

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 18-14
Z.C. CASE NO. 18-14
3840 S Capitol, LLC and 3848 S Capitol, LLC
(Consolidated Planned Unit Development and Related Zoning Map Amendment
@ Square 6129, Lots 77 & 819 [3840-3848 S. Capitol Street, S.E.]
April 29, 2019

Pursuant to notice, at its public hearing on March 7, 2019, the Zoning Commission for the District of Columbia (the “Commission”) considered an application of 3840 S Capitol, LLC and 3848 S Capitol, LLC (together, the “Applicant”) for the review and approval of consolidated planned unit development (“PUD”) and a related Zoning Map amendment to change the zoning from the RA-1 zone to the RA-2 zone (the “Application”) for Lots 77 and 819 in Square 6129, with an address of 3840-3848 South Capitol Street, S.E. (the “Property”). The Commission considered the Application pursuant to Subtitle X, Chapters 3 and 5, of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the “Zoning Regulations”] to which all subsequent citations refer unless otherwise specified). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Notice

1. On December 11, 2018, the Office of Zoning (“OZ”) sent notice of the public hearing to:
 - Advisory Neighborhood Commission (“ANC”) 8C and 8D, the “affected” ANCs pursuant to Subtitle Z § 101.8;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Energy and Environment (“DOEE”);
 - The District of Columbia Housing Authority (“DCHA”);
 - The Council of the District of Columbia (“DC Council”); and
 - Property owners within 200 feet of the Property.(Exhibit [“Ex.”] 17.)

2. A description of the proposed development and notice of the public hearing in this matter were published in the *D.C. Register* on December 21, 2018. (Ex. 13, 14.)

Parties

3. In addition to the Applicant, ANCs 8C and 8D were automatically parties in this proceeding per Subtitle Z § 101.8. There were no other parties in the proceeding.

The Property

4. The Property contains a total of approximately 39,318 square feet of land area. (Ex. 1, 2I.)
5. The Property is currently improved with a surface parking and two residential buildings with a total of 30 units that range in sizes. Within the existing two buildings there are 3 one-bedroom units, 17 two-bedroom units, 9 three-bedroom units, and 1 five-bedroom unit. All of the existing units are market rate, but approximately 85% of the existing tenants receive subsidies and/or housing vouchers. The two existing buildings were built in the 1940s and are nearing the end of their useful life. (Ex. 30.)
6. The Property is located near the Bellevue, Washington Highlands, and Congress Heights neighborhoods in Ward 8.
7. South Capitol Street, S.E. bounds the Property on its west side. The eastern boundary of the Property is a “paper” public alley that is unimproved. South Capitol Street, S.E., Xenia Street, S.W., and Martin Luther King Junior Avenue, S.W. intersect at the approximate midpoint of the Property.
8. The grade of the Property slopes downward from north to south so that the southern end of the Property is approximately eight feet lower in elevation than the north end. (Ex. 2, 2I.)
9. The surrounding area features a variety of uses and zone categories:
 - To the east are primarily single-family residential uses located in the R-3 zone, but there is a significant upward grade change – approximately 20 feet – from west to east such that these houses are located at a much higher elevation than the Property;
 - To the south along South Capitol Street, S.E. are a mix of retail and residential uses located in the MU-4 zone;
 - To the southwest are single-family residential uses located in the R-2 zone;
 - To the west across South Capitol Street, S.E. is a church; and
 - To the north along South Capitol Street, S.E. are multi-family residential uses located in the RA-1 zone.(Ex. 2, 2I.)
10. The Property is currently zoned RA-1.

Comprehensive Plan (Title 10A of the DCMR, the “CP”) Designation

General Policy Map (“GPM”)

11. The Property is located in the Neighborhood Enhancement Area category on the GPM, which encourages compatible small-scale infill development that reflects the historical

mixture and diversity of each community. The Neighborhood Enhancement Area category specifically notes that development of new housing should be encouraged. (CP § 223.6.)

Future Land Use Map (“FLUM”)

12. The majority of the Property is located in the Moderate-Density Residential land use category, with a small portion is located in the Mixed-Use Moderate-Density Residential/Low-Density Commercial land use category on the FLUM.
13. Moderate-Density Residential typically defines neighborhoods comprised of row houses, two- to four-unit buildings, and low-rise garden apartments. In older areas of the District, it might also include areas with existing multi-story apartment buildings. (CP § 225.4.)
14. Low-Density Commercial applies to shopping and service areas that are generally low in scale and character, with predominantly retail, office, and service businesses. They are typically comprised of one- to three-story commercial buildings. (CP § 225.8.)

The Application as Approved

15. The Application requested PUD approval to develop a new four-story, all-affordable residential building with resident amenity space, below-grade parking, and below-grade loading (the “Project”). The Application also sought a PUD-related map amendment to rezone the Property from the RA-1 zone to the RA-2 zone to effectuate the development of the Project. (Ex. 1, 2, 2A-2I.)
16. The Application stated that the Project would have:
 - a. A height of 50.6 feet;
 - b. A lot occupancy of 60%;
 - c. A floor area ratio (“FAR”) of 2.55; and
 - d. All yards and courts will provide the minimum required dimensions.
17. The Project will contain 106 residential units, of which approximately 20 will be studios, 34 will be one-bedroom units, 20 will be two-bedroom units, and 32 will be three-bedroom units. The average size of each unit type in the Project will be larger than the same unit type in the existing buildings, thereby offering tenants larger apartments with the same number of bedrooms. (Ex. 2.)
18. All of the units in the Project will be affordable at the following percentages:
 - a. 21% of the gross floor area (“GFA”) (approximately 22 units) will be reserved for families earning up to 30% of the Median Family Income (“MFI”);
 - b. 68% of the GFA (approximately 72 units) will be reserved for families earning up to 50% of the MFI; and

- c. 11% of the GFA (approximately 12 units) will be reserved for families earning up to 60% of the MFI. (Ex. 33A.)
19. The 30% MFI and 50% MFI units will be affordable for 60 years.
20. The 60% MFI units will be affordable for the life of the Project. The Application states that the Project will apply for an exemption for these units from the Inclusionary Zoning (“IZ”) requirements pursuant to Subtitle C § 1001.6 during the 60-year period that the Project will utilize Low-Income Housing Tax Credit (“LIHTC”) financing and will comply with the sale and rental requirements of the IZ program after the conclusion of the 60-year LIHTC financing period. (Ex. 20, 30.)
21. The Project’s design, specifically its setback and massing, reduces the impact of its density. The Project will be constructed to the western property line, but the significant amount of public parking along South Capitol Street, S.E., will convey the appearance of a large setback from the sidewalk. The Project’s mass is broken into three distinct sections separated by two courtyards, with the northern courtyard providing natural play areas on either side of the residential entrance and the southern courtyard providing access to the below-grade parking and loading facilities. (Ex. 20D-20D4.)
22. The Project’s materials are largely brick and fiber cement along the front and side façades, with mostly fiber cement along the rear façade. (Ex. 20D1-20D4, 30A.)
23. The Project will incorporate multiple sustainable features that will reduce the environmental impact of the redevelopment, including an extensive green roof, approximately 10,500 square feet of solar panels on the roof, and an electric vehicle charging station. The Project will attain Enterprise Green Communities certification. (Ex. 2, 20D1-20D4, 29.)
24. The Project will also provide 17 automobile parking spaces, a loading berth and service/delivery space, and 36 long-term bicycle parking spaces, all of which will be below grade and accessed via a curb cut on South Capitol Street. (Ex. 20D1-20D4.)
25. On February 5, 2019, the Applicant submitted its Comprehensive Transportation Review (“CTR”) prepared by its traffic expert Gorove/Slade. (Ex. 19-19A.)
26. On February 15, 2019, the Applicant updated its Application with a supplemental submission responding to issues raised by the OP Hearing Report that included:
- Updated plans with more detail on the proposed play area and entrance to the building; and
 - Additional information on the proposed Relocation Plan.
- (Ex. 20, 20D1-20D4.)

27. On March 21, 2019, the Applicant responded to the OP Hearing Report and to concerns raised by the Commission at the close of the public hearing as follows:

- Stated that it could not increase the IZ units at the expiration of the 60-year LIHTC financing, as requested by the Department of Housing and Community Development (“DHCD”);
- Confirmed that the Relocation Plan will provide monetary compensation to existing residents who choose to not return;
- Provided the breakdown of unit sizes and rental levels;
- Agreed to add additional brick treatment on the side elevations of the building as shown in the attached revised plans; and
- Reiterated that the proposed lighting for the rear of the building would ensure safety.

(Ex. 30, 30A.)

28. On April 23, 2019, the Applicant submitted an updated relocation plan and response to the three DHCD comments on its proposed relocation plan (the “Relocation Plan”). (Finding of Fact [“FF”] 47; Ex. 36, 36A.)

29. In response to DHCD’s comment that the Project should not result in permanent displacement as an outcome, the Applicant stated that it is:

...unable to revise the Relocation Plan to address DHCD’s comment that the Project should not result in any permanent displacements. A permanent displacement is a defined term that applies when the construction period is longer than 12 months and a resident chooses to permanently relocate instead of returning to the completed project. Of course, the ultimate decision whether a temporarily relocated resident choose to move back to the project is that resident’s choice; therefore, the Applicant cannot guarantee that every resident will choose to move back to the completed project. ... the Applicant will invite and encourage all current residents to return to the project upon completion, and the Applicant hopes and expects that most will return. However, because the ultimate decision is the resident’s the Applicant cannot guarantee in the Relocation Plan that there will be no permanent relocation as a result of the project. (Ex. 36.)

30. In response to DHCD’s other two comments, the Applicant updated the Relocation Plan to include provisions stating that the Applicant will:

- Provide appropriate notices to permanently displaced households that include a “Notice of Non-Displacement General Information Notice (GIN, 90-Day Move notice)”; and
- “[L]ocate replacement housing units and conduct pre-inspections to ensure decent, safe and sanitary conditions and provide DHCD a listing of all units.”

31. The Application requested design flexibility from the requirement to comply with the plans approved by this Order in the following areas: (Ex. 20.)
- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration 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;
 - c. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
 - d. To provide a range in the number of residential dwelling units of plus or minus 10%, except that the number of units and the square footage reserved for affordable housing shall not be reduced;
 - e. To make refinements to the approved parking configuration, including layout and number of parking space plus or minus 10%, so long as the number of parking spaces is at least the minimum number of spaces required by the Zoning Regulations;
 - f. To vary the roof plan as it relates to the configuration of solar panels area, provided that the square footage of the solar panels is not reduced;
 - g. To vary the location, attributes, and general design of the streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division; and
 - h. To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the plans approved by this Order and are compliant with the DC signage regulations.

Requested Development Incentives

32. The Application requested three areas of development incentives for the Project:
- a. A 10% waiver (out of the maximum 50% allowed per Subtitle X § 301.2) from the minimum land area required for a PUD in the RA-2 zone. The minimum land area for a PUD in the RA-2 zone is one acre, while the Property is just short of this requirement at 0.9 acre; (Subtitle X § 301.1.)

- b. A consolidated PUD utilizing the 20% PUD density increase permitted by Subtitle X §§ 303.3 and 303.4; and
 - c. A PUD-related Zoning Map amendment that will rezone the Property from the RA-1 to the RA-2 zone.
33. The Application asserted that the Project will meet all RA-2 zone development standards for a PUD providing IZ. (Ex. 20D1-20D4.)

Application's Statement of Compliance with PUD Requirements

Not Inconsistent with Comprehensive Plan

34. The Application asserts that the proposed map amendment and the Project will be not inconsistent with the CP's maps, including the GPM and the FLUM, because the CP specifically identifies the RA-2 zone (previously the R-5-B zone) as a qualifying Moderate-Density Residential Zone as shown on the FLUM. (CP § 225.4.) The Application also notes that the Building will comply with the development standards for a PUD in the RA-2 zone and is not seeking any additional relief or flexibility beyond the standard 20% FAR increase for PUDs. (Ex. 2.)
35. The Applicant also asserted that the Application was not inconsistent with other CP Elements and Policies including the Land Use, Housing, Transportation, and Far Southeast and Southwest Area Elements because the Building would serve to revitalize the surrounding area with an all-affordable, transit-oriented building. The Applicant also noted that the Relocation Plan would specifically address Housing Element policies regarding displacement (H-2.1.3 – Avoiding Displacement). (Ex. 2.)

Mitigation of Potential Project Impacts

36. As acknowledged by the Applicant and by OP, the Project will include an adverse impact on existing residents by causing displacement through the redevelopment. (Ex. 2, 10, 12, 28.) The Application proposed to mitigate this impact through the following:
- a. The Applicant has committed to an extensive Relocation Plan for temporary relocation rather than permanent displacement of existing residents. All current residents will be welcome to return to the Project after it is completed. The Relocation Plan will provide protection and assistance for existing residents for temporary relocation during construction and permanent relocation back to the Project after construction; and (Ex. 12A, 36A.)
 - b. The Applicant further noted the Relocation Plan includes a commitment to monetary compensation for current residents who choose not to return to the Project after construction. (Ex. 12A, 30, 36A.)
37. As acknowledged by the Applicant, the Project will include a minor adverse impact on the transportation network through a slight increase in trips to the Property. The Applicant proposed measures to mitigate these impacts. (Ex. 19A, 22.)

38. The Applicant's transportation mitigation measures were reviewed and commented on by DDOT. At the March 7, 2019 public hearing, the Applicant agreed to: incorporate all of DDOT's suggestions, implement its proposed Loading and Transportation Demand Management ("TDM") Plans, and provide the requested signage on South Capitol Street, S.E. (March 7, 2019 Public Hearing Transcript [the "3/7/19 Tr.]" at 46.)

Public Benefits and Amenities

39. The Application noted that the following specific public benefits and project amenities would be provided, and it considered them to be commensurate with and proportional to the additional density and height gained through the PUD and Zoning Map amendment:
- a. Superior urban design, architecture, and landscaping, including the use of high-quality materials, building articulation and modulation, courtyard-centered design, balconies for residents, and context-specific design features that will distinguish this building from typical residential development. The Building will be attractive and contextually appropriate with below-grade parking and loading, as well as outdoor play areas for children;
 - b. Site planning and efficient land utilization, through the creation of a new residential development on an underutilized site in a transit-oriented location specifically targeted for such uses. The Building will capitalize on its location as a large site along South Capitol Street, S.E. to provide many new affordable residential units. Thus, the Building will efficiently use the land for an open and inviting building with modern amenities;
 - c. Streetscape and public realm improvements along South Capitol Street, S.E., including increased trees, enhanced sidewalks, and attractive landscaping;
 - d. The provision of at least 32 three-bedroom units all at affordable rental levels for at least 60 years;
 - e. A completely affordable housing project with significantly deep affordability levels; (FF 18.)
 - f. Environmental and sustainable features, including certification of the Building through Enterprise Green Communities. Also, the Building will include environmentally sustainable features such as a green roof, an electric vehicle charging station, and 10,500 square feet of solar panels;
 - g. Employment and training opportunities through commitment to a First Source Agreement with the Department of Employment Services; and
 - h. Uses of special value to the neighborhood as effectuated through the Relocation Plan. The Applicant will implement the Relocation Plan to provide meaningful communication with a streamlined process and effective assistance for existing residents to move into nearby properties during construction and return to the

Project once completed. Additionally, for residents who choose not to return to the Project, the Relocation Plan includes monetary compensation.

(Ex. 2, 12, 20, 29, 30, 36A.)

Responses to Application

Office of Planning

40. OP filed a total of three reports on the Application as follows:

- a. An October 12, 2018 report recommending that the Application be set down for a public hearing (the “OP Setdown Report”); (Ex. 10.)
- b. A February 25, 2019 report filed prior to the public hearing (the “OP Hearing Report”); and (Ex. 21.)
- c. An April 19, 2019 supplemental report filed following the public hearing (the “Supplemental OP Report”). (Ex. 34.)

OP Setdown Report

41. The OP Setdown Report found that the Application was not inconsistent with the CP, including the GPM and FLUM, and would further the objectives of the Land Use, Transportation, Housing, Environmental Protection, Urban Design, and Far Southeast Southwest Area Elements.
42. The OP Setdown Report concluded that the Project is also not inconsistent with, and will advance goals and policies of, the “Bellevue, Embracing the Revitalization Small Area Plan” (the “SAP”) because:
 - a. The Project’s housing opportunities provide a mix of incomes with affordable rental opportunities;
 - b. The Project is also of a similar scale and design to other multifamily residential buildings in the area;
 - c. The Project would improve the pedestrian experience along South Capitol Street, S.E.; and
 - d. The Project advances the Urban Design guidelines of the SAP by building to the property line with landscaped public space and courtyards. (Ex. 10, 21.)

OP Hearing Report

43. The OP Hearing Report found that the minimum site area and design flexibility requested by the Applicant were acceptable. The OP Hearing Report also provided an analysis and table comparing the development standards of the existing RA-1 zone to the proposed RA-2 zone. The OP Hearing Report concluded that the consolidated PUD and Zoning Map amendment to the RA-2 zone would be not inconsistent with the CP. (Ex. 21 at 16-17.)

44. The OP Hearing Report concluded that the benefits and amenities proffered for the Project are commensurate with the amount of development and flexibility sought by the Application. (Ex. 21; 3/7/19 Tr. at 42-43.)
45. The OP Hearing Report included comments from the Department of Housing and Community Development (“DHCD”), the Department of Public Works (“DPW”), the Department of Employment Services (“DOES”), the Fire and Emergency Medical Services Department, and the Department of Energy and Environment (“DOEE”).¹ The OP Hearing Report conveyed the following agency responses:
 - DOEE – requesting additional sustainability measures, including stormwater management, renewable energy (solar panels) and gains in energy efficiency; and
 - DHCD – reiterated initial request that, at the end of the 60-year LIHTC funding period, the Project provide additional IZ units at a deeper level of affordability.
46. The OP Hearing Report therefore recommended approval of the Application upon two conditions:
 - Provide additional IZ units above the 11 required to convert at the expiration of the 60-year LIHTC funding, ideally providing 15% of residential gross floor area for IZ units in perpetuity; and
 - Provide additional information about the Application’s proposed Relocation Plan.

Supplemental OP Report/DCHD Comments

47. The Supplemental OP Report included DHCD’s comments on the Applicant’s Relocation Plan as follows:
 - a. “Permanent displacement should not be an outcome of this project”;
 - b. “Need to ensure a non-displacement [General Information Notice] is provided to the tenants ASAP”; and
 - c. “ADD-Provide Notice to DHCD of Relocation units so that DHCD conducts an inspection prior to tenant move in.”

DHCD did not provide any further explanation of the comments.

Department of Transportation

48. DDOT submitted a February 27, 2019 report finding that the analysis and conclusions in the Applicant’s CTR were sound with respect to site design and travel assumptions and stated that it did not object to the Application based on the adoption of conditions for additional mitigation (the “DDOT Report”). (Ex. 22.)

¹ In addition to the attendees, OP referred the Application to Metropolitan Police Department, DC Water, and DC Public Schools, but received no comments from these agencies.

49. The DDOT Report concluded that the Project will generate a small number of vehicle trips that will have minimal impact on the transportation network. The DDOT Report approved the Applicant's loading management plan but found that the Applicant's TDM plan would be insufficient to fully mitigate the potential adverse traffic impacts. The DDOT Report recommended that the Applicant adopt DDOT's additional TDM recommendations, including:
- a. Work with DDOT and goDCgo (DDOT's TDM program) to implement TDM measures at the site;
 - b. Share the full contact information of the TDM Leaders for the site with DDOT and goDCgo (info@godcgo.com);
 - c. Post all TDM commitments online for easy reference; and
 - d. Provide annual Capital Bikeshare memberships to each resident for the first year after the building opens.
50. The DDOT Report requested that the Applicant install signage, subject to DDOT approval, on the northbound South Capitol Street, S.E. approach to the site driveway indicating that there is an intersection ahead.
51. The DDOT Report recommended further coordination of the design for improvements in public space adjacent to the Project site, development of a curbside management plan, and signage.
52. The DDOT Report stated, as confirmed by DDOT's testimony at the public hearing, that the mitigations described in the DDOT Report and agreed to by the Applicant will mitigate the Project's potential adverse impacts on the District's transportation network. (Ex. 22; 3/7/19 Tr. at 46.)

ANC Report

53. ANC 8D did not submit a formal written report meeting the requirements of Subtitle Z § 406.2 to be afforded "great weight" or otherwise participate in the public hearing for the Application. However, ANC 8C, the ANC in which the Property is located within, submitted a letter dated March 6, 2019, that stated it supported the Application, and noted in particular its support for:
- a. The Project's deeply affordable housing proffer;
 - b. The Project's inclusion of larger family-sized units in response to the community's needs; and
 - c. The inclusion of the Relocation Plan – the ANC noted that it was "important to the community that all the existing tenants can reoccupy the building after it is complete. [The Applicant] has committed verbally and has agreed to put this

commitment in writing. They have taken the additional step of hiring Housing Opportunities Unlimited to facilitate this process of relocating temporarily and them moving them back into the completed project.” (Ex. 24.)

Persons in Support

54. Tamika Briscoe testified in support of the Project at the hearing. Ms. Briscoe acknowledged that she is an employee of the Applicant, but she is also a resident of the Property. Ms. Briscoe testified in support based on her experience with the Applicant as the property manager. She further testified that the Applicant is trustworthy and would relocate residents to nice facilities and return residents to the Property at the improved Project in an acceptable manner. (3/7/19 Tr. at 50-54.)

Persons in Opposition

55. On March 7, 2019, Toni Lawson and Chris Otten, writing as “DC 4 Reasonable Development Ward 8 Study Group” (“DC4RD”), filed a letter in opposition to the Project (the “DC4RD Letter”). (Ex. 26.) The letter raised non-specific, generalized concerns regarding the Project as a whole, including:

- a. The length of time the Project would be affordable;
- b. Claims of no guarantee of return for existing residents;
- c. Infrastructure costs related to the Project; and
- d. Jobs for local residents.

Setdown Meeting of October 22, 2018

56. During its public meeting on October 22, 2018, the Commission voted to set down the Application for a public hearing. At the public meeting, the Commission requested that the Applicant provide the following:

- a. More details about the relocation plan for existing residents;
- b. An outdoor play area;
- c. Refinements/more attention to the exterior brick design and cornice;
- d. Commitment to a First Source Employment Agreement; and
- e. Additional information about sustainability and energy efficient systems in the building. (10/22/18 Transcript [“10/22/18 Tr.”] at 40-45.)

57. On November 21, 2018, the Applicant filed its pre-hearing submission responding to the issues raised by the Commission at setdown and by OP in its Setdown Report. (Ex. 12, 12A-12D9.)

Public Hearing of March 7, 2019

58. On March 7, 2019, the Commission held a public hearing on the Application. On behalf of the Applicant, the Commission accepted Stephanie Farrell as an expert in architecture and Erwin Andres as an expert in traffic engineering. The Applicant provided testimony from these experts as well as from others from the development team.
59. The Applicant provided information in response to questions raised by OP regarding residents' responses to the Relocation Plan, and a current resident testified about residents' positive reactions to the Project. (Ex. 21; 3/7/19 Tr. at 50-54.)
60. At the hearing, the Commission heard testimony from OP and DDOT regarding the Application.
61. One person testified in support of the Application. (FF 54.)
62. No one, including DC4RD, appeared in opposition to the Project at the hearing.
63. While DC4RD did not attend the hearing, the Applicant did provide testimony in response to the allegations in the DC4RD Letter: (3/7/19 Tr. at 55-61.)
 - a. In response to DC4RD's allegations regarding the duration and sufficiency of the affordable housing proffer, the Applicant noted that not only is the Building providing an all-affordable guarantee, but also a guarantee that 11% of the residential units will be available at 60% MFI for the life of the Project, which is a greater amount of affordable housing than would be required to be provided through a matter-of-right development. The Applicant also noted that all of the existing units at the Property are market-rate and there is no rent level protection for the units. The Applicant concluded, therefore, that DC4RD's allegation that providing only 11% of affordable units at 60% MFI would constitute a harm was without merit; and
 - b. The Applicant also noted that the remaining issues raised in the DC4RD Letter were factually incorrect:
 - i. All current residents of the Property are guaranteed the opportunity to return to the Project upon completion, as shown in the Relocation Plan at Exhibit 36A and as described in the Applicant's testimony at the hearing;
 - ii. The Applicant analyzed and is mitigating the infrastructure impacts of the Project. (Ex. 2, 2F, 19A). This infrastructure analysis shows that only the transportation-related infrastructure impacts warranted mitigation. As described above, the Applicant committed to bearing the cost of and implementing the transportation-related improvements where the existing infrastructure will be negatively impacted by the Project; and (Ex. 19A, 29.)

- iii. The Project will include jobs for local residents, as committed by the First Source Agreement. (Ex. 12B.)
64. At the close of the public hearing, the Commission took proposed action to approve the Application and asked:
- The Applicant to respond to concerns raised at the hearing; and
 - DHCD to review the Relocation Plan.

Post-Hearing Submissions

65. The Applicant responded to the Commission as detailed above at FF 27, and DHCD responded through the OP Supplemental Report as detailed above at FF 47.

NCPC Review

66. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the Home Rule Act. (Ex. 28.)
67. NCPC, by action dated March 25, 2019, found that the proposed PUD was exempt from NCPC review because the Application is consistent with the Height Act, causes no adverse impact on federal property or interests, and the Property is located outside the boundary of the L’Enfant City. (Ex. 32.)

CONCLUSIONS OF LAW

1. The Applicant requested approval, pursuant to Subtitle X, Chapter 3; Subtitle X, Chapter 5; and Subtitle Z, Chapter 3 of a consolidated PUD and related Zoning Map amendment. The Commission is authorized under the Zoning Act to approve a planned unit development and Zoning Map amendment consistent with the requirements set forth in Subtitle X §§ 304 and 500.
2. *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.*

(Subtitle X § 300.1.)
3. In evaluating a PUD, the Commission shall find that the proposed development:

- a. *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
- b. *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
- c. *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*

(Subtitle X § 304.4.)

- 4. Pursuant to Subtitle X § 301.2, the Commission may waive up to 50% of the minimum land area requirement if:
 - a. *The project is of exceptional merit and in the best interests of the District; and*
 - b. *For a property outside of the Central Employment Area, the project is devoting more than 80% of the gross floor area for residential uses.*
- 5. The Commission grants the Application’s requested 10% waiver from the minimum one acre of land area requirement for a PUD because the Commission concludes that the Project is of exceptional merit and in the best interests of the District due to the number of public benefits that the Project will provide including being an all-affordable building and the proposed Relocation Plan, environmental benefits, and design features. The Commission also notes that the Property is located outside of the Central Employment Area and devotes all of its GFA to residential use.
- 6. The Commission concludes that the Applicant has satisfied the burden of proof for approval of the Consolidated PUD because the Project is not inconsistent with the Comprehensive Plan, will provide a high-quality development the potential adverse impacts of which are capable of being mitigated or are acceptable given the quality of public benefits, and the proposed public benefits balance out the approved development incentives, and as further detailed below.

Not Inconsistent with the Comprehensive Plan (Subtitle X § 304.4(a).)

- 7. The Commission concludes that approval of the PUD is not inconsistent with the CP and other relevant planning guidance documents. The Commission agrees with the determination of OP and finds that the Project is not inconsistent with the Property’s GPM and FLUM designations and that the Project will advance numerous goals and policies of the CP and the SAP. (FF 34-35, 41-42.)
- 8. Regarding the requested map amendment, the Commission credits the analysis of OP and concludes that the proposed PUD-related Zoning Map amendment from the RA-1 to the

RA-2 zone is not inconsistent with the CP and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the CP, and other District policies and objectives.

9. The Commission notes that the RA-2 zone is specifically identified in the CP as being “appropriate for Moderate Density Residential in some locations.” The Commission concludes that the Property is such a location because of its apartment building context and location along a major thoroughfare (South Capitol Street). Further, at four stories with generous surrounding open space (courtyards, side yard, and rear yard), the Commission concludes that the Project is not inconsistent with moderate-density residential development.
10. The Commission also concludes that construction of a new four-story, 106-unit affordable residential building where there currently are only 30 market-rate residential units is consistent with the Neighborhood Enhancement category on the GPM.

Potential Adverse Impacts - Mitigations (Subtitle X §§ 304.3 & 304.4(b).)

11. The Commission concludes that the Project will not result in unacceptable impacts on the surrounding area or on the operation of city services and facilities. The Commission concludes that the relocation/displacement of existing residents and transportation effects are two potential adverse impacts that are capable of being mitigated as follows:

- a. Relocation/Displacement Impacts - The Commission credits the Applicant’s testimony and the testimony in support from an existing resident in finding that the Relocation Plan will provide protection for existing residents to relocate during construction to nearby properties and to return to the Project once completed. The Relocation Plan provides monetary and logistical support for moving to prevent a negative economic impact on existing residents during the relocation process as well as monetary compensation for residents who choose to not return to the completed Project;

In response to DHCD’s comment regarding permanent displacement, the Applicant stated that it could not guarantee that the existing residents will return because it could not control whether the existing residents would choose to return in the future. The Applicant further stated that consistent with the Revised Relocation Plan, it will invite and encourage all current residents to return upon completion and will provide relocation assistance in the interim. The Commission finds this a credible response and concludes that the Revised Relocation Plan is not only adequate, but is highly commendable, and a public benefit of the PUD. The Commission further finds that the Revised Relocation Plan is adequate to mitigate the adverse impacts on existing residents from relocation due to the Project. (FF 29.) The Commission believes that the Applicant’s updated Relocation Plan satisfied DHCD’s second two comments regarding proper notification to the current residents and DHCD; and (FF 30.)

- b. Transportation Impacts - The Commission credits the testimony of the Applicant's transportation expert and the DDOT Report in finding that the transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures agreed to by the Applicant and DDOT including the proposed TDM plan, loading management plan, street signage, and pedestrian (sidewalk) infrastructure improvements.
12. The Commission also finds that any other potential impacts are outweighed by the quality of the public benefits of the Project.
 13. The Commission also notes that the Application is proposing significant benefits in terms of affordable housing by providing a completely affordable building, including deeply affordable and family-sized units. On this point, the Commission credits the letter from ANC 8C, which acknowledged the strength of the benefits and amenities provided by the Project.

Balancing Public Benefits with Requested Development Incentives (Subtitle X §§ 304.3 and 304.4(c).)

14. The Commission notes that the Application is only seeking three forms of development incentives:
 - a. The waiver from the minimum land area requirement for a PUD;
 - b. The standard 20% additional PUD density bonus; and
 - c. A Zoning Map Amendment from the RA-1 zone to the RA-2 zone.
15. The Commission concludes that the Project will provide specific project benefits and public amenities that will benefit the surrounding neighborhood and the public in general to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design and architecture; three-bedroom units; significant new affordable housing at deep levels of affordability; site planning and economical land utilization; employment and training opportunities; environmentally sustainable elements; and streetscape and public realm improvements all are significant public benefits that will be provided to a considerably greater extent than a matter-of-right development would. The Commission also concludes that these benefits and amenities are not inconsistent with the Comprehensive Plan.
16. The Commission notes that it requested at the public hearing that the Applicant consider increasing the percentage of affordable units provided for the life of the Project at 60% MFI. The Applicant considered the Commission's request and explained the justification for the 11% proffer. The 60-year long-term commitment to deep levels of affordability at the Project is a meaningful benefit of the Project. Providing a large number of family-sized units at 30% and 50% of the MFI for at least 60 years (20 years longer than the typical LIHTC commitment) will create a large amount of affordable housing on a property that currently has no guaranteed affordable units for residents. Additionally, the Applicant has

committed to 11% of the project at 60% MFI for the life of the Project, which exceeds the minimum 10% required under IZ. (Ex. 20, 30.)

17. The Commission concludes that the requested flexibility and related rezoning are appropriate and fully justified by the public benefits and project amenities proffered by the Applicant. The Commission notes that the Application is seeking no flexibility beyond the PUD standards and the requested map amendment to the RA-2 zone will result in only small increases to the development standards and the Applicant will be in compliance with all applicable standards for a PUD in the zone.

Additional Contested Issues

DC4RD Letter

18. The Commission is unpersuaded by the alleged and generalized harms contained in the DC4RD Letter. The Commission concludes that the harms alleged by DC4RD are unsubstantiated, generalized grievances because DC4RD cites no specific aspects of the Project or any evidence about the harms it alleges. Furthermore, as the Commission has previously found, an applicant is not obligated to respond to such generalized and unsupported assertions. (*See, e.g.*, Z.C. Order No. 11-03J(1) (2018).) For an issue or claim to merit a response, the party or witness must present some factual basis for the claim and/or draw a nexus between the claimed deficiency and the current application. The DC4RD Letter did not do so with respect to these issues; it simply presented a list of blanket complaints, without any explanation of how the alleged harms were caused by this Project, that would require the Applicant to specifically address them.
19. The Commission credits the Applicant's testimony at the public hearing in response to the DC4RD Letter and concludes that the four harms alleged by the DC4RD Letter are without merit for the following reasons: (FF 63; Ex. 55.)
 - a. Alleged insufficiency of the duration of Project affordability – the Commission concludes that the all-affordable project will provide 11% of units at 60% MFI for the life of the Project and all other units for a period of 60 years;
 - b. Alleged no guarantee of return for the existing residents – the Commission concludes that the Applicant's Relocation Plan guarantees existing residents the right to return and will adequately address other relocation/displacement issues;
 - c. Alleged insufficient contribution towards potential infrastructure improvements costs – the Commission credits the Applicant's analysis of the Project's infrastructure impacts and concludes that the proposed mitigations adequately address potential adverse impacts, and that the proffered public benefits also outweigh the potential adverse impacts as confirmed by OP, DDOT, DPW, FEMS, and DOEE; and
 - d. Alleged lack of jobs for local residents – the Commission concludes that the Applicant's commitment to a First Source Agreement, as confirmed by OP and DOES, will mitigate this concern.

“Great Weight” to the Recommendations of OP

20. Pursuant to § 13(d) of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
21. The Commission notes that the OP Reports thoroughly analyzed the Application and recommended approval. The Commission also finds that OP determined that the Applicant had satisfied all of its requests for additional information and clarifications. Accordingly, the Commission has given great weight to OP’s recommendation and concurs in that judgement.

“Great Weight” to the Written Report of the ANC

22. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.); see Subtitle Z § 406.2.) To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
23. The Commission notes that while ANC 8C submitted a letter recommending approval of the Application, the letter did not meet the requirements to afforded great weight. Nevertheless, the Commission noted that the ANC commented favorably on several aspects of the Project, particularly the deeply affordable housing and family-sized units. The Commission found these issues and concerns to be relevant to its analysis. The Commission fully credits the unique vantage point that ANC 8C holds with respect to the impact of the Application on the ANC’s constituents and included the ANC’s recommendation in its consideration to approve the Application.
24. ANC 8D is also an affected ANC, and though it did receive proper notice of the Application, it did not provide a recommendation or comment on the Project. There is therefore no report to which the Commission can give great weight.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a Consolidated PUD including a PUD-related Zoning Map amendment to rezone the Site from the RA-1 zone to the RA-2 zone, subject to the following

guidelines, conditions, and standards (whenever compliance is required prior to, on or during a certain time, the timing of the obligation is noted in **bold and underlined text**):

A. Project Development

The Project shall be developed in accordance with the following (collectively the “Approved Plans”), except as modified by the other conditions herein:

- a. The architectural plans and drawings submitted on February 15, 2019, marked as Exhibits 20D1-20D4 of the record; and
 - b. As modified by the plans included with the Applicant’s post-hearing submission dated March 21, 2019, and marked as Exhibit 30A of the record,
2. The Project shall have the following design flexibility from the Approved Plans:
- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the Approved Plans;
 - 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 shown on the Approved Plans;
 - c. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the Approved Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
 - d. To provide a range in the number of residential dwelling units shown on the Approved Plans of plus or 10%, except that the number of units and the square footage reserved for affordable housing shall not be reduced;
 - e. To make refinements to the approved parking configuration shown on the Approved Plans, including layout and number of parking space plus or minus 10%, so long as the number of parking spaces is at least the minimum number of spaces required by the Zoning Regulations;
 - f. To vary the roof plan shown on the Approved Plans as it relates to the configuration of solar panels area, provided that the square footage of the solar panels is not reduced;
 - g. To vary the location, attributes, and general design of the streetscape shown on the Approved Plans to comply with the requirements of, and the approval by, the DDOT Public Space Division; and

- h. To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the Approved Plans approved by the order and are compliant with the DC signage regulations.
3. The Project shall be designed to the specifications as follows:
 - a. A FAR of 2.55;
 - b. A height of 50.6 feet;
 - c. A lot occupancy of 60%;
 - d. The 17 automobile parking spaces, the loading berth and service/delivery space, and 36 long-term bicycle parking spaces will be provided below grade, which will be accessed via a curb cut on South Capitol Street; and
 - e. All yards and courts shall provide the minimum required dimensions.
 4. The Property shall be subject to a PUD-related map amendment from the RA-1 zone to the RA-2 zone. Pursuant to Subtitle X § 311.4, the change in zoning shall be effective upon the recordation of the covenant discussed in Condition No. D.1.

B. Public Benefits

1. The Applicant shall provide affordable housing as set forth in this condition:
 - a. The Applicant shall provide the affordable housing as set forth in the following chart, subject to the paragraphs of this Condition B.1.

Residential Unit Type	Income Type	Floor Area / % of Total*	# of Units	Affordable Control Period	Affordable Unit Type
Total	Mixed	96,481 sf / 100%	106		
Affordable Non-IZ	Up to 30% of MFI	20,261 sf / 21%	22	60 Years	Rental
Affordable Non-IZ	Up to 50% of MFI	65,607 sf / 68%	72	60 Years	Rental
Affordable IZ-Exempt	Up to 60% of MFI	10,613 sf / 11%	12	Life of the Project	Rental

** Refers to the residential gross floor area ("GFA"), but the floor area may be adjusted to subtract the building core factor.*

- b. **Each control period shall commence upon the issuance of the first certificate of occupancy** for the Project;

- c. The chart assumes that the Applicant will be granted an exemption from the requirements of the Inclusionary Zoning (“IZ”) program of Subtitle C, Chapter 10, during the 60-year period of LIHTC financing for the Project, pursuant to Subtitle C § 1001.6 (“IZ Exemption”), although, the Commission takes no position as to whether the IZ Exemption should be granted;
 - d. Should the IZ Exemption be granted, the affordable housing requirements of this condition shall be stated in the covenant required by Subtitle C § 1001.6(a)(4); and
 - e. Should the IZ Exemption be denied, the Affordable IZ-Exempt units identified in the chart above shall become IZ units and the Applicant shall nevertheless provide affordable housing in accordance with this condition B.1, unless the IZ Regulations of Subtitle C, Chapter 10, impose more restrictive standards. The Applicant shall record the covenant required by the Inclusionary Zoning Act as to 11% of the residential GFA of the Project and shall execute the monitoring and enforcement documents required by Subtitle X § 311.6 as to the remaining residential GFA.
2. **For the life of the Project**, at least 32 of the residential units shall be three-bedroom units.
 3. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall demonstrate compliance with the Relocation Plan submitted at Exhibit 36A in the Record and provide an update to the Zoning Administrator regarding the number of residents returning to the Project.
 4. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall:
 - a. Furnish a copy of its preliminary Enterprise Green Communities certification application to the Zoning Administrator demonstrating that the building has been designed to meet the Enterprise Green Communities standard for residential buildings, as shown on the Enterprise Green Communities Checklist on Sheet G-16 of the Plans;
 - b. Demonstrate that it has designed and constructed a minimum of 10,500 square feet of solar arrays located on Project; and
 - c. Demonstrate that it installed at least one electric vehicle charging station in the garage.
 5. **Prior to the issuance of a Building Permit for the Project**, the Applicant shall submit to the Zoning Administrator a copy of the executed First Source Employment Agreement with DOES substantially similar to the form submitted at Exhibit 12B.

C. **Transportation Mitigations**

1. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall install signage on the northbound South Capitol Street, S.E. approach to the Project driveway indicating that there is an intersection ahead, subject to DDOT approval.
2. **For the life of the Project**, the Applicant shall provide the following transportation demand management (“TDM”) measures:
 - a. The Applicant will identify a TDM Leader (for planning, construction, and operations) at the building, who will act as a point of contact with DDOT/Zoning Enforcement with annual updates. The TDM Leader will work with residents to distribute and market various transportation alternatives and options;
 - b. The Applicant will provide TDM materials to new residents in the Residential Welcome Package materials;
 - c. The Applicant will meet Zoning Regulations requirements to provide bicycle parking facilities at the proposed development. This includes secure parking located on-site and a minimum of five short-term bicycle parking spaces around the perimeter of the Site;
 - d. The Applicant will meet Zoning Regulations requirements by providing 36 long-term bicycle parking spaces in the development garage;
 - e. The Applicant will provide a bicycle repair station to be located in the secure long-term bicycle storage room;
 - f. The Applicant will install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives;
 - g. Work with DDOT and goDCgo (DDOT’s TDM program) to implement TDM measures at the site;
 - h. Share the full contact information of the TDM Leaders for the site with DDOT and goDCgo (info@godcgo.com);
 - i. Post all TDM commitments online for easy reference; and
 - j. Offer annual Capital Bikeshare memberships to each resident **for the first year** after the building opens.
3. **For the life of the Project**, the Applicant shall provide the following loading management plan (“LMP”) measures:

- a. A loading manager will be designated by the building management. The manager will coordinate with residents to schedule deliveries and will be on duty during delivery hours;
- b. Residents will be required to schedule move-in and move-outs with the loading manager through leasing terms;
- c. The dock manager will coordinate with trash pick-up to help move loading expeditiously between their storage area inside the building and the curb beside the loading area to minimize the time trash trucks need to use the loading area;
- d. Trucks using the loading area will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT’s Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System; and
- e. The loading manager will be responsible for disseminating DDOT’s Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with District laws and DDOT’s truck routes. The dock manager will also post these documents in a prominent location within the service area.

D. Miscellaneous

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The PUD shall be valid for a period of two years from the effective date of this Order within which time an application shall be filed for a building permit. Construction must begin within three years of the effective date of this Order.
3. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the applicable conditions of this Order (*i.e.*, only those conditions that are required to be satisfied for the particular entitlement the Applicant is seeking at the time) at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

VOTES:

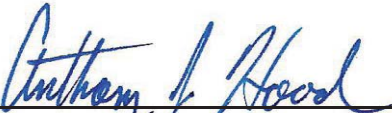
PROPOSED ACTION (March 7, 2019): 4-0-1 (Robert E. Miller, Anthony J. Hood, Michael G. Turnbull, and Peter G. May to **APPROVE**; Peter A. Shapiro not present, not voting.)

FINAL ACTION (April 29, 2019): 5-0-0 (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 18-14 shall become final and effective upon publication in the *D.C. Register*; that is, on March 27, 2020.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.