

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 19-29

Z.C. Case No. 19-29

UM 1340 4th ST., LLC and 1250 4th ST (EDENS) LLC

**(Consolidated Planned Unit Development and Related Map Amendment @ Square 3587,
Lots 3 and 7)**

March 11, 2022

Pursuant to notice, at its March 11, 2022¹ public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of UM 1340 4th ST., LLC and 1250 4th ST (EDENS) LLC (the “Applicant”) requesting the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, to which all subsequent citations to the District of Columbia Municipal Regulations refer unless otherwise specified):

- A consolidated planned unit development (“PUD”), pursuant to Subtitle X, Chapter 3, and Subtitle Z, Chapter 3;
- A PUD-related amendment to the Zoning Map to change the designation for the Square 3587, Lots 3 and 7 (“Property”) from the PDR-1 zone to the MU-9 zone, pursuant to Subtitle X, Chapters 3 and 5, and Subtitle Z, Chapter 3;
- Increase in density of up to 4% pursuant to Subtitle X, Section 303.10;
- Flexibility from the courts requirements;
- Flexibility from Subtitle C, Section 302.3 to permit above-grade balconies and below-grade vaults to project outside of the record lot onto the adjacent Lot 819 and flexibility to extend the PUD-related MU-9 zoning into the adjacent lot to the extent to such areas;
- Flexibility to reduce the amount of below grade parking by a full level;
- Flexibility to fit out the 1346 4th Street, N.E., portion of the Application on an interim basis during construction; and
- A special exception to allow eating and drinking establishments above the roof level pursuant to Subtitle C, Section 1501.1(d) as well as flexibility to use portions of the penthouse for either commercial space or residential amenity space.
- The Applicant proposes to construct a new mixed-use building on the Property, which is located at 1346-1348 4th Street, N.E.

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z. For the reasons stated below, the Commission **APPROVES** the Application.

¹ At its October 14, 2021 public meeting, the Commission setdown the case for a public hearing, after initially deferring a decision regarding setdown at its June 10, 2021 public meeting to allow the Applicant to address the Commission’s concerns. The Commission held the hearing on January 10, 2022. At its January 27, 2022 public meeting the Commission approved proposed action.

FINDINGS OF FACT **BACKGROUND**

PARTIES

1. The Applicant is an affiliate of EDENS, which has been active in the development efforts of the Union Market District. (Exhibit [“Ex.”] 12A.)
2. ANC 5D is automatically a party to the Application because the Property is located within the boundaries of ANC 5D. ANC 5C is also an “affected ANC” and therefore automatically a party to the Application because the Property is located directly across a public street from the boundaries of ANC 5C. (11-Z DCMR § 101.8; Ex. 12A.)
3. The Commission did not receive any requests for party status.

NOTICE

4. The Office of Zoning (“OZ”) sent notice of the January 10, 2022, public hearing on or before November 3, 2021² to:
 - The Applicant;
 - The affected ANCs: ANC 5D and ANC 5C;
 - The ANC 5D01 Single Member District Commissioner, whose district includes the Property;
 - The Ward 5 Councilmember, in whose district the Property is located;
 - The Office of the ANCs;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Consumer and Regulatory Affairs (“DCRA”);
 - The Office of Zoning Legal Division;
 - The District Department of the Environment (“DOEE”);
 - The Chair and At-Large Members of the D.C. Council; and
 - The owners owning property within 200 feet of the Property. (Ex. 22, 22A, 23, and 23A.)
5. OZ published notice of the public hearing in the November 12, 2021 and December 10, 2021 issues of the *D.C. Register* (68 DCR 13183) as well as on the calendar on OZ’s website. (Ex. 20, 21, and 21A)
6. The Applicant submitted evidence that it had posted notice of the public hearing on the Property as required by Subtitle Z, Section 402.3. (Ex. 30 and 39.)

² OZ sent a supplementary notice of public hearing on or before December 2, 2021. The supplementary notice included a reference to the rooftop eating and drinking establishment special exception, which had not been included in the November 3, 2021 notice.

THE PROPERTY

7. The Property consists of approximately 43,782 square feet of contiguous land area located along 4th Street, N.E. and New York Avenue, N.E., less than one-half mile from the NoMA-Gallaudet University Metrorail Station. The Property is irregularly-shaped. The Property consists of two lots in Square 3587: 1346 4th Street, N.E., and 1348 4th Street, N.E. (Ex. 12A.)
8. The Property is located in the Northeast quadrant of the District within Ward 5 and ANC 5D01, in the Union Market District. (Ex. 12A.)
9. The Property is currently improved with two structures, with one on each of the two lots that make up the Property. At 1348 4th Street, N.E. is a single-story bank building with surface parking and drive-through lane and at 1346 4th Street, N.E. is a single-story commercial building with surface parking. The existing building at 1348 4th Street, N.E. will be demolished in order to construct the project that is the subject of the Application (the “Project”). The existing building at 1346 4th Street, N.E. will be renovated and incorporated into the Project in order to accommodate the on-site retention of the PNC Bank, and its continued operation during the construction of the Project. (Ex. 12A and 12F.)
10. The Property is bounded:
 - On the north by New York Avenue, N.E.
 - On the east by 4th Street, N.E.,
 - On the south by 1344 4th Street, N.E., which contains a single-story commercial building in the PDR-1 zone, and
 - On the west by the District-owned, Department of Housing and Community Development (“DHCD”)–administered Lot 819 in Square 3587 (“Lot 819”), which is also in the PDR-1 zone and which is functionally a private alley system subject to a series of easements and covenants for such uses.(Ex. 12A and 12F.)

CURRENT ZONING

11. The Property is located in the PDR-1 Zone, for which Subtitle J, Section 200.1 establishes that the purposes and intent are to permit moderate-density commercial and PDR activities employing a large workforce and requiring some heavy machinery under controls that minimize any adverse impacts on adjacent, more restrictive zones.

COMPREHENSIVE PLAN (TITLE 10A DCMR), FLORIDA AVENUE MARKET STUDY (“SMALL AREA PLAN”), AND WARD 5 WORKS INDUSTRIAL LAND STUDY (“W5W STUDY”)

12. The Comprehensive Plan’s Generalized Policy Map (“GPM”) designates the Property as a “Multi-Neighborhood Center”. (Ex. 19C.) The Framework Element states the Multi-Neighborhood Center designation includes “supermarkets, general merchandise stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers also may include residential and office space for small

businesses, although their primary function remains retail trade.” (10-A DCMR § 225.17 [note: the full citation is needed for the Comp. Plan because of the note in the preamble about all regulatory references being to the Zoning Regulations].) Notably, the definition of the Multi-Neighborhood Center does not contemplate any sort of PDR use. (*Id.*)

13. The Future Land Use Map (“FLUM”) designates the Property as “Mixed Use” with High Density Commercial/High Density Residential/PDR. (Ex. 19C.)

- The High Density Residential “designation is used to define neighborhoods and corridors generally, but not exclusively, suited for high-rise apartment buildings. Pockets of less dense housing may exist within these areas. Density is typically greater than a FAR of 4.0, and greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development.” (10-A DCMR § 227.8).
- The High Density Commercial “designation is used to define the central employment district, other major office centers, and other commercial areas with the greatest scale and intensity of use in the District. Office and mixed office/retail buildings with densities greater than a FAR of 6.0 are the predominant use, although high-rise residential and many lower scale buildings (including historic buildings) are interspersed.” (*Id.* § 227.13.) The MU-9 zone is expressly identified as consistent with the High Density Commercial category. (*Id.*)
- The PDR category “is used to define areas characterized by manufacturing, warehousing, wholesale and distribution centers, transportation services, food services, printers and publishers, tourism support services, and commercial, municipal, and utility activities which may require substantial buffering from housing and other noise, air-pollution, and light-sensitive uses. . . . It is important to ensure that adequate, appropriate land is provided for these PDR uses that are critical to supporting the retail, transportation and service needs of the city. A variety of zone districts apply within PDR areas, recognizing the different intensities of use and impacts generated by various PDR activities. The corresponding zone category is PDR, and the present density and height limits set in these districts are expected to remain for the foreseeable future. Other districts may also apply where the PDR map designation is striped with other land uses. In an area striped to include PDR, development must include PDR space, and on sites containing existing PDR space the amount of PDR space on-site should be substantially preserved.” (*Id.* § 227.14.)

14. The Property is within the area included in the Comprehensive Plan’s Upper Northeast Area Element, which recommends the following development priorities:

- “Locating higher-density housing near Metro stations minimizes the impact of cars and traffic that would be expected if the residents lived farther from high-capacity transit. The District will coordinate with WMATA to make the design, density, and type of housing or other proposed development at these stations is compatible with surrounding neighborhoods; respects community concerns and feedback; and serves a variety of household incomes. Development shall comply with other provisions of the Comprehensive Plan regarding the compatibility of new land uses with established

development, such as existing production, distribution, and repair (PDR) uses.” (*Id.* § 2408.4.)

- “Improve neighborhood shopping areas throughout Upper Northeast. [E]ncourage similar pedestrian-oriented retail development along Rhode Island Avenue, Bladensburg Road, South Dakota Avenue, West Virginia Avenue, Florida Avenue, and Benning Road. New pedestrian-oriented retail activity should also be encouraged around the area’s Metro stations.” (*Id.* § 2408.7.)
- “Recognize the significant potential of the area’s commercially and industrially zoned lands, particularly along the New York Avenue corridor . . . and around the Florida Avenue Market, to generate jobs, provide new shopping opportunities, enhance existing businesses, create new business ownership opportunities, and promote the vitality and economic well-being of the Upper Northeast community. The uses, height, and bulk permitted under the existing PDR zones are expected to remain for the foreseeable future.” (*Id.* § 2408.9.)
- “Improve the visual quality of streets in Upper Northeast, especially along . . . New York Avenue. . . . Landscaping, street tree planting, street lighting, and other improvements should make these streets more attractive community gateways.” “Improve the appearance of New York Avenue as a gateway to Washington, DC.” (*Id.* §§ 2409.1 and 2413.5.)
- “Create new opportunities for small, local, and minority businesses within the Planning Area, and additional community equity investment opportunities as development takes place along New York Avenue . . . and around the Metro stations.” (*Id.* § 2409.5.)
- “Improve environmental quality in Upper Northeast, with particular attention given to the reduction of emissions and particulates from trucks and industrial uses in the area.” (*Id.* § 2409.9.)
- “Redevelop the Florida Avenue Market into a regional destination that may include residential, dining, entertainment, office, hotel, maker, and wholesale food uses.” (*Id.* § 2411.7.)
- “Retain the concentration of PDR land uses in the New York Avenue corridor. While some industrial land was converted to other uses on select sites, such as the Bladensburg/Montana/New York triangle, these changes should not diminish the area’s ability to function as an industrial district meeting the needs of government and District businesses and residents. Mixed-use redevelopment should complement PDR uses within the building envelope as a primary use when PDR zoned.” (*Id.* § 2413.6.)
- “Support infill development and redevelopment on underused commercial sites along New York Avenue. Particularly encourage retail development that would provide better access to goods and services for residents, and sales tax dollars for the District.” (*Id.* § 2413.7.)
- “Improve pedestrian and bicyclist safety and access to the Metropolitan Branch Trail.” (*Id.* § 2416.4.)

15. The Property is within the area included in the Small Area Plan, which recommends high density development for the Property and recommends the development priorities listed below:

- “Function: New Residential, office, and retail uses create a vibrant mixed use destination that retains a revitalized wholesale/retail market.”
 - “Character: A mix of densities ranging from moderate to medium to high density, designed in such a way to be integrated into surrounding development and community fabric.”
 - “Sense of Place: An environment that is functional, safe, dynamic and appealing to businesses.”
 - “Allure: A site that capitalizes on its unique assets and appeals to residents, office workers, market workers, visitors, and students.”
 - “Public Realm: A vibrant public realm that creates user friendly spaces and active ground floor uses with common design elements and human scaled development and design.”
 - “Connectivity: Streetscapes that promote improved vehicular circulation and traffic calming while enhancing pedestrian circulation and access and decreasing pedestrian and truck conflicts.”
 - “Sustainability: Development that embraces site and system sustainability features including applicable requirements of the Green Buildings Act of 2006, LEED certification, and best practices in stormwater management.”
 - “Historic Preservation: A site that includes preserved and adaptively reused market buildings and commemorates the site’s unique history with signage and other design features.”
- (Small Area Plan, p. 55.)

16. The Property is within the area included in W5W Study, which recommends the following development priorities:

- Diversify the District’s economy and bolster existing businesses;
 - Grow and create more businesses, particularly in new and emerging industries;
 - Promote inclusive job growth, offering residents a range of employment opportunities, well-paid jobs with low entry barriers and career ladder potential;
 - Address nuisance/operational issues of some existing businesses;
 - Improve environmental stewardship and performance;
 - Serve municipal functions and optimize efficiencies, co-locations;
 - Provide desired community amenities; and
 - Create great places, improve physical appearance and enhance connectivity.
- (W5W Study, p. 87.)

II. THE APPLICATION

THE PROJECT

17. The Application, as amended, proposes to construct a mixed-use building with:

- A height of 130 feet, consisting of 13 stories plus a penthouse and partially- and fully-below-grade parking;

- A lot occupancy of approximately 86.3% proposed for the first floor and a maximum of approximately 73.1% beginning at the second floor;
- Approximately 426,486 square feet of gross floor area (“GFA”);
- An overall FAR of 9.74 with a commercial FAR of 1.02, a residential FAR of 8.52, and approximately 0.19 FAR attributable to parking and loading areas;
- Approximately 380 residential units;
- A set aside of 11% of the residential GFA for households up to 60% MFI and a set aside of 2% of the residential GFA for households up to 50% MFI, for a total of approximately 50 affordable housing units attributable to the base building (subject to the flexibility noted herein);
- An additional set aside for households up to 50% MFI, which set aside is equivalent to 8% of the habitable penthouse space;
- Sixteen (16) 3-bedroom units, including three (3) affordable 3-bedroom units (subject to the flexibility noted herein);
- Approximately 30% of units with access to balconies/terraces;
- Approximately 178-276 below grade vehicle parking spaces;
- Approximately 305-410 long term and approximately 39-40 short term bicycle parking spaces; and
- Approximately 44,482 square feet of commercial area, with 50% of the such area designed to a custom-defined set of “PDR/Maker use specifications” and with 10% of the space reserved for custom-defined set of “PDR/Maker uses” for a period of 5 years. Such PDR/Maker specifications uses are reproduced in the Conditions hereto.
(Ex. 12A, 15, 16, 19, 34, 34F1-36F6, 44A, 44B.)

18. The Project also includes streetscape and landscaping improvements along 4th Street, N.E. and New York Ave., N.E. (Ex. 12A, 15, 19, 34, 34F1-34F6, 44A.)

RELIEF REQUESTED

19. The Application requested the Commission approve a Consolidated PUD with a related Map Amendment to the MU-9 Zone District pursuant to Subtitle X, Section 303.12. The Applicant also requested an additional increase of up to 4% in the maximum permitted GFA pursuant to Subtitle X, Section 303.10. As a result of the PUD, map amendment, and additional GFA, the Building can achieve the additional height and density shown on the chart below. (Ex. 12A, 34.)

Development Standards	PDR-1	MU-9	Proposed Building
Height	50 feet	130 feet	130 feet
Density (FAR)	3.5 FAR	9.36 (if approved as a PUD); 9.83 (with 5% add'l density per 11-X DCMR § 303.10)	9.74

20. The Application further requested additional PUD-related zoning flexibility pursuant to Subtitle X, Section 303.1 to allow:
- Deviation from the minimum court width requirements; and
 - Flexibility from Subtitle C, Section 302.3 to permit above-grade balconies and below-grade vaults to project outside of the record lot onto the adjacent Lot 819 and concurrent flexibility otherwise to extend the PUD-related MU-9 zoning into the adjacent lot to the extent to such areas.
- (Ex. 12A, 34.)
21. The Application further requested a special exception to allow eating and drinking establishments above the roof level pursuant to Subtitle C, Section 1501.1(d). The Applicant provided evidence that the Application met the special exception standards. (Ex. 12A, 19C, 34.) The Commission therefore considered and granted this relief as a special exception pursuant to Subtitle X, 303.13.
22. The Application further requested flexibility to modify the following components of the Project:
- Flexibility to reduce the amount of below grade parking by a full level;
 - Flexibility to fit out the 1346 4th Street portion of the Project on an interim basis during the construction of the project; and
 - Flexibility to use portions of the penthouse for either commercial space or residential amenity space.
- (Ex. 12A, 34.)
23. Finally, the Application requested the Commission approve design flexibility to vary certain elements in the Application's final plans as approved by the Commission and still comply with the requirement of Subtitle X, Section 311.2 and Subtitle Z, Section 702.8 to construct the Project in complete compliance with the final plans. (Ex. 34, 34B.)

APPLICANT'S REVISIONS/SUBMISSIONS

24. The initial application, filed on November 22, 2019 by UM 1348 4th Street NE LLC and EAJ 401 New York Ave LLC, sought consolidated PUD approval and a related map amendment to the MU-9 Zone District for 1348 4th Street NE and 401 New York Avenue NE as well as an airspace development above 4th Street, NE. By amended application dated December 23, 2020, the 401 New York Avenue NE property was replaced with the 1346 4th Street NE property, the EAJ 401 New York Ave LLC co-applicant was replaced with 1250 4th ST (EDENS) LLC as co-applicant, and the request for airspace development approval was removed. (Ex. 3A, 12A.)
25. By letter dated June 4, 2021 and in response to OP's June 1, 2021 setdown report, the Applicant increased the affordable housing proffer from 10% to 12% of the residential GFA, committing to reserve 5% of the non-residential floor area of the Project's ground floor for PDR/Maker uses for 5 years, and agreeing to make significant pedestrian and bicycle improvements to 4th Street NE. (Ex. 15.)

26. The Commission considered whether to schedule a hearing on the Application at its June 10, 2021 public meeting. The Commission declined to schedule a hearing at that time and instead directed the Applicant to increase the amount of affordable housing and PDR/Maker space in the Project. The Zoning Commission also expressed concern about the Project's proposed lighting and signage elements. (Tr. June 10, 2021 at 49-60.)
27. By letter dated September 28, 2021 and in response to OP and the Commission, the Applicant increased the affordable housing proffer from 12% to 13% of the residential GFA, increased the proportion of the affordable housing that would be set aside at 50% MFI, increased the PDR/Maker space commitment from 5% to 10%, added approximately 20 additional balconies to the Project, and removed the architectural signage and lighting elements on the western façade. (Ex. 16, 17.)
28. The Commission considered the revised application at its October 14, 2021 public meeting and decided to set the Application down for a public hearing. At the meeting, the Commission asked the Applicant to continue to address the other outstanding issues identified in OP's setdown reports. (Tr. Oct. 14, 2021 at 90-94.)
29. Following the Commission's October 14, 2021 public meeting, the Applicant filed a prehearing submission on October 22, 2021, that responded to OP's issues and included updated architectural plans in support of those responses. Each issue and the Applicant's response follows below. (Note in some cases the Applicant's response was supplemented by later filings.)
 - PDR Use Commitment. OP requested the Applicant reserve 50% of the ground floor commercial space for PDR/Maker use. In response, the Applicant explained that it would design 50% of the Project's ground-floor commercial space to PDR/Maker specifications to accommodate PDR/Maker uses—at a significant cost of up to \$2 million beyond the typical retail specifications—and reserve 10% of the Project's ground-floor commercial space for such PDR/Maker uses. The Applicant also provided information regarding the ample amount/pipeline of PDR/Maker space in other nearby buildings and planned projects.
 - IZ Proffer. OP requested the Applicant reserve 15% of the residential GFA for affordable housing. In response, the Applicant agreed to reserve 13% of the residential GFA as affordable housing, with 2% of such 13% set aside for affordable housing reserved at the lower 50% MFI threshold. The Applicant noted that OP and DHCD had agreed that this amount of affordable housing was acceptable given the commitment to deeper levels of affordability.
 - PDR/Maker Use Definition. OP expressed concern that the Applicant's definition of PDR/Maker use was overly broad. The Applicant explained that the term and its definition had been developed with OP in connection with other PUDs and relied on defined terms and uses in the Zoning Regulations to ensure uniform application and enforcement while still achieving PDR/Maker use goals.
 - Small Business Commitment. OP asked the Applicant to consider a separate commitment to support small and local businesses, since not all such businesses are PDR/Maker uses. The Applicant demonstrated how support of small and local businesses was a critical component of its leasing strategy and affirmed its continued

commitment to such businesses but expressed concerns that a mandate for such uses could lead to long-term vacancy and empty ground-level spaces.

- Ward 5 Works Study. OP asked the Applicant to identify how the Project would advance the W5W Study. The Applicant explained that the Project would help create both construction and permanent job opportunities as well as further the diversification, sustainability, connectivity, and procedural action items of the W5W Study.
- Union Market District Wholesalers List. OP asked the Applicant to provide a list of wholesalers that remain in the Union Market District. The Applicant explained that such an inventory could not be created because it did not control the entire Market District and further many businesses were evolving from wholesale to retail operations.
- FAR Flexibility. OP asked the Applicant to further explain why the additional FAR was “essential to the successful functioning of the Project.” The Applicant attributed the additional FAR to the street-activating and PDR/Maker use-supporting commercial mezzanine spaces. The Applicant also explained that the topographical changes resulted in a significantly higher FAR than would be attributed to buildings without such condition. That FAR is all non-leasable space in the parking garage, and the additional FAR helps offset the FAR lost to such non-leasable space.
- Family-Sized Units. OP asked for more family-sized units. The Applicant maintained its minimum commitment of ten (10) 3-bedroom units to fifteen (15) 3-bedroom units, citing the significance of such component of the project, and increased from two to three the number of affordable 3-bedroom units.
- 1346 4th Street Plans. OP asked for plans and details on the interim and final design of the 1346 4th Street portion of the Project. The Applicant integrated these design details into its final set of plans.
- Rooftop Use Mix. OP requested clarity regarding the types of penthouse uses as well as the related IZ commitment. The Applicant explained that its preferred approach was to install a commercial rooftop use, but if the market did not support such a use, the penthouse would be used as residential amenity space. Further, the Applicant affirmed that the habitable space whether designed for commercial or residential use would generate 50% MFI affordable housing units within the building.
- Façade Design. OP asked for additional design attention to the western façade. The Applicant provided drawings and renderings showing an enhanced degree of articulation, including many balconies.
- Balconies. OP asked for additional balconies. In response, the Applicant increased the number of residential units with balconies from 17% to approximately 25% (and subsequently in its hearing presentation, approximately 30%) and noted the size of many of these balconies are 2-4 times larger than typical balconies.
- Sign Plan. OP requested a signage plan. The Applicant integrated signage into its final set of plans.
- Solar. OP encouraged the Applicant to provide solar panels. The Applicant agreed to provide a minimum of 1,800 square feet of solar panel area on the penthouse level.
(Ex. 19, 19A – 19F, 34, 34C.)

30. On November 29, 2021, the Applicant submitted the Comprehensive Transportation Review (“CTR”) prepared by Gorove/Slade regarding the project at the Property referenced above, pursuant to Subtitle Z, Section 401.8. (Ex. 28, 28A.)

31. On December 31, 2021, the Applicant submitted a supplemental statement that included:
- Updated architectural plans that included final resolutions to many of the issues raised by OP;
 - Restatement of the Project’s satisfaction of the PUD standards;
 - Restatement of the Project’s benefits and amenities;
 - Restatement of the Project’s requested flexibility;
 - Analysis of the Project’s consistency with the Comprehensive Plan and other applicable plans, including through a racial equity lens; and
 - Evaluation of the Project’s potential impacts, with an analysis prepared by RCLCO evaluating housing and other economic impacts.
- (Ex. 34, 34A-34G.)

TESTIMONY

32. The Applicant submitted a presentation for the public hearing into the record as Exhibit 41A1-41A9. At the January 10, 2022, public hearing, the Applicant presented the Application, including the testimony of five witnesses:
- Sohael Chowfla, Applicant’s representative;
 - Brian Pilot, Project Architect;
 - David Rubin, Landscape Architect;
 - Sara Link, Civil Engineer; and
 - Daniel Solomon, Traffic Engineer.
- (Tr. Jan. 10, 2022.)

POST HEARING SUBMISSIONS

33. By letter dated January 18, 2022, the Applicant submitted responses to the issues raised at the public hearing:
- ANC Reports. The Applicant indicated that it had contacted ANC 5D for an updated letter and ANC 5C to discuss the application.
 - 30% MFI Affordable Housing Unit. The Applicant explained the administrative, occupancy, and supportive services challenges that made it infeasible to accommodate a 30% MFI unit within the Project.
 - Updated Street Level Views. The Applicant provided additional street-level views of the ground-level and public space design.
 - Roof Shading Update. The Applicant removed the temporary canopy structure on the roof and replaced it with a design that could include rooftop trees and/or a non-structural, retractable canopy element.
- (Ex. 44, 44A, 44B.)
34. By letter dated February 3, 2022, the Applicant submitted its draft proffers and conditions. (Ex. 46.)

35. By letter dated _____, the Applicant submitted its revised draft proffers and conditions. (Ex. 4_.)

JUSTIFICATION FOR RELIEF

ADDITIONAL DENSITY (SUBTITLE X § 303.10)

36. The Application asserted that up to a 4% increase in the maximum density of the PUD is essential to the successful functioning of the Project primarily because it allowed the Applicant to manage and offset the significant grade changes across the Property. At the rear of the Property, the grade changes cause multiple levels of below-grade parking and back-of-house facilities to count towards GFA, thereby reducing the GFA that could be used for residential or commercial development. At the front of the Property, the grade changes require strategic setbacks at street level to create an enhanced public/private experience, and this investment requires additional mezzanine-level commercial space to provide a critical mass of use to animate these enhanced spaces.
37. The Application asserted the approximately 4% increase in density is consistent with the PUD purpose and evaluation standards. As discussed above, the modest increase in density does not result in a material increase in height or density because the PUD includes parking/loading density that, on a typical site, would be exempt from GFA and therefore not attributable to FAR.

CONSISTENCY WITH THE COMPREHENSIVE PLAN AND OTHER ADOPTED PUBLIC POLICIES RELATED TO THE PROPERTY (SUBTITLE X § 304.4(a))

38. The Application asserted it complies with Subtitle X, Section 304.4 and is not inconsistent with the Comprehensive Plan as a whole, including its maps and policies, and other public policies related to the Property, as follows:
- The Project is not inconsistent with the Property’s Multi-Neighborhood Center designation on the GPM since the Project includes a mix of upper-story residential, branch bank, and retail/restaurant/service uses, all proximate to New York Avenue, NE, a key corridor. While the Multi-Neighborhood Center designation does not contemplate PDR use, it notes that “retail trade” should be a *primary* function. To that end, the Application asserted the emphasis on retail use rather than PDR use for the ground floor was consistent with the GPM because the retail use is the primary use occupying up to 90% of the Project’s commercial space.
 - The Project is, on balance not inconsistent with the FLUM’ s Mixed Use High Density Residential / High Density Commercial / PDR designation:
 - The height and density of the Project as well as the PUD-related map amendment to the MU-9 zone are all consistent with the high-density designation. The High-Density Commercial designation specifically contemplates the MU-9 Zone District and densities greater than 6.0 FAR; the Project’s density of approximately 9.74 FAR is appropriate given both the use of IZ far in excess of the requirements of the Zoning Regulations and PUD bonus density.

- The Project’s emphasis on significant amounts of housing and affordable housing are consistent with the High Density Residential designation.
- To the extent the Project’s limited amount of PDR use is arguably inconsistent with the PDR designation for the Property, the Application asserted that the buildout of equivalent of 50% of the Project’s commercial GFA to accommodate PDR uses—combined with the express reservation of 10% of the ground floor for such PDR uses—allowed for an appropriate amount of PDR use given the strong focus on retail in the GPM as well as housing and other priorities in the balance of the Comprehensive Plan and given the absence of existing PDR uses on the Property.
- The Project advances racial equity for the following reasons:
 - The Project provides meaningful amounts of affordable housing in excess of the minimum set aside amount and below the maximum household income levels, which primarily benefit the District’s black and low-income residents by providing affordable housing opportunities within a transit-oriented, mixed-income, inclusive community that is proximate to employment centers.
 - The Project does not displace any existing residents.
 - The Project’s retail and PDR/Maker space create job opportunities for potential workers with a range of skills.
 - The Project delivers safer streets and furthers multiple modes of transportation.
 - The Project forecloses the use of the Property with the types of harmful PDR uses that have disproportionately affected Black residents in Northeast DC.
 - The Project has been developed through a sustained participatory process that has included direct engagement with the ANC.
- The Project is not inconsistent with the Land Use Element because the Project is a pedestrian-oriented development in proximity to transit with ground floor retail use and upper-story multifamily residential use on a vacant and underutilized site. The Project also creates affordable and family-sized housing opportunities within the Central Employment Area, advances sustainable and resilient design goals, and expands commercial opportunities in an urban center away from primarily residential neighborhoods. The Project is also not inconsistent with the specific PDR policies within the Land Use Element, which allow for the change in use for existing PDR areas where the FLUM and Small Area Plan call for such change and focus on the retention of PDR use on sites that are well-buffered from residential uses and remain viable for PDR use.
- The design of and amenities provided by the Project are not inconsistent with and advances the pedestrian, cycling, safety, public space, and parking optimization goals of the Transportation Element.
- The Project is not inconsistent with the Housing Element because it creates a mixed-use development with high-quality mixed-income housing, including a substantial affordable housing component, in an area identified as in need of new housing and affordable housing. The Project also includes family-sized 3-bedroom units as well as access to recreational amenities, and it does not displace any existing residents or convert existing housing. While the Project does not advance the Housing Element’s goal for net-zero housing, it includes other high-impact sustainable and energy-efficient design features, including electric appliances in the residential units,

photovoltaic panels, and electric vehicle charging stations, in addition to being designed to achieve LEED v. 4 Gold.

- The design and operational features of the Project are not inconsistent with and advances the climate resiliency, stormwater management, landscaping, water efficiency, renewable energy, and energy efficiency goals of the Environmental Protection Element. The Application also notes that because of the Project's location within the Central Employment Area, it is categorically exempt from the requirements for an environmental impact analysis under District law.
- The Project is not inconsistent with the Comprehensive Plan's Economic Development Element because the Project advance goals for PDR/Maker, retail, service, and eating and drinking uses in an underutilized corner of the Union Market District, which uses provide entry-level and salaried job opportunities. Although the Project does not include opportunities for direct community equity investment, hiring or CBE incentives, or mitigation for potentially rising commercial rents, the Project does include the buildout of 50% of the ground floor as space that could accommodate PDR/Maker uses, which are expressly defined to include incubator spaces as well as small and local businesses.
- The Project includes a linear, interconnected series of parklets and public plaza areas that advance goals of the Parks, Recreation, and Open Space and Arts and Culture Elements, and it is not inconsistent with any policies of either element.
- The Project's massing, orientation, and siting as well as its streetscape, placemaking, and pedestrian-level façade details all advance goals of the Urban Design Element. To the extent that the retention (or reconstruction) of the low-scale structure at the 1346 4th Street portion of the Project creates a sharp transition in height and character given the scale of the Project as well as other nearby developments, such transition is consistent with the character of the Union Market District, which includes the juxtaposition of older wholesale and warehouse establishments with high-density new construct, allows for the retention of a neighborhood-serving bank establishment, and creates an opportunity for light, air, and views into the Union Market District from New York Avenue, NE.
- The Project advances and is not inconsistent with any policies in the Historic Preservation, Community Services, Infrastructure, and Implementation elements.
- The Project is not inconsistent with the Comprehensive Plan's Upper Northeast Element because the Project provides for new affordable and mixed-income housing and growth in an urban center, away from the predominantly residential neighborhoods. The Project is also not inconsistent with policies and goals in the Upper Northeast Element that call for improved economic development, job opportunities, and pedestrian-oriented retail. To the extent that the Project does not maintain the use, height, and bulk allowed under the existing PDR zoning, such inconsistency with this policy is outweighed by the many other policies that call for high-density mixed-use development at this location, the design for and retention of some PDR use, and the fact that no industrial uses are present at the Property today.

(Ex. 34C.)

39. The Project is generally consistent with the eight recommendations of the Small Area Plan as well as its specific recommendations for high-density zoning, intensity of use, and mix

of uses, and the Project advances the Small Area Plan’s goals for mixed-use amenity-rich development and sustainable design. The streetscape improvements along 4th Street, NE associated with the PUD also advance recommendations and goals of the Small Area Plan. (Ex. 34C.)

40. The Project advances the overall “Vision” of the W5W Study as well as many of its eight goals through the physical creation of space to accommodate future PDR uses and creation of diverse, inclusive employment opportunities as well as through improved appearance, transportation connectivity, and sustainable design. (Ex. 34C.)
41. The Project advances the Mayor’s Order 2019-036 on affordable housing which sets a goal of creating 36,000 new housing units by 2025, including 12,000 affordable housing units, by introducing approximately 380 residential units, with 11% of the residential GFA set aside at 60% MFI, 2% of the residential GFA set aside at 50% MFI, and an additional amount of GFA associated with the habitable penthouse space also set aside at 50% MFI. (Ex. 12A.)

NO UNACCEPTABLE PROJECT IMPACTS ON THE SURROUNDING AREA (SUBTITLE X § 304.4(b))

42. The Application asserted that it complies with Subtitle X, Section 304.3’s balancing test because the development incentives were outweighed by the public benefits offered by the PUD, and those public benefits and other features of the PUD balanced out or mitigated any potential adverse impacts of the development. With respect to impacts, the Application asserted the PUD complies with Subtitle X, Section 304.4(b) because the Project does not create unacceptable project impacts on the surrounding area as follows:
 - The Project creates positive land use impacts through new housing and affordable housing; increased tax revenue; improved streetscape, open space, and urban design (particularly when compared to the existing improvements and surface parking); enhanced public safety through “eyes on the street”; and improved stormwater management and sustainable design over existing conditions.
 - The Project does not have adverse land use and zoning impacts given its consistency with background planning in the Comprehensive Plan and Small Area Plan as well as the many other similar PUDs and related rezonings of a similar height, density, and mix of uses. The requested Map Amendment to the MU-9 Zone is necessary to allow for the construction of multifamily residential housing and affordable housing as well as enable the Property to achieve the height and density that allows for the provision of substantial housing, including affordable housing. The other zoning flexibility sought by the Applicant (additional 4% density, court width, and projecting balconies) is minor and allows for the successful operation and design of the Project on a challenging site that slopes significantly and abuts what is effectively a public alley that is held by the District as private property rather than as public space.
 - The Project does not have adverse housing market or other economic impacts because it does not result in the direct displacement of any existing residents, it delivers new housing that helps mitigate the existing imbalance of supply and demand, and it creates new housing opportunities for low- and moderate-income households, including households with families, where none is permitted today.

- The Project’s transportation impacts are capable of being mitigated by the proximity to transit options, the inclusion of on-site parking, and the agreed-upon transportation demand management measures that have been incorporated as conditions of approval.
 - The Project does not have adverse impacts on local infrastructure and facilities, as water, sewer, trash, electrical, schools, and other public services are all able to accommodate the development.
 - The Project does not have adverse environmental impacts because stormwater, erosion control, and energy demand will all be managed and mitigated in accordance with District law or commitments by the Applicant to LEED-Gold and other sustainable design measures.
 - Construction impacts are capable of being mitigated and in any event are outweighed by the positive impacts and public benefits.
- (Ex. 12A, 34C.)

PUBLIC BENEFITS AND PROJECT AMENITIES OF THE PROPOSED DEVELOPMENT ARE NOT INCONSISTENT WITH THE COMPREHENSIVE PLAN OR WITH OTHER ADOPTED PUBLIC POLICIES (SUBTITLE X § 304.4(C))

43. The Application asserted that it complies with Subtitle X, Section 304.4’s requirement that the public benefits and project amenities of the PUD are not inconsistent with the Comprehensive Plan or other public policies and that such benefits and amenities satisfied the criteria of Subtitle X, Section 305. As discussed in detail below, the proffered benefits exceed what would likely result from matter-of-right development, are tangible, measurable, and able to be arranged prior to issuance of the certificate of occupancy, and benefit either the immediate neighborhood or address city-wide priorities. (*Id.* §§ 305.2, 305.3.) The majority of the benefits accrue to the benefit of ANC 5D, the ANC in which the application is proposed. (*Id.* §§ 305.4.)
44. The Application enumerated the following public benefits and amenities, organized under the categories of public benefits as defined by Subtitle X, Section 305.5:
- **Superior Urban Design, Architecture, and Landscaping (11-X DCMR § 305.5(a) and (b))**. The proposed height and massing of the Project have been carefully designed to take advantage of its gateway location and preserve important views. The design also balances the general urban design principle of building out to the street wall with selective chamfering at the corners to enhance views into the site and create a dynamic building expression. The building design also features superior architectural design features, including high quality materials and finishes, distinctive cascading balconies and terraces, and a high degree of articulation. Finally, the Project includes superior landscaping design features at not only the ground floor and rooftop but on the aforementioned balconies and terraces. This benefit is not inconsistent with Urban Design Elements of the Comprehensive Plan.
 - **Site Planning and Efficient Land Utilization (§ 305.5(c))**. The Project makes efficient use of an underdeveloped transit-oriented site, places all parking underground, and transforms an auto-oriented, inactive area into an attractive urban development. This benefit is not inconsistent with the FLUM, GPM, Land Use, Transportation, Economic Development, and Upper Northeast Elements of the Comprehensive Plan.

- **Housing in Excess of Matter-of-Right Development (§ 305.5(f)(1))**. The Project includes a greater number of housing units than could be developed on the Property as a matter-of-right under the existing PDR-1 zoning, which does not permit any residential uses. The Project creates approximately 380 new residential units in furtherance of the Mayor’s Housing Order and the goals of the Comprehensive Plan. All of the housing is new housing as there is currently no housing at the Property and the Property’s current PDR zoning does not allow residential use. The Project creates new housing in a transit-oriented, amenity-rich location. This benefit is not inconsistent with the FLUM, GPM, Land Use, Housing, and Upper Northeast Elements of the Comprehensive Plan.
- **Three-Bedroom Units (§ 305.5(f)(3))**. The Project includes approximately sixteen 3-bedroom units, with approximately three of these 3-bedroom units set aside as affordable housing (subject to the flexibility noted herein). This benefit is not inconsistent with the Housing and Upper Northeast Area Elements of the Comprehensive Plan.
- **Affordable Housing in Excess of Inclusionary Zoning Requirements (§ 305.5(g))**. The Project reserves 11% of its residential GFA for households with incomes not exceeding 60% MFI and an additional 2% of its residential GFA for households not exceeding 50% MFI. The Project reserves for households with incomes not exceeding 50% MFI an additional area equal to 8% of the penthouse habitable space, and such space is not permitted to be constructed as a matter-of-right given the Property’s PDR-1 Zone designation. This benefit is not inconsistent with the Housing and Upper Northeast Area Elements of the Comprehensive Plan.
- **Environmental and Sustainable Benefits: LEED Gold and EV Charging Stations (§ 305.5(k))**. The Applicant proposes to construct the Project to LEED Gold v4 certification. The Project also integrates other sustainable design features, including solar panels as a renewable energy source on the roof of the Project and at least five electric vehicle charging stations in the parking garage. These benefits are not inconsistent with the Environmental Protection Element of the Comprehensive Plan.
- **Streetscape Improvements (§ 305.5(l))**. The Project implements streetscape improvements along the Project’s frontages, including enhanced shared street design elements along 4th Street in accordance with updates to the Union Market Streetscape Design Guidelines. This benefit is not inconsistent with the Transportation, Parks, Recreation, and Open Space, and Urban Design Elements of the Comprehensive Plan.
- **Uses of Special Value—ANC 5D (§ 305.5(q))**. The Applicant has agreed to fund a study to add bicycle lanes along Mt. Olivet Road and provide \$25,000 in improvements to Lewis Crowe Park and other ANC-requested items, all at ANC 5D’s request. These benefits are not inconsistent with the Transportation and Parks, Recreation, and Open Space, and Upper Northeast Area Elements of the Comprehensive Plan.
- **Other Public Benefits—PDR/Maker Space (§ 305.5(r))**. The Applicant has agreed to build out 50% of the ground-level nonresidential space to accommodate PDR/Maker uses—at substantial cost—and has agreed to reserve 10% of the ground-level nonresidential space for PDR/Maker uses for five years. This benefit is not inconsistent with the FLUM, GPM, Land Use, Economic Development, and Upper Northeast Elements of the Comprehensive Plan as well as the Small Area Plan and W5W Study.

(Ex. 12A, 34.)

SPECIAL EXCEPTION FOR ROOFTOP EATING AND DRINKING ESTABLISHMENT

45. The Applicant submitted substantial evidence showing that the Building met the criteria for the requested special exception for the penthouse eating and drinking establishment because:
- The eating/drinking use is in harmony with the general purpose and intent of the Zoning Regulations, which permit a broad range of commercial uses in the MU-9 Zone. Commercial use of the penthouse space contributes to the mixed-use character of the MU-9 Zone.
 - The proposed eating/drinking use does not tend to adversely affect neighboring property. Immediately proximate properties, such as the undeveloped and District-owned Lot 819 and the self-storage facility along New York Avenue are not likely to be impacted by such use, and the Project's retention of 1346 4th Street, NE as a single-story building creates a buffer from buildings to the south.
- (Ex. 19C.)

RESPONSES TO THE APPLICATION

OP

46. OP submitted a June 1, 2021 report (Ex. 14, the "OP Preliminary Report") supporting the redevelopment of the Property and design direction of the Project but concluding that the PUD would not satisfy the PUD balancing test or Comprehensive Plan consistency requirement until the amount of PDR/Maker space and affordable housing was increased. OP also identified certain other issues and concerns, which are enumerated in Finding of Fact 29.
47. OP submitted an October 4, 2021 report (Ex. 15, the "OP Setdown Report"), recommending that the Commission set down the Application for public hearing based on OP's conclusion that the Project, as modified from the time of the First OP Setdown Report, would be generally not inconsistent with the Comprehensive Plan. OP reiterated its concern about the extent of PDR/Maker use and the other issues listed in the OP Preliminary Report and enumerated in Finding of Fact 29.
48. OP submitted a December 30, 2021 report (Ex. 38, the "OP Hearing Report" and, together with the OP Preliminary Report and the OP Setdown Report, the "OP Reports") which recommended that the Commission approve the Application. The OP Hearing Report concluded that:
- The Project, on balance, is not inconsistent with the Comprehensive Plan and would further a number of important goals of the District, including the provision of affordable housing and opportunities for economic development in the ground floor commercial space, that outweigh potential inconsistencies with the PDR use element;
 - The Project is consistent with the Property's Multi-Neighborhood Center designation on the GPM and generally consistent with the Property's High Density Residential / High Density Commercial / PDR Designation on the FLUM;

- The Project’s provision of housing and affordable housing on vacant land in a transit-oriented location and mixed-use neighborhood, attention to sustainability and wellness, and access to employment opportunities would further racial equity goals;
- The Project’s height and density is consistent with the Small Area Plan;
- The Project’s construction of ground floor space to PDR/Maker use specifications supports the goals of the W5W Study;
- The Project furthers the May 10, 2019 Mayor’s Order on Housing;
- The Applicant had resolved most of the issues and concerns identified in the earlier OP Reports;
- The PUD-related map amendment to the MU-9 zone, the 4% FAR increase, and the court dimension flexibility were acceptable;
- Further evaluation of the flexibility for the proposed balconies that encroach onto Lot 819 was required;
- The special exception criterial for the rooftop eating and drinking establishment use were met; and
- The Applicant had satisfied the PUD evaluation criteria, and was particularly strong in the housing and affordable housing benefit categories.

49. At the January 10, 2022 public hearing, OP testified in support of the Application and reiterated that OP finds, on balance, that the PUD would not be inconsistent with the Comprehensive Plan (Tr. Jan 10, 2022 at 81-82, 84).

DDOT

50. DDOT filed a December 30, 2021 report (Ex. 35) that assessed the potential safety and capacity impacts of the proposed Project on the District’s transportation network (the “DDOT Report”). The DDOT Report concluded that DDOT had no objection to the Application provided that the Applicant implement the TDM plan as proposed in the Applicant’s November 29, 2021 Transportation Statement (Ex. 28A), with the additions recommended by DDOT at the end of its report and listed below:

- Fund and install a 4-dock Capital Bikeshare expansion plate at a station within one-half mile of the Property, in a location to be determined in coordination with DDOT;
- If the Applicant elected not to remove the P3 level of vehicle parking, the Applicant should fund and install a 19-dock Capital Bikeshare station with 12 bikes and one year of maintenance costs. The location of the station will be subject to DDOT approval.
- If the Applicant elected not to remove the P3 level of parking, additional long-term bicycle parking spaces should be constructed on the P1 level.
- The Applicant should confirm the amount of EV charging stations to be provided in the parking garage (that is, five spaces as noted in the CTR).

51. At the January 10, 2022 public hearing, DDOT testified in support of the Application and confirmed that DDOT and the Applicant had reached agreement on the additional TDM items that would be incorporated into the TDM Plan (Tr. Jan 10, 2022 at 82-83). DDOT confirmed that with respect to long-term parking, DDOT and the Applicant agreed that if elected not to remove the P3 level of parking, the Project would include at least 325 long

term bike parking spaces on levels B1, P1, and P2, with the remaining approximately 85 spaces to be installed on the P3 level or elsewhere. (*Id.* at 83.)

OTHER AGENCIES

52. DOEE submitted a report that recognized the Project’s commitment to LEED Gold and encouraged the Applicant to consider measures to maximize energy efficiency and on-site renewable energy, such as electric design, EV charging stations, net-zero energy, and solar. DOEE also encouraged attention to resiliency goals and an increased green area ratio. (Ex. 36.) In response, the Applicant committed to electric appliances in the residential units and increased the solar panels to 1,800 square feet of dedicated roof area, which might include vertical area, in total. (Ex.41A8, p. 70.)
53. The District Department of Parks and Recreation (“DPR”) submitted a report in support of the PUD benefits for nearby Lewis Crowe Park, funding a bicycle study along Mt. Olivet Rd., supporting farmer’s market operations, and providing amenities in public space. DPR recommended consideration of publicly accessible rooftop space as well as fun and creative elements of play in public space or support of improvements to Brentwood Hamilton Park. (Ex. 37.) In response, the Applicant explained that to the extent the rooftop included a commercial space, it would be publicly accessible, the public space design would include fun and creative elements, and the Applicant would focus its park improvements on Lewis Crowe Park as agreed to with the ANC. (Ex. 41A8.)
54. DHCD submitted a report confirming that it consented to the projection of the balconies into the adjacent Lot 819, which is administered by DHCD, and that it had otherwise reviewed the project generally. (Ex. 40.) In the OP Hearing Report, OP noted that DHCD had reported no objections to the Project based on the proposed affordable housing set aside. (Ex. 38.)

ANCs

55. ANC 5D submitted a December 14, 2020 report stating that at its virtual public meeting on November 10, 2020, the ANC voted 5-0-2 to support the Application and its associated public benefits. The report listed no objections to the Application and noted that its “interests are ensuring the [Project] moves forward in an orderly way with public benefits that primarily benefit the neighborhood and the area of the ANC.” (Ex. 13).
56. By letter dated January 14, 2022, ANC 5D Commissioner Sydelle Moore submitted a letter reaffirming ANC 5D’s support for the Project as modified because the modifications had all improved the affordability, architecture, and community benefits. (Ex. 43.)
57. ANC 5C did not submit a report or otherwise participate in the proceedings.

CONCLUSIONS OF LAW

AUTHORITY

1. 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, Section 300, a PUD-related map amendment pursuant to Subtitle X, Section 303.12, and special exception relief pursuant to Subtitle X, Sections 303.1 and 303.13.

STANDARD OF REVIEW: PUD AND PUD-RELATED MAP AMENDMENT APPROVAL

2. Pursuant to Subtitle X, Section 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.*
3. Pursuant to Subtitle X, Section 303.10, the Zoning Commission may authorize an increase of not more than 5% in the maximum density of the PUD, provided that:
“[T]he increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of [Subtitle X, Chapter 3].”
4. Pursuant to Subtitle X, Section 303.11:
“The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission.”
5. Pursuant to Subtitle X, Section 303.12:
“A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD.”
6. Pursuant to Subtitle X, Sections 303.1 and 303.13:
“As part of the PUD process, the Zoning Commission may grant relief from any building development standard or other standard referenced in the zone reference table with the exception of use regulations” and “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.”
7. Pursuant to Subtitle X, Sections 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 Building

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 Building 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 Building; and*
 - (c) *Includes specific public benefits and Building 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.*
8. A PUD’s proposed public benefits must comply with Subtitle X, Sections 305.12:
“A Building 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.
9. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the Comprehensive Plan’s purposes are:
 - (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.
10. In determining whether a PUD is not inconsistent with the Comprehensive Plan, the Commission shall balance the various elements of the Comprehensive Plan. 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. Even 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. The Comprehensive Plan reflects numerous occasionally competing policies and goals and except where specifically provided, the Plan is not binding. Thus, the Commission may balance competing priorities in determining whether

a PUD is consistent with the Comprehensive Plan as a whole. If 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 citations and quotations omitted.)

STANDARD OF REVIEW: SPECIAL EXCEPTION RELIEF

11. Pursuant to Subtitle X, Section 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.”
12. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception:
 - must be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,
 - must not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and
 - complies with the special conditions specified in the Zoning Regulations.
13. The special exception for a penthouse eating or drinking establishment under Subtitle C, Section 1501.1(d) does not impose any additional “specific conditions.”
14. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the [Commission’s] discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and “if the applicant meets its burden, the [Commission] ordinarily must grant the application.” (*First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (internal citations and quotations omitted.)

CONSISTENCY WITH THE PUD ELIGIBILITY STANDARDS

15. The Commission concludes that the Application meets the minimum 15,000 square feet of land area requirements of Subtitle X, Section 301.1 for a PUD in the MU-9 zone because the Property consists of approximately 43,782 square feet of land area. (Findings of Fact, “FF” 7.)

**CONSISTENCY WITH THE COMPREHENSIVE PLAN AND OTHER ADOPTED PUBLIC POLICIES
RELATED TO THE PROPERTY (SUBTITLE X § 304.4(a))**

16. Based on the case record and the Findings of Fact above, the Commission concludes that the Project, including the PUD and related map amendment, is not inconsistent with the Comprehensive Plan and with other public policies and active programs, when the Comprehensive Plan is considered in its entirety. (FF 12-16, 38-41, 49.)
17. The Commission concludes that the Project is consistent with the Property’s “Multi-Neighborhood Center” designation on the Comprehensive Plan’s GPM because the Project includes a mix of upper-story residential and retail/service uses, including a branch bank on an underutilized site near the New York Avenue corridor. (FF 12, 38.)
18. The Commission concludes that the Project is consistent with the Property’s High Density Residential / High Density Commercial / PDR designation on the FLUM because the Property’s proposed density is consistent with the density envisioned under this designation, particularly for a PUD that also utilizes the IZ bonus. The proposed MU-9 Zone is also expressly consistent with the High Density Commercial designation, and the emphasis on large amounts of housing and affordable housing is consistent with the High Density Residential designation. While the relatively limited amount of PDR use is arguably inconsistent with the PDR designation, the Applicant’s agreement to build out 50% of the ground floor space to accommodate such use as well as dedicate 10% of the ground floor space to such use for five years allows for an appropriate amount of PDR use when balanced against other Comprehensive Plan priorities for retail and service use. Further, the Framework Element of the Comprehensive Plan specifically acknowledges that areas that are striped with PDR and other uses may be rezoned to other uses, so long as some PDR space is included in the development. Because the Property is partially vacant and has little or no existing PDR use, the proposed PUD does not run afoul of the Plan’s statement that “the amount of PDR space on-site should be substantially preserved”. (FF 13, 38, 48.)
19. Other language in the Comprehensive Plan’s Land Use Element suggests that Small Area Plan’s statements and objectives are controlling on PDR uses. (*See* 10-A DCMR §§ 316.2-316.5 (“The supply of areas designated for PDR on the [FLUM] should not fall below its current level, unless the land is designated for mixed uses including PDR through a Small Area Plan” and “The [Small Area Plan] Study area shall be subject to the industrial use concepts set forth in that Small Area Plan but is not subject to this policy [regarding retention of PDR uses].”) In addition, PDR-designated areas on the FLUM also designated as “mixed use” are not subject to the heightened PDR use requirements. (*Id.* § 316.3 (“Unless land is designated for mixed uses, including PDR, on the FLUM, uses such as retail, office, or residential must be accessory” (emphasis added); however, non-PDR uses need not be accessory on the Property is which designated for mixed uses on the FLUM, which means that this objective is inoperative to the Property.) To the extent of a conflict between the PDR requirements in the Framework Element and the Land Use Element’s delegation to the Small Area Plan, the Land Use Element is to be given the “greatest weight.” (*Id.* § 300.3 (“the Land Use Element . . . should be given greater weight than the other elements [including the Framework Element].”)) The Commission has repeatedly

found that the inclusion of PDR/Maker use commitments analogous to the proffer here is not inconsistent with the Small Area Plan and the Comprehensive Plan. (*See, e.g.*, Z.C. Case Nos. 15-15, 15-27, 16-05, 16-10, 17-14, and 14-12E) As a whole, the Project is not inconsistent with the Comprehensive Plan’s recommendations and provisions regarding PDR uses.

20. Finally, the Commission concludes that the Project resolves the apparent tension between the Comprehensive Plan’s co-equal maps. On the one hand, the GMP provides that the Property is to be “primarily retail” with upper story residential uses permitted, while on the other the FLUM encourages a mix of uses including PDR uses. The Project’s balance—up to 90% of the commercial space as retail and rest as PDR/Maker use for a period of time but a perpetual ability to scale up to additional PDR/Maker use—resolves the objectives of both maps.
21. The Commission concludes that the Project (a) advances racial equity through meaningful amounts of housing without displacing any existing residents and (b) includes affordable housing that exceeds the minimum setaside requirements and delivers a greater level of affordability than is required in a transit-focused urban center near employment opportunities. Other ways in which the Project advances racial equity include the creation of job opportunities for workers at a wide range of skills in the retail and PDR spaces, the construction of safer streets, and a healthier and more sustainable use of the Property than could occur as a matter-of-right under the PDR-1 Zone. (FF 38.)
22. The Commission concludes that the Project is consistent with the Upper Northeast Area Element because the Project delivers the type of mixed-income, pedestrian-oriented, job-creating development near transit encouraged by this Element. (FF 14, 38.)
23. The Commission concludes that the Project furthers the housing goals of Mayor’s Order 2019-036 by introducing approximately 380 residential units, with 11% of the residential GFA set aside at 60% MFI, 2% of the residential GFA set aside at 50% MFI, and additional GFA set aside at 50% MFI to satisfy the penthouse habitable area affordable housing requirement. (FF 41.)
24. The Commission concludes that the Project furthers the Comprehensive Plan’s Land Use, Transportation, Housing, Environmental Protection, Economic Development, Parks, Recreation, and Open Space, Urban Design, Historic Preservation, Community Services, Infrastructure, and Implementation Elements as a whole because the Project develops an underutilized parcel into a pedestrian-oriented, LEED Gold-certified, mixed-use development in close proximity to transit and because the Project includes ground floor retail and PDR uses, high quality materials and design, enhanced streetscape, iconic architecture, impressive balconies, green roof areas, solar panels, and other sustainable design elements. (FF 38.)
25. Based on the evidence provided in the record of this Application, the Commission agrees that the Project is not inconsistent with the Comprehensive Plan or other adopted and applicable public policies applicable to the Property.

POTENTIAL ADVERSE IMPACTS – HOW MITIGATED OR OUTWEIGHED (SUBTITLE C § 304.4(b))

26. Based on the case record and the Findings of Fact above, the Commission concludes that the Project does not result in any unacceptable impacts that are not capable of being mitigated or outweighed by the Project’s proffered public benefits and therefore protects and advances the public health, safety, welfare and convenience as detailed below.
27. The Commission concludes that the Project does not create any unacceptable land use impacts because the Project converts an existing underutilized lot into attractive and well-designed mixed-use development. (FF 42.)
28. The Commission concludes that the Project does not create any unacceptable zoning impacts because the Project’s proposed MU-9 Zone, density, and height are all consistent with many similar PUDs and related rezonings elsewhere in the Union Market District. Further, the impact of the height and bulk of the Project is acceptable given the quality of public benefits of the Project, namely the housing where none is permitted as a matter-of-right, the affordable housing, three-bedroom housing, the retail and PDR uses, and the other public benefits of the Project. (FF 42.)
29. The Commission concludes that the Project does not create adverse housing market or other adverse economic impacts because it does not directly displace any existing residents or meaningful amounts of PDR use but instead delivers new housing, affordable housing, family housing, and employment opportunities. (FF 42.)
30. The Commission finds that the Project does not create any unacceptable transportation impacts because the Applicant’s proposed TDM plan, as refined and agreed to pursuant to DDOT review, mitigates any potential adverse impacts on the transportation network of the Project’s increased traffic and because the Project is located in close proximity to multiple mass transit offerings. (FF 42.)
31. The Commission finds that the Project does not create any unacceptable environmental impacts because the Project is designed to LEED Gold standard and includes green roofs, solar panels, and other sustainable and energy-efficient design features. (FF 42.)
32. The Commission finds that the PUD does not have adverse impacts on local infrastructure or facilities, which are all able to accommodate the development, and that any short-term construction impacts are outweighed by the many long-term benefits of the Project. (FF 42.)

PUD FLEXIBILITY BALANCED AGAINST THE PUBLIC BENEFITS (SUBTITLE X §§ 304.3 AND 304.4(c))

33. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies the balancing test of Subtitle X, Section 304.3 because the Application’s public benefits outweigh the requested zoning flexibility as well as any potential adverse impacts that are not capable of being mitigated, as discussed below.

34. The Commission concludes that the Application’s proposed amendment of the Zoning Map to rezone the Property from the current PDR-1 Zone to the MU-9 Zone is appropriate because:
- The Map Amendment is not inconsistent with the GPM, FLUM, Small Area Plan, or Comprehensive Plan when taken as a whole; and
 - The Property is currently underutilized given its gateway location and the Map Amendment allows the Property to be developed as a mixed-use Project at a density and height that delivers the many public benefits discussed elsewhere in this Order.
- (FF 42, 43.)
35. The Commission concludes that the requested flexibility is balanced by the proffered benefits and amenities resulting from the Project, including, superior urban design, architecture, and landscaping, site planning and efficient land utilization, housing, family-sized housing, and affordable housing, environmental and sustainable benefits, streetscape improvements, uses of special value, and buildout of/commitment to PDR/Maker space. (FF 44.)
36. The Commission concludes that the benefits more than outweigh the requested flexibility and other development incentives and the potential adverse effects of the Project that are not otherwise favorable or adequately mitigated.

THE ADDITIONAL DENSITY IS ESSENTIAL TO SUCCESSFUL FUNCTIONING OF THE PROJECT (SUBTITLE X § 303.10)

37. Based on the case record and the Findings of Fact above, the Commission concludes that the up to 4% increase in density sought by the Applicant is essential to the successful functioning of the Project and consistent with the PUD purpose and evaluation standards because it offsets the density lost due to the exceptional grade change and retention of 1346 4th Street as a temporary relocation site for the neighborhood-serving bank. Accordingly, the Application satisfies Subtitle X, Section 303.10. (FF 36, 37.)

SPECIAL EXCEPTION FOR ROOFTOP EATING AND DRINKING ESTABLISHMENT

38. The Commission concludes that the Application meets the special exception standards for the penthouse use for the following reasons:
- (a) The eating/drinking use is a use that is otherwise permitted in the MU-9 Zone and so is in harmony with the general purpose and intent of the Zoning Regulations; and
 - (b) The Property’s most immediate neighbors are unlikely to be impacted by such use, and other nearby properties are of a similar height and density in an urban location where such use is expected, and the eating/drinking use does not tend to adversely affect neighboring properties.
- (FF 45.)

GREAT WEIGHT TO RECOMMENDATIONS OF OP

39. The Commission is required to give “great weight” to the recommendation of OP pursuant to Section 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, Section 405.8. (See *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
40. The Commission finds OP’s analysis of the Application, its conclusion that the Application satisfied the PUD and special exception requirements, and its recommendation to approve the Application persuasive and concurs with this judgement. (FF 48-49).

GREAT WEIGHT TO THE WRITTEN REPORT OF THE ANC

41. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC pursuant to Section 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, Section 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).)
42. ANC 5D’s report stated its reasons for supporting the Application, and did not list any issues or concerns with the Project. The Commission found the explanation for the ANC’s support to be persuasive. (FF 55-56.)

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, subject to the following guidelines, conditions, and standards, for:

- A consolidated planned unit development (“PUD”);
- An amendment to the Zoning Map to rezone the Property from the PDR-1 zone to the MU-9 zone;
- An additional increase in density as shown on the Approved Plans (as hereinafter defined) pursuant to Subtitle X, Section 303.10;
- Flexibility from the court requirements as shown on the Approved Plans;
- Flexibility to permit above-grade balconies and below-grade vaults to project outside of the Property onto the adjacent Lot 819 and extend the PUD-related MU-9 zoning into the adjacent lot to the extent of such areas;
- Flexibility to reduce the amount of below grade parking by a full level;
- Flexibility to fit out 1346 4th Street on an interim basis during the construction of the Project; and

- A special exception to allow eating and drinking establishments above the roof level as well as flexibility to use portions of the penthouse for either commercial space or residential amenity space.

A. PROJECT DEVELOPMENT

1. The Project shall be constructed in accordance with the plans, as modified by the guidelines, conditions, and standards herein, submitted February __, 2022 as Exhibit __ (the “Approved Plans”).
2. The Property shall be rezoned from the PDR-1 zone to the MU-9 zone. Pursuant to 11-X DCMR § 311.4, the change in zoning shall be effective upon the recordation of the covenant required pursuant to Condition E.1.
3. The Project shall have special exception relief to permit eating and drinking establishments above the roof level.
4. In accordance with the Approved Plans, as modified by the guidelines, conditions, standards, and flexibility herein, the Approved PUD shall have:
 - A maximum building height of approximately 130 feet;
 - Approximately 426,486 square feet of GFA;
 - An FAR of approximately 9.74 for the Property, with a nonresidential FAR of 1.02, a residential FAR of 8.52, and an FAR of 0.19 for parking and loading space; and
 - Approximately 380 residential units.
5. The Project shall have flexibility from the following requirements of the Zoning Regulations, as shown on the Approved Plans:
 - Flexibility from the courts requirements; and
 - Flexibility to permit above-grade balconies and below-grade vaults to project outside of the Property onto the adjacent Lot 819 and extend the PUD-related MU-9 zoning into the adjacent lot to the extent of such areas.
6. With respect to the portion of the Project that is located at 1346 4th Street NE:
 - a. During the construction of the primary portion of the Project at 1348 4th Street NE, the Applicant shall have flexibility to renovate the existing building at 1346 4th Street, NE to accommodate the PNC Bank branch on an interim basis during construction subject to the notes and drawings in the Approved Plans; and
 - b. Following the completion of the primary portion of the Project and the relocation of the PNC branch into its permanent space within the Project, the Applicant shall be permitted to renovate the structure at 1346 4th Street NE in accordance with the notes and drawings in the Approved Plans and thereupon use such structure for any use permitted in the MU-9 Zone. As

part of such renovation of the 1346 4th Street NE structure, the Applicant will close the existing curb cuts in front of the 1346 4th Street NE structure and extend the streetscape improvements along the west side of 4th Street, NE south to connect with the streetscape installed by the project approved by Z.C. Order No. 14-07B at 1300 4th Street, NE, all subject to approval through the public space permitting process and as may be modified thereby, within three (3) years of the issuance of the certificate of occupancy for core and shell in the 1348 4th Street portion of the building to be constructed.

7. The Project shall have the following flexibility from the Approved Plans in the following areas:
 - a. Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, mezzanines, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the Approved Plans;
 - b. Exterior Materials – Color: To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the Approved Plans;
 - c. Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the Approved Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
 - d. Number of Units: To provide a range in the approved number of residential dwelling units of plus or minus ten percent (10%) and accordingly adjust the type and location of affordable units to reflect the final unit mix of the Project, provided the location and proportionality of affordable units are consistent with Sheet [54 in Exhibit 34F2] of the Approved Plans;
 - e. Parking Layout: To make modifications to the parking configuration, including layout and number of parking spaces and the size and number of garage levels constructed, including the removal of up to one whole or partial level of parking from the number of levels shown in the Plans and/or to convert such whole and/or partial level to mechanical, amenity, and/or other permitted uses, so long as the number of automobile and bicycle parking spaces is at least the minimum number of spaces required by the Zoning Regulations; provided further, that if a level of parking is removed, (1) the number of required long-term bicycle parking spaces shall be reduced to no less than the minimum number of spaces required by the Zoning Regulations; and (2) the Applicant shall not be required to fund or deliver the Capital Bikeshare station described in Condition C.5.

- f. Streetscape Design and Projections into Public Space: To vary the location, attributes, and general design of the approved streetscape and projections into public space to comply with the requirements of, and the approval by, the DDOT Public Space Review Division or the Public Space Committee;
- g. Signage: To vary the final design of the commercial/PDR/Maker storefronts and signage, including the number, size, design, and location of commercial/PDR/Maker entrances, awnings, canopies, materials, and similar features, to accommodate the needs of specific commercial/PDR/Maker tenants within the parameters set forth in Retail Signage Guidelines included in the Approved Plans provided that variations do not modify the building footprint or reduce the quality of the materials used on the exterior of the ground floor;
- h. Sustainable Features: To vary the approved sustainable features of the Project and the amount, location and type of green roof, solar panels, planted canopies, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, provided (i) the total number of LEED points achievable for the Project does not decrease below the minimum required for LEED Gold v4, (ii) the Project achieves a minimum GAR of 0.2, and (iii) the Project includes a minimum of 1,800 square feet of roof area (which may be vertical space) containing solar panels and related equipment and adjacent space;
- i. Balcony Irrigation: To modify the irrigation system(s) for the Project's balconies to accommodate final design and compliance with the Construction Code;
- j. Commercial Uses: To vary the uses of the non-residential spaces of the Project for any use allowed in the MU-9 zone, subject to the requirements to Conditions B.1 and C.11 below; and
- k. Penthouse: To install commercial uses, including without limitation eating and drinking establishment uses, and/or residential amenity spaces, within the penthouse level of the Project and to remove exterior amenity elements provided all roof level lighting shall be downlighting.

B. BUILDING PERMIT REQUIREMENTS

- 1. **Prior to the issuance of a building permit for the 1348 4th Street portion of the Project**, the Applicant shall demonstrate that the plans contained in the building permit application for the Project satisfy the PDR/Maker construction specifications as follows for a total area equal to a minimum of 50% of the combined ground-floor and mezzanine non-residential space:
 - a. A structural slab load (ground floor) live load of 125 pounds per square inch;
 - b. Clear height of approximately 16 feet from ground-floor slab to bottom of structure above;
 - c. An electrical supply of 50 watts per square foot;

- d. A loading dock that includes a 48-inch raised loading dock and/or levelers;
- e. An open floor plan layout;
- f. A sound attenuation for mixed-use that satisfies NC-25 minimum noise criteria and includes seven-inch-thick minimum concrete podium slab;
- g. HVAC designed for one ton per 300 square feet; and
- h. Ventilation (Fresh Air/Make-Up Air) louvers at façade.

C. CERTIFICATE OF OCCUPANCY REQUIREMENTS

1. **Prior to the issuance of a final certificate of occupancy for the 1348 4th Street portion of the Project,** the Applicant shall provide the Zoning Administrator with evidence that the Project has or will achieve the requisite number of prerequisites and points necessary to secure LEED Gold v4 certification or higher from the U.S. Green Building Council (USGBC). **Within two (2) years after the date of issuance of the first Certificate of Occupancy for the 1348 4th Street residential portion of the Project,** the Applicant shall provide the Zoning Administrator with documentation showing such certification with USGBC.
2. **Prior to the issuance of the first certificate of occupancy for the 1348 4th Street portion of the Project,** the Applicant shall provide the Zoning Administrator with information showing that the Project includes a minimum of 1,800 square feet of roof area (which may be vertical area) containing solar panels and related equipment and adjacent space.
3. **Prior to the issuance of the first Certificate of Occupancy for the 1348 4th Street portion of the Project,** the Applicant shall provide the Zoning Administrator with evidence that it has installed a minimum of five (5) electric vehicle charging stations within the Project.
4. **Prior to the issuance of the first Certificate of Occupancy for the 1348 4th Street portion of the Project,** the Applicant shall provide the Zoning Administrator with evidence that it has funded and installed a 4-dock Capital Bikeshare expansion plate at a station within one-half mile of the Property, with the location to be determined in coordination with DDOT.
5. **Prior to the issuance of the first Certificate of Occupancy for the 1348 4th Street portion of the Project, and only if the Applicant elects to construct the P3 level of parking,** the Applicant shall provide the Zoning Administrator with evidence that it has funded a 19-dock Capital Bikeshare station with 12 bikes with the location subject to DDOT approval, and one (1) year of maintenance costs, which evidence may be provided by documentation of receipt of such funds from DDOT. Such Capital Bikeshare shall be installed by DDOT.
6. **Prior to the issuance of the first Certificate of Occupancy for the 1348 4th Street portion of the Project,** the Applicant shall provide the Zoning Administrator with evidence that it has constructed the streetscape improvements on 4th Street, NE and New York Avenue, NE as shown on the Approved Plans and in accordance with the

Union Market Streetscape Design Guidelines (subject to approval by the Public Space Committee), including the shared street concepts pursuant set forth in the Approved Plans, provided that the streetscape improvements located on 4th Street NE in front of 1346 4th Street NE (as described in Condition A(1)(b)) shall be completed within three years after the issuance of the first Certificate of Occupancy for the 1348 4th Street portion of the Project.

7. **Prior to the issuance of the first Certificate of Occupancy for the 1348 4th Street portion of the Project**, the Applicant shall provide the Zoning Administrator with evidence that it has constructed the “gateway parklets” at each of Penn Street, NE and Morse Street, NE consistent with the Approved Plans, subject to and as may be modified by DDOT approval.
8. **Prior to the issuance of the first Certificate of Occupancy for the 1348 4th Street portion of the Project**, the Applicant shall provide the Zoning Administrator with evidence that it has commissioned a study to install bicycle lanes along Mount Olivet Road NE from 9th Street NE into the Carver-Langston neighborhood.
9. **Prior to the issuance of the first Certificate of Occupancy for the 1348 4th Street portion of the Project**, the Applicant shall provide the Zoning Administrator with evidence it has donated to ANC 5D funds for the following improvements:
 - a. \$10,000.00 for lighting, landscaping, cleanup, and related improvements at Lewis Crowe Park;
 - b. \$10,000.00 to establish a seasonal farmers’ market at Lewis Crowe Park;
 - c. \$2,500.00 for murals and public art at Lewis Crowe Park; and
 - d. \$2,500.00 for an ANC 5D neighborhood art project to design and install flags for the Single Member Districts within ANC 5D.
10. **For a minimum of one (1) year after the date of issuance of the first Certificate of Occupancy for the 1348 4th Street residential portion of the Project**, provide an annual CaBi membership to each new resident;
11. **For a minimum of five (5) years after the date of issuance of the first Certificate of Occupancy for the 1348 4th Street portion of the Project**, the Applicant shall reserve a total area equal to a minimum of ten percent (10%) of the combined ground-floor and mezzanine non-residential space of the Project for one or more of the following PDR/Maker uses:
 - a. Production, sale, and/or distribution of food and beverages (provided that the onsite consumption of food and beverages shall only be permitted when associated with such production, sale, and/or distribution user);
 - b. Food incubators and food hubs;
 - c. Robotics and 3-D manufacturing;
 - d. Small-scale production, distribution, or repair of goods and related accessory sales;
 - e. Curation and sale of small-scale production goods;

- f. New and locally-owned small businesses as certified with the Department of Small and Local Business Development;
 - g. “Creative economy” uses, including incubators, graphic design, product or industrial design, engineering and design, technology design and production, design and product curation, fashion design, horticultural design, green businesses and sustainable design, specialty sports and recreation uses, media/communications production and distribution; and/or
 - h. “Arts” uses including arts, design and creation uses, as defined in Subtitle B, Section 200.2(e), and entertainment, assembly and performing arts uses, as defined in Subtitle B § 200.2(n).
12. **Following the issuance of a certificate of occupancy for the 1348 4th Street portion of the Project**, the Project’s Transportation Coordinator(s) (as hereinafter defined) shall submit to the Office of Zoning for inclusion in the IZIS case record of the case documentation summarizing compliance with the transportation and TDM conditions of this Order.
13. **Five years after the issuance of the final certificate of occupancy for the 1348 4th Street portion of the Project**, if the Transportation Coordinator has not established a relationship with DDOT or goDCgo, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo summarizing continued substantial compliance with the transportation and following TDM conditions in the Order, unless no longer applicable as confirmed by DDOT; provided, that if such letter is not submitted on a timely basis, the Applicant shall have sixty (60) days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter.

D. REQUIREMENTS FOR THE LIFE OF THE PROJECT

- 1. **For the life of the Project**, the Project shall dedicate approximately 373,100 square feet of GFA to residential use, subject to the flexibility contained herein.
- 2. **For the life of the Project**, the Applicant shall reserve the equivalent of no less than 11% of the Project’s residential gross floor area (excluding the penthouse habitable space) for households with incomes not exceeding 60% of MFI.
- 3. **For the life of the Project**, the Applicant shall reserve the equivalent of no less than 2% of the Project’s residential gross floor area (excluding the penthouse habitable space) for households with incomes not exceeding 50% of MFI.
- 4. **For the life of the Project**, the Applicant shall reserve for households with incomes not exceeding 50% of MFI an area equal to no less than 8% of the entirety Project’s penthouse habitable space regardless of its actual use and notwithstanding the exception from the set-aside requirements for penthouse space devoted exclusively to communal rooftop recreation or communal amenity space set forth in 11-C DCMR § 1507.2(a).

5. **For the life of the Project**, the Inclusionary Zoning units in the Project shall be generally in accordance with the following chart, subject to the flexibility noted herein:

Residential Unit Type	Residential Gross Floor Area	MFI	Affordability Control Period	Tenure
Total	Approx. 373,100 square feet of GFA	Varies	N/A	N/A
Market Rate	87% of residential GFA less an area equal to 8% of habitable penthouse area (= approx. 323,541 sf)	Market Rate	N/A	N/A
IZ – 11% @ 60% MFI	11% of residential GFA (= approx. 41,041 sf)	60% MFI	Life of Project	Rental
IZ – 2% @ 50% MFI	2% of residential GFA (= approx. 7,462 sf)	50% MFI	Life of Project	Rental
IZ – 8% of PH habitable area ³ @ 50% MFI	8% of habitable penthouse area (= approx. 1,056 sf)	50% MFI	Life of Project	Rental

6. **For the life of the Project**, the Applicant will provide sixteen (16) three-bedroom units, including three (3) units reserved as affordable units for households up to 60% MFI (subject to the flexibility noted herein).
7. **For the life of the Project**, the Applicant shall comply with the following TDM measures:
- Identify one or more “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;
 - Require each Transportation Coordinators develop, distribute, and market various transportation alternatives and options to residents and employees, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the Project’s website and in any internal building newsletters or communications;
 - Require Transportation Coordinators to receive TDM training from goDCgo to the extent available to learn about the TDM conditions for this Project and available options for implementing the TDM Plan;
 - Require Transportation Coordinators to subscribe to applicable and available goDCgo newsletters;

³ This Order does not require that any affordable units in the Project be located on the penthouse level.

- f. Provide a free SmarTrip card and a complimentary Capital Bikeshare coupon good for one ride to every new resident and employee;
 - g. Provide residents and retail employees 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 to the extent MWCOG does not offer carpooling matching services in the future;
 - h. Refrain from leasing unused parking spaces to anyone aside from users of the Project, except that parking spaces within the Project may be leased to users of other buildings (1) for which no parking is provided and/or (2) within the Union Market District;
 - i. Satisfy the Zoning Regulations requirements’ short- and long-term bicycle parking requirements by providing at least 39 short-term spaces and at least 146 long-term bicycle spaces, provided that (1) if the P3 parking level is constructed, at least 325 long term bike parking spaces shall be located on levels B1, P1, and P2, and any remaining additional spaces may be installed on any level, including the P3 level, and (2) all long-term bicycle space shall be provided free of charge to residents and retail employees;
 - j. Provide electrical outlets within each long-term bicycle parking storage room;
 - k. Provide long-term bicycle storage to accommodate non-traditional sized bikes including cargo, tandem, and kids bikes;
 - l. Provide a bicycle repair station on each garage level with long-term bicycle parking; and
 - m. Post all TDM commitments on the Project’s website to publicize availability and allow the public to see what commitments have been promised.
8. **For the life of the Project**, for the residential component of the Project, the Applicant shall comply with the following TDM measures:
- a. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile of the Property;
 - b. Provide to all new residents welcome packets which include, at a minimum, the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home brochure, and the most recent DC Bike Map;
 - c. Install within the Project’s residential lobby a Transportation Information Center Display (electronic screen) containing information related to local transportation alternatives, which display should include, at a minimum, information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles; and
 - d. Provide one (1) collapsible shopping cart (utility cart) for every 50 residential units, for a total of eight (8) as an incentive to residents to walk to the grocery shopping and run errands.

9. **For the life of the Project**, for the retail component of the Project, the Applicant shall provide the following TDM measures:
- a. Provide in a visible and prominent location on the Project’s website “getting here” information with a focus on non-automotive travel modes, links to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for patrons and employees discouraging parking on-street in Residential Permit Parking (i.e., so-called “RPP”) zones;
 - b. Require the Transportation Coordinator(s) to demonstrate to goDCgo that each non-residential tenant with twenty (20) or more employees working on-site (1) complies with the DC Commuter Benefits Law, (2) participates in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), and (3) complies with any other commuter benefits related laws that may be implemented in the future; and
 - c. Satisfy zoning requirements for showers and lockers for use by employees.

E. VALIDITY

- 1. No building permit shall be issued for the Project 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 Zoning Legal Division and the Zoning Division, DCRA (the “PUD Covenant”). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Site 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 OZ.
- 2. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.

VOTE FINAL ACTION: _____ (Peter A. Shapiro, Joseph S. Imamura, Anthony J. Hood, Robert E. Miller, and Peter G. May to APPROVE).

In accordance with the provisions of 11-Z DCMR § 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 HOOD
CHAIRMAN
ZONING COMMISSION

SARA B. BARDIN
DIRECTOR
OFFICE O ZONING

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