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December 21, 2022

VIA IZIS

Zoning Commission
of the District of Columbia
441 4th Street, NW - Suite 210
Washington, DC 20001

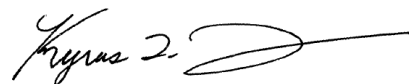
**Re: Applicant's Proposed Findings of Fact and Conclusions of Law
Z.C. Case No. 22-11 - Consolidated PUD and Related Zoning Map Amendment
807 Maine Avenue, SW (Square 439-S, Lot 15)**

Dear Members of the Zoning Commission:

On behalf of MCRT Investments LLC (the "Applicant"), we hereby submit the Applicant's proposed Findings of Fact and Conclusions of Law for the above-referenced case. The Applicant appreciates the Commission's continued consideration of this application.

Sincerely,

HOLLAND & KNIGHT, LLP



Kyrus L. Freeman
Jessica R. Bloomfield

Attachment

cc: Certificate of Service
Joel Lawson, Office of Planning (via Email)
Karen Thomas, Office of Planning (via Email)
Aaron Zimmerman, DDOT (via Email)
Emma Blondin, DDOT (via Email)
Jacob Ritting, OZLD (via Email)

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2022, a copy of this letter and the Applicant's proposed Findings of Fact and Conclusions of Law were served on the following by email:

1. Ms. Jennifer Steingasser
D.C. Office of Planning
jennifer.steingasser@dc.gov

2. Advisory Neighborhood Commission 6D
c/o Commissioner Edward Daniels, Chair
6D@anc.dc.gov
6D07@anc.dc.gov

3. Commissioner Marjorie Lightman
Single-Member District Representative
ANC 6D01
6D01@anc.dc.gov



Jessica R. Bloomfield
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 20-12

Z.C. Case No 22-11

MCRT Investments LLC

**(Consolidated PUD & Related Map Amendment from the MU-12 Zone to the MU-10 Zone,
807 Maine Avenue, S.W. (Square 439S, Lot 15))**

DATE

Pursuant to notice, at its public meeting on _____, the Zoning Commission for the District of Columbia (the “Commission”) considered a request from MCRT Investments LLC (the “Applicant”) for a consolidated planned unit development (“PUD”) and Zoning Map amendment from the MU-12 zone to the MU-10 zone to construct a new residential building (the “Application”) at 807 Maine Avenue, SW (Square 439S, Lot 15) (the “PUD Site”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitles X and Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations,” to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

Notice

1. On May 26, 2022, the Office of Zoning (“OZ”) sent notice of the September 15, 2022, public hearing in accordance with Subtitle Z § 402.1 to: (Exhibit [“Ex.”] 20.)
 - Authorized counsel for the Applicant;
 - The affected Advisory Neighborhood Commission (“ANC”) 6D;
 - The ANC 6D01 Single Member District (“SMD”) Commissioner, whose district includes the PUD Site;
 - The Office of the ANCs;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Consumer and Regulatory Affairs (“DCRA”);¹
 - The Office of Zoning Legal Division (“OZLD”);
 - The District Department of Environment (“DOEE”);
 - Councilmember Charles Allen, the Ward 6 Councilmember in whose district the PUD Site is located;
 - The Chair and At-Large Members of the D.C. Council; and

¹ DCRA was converted to the Department of Buildings (“DOB”) following issuance of the notice.

- The owners of property located within 200 feet of the PUD Site.
2. Notice of the September 15, 2022, public hearing was also published in the June 3, 2022 D.C. Register. (Ex. 18.)
 3. On June 9, 2022, OZ sent a corrected notice of the September 15, 2022, public hearing to the same recipients listed in Finding of Fact (“FF”) No. 1. (Ex. 23.)
 4. The corrected notice of the September 15, 2022, public hearing was also published in the June 17, 2022 D.C. Register. (Ex. 21.)
 5. At the September 15, 2022, public hearing, the Commission continued the hearing to November 14, 2022, to give the Applicant more time to work with neighborhood residents and the affected ANC 6D.
 6. The Applicant submitted evidence that it posted notice of the public hearing on the PUD Site, as required by Subtitle Z § 402.3, and maintained said notice in accordance with Subtitle Z § 402.10. (Ex. 24 and 37.)

Parties

7. The following are automatically parties in the proceeding pursuant to Subtitle Z § 403.5:
 - The Applicant; and
 - ANC 6D.
8. The Commission received one request for party status from Gail Fast, the President of the Council of Co-Owners of Town Square Towers Condominium (“TST”) on behalf of the TST Board of Directors. (Ex. 27.)
9. As a preliminary matter during the September 15, 2022, public hearing, the Commission denied TST’s request for party status on the basis that TST had not demonstrated that it would be more significantly, distinctly, or uniquely affected by the proposed zoning action compared to other persons in the general public.
10. TST submitted a second request for party status (Ex. 71), which the Commission denied at its November 14, 2022, public hearing for the same reasons that it denied the party status request at the September 15, 2022 public hearing.

The PUD Site

11. The PUD Site is located at 807 Maine Avenue, SW, and is known as Lot 15 in Square 439-S. The PUD Site is a triangularly-shaped parcel and contains approximately 23,664 square feet of land area.
12. The PUD Site is generally bounded by 7th Street to the east, Maine Avenue to the south, and the Thomas Jefferson Middle School Academy (“Jefferson”) to the north. In between the PUD Site and Maine Avenue is District-owned property known as Lot 814 in Square 439-S.

13. The PUD Site is presently improved with an office building known as the Denvel D. Adams National Service and Headquarters for Disabled American Veterans (“DAV”).
14. The PUD Site is generally surrounded by a mix of residential and non-residential uses and with a mix of densities. The PUD Site is well-served by public transit options.
15. The PUD Site is located within the boundaries of Ward 6 and ANC 6D01.

Existing Zoning

16. The PUD Site is zoned MU-12. (Ex. 3D.) The MU zones provide for mixed use developments that permit a broad range of commercial, institutional, and multiple dwelling unit residential development at varying densities. 11-G DCMR § 100.1. The MU zones are also designed to provide facilities for housing, shopping, and business needs, including residential, office, service, and employment centers. 11-G DCMR § 100.2.
17. The purposes of the MU Zones are to, among other things: (i) reflect a variety of building types, including, but not limited to, shop-front buildings which may include a vertical mixture of residential and non-residential uses, buildings made up entirely of residential uses, and buildings made up entirely of non-residential uses; (ii) encourage safe and efficient conditions for pedestrian and motor vehicle movement; and (iii) preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities. 11-G DCMR § 100.3.
18. The MU-12 zone is intended to permit moderate-density mixed-use development generally in the vicinity of the waterfront. 11-G DCMR § 500.3. The maximum permitted density in the MU-12 zone is 2.5 floor area ratio (“FAR”), with up to 3.0 FAR for Inclusionary Zoning (“IZ”) projects, and with a maximum non-residential density of 1.0 FAR. 11-G DCMR § 502.1. The maximum permitted building height in the MU-12 zone is 45 feet, with up to 50 feet for IZ projects. 11-G DCMR § 503.1. The MU-12 zone permits a maximum penthouse height of 12 feet and one story, except 15 feet and a second story is allowed for mechanical space. 11-G DCMR § 503.2. The maximum permitted lot occupancy for residential use in the MU-12 zone is 80%. 11-G DCMR § 504.1.

Comprehensive Plan (“Comp Plan”) Designations

19. The PUD Site is designated as Mixed Use (Medium Density Commercial / Medium Density Residential) on the Comp Plan Future Land Use Map (“FLUM”). A “Mixed Use” designation on the FLUM is not intended to be interpreted according to its separate land use categories. Rather, “Mixed Use” on the FLUM is a specific land use category unto itself. The Mixed Use designation is assigned to areas where the mixing of two or more land uses is encouraged, but is not mandatory, with the particular combination of uses desired in a given area depicted in the specific striped pattern on the FLUM. The general density and intensity of development within Mixed Use areas are determined by the specific mix of uses shown on the FLUM. If the desired outcome is to emphasize one use over another, the FLUM may note the dominant use by assigning it a higher density. The Area Elements may also provide detail on the mix of uses envisioned for a site. 10A DCMR § 227.21. In this case, the Mixed Use (Medium Density Residential / Medium Density

Commercial) FLUM designation does not indicate a preference for a particular use on the PUD Site.

20. The PUD Site is designated as a Neighborhood Conservation Area on the Comp Plan Generalized Policy Map (“GPM”). The guiding philosophy for Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the FLUM and Comp Plan policies. Approaches to managing context-sensitive growth in Neighborhood Conservation Areas may vary based on neighborhood socio-economic and development characteristics. In areas with access to opportunities, services, and amenities, more levels of housing affordability should be accommodated. 10A DCMR § 225.5.
21. The PUD Site is within the Lower Anacostia Waterfront/Near Southwest area element of the Comp Plan, which establishes a variety of policies and actions that are intended to guide growth and neighborhood conservation decisions in tandem with the policies and actions set forth in the Citywide Elements of the Comp Plan. 10A DCMR § 1907.1.
22. The PUD Site is within the boundaries of and subject to the policies set forth in the Council-approved Southwest Neighborhood Plan (“SW Plan”), which is the Small Area Plan applicable to the PUD Site.

II. THE APPLICATION

The Project

23. The Application, as amended, proposes to redevelop the Property with a new residential building (the “Project”) which will provide:
 - A maximum building height of 110 feet;
 - Approximately 194,839 square feet of gross floor area (“GFA”) (approximately 8.21 FAR);
 - Approximately 195 residential units;
 - Approximately 78 on-site parking spaces; and
 - Approximately 86 long-term and 10 short-term bicycle parking spaces.
24. **Building Design.** The Project was designed to leverage its prominent location on Maine Avenue, SW, by creating a three-sided building that is engaging and visually appealing from every approach. The base of the building is double height and will be activated by active ground floor residential amenity uses. Above the ground level the building is horizontally differentiated by three, three-level building forms, which break down the building height into smaller, more pedestrian-friendly proportions. Within this horizontal expression, the building’s corners produce an interlocked wave that creates a context-sensitive design that relates to the shape of the PUD Site and surrounding buildings. This design motif helps to overcome the PUD Site’s limitations, conveying an impression that the building is ever-changing and establishing a minimalist aesthetic that prevents each façade of the building from feeling too overbearing or repetitive. The façade’s tone-on-

tone coloring and change in material pattern further help to emphasize the changing elements and accentuate the fluid nature of the building.

25. After the September 15, 2022, public hearing, and in response to comments from the community and ANC regarding the Project's massing, the Applicant reduced the size of the building by removing density located at the Property's northeast corner. In doing so, this area was converted to publically accessible open space with new landscaping, bioretention planters, special and permeable paving, benches, art, and other pedestrian-oriented improvements.
26. Circulation, Parking, and Loading. The Project's circulation, parking, and loading are designed to limit impacts to surrounding properties, minimize traffic congestion, and maximize pedestrian safety. A curb cut on 7th Street will provide vehicular access to the Project's loading facilities and below-grade parking garage. One loading berth and one service-delivery space are located within the building, and a second service-delivery space is located on the PUD Site adjacent to the garage entrance. All loading turn movements can be accommodated on-site. Two levels of below-grade parking are provided to accommodate approximately 78 parking spaces. Long-term bicycle parking will be provided in the first garage level of the building, and short-term bicycle parking will be provided at the perimeter of the PUD Site.
27. Streetscape Improvements. The Project's streetscape and landscape features are designed to enhance the existing pedestrian environment and are provided in accordance with DDOT standards. The streetscape improvements include new trees and tree boxes, plantings and planting beds, bioretention areas, special and permeable paving, benches, and public art. These improvements are valued at approximately \$1 million, of which approximately half is being provided over and above what would otherwise be required for matter-of-right development at the PUD Site.
28. Sustainable Features and LEED. The Project is designed to satisfy the LEED-H Multifamily Midrise v4 Gold rating level. In doing so, the Project implements a holistic and integrative approach to sustainable design strategies, including incorporating innovative stormwater management techniques, high performance mechanical and ventilation systems, and high performance building envelope systems.

Zoning and Design Flexibility Requested

29. The Application requested that the Commission approve a consolidated PUD with a related Zoning Map amendment from the MU-12 zone to the MU-10 zone, which would allow a maximum building height of 110 feet and a maximum density of 8.64 FAR.
30. The Application requested additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1 to allow:
 - A maximum lot occupancy of 82% whereas a maximum of 80% lot occupancy is permitted.
 - A side yard with varying widths, all of which are less than the required width of 18 feet, 4 inches; and

- A maximum rear yard depth of seven feet whereas a rear yard depth of 22 feet, 11 inches feet is required.
31. The Application also 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 § 311.2 and Subtitle Z § 702.8 to construct the Project in complete compliance with the final plans. The Applicant’s original request for design flexibility was included in the Statement in Support (Ex. 3) and modified in the Prehearing Statement (Ex. 16).

The Applicant’s Submissions and Testimony

32. On March 7, 2022, the Applicant submitted the original application (Ex. 1-5), which included the following:
- A Statement in Support of the Application that provided an overview of the Project and justifications relating to the PUD evaluation criteria of Subtitle X § 304;
 - An initial list of public benefits and project amenities proffered;
 - An evaluation of the Project’s consistency with the Comp Plan; and
 - An initial set of architectural plans and elevations.
33. The Commission voted to set down the Application for a public hearing at its May 12, 2022, public meeting.
34. On May 13, 2022, the Applicant submitted a Prehearing Submission that responded to the Commission’s comments at the setdown meeting and OP’s requests for additional information, and included: (Ex. 15-16)
- Updated landscape plans;
 - An explanation as to how the Applicant would maximize private outdoor space in the Project; and
 - A statement that the Applicant would file additional information and analyses requested prior to the public hearing on the Application.
35. On August 4, 2022, the Applicant submitted a Comprehensive Transportation Review (“CTR”) report dated August 1, 2022, which assessed the Project’s transportation impacts and concluded that: (Ex. 26)
- The proposed development has a low parking supply, a robust Transportation Demand Management (“TDM”) plan, and a high-quality pedestrian realm design, which meets DDOT’s goals of supporting adjacent transit routes, minimizing impacts on the transportation network, and the conditions for a Low Impact Development (“LID”) Exemption from a CTR and traffic impact analysis;
 - The PUD Site is surrounded by an existing network of transit, bicycle, and pedestrian facilities that create an excellent environment for safe and effective non-vehicular transportation;
 - The Project introduces bicycle facilities that exceed zoning requirements;
 - The Applicant will install a protected bicycle lane along the PUD Site’s 7th Street frontage between I Street and Maine Avenue, SW, which will improve the quality and attractiveness of active transportation to and from the PUD Site;

- The Project provides vehicle parking spaces in the below-grade garage, including electric vehicle spaces;
 - The loading area will be accessed via 7th Street, SW, and will include one 30-foot loading berth, one 20-foot service/delivery space, and one short-term 20-foot service/delivery space, exceeding zoning requirements and meeting the practical needs of the Project;
 - The Project will provide a Loading Management Plan (“LMP”) to ensure efficient operation of the on-site loading facilities, and a Construction Management Plan (“CMP”) to minimize the impacts from construction of the Project; and
 - The TDM measures adequately promote non-vehicular modes of travel for residents and visitors.
36. On August 26, 2022, the Applicant submitted a Supplemental Prehearing Submission, which included the following: (Ex. 28)
- Updated architectural plans and elevations, which included a Tree Preservation Plan (“TPP”) at Sheet C09; (Ex. 28A)
 - A Project Resiliency Checklist identifying the resilient design strategies incorporated into the Project; (Ex. 28B)
 - An evaluation of the Application’s consistency with the SW Plan; (Ex. 28D)
 - An updated description of the Applicant’s proposed public benefits and project amenities; (Ex. 28)
 - Responses to the specific comments and requests for information from OP in its hearing report; (Ex. 28)
 - Responses to each of the specific comments and concerns raised by ANC 6D to date, including submitting a CMP (Ex. 28E), a LMP (Ex. 28C), and the TPP; and an analysis regarding how the proposed building height is not inconsistent with the Comp Plan and SW Plan, consistent with the surrounding neighborhood context, and would not result in adverse effects; and (Ex. 28)
 - A summary of the Interagency Meeting held on July 19, 2022, and the Applicant’s responses to specific comments and requests for information from District agencies during that meeting. (Ex. 28.)
37. On August 30, 2022, the Applicant submitted a response in opposition to TST’s party status request (the “Response to Party Status”). (Ex. 31.) The Response to Party Status explained that: (i) Ms. Gail Fast did not meet the standard for party status pursuant to Subtitle Z § 404.1(f); (ii) Ms. Fast did not provide evidence that TST met the standard for party status pursuant to Subtitle Z § 404.14; and (iii) the majority of TST residents do not live within 200 feet of the PUD Site.
38. On September 14, 2022, the Applicant submitted a response to letters in opposition filed in the case record (the “Response to Opposition Letters”). (Ex. 53.) The Response to Opposition Letters responded to each of the issues identified in the letters submitted to the record in opposition to the Application, including comments related to: (i) the Project being inconsistent with the SW Plan; (ii) impacts associated with traffic, parking, safety, noise, and WMATA; (iii) the Project being out of scale within the neighborhood context and resultant reduction in property values; (iv) the Project’s impacts on Jefferson; (v) lack of

residential demand in the Southwest neighborhood; (vi) generalized comments from residents north of G Street, SW; (vii) lack of support for providing a contribution to the Southwest Business Improvement District (“SW BID”); (viii) gentrification; (ix) pet waste; (x) retail concerns; and (xi) tree preservation.

39. On September 14, 2022, the Applicant submitted a powerpoint presentation and photographs of the proposed building materials for the Project. (Ex. 52, Ex. 53A.)
40. At the September 15, 2022, public hearing, the Commission continued the hearing until November 14, 2022, to give the Applicant additional time to work with the community and ANC.
41. On October 25, 2022, the Applicant submitted a filing (the “Second Supplemental Prehearing Submission”), which included the following: (Ex. 69)
 - Further updated architectural plans and elevations (the “Plans”), which showed a reduced project massing and density, fewer residential units, and more publically-accessible green space;
 - An updated evaluation of the Applicant’s affordable housing proffer;
 - An update on the Applicant’s contribution to Jefferson and information about how the Project, as revised, would not cause adverse impacts on Jefferson;
 - A commitment to make contributions to Habitat for Humanity (“Habitat”) and MYLY Design, rather than to the SW BID;
 - Information on the significant landscape improvements to public and private space;
 - An agreement to restrict residents of the project from obtaining Residential Parking Permits (“RPPs”);
 - Information demonstrating that the Project will help to advance racial equity;
 - An updated SW Plan analysis; and
 - An updated list of public benefits and project amenities.
42. On November 7, 2022, the Applicant submitted a response in opposition to TST’s second party status request (the “Second Response to Party Status”). (Ex. 73.) The Second Response to Party Status explained why TST did not provide evidence that it met the standard for party status pursuant to Subtitle Z § 404.14.
43. On November 11, 2022, the Applicant submitted an updated powerpoint presentation. (Ex. 81A).
44. At the November 14, 2022, public hearing the Applicant:
 - Presented the Application, including updates to the Project since the September 15, 2022, public hearing and its agreement to the two conditions in the DDOT report. The Applicant’s presentation was supported by the testimony of: (Ex. 81A)
 - Randy Reese, on behalf of DAV;
 - Shane Dettman, on behalf of Goulston and Storrs, accepted by the Commission as an expert in land use planning;
 - Christopher Huffer, on behalf of SK+I Architects, accepted by the Commission as an expert in architecture;

- Matt Clark, on behalf of LandDesign, accepted by the Commission as an expert in landscape architecture; and
 - Daniel Solomon, on behalf of Gorove/Slade Associates, accepted by the Commission as an expert in transportation planning.
 - The Applicant also presented rebuttal following a presentation by OAG regarding the Project’s affordable housing. (Ex. 85.)
45. On November 28, 2022, the Applicant submitted a post-hearing submission that provided additional information requested by the Commissioners at the public hearing (the “Post-Hearing Submission”), which included the following: (Ex. 86-86A.)
- Additional information regarding the proposed color and maintenance of the building materials;
 - IZ unit location plans for every floor in the building;
 - Information regarding the relationship between the ground floor units and the adjacent public space; and
 - Supplemental architectural and landscape sheets to supplement the written information provided (the “Supplemental Sheets”).
46. On December 2, 2022, the Applicant submitted a response to OAG’s Post-Hearing Submission (the “Applicant’s Response to OAG”), which provided the following arguments: (Ex. 88.)
- OAG incorrectly applied the IZ Plus standard in determining whether the proffered affordable housing should be considered a public benefit under the PUD;
 - OAG presented incorrect IZ Plus calculations, and the Applicant explained and provided correct calculations.
 - OAG mischaracterized the Applicant’s assertions at the public hearing, which were intended to state that OP had advised the Applicant that it would not support a stand-alone map amendment to the MU-10 zone without a PUD; and
 - OAG ignores the extensive public benefits package provided as part of the PUD and focuses only on the Applicant’s affordable housing proffer to determine whether the proposed benefits balance against the degree of incentives and adverse impacts.

Applicant’s Justifications For Relief

Consistency with the Comp Plan and Other Public Policies (Subtitle X § 304.4(a))

47. The Applicant asserted that the Application complies with Subtitle X § 304.4(a) because the Project is not inconsistent with the Comp Plan as a whole, including its maps and policies, and other adopted public policies and active programs related to the PUD Site, as set forth in FF Nos. ____.

Framework Element - GPM

48. The Project is not inconsistent with the PUD Site’s designation on the GPM as a Neighborhood Conservation Area because the Project is compatible with the diversity of land uses and building types found in the surrounding area, as well as with the scale and character of the neighborhood, both existing and as envisioned in the SW Plan. The Project will contribute to addressing citywide housing needs on a site that is in close proximity to

Metrorail and numerous neighborhood services and amenities, which is consistent with the guiding philosophy in Neighborhood Conservation Areas. The Project consists of a medium-density development that is not inconsistent with the FLUM and Lower Anacostia Waterfront / Near Southwest Area Element policies, consistent with the recommendations and design guidelines in the SW Plan, and is responsive to the scale, pattern, and character of the immediate context.

49. The Project is consistent with the SW Plan design guidelines, since the massing and 110-foot building height is consistent with the heights of residential building in the immediate context, which range from 90 to 130 feet. The recessed ground-floor and additional open space provided at street level relate to the surrounding context and establish active pedestrian-oriented street frontages. The publically accessible green space at the northeast corner of the PUD Site is located at the western terminus of I Street, SW, which the SW Plan characterizes as an important east-west connector that should provide a beautiful and shaded pedestrian experience. Accordingly, the proposal to incorporate green space on the PUD Site is fully consistent with the SW Plan's vision for the important corridor.

Framework Element - FLUM

50. The Project, including the requested Zoning Map amendment to the MU-10 zone, is not inconsistent with the PUD Site's designation on the FLUM as Mixed Use (Medium Density Commercial / Medium Density Residential).
51. The MU-10 zone is expressly referred to in the Framework Element as being consistent with the Medium Density Commercial land use category, which is used to define: "...shopping and service areas that are somewhat greater in scale and intensity than the Moderate Density Commercial areas. Retail, office, and service businesses are the predominant uses, although residential uses are common. Areas with this designation generally draw from a citywide market area. Buildings are larger and/or taller than those in Moderate Density Commercial areas. Density typically ranges between a FAR of 4.0 and 6.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-8 and MU-10 Zone Districts are consistent with the Medium Density category, and other zones may also apply." 10A DCMR § 227.12.
52. Although the PUD Site's FLUM designation does not expressly favor one use over another, the policy guidance provided in the Comp Plan Elements and the SW Plan consistently promote the need for more housing to help address the District's housing needs. The MU-10 zone is consistent with this guidance as it generally favors residential use over commercial use by limiting non-residential density. Specifically, under a PUD the MU-10 zone permits an overall maximum density of 8.64 FAR, of which up to 4.02 FAR may be devoted to non-residential uses. Consistent with this guidance, the Project favors residential use by devoting 100% of the Project's density to residential use.
53. With respect to height, the Project's 110-foot building height is consistent with other residential buildings immediately surrounding the PUD Site. Specifically, buildings at The Wharf immediately across Maine Avenue are 130 feet and 110 feet in height. The Banks

development located immediately across 7th Street, and TST located to the north on 7th Street, are both 90 feet in height.

54. Accordingly, the Project's density and height are not inconsistent with the PUD Site's FLUM designation as follows:
- Framework Element Guidance: 4.0 FAR to 6.0 FAR, with greater density possible with IZ or a PUD; no height limit identified.
 - MU-10 PUD Permits: 8.64 FAR and 110 ft. building height.
 - Proposed Project: 8.21 FAR and 110 ft. building height.
55. Based on the foregoing and the documents in the case record, the Application is not inconsistent with the FLUM designation applicable to the Property, and any potential inconsistencies are offset and outweighed by the Project's satisfaction of multiple other Comp Plan policies as set forth below.

Lower Anacostia Waterfront / Near Southwest Area Element

56. The Project is not inconsistent with the policies set forth in the Lower Anacostia / Near Southwest Area Element. The Project will redevelop an underutilized site in close proximity to transit, the waterfront, and numerous neighborhood amenities including parks, museums, and retail, with a new development containing approximately 195 new residential units. Consistent with the FLUM and recommendations of the SW Plan, the Project will bring greater residential development to the Maine Avenue corridor (AW-2.5.2). The Applicant will devote 15% of the Project's residential GFA to affordable housing, which far exceeds the amount of affordable housing that would be required under the PUD Site's existing zoning (AW-2.5.2, AW-2.5.11). The Project will even provide more affordable housing than would be required under a standalone MU-10 map amendment that was subject to IZ Plus. Finally, the housing within the Project, including the affordable housing units, will comprise a range of unit types.
57. The Application asserted that the Project was not inconsistent with the following policies of the Lower Anacostia / Near Southwest Area Element: AW-1.1.5: Flood-Resilient and Climate-Adaptive Development; AW-1.1.6: Resilient Affordable Housing; AW-2.5.2: Southwest Neighborhood Plan; AW-2.5.4: An Equitable and Inclusive Southwest Neighborhood; AW-2.5.7: Southwest Sustainability and Resilience; AW-2.5.8: Southwest Arts and Culture; AW-2.5.11: Affordable and Family-Sized Housing in Southwest. (Ex. 3H, 81A.)

Citywide Elements

Land Use Element

58. The Application will help achieve the goals of the Land Use Element and will not be inconsistent with the Land Use Element overall. The Project will promote the continued growth of the urban, mixed-use neighborhood that is developing along the Maine Avenue corridor (LU-1.2.4). The Project will deliver approximately 195 new dwelling units, and approximately 15% of the residential GFA will be dedicated as affordable housing. The residential use is appropriate for the PUD Site's location along the edge of the Central Employment Area ("CEA") and proximity to transit (LU-1.4.4, LU-1.4.6). Consistent with

the FLUM, the proposed MU-10 zone will facilitate the construction of new multi-family housing, including affordable housing at 50% to 60% of the MFI in a transit- and amenity-rich area of the city (LU-1.4.C).

59. The Project also advances the District's goal to increase housing supply, particularly affordable units, with the parallel goals to advance sustainability, promote arts and culture, and protect neighborhood character. The approximately 195 new market rate and affordable housing units will greatly assist in achieving the housing goals for the Lower Anacostia Waterfront / Near Southwest Planning Area, and the Applicant's commitment to achieve LEED Gold will advance District environmental and energy policies. The Project will also incorporate public art (LU-2.3.12). The height and massing of the Project are consistent with the surrounding context, and the GPM and FLUM. Specifically, the 110-foot building height is within the range of 90-, 110-, and 130-foot residential buildings that surround the PUD Site. Finally, as shown on the Applicant's shadow study, the building height will not have an unacceptable impact on Jefferson and will not cast shadows on the Jefferson recreation fields to the north of the school building. The vast majority of shadows created by the Project will be cast on Jefferson's parking and loading areas located at the rear of the school building (LU-2.1.3).
60. Based on the foregoing, the Application asserted that the Project was not inconsistent with the following Land Use policies: LU-1.2.4: Urban Mixed-Use Neighborhoods; LU-1.4.4: Affordable Rental and For-Sale Multi-family Housing Near Metrorail Stations; LU-1.4.6: Development Along Corridors; LU-1.4.C: Metro Station and Inclusionary Zoning; LU-2.1.1: Variety of Neighborhood Types; LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods; and LU-2.3.12: Arts and Culture Uses in Neighborhoods. (Ex. 3H, 81A.)

Transportation Element

61. The Application stated that the Project was not inconsistent with the Transportation Element. The Project will establish new transit-oriented development that is in close proximity to Metrorail and other forms of public transportation and bicycle infrastructure (T-1.1.4, T-1-1-7). The Project includes various transit-oriented development-related improvements, including the construction of new residential use in close proximity to the Maine Avenue corridor, bicycle storage areas, and public space improvements such as new paving, lighting, landscaping, and bicycle racks (T-2.4.1, T-2.4.2). The Project will also incorporate place making-strategies through seating and landscaping along 7th Street and Maine Avenue, and through the use of public art (T-1.4.1).
62. In addition, the Project integrates bicycle and pedestrian safety considerations, such as incorporating secure indoor bicycle parking and providing exterior short-term bicycle parking to encourage residents, visitors, and employees of the Project to travel by bike. The Applicant will improve the public realm by making new landscape and lighting improvements to enhance the pedestrian experience and general safety of the surrounding area (T-2.3.1). Together, these physical improvements to the streetscape will improve bicycle and pedestrian safety in the area.

63. The Project also includes a strong TDM program that reduces the number of vehicle trips and miles traveled and increases the efficiency of the city's transportation systems (T-1.1.2, T-3.1.1). As part of the TDM program the Applicant will unbundle the cost of parking from the cost of renting a residential unit, which will help discourage residents from buying or renting parking spaces (T-3.2.D). The Project will also include a number of transportation mitigation measures and support facilities that will help address existing transportation issues in the area and improve transportation safety and access (T-1.1.B). At the request of the ANC, the Applicant will also restrict residents of the Project from obtaining RPPs.
64. Based on the foregoing, the Application asserted that the Project advances the following Transportation Element policies: T-1.1.2: Land Use Impact Assessment; T-1.1.4: Transit-Oriented Development; T-1.1.7: Equitable Transportation Access; T-1.1.8: Minimize Off-Street Parking; T-1.1.B: Transportation Improvements; T-1.4.1: Street Design for Placemaking; T-2.4.1: Pedestrian Network T-2.4.2: Pedestrian Safety; T-3.1.1: TDM Programs; and T-3.2.D: Unbundle Parking Cost. (Ex. 3H, 81A.)

Housing Element

65. The Application stated that the Project helps meet the housing needs of present and future District residents at locations consistent with District land use and housing policies and objectives. The Project will provide approximately 195 new residential units within close proximity to transit, including affordable units reserved for households at the 50% and 60% MFI levels, which will remain affordable for the life of the Project (H-2.1.6). The market rate and affordable housing will contribute to the District's housing goals set forth in the Housing Equity Report (H-1.1.1, H-1.1.3, H-1.2.1, H-1.2.7, H-1.2.11). The approximately 195 new housing units in the Project represent approximately 2.4% of the overall housing goal for the Lower Anacostia Waterfront / Near Southwest Planning Area. Further, the Housing Equity Report sets an affordable housing goal of 850 units for the Planning Area. The Project will devote 15% of the residential GFA to affordable housing for households earning no more than 50% and 60% of the MFI. The affordable housing within the Project will help the District achieve the affordable housing production goal set by the Housing Equity Report for the Planning Area. (H-1.2.9, H-1.2.F).
66. The Project will also address citywide housing needs by developing new housing on an underutilized property in a growing and changing mixed-use neighborhood that is developing around along the Maine Avenue corridor. The affordable housing will be designed and constructed according to the same high-quality architectural design standards used for the market-rate housing, and the interior amenities, including finishes and appliances, will be comparable to the market-rate materials, durable, and consistent with contemporary standards for new housing (H-1.1.5). The Project will also contain housing for larger households, including three bedroom units (H-1.1.9, H-1.3.1).
67. Based on the foregoing, the Application asserted that the Project substantially advances the following Housing Element policies: H-1.1.1: Private Sector Support; H-1.1.3: Balanced Growth; H-1.1.5: Housing Quality; H-1.1.9: Housing for Families; H-1.2.1: Low- and Moderate-Income Housing Production as a Civic Priority; H-1.2.7: Density Bonuses for Affordable Housing; H-1.2.9: Advancing Diversity and Equity of Planning Areas; H-

1.2.11 Inclusive Mixed-Income Neighborhoods; H-1.2.F: Establish Affordability Goals by Area Element; H-1.3.1: Housing for Larger Households; and H-2.1.6: Long-Term Affordability Restrictions. (Ex. 3H, 81A.)

Environmental Protection Element

68. The Project is not inconsistent with the policies of the Environmental Protection Element. As part of the Project, the Applicant will reconstruct the streetscape surrounding the PUD Site, which will include new trees that will add tree canopy, provide shade, improve air quality, provide urban habitat, and add aesthetic value (E-1.1.2, E-2.1.2). The Project will also incorporate landscaping, including sustainable landscaping practices, which will enhance and beautify the public rights-of-way, reduce storm water runoff, and strengthen the character of the public realm (E-2.1.3). This includes the installation of green roofs that will improve storm water management and climate resilience (E-4.1.2, E-4.1.3). Finally, the Project will be designed in accordance with LEED Gold standards (E-3.2.3, E-3.2.7, E-4.2.1).
69. Based on the foregoing, the Application asserted that the Project would advance the following Environmental Protection Element policies: E-1.1.2: Urban Heat Island Mitigation; E-2.1.2: Tree Requirements in New Development; E-2.1.3: Sustainable Landscaping Practices; E-3.2.7: Energy-Efficient Building and Site Planning; E-4.1.2: Using Landscaping and Green Roofs to Reduce Runoff; E-4.1.3: GI and Engineering; and E-4.2.1: Support for Green Building. (Ex. 3H, 81A.)

Urban Design Element

70. The Project is not inconsistent with the policies of the Urban Design Element. The Project will help achieve the goals of the Urban Design Element through its massing and quality materials that respond to the surrounding context, as well as by providing an on-site pocket plaza with publically-accessible open space, and through improvements to adjacent public space (UD-2.2.1, UD-2.2.2). The 110-foot building height is compatible with existing residential buildings that immediately surround the PUD Site. As shown in the Applicant's shadow study, the Project will not cast shadows on the recreation fields located to the north of Jefferson, and any shadows that are cast will be on parking and loading areas, and on the portion of the school building containing the gymnasium. No classrooms will be impacted by shadows created by the Project (UD-2.2.7).
71. To further relate to the surroundings, the Applicant reduced the density of the Project by recessing the ground floor and pulling the massing away from the residential uses to the northeast, which results in additional open space at the ground level. It also designed the building to have strong articulation at the upper floors through variation in façade angles and materials (UD-4.2.1, UD-4.2.4). The Applicant designed the ground floor of the Project to be engaging to passersby and to support the programmed residential space that is contemplated along Maine Avenue. The use of high quality materials at the ground level will elevate the pedestrian experience and facilitate engagement (UD-2.1.1, UD-4.2.2).
72. Based on the foregoing, the Application asserted that the Project advances the following Urban Design Element policies: UD-2.1.1: Streetscapes That Prioritize the Human

Experience; UD-2.2.1: Neighborhood Character and Identity; UD-2.2.2: Areas of Strong Architectural Character; UD-2.2.7: Preservation of Neighborhood Open Space; UD-3.2.5: Safe and Active Public Spaces and Streets; UD-4.2.1: Scale and Massing of Large Buildings; UD-4.2.2: Engaging Ground Floors; and UD-4.2.4: Creating Engaging Facades. (Ex. 3H, 81A.)

Potential Comp Plan Inconsistencies

73. The Applicant conducted a thorough Comp Plan evaluation using a racial equity lens and determined that the Application is not inconsistent with the Comp Plan when read as a whole. In conducting its evaluation, the Applicant identified any and all instances where the Application could be viewed as being potentially inconsistent with certain Comp Plan policies; the result being that while the Applicant did identify a few policies where the Project may be viewed as inconsistent, these potential inconsistencies are far outweighed by the Project's overall consistency with the FLUM and numerous other competing Comp Plan policies relating to land use, housing, transit oriented development, and environmental sustainability.
74. The Applicant stated that the potential policy inconsistencies relate to the conceivable reuse of the existing building on the PUD Site, which was constructed as an office building in the 1980s. While the Applicant could theoretically continue to use the building for office use, the building would need to be fully renovated to be competitive in a lower-tier office market (ED-2.1.4, ED-2.1.5, ED-2.1.B). Further, given the PUD Site's FLUM designation, location, and the critical need for more housing in the District, the continued office use of the building is no longer the best use for the PUD Site. Rather, redevelopment of the PUD Site in a manner that better utilizes available land area and capitalizes on the PUD Site's proximity to transit and amenities to address citywide housing and sustainability goals far outweighs the continued use of the PUD Site for office purposes. (Ex. 81A1, p. 31).

Racial Equity

75. The Application noted that equity is conveyed throughout the Comp Plan where priorities of affordable housing, displacement, and access to opportunity are distinguished. In light of the guidance provided by relevant Comp Plan policies, the Applicant asserted that the Project and related Zoning Map amendment to the MU-10 zone would not be inconsistent with the Comp Plan when evaluated through a racial equity lens. In support of its assertion, the Applicant evaluated the Project's consistency with the Comp Plan through a racial equity lens by applying the Commission's Racial Equity Tool. (Ex. 3H.)
76. The Applicant asserted that the expected goals of the proposed zoning action are as follows:
 - Approve a consolidated PUD and related Zoning Map amendment that would result in new housing, including affordable housing and larger-sized units, that is consistent with District housing and sustainability objectives at an underutilized, transit-oriented site that is compatible with the scale and character of the surrounding neighborhood;
 - Permit the following development program:
 - Approximately 195 new housing units;
 - A minimum set aside of 15% of the total residential GFA as affordable housing, with approximately 14% of the residential GFA set aside for households earning

- no more than 60% MFI and approximately 1% of the residential GFA set aside for households earning no more than 50% MFI;
- A minimum set aside of 15% of the penthouse habitable space devoted to households earning no more than 50% MFI;
- Three three-bedroom units at 60% MFI; and
- Sustainability measures that include LEED Gold Certification and rooftop solar.
- Deliver a comprehensive public benefits and amenities package, including public art, a contribution to Jefferson, and a contribution to Habitat. (Ex. 81A1.)

77. The Applicant asserted that the proposed zoning action would:

- Not result in negative outcomes with respect to displacement because the Project:
 - Does not involve physical displacement of residents;
 - Limits economic displacement because:
 - 14% of the base building GFA will be devoted to households earning no more than 60% MFI (low income);
 - 1% of the base building GFA will be devoted to households earning no more than 50% MFI (very low income); and
 - 15% of the penthouse habitable space will be devoted to households earning no more than 50% GFA (very low income);
 - Does not contribute to cultural displacement or loss of belonging or shared neighborhood identity because:
 - The public art proffer will be developed with neighborhood input; and
 - New landscaping and streetscape improvements will foster opportunities for community interaction and engagement.
 - Result in positive outcomes for all District residents, regardless of socioeconomic status, with respect to housing because the Project will:
 - Generate approximately 195 dwelling units (market rate and affordable), which represents approximately 2.4% of the housing production goal for the Planning Area, per the Housing Equity Report;
 - Dedicate new IZ units for low and very low income households;
 - Provide three three-bedroom units devoted to affordable housing at 60% MFI, which will accommodate family-sized households;
 - Result in positive outcomes for all District residents, regardless of socioeconomic status, with respect to transportation and pedestrian safety, including public space, streetscape, and infrastructure, because the Project will:
 - Improve access to public transit, since the PUD Site is located approximately 0.3 miles from Metrorail and adjacent to the D.C. Circulator and priority bus corridors;
 - Involves the reconstruction of the adjacent streetscape along Maine Avenue and 7th Street that includes landscape and seating;
 - Will provide a protected bicycle lane along 7th Street; and
 - Will install other transportation improvement benefits identified through the DDOT CTR process;
 - Result in positive outcomes for all District residents, regardless of socioeconomic status, with respect to employment because the Project will:

- Create new construction, building maintenance, and management job opportunities; and
 - Increase access to job opportunities because of the Property’s proximity to multiple modes of public transit and to numerous retail, service, and neighborhood-serving establishments;
- Result in positive outcomes for all District residents, regardless of socioeconomic status, with respect to the environment because the Project will:
 - Be constructed to achieve LEED Gold certification; and
 - Include the installation of green roofs, solar panels, stormwater management improvements, and compliance with the Green Building Act;
- Improve access to community facilities and wellness and education opportunities for all District residents, regardless of socioeconomic status, because:
 - The PUD Site is in close proximity to the Southwest Waterfront and other open space areas, parks, educational facilities, the Southwest Library, and the Future Southwest Community Center, and cultural attractions;
 - The Applicant will provide a \$150,000 contribution to Jefferson to help fund curricular resources to support student learning and field trips and excursions that were eliminated during the COVID-19 pandemic;
- Improve access to amenities and recreational opportunities for all District residents, regardless of socioeconomic status, because:
 - The PUD Site is located near numerous retail, service, and eating and drinking establishment uses, including those at The Wharf; and
 - The Project is located near numerous cultural attractions, including performing arts, art galleries, and museums. (Ex. 3H, 28, 69E.)

78. Based on the themes of the Commission’s Racial Equity Tool addressed above in FF Nos. ___, and as reflected in the Applicant’s submissions and testimony during the public hearing, the Applicant asserted that the proposed zoning action would result in positive outcomes for all residents and future residents of the District, and therefore, the Application is not inconsistent with the Comp Plan when evaluated through a racial equity lens.

SW Plan

79. The Application is not inconsistent with the SW Plan because the Project: (Ex. 69D)
- Advances recommendations under the “Model Community” vision by: (SW Plan, MC-4, MC-5, MC-6, MC-7, MC-11) (Ex. 69D, pp. 1-2.)
 - Providing new housing where no housing currently exists, including significant new affordable housing that exceeds what would be provided as a matter of right under existing zoning;
 - Incorporating larger sized residential units, including IZ units, to better serve families;
 - Establishing context-sensitive streetscape improvements, landscaping, and open space that provide opportunities for community interaction. Streetscape amenities include benches, bike racks, planters, public art, special paving, and

- tree boxes, which collectively integrate with the existing street design and create better connections within the neighborhood; and
 - Providing building setbacks to allow for additional space for pedestrian use and enjoyment, and incorporating façade undulation and building setbacks to establish a context-sensitive design that leverages the PUD Site’s location while respecting surrounding uses.
- Advances recommendations under “Principles 1-8” by:
 - Proposing building height and massing that complement and uphold adjacent and nearby development (P-1);
 - Achieving design excellence with a dynamic, sustainable building and landscape elements that pique visual interest through distinguished architecture and high quality materials (P-2);
 - Promoting variation in building frontages through the use of façade undulation and ground level setbacks that avoid the creation of a “superblock” and establish an engaging structure that is appropriately scaled and approachable from all directions (P-3);
 - Enhancing green space through landscape design that includes new bioretention plant beds, special and permeable paving, tree boxes, green roof areas, and other user-friendly green spaces within the urban infrastructure (P-4);
 - Incorporating sustainable building and site design by achieving LEED v4 Gold and otherwise implementing a holistic and integrative approach to sustainable design that includes innovative stormwater management techniques, high performance mechanical and ventilation systems and building envelopes, bioretention areas, and solar, among others, and incorporating a variety of strategies from DOEE’s Resilient Design Guidelines (P-5);
 - Ensuring that parking is not a detractor by providing all parking and loading on-site, proposing a low parking supply that is entirely below-grade, and providing a new curb cut that will result in a safer pedestrian environment (P-6);
 - Maximizing transparency of ground floor uses by locating active residential uses on the ground floor and incorporating substantial public space improvements that will promote pedestrian-oriented usage on both street frontages (P-7); and
 - Encouraging connectivity for pedestrians, cyclists, vehicles, and transit by improving the streetscape to enhance the pedestrian experience, constructing a protected bicycle lane on 7th Street, and bringing new landscaping to the area to establish a well-designed and safe urban environment.
- Advances the SW Plan’s Design Guidelines by:
 - Proposing appropriate building height and massing;
 - Achieving design excellence of architectural character;
 - Establishing building setbacks to create views through and around the Project;
 - Developing a new multi-family building with significant new housing and affordable housing;
 - Reducing the “urban canyon” effect by providing substantial new green space, public art, and landscape improvements on both street frontages;

- Establishing a significant building setback which will provide publically-accessible open and green space; and
 - Providing additional open space on the roof of the building for residents.
- Advances the objectives of the “Green Oasis” concept by (SW Plan, GO-8, GO-11, GO-12GO-13GO-14): (Ex. 69D, pp. 5-7.)
 - Providing substantial open space along the street frontages with new plantings, trees and tree pits, benches for social engagement, bicycle racks, public art, and other pedestrian-focused features;
 - Reducing stormwater runoff through innovative stormwater management techniques, bioretention and green roof areas, native and adapted plant materials, and permeable paving, among others;
 - Incorporating features to mitigate future flood risk;
 - Maximizing sustainable practices that incorporate elements from DOEE’s Resilient Design Guidelines; and
 - Providing EV charging infrastructure.
- Advances the goal of providing art in the public realm and reinforcing the Southwest’s identify as an arts and cultural designation by: (Ex. 69D, p. 7.)
 - Contributing \$75,000 to MYLY Design, a local minority-owned, women-owned, certified business entity based in Washington, D.C., which will design, fabricate, and install public art on Maine Avenue, SW, between 7th and 9th Streets, SW; and
 - Designing and installing a publically-accessible art piece within the property line located at the northeast corner of the PUD Site.
- Advances the goals of providing safe pedestrian connections and bicycle infrastructure, and ensuring that Maine Avenue provides an attractive transition from the SW neighborhood to the Wharf by (VC-4, VC-4, VC-8): (Ex. 69D, pp. 8-9.)
 - Incorporating significant improvements to the public and private spaces adjacent to the building with new wide sidewalks, special and permeable paving, trees and plantings, benches, lighting, and other pedestrian-focused features to improve safety and encourage pedestrian activity;
 - Installing a new protected bicycle lane on 7th Street that will include pavement markings and barriers to enhance cyclist safety and improve circulation patterns; and
 - Enhancing the corner of Maine Avenue and 7th Street by providing ground floor open space, building articulation, and significant new streetscape improvements that will create a hospitable environment for residents of the building and visitors to the neighborhood.
- OP also found that the Project was not inconsistent with the SW Plan, stating in its Setdown Report (Ex. 14) that the Project incorporates the SW Plan’s Design Guidelines by providing an attractive building exhibiting unique architecture; incorporating façade articulation and an interesting pedestrian experience; including green roof and landscaping; constructing the building to LEED Gold; and locating parking below-grade. (See Ex. 14, pp. 13-14.) OP also stated that the SW Plan makes several recommendations that would be furthered by the Project, including (i) prioritizing affordable units above the IZ requirement, including providing three-bedroom units;

(ii) increasing the number of benches along sidewalks through the Southwest neighborhood; (iii) increasing tree canopy in the Southwest Planning Area; and (iv) encouraging the installation of electric vehicle charging stations. (Ex. 14, p. 14.)

- In its Hearing Report, dated September 6, 2022 (Ex. 35) and in its Supplemental Report, dated November 7, 2022 (Ex. 74), OP continued to find that the Project would not be inconsistent with the SW Plan, including the design principles of the SW Plan. (Ex. 35, pp. 1, 8, and Ex. 74, pp. 1, 9.) OP also testified at the public hearing that the Project would “satisfy[] the southwest small area plan’s design and affordability guidelines.” See Public Hearing Transcript, Nov. 14, 2022 (“Tr.”) at p. 99; see also Tr. At pp. 95 and 98-99.

No Unacceptable Project Impacts on the Surrounding Area (Subtitle X § 304.4(b))

80. The Applicant asserted that the Application complied with Subtitle X § 304.4(b), which requires that a PUD not create any potential adverse impacts that cannot not be mitigated or balanced out by public benefits, as follows:

- The Project will not result in unacceptable impacts on the surrounding area or on the operation of city services and facilities, and will instead have a favorable impact on the surrounding area. The Project will transform an underutilized office site into a new residential building that is compatible with immediate and surrounding uses. The Project involves critical improvements to the adjacent streetscape and significantly improved conditions for pedestrian, vehicular, and bicycle traffic. The Project will benefit the area by contributing a significant number of new residential units, including affordable housing units, in an area designated for medium density uses;
- The Applicant evaluated the potential impacts of the Project as it relates to land use, transportation, housing, environmental protection, economic development, urban design, community services and facilities, educational facilities, and infrastructure, and found that for each topic area the potential impacts would be favorable or capable of being mitigated. (Ex. 3; 81A.) Various District agencies also reviewed the Project and determined that it would not have any unacceptable impacts on land use, arts and culture, economic development, and urban design (favorable recommendation from OP); transportation (no objection letter from DDOT); housing (no objection received from DHCD); historic preservation (no objection received from HPO); environmental protection (no objection received from DOEE); parks, recreation, and open space (no objection received from DPR); community services and facilities (no objection received from DPR, DCPL, or FEMS); educational facilities (no objection received from DCPS); and infrastructure (no objection received from DC Water, WMATA, or Washington Gas). (Ex. 81A.)
- The potential transportation impacts of the Project were specifically analyzed in the Applicant’s CTR Report, which was prepared in coordination with and reviewed by DDOT. (Ex. 26A.) The CTR Report found that the Project will not have any adverse impacts on the roadway network;
- In order to mitigate any adverse impacts caused by parking in the surrounding neighborhood by future residents of the Project, the Applicant agreed to restrict residents of the building from obtaining RPPs for the life of the Project; (Ex. 69)

- In order to mitigate any adverse impacts to existing trees, the Applicant agreed to implement a TPP during construction of the Project; (Ex. 69A, p. C09)
- In order to mitigate any adverse impacts caused by construction activities at the PUD Site, the Applicant agreed to implement a CMP during construction of the Project. (Ex. 28E.)

Zoning Flexibility to be Balanced Against Public Benefits (Subtitle X §§ 304.3 and 304.4(c))

81. The Applicant asserted that the Application complied with Subtitle X §§ 304.3 and 304.4(c), which, when read in conjunction, require the Commission to judge, balance, and reconcile the relative value of the public benefits and project amenities offered with the degree of development incentives requested.

Zoning Map Amendment

82. The Application asserted that the Zoning Map amendment from the MU-12 to the MU-10 zone will:

- Not be inconsistent with the Comp Plan, including the FLUM and the GPM;
- Allow development of the PUD Site to be compatible with the mix of uses, heights, and densities, in the surrounding area; and
- Allow the Project to provide more housing, including affordable housing, than could be provided as a matter-of-right under the existing MU-12 zoning.

Zoning Flexibility

83. The Application asserted that it met the standard for PUD flexibility as follows:

- Lot Occupancy – The request is for a minimal increase (2%) over the maximum lot occupancy permitted and would not result in any adverse impacts;
- Side Yard Width – It would be impractical to provide a compliant side yard due to the irregular, triangular shape of the PUD Site, the undulating building facades, and the location of the WMATA easement. Providing a non-compliant side yard will not result in any adverse impacts; and
- Rear Yard Depth – It would be impractical to provide a compliant rear yard depth due to the irregular, triangular shape of the PUD Site. Providing a non-compliant rear yard will not result in any adverse impacts.

Public Benefits and Amenities

84. The final Application proffered the following categories of public benefits and amenities, as defined by Subtitle X § 305.5:

- **Urban Design and Architecture ((11-X DCMR § 305.5(a)); Superior Landscaping (11-X DCMR § 305.5(b)); and Site Planning and Efficient Economical Land Utilization (11-X DCMR § 305.5(c))**. The Project reflects a superior architectural and landscape design compared to what would otherwise be developed as a matter-of-right. The Project includes high-quality building materials and utilizes unique architectural features, setbacks, and articulation that will create a visually interesting building at an underutilized site.

The Project also incorporates superior urban design features such as new and engaging streetscape improvements, plaza spaces, seating areas, street trees and planting beds, special and permeable paving, bioretention areas, and other pedestrian-centric spaces that create better connections within the neighborhood. All of these spaces will be open to the public and will result in a significant upgrade compared to the existing fenced-off condition. Moreover, the Project represents economical land utilization as it will redevelop the existing vacant office building with a new higher-density residential building that is fully consistent with the Comprehensive Plan.

- **Commemorative Works or Public Art (11-X DCMR §305.5(d))**. The Applicant will incorporate public art into the design and program of the Project as follows:
 - The Applicant will design and install a publically-accessible art piece within the property line located at the northeast corner of the PUD Site; and
 - The Applicant will contribute \$75,000 to MYLY Design, a local minority-owned, women-owned, certified business entity based in Washington, D.C., which will design, fabricate, and install public art on Maine Avenue, SW, between 7th and 9th Streets, SW.
- **Housing that Exceeds the Amount that Would Have Been Required Through Matter-of-Right Development Under Existing Zoning (11-X DCMR § 305.5(f)(1))**. The Project results in the creation of new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the SW Plan. The Project will replace an existing office building with approximately 195 new residential units. Given that existing zoning does not require housing, this amount of housing substantially exceeds the amount that could be provided if the PUD Site was developed as a matter-of-right.

Specifically, under the existing MU-12 zone with IZ, the PUD Site could be developed as a matter-of-right with approximately 70,992 square feet of GFA devoted to residential use (3.0 FAR x 23,664 sq. ft. land area). This is compared to the 194,839 square feet of GFA proposed for the Project (8.2 FAR), which is an increase of 123,847 square feet of residential use compared to matter-of-right development (174.5% increase). The Project will also include a mix of unit types, including nine 3-bedroom units.

- **Affordable Housing that Exceeds the Amount that Would Have Been Required Through Matter-of-Right Development Under Existing Zoning (11-X DCMR § 305.5(g))**. In addition to the creation of new housing, the Project will also produce significant new affordable housing. Specifically, the Applicant will set aside a minimum of 15% of the residential GFA and penthouse floor area to IZ units as follows: (i) approximately 1% reserved for households earning up to 50% of the MFI; and (ii) approximately 14% reserved for households earning up to 60% of the MFI. The Applicant's affordable housing proffer will help foster a mixed-income community on a site where no housing currently exists and that is in close proximity to public transit and numerous neighborhood amenities. In addition, the Project will include a mix of unit types, including three 3-bedroom IZ units.

The Applicant's affordable housing proffer represents a substantial increase compared to the amount of affordable housing that would be required for a matter-of-right development in the MU-12 zone. As a matter-of-right (MU-12), the PUD Site would be required to set aside approximately 8,874 square feet of residential GFA to IZ, assuming non-Type I construction, as follows:

- 3.0 FAR with IZ = 70,992 sq. ft. of residential GFA permitted
- 10% of residential GFA = 7,099 sq. ft. of residential GFA devoted to IZ
- 75% of bonus density utilized = 8,874 sq. ft. of residential GFA devoted to IZ

The 8,874 square feet of IZ is compared to the 29,465 square feet of residential GFA proposed to be devoted to IZ as part of the PUD, excluding the IZ generated by the penthouse. Accordingly, the affordable housing provided in the PUD represents a 20,591 square foot increase (232% increase) in affordable housing compared to what would be provided as a matter-of-right under existing zoning.

Assuming the same size penthouse habitable space on a matter-of-right development, approximately 660 square feet of IZ would be required (10% of 6,599 sf penthouse space) at 50% of the MFI. However, the Project is providing 1,789 square feet at 50% of the MFI, which is a 171% increase in the amount of affordable housing that would be provided at 50% MFI for matter-of-right development at the Site.

Taking the IZ generated by the base building and penthouse together, the Project will provide 30,455 square feet of IZ, whereas a matter-of-right project with the same penthouse would only provide 9,534 square feet of IZ. This represents a 20,921 square foot increase in IZ (219% increase) compared to matter-of-right development.

In addition to the foregoing, for the life of the Project, the Applicant will ensure that the Project's website includes information directing potential tenants regarding how to apply for IZ units.

- **Environmental and Sustainable Benefits that Exceed the Standards Required by Zoning or Other Regulations (11-X DCMR § 305.5(k))**. The Project will be designed to satisfy the LEED-H Multifamily Midrise v4 Gold rating standard. In doing so, the Applicant will implement a holistic and integrative approach to sustainable design, including the incorporation of innovative stormwater management techniques, high performance mechanical and ventilation systems, and high performance building envelope systems.

In addition, the Applicant will (i) provide 100% electric appliances within all residential units; (ii) provide eight EV charging spaces in the parking garage and ensure that an additional 16 vehicle parking spaces are EV-ready; and (iii) ensure that 10% of the bicycle parking spaces will have access to an electrical outlet for charging. The Applicant will also install a minimum of 925 square feet of solar on the roof of the building.

In addition, the Applicant will incorporate a number of strategies set forth in the DOEE *Climate Ready D.C. – Resilient Design Guidelines*, and specifically those identified in

the Resilient Design Strategies Matrix included at p. 36 of the Resiliency Guidelines. The strategies that will be incorporated into the Project are set forth in the Project Resiliency Checklist (Exhibit 28B), which will help to enhance the Project's climate readiness.

- **Streetscape Plans (11-X DCMR § 305.5(l)); Superior Landscaping, or Creation of Preservation of Open Spaces (11-X DCMR § 305.5(b)).**

As recommended in the SW Plan, the Project will include significant new streetscape improvements that create a safe and pedestrian friendly urban environment. On Maine Avenue, bike racks, benches, planter beds, tree boxes, and new concrete sidewalks will be provided. On 7th Street, bike racks, benches, planter beds, tree boxes, bioretention areas, new concrete sidewalks, public art, and an area of special/permeable paving will be provided. The proposed landscape improvements represent the redevelopment of a significant amount of public and private space, with approximately 3,524 square feet of landscaping in public space and approximately 3,520 square feet of landscaping on private property, for a total of approximately 7,044 square feet. The proposed streetscape improvements are valued at approximately \$1 million, of which approximately half is being provided over and above what would otherwise be required for matter-of-right development at the Site. These improvements will leverage the PUD Site's corner location, complement the energy and activity of the surrounding area, and provide a safe and comfortable space for building residents, visitors, and passers-by to enjoy.

- **Transportation Infrastructure Beyond that Needed to Mitigate any Potential Adverse Impacts (11-X DCMR § 305.5(o)).**

The Applicant will implement the following improvements that are being provided as benefits to the PUD and are not needed to mitigate any potential adverse impacts created by the Project:

The Applicant will design, fund, and construct a protected bicycle lane on the west side of 7th Street, SW, between I Street and Maine Avenue, SW, as well as any infrastructure determined necessary by DDOT to manage the conflicts between buses and bicycles, subject to DDOT approval. The protected bicycle lane will be limited to pavement markings, concrete barriers, and/or flexipost bollards along the PUD Site's frontage and across the west leg of the intersection of 7th Street and Maine Avenue.

The Applicant will abide by the Loading Management Plan ("LMP"), as agreed to by DDOT, for the life of the Project. A copy of the proposed LMP is included at Exhibit 28C of the case record.

The Applicant will not seek any Residential Parking Permit ("RPP") designations for the Project on streets that would allow residents of the Project to apply for or obtain RPPs, and will also include a rider in all residential leases that restricts residents of the Project from obtaining an RPP.

- **Uses of Special Value to the Neighborhood or the District of Columbia as a Whole (11-X DCMR § 305.5(q)).**
 - Donation to Jefferson Middle School Academy. The Applicant will contribute \$150,000 to Jefferson Middle School Academy (“Jefferson”) to be used for the following educational resources, as finally allocated at Jefferson’s discretion: (i) supplementary curricular resources to support student learning, particularly for struggling readers and students furthest from academic success; and (ii) field trips and excursions, particularly because these opportunities were eliminated during the Covid-19 pandemic.
 - Donation to Habitat for Humanity. The Applicant will contribute \$100,000 to Habitat to aid in the production of new for-sale affordable housing units in Ward 6, which will be reserved for households earning between 50% and 60% of the MFI. The Applicant’s contribution will help subsidize down payment assistance for the future homeowners and/or lower costs of construction.
 - Targeted Senior Advertising. The Applicant will advertise the residential units within the Project in traditional rental guides as well as in publications such as The AARP Magazine, Today’s Senior Magazine, Inspired Magazine, and other similar publications to specifically target senior citizens as potential residents of the Project. In addition, all units will be outfitted with blocking for installation of grab bars should a resident request their installation.
 - Construction Management Plan. The Applicant will abide by a Construction Management Plan (“CMP”) to be in place throughout construction of the Project.

III. RESPONSES TO THE APPLICATION

District Agencies

OP Report and Testimony

85. On May 2, 2022, OP submitted a report (the “OP Setdown Report”) that stated the following (Ex. 14):

- The Application is generally not inconsistent with the Comp Plan Elements and Maps and the SW Plan;
- The proposed rezoning from the MU-12 to the MU-10 zone would not be inconsistent with the Comp Plan’s maps. The proposed zone would allow essential neighborhood-serving commercial uses and residential uses, including market rate and affordable dwelling units. The PUD Site’s FLUM designation is equally consistent with the MU-10 zone and the MU-12 zone. The MU-10 zone would allow for additional density and would generate more affordable residential units;
- The Neighborhood Conservation Area Policy Map designation allows for compatible redevelopment, including mixed-use buildings that are compatible with the existing scale, natural features, and character of the area, which would be supported by the MU-10 zone;

- The MU-10 zone has the potential to create significantly more residential units than the current zone, increasing the total supply of housing units in the Planning Area, which could help alleviate the pressure on housing costs overall;
- The proposed PUD with a related MU-10 map amendment has the potential to provide up to three times more affordable housing than a matter-of-right project;
- The proposed PUD and map amendment would create significant additional affordable housing. The potential affordable housing units that could be created under the requested MU-10 zone with a PUD is higher than other rezoning scenarios and would result in deeper affordability as it would be available to households earning no more than 60% MFI. Making room for affordable housing has the potential to benefit non-white populations who on average have lower incomes than white residents;
- The proposed PUD would not result in physical displacement of residents, as the PUD Site does not currently include a residential use. Displacement due to housing cost increases should not occur due to the level of affordable housing that would be provided by the Project;
- The proposed development is not inconsistent with the land use, transportation, housing, environmental protection, economic development, urban design, and arts and culture policies of the Citywide Elements of the Comp Plan;
- The Project would incorporate elements consistent with the SW Plan’s Design Guidelines, and the proposed map amendment would further several specific recommendations identified in the SW Plan;
- The proposed PUD would be consistent with the scale of buildings in the neighborhood, including those on the south side of Maine Avenue that are part of the Wharf development;
- The proposed PUD would change the zoning to a higher moderate-density mixed-use zone, and on balance, would not be inconsistent with the Comp Plan. The policies cited in Appendix I and as discussed in the Citywide and Area Elements sections, work together to support increasing density to permit more mixed-use and housing, including affordable housing, in proximity to transit on an infill lot; and
- The PUD would help the District towards attaining its affordable housing pipeline goals as identified in the Housing Equity Report and could help the Planning Area achieve a minimum of 6% of affordable units by 2025.

86. On September 6, 2022, OP submitted a report (the “OP Hearing Report”) that stated the following: (Ex. 35)

- A full description of the Comp Plan and analysis of the proposal against its maps and policies was provided in the OP Setdown Report. In general there have been no changes made to the proposal after setdown that would significantly impact this analysis;
- OP continues to determine that, on balance, the proposal is not inconsistent with the Comp Plan as a whole, including the maps and the policy statements. In particular, the proposal would further policy statements contained in the Land Use, Transportation, Housing, Environmental Protection, Economic Development, Urban Design, and Arts and Culture Citywide Elements, and the Lower Anacostia Waterfront/Near Southwest Area Element;
- A comprehensive equity analysis is included in the OP Setdown Report. In particular, the proposed PUD and map amendment would create significant additional affordable

housing through the provision of 15% IZ. The potential number of affordable housing units created under the requested MU-10 zone with a PUD is higher than what would be provided under other rezoning scenarios. Making room for affordable housing has the potential to benefit non-white populations who on average have lower incomes than white residents;

- The proposal would not result in the direct displacement of existing residents, as there are no residential units on the site. The PUD Site is close to transit options, providing access to services and employment. The site has good access to public schools and other amenities for the new residents;
- On balance, the proposed development and the rezoning from the MU-12 to the MU-10 zone would not be inconsistent with the Comp Plan text and maps and the Southwest Neighborhood Plan. The PUD Site's FLUM designation is equally consistent with the MU-10 zone and the MU-12 zone, but the MU-10 zone would allow for additional density and would generate more affordable residential units;
- The additional height and GFA to be provided through the map amendment would allow development of the PUD Site to the density anticipated by the FLUM and GPM and in character with new development along the Maine Avenue corridor. Flexibility would allow for additional height and GFA to support housing where none currently exists;
- OP supports the flexibility for lot occupancy, side yard, and rear yard. Light and air to Jefferson would not be substantially diminished and there are no residential or full classroom structures belonging to the school in the immediate vicinity of the rear and side yards. The Applicant provided a shadow study (Ex. 28A2, Sheets 041-046) and the results indicate that shadows would mainly affect the open basketball court area and enclosed gym on the school property, primarily during the winter. As such, OP supports the flexibility requests due to the PUD Site's constraints and the minimal impact shadows would have overall; and
- The Project's benefits, amenities, and proffers would appear to be commensurate with the related map amendment and other requested flexibility through the PUD.

87. The OP Hearing Report also stated that (i) OP held an interagency meeting on July 19, 2022, to which it invited representatives from all notified agencies to participate, including DOEE, DDOT, DC Water, and DPR; and (ii) the Applicant also met separately with DDOT and WMATA to discuss the relevant aspects of the Application. The OP Hearing Report noted that the Applicant submitted responses to the concerns expressed at the interagency meeting. (Ex. 28.)

88. On November 7, 2022, OP submitted a Supplemental Hearing Report (the "OP Supplemental Report") that stated the following: (Ex. 74)

- OP continues to recommend approval of the PUD and related zoning map amendment, as amended by the Applicant in response to the Commission's and the community's concerns. On balance, the proposed development remains not inconsistent with the Comprehensive Plan text and maps and the SW Plan;
- OP supports the revisions to the building design, including the decrease in density, lot occupancy, and unit count, and the conversion to ground floor retail. The revisions also

- include accessible on-site open space, which would create a visible sense of space and place typical of SW apartment buildings, and consistent with the SW Plan’s vision;
- The Project’s increase in affordable housing could not be realized with a building within a lower density zone or as currently exists;
 - The proposed MU-10 zone is not inconsistent with the Comp Plan’s designation for the site and the project would provide housing, including affordable units where none currently exists on a high land value site/location. A lower building height would not provide comparable number of IZ units dedicated to households at 50% and 60% MFI, which represent very low-income households on the DHCD’s income scale of affordability;
 - The art installation will be directly managed by the design team originally involved with the landscape recommendations for the SW Plan and with experience of public art in the neighborhood;
 - The direct contribution to Habitat would benefit District households at 50% and 60% MFI who would not qualify to purchase a new home in Ward 6, which has a high median home value;
 - OP supports the Applicant’s increased contribution to Jefferson for the specific needs identified, which will benefit the low-income students of the neighborhood who attend this school. This is also supportive of equity principles anticipated by the Comp Plan;
 - OP supports the additional landscaping that would be an improvement over what exists and what may be provided for a matter-of-right development. This amenity of the PUD is consistent with the goals anticipated under the SW Plan;
 - OP is satisfied that the Applicant has thoroughly addressed the issue of whether the Project is not inconsistent with the SW Plan’s vision, based on the Applicant’s submissions that outline how the Project satisfies the SW Plan’s goal for Maine Avenue to provide an attractive transition from the Southwest neighborhood to the Wharf development. OP continues to maintain that the Project as amended is consistent with the SW Plan.
 - The proposed CMP would address concerns regarding dust and truck traffic during construction; and
 - The proposed bicycle lane on 7th Street will manage conflicts between buses and bicycles.

89. At the November 14, 2022, public hearing, OP testified in support of the Application. In response to questions from the Commission, OP stated that it would not have supported a zoning map amendment to the MU-10 zone without a corresponding PUD.

DDOT Report and Testimony

90. On September 6, 2022, DDOT submitted a report (the “DDOT Report”) that stated the following: (Ex. 34)
- DDOT has no objection to approval of the Application with the following conditions included in the final order:
 - The Applicant implements the TDM plan as proposed in the August 1, 2022 CTR for the life of the Project, unless otherwise noted, with the following revision: in the order, state the specific number of long-term bicycle parking

- spaces to be provided as horizontal on the floor (50%), cargo/tandem-sized (5%), and served by electrical outlets (10%), instead of as percentages; and
- Prior to the issuance of a COO, the Applicant will design, fund, and construct a protected bicycle lane on the west side of 7th Street between I Street, SW and Maine Avenue, SW, as well as any infrastructure determined necessary by DDOT to manage the conflicts between buses and bicycles, subject to DDOT approval;
- A CTR with a Traffic Impact Analysis was not required since the Project meets DDOT’s Low Impact Development Exemption criteria in the 2022 Guidance for Comprehensive Transportation Review;
- The proposed TDM plan, as revised, in conjunction with the bike lane construction, is sufficiently robust to encourage non-auto travel and support the low assumed auto mode share;
- The Project will shift the existing curb cut on 7th Street southward, which will provide safer spacing from the I Street intersection; and
- The Project meets or exceeds all zoning requirements and DDOT standards for vehicle parking, bicycle parking, and loading facilities. Accordingly, the proposed LMP is not required to be included as a condition of approval. Instead, one of the TDM Plan conditions requires that the LMP be provided to the site’s future transportation coordinator.

91. At the November 14, 2022 public hearing, DDOT testified in support of the Project with the conditions noted above. DDOT also stated that it reviewed the Applicant’s supplemental memo regarding trip generation and continued to support the Project despite the small increase.

Office of the Attorney General (“OAG”) Report And Testimony

92. The Equitable Land Use Section of the OAG filed a PowerPoint presentation that presented arguments for an appropriate minimum affordable housing proffer of 21% of the residential GFA (Ex. 75A) (the “OAG Powerpoint”).

93. At the public hearing, OAG testified in opposition to the Application on the grounds that the Applicant’s affordable housing proffer was inconsistent with the Comp Plan and failed to provide the same ratio of affordable housing that would be required for a matter of right project for the same density (Subtitle X § 301.1(a)), and therefore did not satisfy the PUD balancing test under Subtitle Z §§ 304.3-304.4.

94. On November 28, 2022, OAG filed a post-hearing statement (the “OAG Post-Hearing Statement”) that supplemented OAG’s testimony provided at the public hearing and made the following assertions: (Ex. 87)

- In order to claim IZ as a PUD public benefit, a PUD with a map amendment should provide at least the amount of affordable housing that would be required for the PUD’s requested additional density based on the IZ Plus formula for a matter-of-right project in the requested zone;

- OAG’s recommended 21% set-aside is based on the IZ Plus calculation in which the proposed PUD’s IZ Plus set-aside would be based on the bonus density utilized by the PUD;
- The Applicant and the Commission suggested that OAG should have used the MU-8 zone for its calculations based on the Applicant’s assertion that OP would not have supported a non-PUD map amendment to the MU-10 zone, but only to the lower density MU-8 zone, and as such the Commission could not have approved a non-PUD map amendment to the MU-10 zone. OAG rejects this argument on the basis that the Commission has the exclusive authority to decide zoning applications, including map amendments, and notes that using the MU-8 zone would not relieve the PUD from providing a higher IZ set-aside; and
- OAG believes that, to provide a truly meaningful affordable housing benefit, the PUD’s IZ proffer should be increased to at least 21% of the residential GFA based on the IZ Plus baseline. Without that increased proffer, OAG asserts that the PUD does not satisfy the PUD evaluation criteria and the Commission should deny the PUD unless the IZ set-aside proffer is increased.

ANC 6D Reports and Testimony

95. The ANC submitted a report dated September 12, 2022 (Ex. 59), which stated as follows:
- At a duly noticed public meeting on September 12, 2022, with a quorum of Commissioners present, ANC 6D voted 6-0-0 to oppose the Project;
 - The Project violates the spirit, intent, and rationale of the SW Plan because the Project’s proposed height and density are greater than those allowed by existing zoning;
 - The Application lacks meaningful community benefits; and
 - The Project will result in future impacts to the surrounding neighborhood, including impacts to traffic, on-street parking, and pedestrian/bicycle safety.
96. The ANC submitted a second report dated November 10, 2022 (Ex. 82), which stated as follows:
- At a duly noticed special public meeting on November 10, 2022, with a quorum of Commissioners present, ANC 6D voted 6-1-0 to provide conditional support for the Project;
 - The ANC worked with the Applicant following the originally-scheduled September 15, 2022, public hearing, and recognized the additional proffers and design changes that will benefit the community that the Applicant made as a result of the continued engagement;
 - The Applicant should further reduce the size of the building to comply with the 80% lot occupancy requirement;
 - The Applicant should consult with a community group selected by ANC 6D on the public art, and any fees associated with management of the public art should be a pro-bono contribution;
 - Rather than providing \$100,000 to Habitat, the Applicant should reallocate this contribution to the PTOs of Amidon-Bowen Elementary School (“Amidon”) and the Richard Wright Public Charter School (“Richard Wright”), and the Applicant should make the contributions immediately upon recordation of the PUD; and

- The Applicant should provide at least 21% of the residential units (no less than 42 units) as affordable housing units at 60%-80% of the MFI.

97. Commissioner Fredrica Kramer of ANC 6D testified at the public hearing, summarizing the issues and concerns raised in the second ANC report.

Persons and Organizations in Support

98. Letters or testimony in support of the Application were submitted to the record as follows:

- Thirteen individuals (Ex. 30, 36, 40, 46, 62, 64, 66, 68, and 76-80);
- Habitat for Humanity (Ex. 69B);
- MYLY (Ex. 69C);
- The Westminster Presbyterian Church (Ex. 70); and
- The Jefferson PTO (Ex. 83)

Persons and Organizations in Opposition

99. Letters or testimony in opposition to the Application were submitted to the record as follows:

- Twenty-two individuals, plus a petition (Ex. 29, 32, 33, 34, 38, 39, 41-45, 47-51, 54-57, 63, 65, and 67); and
- TST (Ex. 27-27A).

100. At the public hearing, Gail Fast of TST and Coy McKinney testified in opposition to the Application.

National Capitol Planning Commission (“NCPC”)

101. The Commission referred the Application to NCPC on _____. (Ex. __.) NCPC filed a report dated _____ stating that the proposed Project _____.

IV. CONTESTED ISSUES

102. The ANC, TST, and individuals in opposition to the Application, and the testimony provided at the public hearing, raised several issues that are categorized and summarized below, to which the Applicant responded as follows: (Ex. 53)

- Comment 1: The Project is inconsistent with the SW Plan and Comp Plan, including that the SW Plan (i) requires 20% affordable units; (ii) identifies the Property as low-density commercial on the FLUM; (iii) prohibits a cascading wall effect on Maine Avenue/M Street; and (iv) the Project would be inconsistent with the vision of the SW as a “Green Oasis.”
- Response to Comment 1: The Applicant provided an extensive evaluation as to how the Project is not inconsistent with the SW Plan and the Comp Plan, and OP agreed with this analysis. (Ex. 3, 3H, 14, 28D, 35, 53 69D). The Applicant also provided the following specific responses:

- Only District-controlled sites are encouraged to provide 20% affordable housing under the SW Plan, whereas PUDs are encouraged to prioritize affordable units above the IZ requirement or fewer affordable units but larger in size. *See* SW Plan Goals MC-4 and MC-6. The Project provides well over the minimum IZ requirement, as well as three-bedroom units. (Ex. 53.) OP agreed that the increase in IZ over the matter-of-right requirements “could not be realized with a building within a lower density zone or as currently exists” and that the Project “would provide housing, including affordable units where not currently exists on a high land value site/location.” (Ex. 74, p. 3.)
- The PUD Site is shown as Low Density Commercial at Figure 2.4 in the SW Plan, which is labeled as a 2006 FLUM map. The D.C. Council updated the FLUM during the 2021 Comp Plan update to Mixed-Use (Medium Density Residential / Medium Density Commercial). This higher-density mixed-use designation was done pursuant to an extensive public Comp Plan rewrite process, and was specifically changed to support the creation of a gateway into the community. The proposed Zoning Map amendment to MU-10 is not inconsistent with the current FLUM designation; (Ex. 3, 3H, 14, 28D, 35, 53 69D.) OP agreed with this analysis, stating that the “proposed MU-10 zone is not inconsistent with the Comp Plan’s designation for the site.” (Ex. 74, p. 3.)
- There is nothing in the SW Plan that prohibits a cascading wall effect on Maine Avenue/M Street. Moreover, the Project does not create a cascading wall along Maine Avenue, and instead has been designed to fully comply with all of the SW Plan’s Design Guidelines; and (Ex. 28D, 53, 69D)
- The Project is fully consistent with the SW Plan’s vision for a Green Oasis. (Ex. 69D.) *See* Ex. 53, pp. 1-3, for full details on the Applicant’s response to Comment 1. OP also found that the Project “includes significant streetscape improvements... that will serve residents of the development and provide improved access for area residents... the framework and design would respect the design principles of the Small Area Plan, including Design Principle #3 – Enhance green space through landscaped perimeters and internal green or amenity spaces.” (Ex. 35, p. 9.)
- Comment 2: The Project would result in negative impacts associated with traffic congestion, on-street parking, pedestrian safety, construction noise and dust, and would interfere with the WMATA substation.
- Response to Comment 2: The Project will not result in negative impacts to traffic, congestion, parking, pedestrian safety, construction noise and dust, or with the WMATA substation (Ex. 53) due to the robust TDM plan, high-quality improvements to the pedestrian realm, the provision of vehicle and bicycle parking that meet minimum requirements, and the installation of a protected bicycle lane on 7th Street. The CTR concluded that the Project will not generate additional vehicle trips during the AM or PM weekday peak hours when compared to the existing office use at the Property, and will generate a nominal number of weekend trips. DDOT agreed with the Applicant’s trip generation analysis. (*See* Ex. 34, *e.g.* at p. 2, wherein DDOT stated that the “proposed TDM Plan, in conjunction with the bike lane construction, is sufficiently robust to encourage non-auto travel and support the low assumed auto mode share.”)

The Project will not impact traffic flow along G and 9th Streets specifically, which was referenced by opposition letters, as that intersection is not adjacent to the PUD Site and vehicles originating at the Project would have no reason to travel to that intersection. The relocated curb cut will meet all DDOT standards and will create a safer environment for pedestrians and bicyclists, including Jefferson students. (DDOT Report, Ex. 34, p. 1.) Moreover, a crossing guard is already provided for Jefferson students to ensure safe crossing conditions. The Applicant will be required to submit a Traffic Control Plan (“TCP”) prior to construction, which will provide for safe and efficient movements of pedestrians, bicyclists, and vehicles. The Applicant will be required to comply with all applicable noise regulations and the Noise Control Act during construction. The Applicant has coordinated extensively with WMATA. Any development within WMATA’s “zone of influence” must be reviewed and approved prior to issuance of any building permits for the Project to ensure that it does not propose any danger or negative impacts. (Ex. 53.) *See* Ex. 53, pp. 3-6, for full details on the Applicant’s response to Comment 2.

- Comment 3: The Project is out of scale with the surrounding neighborhood and would reduce property values.
- Response to Comment 3: The Project’s height is consistent with the heights of adjacent residential buildings, such that the difference between the proposed 110 foot tall building and the existing adjacent buildings at 90, 100, 110, and 130 feet tall, will be practically imperceptible from the ground level. (Ex. 53, 28.) Based on findings in the market analysis prepared by RCLCO Real Estate Consulting (Ex. 53, pp. 19-35) (the “Market Analysis”), the Project will likely result in increased property values, rather than decreased values. *See* Ex. 53, pp. 6-8, for full details on the Applicant’s response to Comment 3. *See also* OP Report (Ex. 35, p. 11) stating that the Project “would have a height and FAR consistent with surrounding projects” and OP Supplemental Report (Ex. 74, p. 3) stating that a “lower building height would not provide comparable number of IZ units dedicated to households at 50% and 60% MFI.”
- Comment 4: The Project would block light and air to Jefferson, and would make the school less attractive for prospective parents, which would reduce enrollment and funding.
- Response to Comment 4: The Project will not block light and air to Jefferson. The Applicant’s shadow studies show that the Project casts minimal shadows on Jefferson, only during winter months, and only on the school’s parking and loading areas, gym, and basketball courts. There is no perceptible increase in shadows created by a 110 foot tall building compared to a 90 foot building. It is also settled law that a property owner is not entitled to the unobstructed passage of light and air or views without an express easement, which does not exist in this case. Moreover, Jefferson is located in an urban area where developments of greater height are visible from its grounds, and it is not unusual for schools in the District to be located in close proximity to taller buildings. *See* Ex. 53, pp. 8-13, for full details on the Applicant’s response to Comment 4. Moreover, the PTO submitted a letter in support of the Project stating that it has “a clear understanding of the impacts development can have on the daily operations of the school and the educational experience of its students” and that the PTO has “reviewed the proposed application and reached an agreement with the developer that covers [its] principal concerns of delivering a safe and learning conducive environment for [its]

students, particularly during the construction periods.” (Ex. 83.) OP also found that “light and air to the abutting property, Jefferson Middle School, would not be substantially diminished” (Ex. 35, p. 6) and that the Applicant “provided a shadow study demonstrating that the project would not have an undue impact on the neighboring Jefferson Middle School” (Ex. 14, p. 11.)

- Comment 5: Residents north of G Street complained that the Project would cast shadows and block sunlight on their homes.
- Response to Comment 5: The Project is not located near G Street and therefore will not cast shadows or block sunlight from those homes. *See* Ex. 53, p. 13, for full details on the Applicant’s response to Comment 5.
- Comment 6: The Applicant should not provide monetary contributions to the SW BID.
- Response to Comment 6: While it is common practice for PUD applicants to provide contributions to BIDs, the Applicant subsequently revised this proffer so that all financial contributions would be provided to the specifically-identified organizations. *See* Ex. 53, pp. 13-14, for full details on the Applicant’s response to Comment 6.
- Comment 7: The Project would intensify gentrification in the SW neighborhood.
- Response to Comment 7: The Project is fully consistent with the SW Plan’s recommendations to provide a mix of housing, including affordable housing that substantially exceeds the amount required under existing zoning. As stated in the Market Analysis (Ex. 53, pp. 19-35), the rising demand for urban living will be met by increasing supply. Rising housing costs is largely caused by market forces, including strained housing supply and increased demand. Increasing supply will help to mitigate housing costs. Increasing the overall housing and affordable housing supply will put downward pressure on market housing prices, thus reducing the impacts of gentrification. *See* Ex. 53, pp. 14-15, for full details on the Applicant’s response to Comment 7.
- Comment 8: The Applicant should manage pet waste.
- Response to Comment 8: Project residents will be expected to abide by all District regulations that require dog walkers to pick up dog waste. *See, e.g.* 24 DCMR § 900.
- Comment 9: The retail space in the Project should be neighborhood serving and affordable to neighborhood residents.
- Response to Comment 9: The Applicant converted the previously-proposed retail space in the Project to residential units.
- Comment 10: The Applicant should preserve existing trees.
- Response to Comment 10: The Applicant submitted a TPP plan and will be required to receive approval of the TPP by DDOT prior to the issuance of a building permit for the Project.
- In addition, the Applicant noted that many of the letters of opposition were submitted by residents who are more specifically opposed to the PUD proposed in Z.C. Case No. 22-06, located to the northwest of the PUD Site, and that many of the comments raised regarding building design, traffic, and shadows do not apply to the Project. Many of such residents are located on the north side of G Street, SW, which is over 790 feet from the PUD Site, and accordingly the Project is unlikely to have negative impacts on these properties. (Ex. 53.)

103. OAG made four main assertions at the public hearing and in the OAG Post-Hearing Submission, which the Applicant countered as follows: (Ex. 88)

- Because the IZ Plus regulations specifically state that IZ Plus “shall not apply to a map amendment that is related to a PUD application” (Subtitle X § 502.2(a)), OAG incorrectly applied the IZ Plus standard in determining whether the proffered affordable housing should be considered a public benefit under the PUD;
- OAG presented incorrect IZ Plus calculations and erroneously treated building projections and penthouse habitable space as PUD bonus density. The correct analysis for determining whether affordable housing can be considered a public benefit under a PUD is whether the affordable housing exceeds the amount that would be required under existing zoning. *See* Subtitle X § 305.5(g). In this case, the proffered affordable housing is well above what would have been required through matter-of-right development under the existing MU-12 zone, and is therefore properly classified as a public benefit. The Applicant provided its calculations at Ex. 88, pp. 2-3;
- OAG mischaracterized the Applicant’s assertion at the public hearing, which was intended to state that OP would not have supported a stand-alone map amendment to the MU-10 zone without a PUD. At the public hearing OP confirmed the Applicant’s assertion. Moreover, OAG’s assertion that the Commission would approve a map amendment to the MU-10 zone even if OP opposed the application was without merit. In addition, OAG applied the wrong IZ Plus calculations in comparing the proposed PUD to the MU-8 zone, which, when done correctly, demonstrate that the affordable housing proposed under the PUD still exceeds what would be required under an MU-8 IZ Plus development. The Applicant provided its calculations at Ex. 88, p. 4; and
- OAG ignored the fact that the Applicant’s affordable housing proffer was only one of many public benefits, and that the standard of review requires the balancing of all the benefits and amenities with the degree of incentives and adverse impacts. In this case, the PUD’s overall benefits and amenities package far outweighs the degree of development incentives and technical zoning flexibility requested.

104. The ANC’s second report, dated November 10, 2022 (Ex. 82), was in support of the Project with six conditions. The Applicant provided the following responses to the ANC’s stated conditions:

- ANC Condition No. 1: The Applicant should provide at least 21% of the residential units (no less than 42 units) as affordable housing at 60%-80% of the MFI, consistent with OAG’s recommendation.
- Applicant’s Response to ANC Condition No. 1: As set forth in FF Nos. ____, OAG’s recommendation to provide 21% affordable housing is inconsistent with the Zoning Regulations, which specifically state that IZ Plus “shall not apply to a map amendment that is related to a PUD application.” Subtitle X § 502.2(a). Moreover, OAG presented incorrect IZ Plus calculations in arriving at the purported 21% IZ requirement and erroneously treated building projections and penthouse habitable space as PUD bonus density. The Applicant provided the correct IZ analysis at Exhibit 88, pp. 2-3, which sets forth the amount of affordable housing being provided in the Project that exceeds the amount of IZ that would have been required under existing zoning. *See* Subtitle X § 305.5(g).

- ANC Condition No. 2: The Applicant should continue to pare back the FAR so the project falls within the required limits.
- Applicants Response to ANC Condition No. 2: The Project's proposed density is 8.21 FAR, which is less than the maximum permitted density of 8.64 FAR for a PUD in the MU-10 zone. As it relates to lot occupancy, the Project's request for 82% lot occupancy, instead of 80% lot occupancy, is minimal, was supported by OP, was reduced significantly following the initial public hearing, and will not result in any adverse impacts. Moreover, as thoroughly described by the Applicant at the public hearing, the proposed building design does not result in a lot occupancy of more than 80% on any individual floor of the building.
- ANC Condition No. 3: The ANC's conditional support does not alter its commitment to the SW Plan.
- Applicants Response to ANC Condition No. 3: The Applicant acknowledges this commitment.
- ANC Condition No. 4: Rather than providing \$100,000 to Habitat, the Applicant should reallocate this contribution to the PTOs of Amidon and Richard Wright, and the Applicant should make the contributions immediately upon recordation of the PUD.
- Applicants Response to ANC Condition No. 4: The Applicant is committed to making a \$100,000 contribution to Habitat, which will advance the District's goals of providing more for-sale, family-sized affordable housing in Ward 6. The contribution will help subsidize down-payment assistance for future homeowners and/or lower the costs of construction, and will directly benefit District households at 50% and 60% of the MFI who would not otherwise qualify to purchase a new home in Ward 6, which has a high medium home value. Habitat submitted a letter in support of this proposal at Exhibit 69B and is anticipating receipt of the funds. Moreover, the Amidon and Richard Wright schools have not participated in the subject case, are not impacted by the Project, and have not indicated a specific need that this Project should address. The only school that is impacted by the Project is Jefferson, with whom the Applicant has engaged significantly and has offered a generous contribution. A letter in support of the Project from the Jefferson PTO is included at Exhibit 83. As it relates to the timing for issuance of the contributions, the Applicant's proposal of demonstrating compliance is consistent with the timing in all other recently approved PUDs and with the Zoning Regulations.
- ANC Condition No. 5: If the Applicant's contribution to MYLY for public art is directed through a management entity, any such involvement should be a pro-bono contribution by the Applicant with no additional fees extracted.
- Applicants Response to ANC Condition No. 5: The Applicant will make the contribution directly to the artist for the design, fabrication, and installation of the public art. The contribution will not be directed through an entity for management purposes.
- ANC Condition No. 6: The final order should include a CMP with Jefferson, TST, The Wharf, The Banks, and the Applicant, in addition to a dog waste management plan.
- Applicants Response to ANC Condition No. 6: The Applicant submitted and will abide by a CMP (Ex. 28E), and all Project residents will be expected to abide by all District regulations that require dog walkers to pick up dog waste. *See, e.g.* 24 DCMR § 900.

V. 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 § 300, and a PUD-related Zoning Map amendment pursuant to Subtitle X, § 303.12.

PUD and PUD-Related Zoning Map Amendment

2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
 - a. *Results in a project superior to what would result from the matter-of-right standards;*
 - b. *Offers a commendable number or quality of meaningful public benefits; and*
 - c. *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
3. Pursuant to Subtitle X § 300.11:
"The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission."
4. Pursuant to Subtitle X § 300.12:
"A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weight the benefits of the PUD."
5. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application the Commission must:
"Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case;"
and must find that the proposed development:
 - (a) *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - (b) *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
 - (c) *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
6. A PUD's proposed public benefits must comply with Subtitle X § 305.12:

"A project may qualify for approval by being particularly strong in only one (1) or a few of the categories in this section, but must be acceptable in all proffered categories and superior in many."

7. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the Comp Plan's purposes as:
 - (a) *to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
 - (b) *to guide executive and legislative decisions on matters affecting the District and its citizens;*
 - (c) *to promote economic growth and jobs for District residents;*
 - (d) *to guide private and public development in order to achieve District and community goals;*
 - (e) *to maintain and enhance the natural and architectural assets of the District; and*
 - (f) *to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*

8. In determining whether a PUD is not inconsistent with the Comp Plan, the Commission shall balance the various elements of the Comp 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. *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm'n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). '[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.' *Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous 'occasionally competing policies and goals,' and, '[e]xcept where specifically provided, the Plan is not binding.' *Id.* at 1167, 1168 (internal quotation marks omitted). Thus 'the Commission may balance competing priorities' in determining whether a PUD is consistent with the Comprehensive Plan as a whole.' (*D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm'n*, 73 A.3d 107, 126 (D.C. 2013).) '[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.'" (*Friends of McMillan Park v. District of Columbia Zoning Comm'n*, 149 A.3d 1027, 1035 (D.C. 2016).)

9. Small Area Plans supplement the Comp Plan by providing detailed direction for areas ranging in size from a few city blocks to entire neighborhoods or corridors. 10A DCMR § 104.8. Small Area Plans are prepared with community input, to provide more detailed planning guidance, and typically are approved by resolution of the Council. Unless a Small Area Plan has been made binding on the Zoning Commission through its enactment as part of a Comp Plan amendment, a Small Area Plan provides only supplemental guidance to the Zoning Commission and it does so only to the extent it does not conflict with the Comp Plan. 10A DCMR § 224.5.

Consistency with the PUD Eligibility Standards (Subtitle X §301.1)

10. The Commission concludes that the Application meets the minimum land area requirement of Subtitle X § 301.1, because the PUD Site consists of 23,664 square feet of land area.

Consistency with the Comp Plan and Other Public Policies (Subtitle X § 304.4(a))

11. Based on the case record and the Findings of Fact above, the Commission concludes that the Project, including the PUD and related Zoning Map amendment, is not inconsistent with the Comp Plan and with other public policies and active programs related to the Property, when the Comp Plan is considered in its entirety. (FF __.)
12. The Commission concludes that the Project is not inconsistent with the Property's Neighborhood Conservation Area designation on the Comp Plan's GPM for the reasons set forth in FF No. __.
13. The Commission concludes that the Project is not inconsistent with the Property's Mixed-Use designation on the Comp Plan's FLUM for the reasons set forth in FF No. __.
14. The Commission concludes that the Project is not inconsistent with the Lower Anacostia Waterfront and Near Southwest Area Element, which applies to the Property, for the reasons set forth in FF No. ____.
15. The Commission concludes that the Project furthers the Comp Plan's Land Use, Transportation, Housing, Environmental Protection, and Urban Design Elements for the reasons set forth in FF No. ____.
16. The Commission concludes that to the extent the Project is inconsistent with any of the Comp Plan policies, such inconsistencies are far outweighed by the Project's advancement of numerous Comp Plan policies under the Lower Anacostia Waterfront and Near Southwest Area Element and the Citywide Elements, and other competing considerations that strongly weigh in favor of redeveloping the Property with new housing and affordable housing, as set forth in FF Nos. ____.
17. The Commission concludes that the Project is not inconsistent with the SW Plan. The Commission acknowledges the Project's inconsistency with the SAP was a primary argument advanced by the opposition in this case. However, the Commission is persuaded by the evidence in the record that the Project advances many of the goals and design guidelines of the SW Plan as set forth in FF No. ____.

development for the PUD Site in light of the SW Plan's recommendations, and will be a compatible contribution to the Southwest neighborhood.

18. The Commission concludes that the Project is not inconsistent with the Comp Plan overall when evaluated through a racial equity lens, as set forth in FF Nos. ___.
19. Based on the evidence provided in the case record, the Commission agrees that the Project is not inconsistent with the Comp Plan as a whole or with other adopted and applicable public policies.

Potential Adverse Impacts are Mitigated or Outweighed (Subtitle X § 304.4(b))

20. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts that are not capable of being mitigated or are outweighed by the Project's proffered public benefits, and therefore protects and advances the public health, safety, welfare and convenience, for the reasons set forth in FF Nos. ___.

PUD Flexibility Balanced Against Public Benefits (Subtitle X §§ 304.3 and 304.4(c))

21. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies the balancing test under Subtitle X § 304.3 because the Project includes specific public benefits and project amenities that are not inconsistent with the Comp Plan or other public policies and active programs related to the PUD Site. Furthermore, the public benefits outweigh the requested zoning flexibility as well as any potential adverse impacts that are not capable of being mitigated, for the reasons set forth in FF No. ___.
22. The Commission concludes that the Applicant's proffered public benefits and amenities resulting from the Project, including superior urban design and architecture, site planning and efficient and economical land utilization, commemorative works or public art, housing and affordable housing, environmental and sustainable benefits, streetscape plans, transportation infrastructure, and uses of special value to the neighborhood or the District of Columbia as a whole, are commendable. (FF ___.)
23. The Commission concludes that the Applicant's proposed Zoning Map amendment to rezone the Property from the MU-12 zone to the MU-10 zone is appropriate because:
 - The proposed MU-12 zone is not inconsistent with the Comp Plan, including the GPM and FLUM designations for the PUD Site, or with the Comp Plan when taken as a whole;
 - The PUD Site is currently underutilized given that it is improved with an older office building;
 - The PUD Site can be better utilized given its close proximity to transit and neighborhood-serving retail, services, and recreational opportunities; and
 - The Zoning Map amendment will allow the PUD Site to be developed as a residential building at a height and density that can produce substantial new housing, including

affordable housing, that is compatible with the surrounding area and appropriate for this location.

24. The Commission concludes that the Applicant's requested zoning flexibility to the lot occupancy, side yard, and rear yard requirements is outweighed by the proffered benefits and amenities resulting from the Project. (FF __.)
25. The Commission concludes that the requested design flexibility is appropriate for the Project and is balanced by the proffered benefits and amenities resulting from the Project (FF __.)

Great Weight to the Recommendations of OP

26. The Commission is required to give "great weight" to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
27. The Commission finds OP's analysis of the Application, its conclusion that the Application satisfies the PUD evaluation requirements, and its recommendation to approve the Application persuasive and concurs with this judgement.

Great Weight to the Written Report of the ANC

28. The Commission must give "great weight" to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016.) The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
29. The Commission acknowledges the ANC's issues and concerns with the Project, but does not find the ANC's advice persuasive under the circumstances because:
 - The Commission agrees with the Applicant's justifications and concurs with the judgment of OP that the Application is furthers the goals and recommendations of the SW Plan;
 - The Commission agrees with the Applicant's justifications and concurs with the judgment of OP that the Application is not inconsistent with the Comp Plan, on balance, when the Project is evaluated through a racial equity lens;
 - The Commission finds the public benefits and amenities proffered in connection with the PUD outweigh the development incentives and flexibility requested by the Applicant, including the requested 2% increase in lot occupancy about which the ANC

was particularly concerned. With respect to public benefits, the Commission specifically finds that (i) the Applicant’s proffer of 15% affordable housing is appropriate in this case given the substantial other public benefits and amenities being proffered; (ii) the Applicant’s proposal to contribute \$100,000 to Habitat is appropriate since it will help to advance the District’s goals of providing more for-sale, family-sized affordable housing in Ward 6; and (iii) the Applicant’s proposal to contribute \$75,000 directly to MYLY Design is appropriate given that the artist is familiar with the SW neighborhood and has experience working on public art projects within ANC 6D in the past.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law contained in this Order, 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 PUD and a related Zoning Map amendment from the MU-12 zone to the MU-10 zone.

A. PROJECT DEVELOPMENT

1. The Project shall be developed and constructed substantially in accordance with the Plans and Elevations prepared by SK+I Architects dated October 25, 2022, and included in the case record at Exhibit 69A, as updated by the drawings and diagrams prepared by SKI+I Architects dated November 28, 2022, and included in the case record at Exhibit 86A (together, the “Approved Plans”) as modified by the guidelines, conditions, and standards herein.
2. In accordance with the Approved Plans, as modified by the guidelines, conditions, standards, and flexibility herein, the approved Project shall have:
 - A maximum building height of approximately 110 feet;
 - Approximately 194,839 square feet of total GFA (8.21 FAR);
 - Approximately 195 residential units;
 - Approximately 78 vehicle parking spaces; and
 - Approximately 86 long term and 10 short term bicycle parking spaces.
3. The Applicant shall have PUD design flexibility in the following areas:
 - a. Number of Dwelling Units. To provide a range in the approved number of residential dwelling units of plus or minus ten percent (10%);
 - b. Interior Components. To vary the location and design of all interior components, including amenities, partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;
 - c. Garage Configuration. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, so long as the number of

parking spaces does not decrease below the minimum level required by the Zoning Regulations;

- d. Exterior Materials. 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 proposed by the Approved Plans;
- e. Exterior Details. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the Approved Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railing, and skylights;
- f. Signage. To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the Approved Plans;
- g. Affordable Units. To vary the number and mix of inclusionary units if the total number of dwelling units changes within the range of flexibility requested, so long as the total square footage reserved for inclusionary units (15% of the residential GFA) is not reduced, and provided that the location and proportionate mix of the inclusionary units will substantially conform to the layout shown on the Approved Plans (Ex. 86A, pp. 5-6);
- h. Streetscape Design. To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division; and
- i. Sustainable Features. To vary the sustainable elements of the Project, provided the total number of LEED points achieved by the PUD does not decrease below the minimum number specified by this Order, and further provided that the Project meets the minimum 0.2 GAR requirement required under 11-G DCMR § 407.3.

B. BUILDING PERMIT REQUIREMENTS

1. **The Applicant shall submit with its building permit application for the Project** a checklist evidencing that the Project has been designed to meet the LEED-H Multifamily Midrise v4 Gold rating standard.
2. **Prior to the issuance of a building permit for the Project**, the Applicant shall submit and receive approval from DDOT's Urban Forestry Division of a TPP for the existing street trees located along Maine Avenue and 7th Street, SW, which TPP shall be substantially similar to the TPP included at Exhibit 69A

C. CONSTRUCTION REQUIREMENTS

1. **During construction of the Project**, the Applicant shall abide by the terms of the CMP included at Exhibit 28E.

D. CERTIFICATE OF OCCUPANCY ("COO") REQUIREMENTS

1. **Prior to the issuance of the final COO for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has:

- a. Designed and installed a publically-accessible art piece within the property line located at the northeast corner of the PUD Site; and
 - b. Contributed \$75,000 to MYLY Design for the design, fabrication, and installation of public art on Maine Avenue, SW, between 7th and 9th Streets, SW
2. **Prior to the issuance of the final COO for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has incorporated the following into the building's design and operation:
 - a. Provided 100% electric appliances within all residential units;
 - b. Installed eight EV charging spaces and installed conduit in the parking garage in an amount that would permit an additional 16 vehicle parking spaces to be EV-ready;
 - c. Installed electrical outlets in the long-term bicycle storage room to provide electrical charging for at least 10% of the bicycle parking spaces;
 - d. Installed a minimum of 925 square feet of solar on the roof of the building; and
 - e. Incorporated the resilient design strategies identified in the Project Resiliency Checklist included at Exhibit 28B.
3. **Prior to the issuance of the final COO for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has:
 - a. Installed the improvements shown on Sheets L02, L04, and L05 of Exhibit 69A and Sheet 2 of Exhibit 86A in the public and private spaces along Maine Avenue and 7th Street, SW, subject to DDOT approval; and
 - b. Installed the improvements shown on Sheets L02, L04, and L05 of Exhibit 69A and Sheet 2 of Exhibit 86A in the private space along Maine Avenue.
4. **Prior to the issuance of the final COO for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a protected bicycle lane on the west side of 7th Street, SW, between I Street and Maine Avenue, SW, as well as any infrastructure determined necessary by DDOT to manage the conflicts between buses and bicycles, subject to DDOT approval. The protected bicycle lane will be limited to pavement markings, concrete barriers, and/or flexipost bollards along the PUD Site's frontage and across the west leg of the intersection of 7th Street and Maine Avenue, all subject to any modifications required to obtain DDOT's final approval during public space permitting.
5. **Prior to the issuance of the first COO for the Project that includes residential use**, the Applicant shall demonstrate to the Zoning Administrator that it has included a rider in all residential leases that restricts residents of the Project from obtaining an RPP.
6. **Prior to the issuance of the first COO for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has done the following:
 - a. Contributed \$150,000 to Jefferson to be used for the following educational resources, as finally allocated at Jefferson's discretion: (i) supplementary curricular resources to support student learning, particularly for struggling readers and students furthest from academic success; and (ii) field trips and excursions, particularly because these opportunities were eliminated during the Covid-19 pandemic; and

- b. Contributed \$100,000 to Habitat to aid in the production of new for-sale affordable housing units in Ward 6, which will be reserved for households earning between 50% and 60% of the MFI. The Applicant’s contribution may be used to help subsidize down payment assistance for the future homeowners and/or lower costs of construction
- 7. **Prior to the issuance of the first COO for the Project that includes residential use**, the Applicant shall demonstrate to the Zoning Administrator that it has installed blocking for installation of grab bars in all units should a resident request their installation.
- 8. **Prior to the issuance of the first COO for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it implemented and abided by the approved TPP.

E. REQUIREMENTS FOR THE LIFE OF THE PROJECT

- 1. **For the life of the Project**, the Applicant shall dedicate approximately 194,839 square feet of GFA to residential use in the Project.
- 2. **For the life of the Project**, the Applicant shall provide nine three-bedroom units.
- 3. The Applicant shall provide affordable housing for the Project in accordance with this condition.
 - a. **For the life of the Project**, the affordable housing shall be administered by the D.C. Department of Housing and Community Development through the IZ program. The affordable housing shall comply with all development standards, tenancy regulations, and implementation requirements for IZ units as set forth in 11-C DCMR, Chapter 10 and 14 DCMR, Chapter 22.
 - b. **For the life of the Project**, the Applicant shall provide the affordable housing as set forth in the following chart:

Residential Unit Type	Residential GFA (Includes Penthouse and Projections) % of Total	# of Units	Affordable Control Period	Affordable Unit Type
Total	203,034	195	Life of the Project	Rental
Market Rate	172,579 (85%)	168	Life of the Project	Rental
IZ	28,666 (14%)	24	Life of the Project	Rental
IZ	1,789 (1%)	3	Life of the Project	Rental
IZ Total	30,455 (15%)	27	Life of the Project	Rental

- c. **For the life of the Project**, the Applicant shall provide three three-bedroom IZ units at 60% of the MFI.
 - d. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this condition.
 - e. **For the life of the Project**, the Applicant shall maintain a website that includes information directing potential tenants on how to apply for IZ units.
4. **For the life of the Project**, the Applicant shall abide by the terms of the LMP included at Exhibit 28C.
 5. **For the life of the Project**, the Applicant shall not seek any RPP designations for the Project on streets that would allow residents of the Project to apply for or obtain RPPs.
 6. **For the life of the Project**, the Applicant shall advertise the Project in traditional rental guides as well as in publications such as The AARP Magazine, Today's Senior Magazine, Inspired Magazine, and/or other similar publications to specifically target senior citizens as potential residents of the Project.

F. TRANSPORTATION DEMAND MANAGEMENT

1. **For the life of the Project unless otherwise noted**, the Applicant shall provide 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;
 - b. Identify a Transportation Coordinator for the planning, construction, and operations phases of development. The Transportation Coordinator will (i) act as the point of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo; (ii) conduct an annual commuter survey of building employees and residents on-site and report TDM activities and data collection efforts to goDCgo once per year; (iii) develop, distribute, and market various transportation alternatives and options to residents, including promoting transportation events (e.g., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications; and (iv) subscribe to goDCgo's residential newsletter and receive TDM training from goDCgo to learn about the transportation conditions for this Project and available options for implementing the TDM Plan;
 - c. Provide welcome packets to all new residents that will, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map;
 - d. Provide residents who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOC) or another comparable service if MWCOC does not offer this in the future;

- e. Provide a copy of the LMP to the Transportation Coordinator so they are aware of this commitment;
- f. Post all transportation and TDM commitments on the building website, publicize availability, and allow the public to see what has been promised;
- g. Offer a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident;
- h. Provide at least 12 short- and 84 long-term bicycle parking spaces across the site, exceeding ZR16 minimum requirements for at least 10 short- and 58 long-term bicycle parking spaces;
- i. Accommodate non-traditional sized bikes including cargo, tandem, and kids bikes in the long-term bicycle storage room, with a minimum of four spaces that will be designed for longer cargo/tandem bikes, a minimum of eight spaces that will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum of 42 spaces that will be placed horizontally on the floor.
- j. Not charge a fee to building residents for the usage of the bicycle storage room;
- k. Install a minimum of two electric vehicle charging stations, per DDOT recommendations of a minimum of one out of every 50 vehicle parking spaces being served by an EV charging station;
- l. Direct the Transportation Coordinator to submit documentation summarizing compliance with the transportation and TDM conditions of the Order to the Office of Zoning for inclusion in the IZIS case record of the case following the issuance of a COO for the Project; and
- m. Direct the Transportation Coordinator to submit a letter to the Zoning Administrator, DDOT, and goDCgo every five years (as measured from the final COO for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order following the issuance of a COO for the Project.

G. 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, Department of Buildings (the “PUD Covenant”). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the PUD Covenant with the records of the Office of Zoning.
- 2. The PUD shall be valid for a period of two years from the effective date of this Order. Within 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.