



October 7, 2019

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VIA IZIS

Anthony Hood, Chairperson
D.C. Zoning Commission
441 4th Street, NW, Suite 200S
Washington, DC 20001

**RE: ZC Case No. 19-01 – Wesley Hawaii LLC
Applicant’s Proposed Findings of Fact and Conclusions of Law**

Chairperson Hood and Honorable Members of the Commission:

On behalf of Applicant Wesley Hawaii LLC (the “Applicant”), we hereby file the enclosed Applicant’s Proposed Findings of Fact and Conclusions of Law in accordance with Subtitle Z § 601.1. Thank you for your attention to this matter and we look forward to the Commission taking final action on this application on October 21, 2019.

Sincerely,
COZEN O’CONNOR

A handwritten signature in blue ink, appearing to read 'MM', with a horizontal line underneath.

Meridith Moldenhauer

Certificate of Service

I HEREBY CERTIFY that on this 7th day of October, 2019, a copy of the Applicant's Proposed Findings of Fact and Conclusions of Law was served, via email, on the following:

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Meridith Moldenhauer

APPLICANT’S PROPOSED ORDER

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA ZONING COMMISSION ORDER NO. 19-01

Z.C. Case No. 19-01

Wesley Hawaii, LLC

(Consolidated Planned Unit Development and Related Zoning Map Amendment
@ Square 3684, Lot 66)
_____, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (“**Zoning Commission**” or “**Commission**”) held a public hearing on September 16, 2019, to consider an application (“**Application**”) for review and approval of a consolidated planned unit development (“**PUD**”) and a related Zoning Map amendment (“**Map Amendment**”) filed by Wesley Hawaii, LLC (“**Applicant**”). The Commission considered the Application pursuant to Subtitle X, Chapters 3 and 5 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“**Zoning Regulations**” to which all references are made unless otherwise specified). The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 4 of the Zoning Regulations. The Commission hereby **APPROVES** the Application, subject to the conditions set forth below.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On January 4, 2019, the Applicant filed the Application for a PUD and related Map Amendment from the RA-1 zone to the RA-2 zone for the property located at 1 Hawaii Avenue NE (Square 3684, Lot 66¹) (“**Property**”).
2. As part of the Application, the Applicant seeks to redevelop the Property by razing the existing apartment building and constructing a 70-unit, all-affordable residential building. (Exhibits (“**Ex.**”) 2, 26).
3. The Office of Zoning (“**OZ**”) referred the Application to the Office of Planning (“**OP**”), Councilmember McDuffie, Councilmember Todd, Advisory Neighborhood Commission 5A (“**ANC 5A**”), and Advisory Neighborhood Commission 4D (“**ANC 4D**”). OZ also published notice of the filing of the Application in the *D.C. Register*. (Ex. 5-9)
4. By report dated March 29, 2019, OP recommended the Application be set down for a public hearing by the Zoning Commission. (Ex. 10).

¹ The Application was submitted when the Property was identified as Parcel 0124/0077. (Ex. 2). After filing the Application, the Applicant applied for a subdivision of the Property with the D.C. Department of Consumer and Regulatory Affairs. The subdivision application was granted and the Property was assigned record lot number 66 in square 3684.

5. At its public meeting on March 25, 2019, the Commission reviewed the Application, requested additional information from the Applicant, and voted to schedule a public hearing on the Application. (3/25/19 Hearing Transcript).
6. On May 21, 2019, the Applicant submitted its prehearing statement. The prehearing statement addresses the comments and issues raised by the Commission at its public meeting as well as by OP in its set down report. Specifically, the prehearing statement: (i) revised the location of Inclusionary Zoning units; (ii) clarified the Applicant's flexibility request for loading berth clearance; (iii) clarified aspects of the Project's affordable housing component; (iv) provided additional information regarding the Applicant's proffered benefits of environmental and sustainability, social services, and superior landscaping and preservation of open spaces; (v) clarified where the bioretention area can be located on the Property; (vi) clarified the number of bicycle parking spaces; (vii) provided updated plans for the Project's landscaping, pavement materials, and building materials; and (viii) provided information on the Applicant's participation in first source employment for the Project. (Ex. 15, 15A-15G).
7. On June 3, 2019, the Applicant submitted a Comprehensive Transportation Review prepared by Gorove/Slade Associates, a professional transportation planning and traffic engineering firm. (Ex. 18, 18A1-A3). The Comprehensive Transportation Review was served on the District Department of Transportation ("DDOT"), OP, ANC 5A and ANC 4D. (Ex. 18).
8. On June 18, 2019, the Applicant filed a request for the Commission to postpone the previously-scheduled hearing on the Application. (Ex. 20). The Applicant requested a postponement to address issues raised by the community with regard to the Project. The Commission granted the request and rescheduled the public hearing to September 16, 2019. (Ex. 20).
9. On June 25, 2019, notice of the re-scheduled public hearing was mailed to all owners of property located within 200 feet of the Property, Councilmembers Kenyan McDuffie and Brandon Todd, At-Large Councilmembers, OP, DDOT, the D.C. Department of Consumer and Regulatory Affairs, the Office of the Attorney General, the D.C. Department of Energy and the Environment, the D.C. Housing Authority, ANC 5A, and ANC 4D. (Ex. 23). A description of the proposed development and the notice of the re-scheduled public hearing in this matter were published in the *D.C. Register* on July 5, 2019. (Ex. 21). OZ also published notice of the public hearing through the calendar on OZ's website.
10. On August 27, 2019, the Applicant submitted a supplemental prehearing statement that included the following: (i) updates to the proposed architectural plans for the Project; (ii) a summary of key findings in the Comprehensive Transportation Review; (iii) a review of community outreach efforts, including detailing the support of ANC 5A and other community groups; (iv) clarification on certain proffered benefits, including the Project's affordable housing; (v) refined language for the Applicant's flexibility

request; and (vi) outlines of witness testimony. (Ex. 26, 26A1-26C)

11. On September 6, 2019, OP submitted a report recommending approval of the Application with conditions. (Ex. 28).
12. On September 6, 2019, DDOT submitted a report stating no objection to the Application with conditions. (Ex. 29).
13. On September 13, 2019, ANC 5A submitted a resolution supporting the Application, which was passed with a unanimous vote of 6-0-0. (Ex. 31). There are also letters in support for the Application in the record from the 1 Hawaii Ave NE Tenant Association (the “**Tenant Association**”) (Ex. 33), the Coalition for Smarter Growth (Ex. 36), and the Fort Totten Civic Association (Ex. 37). There are no letters in opposition to the Application in the record.
14. After proper notice, the Commission held a public hearing on the application on September 16, 2019. The parties to the case were the Applicant, ANC 5A and ANC 4D. There were no requests for party status submitted in the record.
15. As a preliminary matter at the public hearing, the Commission considered the Applicant’s request for a waiver from the requirements of Subtitle Z § 300.7. (Ex. 30). Specifically, the Applicant requested the Commission waive the requirements of Subtitle Z § 300.7 to mail Notice of Intent to File the Application to ANC 4D, which is the neighboring ANC. (Ex. 30).
16. The Commission evaluated the waiver request in accordance with the requirements of Subtitle Z § 101.9. The Commission found there was good cause to waive Subtitle Z § 300.7 as it pertains to ANC 4D because the Applicant attended public meetings of ANC 4D to present the Project. (Ex. 2, pg. 37). Further, the Applicant served ANC 4D with the Application and all subsequent documents filed in the record. (Exs. 3, 15, 18, 26, 42, 43). The Commission finds that ANC 4D had notice of the Application and, therefore, ANC 4D was not be prejudiced by the Applicant’s failure to mail a Notice of Intent to File to ANC 4D. Accordingly, the Commission granted a waiver of Subtitle Z § 300.7 as it pertains to ANC 4D. (9/16/19 Hearing Transcript).
17. As a preliminary matter at the public hearing, the Commission accepted David Haresign from Bonstra|Haresign Architects as an expert in architecture and Stephen Varga from Cozen O’Connor as an expert in land use and planning, both of whom testified on behalf of the Applicant. (9/16/19 Hearing Transcript).
18. During the hearing, Chris Marshall, a project manager with the Applicant, testified on behalf of the Applicant as well. (9/16/19 Hearing Transcript).
19. At the public hearing, the Commission also heard testimony from OP and DDOT

regarding the Application. Both OP and DDOT reiterated their support for the Application, which was set forth in their respective reports. (9/16/19 Hearing Transcript).

20. No individuals or groups spoke in support of or in opposition to the Application at the public hearing. The Commission acknowledged on the record individual representatives of the Tenant Association who were in attendance at the public hearing and were supportive of the Application and the Project. (9/16/19 Hearing Transcript).
21. At the close of the public hearing, the Commission took proposed action by a vote of 3-0-2 to approve the Application. The Commission also requested the following information from the Applicant before final action: (i) a summary of the Applicant's public benefits and amenities; (ii) confirmation as to lot occupancy and amount of open space; (iii) confirmation as to the size of the proposed children's play area; (iv) an executive summary of the Applicant's development agreement with tenants at the Property; (v) confirmation as to whether the Applicant is committing to provide solar panels at the Project; (vi) explanation on an enforcement method for proffered benefits to the Fort Totten Civic Association; (vii) an update architectural plan showing a mirror along the driveway to the parking garage; (viii) confirmation as to the Property's record lot number; and (ix) a complete first source agreement. (9/16/19 Hearing Transcript).
22. On September 17, 2019, the proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. (Ex. 41).
23. On September 30, 2019, the Applicant filed its post-hearing submission addressing the Commission's requests during the hearing. (Ex. 43).
24. On _____, OP filed responses to the Applicant's post-hearing submission (Ex. _____).
25. On _____, the Applicant filed its final list of proffers and draft conditions pursuant to 11 DCMR Subtitle X § 308.12.
26. On _____, NCPC submitted its report stating _____. (Ex. ____).
27. At a public meeting on October 21, 2019, the Zoning Commission took final action to approve the Application by a vote of _____.

The Property and Surrounding Area

28. The Property is located in Ward 5 near the Fort Totten and Pleasant Hill neighborhoods. The Property is currently located in the RA-1 zone. The Property is not in an historic district. (Ex. 2).

29. The Property is a triangular-shaped lot with a land area of 26,400 sq. ft. The Property is circumscribed by public rights-of-way on all three lot lines: Rock Creek Church Road NW to the west; Hawaii Avenue NE to the east; and Allison Street NW to the south. (Ex. 2).
30. The Property has a unique topography, with a ridge along the western and southern lot lines that slopes inward toward the middle of the Property. There are also building restriction lines along each of the Property's lot lines. The building restriction area along Allison Street NW and Hawaii Avenue NE is 15-feet-wide and the building restriction area along Rock Creek Church Road NW is 20-feet-wide. (Ex. 2).
31. The Property is currently improved with a 34-unit, two-story apartment building that was constructed in the 1940's (the "**Existing Building**"). The Existing Building is in disrepair and is nearing the end of its useful life. There is no parking at the Existing Building. (Ex. 2).
32. The surrounding area is primarily residential in nature. Across Hawaii Avenue NE to the east of the Property is a moderate-density residential neighborhood primarily featuring single-family rowhomes. There are also low-rise apartment buildings to the south on Hawaii Avenue NE and to the north on North Capitol Street. The Property abuts cemeteries along its other two sides: Rock Creek Cemetery to the northwest and the U.S. National Cemetery to the south. (Ex. 2).
33. The Property is half-a-mile from the Fort Totten Metrorail Station. There are two Metrobus stops on the Property that provide access to bus lines 60 and H8. A third bus stop is located in nearby public space to the southwest of the Property. There are several bus lines with stops at the Fort Totten Metrorail Station as well as a bikeshare station and zip car parking. (Ex. 2).

The Project

34. The Applicant proposes to raze the Existing Building and construct a 70-unit, all-affordable apartment building at the Property ("**Project**"). As part of the Application, the Applicant proposes to rezone the Property from the RA-1 zone to the RA-2 zone. (Ex. 2, 26).
35. Of the 70 units proposed for the Project, there will be 10 studios, 38 1-bedroom units, 7 2-bedroom units and 15 3-bedroom units, subject to the flexibility specified below. The Project will also incorporate 14 parking spaces on the cellar level, indoor/outdoor recreational space for residents, and an outdoor children's play area. (Ex. 2, 26).
36. In terms of the affordability levels at the Project, the Applicant proposes 7 units reserved for renters earning up to 30% of the Median Family Income ("**MFI**"); 29 units for renters earning up to 50% MFI; 16 units for renters earning up to 60% MFI; and 18

units for renters earning up to 80% MFI, subject to the flexibility specified below. (Ex. 26). The Applicant has committed to these units remaining affordable for no less than 40 years. The Applicant is pursuing financing for the Project through Low Income Housing Tax Credits Housing, tax-exempt bonds, and the Housing Production Trust Fund. If these funding mechanisms are secured, then the Project would be exempt from the Inclusionary Zoning regulations (“IZ”) under Chapter 1000 in Subtitle C of the Zoning Regulations. Following the affordability control period, at least 10% of the units will remain affordable for the life of the Project in accordance with the IZ regulations. (Ex. 2, 26).

37. As shown in the architectural plan set at Ex. 26A1-A4 (the “**Architectural Plans**”), the Project will comply with the development standards for a PUD in the RA-2 zone. The Project will have approximately 59,070 sq. ft. of gross floor area, which equates to a floor-area-ratio of 2.24. The Project will be four stories with a maximum building height of 48’6” plus a non-habitable mechanical penthouse. The Project proposes a lot occupancy of 53%. (Ex. 26, 26A1-A4). The Project will meet the zoning requirements for side yards and rear yard.
38. The Project will have a cellar level with 14 parking spaces, which are accessed via a driveway with a curb cut on Allison Street NW. The driveway varies in width from 24-feet to 14-feet, and, accordingly, the Applicant has requested flexibility for the portions narrower than the required 20-feet. The cellar level will also have six dwelling units, a long-term bicycle parking room for 48 bicycle parking spaces and other mechanical space. (Ex. 2, Ex 26, 26A-A4).
39. The proposed loading berth is located on the Project’s ground level and is accessed from the same driveway as the parking garage. The Applicant has requested flexibility because the loading berth has a vertical clearance of 10’6”, which is less than the required 12 feet. (Ex. 2, Ex. 26, 26A1-A4).
40. The Project is designed to largely replicate the “T-shape” of the Existing Building. The main building entrance will be located at the corner of Hawaii Avenue NE and Rock Creek Church Road NW. The Project’s frontage on Hawaii Avenue NE is highlighted by six bay projections. The Project design also includes two glass stair enclosures along the western-facing façade. (Ex. 2, Ex. 26, 26A1-A4).
41. The proposed building materials are primarily red and ochre brick with light grey stucco and dark grey metal accents. (Ex. 2, Ex. 26, 26A1-A4).
42. The Applicant is pursuing LEED-Gold certification for the Project under the U.S. Green Building Council’s LEED v.4 standards. The Applicant intends to provide solar panels on the Project’s roof depending on financing availability. (Ex. 2, Ex. 26, 26A1-A4).
43. The Applicant has also proposed a substantial landscape plan to highlight the Property’s open space and increase the tree cover on the Property. The Project

proposes an outdoor amenity space and a children's play area along Rock Creek Church Road NW. The Applicant will make improvements to public space surrounding the Property, including designating a pick-up/drop-off space for cars and rideshares. (Ex. 2, Ex. 26, 26A1-A4).

Zoning Flexibility

44. Flexibility from Minimum PUD Land Area Requirement. The Applicant requested flexibility from the minimum land area requirement for a PUD in the RA-2 zone pursuant to Subtitle X § 301.1 of the Zoning Regulations. In the RA-2 zone, a PUD must have a minimum land area of 1 acre (43,560 sq. ft.). However, the Property has a total land area of 26,400 sq. ft., or approximately 60% of the required 1 acre. Under Subtitle X § 301.2, the Zoning Commission may waive up to 50% of the minimum land area requirement for a PUD in Zone Group 1, which includes the RA-2 zone, provided the Zoning Commission finds (i) the development is of exceptional merit and the development is in the best interest of the District of Columbia; and (ii) if the development is outside the Central Employment Area and at least 80% of the gross floor area is dedicated to dwelling units and accessory uses thereto. *See* 11 DCMR Subtitle X § 301.2.
45. The Commission finds the Project meets the requirements of Subtitle X § 301.2 because the Property is located outside the Central Employment Area and 100% of the Project's gross floor area is dedicated to dwelling units and accessory uses thereto. Further, the Commission finds that the Project is of exceptional merit and in the best interest of the District of Columbia because it will provide 70 all-affordable dwelling units, with a substantial amount of larger units for families. The Project will greatly improve the condition of the Existing Building while safeguarding against displacement of existing residents. The Project also demonstrates exceptional merit through architectural design, landscaping and public space improvements. Accordingly, the Commission concludes that flexibility from the minimum PUD land area requirements is appropriate in this case.
46. Flexibility for Vertical Clearance of Loading Berth. The Applicant is providing one loading berth at the Project as required under Subtitle C § 901.1 of the Zoning Regulations. However, Subtitle C § 905.2 prescribes certain size and layout requirements for the required loading berth. The Applicant requests flexibility from Subtitle C § 905.2 because the proposed loading berth does not have a vertical clearance of 14 feet. Instead, the Project's loading berth will have a vertical clearance of 10.5 feet. The limited vertical clearance is primarily driven by the Property's topography, which creates different elevations from Hawaii Avenue NE to where the loading berth is located. Nonetheless, the Commission finds that trucks up to 26 feet in length will be able to fully access the loading berth. The 26-foot truck is the maximum expected size needed for a three-bedroom unit, which is the largest unit size in the Project. Further, the Project does not have any retail or other uses that may require

larger trucks. As such, the Commission finds that the loading berth, as proposed, will not create adverse impacts and will adequately service the Project.

47. Flexibility for Driveway Width. The Applicant also requested flexibility for the Project's driveway, which varies in width from 24-feet-wide to 14-feet-wide. Under Subtitle C § 711.6, a driveway within 20-feet of a street lot line must be at least 20-feet-wide for two-way traffic. Although portions of the driveway meet this requirement, flexibility is needed for the portions less than 20-feet in width. The narrow driveway is a result of the Property's triangular-shape and the limitations imposed by the building restriction areas on the Property. Due to these factors, the Applicant is incorporating bioretention area along the driveway, which contributes to narrowing the drive aisle. However, the Commission finds that this flexibility will not have an adverse impact because, even at its narrowest, the driveway provides sufficient width for two-way traffic. Traffic volume is not expected to be heavy as there is only 14 parking spaces at the Project. Furthermore, the Applicant is installing a traffic mirror to help residents navigate entering and existing the parking garage. As such, the Commission finds that the driveway, as proposed, will not create adverse impacts and will adequately service the Project.

Development Flexibility

48. The Applicant also requests flexibility in the following areas:
- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided such variations do not change the exterior configuration of the building;
 - b. To vary the number, location, and arrangement of parking spaces for the Project, provided that the total parking is not reduced below the minimum level required for the PUD;
 - c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
 - d. To vary the number of residential dwelling units by an amount not greater than plus 5% and not less than minus 10% from the number depicted on the Architectural Plans approved by the Zoning Commission; and
 - e. To vary the location, attributes and general design of the streetscape incorporated in the project to comply with the requirements of and the approval by the Department

of Transportation's Public Space Division.

49. The Applicant originally requested flexibility to vary the residential dwelling units up to plus 10%. However, at OP's request, the Applicant refined the flexibility request to no greater than plus 5%. (Ex. 28).
50. With the revisions, the Commission has no objections to the Applicant's requested flexibility.

Public Benefits and Amenities

51. Superior Urban Design and Architecture (Subtitle X § 305.5(a)). The Commission finds the Project demonstrates superior urban design and architecture because the Applicant and its architectural team have designed an aesthetically appealing building that is functional while remaining in harmony with the surrounding residential neighborhoods. The Project will be a significant improvement over the design and architectural details of the Existing Building. The Project proposes six rows of bay projections along Hawaii Avenue NE, which are intended to mimic the character of the neighboring townhomes. The Project emphasizes the primary entrance at the corner of Hawaii Avenue and Rock Creek Church Road with a large landing and visually-appealing entryway. Further, the two glass-enclosed stairwells promote an "active" building while offering a distinction from the other high-quality materials, including the red and ochre brick. The staggered facades along Rock Creek Church Road and Allison Street are superior design elements compared to a continuous street wall.
52. Superior Landscaping, or creation or preservation of open spaces (Subtitle X § 305.5(b)). The Commission finds the Project demonstrates superior landscaping and preservation of open spaces because the Project proposes a robust landscaping plan that offers new and varied plantings, increases the tree coverage over existing conditions at the Property, and highlights the open green areas on and around the Property. The Commission notes that the Project's lot occupancy is 53%, which is well under the maximum 60% lot occupancy. Nonetheless, after accounting for additional public space within Allison Street, Rock Creek Church Road and Hawaii Avenue, approximately 66% of the "island" will be open and green. The Project's landscaping and open space provide a transition from the neighboring cemeteries to the residential areas to the east of the Property. The Project also provides outdoor recreational space for adults and a children's play area.
53. Site planning and efficient and economical land utilization (Subtitle X § 305.5(c)). The Commission finds the Project makes an efficient and economic use of the Property. The buildable area on the Property is greatly limited by three building restriction lines. Despite the limited buildable area, the Project incorporates 70 units and substantial open space while maintaining a massing, height and density that is compatible with the nearby neighborhoods. The Project largely mirrors the shape of the Existing Building, which has been part of the community for 80 years.

54. Housing and Affordable Housing (Subtitle X § 305.5(f) and (g)). The Commission finds the Project's most significant benefit is the creation of 70 dwelling units all of which will be affordable housing. The Applicant proposes 7 units reserved for renters earning up to 30% of MFI; 29 units for renters earning up to 50% MFI; 16 units for renters earning up to 60% MFI; and 18 units for renters earning up to 80% MFI. (Ex. 26). The Applicant has committed to these units remaining affordable for no less than 40 years. Following the affordability control period, at least 10% of the units will remain affordable for the life of the Project in accordance with IZ.
55. Both ANC 5A and the Fort Totten Civic Association identified affordable housing as an important element of the Project. (Ex. 31, 37). To that end, the affordable housing proffer exceeds the amount of affordable square footage that would be required under a by-right development. In such a scenario, the Applicant would be required to set aside 10% of the residential gross floor area, or 75% of the achievable bonus density, for renters earning up to 60% MFI. Under the existing RA-1 zone, this would result in significantly less affordable housing than the proposed Project.
56. In addition to preserving 34 units of housing and creating 36 new units at the Property, the Commission finds that the Applicant's provision of 15 3-bedroom units is a public benefit. The 3-bedroom units offer larger, family-sized units, which meets an important housing need in the District. The Commission notes that the Project is also proposing 7 2-bedroom units that are suitable for families as well.
57. Employment and Training Opportunities (Subtitle X § 305.5(h)). The Applicant will enter into a First Source Employment Agreement with the Department of Employment Services. The Applicant will complete the First Source Employment Agreement in due course during permitting, but definitively prior to the issuance of a building permit for the Project.
58. Social Services and Facilities (Subtitle X § 305.5(i)). The Applicant will offer social service programs to Project residents. The social service programs will be administered by an on-site coordinator, which the Applicant will employ assuming funding availability for the position. The expected programming would include housing stability, adult education, and health and wellness classes. The Commission agrees with OP's conclusion that such programs would be of considerable benefit to Project residents.
59. Environmental and Sustainability Benefits (Subtitle X § 305.5(k)). The Commission finds that the Project will incorporate environmentally sustainable features beyond that of a by-right development. In particular, the Project will achieve LEED-Gold certification under the U.S. Green Building Council's v.4 standards. The Project will have infrastructure to service electric vehicles, as recommended by the Department of Energy and Environment. The Applicant intends to incorporate solar panels on the Project's roof as demonstrated in the Architectural Plans. However, the Applicant could not commit to the inclusion of solar panels as of the date of the Commission's public hearing due to funding uncertainty.

60. Streetscape Plans (Subtitle X § 305.5(l)). The Commission finds the Project will include landscape and improved streetscapes in public space surrounding the Property. The Applicant proposes new plantings and trees that will increase and beautify the green space around the Property. The landscape plan includes several large canopy trees near the Property's southwestern point along with mixed plantings by the Project's primary entrance. The Project will also ensure that the surrounding sidewalks and pedestrian facilities are brought up to DDOT standards. Finally, the Applicant has proffered that it will work with DDOT to designate a "pick-up/drop-off" space for vehicles and ride shares on Rock Creek Church Road NW. This designated space would alleviate traffic congestion on Hawaii Avenue NE.
61. Outdoor Children's Play Area (Subtitle X § 305.5(m)). The Project will incorporate an outdoor children's play area that is approximately 580 square feet. The Commission commends the Applicant for providing the play area as the Project will likely have residents with children due to the availability of family-sized units. The Commission acknowledges that the play area is in public space and, therefore, is subject to approval by DDOT's Public Space Committee. Nonetheless, the Applicant has committed to programming the play area prior to the issuance of a certificate of occupancy for the Project.
62. Uses of Special Value to the Neighborhood (Subtitle X § 305.5(q)). The Applicant will implement a temporary relocation plan to assist existing tenants during construction of the Project and ensure that tenants can return to comparable unit sizes and similar rent once the Project is completed. As detailed in the Applicant's Post-Hearing Submission (Ex. 43), the Applicant entered into an agreement with the Tenant Association. This agreement outlines the tenants' rights in connection with the Applicant's purchase and redevelopment of the Property.
63. The Commission finds that this is a benefit of special value because the Applicant agreed to an extensive relocation plan that includes, but is not limited to, the Applicant's payment of tenants' moving expenses, the close proximity of temporary relocation units, the length of temporary relocation, and the employment of a relocation specialist to work directly with tenants. (Ex. 43). The Commission further notes that the Applicant has placed rent protections in its agreement with the Tenant Association and the Applicant agreed to pay for the Tenant Association's legal representation.
64. The Commission commends the Applicant for its continued work with the Tenant Association during the pendency of the Application. The Applicant worked with the Tenant Association to clarify the size and unit type that qualified tenants would be able to return to at the Project. Due to these continued efforts, the Tenant Association filed a letter of support for the Project.
65. Additionally, the Applicant proffered benefits to the Fort Totten Civic Association. The Applicant will pay organizational dues of \$2,500 per year for a period of 10 years to the Fort Totten Civic Association. The Commission notes that this benefit is

enforceable through a written and signed Letter of Intent from the Applicant to the Fort Totten Civic Association, which will be provided to the Zoning Administrator prior to issuance of a certificate of occupancy. (Ex. 43). The Applicant has also agreed to provide the Fort Totten Civic Association with meeting space in the Project's amenity room up to twice a month for as long as the association remains active. The Fort Totten Civic Association filed a letter of support for the Project.

Consistency with the Comprehensive Plan and Other Planning Guidance

66. The Commission finds the Project is not inconsistent with the Comprehensive Plan as a whole. Specifically, the Project is not inconsistent with the Generalized Policy Map (“GPM”), advances the purposes of the Comprehensive Plan, complies with the guiding principles of the Comprehensive Plan, and furthers a number of major elements in the Comprehensive Plan. As explained below, the Project's consistency with other policies outweighs the Project's potential inconsistency with the Future Land Use Map (“FLUM”), which designates the Property as “Parks, Recreation and Open Space.”
67. The Comprehensive Plan guides the District's development, both broadly and in detail. *See* 10A DCMR § 103.2. The Comprehensive Plan includes detailed maps and policies for the physical development of the District, and addresses social and economic issues that affect and are linked to the development of the city and its citizens. The Comprehensive Plan allows the District to ensure that its resources are used wisely and efficiently and that public investment is focused in the areas where it is needed most. *See* 10A DCMR § 100.14.
68. The purposes of the Comprehensive Plan are as follows: (a) to define the requirements and aspirations of District residents and, accordingly, influence social, economic and physical development; (b) to guide executive and legislative decisions on matters affecting the District and its citizens; (c) to promote economic growth and jobs for District residents; (c) to guide private and public development in order to achieve District and community goals; (e) to maintain and enhance the natural and architectural assets of the District; and (f) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (D.C. Code §1-245(b)).
69. The Commission notes that the Comprehensive Plan, including the FLUM and the GPM, is not a code of compulsory requirements. 10A DCMR § 226.1; *Durant v. D.C. Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013). Rather, the Comprehensive Plan is “an interpretative guide, which the Commission must consider holistically.” *Durant*, 65 A.3d at 1168; cf. *Tenley & Cleveland Park Emergency Committee v. D.C. Zoning Comm'n*, 550 A.2d 331, 338 (D.C. 1988) (“[a]lthough the Plan serves as an important policy guide, its legal mandate is more limited. Except as provided by other law or the Plan itself, the District elements are advisory”). (Id.)
70. Moreover, even if a PUD or zoning map amendment application arguably "conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be

consistent with the Comprehensive Plan as a whole." *Durant*, 65 A.3d at 1168l; *see also Friends of McMillan Park v. D.C. Zoning Comm'n*, 211 A.3d 129 (D.C. 2019)). The Comprehensive Plan reflects numerous "occasionally competing policies and goals," and, "[e]xcept where specifically provided, the Plan is not binding." *Id.* at 1167, 1168. Thus, "the Commission may balance competing priorities" in determining whether a PUD is consistent with the Comprehensive Plan as a whole. *Id.* (quoting *D.C. Library Renaissance Project/West End Library Advisory Grp. v. D.C. Zoning Comm'n*, 73 A.3d 107, 126 (D.C. 2013)). "[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations." *Id.*

71. Generalized Policy Map. The GPM designates the Property for "Neighborhood Conservation Area." This designation is intended for areas that are primarily residential in character and where the expectation is to maintain existing land uses and community character. 10A DCMR § 223.4. Nonetheless, some new development and reuse opportunities are anticipated in Neighborhood Conservation Areas. *Id.* As such, the "guiding philosophy of Neighborhood Conservation Areas is to conserve and enhance established neighborhoods." *Id.* at § 223.5.
72. The Commission finds the PUD and Map Amendment to not be inconsistent with the Neighborhood Conservation Area designation in the GPM. The Project will preserve the existing residential use at the Property. The Applicant's proposal to raze the Existing Building, which is in poor condition, and construct a modern apartment building with amenities will serve to enhance the Fort Totten community, including for tenants of the Existing Building who choose to return to the Project. The Project's relatively modest density increase is balanced out by an architectural and landscape design that harmonizes with the surrounding residential area.
73. Future Land Use Map. The FLUM designates the Property for "Parks, Recreation and Open Space." The Framework Element defines the "Parks, Recreation and Open Space" designation to include "the federal and District park systems, including the National Parks, the circles and squares of the L'Enfant city and District neighborhoods, the National Mall, settings for significant commemorative works, certain federal buildings such as the White House and the US Capitol grounds, and museums, and District operated parks and associated recreation centers." 10A DCMR § 225.17. "It also includes permanent open space uses such as cemeteries, open space associated with utilities such as the Dalecarlia and McMillan Reservoirs, and open space along highways such as Suitland Parkway. This category includes a mix of passive open space (for resource conservation and habitat protection) and active open space (for recreation)." *Id.*
74. As the Commission has previously acknowledged, the Framework Element of the Comprehensive Plan provides that the FLUM is not a zoning map. 10A DCMR § 226.1(a). While zoning maps are parcel-specific and establish detailed requirements for setback, height, use, parking, and other attributes, the FLUM does not follow parcel

boundaries and its categories do not specify allowable uses or dimensional standards. *Id.* By definition, the FLUM is to be interpreted broadly. *Id.* Furthermore, the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. The granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here. *Id.* at § 226.1(c).

75. The Commission finds that the PUD and Map Amendment is potentially inconsistent with the “Parks, Recreation and Open Space” designation in the FLUM because such a designation is intended for federal and District park systems or other permanent open space uses, including cemeteries. The Property abuts two cemeteries to the northwest and southwest, both of which are designated by the FLUM as “Parks, Recreation and Open Space.” Such a designation is appropriate for cemeteries as reflected in the Framework Element. Since the FLUM is not “parcel-specific,” the Commission finds it is likely that the Property was “lumped” in with the adjacent cemeteries.
76. Additionally, the Commission credits OP’s analysis as well as expert testimony from Stephen Varga, the Applicant’s land use and planning expert, that the Property’s designation in the FLUM is likely a mistake because the Property has been privately-owned and improved with an apartment building since at least the 1940’s. In finding that the FLUM designation is likely a mistake. (Ex. 10, Ex. 38, 9/16/19 Hearing Transcript). This significantly predates the passage of the first Comprehensive Plan and FLUM in 1984. (Ex. 10, 28; *see* D.C. Code § 1-306.02). The Applicant proposes to continue the residential apartment use that has occupied the Property for at least 80 years.
77. Nonetheless, the Commission notes that the Project will maintain and improve the open space on and around the Property. The Applicant proposes a robust landscape plan that will beautify the Property and abutting public space and increase the overall tree cover. Approximately 66% of the Property and the abutting public space will be open green space. (Ex. 43).² As such, the Project is consistent with elements of the “Parks, Recreation and Open Space” designation in the FLUM.
78. Despite the Project’s potential inconsistency with the FLUM designation, the Commission finds that the Project is not inconsistent with the Comprehensive Plan as a whole. The Project is consistent with the Property’s designation in the GPM. As described in more detail below, the Project is also consistent with numerous policies in the Comprehensive Plan. Most notably, the Project furthers vital goals in the Housing Element, which encourages the preservation and production of affordable, family-sized housing. The Project is also consistent with policies in the Land Use Element, the Environmental Protection Element, the Rock Creek East Area Element and other

² This accounts for all land located between Rock Creek Church Road, Allison Street and Hawaii Avenue. A portion of this land is public space, including within the building restriction area. Although the public space does not count in the Project’s lot occupancy calculations, the Applicant is improving the public space, including through its landscaping plan. Thus, it is equitable to weigh the abutting public space in review of the Project’s open green area.

elements. As set forth in the *Durant* case and the *Friends of McMillan Park* case, the Commission gives more weight to the GPM and the written policy elements because the record demonstrates the FLUM designation for the Property is likely a mistake, as outlined above.

79. The surrounding residential neighborhoods are designated as “Moderate Density Residential” on the FLUM. (Ex. 2G). This designation is generally intended for row house neighborhoods and low-rise apartment buildings. 10A DCMR § 225.4. Such a designation is generally consistent with the RA-2 zone. *Id.* To that end, there is a pending map amendment that would designate the Property as “Moderate Density Residential” on the FLUM. (Ex. 2H).
80. The Commission finds that the Map Amendment is not inconsistent with the “Moderate Density Residential” FLUM designation because it proposes the Property be re-zoned to the RA-2 zone. Additionally, the Project, as a whole, is not inconsistent with this designation because it would be a moderate-density apartment building that aligns with nearby development patterns.
81. Compliance with Citywide and Area Elements. The Commission finds that the Project is not inconsistent with the objectives and policies contained in the Citywide and Area Elements of the Comprehensive Plan. The Commission bases its finding on evidence in the record, including the Applicant’s statement in support of the Application, which includes a Comprehensive Plan analysis, as well as OP’s reports and the testimony of Mr. Varga. (Ex. 2, 10, 28). In general, the Commission finds that the Project furthers policies in the Land Use Element, Housing Element, Transportation Element, Environmental Protection Element, Urban Design Element, and Rock Creek East Element.
82. Land Use Element. As found by OP, the Project is not inconsistent with the following policies in the Land Use Element of the Comprehensive Plan:
 - a. *Policy LU-2.1.2: Neighborhood Revitalization:* Facilitate orderly neighborhood revitalization and stabilization by focusing District grants, loans, housing rehabilitation efforts, commercial investment programs, capital improvements, and other government actions in those areas that are most in need. Use social, economic, and physical indicators such as the poverty rate, the number of abandoned or substandard buildings, the crime rate, and the unemployment rate as key indicators of need.
 - b. *Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods:* Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to “create successful neighborhoods” in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others.

- c. *Policy LU-2.2.4: Neighborhood Beautification*: Encourage projects which improve the visual quality of the District's neighborhoods, including landscaping and tree planting, façade improvement, anti-litter campaigns, graffiti removal, improvement or removal of abandoned buildings, street and sidewalk repair, and park improvements.
83. The Project would revitalize an aging building that is in need of significant upgrades and repairs. The Project is an improvement over the Existing Building because it will provide modern amenities, an improved architectural design, and a greater percentage of family-sized units. The Project accomplishes the dual goals of increasing the housing supply, including from 34 units to 70 units at the Property, while preserving the neighborhood character. The Project's landscape and open space plan will further beautify the area.
84. Housing Element. As found by OP, the Project is not inconsistent with the following policies in the Housing Element of the Comprehensive Plan.
- a. *Policy H-1.1.3: Balancing Growth*: Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing.
 - b. *Policy H-1.1.5: Housing Quality*: Require the design of affordable housing to meet the same high-quality architectural standards required of market-rate housing. Regardless of its affordability level, new or renovated housing should be indistinguishable from market rate housing in its exterior appearance and should address the need for open space and recreational amenities, and respect the design integrity of adjacent properties and the surrounding neighborhood.
 - c. *Policy H-1.2.1: Affordable Housing Production as a Civic Priority*: Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout the city.
 - d. *Policy H-1.2.6: Non-Profit Involvement*: Actively involve and coordinate with the nonprofit development sector, increasing their capacity to produce affordable housing. Enter into partnerships with the non-profit sector so that public funding can be used to leverage the creation of affordable units.
 - e. *Policy H-1.3.1: Housing for Families*: 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.
 - f. *Policy H-2.1.1: Protecting Affordable Rental Housing*: Recognize the importance of preserving rental housing affordability to the well-being of the District of Columbia

and the diversity of its neighborhoods. Undertake programs to protect the supply of subsidized rental units and low-cost market rate units.

- g. *Policy H-2.1.3: Avoiding Displacement*: Maintain programs to minimize displacement resulting from the conversion or renovation of affordable rental housing to more costly forms of housing. These programs should include financial, technical, and counseling assistance to lower income households and the strengthening of the rights of existing tenants to purchase rental units if they are being converted to ownership units.
85. The Commission finds that the Project furthers these Housing Element policies by providing 70, all-affordable units of high-quality residential housing. As stated in the record, the Applicant is preserving the existing 34 units of affordable housing and producing 36 new units of affordable housing. The Applicant proffers deep levels of affordability in terms of MFI levels, with 52 units at or below 60% MFI. Further, the Project will have a significant number of family-sized units, including 15 3-bedroom units. Through an agreement with existing tenants, the Applicant has ensured that no tenants will be displaced. Further, the existing tenants subject to the agreement are entitled to return to the Project, once completed, with substantially similar rent and unit sizes. The Commission also notes that the Project furthers *Policy H-2.1.5*, which was not mentioned in the OP report, because the Applicant has proffered long-term affordability restrictions for at least 40 years.
86. Transportation Element. As found by OP, the Project is not inconsistent with the following policy in the Transportation Element of the Comprehensive Plan.
- a. *Policy T-1.2.3: Discouraging Auto-Oriented Uses*: Discourage certain uses, like “drive-through” businesses or stores with large surface parking lots, along key boulevards and pedestrian streets, and minimize the number of curb cuts in new developments. Curb cuts and multiple vehicle access points break-up the sidewalk, reduce pedestrian safety, and detract from pedestrian-oriented retail and residential areas.
87. The Project proposes only one curb cut from Allison Street NE. The curb cut provides access to 14 parking spaces in the garage as well as the loading berth. The curb cut will not detract from the pedestrian experience on and around the Property. The Project will further minimize impact on pedestrians through a Transportation Demand Management Plan, which the Applicant has agreed to as a condition of approval. The Applicant will improve the pedestrian facilities as demonstrated in its public space plan.
88. Environmental Protection Element. As found by OP, the Project is not inconsistent with the following policies in the Environmental Protection Element of the Comprehensive Plan.
- a. *Policy E-1.1.1: Street Tree Planting and Maintenance*: Plant and maintain street trees in all parts of the city, particularly in areas where existing tree cover has been

reduced over the last 30 years. Recognize the importance of trees in providing shade, reducing energy costs, improving air and water quality, providing urban habitat, absorbing noise, and creating economic and aesthetic value in the District's neighborhoods.

- b. *Policy E-1.1.3: Landscaping*: Encourage the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity.
 - c. *Policy E-2.2.1: Energy Efficiency*: Promote the efficient use of energy, additional use of renewable energy, and a reduction of unnecessary energy expenses. The overarching objective should be to achieve reductions in per capita energy consumption by DC residents and employees.
 - d. *Policy E-2.2.3: Reducing Home Heating and Cooling Costs*: Encourage the use of energy-efficient systems and methods for home insulation, heating, and cooling, both to conserve natural resources and also to reduce energy costs for those members of the community who are least able to afford them.
 - e. *Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff*: Promote an increase in tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction and adaptive reuse, and the application of tree and landscaping standards for parking lots and other large paved surfaces.
89. The Commission finds that the Project furthers these policies because it will achieve LEED-Gold certification under the U.S. Green Building Council's v.4 standards. The Project will include a landscaping plan that offers a variety of plantings and increases the overall tree coverage at the Property. The Applicant also proposes a green roof to reduce stormwater runoff.
90. Urban Design. As found by OP, the Project is not inconsistent with the following policies in the Urban Design Element of the Comprehensive Plan.
- a. *Policy UD-2.2.1: Neighborhood Character and Identity*: Strengthen the defining visual qualities of Washington's neighborhoods. This should be achieved in part by relating the scale of infill development, alterations, renovations, and additions to existing neighborhood context.
 - b. *Policy UD-2.2.8: Large Site Development*: Ensure that new developments on parcels that are larger than the prevailing neighborhood lot size are carefully integrated with adjacent sites. Structures on such parcels should be broken into smaller, more varied forms, particularly where the prevailing street frontage is characterized by small, older buildings with varying facades.
91. The Commission finds that the Project has been designed with high-quality architecture

and materials. The Project's scale and residential design will strengthen and harmonize with the qualities of the surrounding neighborhood. The Project's increase in density is counter-balanced by mitigating factors, including the public rights-of-way that separate the Property from residential uses across Hawaii Avenue NE. The Commission also notes that the Project has not reached the maximum floor-area-ratio or height permitted in the RA-2 zone.

92. Rock Creek East Area Element. As found by OP, the Project is not inconsistent with the following policies in the Rock Creek East Area Element of the Comprehensive Plan.
- a. *Policy RCE-1.1.1: Conservation of Low Density Neighborhoods:* Maintain and conserve the attractive, stable neighborhoods of the Rock Creek East Planning Area. Any new development in the Planning Area should be attractively designed and should contribute to the community's positive physical identity.
 - b. *Policy RCE-1.1.2: Design Compatibility:* Ensure that renovation, additions, and new construction in the area's low density neighborhoods respects the scale and densities of adjacent properties, avoids sharp contrasts in height and mass, and preserves park like qualities such as dense tree cover and open space.
 - c. *Policy RCE-1.1.5: Housing Renovation:* Strongly encourage the rehabilitation and renovation of existing housing in Rock Creek East, taking steps to ensure that housing remains affordable for current and future residents.
 - d. *Policy RCE-1.1.6: Development of New Housing:* Encourage the retention of existing subsidized housing units within the Rock Creek East Planning Area, along with other measures to increase housing choices and improve housing affordability for area residents. This should include the production of new mixed income housing along Georgia Avenue, and the encouragement of mixed income housing in the industrially zoned area west of Georgia Avenue between Upshur and Shepherd, and on District-owned land along Spring Road near the Petworth Metro Station. A particular emphasis should be placed on providing low cost affordable housing for seniors.
93. The Commission finds that the Project will conserve the nearby stable neighborhoods by maintaining a residential use at the Property. The Project has been designed that it is respectful and in harmony with the low-density neighborhood across Hawaii Avenue. The Project will also preserve and enhance the existing open space and landscaping at the Property to enhance the residential feel of the neighborhood. The Project's proposed affordability levels will provide low-cost affordable housing, including for senior citizens.

Office of Planning Reports and Testimony

94. On March 15, 2019, OP submitted a report recommending set down of the Application. (Ex. 10). The OP set down report stated that the Project is "not inconsistent with the

Comprehensive Plan,” including the “map designations.” The report explained that the Project is consistent with the Property’s designations on the FLUM and GPM, and the Project furthers many recommendations in the Comprehensive Plan’s citywide and area elements. In regard to the FLUM, the OP set down report noted that the Property’s designation of “Parks, Recreation, and Open Space” does not match the existing development on the site. OP pointed out that the Property has been improved with a residential multiple dwelling building since the 1940’s, which was prior to the adoption of the Comprehensive Plan’s FLUM in 1984. As such, OP found it appropriate to analyze the Property’s consistency with the surrounding residential area’s designation in the FLUM of “Moderate Density Residential.” The OP set down report also found the Applicant’s proffered benefits to be sufficient for set down, with revisions or additional information as requested. (Ex. 10).

95. On September 6, 2019, OP submitted a hearing report. (Ex. 28). The OP hearing report stated that OP is “very supportive of the new affordable units and the Applicant’s efforts to accommodate existing tenants of this building.” (Ex. 28). As such, OP recommended approval of the Application. OP stated that “the proposed PUD...would not be inconsistent with the Comprehensive Plan as a whole, including the maps and the policy statements. In particular, the proposal would further policy statements contained in the Land Use, Transportation, Housing, Environmental Protection, and Urban Design Citywide Elements, and the Rock Creek East Area Element.” (Ex. 28).
96. The OP hearing report recommended approval of the Application, but requested the Applicant to address the following issues during the hearing: (i) revise the flexibility request to vary the number of dwelling units; (ii) provide additional certainty concerning the flexibility on the Applicant’s affordable housing proffer, including that no dwelling would exceed 80% MFI, the overall average affordability would not exceed 60% MFI, the proffered affordability levels of 30%, 50%, 60% and 80% MFI would not change, and all units would remain affordable during the control period; (iii) address DOEE comments regarding solar panels on the roof; (iv) address DOEE comment regarding electric charging station; (v) address DDOT comments regarding traffic mirrors for driveway; (vi) commit to programming children’s play area prior to issuance of certificate of occupancy; and (vii) address TDM conditions recommended by DDOT.
97. At the public hearing, OP testified that it recommended approval of the Application. Further, the Applicant provided the information and clarifications requested by OP during the hearing and in the Applicant’s Post-Hearing Submission. (Ex. 43). In particular, the Applicant: (i) revised its flexibility request to allow for no more than a 5% increase to the Project’s total unit count; (ii) agreed to all of OP’s conditions with regard to the affordability flexibility request; (iii) addressed DOEE’s comments regarding solar panels; (iv) confirmed that the Project would have infrastructure for electric charging stations; (v) confirmed the Project would have a traffic mirror along the driveway; (vi) committed to programming the children’s play area prior to issuance of certificate of occupancy; and (vii) agreed to all of the TDM conditions recommended by DDOT. Accordingly, the Commission finds that the Applicant responded to all of OP’s concerns.

98. Consistent with D.C. Official Code § 6-623.04 (2001), the Commission places great weight on the OP reports and testimony in approving this application.

DDOT Report and Testimony

99. On September 6, 2019, DDOT submitted its hearing report. (Ex. 29). The DDOT report indicated no objection to the Application provided the Applicant implements the TDM measures proposed in its Comprehensive Transportation Review filed on May 22, 2019 (Ex. 18) and additional measures set forth in DDOT's report.
100. At the public hearing, DDOT testified that it had no objection to the Application. During the hearing, the Applicant agreed to the additional TDM measures proposed by DDOT in its report. As noted above, the Applicant also confirmed that traffic mirrors would be included along the driveway, which was recommended by DDOT. (Ex. 43).
101. The Commission finds the Applicant fully addressed comments raised in DDOT's report. Therefore, the Project will not create adverse impacts on the surrounding transportation network that cannot be mitigated.

Additional Interagency Reviews

102. Pursuant to 11 DCMR Subtitle X § 304.4, the Commission shall find the Project 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.
103. In this case, and as set forth in the OP set down report, OP referred the application to other District agencies for review, including DDOT, DOEE, DC Water, the Department of Housing and Community Development ("DHCD"), the Department of Parks and Recreation, DC Public Schools, Fire and Emergency Medical Services Department, and the Metropolitan Police Department. (Ex. 10). In OP's hearing report, it confirmed that it had circulated Project information to District agencies, and had received comments from DOEE, DHCD and DDOT. (Ex. 28). DOEE's comments offered suggestions for renewable energy programs, including through solar panels. (Ex. 28). DOEE also requested the Applicant to consider installing electric vehicle charging stations or electric vehicle ready infrastructure. (Ex. 28). DHCD stated it had no objections to the Application and confirmed that the Applicant had applied for Housing Production Trust Funds funding. (Ex. 28). DHCD also requested the Applicant identify the IZ units that would remain affordable for the life of the building. (Ex. 28). DDOT reiterated it had no objection to the Application, including the narrower driveway provided the Applicant install traffic mirrors. (Ex. 28).
104. The Commission finds the Applicant addressed all interagency comments concerning the Application. During the hearing and in its Post-Hearing Submission, the Applicant addressed DOEE's suggestion to incorporate solar panels. The Applicant confirmed

that it intends to provide solar panels on the roof of the Project, but needed to secure funding before it could commit to solar panels. (Ex. 43). The Applicant also confirmed that the Project would have electric vehicle ready infrastructure per DOEE's request. In regard to DHCD, the Commission notes that the Architectural Plans identify the IZ units that will remain affordable for the life of the building. (Ex. 26A3, Sheet A6.02). Finally, as noted above, the Applicant adequately addressed all DDOT comments.

ANC 5A Report

105. On September 13, 2019, ANC 5A submitted a resolution supporting the Application, which was passed by a unanimous vote of 6-0-0. (Ex. 31). ANC 5A stated that it was "excited about [the Applicant's] planned redevelopment of the Property," and commended the Applicant for being "an active and engaged member of the community" during the PUD process. (Ex. 31). ANC 5A noted the importance of the Applicant obtaining support from the Fort Totten Civic Association before ANC 5A voted on the Application. (Ex. 31). To that end, the Applicant met with the Fort Totten Civic Association in September 2018, April 2019, June 2019 and July 2019. (Ex. 26). SMD Commissioner Washington was present at several of the Applicant's meetings with the Fort Totten Civic Association. (9/16/19 Hearing Transcript). The Applicant also met with ANC 5A in May 2018, October 2018, January 2019, February 2019, March 2019 and August 2019. (Ex. 26).
106. ANC 5A found that the Applicant had worked to address the concerns of ANC 5A and the Fort Totten Civic Association, including as to the Project's proposed density and other impacts to traffic and parking. ANC 5A found the Applicant's design changes, including reducing the unit count, to resolve the community's concerns. As such, ANC 5A supported the Application and Project. (Ex. 31).
107. The Commission notes that ANC 4D, which is also a party to this Application, did not file a resolution in the case record, nor did a representative of ANC 4D appear at the public hearing. At the public hearing, the Applicant stated that it had presented to ANC 4D and generally received positive comments on the Project, but ANC 4D had stated it would defer to ANC 5A. The Board notes that the Applicant presented to ANC 4D in October 2018. (Ex. 26).

Adverse Impacts and Mitigations

108. The Applicant acknowledged potential adverse impacts of the Project and how such impacts will be mitigated. In particular, ANC 5A and the Fort Totten Civic Association had raised concerns with regard to the Project's height and density as well as parking concerns. Additionally, the Applicant acknowledged potential impacts to tenants in the Existing Building as a result of temporary relocation during construction of the Project.
109. With regard to potential adverse impacts of height and density, the Applicant testified that it had reduced the Project after set down in response to community concerns. As reflected in the Architectural Plans, the Applicant identified that the Project had been

reduced from five stories to four stories and from 78 units to 70 units. (Ex. 26A1-A4). As such, the potential adverse impacts of height and density were mitigated by changes to the Architectural Plans. Indeed, both the Fort Totten Civic Association and ANC 5A acknowledged these positive changes in the record. (Ex. 31, 37). The Fort Totten Civic Association stated that it had negotiated with the Applicant “to come up with a building size that the community can support.” (Ex. 37). ANC 5A acknowledged that the design changes “directly addressed the ANC’s concerns and resulted in our support for the Application and the Project.” (Ex. 31).

110. Likewise, with regard to potential adverse impacts to parking, the Applicant noted that it had made changes to the Architectural Plans by adding two additional parking spaces. Initially, the Applicant had proposed 12 parking spaces, but the final version of the Architectural Plans incorporated 14 parking spaces on the garage level. (Ex. 26A1-A4). As noted by the Applicant, the 14 parking spaces exceeds the Project’s zoning requirement of 11 parking spaces. In conjunction with the reduced unit count, any impacts to the surrounding parking network would be mitigated by increasing the Project’s parking spaces. The Fort Totten Civic Association stated that the Applicant’s changes had addressed its concerns over parking. (Ex. 37).
111. Finally, the Applicant acknowledged the potential adverse impacts to tenants of the Existing Building in terms of temporary relocation during construction of the Project. The Applicant addressed these impacts through a relocation plan negotiated between the Applicant and the Tenant Association. (Ex. 43). The relocation plan is memorialized in a written agreement with the Tenant Association, which was summarized in the Post-Hearing Statement. Through the relocation plan, the Applicant will find nearby housing for tenants during temporary relocation and will dedicate resources, including a full-time relocation manager, to assist in the moving process. (Ex. 43). The Applicant has ensured that rent will remain the same during temporary relocation. (Ex. 43). To that end, the written agreement confirms that existing tenants are entitled to return to the Project, once constructed, at substantially similar rents and unit sizes as the Existing Building. (Ex. 43). The Tenant Association filed a letter of support for the Project, which references its agreement with the Applicant. (Ex. 33). Accordingly, the Commission finds that potential adverse impacts of temporary relocation for tenants has been mitigated through a written agreement between the Applicant and the Tenant Association.
112. In satisfaction of Subtitle X § 304.4(b), the Commission finds that the Project does not have unacceptable impacts on the surrounding area because the potential impacts are capable of being mitigated.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality

of meaningful public benefits; and (c) protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan. (11 DCMR Subtitle X § 300.1).

2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of 11-X DCMR, Chapter 3 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential and non-residential uses for the Project are appropriate for the PUD Site. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.
5. The Application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
6. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the PUD benefits and amenities are reasonable tradeoffs for the requested development flexibility.
7. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP reports in this case and, as explained in this decision, finds its recommendation to grant the Application persuasive.
9. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. To satisfy this great weight requirement, District agencies must

articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. 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). Since ANC 5A’s written report expressed no issues or concerns there is nothing to give great weight to. Additionally, ANC 4D did not file a written report in the case record.

10. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2- 1401 et seq. (2012 Repl.).

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a planned unit development and related Zoning Map amendment from the RA-1 zone to the RA-2 zone for Lot 66 in Square 3684. The approval of this PUD and Zoning Map amendment is subject to the following guidelines, standards, and conditions set forth below.

A. Project Development

1. The Project shall be developed substantially in accordance with the Architectural Plans and Elevations dated August 27, 2019 and prepared by Bonstra|Haresign Architects, as modified by the guidelines, conditions and standards in this Order. (Ex. 26A1-26A4).
2. The Property shall be rezoned from the RA-1 Zone District to the RA-2 Zone District. Pursuant to 11 DCMR Subtitle X § 311.4, the change in zoning shall be effective upon the recordation of the covenant discussed in Condition No. ____.
3. The Applicant is granted the flexibility from the from the minimum area requirements of 11 DCMR Subtitle X § 301.1 for the reasons discussed in FF Nos. 41 and 42.
4. The Applicant is granted flexibility from the loading berth clearance height and driveway width requirements of the Zoning Regulations for the reasons discussed in FF Nos. 43 and 44.
5. The Applicant shall have flexibility with the design of the PUD in the follow areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided such variations do not change the exterior configuration of the building;

- b. To vary the number, location, and arrangement of parking spaces for the Project, provided that the total parking is not reduced below the minimum level required for the PUD;
- c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
- d. To vary the number of residential dwelling units by an amount not greater than plus 5% and not less than minus 10% from the number depicted on the Architectural Plans approved by the Zoning Commission; and
- e. To vary the location, attributes and general design of the streetscape incorporated in the project to comply with the requirements of and the approval by the Department of Transportation’s Public Space Division.

B. Public Benefits

- 1. For the life of the Project, the Applicant shall provide the housing and affordable housing set forth in the following chart. The chart assumes the Applicant will be granted an exemption from the Inclusionary Zoning regulations (“IZ Regulations”) set forth in Subtitle C, Chapter 10 of the Zoning Regulations, pursuant to 11 DCMR Subtitle C § 1001.6. However, the Commission takes no position as to whether the IZ exemption should be granted:

Residential Unit Type	Percentage of Total	Unit Count	Income Type	Affordable Control Period	Affordable Unit Type
Total	100%	70			
LIHTC Affordable Units	26%	18	Up to 80% MFI	40 years	Rental
IZ Affordable Units*	10%	7	Up to 60% MFI	For life of project after 40 year control period ends	Rental
LIHTC Affordable Units	13%	9	Up to 60% MFI	40 years	Rental
LIHTC Affordable Units	41%	29	Up to 50% MFI	40 years	Rental
LIHTC Affordable Units	10%	7	Up to 30% MFI	40 years	Rental

*The units designated as “IZ Affordable Units” shall be rented at 60% MFI during the 40 year control period.

- a. Each control period shall commence upon the issuance of the first certificate of occupancy.
 - b. Should the exemption from the IZ Regulations be granted, the affordable housing requirements of this condition shall be stated in the covenant required under 11 DCMR Subtitle C § 1001.6(a)(4).
 - c. Should the exemption from the IZ Regulations be denied, the Applicant shall provide affordable housing in accordance with this condition, unless the IZ Regulations impose more restrictive standards. The Applicant shall record the covenant required by the Inclusionary Zoning Act as to 10% of the residential gross floor of the Project, and shall execute the monitoring and enforcement documents required by 11 DCMR Subtitle X § 311.6 as to the remaining residential gross floor area.
 - d. The Applicant shall have flexibility to modify the unit percentages and corresponding income levels set forth in the above chart provided the following conditions are met:
 - i. The Project’s overall average income level does not exceed 60% Median Family Income (“MFI”);
 - ii. No dwelling unit at the Project is rented to a household with an income greater than 80% MFI;
 - iii. The income levels of 30%, 50%, 60% and 80% MFI do not change to different income levels; and
 - iv. All units in the Project are maintained as affordable for a period of 40 years in accordance with the Affordable Chart.
2. **For the life of the Project**, at least 15 of the dwelling units will be three-bedroom units.
 3. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it employs an on-site coordinator at the Property to administer social service programs at the Project, assuming the availability of funding for such a position.
 4. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall furnish a copy of its application for LEED certification to the Zoning Administrator. The application for LEED certification shall indicate the Project is designed to include at least the minimum number of points necessary to

achieve Gold certification under the U.S. Green Building Council's LEED v.4 standards.

5. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall demonstrate that it has installed infrastructure in the Project's parking garage that can service electrical vehicles.
6. **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 the D.C. Department of Employment Services substantially similar to the form submitted at Exhibit 15F in the case record.
7. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall implement a Relocation Plan consistent with the document included in the Applicant's Post-Hearing Submission at Exhibit 43 in the case record, and provide an update to the Zoning Administrator regarding the number of residents returning to the Project.
8. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall provide proof to the Zoning Administrator that it has paid \$2,500 for organization dues to the Fort Totten Civic Association. The Applicant shall provide a written letter of intent to the Fort Totten Civic Association setting forth that so long as the Fort Totten Civic Association is actively registered as a "civic association" in the District: (a) the Applicant's obligation to pay to the Fort Totten Civic Association organizational dues no greater than \$2,500 per year for an additional period of nine years; and (b) the Applicant's obligation to provide the Fort Totten Civic Association with a meeting space in the Project's first floor amenity room up to twice a month. The written letter of intent will be provided to the Zoning Administrator and shall be signed by the Applicant.
9. **For the life of the Project**, and subject to approval by the District Department of Transportation, there shall be a children's play area as depicted in the Architectural Plans.
10. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall submit to the Zoning Administrator the programming for the children's play area.

C. **Transportation**

1. **For the life of the Project**, the Applicant shall implement 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. TDM Leaders will receive TDM training from goDCgo to learn about the TDM conditions for this project and nearby available options.
- d. The Applicant will post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised.
- e. The Applicant will provide website links to CommuterConnections.com and goDCgo.com on property websites.
- f. The Applicant will exceed Zoning requirements by providing 48 long-term bicycle parking spaces and twelve (12) short-term bicycle parking spaces around the perimeter of the site.
- g. The long-term bicycle storage room will accommodate non-traditional bike sizes, including cargo, tandem and kids' bikes.
- h. The Applicant will provide a bicycle repair station to be located in the secure long-term bicycle storage room.
- i. The Applicant will unbundle the cost of residential parking from the cost of lease or purchase of each unit, and parking cost will be the average market rate within $\frac{1}{4}$ mile of the Property at a minimum.
- j. The Applicant will install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives.
- k. Identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement.
- l. Provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year.
- m. Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to the residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications.

- n. Provide residents who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future.
 - o. Transportation Coordinator will subscribe to goDCgo's residential newsletter.
 - p. Provide a FREE SmarTrip card to every new resident and a complimentary Capital Bikeshare coupon good for one ride.
2. **For the Life of the Project**, the Applicant shall provide the following loading management plan measures:
- a. A loading dock manager will be designated by the building management. The dock manager will coordinate with tenants to schedule deliveries and residential moves.
 - b. Residents will be required to schedule move-in and move-outs with the loading manager through lease regulations.
 - c. Deliveries will be required to use 30' trucks or less utilizing the loading facilities located along the site driveway off Allison Street. Tenants who wish to use longer trucks must apply for a public space permit from DDOT allowing them to conduct loading operations within public space.
 - d. All loading, delivery, and trash collection activity will be required to utilize the building's internal corridors to access the loading berth, remaining on private property.
 - e. The dock manager will schedule deliveries such that the loading facility capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time so as to not impede traffic flow within the driveway or on any adjacent streets.
 - f. Trucks using the loading dock 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.
 - g. The dock 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.

- h. A representative of the building management will be on call during scheduled deliveries to address compliance issues.

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 is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. (the “Act”), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On September 16, 2019, upon the motion of Commissioner Robert E. Miller, as seconded by Commissioner Michael G. Turnbull, the Zoning Commission took PROPOSED ACTION to APPROVE the application at the conclusion of its public hearing by a vote of 3-0-2 (Anthony J. Hood, Robert E. Miller, Michael G. Turnbull to approve; Peter G. May and Peter A. Shapiro not present and not voting).

On October 21, 2019, upon the motion of Commissioner _____ as seconded by Commissioner _____, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of _____ (_____ to approve; _____ not present and not voting).

In accordance with the provisions of 11 DCMR Subtitle Z § 604.9 of the Zoning Regulations,

this Order shall become final and effective upon publication in the *D.C. Register*; that is, on _____.

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