

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



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)  
October 21, 2019

Pursuant to notice, at its October 21, 2019<sup>1</sup> public meeting, the Zoning Commission for the District of Columbia (the “**Commission**”) deliberated on the application (“**Application**”) filed by Wesley Hawaii, LLC (the “**Applicant**”) requesting the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“**DCMR**”), Zoning Regulations of 2016,” to which all references are made unless otherwise specified) for Lot 66<sup>2</sup> in Square 3684, with an address of 1 Hawaii Avenue, N.E., (the “**Property**”):

- A consolidated planned unit development (“**PUD**”); and
- A related amendment of the Zoning Map from the current RA-1 zone to the proposed RA-2 zone (the “**Map Amendment**”) pursuant to Subtitle X, Chapters 3 and 5.

The Commission conducted the public hearing in accordance with the provisions of Subtitle Z, Chapter 4. The Commission hereby **APPROVES** the Application for the reasons discussed herein, subject to the conditions stated below.

**FINDINGS OF FACT**  
**I. BACKGROUND**

**PARTIES**

1. The following were automatically parties in this proceeding per Subtitle Z § 403.5:
  - The Applicant;
  - Advisory Neighborhood Commission (“**ANC**”) 5A, in which district the Property is located and so an “affected” ANC per Subtitle Z § 101.8; and
  - ANC 4D, which district is directly across the street from the Property and so also an “affected” ANC per Subtitle Z § 101.8.
2. The Commission received no requests for party status.

**NOTICE**

3. The Office of Zoning (“**OZ**”) sent notice of the July 18, 2019, public hearing on May 30, 2019, (Exhibit [“**Ex.**”] 17-17A) to:

---

<sup>1</sup> At its March 25, 2019 public meeting, the Commission set the Application down for a public hearing on July 18, 2019, which was postponed at the Applicant’s request to September 16, 2019.

<sup>2</sup> The Applicant subdivided the Property after the Application was filed to change the identification from Parcel 0124/0077 to Record Lot 66 in Square 3684. (Ex. 2.)

- ANCs 5A and 4D;
  - The Office of Planning (“OP”);
  - The District Department of Transportation (“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 (“DOEE”),
  - The D.C. Housing Authority;
  - The Ward 5 Councilmember, in whose ward the Property is located;
  - The Ward 4 Councilmember, whose ward is directly across the street from the Property;
  - The Chair and At-Large Members of the D.C. Council; and
  - The owners of property located within 200 feet of the Property.
4. OZ also published notice of the July 18, 2019 public hearing, in the July 5, 2019 *D.C. Register* (66 DCR 7922), and on the calendar on OZ’s website. (Ex. 21.)
  5. OZ sent notice of the rescheduled September 16, 2019, public hearing to the same recipients on June 25, 2019, as well as published the notice in the June 7, 2019, *D.C. Register* (66 DCR 6821) and on the calendar on OZ’s website. (Ex. 22-23.)

**THE PROPERTY**

6. The Property is a triangular lot with a land area of 26,400<sup>3</sup> square feet in Ward 5 near the Fort Totten and Pleasant Hill neighborhoods. (Ex. 2.)
7. The Property is not in an historic district. (Ex. 2.)
8. The Property is bounded by:
  - To the northeast - Hawaii Avenue, N.E., with a 15-foot wide building restriction area,
  - To the southeast - Allison Street, N.W., with a 15-foot wide building restriction area, and
  - To the west - Rock Creek Church Road, N.W., with a 20-foot wide building restriction area. (Ex. 2.)
9. 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. (Ex. 2.)
10. The Property is improved with a 34-unit, two-story apartment building constructed in the 1940s (the “**Existing Building**”) that is in disrepair and is nearing the end of its useful life. (Ex. 2.)
11. The Property has no parking. (Ex. 2.)

---

<sup>3</sup> During the subdivision (see note 1 above), the Property’s size was corrected to be 27,728 square feet, some 1, 328 square feet more than that stated in the Application and approved by the Commission. This correction will reduce the amount of the PUD minimum area waiver per Subtitle X § 301.2 and reduce the maximum lot occupancy to 50% and total FAR to 2.13, but will have no substantive change to the Building as proposed and approved by the Commission.

12. The area around the Property includes:
  - Residential areas – single household rowhouses on Hawaii Avenue, N.E., to the northeast and low-rise apartment buildings on North Capitol Street, N.E. to the north, and on Hawaii Avenue and Chermont Drive, N.E. to the east; and
  - Cemeteries - Rock Creek Cemetery to the west and the U.S. National Cemetery to the south.
13. The Property is served by the following mass transit services:
  - The Fort Totten Metrorail Station, within a half-mile of the Property that provide
    - Metrorail service;
    - Stops for several bus lines;
    - A Capital Bikeshare station; and
    - Zipcar parking;
  - Two Metrobus stops on the Property that provide access to bus lines 60 and H8; and
  - A third bus stop located in nearby public space to the southwest of the Property. (Ex. 2.)

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

14. The CP’s Generalized Policy Map (“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. Nonetheless, some new development and reuse opportunities are anticipated in Neighborhood Conservation Areas. As such, the “guiding philosophy of Neighborhood Conservation Areas is to conserve and enhance established neighborhoods.” (CP §§ 223.4, 223.5.)
15. The CP’s Future Land Use Map (“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.... 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).” (CP § 225.17.)

## **II. THE APPLICATION**

### **INITIAL APPLICATION**

16. The Application proposed to raze the Existing Building and construct a 70-unit, all-affordable apartment building at the Property (“**Building**”), composed of approximately:
  - 10 studios;
  - 38 one-bedroom units;

- 7 two-bedroom units;
  - 15 three-bedroom units;
  - 14 underground parking spaces;
  - Indoor outdoor recreational space for residents; and
  - An outdoor children’s play area. (Ex. 2, 26.)
17. The Application proposed the following affordability commitment for no less than 40 years, subject to the flexibility specified below:
- 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. (Ex. 26.)
18. The Applicant is pursuing financing for the Building through Low Income Housing Tax Credits Housing, tax-exempt bonds, and the Housing Production Trust Fund. If these funding mechanisms are secured, then the Building would be exempt from the Inclusionary Zoning Regulations (“IZ”) under Subtitle C, Chapter 1000. Following the affordability control period, at least 10% of the units will remain affordable for the life of the Building in accordance with the IZ regulations. (Ex. 2, 26.)
19. The Building will have approximately:
- A 53% lot occupancy;
  - A maximum building height of 48 feet, 6 inches, with four stories;
  - A non-habitable mechanical penthouse;
  - 59,070 sq. ft. of gross floor area; and
  - A floor area ratio (“FAR”) of 2.24. (Ex. 26, 26A1-A4.)
20. The Building will comply with the development standards for a PUD in the RA-2 zone, including the required side and rear yards. (Ex. 26A1-A4.)
21. The Building’s cellar level will have:
- Six dwelling units;
  - 14 parking spaces accessed from a curb cut on Allison Street, N.W., via a driveway that varies in width from 14 to 24 feet;
  - A long-term bicycle parking room for 48 bicycle parking spaces; and
  - Other mechanical space. (Ex. 2, 26, 26A-A4.)
22. The proposed loading berth is located on the Building’s ground level and is accessed from the same driveway as the parking garage. (Ex. 2, 26, 26A1-A4.)
23. The Building 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, N.E., and Rock Creek Church Road, N.W. The Building’s frontage on Hawaii Avenue, N.E., is highlighted by six bay projections. The Building design also includes two glass stair enclosures along the western-facing façade. (Ex. 2, 26, 26A1-A4.)

24. The proposed building materials are primarily red and ochre brick with light grey stucco and dark grey metal accents. (Ex. 2, 26, 26A1-A4.)
25. The Applicant is pursuing LEED-Gold certification for the Building under the U.S. Green Building Council's LEED v.4 standards. The Applicant intends to provide solar panels on the Building's roof depending on financing availability. (Ex. 2, 26, 26A1-A4.)
26. 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 Building proposes an outdoor amenity space and a children's play area along Rock Creek Church Road, N.W. 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, 26, 26A1-A4.)

#### **APPLICANT'S REVISIONS AND SUBMISSIONS**

27. The Applicant filed a May 21, 2019, response (Ex. 15, the "**Prehearing Statement**") to the comments of the OP Setdown Report (Finding of Fact ["**FF**"] 73) and the Commission at its March 25, 2019, public meeting that:
  - Revised the location of Inclusionary Zoning units;
  - Clarified the Applicant's flexibility request for loading berth clearance;
  - Clarified aspects of the Building's affordable housing component;
  - Provided additional information regarding the Applicant's proffered benefits of environmental and sustainability, social services, and superior landscaping and preservation of open spaces;
  - Clarified where the bioretention area can be located on the Property;
  - Clarified the number of bicycle parking spaces;
  - Provided updated plans for the Building's landscaping, pavement materials, and building materials; and
  - Provided information on the Applicant's participation in first source employment for the Building.
28. The Applicant filed a May 22, 2019, Comprehensive Transportation Review (Ex. 18, 18A1-18A3, the "**CTR**") prepared by Gorove/Slade Associates, a professional transportation planning and traffic engineering firm, that proposed a Traffic Demand Management plan (the "**TDM Plan**") to mitigate potential adverse transportation impacts of the Application.
29. The Applicant submitted an August 27, 2019 statement (Ex. 26, the "**Supplemental Statement**") that:
  - Updated the architectural plans for the Building;
  - Summarized the key findings in the CTR;
  - Detailed the Applicant's community outreach efforts, including detailing the support of ANC 5A and other community groups;
  - Clarified certain proffered benefits, including the Building's affordable housing;

- Refined language for the Applicant’s flexibility request; and
  - Outlined witness testimony.
30. At the September 16, 2019 public hearing, the Applicant:
- Presented the Application with testimony from:
    - David Haresign from Bonstra|Haresign Architects, accepted by the Commission as an expert in architecture;
    - Stephen Varga from Cozen O’Connor, accepted by the Commission as an expert in land use and planning; and
    - Chris Marshall, a project manager with the Applicant;
  - Reduced its request for flexibility to vary the number of residential dwelling units to allow 5% more and 10% less than the proposed 70 units;
  - Agreed to all of OP’s conditions with regard to the affordability flexibility request; and
  - Stated that the Applicant had presented the Application to ANC 4D and generally received positive comments on the Building, but ANC 4D had stated it would defer to ANC 5A. (Ex. 26.)
31. The Applicant filed a September 30, 2019 response (Ex. 43, the “**Post-Hearing Submission**”) to the comments of OP and the Commission at the September 16, 2019, public hearing that:
- In response to DOEE’s comments, confirmed that the Building:
    - Would have solar panels if the Applicant is able to secure funding; and
    - Would have infrastructure for electric charging stations;
  - Confirmed the Building would have a traffic mirror along the driveway;
  - Committed to programming the children’s play area prior to the issuance of certificate of occupancy; and
  - Agreed to all of the DDOT Report’s (FF 78) recommended additional TDM conditions.

**RELIEF REQUESTED**

**Waiver of Minimum PUD Land Area Requirement**

32. The Application requested a waiver pursuant to Subtitle X § 301.2 of the minimum one-acre (43,560 sq. ft.) land area requirement for a PUD in the current RA-1 zone required by Subtitle X § 301.1 to allow a PUD for the Property’s 26,400 sq. ft. total land area.

**Design Flexibility from Final Plans**

33. The Application requested the following design flexibility from what was depicted on the Application’s final proposed plans, if approved by the Commission:
- 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;
  - To vary the number, location, and arrangement of parking spaces for the Building, provided that the total parking is not reduced below the minimum level required for the PUD;
  - 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;

- 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 Commission; and
- To vary the location, attributes and general design of the streetscape incorporated in the Building to comply with the requirements of and the approval by the DDOT's Public Space Division.

### **Development Flexibility**

34. The Application requested the following development flexibility pursuant to Subtitle X § 303:

- **Map Amendment from RA-1 zone to RA-2 zone**

Pursuant to Subtitle Z § 500.3, which authorizes the Commission to amend the Zoning Map where the Map Amendment is not inconsistent with the CP and with other adopted public policies and active programs related to the Property, the Application requests the Map Amendment to change the Property's zoning designation to the RA-2 zone from the current RA-1 zone.

- **Flexibility for Vertical Clearance of Loading Berth**

The Application requests flexibility of three-and-one-half feet from Subtitle C § 905.2's required vertical clearance of 14 feet for the loading dock to accommodate the Building's 10.5 foot vertical clearance. The limited vertical clearance is primarily driven by the Property's topography that creates different elevations from Hawaii Avenue, N.E., to where the loading berth is located. The Applicant asserted that the trucks up to 26 feet in length, which is the maximum expected size needed for a three-bedroom unit, the largest unit size in the Building will be able to fully access the loading berth. Since the Building does not have any retail or other uses that may require larger trucks, the Application asserted that the loading berth, as proposed, will not create adverse impacts and will adequately service the Building.

- **Flexibility for Driveway Width**

The Application requests flexibility of six feet from Subtitle C § 711.6's minimum 20-foot driveway width for two-way traffic within 20 feet of a street lot line for. Although portions of the driveway meet this requirement, other portions have a width of only 14 feet. 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 Application incorporates a bioretention area along the driveway, which contributes to narrowing the drive aisle. The Application asserts 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 Building. Furthermore, the Applicant is installing a traffic mirror to help residents navigate entering and existing the parking garage. As

such, the Application asserts that the driveway, as proposed, will not create adverse impacts and will adequately service the Building.

### **APPLICANT'S JUSTIFICATION**

#### **Consistency with the CP and Other Planning Guidance**

##### ***Generalized Policy Map***

35. The Building 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 Building. The Building's relatively modest density increase is balanced out by an architectural and landscape design that harmonizes with the surrounding residential area.

##### ***Future Land Use Map***

36. The CP's Framework Element provides that the FLUM is not a zoning map. 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. By definition, the FLUM is to be interpreted broadly. 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. (CP §§ 226.1(a), (c).)

37. 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. Such a designation is generally consistent with the RA-2 zone. (CP § 225.4.) To that end, there is a pending map amendment that would designate the Property as "Moderate Density Residential" on the FLUM. (Ex. 2H.)

##### ***Compliance with Citywide and Area Elements***

38. The Applicant also submitted evidence and testimony that the Building is not inconsistent with the objectives and policies contained in the Citywide and Area Elements of the CP. The evidence in the record includes the Applicant's statement in support of the Application and CP analysis, as well as OP's reports and the testimony of Mr. Varga. (Ex. 2, 10, 28.) In general, the Building furthers policies in the Land Use Element, Housing Element, Transportation Element, Environmental Protection Element, Urban Design Element, and Rock Creek East Element.

##### **Land Use Element**

39. The Application asserted that the Building is not inconsistent with the following policies in the Land Use Element of the CP:

- *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;

- *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; and
- *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.

40. The Building would revitalize an aging building that is in need of significant upgrades and repairs. The Building 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 Building 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 Building’s landscape and open space plan will further beautify the area.

### **Housing Element**

41. The Application asserted that the Building is not inconsistent with the following policies in the Housing Element of the CP:
- *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;
  - *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;
  - *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;
  - *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;

- *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;
  - *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; and
  - *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.
42. The Building 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 Building will have a significant number of family-sized units, including 15 three-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 Building, once completed, with substantially similar rent and unit sizes. The Commission also notes that the Building 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.

### **Transportation Element**

43. The Applicant asserted that the Building is not inconsistent with the following policy in the Transportation Element of the CP:
- *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.
44. The Building proposes only one curb cut from Allison Street, N.E. 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 Building 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.

### **Environmental Protection Element**

45. The Applicant asserted that the Building is not inconsistent with the following policies in the Environmental Protection Element of the CP:

- *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;
- *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;
- *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;
- *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; and
- *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.

46. The Building furthers these policies because it will achieve LEED-Gold certification under the U.S. Green Building Council’s v.4 standards. The Building 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.

### **Urban Design**

47. The Applicant asserted that the Building is not inconsistent with the following policies in the Urban Design Element of the CP:

- *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; and
- *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 façades.

48. The Building has been designed with high-quality architecture and materials. The Building’s scale and residential design will strengthen and harmonize with the qualities of the surrounding neighborhood. The Building’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, N.E. The Commission also notes that the

Building has not reached the maximum floor area ratio or height permitted in the RA-2 zone.

### **Rock Creek East Area Element**

49. The Applicant asserted that the Building is not inconsistent with the following policies in the Rock Creek East Area Element of the CP:
- *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;
  - *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;
  - *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; and
  - *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.
50. The Building will conserve the nearby stable neighborhoods by maintaining a residential use at the Property. The Building has been designed that it is respectful and in harmony with the low-density neighborhood across Hawaii Avenue. The Building will also preserve and enhance the existing open space and landscaping at the Property to enhance the residential feel of the neighborhood. The Building's proposed affordability levels will provide low-cost affordable housing, including for senior citizens.

### **Project Impacts**

#### ***Favorable Impacts***

51. The Building will have a favorable impact on the Fort Totten neighborhood and the District as a whole because it will contribute 70 new units to the housing supply. All of the units will be affordable, which meets a great need within the overall housing supply. The Applicant's agreement with the Tenant Association ensures that no existing tenants will be displaced as a result of the Building.
52. The Building will be a family-friendly building. There are a considerable number of three-bedroom units that will offer appropriately-sized housing for families. Additionally, there will be a children's play area on site.

53. The Building is expected to be a significant upgrade over the Existing Building at the Property, both for the community and existing tenants. In terms of the community, the Building offers architectural design elements that will be aesthetically pleasing in comparison to the Existing Building. For existing tenants, the Building will be a significant improvement in terms of housing quality and functionality. Once completed, the Building will offer residents new units with modern amenities. Additionally, building residents will enjoy upgraded common space, including both indoor and outdoor recreational space.
54. The Building's improved landscaping serves to highlight the surrounding area's open green area through increased tree coverage and new plantings. As such, the landscaping plan will be a favorable impact to the community and existing tenants alike.
55. Unlike the Existing Building, the Building will be environmentally-friendly, as it is expected to achieve LEED-Gold certification.

#### **Potential Adverse Impacts and Mitigations**

56. The Applicant acknowledged potential adverse impacts of the Building and how such impacts will be mitigated. In particular, ANC 5A and the Fort Totten Civic Association had raised concerns with regard to the Building'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 Building.

#### ***Height and Density***

57. With regard to potential adverse impacts of height and density, the community expressed concern that the Building would be too tall and add too many people to the surrounding area.
58. The Applicant testified that it had reduced the Building after setdown to mitigate these concerns. As reflected in the Architectural Plans, the Applicant identified that the Building 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 Building." (Ex. 31.)

#### ***Parking***

59. The community expressed concern that there could be adverse impacts to the parking supply in the surrounding area due to the Building's increase of density.
60. To mitigate these concerns, the Applicant added two parking spaces to the Building. 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 Building'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 Building's parking spaces. The Fort Totten Civic Association stated that the Applicant's changes had addressed its concerns over parking. (Ex. 37.)

### ***Temporary Relocation***

61. The Applicant acknowledged the potential adverse impacts to tenants of the Existing Building in terms of temporary relocation during construction of the Building.
62. 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 agreed that rent will remain the same during temporary relocation. (Ex. 43.)
63. The written agreement also confirms that existing tenants are entitled to return to the Building, once constructed, at substantially similar rents and unit sizes as the Existing Building. (Ex. 43.) Rent increases for existing tenants are limited to the amount permitted under D.C. Code §§ 42-3502.08(h), 42-3502.24. (Ex. 43.)
64. The Tenant Association filed a letter of support for the Building, 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.

### **Public Benefits and Amenities**

65. ***Superior Urban Design and Architecture (Subtitle X § 305.5(a))***  
The Applicant and its architectural team designed an aesthetically appealing building that is functional while remaining in harmony with the surrounding residential neighborhoods. The Building will be a significant improvement over the design and architectural details of the Existing Building. The Building proposes six rows of bay projections along Hawaii Avenue, N.E., which are intended to mimic the character of the neighboring townhomes. The Building emphasizes the primary entrance at the corner of Hawaii Avenue, N.E., and Rock Creek Church Road, N.W., 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, N.W., and Allison Street, N.W., are superior design elements compared to a continuous street wall.
66. ***Superior Landscaping, or creation or preservation of open spaces (Subtitle X § 305.5(b))***  
The Building 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 Building's lot occupancy is 53%, which is well under the maximum 60% lot occupancy. Nonetheless, after accounting for additional

public space within Allison Street, N.W., Rock Creek Church Road, N.W., and Hawaii Avenue, N.E., approximately 66% of the “island” will be open and green. The Building’s landscaping and open space provide a transition from the neighboring cemeteries to the residential areas to the east of the Property. The Building also provides outdoor recreational space for adults and a children’s play area.

67. ***Site planning and efficient and economical land utilization (Subtitle X § 305.5(c))***

The buildable area on the Property is greatly limited by three building restriction lines. Despite the limited buildable area, the Building incorporates 70 units and substantial open space while maintaining a massing, height and density that is compatible with the nearby neighborhoods. The Building largely mirrors the shape of the Existing Building, which has been part of the community for 80 years.

68. ***Housing and Affordable Housing (Subtitle X § 305.5(f) and (g))***

The Building’s most significant benefit is the creation of 70 dwelling units all of which will be affordable housing:

- The Applicant proposes seven 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. 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 Building in accordance with IZ; (Ex. 26.)
- Both ANC 5A and the Fort Totten Civic Association identified affordable housing as an important element of the Building. 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; and (Ex. 31, 37.)
- In addition to preserving 34 units of housing and creating 36 new units at the Property, the Building will have 15 three-bedroom units as a public benefit. The three-bedroom units offer larger, family-sized units, which meets an important housing need in the District. The Building is also proposing seven two-bedroom units that are suitable for families as well.

69. ***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 Building.

70. ***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 a coordinator employed by the Applicant. The coordinator will be available to assist residents as need or by request. The expected

programming would include housing stability, adult education, and health and wellness classes.

71. ***Environmental and Sustainability Benefits (Subtitle X § 305.5(k))***

The Building will incorporate environmentally sustainable features beyond that of a by-right development. In particular, the Building will achieve LEED-Gold certification under the U.S. Green Building Council's v.4 standards. The Building 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 Building'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.

72. ***Outdoor Children's Play Area (Subtitle X § 305.5(m))***

The Building will incorporate an outdoor children's play area of approximately 580 square feet. As the play area is in public space, it 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 Building.

73. ***Uses of Special Value to the Neighborhood (Subtitle X § 305.5(q))***

The Application proffered two commitments under this category:

- The Applicant will implement a temporary relocation plan to assist existing tenants during construction of the Building and ensure that tenants can return to comparable unit sizes and similar rent once the Building is completed. As detailed in the Applicant's Post-Hearing Submission (Ex. 43), the Applicant entered into an agreement with the Tenant Association that outlines the tenants' rights in connection with the Applicant's purchase and redevelopment of the Property; and
- 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 Applicant has committed to making one payment of \$25,000 to the Fort Totten Civic Association. (Ex. 45.) The Applicant has also agreed to provide the Fort Totten Civic Association with meeting space in the Building'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 Building.

### III. RESPONSES TO APPLICATION

**OP**

74. OP submitted a March 15, 2019, report (Ex. 10, the "**OP Setdown Report**") stating that:

- The Building is not inconsistent with the CP, including the map designations;
- The Building is consistent with the Property's designations on the FLUM and GPM, and the Building furthers many recommendations in the CP's citywide and area elements;
- The Property's FLUM designation as "Parks, Recreation, and Open Space" does not match the Property's existing use, which has been a residential multiple dwelling building since the 1940's, prior to the 1984 adoption of the FLUM, and so OP asserted it was appropriate to analyze the Property's consistency with the surrounding residential area's FLUM designation of "Moderate Density Residential;"



- The Applicant’s proffered benefits to be sufficient for set down, with revisions or additional information as requested;
- OP had 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; and
- Therefore, OP recommended the Commission set the Application down for a public hearing.

75. OP submitted a September 6, 2019, report (Ex. 28, the “**OP Hearing Report**”) that:
- Affirmed OP’s support for the Application’s proposed new affordable units and the Applicant’s efforts to accommodate existing tenants of the Existing Building;
  - Concluded that the proposed PUD would not be inconsistent with the CP as a whole, including the maps and the policy statements and 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; and
  - Recommended approval of the Application, but requested the Applicant to address the following issues during the hearing:
    - Reduce the requested 10% design flexibility to vary the number of dwelling units;
    - 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;
    - Address DOEE comments regarding solar panels on the roof;
    - Address DOEE comment regarding electric charging station;
    - Address DDOT comments regarding traffic mirrors for driveway;
    - Commit to programming children’s play area prior to issuance of certificate of occupancy; and
    - Address TDM conditions recommended by DDOT.

76. At the September 16, 2019 public hearing, OP testified that it recommended approval of the Application.

**DDOT**

77. DDOT responded to OP’s referral with a comment in the OP Hearing Report stating that DDOT had no objection to the Application’s proposed narrower driveway, provided the Applicant install traffic mirrors.
78. DDOT submitted a September 6, 2019, report (Ex. 29, the “**DDOT Report**”) that:
- Concluded that the Building would generate only a small number of vehicle, transit, bicycle, and pedestrian trips and therefore did not require a traffic impact assessment;

- Noted that the Application proposes almost twice the number of required long-term bicycle parking spaces; and
- Stated that DDOT therefore had no objection to the Application provided the Applicant implements the TDM Plan as revised to include DDOT’s proposed additional measures.

79. At the September 16, 2019, public hearing, DDOT testified that it had no objection to the Application.

**OTHER AGENCIES**

80. DOEE’s comments in the OP Hearing Report suggested that the Applicant consider adding renewable energy programs, including solar panels and installing electric vehicle charging stations or electric vehicle ready infrastructure. (Ex. 28.)

81. DHCD’s comments in the OP Hearing Report:

- Confirmed that the Applicant had applied for Housing Production Trust Fund funding;
- Requested the Applicant identify the IZ units that would remain affordable for the life of the Building; and
- Stated it had no objections to the Application. (Ex. 28.)

**ANCs**

82. ANC 5A filed a September 13, 2019, resolution (Ex. 31, the “**ANC 5A Report**”) that:

- Stated that the ANC 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;
- 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;
- Found that the Applicant had worked to address the concerns of ANC 5A and the Fort Totten Civic Association, including as to the Building’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; and
- Concluded that, therefore, ANC 5A supported the Application.

83. ANC 4D did not file a resolution in the case record and no representative of ANC 4D appeared at the public hearing.

**NCPC**

84. OZ referred the Application on September 17, 2019, to the National Capital Planning Commission (“**NCPC**”) pursuant to § 492 of the Home Rule Act. (Ex. 41.)

85. NCPC filed an October 21, 2019, report stating that the Building qualifies for an exemption from NCPC review, but also noting that the Building would not have an impact on nearby

federal land because the proposed residential use is similar to the existing residential use at the Property. (Ex. 46.)

### **PUBLIC RESPONSES**

86. The Commission received three letters in response to the Application, all in support. (Ex. 33, 36, 37.)
87. At the September 16, 2019, public hearing, no individuals or groups spoke in support of or in opposition to the Application, although representatives of the Tenant Association who were in attendance at the public hearing and were supportive of the Application and the Building.

### **CONCLUSIONS OF LAW**

#### **PRELIMINARY MATTERS**

1. As a preliminary matter at the public hearing, the Commission granted the Applicant's requested waiver from Subtitle Z § 300.7's requirement to mail a Notice of Intent to File the Application to ANC 4D, the neighboring ANC based on the Applicant's demonstration of good cause and no prejudice to the parties pursuant to Subtitle Z § 101.9 because ANC 4D had notice of the Application because the Applicant had:
  - Presented the Building at public meetings of ANC 4D (Ex. 2, pg. 37); and
  - Served ANC 4D with the Application and all subsequent documents filed in the record. (Ex. 3, 15, 18, 26, 42, 43.)

#### **AUTHORITY**

2. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a Consolidated PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 300, as well as special exception relief pursuant to Subtitle X § 303.13.
3. Pursuant to Subtitle X § 300.1, 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 Building 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.*
4. Pursuant to Subtitle X § 300.4, a PUD application may include a related zoning map amendment that is conditioned upon the construction of the PUD as approved. Pursuant to Subtitle X § 500.3, the Commission must find that a proposed map amendment is not inconsistent with the CP and other adopted public policies and active programs related to the subject site.
5. Pursuant to Subtitle X §§ 303.1 and 303.13:

*“As part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards. Any such flexibility shall be considered the type of development flexibility against which the Zoning Commission shall weigh the benefits of the PUD.”*

6. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application, the Commission must:

*“Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case;”*

and must 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.*
7. A PUD’s proposed public benefits must comply with Subtitle X § 305.12:  
*“A project may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many.”*
8. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP’s purposes as:
- (1) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
  - (2) to guide executive and legislative decisions on matters affecting the District and its citizens;*
  - (3) to promote economic growth and jobs for District residents;*
  - (4) to guide private and public development in order to achieve District and community goals;*
  - (5) to maintain and enhance the natural and architectural assets of the District; and*
  - (6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*
9. The CP guides the District’s development, both broadly and in detail. The CP 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 CP 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 CP §§ 100.14, 103.2.)

10. The Commission notes that the CP, including the FLUM and the GPM, is not a code of compulsory requirements. (CP § 226.1; *Durant v. D.C. Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013).) Rather, the CP 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”).)
11. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)) (the “**McMillan PUD**”). In its decision affirming the Commission’s approval of the McMillan PUD, the Court stated the following:

“The Comprehensive Plan is a ‘broad framework intended to guide the future land use planning decisions for the District. *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). ‘[E]ven if a proposal 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 v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). 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 (internal quotation marks omitted). Thus ‘the Commission may balance competing priorities’ in determining whether a PUD is consistent with the Comprehensive Plan as a whole.’ *D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia 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.’” *Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016) (internal quotation marks and references omitted).
12. Moreover, even if a PUD or zoning map amendment application arguably "conflicts with one or more individual policies associated with the CP, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the CP as a whole." (*Durant*, 65 A.3d at 1168; see also *Friends of McMillan Park v. D.C. Zoning Comm'n*, 211 A.3d 129 (D.C. 2019)).) The CP 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 CP 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 CP, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations." (*Id.*)

#### **COMPLIANCE WITH PUD ELIGIBILITY STANDARDS**

13. For a PUD in the RA-1 zone, the Zoning Regulations require a minimum land area of one acre or 43,560 square feet. (Subtitle X § 301.2.) The Property is approximately 26,400 square feet in land area, or 0.6 acres.
14. The Commission may waive the minimum land area for a PUD in Zone Group 2, which includes the RA-1 zone, to a minimum of 5,000 square feet, 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. (Subtitle X § 301.2.)
15. The Commission concludes that the Applicant's request to waive approximately 40% of the minimum land area requirements is appropriate because:
  - The Building is of exceptional merit and in the best of interest of the District of Columbia because it will:
    - Provide 70 all-affordable dwelling units, with a substantial number of larger units for families;
    - Greatly improve the condition of the Existing Building while safeguarding against displacement of existing residents; and
    - Provide exceptional architectural design, landscaping and public space improvements;
  - The Property is located outside the Central Employment Area; and
  - 100% of the Building's gross floor area is dedicated to dwelling units and accessory uses thereto.

#### **CONSISTENCY WITH THE CP AND PUBLIC POLICIES (SUBTITLE X § 304.4(A))**

16. Based on the case record, including the CP consistency analyses of the Applicant and OP, the Commission concludes that the Building will not be inconsistent with the objectives and policies of the CP, when considered as a whole, because the Building is not inconsistent with the GPM, advances the purposes of the CP, complies with the guiding principles of the CP, and furthers a number of major elements in the CP, as further discussed below.
17. Development of the Property included in this application carries out the purposes of Subtitle X, Chapter 3, 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.
18. The Commission concludes that the Building is consistent with the GPM's designation of "Neighborhood Conservation Area," which is intended for residential areas where existing land uses will be maintained, because the Building will continue the existing residential

use of the Property while replacing the Existing Building, which is in poor condition, with a new apartment building that has updated amenities and quality building materials and design elements.

19. The Commission concludes that the Building is consistent with certain elements of the “Parks, Recreation and Open Space” FLUM designation because the Applicant has proposed a robust landscape plan that will beautify the Property and abutting public space and increase the overall tree cover, with approximately 66% of the Property and the abutting public space maintained as open green space. (Ex. 43.)<sup>4</sup>
20. However, the Commission acknowledges that the Building is potentially inconsistent with the Property’s FLUM designation for “Parks, Recreation and Open Space” because such a designation is intended for federal and District park systems or other permanent open space uses, including cemeteries. Indeed, the Property abuts two cemeteries to the northwest and southwest, both of which are designated by the FLUM as “Parks, Recreation and Open Space.” Given this proximity, since the FLUM is not “parcel-specific,” the Commission concludes that the Property was likely “lumped” in with the adjacent cemeteries, and so the Property’s designation in the FLUM was likely a mistake, as asserted by the Applicant and OP, especially since the Property has been privately-owned and improved with an apartment building since at least the 1940’s, which significantly predates the passage of the first CP and FLUM in 1984. (Ex. 10, 28; *see* D.C. Code § 1-306.02.) The Application therefore proposes to continue the residential apartment use that has occupied the Property for at least 80 years.
21. The Commission also concludes, in concurrence with OP, that the Building is not inconsistent with the FLUM’s “Moderate Density Residential” designation for much of the nearby residential neighborhoods because the Building is a moderate-density apartment building in the RA-2 zone. There is a pending map amendment for the Property to this designation, which would bring the Property into line with the FLUM designation for nearby residential neighborhoods.
22. As set forth in the *Durant* and *Friends of McMillan Park* cases, 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. Further, the Building is consistent with certain elements of the current “Parks, Recreation and Open Space” designation, and would otherwise be consistent with a FLUM designation of “Moderate Density Residential.”
23. The Commission concludes that the Building is consistent with numerous policies in the citywide and area elements of the CP. Most notably, the Building furthers vital goals in the Housing Element, which encourages the preservation and production of affordable, family-

---

<sup>4</sup> 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 Building’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 Building’s open green area.

sized housing. The Building is also consistent with policies in the Land Use Element, the Environmental Protection Element, the Transportation Element, the Urban Design Element, and the Rock Creek East Area Element set forth herein.

24. Additionally, the Commission gives more weight to the citywide and area elements because the Building furthers important CP policies concerning the production and preservation of affordable, family-sized housing, which outweighs any potential inconsistency with the FLUM.
25. Therefore, approval of the PUD is appropriate because the Building is consistent with the present character of the area and is not inconsistent with the CP. In addition, the Building will promote the orderly development of the Property 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.

**POTENTIAL ADVERSE IMPACTS – HOW MITIGATED OR OUTWEIGHED (SUBTITLE X § 304.4(B))**

26. Based on the case record and the Findings of Fact above, the Commission concludes that the Building will not result in any unacceptable impacts that are not capable of being mitigated or outweighed by the Building’s proffered public benefits, and therefore protects and advances the public health, safety, welfare and convenience as detailed below.
27. In regard to potential adverse impacts of the Building’s height and density, the Applicant reduced the size of the Building during the pendency of the Application. The Applicant reduced the Building by 8 units, decreased the gross floor area by over 9,000 square feet, and reduced the building height by 10 feet. As noted above, the Building will not meet the maximum permitted building height or FAR in the RA-2 zone. ANC 5A and the Fort Totten Civic Association stated that these design changes addressed each group’s concern regarding the Building’s height and density.
28. Similarly, the Applicant added parking spaces to address concerns about impacts to on-street parking in the neighborhood. The Building’s 14 parking spaces will exceed the minimum requirement of 11 parking spaces for a 70-unit apartment building.
29. The Commission also recognized potential adverse impacts to tenants from temporary relocation during construction of the Building. The Commission finds that the Applicant has alleviated these impacts through an extensive relocation plan the Applicant and tenants entered into prior to the Application. As set forth in the Applicant’s Post-Hearing Submission, 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. The Applicant has ensured that rent will remain the same during temporary relocation. After construction of the Building is completed, the agreement sets forth that tenants will be entitled to return to the Building at substantially similar rents and unit sizes. The Applicant’s ability to increase rent for tenants subject to the written agreement is limited to that permitted under D.C. law.



**PUD FLEXIBILITY BALANCED AGAINST PUBLIC BENEFITS (SUBTITLE X § 304.4(C))**

30. Based on the case record and the Findings of Fact above, the Commission concludes that the Application’s requested zoning flexibility is outweighed by the Application’s proposed public benefits as discussed below.
31. The Commission concludes the Applicant has requested a relatively minimal amount of development incentives and flexibility as part of the PUD:
- The map amendment seeks a modest increase in density from the current RA-1 zone to the RA-2 zone, and the Building will comply with all RA-2 zone-specific development standards, and is well under the maximum permitted FAR, building height, and lot occupancy for a PUD in the RA-2 zone; and
  - The requested development flexibility from the vertical loading clearance and driveway width requirements is minor and will have minimal, if any, impact on neighboring properties or residents of the Building.
32. The Commission concludes that in comparison with this minor development flexibility, the Building offers significant public benefits that together far outweigh the requested development flexibility, particularly:
- The Building will be an all-affordable development with at least 36 units at or below 50% MFI;
  - The Building will provide 15 “family-sized” three-bedroom units;
  - The Applicant’s commitment to an extensive relocation plan that will limit the disruption of temporary relocation and ensure existing residents are entitled to return to the Building, once completed, at substantially similar rents and unit sizes;
  - LEED-Gold certification for the Building; and
  - A \$25,000 donation to the Fort Totten Civic Association.
33. The Commission concludes that the Applicant’s work with the Tenant Association to clarify the size and unit type that qualified tenants would be able to return to at the Building, and the resulting relocation plan is a benefit of special value because this relocation plan 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;
  - The employment of a relocation specialist to work directly with tenants;
  - Rent protections; and
  - Payment by the Applicant for the Tenant Association’s legal representation.
- Due to these continued efforts, the Tenant Association filed a letter of support for the Building.

**“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP**

34. The Commission must give “great weight” to the recommendation of OP pursuant to § 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 (2018 Repl.)) and Subtitle Z § 405.8.

(*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).)

35. The Commission finds persuasive OP's analysis of the Application as meeting the PUD standards, including not being inconsistent with the CP, and OP's recommendation to approve the Application and concurs in that judgement.

**“GREAT WEIGHT” TO THE WRITTEN REPORT OF AN “AFFECTED” ANC**

36. The Commission must give “great weight” to the issues and concerns raised in the written report of an affected ANC 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.)) and 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).)
37. Since the ANC 5A Report expressed no issues or concerns, there is nothing to which the Commission can give “great weight”. Nevertheless, the Commission notes the ANC 5A Report's support for the Application and concurs in that judgement.
38. Since ANC 4D did not file a written report, there is nothing 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 with the related amendment of the Zoning Map to rezone the Property from the current RA-1 zone to the new RA-2 zone, with a waiver from the minimum PUD land area requirement pursuant to Subtitle X § 301.

The approval is 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**

1. The Building shall be developed substantially in accordance with:
  - The architectural plans and drawings submitted on August 27, 2019 at Exhibit 26A1-26A4 (the “**Architectural Plans**”);
  - As modified by the Applicant's Post-Hearing Submission, marked as Exhibit 43B (collectively with the Architectural Plans, the “**Approved Plans**”); and
  - As modified by the guidelines, conditions, and standards herein.

2. The Property shall be rezoned from the RA-1 Zone District to the RA-2 Zone District. Pursuant to Subtitle X § 311.4, the change in zoning shall be effective upon the recordation of the covenant discussed in Condition No. E.1.
3. The Applicant is granted development flexibility pursuant to Subtitle X § 303 from:
  - The PUD-related map amendment from the RA-1 to the RA-2 zone;
  - The minimum loading berth clearance height of Subtitle C § 905.2; and
  - The minimum driveway width requirements of Subtitle C § 711.6.
4. The Applicant shall have flexibility from the Approved Plans in the following areas:
  - 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;
  - To vary the number, location, and arrangement of parking spaces for the Building, provided that the total parking is not reduced below the minimum level required for the PUD;
  - 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;
  - 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 Approved Plans; and
  - To vary the location, attributes and general design of the streetscape incorporated in the Building to comply with the requirements of and the approval by the Department of Transportation's Public Space Division.

## **B. BUILDING PERMIT REQUIREMENTS**

1. **Prior to the issuance of a Building Permit for the Building**, 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.
2. **Prior to the issuance of a Building Permit for the Building**, the Applicant shall furnish a copy of its application for LEED certification to the Zoning Administrator. The application for LEED certification shall indicate the Building 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.

## **C. CERTIFICATE OF OCCUPANCY REQUIREMENTS**

1. **Prior to the issuance of a Certificate of Occupancy for the Building**, the Applicant shall furnish the following to the Zoning Administrator:

- A copy of its application for LEED certification that shall indicate the Building 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;
- Evidence that the Applicant employs a coordinator at the Property to administer social service programs at the Building, as needed or requested by residents;
- Evidence that the Applicant has installed infrastructure in the Building’s parking garage that can service electrical vehicles;
- Evidence that the Applicant has implemented a Relocation Plan consistent with the document included in the Applicant’s Post-Hearing Submission at Exhibit 43 in the case record;
- An update to the Zoning Administrator regarding the number of residents returning to the Building;
- Evidence that the Applicant has paid \$25,000 to the Fort Totten Civic Association as organizational dues for 10 years. The Applicant shall provide a signed letter of intent to the Zoning Administrator setting forth that so long as the Fort Totten Civic Association is actively registered as a “civic association” in the District, the Applicant will provide the Fort Totten Civic Association with a meeting space in the Building’s first floor amenity room, as depicted in the Architectural Plans, up to twice a month; and
- The programming for the children’s play area.

**D. REQUIREMENTS FOR THE LIFE OF THE BUILDING**

1. **For the Life of the Building**, the Applicant shall provide the housing and affordable housing set forth in the following chart:

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.

- The chart assumes the Applicant will be granted an exemption from the IZ Regulations of Subtitle C, Chapter 10, pursuant to Subtitle C § 1001.6. However, the Commission takes no position as to whether the IZ exemption should be granted;
- Each control period shall commence upon the issuance of the first certificate of occupancy;

- Should the exemption from the IZ Regulations be granted, the affordable housing requirements of this condition shall be stated in the covenant required under Subtitle C § 1001.6(a)(4);
  - 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 Building, and shall execute the monitoring and enforcement documents required by Subtitle X § 311.6 as to the remaining residential gross floor area; and
  - 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:
    - The Building's overall average income level does not exceed 60% Median Family Income (“MFI”);
    - No dwelling unit at the Building is rented to a household with an income greater than 80% MFI;
    - The income levels of 30%, 50%, 60% and 80% MFI do not change to different income levels; and
    - All units in the Building are maintained as affordable for a period of 40 years in accordance with the Affordable Chart.
2. **For the life of the Building**, at least 15 of the dwelling units will be three-bedroom units, with the location of the three-bedroom units as depicted in the Architectural Plans.
  3. **For the life of the Building**, there shall be a children’s play area for the use of Project residents, as depicted in the Approved Plans subject to approval by the District Department of Transportation.
  4. **For the life of the Building**, the Applicant shall implement the following Transportation Demand Management (“TDM”) measures:
    - 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;
    - The Applicant will provide TDM materials to new residents in the Residential Welcome Package materials;
    - TDM Leaders will receive TDM training from goDCgo to learn about the TDM conditions for this project and nearby available options;
    - The Applicant will post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised;
    - The Applicant will provide website links to [CommuterConnections.com](http://CommuterConnections.com) and [goDCgo.com](http://goDCgo.com) on property websites;
    - The Applicant will exceed Zoning requirements by providing 48 long-term bicycle parking spaces and 12 short-term bicycle parking spaces around the perimeter of the Property;

- The long-term bicycle storage room will accommodate non-traditional bike sizes, including cargo, tandem and kids' bikes;
- The Applicant will provide a bicycle repair station to be located in the secure long-term bicycle storage room;
- 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 ¼ mile of the Property at a minimum;
- The Applicant will install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives;
- 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;
- 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;
- 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;
- 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;
- Transportation Coordinator will subscribe to goDCgo's residential newsletter; and
- Provide a Free SmarTrip card to every new resident and a complimentary Capital Bikeshare coupon good for one ride.

5. **For the Life of the Building**, the Applicant shall provide the following loading management plan measures:

- A loading dock manager will be designated by the building management. The dock manager will coordinate with tenants to schedule deliveries and residential moves;
- Residents will be required to schedule move-in and move-outs with the loading manager through lease regulations;
- Deliveries will be required to use 30-foot trucks or less utilizing the loading facilities located along the 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;
- 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;
- 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;

- 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;
  - 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; and
  - A representative of the building management will be on call during scheduled deliveries to address compliance issues.
6. **For the life of the Building**, 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.

**E. VALIDITY**

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.

**Proposed Action**

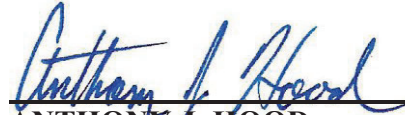
**VOTE (September 16, 2019): 3-0-2** (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood to **APPROVE**; Peter A. Shapiro and Peter G. May not present, not participating)


**Final Action**

**VOTE (October 21, 2019): 5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Michael G. Turnbull and Peter G. May to **APPROVE**)

**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 provisions of Subtitle Z § 604.9, this Order No. 19-01 shall become final and effective upon publication in the *D.C. Register*; that is, on June 25, 2021.

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.