To support this sweeping assertion, the Statement in Support cherry picks a small number of generic provisions of the Plan that would be consistent with almost any development at the site, including matter-of-right development. The provisions cited include “infill” of a currently vacant property, “using metro stations as anchors,” discouraging “auto-oriented uses such as ‘drive-through’ business and large surface parking lots,” and providing “new housing to meet the needs of present and future District residents.” (Statement in Support, pp. 22-24.) As weak as these arguments are, the PUD submission goes further by distorting them, selectively quoting from them, or taking them out of context, as set out in the following paragraphs.
2. The PUD submission repeatedly states or implies that the project is consistent with the Comprehensive Plan because the Plan anticipates “infill” development. (Statement in Support, pp. 12, 22, 23.) However, any project at the now-vacant site would be infill; just because a project is infill does not make it consistent with the Comprehensive Plan. The Plan states that infill is contingent on a development being “compatible in scale with its surroundings” (10A DCMR § 307.2), “sensitive to neighborhood context” (10A DCMR § 307.3), and that it “should complement the established character of the area and should not create sharp changes in the physical development pattern” (10A DCMR § 307.5). Moreover, compatibility with surrounding neighborhoods applies especially “in single family and row house neighborhoods” (10A DCMR § 307.7). The PUD proposal is inconsistent with these key infill provisions of the Comprehensive Plan, especially since the site is in a row house neighborhood. It is substantially out of scale with the neighboring row houses; its commercial component and lack of setbacks does not complement the established character of the area; and the introduction of two five story buildings would indeed create a sharp change in the physical development pattern.
3. The PUD submission repeatedly makes the point that the Comprehensive Plan encourages development near metro stations (Statement in Support, pp. 1, 3, 4, 13, 17, 20, 22, 23, 24, 25, 27). Once again, any project at the site would be close to a metro station; just because a project is near a metro does not make it consistent with the Comprehensive Plan. The Land Use elements of the Comprehensive Plan explicitly state that the principles to be applied to development near metro stations include “protecting lower density uses in the vicinity” (10A DCMR § 306.4). In addition, the land use elements state that “to avoid adverse effects on low and moderate density neighborhoods, most transit-oriented development should be accommodated on commercially zoned land” (10A DCMR § 306.9). The site is designated in the Comprehensive Plan as moderate density residential and it is not commercially zoned. Therefore, despite the

site's proximity to a metro station, the PUD proposal is not consistent with the intent or specific guidance of the Comprehensive Plan in regard development near metro stations.

4. The PUD submission states it is consistent with the Comprehensive Plan's goal of "maintain[ing] a variety of residential unit types." (Statement in Support, p. 23.) This statement ignores the broader context of development in Southwest DC, where thousands of new apartment units of many sizes have recently been completed, are under construction, or are planned. Perversely, the PUD proposal would take the last undeveloped site in all of Southwest that is zoned for row houses and use it to build still more apartments. This is inconsistent with the Housing Element of the Comprehensive Plan, which calls for developers to "Provide a larger number of housing units for families with children by encouraging new and retaining existing single family homes, duplexes, row houses, and three- and four-bedroom apartments." (10A DCMR § 505.6) Although a few three bedroom apartments were included in the original PUD submission, these were eliminated in the Prehearing Submission. Approval of the PUD would virtually guarantee that no further row houses suitable for large families will be built in SW, actually reducing the variety of residential unit types available. A matter-of-right development, in contrast, would increase the variety of residential unit types through construction of three and four bedroom family units, the housing type in shortest supply in SW.
5. The PUD submission asserts that the project "meets the objectives of the Land Use Element by offering an appropriate amount of below-grade parking for residents, visitors, and employees of the Project." (Statement in Support, p. 23.) However, even the applicant's own Comprehensive Transportation Review shows that there is no provision for visitor parking, as well as insufficient parking to meet anticipated demand by employees (Exhibit 22A). Even if enough parking were provided, this would be a weak reed to claim compliance with the broad objectives of the Land Use Element, especially in light of how many aspects of the project would be inconsistent with the Land Use Element, as set out in Section V, above.
6. The PUD submission states falsely that "The Southwest Small Area Plan does not make a specific land use recommendation for the Property." (Statement in Support, p. 21.) In fact the Small Area Plan explicitly declined to recommend a change to the current land use designation. (Small Area Plan, p. 97.)
7. The PUD submission states that "the STC is exactly the type of cultural use envisioned in the Southwest Small Area Plan" (Statement in Support, p. 12). However, there is nothing in the SW Small Area plan that would support the construction of a multi-story apartment building on top of the proposed STC spaces. The proposed STC square footage could be contained in a development that met matter-of-right guidelines on height, number of stories, and land occupancy, and thus be more in line with the Small Area Plan as a whole. The Small Area Plan acknowledges that the site is zoned for row houses and explicitly states that it does not recommend a change in land use for the site (SW Small Area Plan, page 97).

8. The PUD submission repeatedly cites the Southwest Small Area Plan's concept of an "arts corridor" along I Street as a justification for its project. (Statement in Support, pp. 12, 17, 20, 21). However, as described in the Small Area Plan, "The 'I' Street corridor has a dense, mature tree canopy with large setbacks...." (Small Area Plan, p. 39.) The PUD's proposed building plan, with no setbacks and the uprooting of both the existing and the previously existing tree canopy, it would certainly not meet these defining characteristics of the I Street corridor. In fact, it would be the only building on either side of the entire length of I Street SW that does not have a significant setback. This would result in a sharp visual contrast with the surrounding area. In addition, while it could be argued that the STC portion of the project might fit the concept of an arts corridor, the construction of multiple stories of apartments above the STC space would have no relation to the arts.
9. The PUD submission states that the project will bring "improved open space" in compliance with the SW Small Area Plan. (Statement in Support, p. 25). In fact, the proposed buildings – which would occupy almost the entire lot from corner to corner – would provide no open space beyond a driveway. Moreover, although the illustrations in the PUD application show many trees, the PUD application states that no trees of any size will be planted (Exhibit 20D6, p. 4.7).
10. The PUD application has not even come close to meeting the burden of proof that the PUD proposal is not inconsistent with the Comprehensive Plan. As demonstrated by the points above, many of its contentions in regard to the Plan are unsupported by evidence; others are clear misrepresentations of the Plan; while still others have quoted sections of the Plan out of context. The preponderance of evidence, by far, demonstrates that the PUD application is not consistent with the Comprehensive Plan and thus should not be approved.