

PLANNED UNIT DEVELOPMENT COVENANT

**Z.C. Order No. 22-21
2229 M Street NE Owner, LLC
(Consolidated PUD and Related Zoning Map Amendment
@ Square 4465, Lot 40)**

THIS PLANNED UNIT DEVELOPMENT COVENANT (“**Covenant**”), is made as of this 26th day of August 2026, by 2229 M Street NE Owner LLC,¹ a District of Columbia limited liability company (the “**Declarant**”), for the benefit of the District of Columbia, a municipal corporation (the “**District**”).

W I T N E S S E T H:

WHEREAS, the Declarant is the owner in fee simple of certain real property and improvements located in the District of Columbia known for assessment and taxation purposes as Lot 40² in Square 4465, with an address of 2229 M Street, N.E., Washington, D.C. (the “**PUD Site**”). The PUD Site bounded by the Arboretum Condominium complex to the west, a federally owned triangular lot to the east, an alley to the south, and M Street, N.E. to the north, all in the Northeast quadrant of Washington, D.C., and as is more particularly described in Exhibit A;

WHEREAS, the Zoning Commission for the District of Columbia (the “**Zoning Commission**” or “**Z.C.**”) approved an application for a Consolidated PUD (the “**PUD**”) and a related Zoning Map Amendment at the PUD Site by Z.C. Order No. 22-21, dated March 30, 2023, that became final and effective on November 10, 2023 (the “**Original Order**”);

WHEREAS, the Zoning Commission approved a Modification without Hearing to the PUD and related Zoning Map Amendment pursuant to Z.C. Order No. 22-21A, effective October

¹ The Declarant is the successor-in-interest to 2229 M Street NE, LLC, having acquired the PUD Site from 2229 M Street NE LLC, the previous owner of the PUD Site and applicant in Z.C. Case Nos. 22-21 and 22-21A.

² The PUD Site previously comprised two record lots—Lots 36 and 39—that were subsequently combined to form Lot 40.

17, 2025 (the “**PUD Modification**”), and a Two-Year Time Extension of the PUD and related Zoning Map Amendment on the PUD Site pursuant to Z.C. Order No. 22-21B, effective February 20, 2026 (the “**Time Extension**,” together with the Original Order and the PUD Modification, the “**Order**”).

WHEREAS, Subtitles X § 311.3 and Z § 702.10 of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “**Zoning Regulations**,” to which all references herein are made unless otherwise specified) require the Declarant to enter into this Covenant for the PUD Site binding the Declarant, and its successors and assigns, to construct on and use the PUD Site in accordance with the Order, including all modifications, alterations, or amendments thereto approved by the Zoning Commission;

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed between the parties hereto as follows:

1. Approved Plans, Terms and Conditions. The terms and conditions of the Zoning Commission’s approval of the Consolidated PUD and related Zoning Map Amendment for the PUD Site in the Order are incorporated herein by reference and made a part hereof as Exhibit B and shall be considered a part of this Covenant. The Declarant shall construct on, and use, the PUD Site only in accordance with the plans approved by the Order and its conditions and restrictions, subject to such changes as the Zoning Administrator of the District of Columbia (the “**Zoning Administrator**”) may authorize pursuant to Subtitle A § 304.5, or as the Zoning Commission may authorize pursuant to Subtitle Z §§ 703 or 704. The Declarant covenants that it shall use the PUD Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time by the Zoning Commission, subject to the terms and conditions contained herein and the provisions of Subtitle X, Chapter 3.

2. Additional Time to Construct PUD. The Zoning Commission may consider, in accordance with and subject to the limitations of Subtitle Z § 705, an application filed by the Declarant demonstrating good cause to extend the validity period of the Order and the time period requirements for filing a building permit application and commencing construction in accordance with Condition No. D.2. of the Original Order, as modified by any extension of time granted pursuant to Subtitle Z § 705.

3. Default. In the event that the Declarant fails to file a building permit application to construct, or fails to commence construction of, the PUD approved in the Order within the time specified in Condition No. D.2. of the Original Order, as modified by any extension of time granted by the Zoning Commission for good cause shown pursuant to Subtitle Z § 705, the benefits granted under the Order shall terminate pursuant to Subtitle Z § 702.6 and thereafter this Covenant shall be deemed null and void.

4. Future Conveyance. The Declarant covenants that if any conveyance of all or any part of the PUD Site takes place, such conveyance shall contain a specific covenant that binds the grantee, its successors and assigns, to construct on and use the PUD Site, or a conveyed portion thereof, in accordance with the terms and conditions of this Covenant, and that provides that the grantee, and its successors and assigns, shall be considered a declarant to this Covenant.

5. Covenants to Run with the Land. The covenants and restrictions contained herein shall be deemed real covenants running with the PUD Site and shall bind the Declarant, its successors and assigns, and shall inure to the benefit of the Declarant, its successors and assigns, and to the District as beneficiary of the Covenant. Such covenants are not binding upon any party should it no longer have a property interest in the PUD Site. The District, as the regulating

authority and the beneficiary of this Covenant, shall have the right to enforce all covenants, conditions, and restrictions contained herein.

6. Recordation. The Declarant shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia (the “**Land Records**”) and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. Rescission/Alteration of this Covenant. If the Zoning Commission modifies or amends the Order, no formal amendment of this Covenant shall be required, provided that the Declarant, or its successors or assigns, record a notice of modification in the Land Records together with a copy of the written order authorizing the modification or amendment. No other amendment to the obligations created by this Covenant is permitted without the prior written consent of the District and, if determined by the Office of Zoning Legal Division to be necessary, without the prior approval of the Zoning Commission.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, this Covenant has been duly executed by the Declarant and is effective as of the day and year first above written.

DECLARANT:

2229 M Street NE Owner LLC,
a District of Columbia limited liability company

By: 2229 M Street NE MM LLC,
a District of Columbia limited liability company,
its managing member

By: M Lemp
Name: Mercedes Lemp
Its: CEO

By: _____
Name: David Jacobs
Its: President

STATE OF Florida)
) ss:
COUNTY OF Polk)

This Covenant was acknowledged before me on 20th August, 2026, by Mercedes Lemp, as CEO of 2229 M Street NE MM LLC, a District of Columbia limited liability company, in its capacity as managing member of 2229 M Street NE Owner LLC, a District of Columbia limited liability company, on behalf of 2229 M Street NE Owner LLC. This notarial act involved a remotely located individual and was performed using communication technology. Mercedes produced US Passport as identification.

[Notary Seal]



This notarial act was an online notarization

Andrea Pagan Beltran
Notary Public, Andrea Pagan Beltran
My commission expires: 11/20/2028

STATE OF _____)
) ss:
COUNTY OF _____)

This Covenant was acknowledged before me on 20th August, 2026, by David Jacobs, as President of 2229 M Street NE MM LLC, a District of Columbia limited liability company, in its capacity as managing member of 2229 M Street NE Owner LLC, a District of Columbia limited liability company, on behalf of 2229 M Street NE Owner LLC. This notarial act involved a remotely located individual and was performed using communication technology.

[Notary Seal]

Notary Public, _____
My commission expires: _____

IN WITNESS WHEREOF, this Covenant has been duly executed by the Declarant and is effective as of the day and year first above written.

DECLARANT:

2229 M Street NE Owner LLC,
a District of Columbia limited liability company

By: 2229 M Street NE MM LLC,
a District of Columbia limited liability company,
its managing member

By: _____
Name: Mercedes Lemp

Its: CEO

By: David Jacobs

Name: David Jacobs

Its: President

STATE OF _____)
) ss:
COUNTY OF _____)

This Covenant was acknowledged before me on _____, 2026, by Mercedes Lemp, as CEO of 2229 M Street NE MM LLC, a District of Columbia limited liability company, in its capacity as managing member of 2229 M Street NE Owner LLC, a District of Columbia limited liability company, on behalf of 2229 M Street NE Owner LLC. This notarial act involved a remotely located individual and was performed using communication technology.

Notary Public, _____

[Notary Seal]

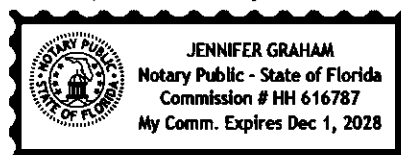
My commission expires: _____

STATE OF Florida)
) ss:
COUNTY OF Lee)

This Covenant was acknowledged before me on August 21, 2026, by David Jacobs, as President of 2229 M Street NE MM LLC, a District of Columbia limited liability company, in its capacity as managing member of 2229 M Street NE Owner LLC, a District of Columbia limited liability company, on behalf of 2229 M Street NE Owner LLC. This notarial act involved a remotely located individual and was performed using communication technology.

Signed by David Ernest Jacobs / IL Driver License
This online notarization was completed via two-way audio/video technology.

[Notary Seal]



Jennifer Graham

Notary Public, Jennifer Graham

My commission expires: 12/01/2028

APPROVED AS TO TECHNICAL SUFFICIENCY:

Kathleen A. Beeton
Kathleen Beeton
Zoning Administrator
Department of Buildings

8.26.2026
Date

(PUD Covenant pursuant to Subtitles X § 311.3 and Z § 702.10 for Lot 40 in Square 4465 for the Consolidated PUD approved by Z.C. Order No. 22-21, as the same may be further amended and/or modified from time to time by the Zoning Commission for the District of Columbia)

APPROVED AS TO LEGAL SUFFICIENCY:



Hillary Lovick, Lead Attorney Advisory, Zoning Commission

8/25/26

Date

Office of Zoning Legal Division

(PUD Covenant pursuant to Subtitles X § 311.3 and Z § 702.10 for Lot 40 in Square 4465 for Consolidated PUD approved by Z.C. Order No. 22-21, as the same may be further amended and/or modified from time to time by the Zoning Commission for the District of Columbia)

EXHIBIT A

LEGAL DESCRIPTION OF THE SUBJECT SITE

All that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as follows:

Lot Forty (40) in Square Four Thousand Four Hundred Sixty-Five (4465), as per Plat recorded in Book 220, Page 132 among the Records of the Office of the Surveyor for the District of Columbia.

EXHIBIT B

ZONING COMMISSION ORDER NOS. 22-21, 22-21A, AND 22-21B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 22-21
Z.C. Case No. 22-21
2229 M Street NE, LLC
(Consolidated PUD and Related Zoning Map Amendment
@ Square 4465, Lots 36 and 39)
March 30, 2023

Pursuant to notice, at its February 16, 2023 public hearing,¹ the Zoning Commission for the District of Columbia (“Commission”) considered the application of 2229 M Street NE, LLC (the “Applicant”) pursuant to Subtitle X, Chapter 3 and Subtitle Z, Chapter 3 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), Zoning Regulations of 2016, to which all references are made unless otherwise specified) for the review and approval of a consolidated planned unit development (“PUD”) and a related Zoning Map amendment from the RA-2 Zone to the RA-4 Zone (the “Application”) for Lots 36 and 39 in Square 4465 (the “Property”). The Applicant also requested flexibility pursuant to Subtitle X § 303.1 from the surface parking and loading screening requirements of Subtitle C §§ 714 *et seq.*, 908.2; and such other design flexibility as are set forth in the Conditions hereof.

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

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. In addition to the Applicant, the automatic parties to this case, pursuant to Subtitle Z § 403.5, were Advisory Neighborhood Commission (“ANC”) 5D, in which the Property is located, and ANC 5C,² to which the Property is adjacent and so an “affected ANC” per Subtitle Z § 101.8.
2. There were two requests for party status in opposition to the Application:

¹ On February 16, 2023, the Commission held a public hearing on the Application and, at the conclusion of the hearing, took proposed action to approve the Application. At its March 30, 2023 public meeting, the Commission took final action to approve the Application.

² ANC 5C did not participate in this case.

- Advanced party status request³ filed on November 20, 2022, by Kara and Justin Rollins, co-owners of 2221 M Street, N.E., Apartment 302 (Exhibits [“Ex.”] 23-23C); and
 - Advanced party status request filed on December 5, 2022, by Ryun Lee, owner of 2221 M Street, N.E., Apt. 301. (Ex. 26, 26A.)
3. At its January 26, 2023 public meeting, the Commission considered the advanced party status requests of Kara and Justin Rollins and Ryun Lee and granted them all joint party status as the “Lee-Rollins” party in opposition. (Transcript [“Tr.”] from January 26, 2023 public meeting at pp. 6-14.)
 4. On February 13, 2023, Lee-Rollins submitted a letter changing its party status from opposition to support, based on modifications the Applicant made to the Project in response to concerns raised by Lee-Rollins, as further discussed below. (Ex. 39.)

NOTICE

5. Pursuant to Subtitle Z § 300.7, the Applicant mailed a Notice of Intent to file the Application (Ex. 3C.) on December 31, 2021.
6. On September 8, 2022, the Office of Zoning (“OZ”) sent notice of the December 22, 2022 virtual public hearing to:
 - The Applicant;
 - The affected ANC’s 5D and 5C;
 - The Office of the ANC’s;
 - The Ward 5 Councilmember;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Consumer and Regulatory Affairs⁴ (“DCRA”) General Counsel;
 - The Office of Zoning Legal Division (“OZLD”);
 - The Department of Energy & Environment (“DOEE”);
 - The Chair and At-Large members of the D.C. Council; and
 - Property owners within 200 feet of the Property.

(Ex. 18, 19.)

7. On December 1, 2022, the Applicant submitted a letter requesting a postponement of the scheduled December 22, 2022 public hearing to February 16, 2023, in order to further

³ On December 7, 2022, Kara and Justin Rollins submitted a letter requesting the Commission postpone consideration of their advanced party status request until its January 26, 2023 public meeting, which request was granted. (Ex. 27.)

⁴ As of October 1, 2022, pursuant to the Department of Buildings Establishment Act of 2020, D.C. Law 23-269 (effective April 5, 2021), the building permit and development review duties previously vested with DCRA were transferred to the newly created Department of Buildings (“DOB”).

address community concerns about the Project. (Ex. 25.) The postponement request was approved on December 1, 2022.

8. On December 16, 2022, OZ sent notice of the postponed February 16, 2023 public hearing, to the parties listed in Finding of Fact (“FF”) No. 6 above. (Ex. 31, 32.)
9. OZ published notice of the December 22, 2022 public hearing in the May 20, 2022 issue of the *District of Columbia Register* (69 DCR 005654, *et seq.*) and then again in the September 16, 2022 issue of the *District of Columbia Register* (69 DCR 011274 *et seq.*) as well as on the calendar on OZ’s website. (Ex. 7, 17.) After the public hearing was postponed, OZ published notice of the February 16, 2023 public hearing, in the December 30, 2022 issue of the *District of Columbia Register* (69 DCR 015522 *et seq.*) as well as on the calendar on OZ’s website. (Ex. 30.)
10. The Applicant submitted evidence that it had posted notice of the public hearing as required by Subtitle Z § 402.3 and maintained such notice in accordance with Subtitle Z § 402.10 (Ex. 22, 38.)

THE PROPERTY

11. The Property is comprised of two record lots on the south side of M Street, N.E., east of 21st Place, N.E., and north of Maryland Avenue, N.E. The Property is bounded by the Arboretum Condominium complex to the west, a federally owned triangular lot to the east, an alley to the south, and M Street, N.E. to the north. The Property slopes down approximately 10 feet from north to south and approximately seven feet down from west to east as it is located at the bottom of a hill on M Street, N.E. The highest point of the Property is at its northwest corner adjacent to the Arboretum Condominium building. The Property consists of approximately 15,068 square feet of land area and is currently improved with a three and a half story building that was formerly used as a child development center and a two-story building that formerly included residential units. Both buildings are currently vacant. (Ex. 3.)
12. The immediate neighborhood around the Property is generally comprised of low- to mid-rise apartment buildings in the RA-2 zone to the west and south, as well as significant open spaces immediately adjacent to the Property. In addition to the unimproved property to its east, the National Arboretum is located immediately to the north of the Property, across M Street, N.E., and the Langston Golf Course is located to the southeast of the Property, south of Maryland Avenue, N.E. The Trinidad Recreation Center and Rosedale Recreation Center are also located in close proximity to the Property. The Property is approximately ½ mile from an ALDI grocery store and one mile from the stores and restaurants on the H Street Corridor. (Ex. 3.)
13. The Property is served by the X8 bus line, which provides access to Union Station, and is located approximately ¾ mile from both the 19th and Benning and Oklahoma and Benning stops on the DC Streetcar line. It is also located west of the Anacostia Freeway (I-295),

which provides access to the remainder of Washington DC, Maryland, and the Capital Beltway. (Ex. 3.)

14. The Property is designated Medium Density Residential on the Future Land Use Map (“FLUM”) of the Comprehensive Plan (Title 10-A DCMR). (Ex. 1, 2, 3.) The Framework Element notes that “[t]his designation is used to define neighborhoods generally, but not exclusively, suited for mid-rise apartment buildings. . . . Density typically ranges from 1.8 to 4.0, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development.” (10-A DCMR § 227.7.)
15. The Property is located in the Neighborhood Conservation Area on the Generalized Policy Map (“GPM”). (Ex. 3.) Neighborhood Conservation Areas “are generally residential in character” and “where change occurs, it will typically be modest in scale and will consist primarily of infill housing. . .” (10-A DCMR § 225.4.) The Framework Element notes that “[t]he guiding philosophy . . . is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs” and advises that “new development . . . should be compatible with the existing scale, natural features, and character of each area.” (10-A DCMR § 225.5.)

II. THE APPLICATION

16. On May 3, 2022, the Applicant submitted the Application for a consolidated PUD and related map amendment from the RA-2 zone to the RA-4 zone for the Property. (Ex. 1-3J.)

THE PROJECT

17. The Applicant proposes to construct a seven-story, approximately 92-unit building with surface parking, as an all-affordable residential project for seniors (aged 55+) (the “Project”). (Ex. 3, 15, 34, 36, 47.)
18. The Project includes architectural elements and integrates into the surrounding neighborhood. Each of the Project’s facades feature distinct material articulations. The Applicant incorporated Juliette balconies and a material palette in response to comments from OP, as further discussed below. (Ex. 3, 15, 34, 36, 47.)
19. The total gross floor area included in the Project will be approximately 66,687 square feet, for a floor area ratio (“FAR”) of approximately 4.43⁵ and a building height of approximately 71 feet, 8.5 inches. (Ex. 3I1, 3I2, 34A1-34A3, 36A, 36B, 47B1-47B5.)
20. The Project will be entirely affordable and provide approximately 92 new residential units for people aged 55 and older with household incomes between 30%-80% of median family income (“MFI”). The Project would provide 80% of the units as affordable to households at or below 60% MFI and the remaining 20% of the units as affordable for households at

⁵ The Project was initially proposed with a density of 4.99 FAR, but the Applicant later decreased this to 4.43 FAR in response to community comments.

or below 80% of MFI for the first 40 years of operations. Following the initial 40-year control period, the Applicant has committed to set aside 15% of the total residential gross floor area (“GFA”) as inclusionary zoning (“IZ”) units for households at or below 60% MFI. (Ex. 3, 34.)

21. The Project will fulfill Enterprise Green Communities Plus certification, which is the LEED Gold equivalent for affordable housing projects. The Applicant will provide approximately 2,000 square feet of solar arrays and approximately 3,000 square feet of green roof for the Project. (Ex. 34, 46.)
22. The Project will provide four security cameras, one at each of the building’s corners. The Project will also include streetscape improvements along its M Street frontage that exceed DDOT’s standard requirements. (Ex. 34.)

FLEXIBILITY REQUESTED

23. The Property is zoned RA-2, which provides for areas developed with predominately moderate density residential. (Subtitle F § 300.3.) The Applicant seeks a PUD-related map amendment, pursuant to Subtitle X § 303.12, to re-zone the Property to the RA-4 zone. The Project’s proposed height of approximately 71.5 feet, is higher than the maximum 50-foot height permitted in a matter-of-right development under the existing RA-2 zoning and is a gain of 21.5 feet. The Project’s proposed density of approximately 4.43 FAR, is a gain of 2.63 FAR when compared to matter-of-right density permitted under existing RA-2 zoning (maximum 1.8 FAR), and a gain of 2.27 FAR when compared to the density permitted under existing RA-2 zoning for an IZ development (maximum 2.16 FAR with IZ). The Project is consistent with the Zoning Regulations with respect to all development standards applicable to that zone except with respect to parking and loading screening. The Applicant seeks (1) flexibility to waive the parking and loading screening requirements of Subtitle C §§ 714, 908.2; and (2) design flexibility as are set forth in the Conditions hereof. (Ex. 3, 7, 34.)
24. Pursuant to Subtitle X § 303.1, the Applicant requests flexibility from the screening otherwise required for the parking spaces and the service/delivery space accessed off of the rear alley. Subtitle C § 714 requires screening for surface parking lots with breaks only allowed for access and no more than 20 feet per break. However, the Project’s parking spaces are accessed immediately off of the alley to the rear of the Property and such border screening would prevent easy access to the parking spaces and create potential hiding locations off of the alley. Further, Subtitle C § 908.2 would require the service/delivery space to be screened because, while it is located in the rear yard, it is not separated from all other property by 25 feet. However, because the service/delivery space is accessed from the alley, screening the space would be problematic for the same reasons. Finally, unscreened vehicular parking spaces are a common condition off of this alley for the neighborhood. (Ex. 3.)
25. The Applicant also originally requested flexibility from the rear yard and parking requirements, but later withdrew that request in its January 27, 2023 Supplemental

Statement, after it reduced the height of the building in response to comments from the community.⁶ (Ex. 3, 34.)

ADDITIONAL FILINGS

26. On August 16, 2022, the Applicant filed a supplemental submission that requested a public hearing; explained the environmental and parking occupancy studies conducted by the Applicant; provided details about the IZ units as requested by OP and the Commission; explained the infeasibility of stepping down the Project's height as requested by ANC 5D; and provided updates on the Applicant's proposals to provide a bus shelter on Maryland Avenue, a pedestrian pathway on National Park Service property connecting M Street and Maryland Avenue, and surveillance cameras. In response to ANC 5D's comments concerning water runoff issues on the Property, the Applicant stated that it has assessed the water runoff situation and will commit to providing stormwater management through permeable pavement and green roof areas. These practices will meet DOEE regulations and capture all runoff from the site. Any overflows will be piped directly to the storm sewer and will not discharge to M Street, N.E. (Ex. 15, 15A-15C.)
27. The Applicant filed its Transportation Study on November 7, 2022, detailing the Project's potential to impact the surrounding streets and the Transportation Demand Management ("TDM") plan for the Project. (Ex. 21.)
28. The Applicant filed an additional supplemental submission on January 27, 2023, updating the massing, unit count, design, and parking of the Project based on community and OP feedback. As a result of these updates, the Project's height was reduced from approximately 87.5 feet to approximately 71.5 feet; the number of affordable units was reduced from approximately 120 to approximately 92 units; Juliette balconies were added; and the Applicant withdrew its previous requests for flexibility from the rear yard and parking requirements. This submission also included: an update to the Transportation Study in response to ANC 5D concerns that analyzed parking supply and demand and potential parking mitigations in the immediate area of the Project; a sun study; a clarification about the number of accessible units; an explanation that the Project's Green Area Ratio ("GAR") cannot be increased from 0.3 to 0.4 because the Project's reduced height results in wood frame construction that cannot support an increased green roof; and an enhanced IZ commitment following the initial 40-year control period from 12% to 15%. Furthermore, the Applicant stated that its earlier proposals of providing a bus shelter and pedestrian pathway could no longer be considered commitments at this point because they require further negotiation with third parties. However, the Applicant did propose to operate a free shuttle service for residents from the Project to the intersection of Bladensburg Road and

⁶ The Applicant reduced the Project's height, size, and number of units resulting in a lower parking and rear yard requirement, and the Applicant also reconfigured the parking in the rear to maximize the spaces that can be provided. Specifically, the Application proposes 13 parking spaces, two of which will be dedicated to car-share spaces, bringing the zoning-compliant parking to 17 spaces, which exceeds the 16 spaces required.

Benning Road NE. The supplemental submission included the following list of public benefits and amenities as proposed by the Applicant:

- Housing (Subtitle X § 305.5(f).): The Project will create approximately 92 new affordable residential units for seniors;
- Affordable Housing (Subtitle X § 305.5(g).): 100% of the units will be affordable, with 80% available for households with an annual income lower than 60% MFI and 20% available for households with an annual income lower than 80% MFI, for a period of 40 years. The Applicant committed to a 15% IZ set aside once the initial 40-year affordability term lapses;
- Superior Urban Design and Architecture (Subtitle X § 305.5(a).): The Project includes unique architectural elements while simultaneously integrating the building into the surrounding neighborhood. Each of the Project's façades features distinct material articulations. The Applicant has responded to OP's Urban Design comments to include approximately 43 Juliette balconies on the northern and eastern sides of the building, as well as brick on the western façade;
- Streetscape Plans (Subtitle X § 305.5(l).): The Project includes streetscape improvements along the frontage with M Street, N.E. In addition to the standard DDOT-required streetscape improvements, the additional plantings and green space associated with the area between the building wall and the street aesthetically improve this space;
- Environmental and Sustainability Benefits (Subtitle X § 305.5(k).): The Project will achieve Enterprise Green Communities Plus certification, which is the LEED Gold equivalent for affordable housing projects. The Project also will have approximately 790 square feet of green roof and 2,400 square feet of solar panels, which are expected to generate 41,080 KWh (41.08 MWh) of energy annually for the Project. In addition, the Project will feature significant landscaping, EnergyStar appliances, and energy efficient lighting features within units; and
- Uses of Special Value (Subtitle X § 305.5(q).): This Project will provide special value to the District of Columbia as a whole by providing much needed affordable housing to a vulnerable population, senior citizens. This use of special value also benefits the neighborhood by enabling community members to age in place rather than leave their social network. In addition, the Applicant committed to placing cameras on each of the building's four facades. The Applicant will install multiple cameras, which will operate 24/7 and be registered with the Metropolitan Police Department. The installation and monitoring of these cameras serves as a special use to the immediate-surrounding neighborhood by deterring illegal dumping and enhancing community safety.

(Ex. 34, 34A1-34C.)

29. On February 3, 2023, the Applicant filed another additional supplemental submission, updating materials, clarifying the rear yard calculation, and providing an Enterprise Green Communities Plus checklist in response to OP comments. (Ex. 36, 36A-36C.)

III. RESPONSES TO THE APPLICATION

OFFICE OF PLANNING REPORTS

30. On June 20, 2022, OP filed a report (the “OP Setdown Report”) recommending that the Commission set down the Application and explained that the proposed PUD, with the related map amendment, was not inconsistent with the Comprehensive Plan maps, Citywide Elements, and the Upper Northeast Area Element, including when viewed through a racial equity lens. (Ex. 12.)
31. By report dated February 6, 2023 (the “OP Hearing Report”), OP recommended approval of the Application and concluded that the Application met the requirements of the Zoning Regulations and would not be inconsistent with the Comprehensive Plan, as analyzed through a racial equity lens. (Ex. 37.)
32. The OP Hearing Report stated that the Application was not inconsistent with the Comprehensive Plan, including the FLUM and GPM and recent racial equity components reflected in the Plan, is consistent with the purpose of the PUD process, and would result in a positive contribution to the increase of affordable housing for households of varying income levels. The OP Hearing Report stated no objection to the Applicant’s requested design flexibility and flexibility from the parking space and the service/delivery space screening requirements. The OP Hearing Report further stated that “the proposal’s all-affordable senior housing, design and architecture, sustainability features, and agreement with the ANC to install security cameras are sufficient proffers commensurate with the related map amendment and flexibility requested through the PUD.” (Ex. 37.)
33. On February 21, 2023, OP submitted a supplemental report, in response to the Commission’s request at the public hearing, providing disaggregated data regarding race and ethnicity for the Upper Northeast Planning Area, in which the Property is located, based on the Commission’s Revised Racial Equity Analysis Tool released on February 3, 2023. OP stated that the data shows that over the past 10 years there has been a decline in the number of Black residents and senior residents in the Planning Area. The data further shows that the Black households, “Two or More” households, “Some other Race” households, and Hispanic/Latino households have a significantly lower median income than the other households in this area. Based on this disaggregated data, OP concluded that the Application would allow for more older residents, and specifically older Black residents, to remain in Upper Northeast. (Ex. 43.)

DISTRICT DEPARTMENT OF TRANSPORTATION REPORT

34. By report dated December 9, 2022, DDOT noted no objection to the Application, subject to the following condition:

Implementation of the Applicant’s proposed Transportation Demand Management Plan as proposed in the Applicant’s Comprehensive Transportation

Review dated November 7, 2022 (Ex. 21A4.) and updated in the Supplemental Transportation and Parking Assessment (Ex. 34B.) for the life of the Project. (Ex. 29.)

ANC REPORTS AND TESTIMONY

35. On June 26, 2022, ANC 5D submitted a preliminary report stating that at a regularly scheduled public meeting on June 14, 2022, at which a quorum was present, ANC 5D voted 5-0-1 to provide its concerns about the Project, including the Project's excessive height; transportation and parking impacts; water runoff management issues after construction; and a request for the installation of environmental cameras to prevent illegal dumping. (Ex. 13.)
36. On November 28, 2022, ANC 5D filed a second report stating that at a regularly scheduled public meeting on November 8, 2022, at which a quorum was present, ANC 5D voted 4-0-1 in opposition to the Application. The report noted community concerns about the height and massing of the Project and stated that the building's size would be incompatible with other buildings currently being constructed in the area. The letter also expressed concerns about parking availability and transit options for future residents. In addition, the ANC stated that the unit mix disproportionately featured studios, and the units overall were too small. Lastly, the letter also included concerns about water runoff during construction, as well as a request to install cameras to deter illegal dumping. (Ex. 24.)
37. In response to ANC 5D and community concerns, the Applicant made several revisions to the Project. First, regarding massing concerns, the Applicant reduced the building's height from eight stories to seven stories (more than 15 feet) to better integrate with the surrounding architecture. Second, the Applicant addressed parking and transit concerns by reconfiguring the parking area in the rear of the lot to maximize available spaces, as well as committing to provide a free shuttle to the intersection of Bladensburg Road and Benning Road, N.E. for residents. (Ex. 34.) The Applicant also provided a supplement to the Transportation Statement to detail additional transit-related proffers. (Ex. 34B.) Third, the Applicant adjusted the unit mix of the Project to feature more two-bedrooms and focus on larger units. Fourth, regarding runoff issues, the Applicant committed to providing stormwater management through permeable pavement and green roof areas. (Ex. 15.) Lastly, the Applicant agreed to place cameras on each of the building's four facades, to operate 24/7. (Ex. 15, 34.)
38. On February 15, 2023, ANC 5D filed a letter stating that at a regularly scheduled public meeting on February 13, 2023, at which a quorum was present, ANC 5D voted 6-1-1 to support the Application. The ANC letter noted that the Applicant's revised plans reflected responses to its previous concerns and that, based on the overall benefits of the Project and those revised plans, ANC 5D is now in support of the Application. The ANC further noted that the revisions to the Project were not only persuasive to the ANC but also the immediate neighbors, who withdrew their opposition based on the updates. (Ex. 41.)

OTHER AGENCIES, PERSONS, OR GROUPS

39. On November 20, 2022, Kara and Justin Rollins requested party status in opposition to the Application. Kara and Justin Rollins expressed concerns about the height and massing of the Project, stormwater runoff issues, and health impacts during the construction phase. (Ex. 23.)
40. On December 5, 2022, Ryun Lee requested party status in opposition to the Application. Ryun Lee also stated concerns regarding the Project's height and effect on water runoff and flooding. In addition, Ryun Lee expressed concerns about parking capacity and water intrusion damage during construction. (Ex. 26.)
41. On December 7, 2022, Victoria Stiles submitted a letter in opposition to the Application. Victoria Stiles' letter detailed concerns about parking and blocked Arboretum views, and also noted that the unit sizes were too small for senior living. (Ex. 28.)
42. The Applicant ultimately modified the Project to respond to community concerns. Specifically, it addressed the issues by:
 - (a) Redesigning the Parking: The Applicant redesigned its parking area, which allowed it to accommodate 13 spaces. Two of the spaces will be used as car-share spaces, which increase the total space count, for zoning purposes, to 17 spaces, exceeding the requirement to provide 16 on-site spaces;
 - (b) Reducing the Building Height: The Applicant removed a floor of the building, reducing the eight-story, 87.5-foot building to a seven-story, 71.5-foot building. This modification decreased height by over 15 feet and reduced the number of units from 120 to 92. This change will help better integrate the building with other development on the block and minimize any impacts on views of the Arboretum;
 - (c) Making Design Refinements: In response to comments from OP, the Applicant incorporated Juliette balconies and revised the composition of the western façade of the building. More specifically, it incorporated brick on the western façade and reduced the use of EIFS. It also eliminated the windows on its western façade closest to the neighbors;
 - (d) Confirming Compliance with Stormwater Requirements: The Applicant confirmed that it would comply with stormwater management requirements and that it would meet the Green Area Ratio requirements; and
 - (e) Adjusting the Unit Mix: The Applicant adjusted the unit mix to provide a greater emphasis on the number of two-bedroom units, though a mix of studios and one-bedroom units will still be provided.(Ex. 34.)
43. As noted above, the Commission granted joint party status in accordance with Subtitle Z § 404 to Kara and Justin Rollins and Ryun Lee as the Lee-Rollins party at its public meeting on January 26, 2023. (Tr. From January 26, 2023 public meeting at pp. 6-14.)

44. On February 13, 2023, Lee-Rollins filed a letter changing their position from opposition to support in response to the Applicant's updates to the Project based on community concerns. Specifically, they highlighted:
- (a) The Reduction in Building Height: Lee-Rollins stated they were satisfied with the Applicant's reduction of building height by over 15 feet;
 - (b) The Increase in Unit Size: Lee-Rollins appreciated the Applicant's move to include predominately one- and two-bedroom units that are generally at least 550 square feet, which they believe was an improvement over the initial proposal, which included nearly 40% studios that were approximately 450 square feet;
 - (c) The Reconfigured Parking Area: The opposition believed that the Applicant's parking study failed to account for current and approved development along the 2200 block of M Street, N.E. and, as such, had concerns with the Applicant's initial request for parking relief. The Applicant reconfigured its parking area and no longer sought relief from the parking requirements, which satisfied Lee-Rollins;
 - (d) Removal of Windows from the Western Façade: Lee-Rollins appreciated the removal of windows on the western-façade, which they believe would have otherwise overlooked the rooftop units in their building, raising privacy concerns; and
 - (e) Improved Security of the Existing Site: The Applicant took additional steps to secure the buildings on the Property to prevent them from becoming nuisances during the pendency of this Application, which was appreciated by Lee-Rollins.

(Ex. 39.)

PUBLIC HEARING

45. At the February 16, 2023 public hearing, the Applicant agreed to make design updates to the Project, including darkening the penthouse color, and to provide a fully updated set of plans. (Tr. from February 16, 2023 public hearing at pp. 43 and 58.)
46. The Applicant also agreed to provide a supplemental racial equity analysis in response to the Commission's Revised Racial Equity Analysis Tool released on February 3, 2023. (Tr. from February 16, 2023 public hearing at pp. 54-55.)
47. Pursuant to Subtitle Z § 408.11, at the close of the hearing, the Commission took proposed action to approve the Application. (Tr. from February 16, 2023 public hearing at pp. 60.)
48. On March 13, 2023, the Applicant submitted a post-hearing statement providing additional materials requested by the Commission regarding cleaning the building to ensure long-term appearance, the free shuttle service schedule, and a supplemental racial equity analysis as well as a fully updated set of plans. (Ex. 47-47D.)
49. As part of its post-hearing statement submitted March 13, 2023, the Applicant provided a supplemental racial equity analysis that included a summary of community outreach and engagement efforts. The analysis highlights how, over the course of 15 months, the

Applicant met with the community 15 times regarding the Project, including three ANC Committee meetings, five full ANC meetings, and seven meetings with nearby residents. (Ex. 47C.)

50. The Applicant's analysis stated that the Project is not inconsistent with the Comprehensive Plan when considered through a racial equity lens and that the Project advances racial equity by:
- (a) creating new, affordable housing for seniors where none currently exists;
 - (b) incorporating sustainable features to achieve Enterprise Green Communities Plus certification, resulting in a better environmental condition for the site and surrounding community;
 - (c) improving the pedestrian experience along M Street with enhanced streetscape features; and
 - (d) providing opportunities for short-term and long-term jobs for area residents.
- (Ex. 47C.)

NATIONAL CAPITAL PLANNING COMMISSION ("NCPC")

51. On February 22, 2023, the Commission referred the Application to NCPC for review and comment pursuant to the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Section 1-201 *et seq.* (Ex. 44.)
52. By report dated March 29, 2023, NCPC found that the proposed Project is exempt from NCPC review because it meets the requirements of exception 12 in Chapter 8 of NCPC's Submission Guidelines. (Ex. 48.)

CONCLUSIONS OF LAW

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 Rep1.)), the Commission may approve a Consolidated PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 300, a PUD-related map amendment pursuant to Subtitle X § 303.12, and flexibility from all other development standards pursuant to Subtitle X § 303.1.
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 § 304.3, in evaluating a proposed PUD, the Commission shall 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.
4. Pursuant to Subtitle X § 304.4, to approve a proposed PUD, the Commission must determine 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.*
5. Pursuant to Subtitle X §§ 305.2, 305.3, 305.4, and 305.12, the PUD's benefits and amenities must "benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions", in majority part "relate to the geographic area of the Advisory Neighborhood Commission in which the application is proposed" and "meet the following criteria: (a) Benefits shall be tangible and quantifiable items; (b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) Benefits may primarily benefit a particular neighborhood or area of the city or service a critical city-wide need; and (d) Monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided." Moreover, a PUD "may qualify for approval by being particularly strong in only one (1) or a few categories [of public benefits], but must be acceptable in all proffered categories and superior in many."
6. The Comprehensive Plan Act of 1984 (DC Law 5-75; DC Official Code § 1-306.01(b)) established the 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.*

7. In determining whether a PUD is not inconsistent with the Comprehensive Plan, the Commission shall balance the various elements of the Plan. The District of Columbia Court of Appeals discussed this balancing test in its review of the PUD and related Map Amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (ZC Order No. 13-14(6)):

“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).)

8. The Comprehensive Plan also requires the Commission to evaluate all zoning actions through a racial equity lens. (10-A DCMR § 2501.8.) Consideration of equity is intended to be based on the policies of the Plan and part of the Commission’s consideration of whether the PUD in this case is “not inconsistent” with the Plan, rather than a separate determination about a zoning action’s equitable impact.
9. The Comprehensive Plan’s Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (10-A DCMR § 213.6.) Further “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development and employment opportunities.” (10-A DCMR § 213.7.) The District applies a racial equity lens by targeting support to

communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (10-A DCMR § 213.9.)

10. The Comprehensive Plan's Implementation Element provides guidance for the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states that "[a]long with consideration of the defining language on equity and racial equity in the Framework Element, guidance in the Citywide Elements on District-wide equity objectives, and the Area Elements should be used as a tool to help guide equity interests and needs of difference areas in the District." (10-A DCMR § 2501.6.) In addition, the Implementation Element suggests to prepare and implement tools to use as a part of the Commission's evaluation process. (10-A DCMR § 2501.8.) The Commission released a revised Racial Equity Analysis Tool on February 3, 2023, with new components requiring applicants to include information about their community outreach and engagement efforts and OP to include disaggregated race and ethnicity data for the affected Planning Area in their respective Comprehensive Plan consistency submissions regarding racial equity.

PUD EVALUATION STANDARDS

Consistency with the Comprehensive Plan (Subtitle X § 304.4(a).)

11. The Commission considered whether the PUD and PUD-related Map Amendment are not inconsistent with the Comprehensive Plan and concludes they are not inconsistent with the Comprehensive Plan for the following reasons:
 - (a) The FLUM indicates that the Property is appropriate for Medium Density Residential use, which is a designation used to "define neighborhoods generally, but not exclusively, suited for mid-rise apartment buildings..." (10-A DCMR § 227.7.) The Commission acknowledges that the Project's FAR of approximately 4.43 exceeds the density range of 1.8 to 4.0 FAR typically associated with the Medium Density Residential category. However, the Commission concludes that this potential inconsistency is outweighed because the Project is comprised of all affordable units to be made available as senior housing, with a 15% IZ set-aside to apply following the initial 40-year affordability period, which will advance critical Comprehensive Plan policies that encourage housing and affordable housing and bring the District closer to meeting its housing goals;
 - (b) The GPM indicates that the Property is located in a Neighborhood Conservation Area. Neighborhood Conservation Areas "are generally residential in character" and typically "consist primarily of infill housing." (10-A DCMR § 225.4.) The Project is compatible with existing neighborhood development, particularly after the modifications made to its massing in response to community concerns, and it provides infill housing for a population that needs it;
 - (c) The Project would advance policies of the Citywide Land Use, Transportation, Housing, Environmental Protection, and Urban Design Elements, as well as the

Upper Northeast Area Element. Specifically, the Project's addition of density will be consistent with the surrounding neighborhood; it will provide streetscape improvements and has been designed with minimal surface parking; it will expand the housing supply and provide affordable housing opportunities for seniors in an area where there is a significant need for such housing; and it incorporates sustainable and thoughtful design elements that emphasize the Property's natural features;

- (d) Together, the Applicant's initial and supplemental racial equity analyses provided a detailed discussion of the Project's consistency with applicable Citywide and Area Element policies, including several policies focused on advancing racial equity. (Ex. 3, 47C.) In addressing the Commission's revised Racial Equity Tool, the Applicant also detailed its substantial community outreach, which included meetings with immediate neighbors, the Single Member District representative for the Property, ANC 5D, and condominium owners of the adjacent Arboretum Condominiums. Based on these meetings, the Applicant revised its Application to include security cameras, enhanced sustainability benefits, and a TDM plan; and
- (e) The Commission concludes that, when examined through a racial equity lens, the Project advances racial equity as a process, consistent with the Comprehensive Plan, 10-A DCMR § 213.6, by providing housing and affordable housing for seniors and creating a sustainable Project with an appropriate height and massing that was informed by the Applicant's extensive community engagement efforts, as evidenced by the ANC's and adjacent neighbors' support for the Project. The Commission notes that the disaggregated race and ethnicity data provided by OP reveals that there is a declining number of Black residents and senior residents in the Upper Northeast Planning Area and that the Project would help older Black residents remain in the area. Thus, the Commission finds that the Application responds to the District's racial equity goals as the Applicant utilized community outreach and engagement guidance, considered the Project's potential impact on existing racial disparities as informed by OP's disaggregated race and ethnicity data for the Planning Area, and revised the design of the Project accordingly. The Project will advance many desired Comprehensive Plan policies/themes identified in the Commission's revised Racial Equity Analysis Tool.

Potential Adverse Impacts – How Mitigated or Outweighed (Subtitle X § 304.4(b).)

- 12. The Commission concludes that any adverse impacts created by the Project are acceptable or sufficiently mitigated for the following reasons:
 - (a) Certain neighbors, including the Lee-Rollins party, and ANC 5D initially objected to the Project's proposed height, limited number of parking spaces, unit size and mix, and potential water runoff issues, as well as other potential neighborhood impacts. (Ex. 13, 23, 24, 26, 28.) The Applicant revised the Project to address these concerns, as summarized above (*see* FF Nos. 37, 42), and Lee-Rollins and ANC

5D changed their positions to support of the Project. Therefore, the Commission believes these impacts have been mitigated and any remaining Project impacts are acceptable given the quality of public benefits provided; and (Ex. 13, 23, 24, 26, 39, 41.)

- (b) Because the Project will contribute to the overall traffic in the neighborhood, which is an existing concern, the Applicant stipulated to specific mitigations to address that impact, including a TDM plan and a free shuttle for residents, which is incorporated into the Conditions hereof. Therefore, the Commission believes these impacts have been sufficiently mitigated and any remaining Project impacts are acceptable given the quality of public benefits provided, particularly the provision of more housing and affordable housing for seniors. (Ex. 34.)

PUD Flexibility Balanced Against Public Benefits and Potential Adverse Effects (Subtitle X §§ 304.4(c) and 304.3.)

- 13. The Commission acknowledges the Project requires flexibility through the PUD process for both the requested map amendment as well as flexibility from the parking and loading screening requirements and general design flexibility.
- 14. The Commission recognizes the public benefits provided by the Project, including its urban design and architecture, its provision of all-affordable senior housing, the commitment to Enterprise Green Communities Plus certification, and a use of special value in providing security cameras and senior housing in this community. The Commission notes that, while both the Applicant and OP describe the provision of security cameras as a public benefit, the Commission finds the commitment to be more a mitigation to prevent the existing condition of illegal dumping on M Street as noted by ANC 5D in its reports. Therefore, out of an abundance of caution, the Commission concludes that, even if it does not consider the security cameras a public benefit, the Project's other public benefits are sufficient to justify the development incentives requested and any adverse effects of the Project as required by Subtitle X § 304.3.
- 15. The Commission thus concludes that the PUD will provide public benefits that are commensurate with the flexibility requested, thus satisfying Subtitle X § 304.3.
- 16. The Commission further concludes that the PUD and related map amendment are not inconsistent with the Comprehensive Plan, including when viewing the Project through a racial equity lens, and provides benefits and amenities commensurate with the requested flexibility, including the map amendment and flexibility from the screening requirement, as detailed in the Application and in OP's reports. (Ex. 3, 12, 34, 37.)

Evaluating the Public Benefits (Subtitle X § 305.)

- 17. The Commission concludes that the Project includes specific public benefits and amenities that are not inconsistent with the Comprehensive Plan or other policies relevant to the PUD Site. The Commission evaluated the benefits proffered by the Applicant, pursuant to

Subtitle X § 305 and concludes that the public benefits benefit the surrounding neighborhood to a significantly greater extent than development of the site as a matter-of-right would. Namely, the increased density the PUD related map amendment will allow will provide more housing on the PUD Site and the Project will incorporate thoughtful and sustainable design elements, streetscape improvements, and will be all affordable for seniors in an area of the District where there is a significant need for both affordable and senior housing. (Ex. 34; see also FF No. 28.)

18. Based upon the record before the Commission, the Commission concludes that the Applicant has met the burden of proof pursuant to Subtitle X § 300 *et seq.* and Subtitle Z § 300 and that the requested PUD and related map amendment can be granted.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

19. 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).)
20. The Commission finds OP’s analysis of the Application, its conclusion that the Application satisfies the PUD evaluation requirements and is not inconsistent with the Comprehensive Plan Maps and the Citywide and Area Element, including when viewed through a racial equity lens, and its recommendation to approve the Application persuasive and concurs with OP’s recommendation.

“GREAT WEIGHT” TO THE ANC REPORTS

21. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC(s) 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).)
22. The Commission acknowledges that the ANC 5D initially expressed several concerns related to the Project’s height and massing, transportation and parking issues, water runoff, the unit mix, and illegal dumping at the site. (See FF Nos. 35, 36.) However, the Applicant responded to these issues and made revisions to the Project’s design and PUD commitments, as summarized above, which ultimately led ANC 5D to file a letter of support. (Ex. 41.) The Commission therefore believes ANC 5D’s issues and concerns have been addressed and resolved.

23. Since ANC 5C did not submit a report to the record or participate in this case, there is nothing from ANC 5C to which the Commission can give “great weight.”

DECISION

In consideration of the record, the Zoning Commission orders **APPROVAL** of the Application for a consolidated PUD and a related Zoning Map amendment; flexibility from surface parking and loading screening requirements; and such other design flexibility as are set forth in the Conditions hereof. This approval is subject to the following guidelines, conditions, and standards of this Order:

A. Project Development

1. The Project shall be developed in accordance with the architectural plans and drawings submitted on March 13, 2023 (the “Plans”). (Ex. 47B1-47B5.)
2. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - (a) To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the building and do not prevent compliance with the conditions of this Order that require the Applicant to provide the identified public benefits;
 - (b) To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials;
 - (c) To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
 - (d) To vary the number of residential units by plus or minus 10%;
 - (e) To vary the number of parking spaces by plus 10% provided that no additional relief is required;
 - (f) To reconfigure the surface parking layout provided that no additional relief is required;

- (g) To vary the roof plan as it relates to the configuration of solar panels and green roof areas, provided that the square footage of the solar panels and green roof are not reduced;
 - (h) To make minor variations in the sizes and locations of windows necessary to comply with sustainability and energy efficiency benchmarks; and
 - (i) To vary the number of balconies by plus or minus 5%, or approximately two units.
3. The Applicant shall have flexibility from the screening otherwise required for the parking spaces and the service/delivery space accessed off of the rear alley.
 4. The Applicant shall install four security cameras, one at each of the building's corners.

B. Public Benefits

1. The Applicant shall provide affordable housing as set forth in this condition:
 - (a) The Applicant shall provide the affordable housing set forth in the following chart. The chart assumes that the Applicant will be granted an exemption from the Inclusionary Zoning regulations ("IZ Regulations") set forth in Subtitle C, Chapter 10 of the Zoning Regulations, pursuant to Subtitle C § 1001.6 ("IZ Exemption"). However, the Commission takes no position as to whether the IZ Exemption should be granted (table follows chart)

Residential Unit Type	Floor Area/ % of Total*	Income Type	Affordable Control Period	Affordable Unit Type
Total	66,687 SF/100%	Mixed		
Affordable Non-IZ	13,337 SF /20%	Up to 80% of MFI	40 years	Rental
Affordable Non-IZ	53,350 SF /80%	Up to 60% of MFI	40 years	Rental
IZ**	10,004 SF /15%	Up to 60% of MFI	Life of the Project	Rental

* Does not include the penthouse set aside; refers to the residential gross floor area, but the floor area may be adjusted to subtract the building core factor.

** IZ takes effect after the initial 40-year affordability period expires.

- (b) Each control period shall commence upon the issuance of the first certificate of occupancy;
- (c) Should the IZ Exemption be granted, the affordable housing requirements of this condition shall be stated in the covenant required by Subtitle C § 1001.6(a)(4), and such covenant shall be recorded prior to the issuance of the first certificate of occupancy for the Project; and

- (d) Should the IZ Exemption be denied, the Applicant shall nevertheless provide a minimum of 15% of the residential gross floor area of the building as affordable to households earning up to 60% of MFI in accordance with this condition, unless the IZ Regulations impose more restrictive standards, and the Applicant shall record the covenant required by the Inclusionary Zoning Act and shall execute the monitoring and enforcement documents required by Subtitle X § 311.6 prior to the issuance of the first certificate of occupancy for the Project.
- 2. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall furnish a copy of its Enterprise Green Communities Plus certification application to the Zoning Administrator demonstrating that the building has been designed to meet the Enterprise Green Communities Plus standard for residential buildings, as shown on the Enterprise Green Communities Plus Checklist on Exhibit 36C of the record.
- 3. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall demonstrate that it has designed and constructed a minimum of 2,000 square feet of solar arrays located on the Project.
- 4. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall demonstrate that it installed at least 3,000 square feet of green roof on the Project.

C. Transportation

- 1. The Applicant shall provide a shuttle service between the Project and the intersection of Bladensburg Road and Benning Road free of charge for the building's residents, with exact scheduling and timing to be determined between building management and residents.
- 2. **For the life of the Project**, the Applicant shall provide the following transportation demand management ("TDM") measures:
 - (a) The Applicant will unbundle the cost of vehicle parking from lease or purchase agreement for each residential or retail unit and charge a minimum rate based on the average market rate within a quarter mile of the Property;
 - (b) The Applicant will identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;
 - (c) The Transportation Coordinator will conduct an annual commuter survey of employees and residents on site, and report TDM activities and data collection efforts to goDCgo once per year;

- (d) The Transportation Coordinator will develop, distribute, and market various transportation alternatives and options to the residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the Project's website and in any internal building newsletters or communications;
- (e) The Transportation Coordinator will subscribe to goDCgo's residential newsletter. The Transportation Coordinator(s) will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM plan;
- (f) The Applicant will provide welcome packets to all new residents and staff that, 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. Brochures can be ordered from DDOT's goDCgo program by emailing info@godcgo.com;
- (g) The Applicant will provide residents who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future;
- (h) The Applicant will post all transportation and TDM commitments on the project's website, publicize availability, and allow the public to see what commitments have been promised;
- (i) The Applicant will offer a SmarTrip Card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident;
- (j) The Applicant will provide at least five short-term and 31 long-term bicycle parking spaces;
- (k) Long-term bicycle storage rooms will accommodate non-traditional sized bikes, including cargo, tandem, and kids bikes, with a minimum 5% of spaces (at least 2) be designed for longer cargo/tandem bikes (10 feet by 3 feet), a minimum of 10% of spaces (at least 3) will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum of 50% of spaces (at least 16) will be placed horizontally on the floor. There will be no fee to residents or employees for usage of the bicycles storage room, and strollers will be permitted to be stored in the bicycle storage room;
- (l) The Applicant will provide a bike repair station on site; and

- (m) The Applicant will install a minimum of three electric vehicle charging stations.
- 3. **Following the issuance of a Certificate of Occupancy**, the Applicant shall provide the following TDM measures:
 - (a) The Transportation Coordinator will submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case; and
 - (b) The Transportation Coordinator shall submit to the Zoning Administrator, DDOT, and goDCgo every five years (as measured from the final Certificate of Occupancy for the Project) summarizing continued substantial compliance with the transportation and TDM Conditions of this Order, unless no longer applicable as confirmed by DDOT. If such letter is not submitted on a timely basis, the building shall have 60 days from the date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter.

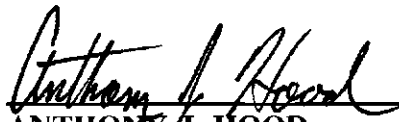
D. Miscellaneous

- 1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of Zoning Legal Division and the Zoning Administrator. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
- 2. The PUD shall be valid for a period of two years from the effective date of this Order within which time an application shall be filed for a building permit. Construction must begin within three years of the effective date of this Order.
- 3. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On February 16, 2023, upon the motion of Vice Chair Miller, as seconded by Commissioner Imamura, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the Application at the close of the public hearing by a vote of **4-0-1** (Robert E. Miller, Anthony J. Hood, Joseph S. Imamura, and Peter G. May to **APPROVE**; 3rd Mayoral Appointee seat vacant).

On March 30, 2023, upon the motion of Commissioner May, as seconded by Commissioner Imamura, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Peter G. May, Anthony J. Hood, Joseph S. Imamura, and Robert E. Miller to **APPROVE**; 3rd Mayoral Appointee seat vacant).

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 22-21 shall become final and effective upon publication in the *District of Columbia Register*; that is, on November 10, 2023.


ANTHONY J. HOOD
CHAIRMAN

ZONING COMMISSION


SARA A.
BARDIN
DIRECTOR
OFFICE OF ZONING

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



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 22-21A

Z.C. Case No. 22-21A

2229 M Street, N.E., LLC

**(Modification without Hearing of a Consolidated Planned Unit Development (“PUD”) and
Related Zoning Map Amendment @ Square 4465, Lot 40)**

July 31, 2025

Pursuant to notice, at its public meeting on July 31, 2025, the Zoning Commission for the District of Columbia (“Z.C.” or the “Commission”) considered the application (the “Application”) of 2229 M Street N.E., LLC (the “Applicant”) for a Modification without Hearing to approve changes to exterior materials, balconies, entryway landscaping, internal window arrangements, and miscellaneous design refinements shown on the approved plans of the approved PUD for the property located at 2229 M Street, N.E. on Lot 40¹ in Square 4465 (the “Property”).

The Commission considered the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle 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

Prior Approval, Parties, and Notice

1. Pursuant to Z.C. Order No. 22-21 (the “Order”), the Commission approved a consolidated PUD and related map amendment from the RA-2 zone to the RA-4 zone for the Property to permit construction of an all-affordable senior residential building consisting of approximately 66,687 square feet, and approximately 92 units for people aged 55+, with a FAR of approximately 4.43, and a building height of approximately 71 feet, 8.5 inches. (the “Approved PUD”). The Commission also granted the Applicant flexibility, pursuant to Subtitle X § 303.1, from the surface parking and loading screening requirements of Subtitle C §§ 714 *et seq.*, 908.2, respectively, and other design flexibility as set forth in the Order.
2. The automatic parties to this case, per Subtitle Z § 403.5, are Advisory Neighborhood Commission (“ANC”) 5D, in which the Property is located, and ANC 5C, to which the Property is adjacent and so is an “affected ANC” per Subtitle Z § 101.8.

¹ The Property previously comprised two record lots—Lots 36 and 39—that were subsequently combined to form Lot 40.

3. The Applicant served the Application on the Office of Planning (“OP”), District Department of Transportation, ANCs 5D and 5C, and parties in support² on June 6, 2025, as indicated by the Certificate of Service submitted with the Application (Ex. 2 at 8).

The Application

4. On June 6, 2025, the Applicant filed the Application seeking a Modification without Hearing to the Approved PUD to modify design components as the result of refining its plans in preparing construction drawings for a building permit to obtain Passive Housing certification, which incorporates standards significantly beyond almost all building codes and many green building certifications providing superior sustainability benefits. The proposed design component changes are as follows:
 - a. Exterior Materials: Exterior Insulation and Finish System (EIFS) will replace the stucco as an exterior material;
 - b. Juliet Balconies: The Applicant will replace the Juliet balconies with fully functional windows;
 - c. Entry Redesign: Landscaping will replace the porch seating area in the front entry space, and the penthouse canopy will be removed; and
 - d. Window Arrangement: The placement of windows will be modified and the size of the windows along the east elevation towards M Street will be reduced.
(Ex. 2).
5. Although within the permitted parameters for a PUD in the RA-4 zone, the Application also detailed minor updates to the Approved PUD’s architectural plans (Ex. 2C1-2C3). These minor changes reflect a typical evolution to permit plans as they are prepared. In addition, the changes were a result of an effort to better promote sustainability by increasing renewable energy use and encouraging multi-modal transportation. More specifically, the miscellaneous refinements include:
 - a. Floor Area Ratio (“FAR”). Gross floor area will increase from 66,687 square feet to 67,961 square feet, and FAR will increase from 4.43 to 4.51;
 - b. Lot Occupancy. Lot occupancy will increase from 63% to 63.66%, which rounds up to 64% lot occupancy;
 - c. Building Height Measuring Point. Although there is no actual increase in building height, the building height will increase from 71 feet, 8.5 inches to 73 feet;
 - d. Side Yard Setback. The side yard will be reduced from 5 feet to 4 feet, 9 inches;
 - e. Rear Yard Setback. The generator will be moved from the building roof to the rear yard, and the rear yard will be reduced from 38.6 feet to 35.38 feet;
 - f. Penthouse Height. The Applicant will increase the height of the penthouse from 18 feet, 4.5 inches to 19 feet;
 - g. Solar Panels. The Applicant will increase the number of solar panels from 35 to 63; and

² Kara and Justin Rollins and Ryun Lee (“Lee-Rollins”) requested and were granted party status in opposition in the original application to the Approved PUD. Lee-Rollins changed their party status from opposition to support based on modifications that the Applicant made to the proposed project in response to concerns raised by Lee-Rollins.

- h. Bicycle Parking. The total number of bicycle parking spaces will increase from 36 spaces (31 long-term and five short-term) to 41 spaces (34 long-term and six short-term).
(Ex. 2C1).

Responses to the Application

6. On June 26, 2025, OP submitted into the record its report that recommended that the Commission approve the Application as requested (Ex. 4).
7. OP agreed with the Applicant that the proposed modifications were consistent with the intent of the RA-4 Zone and the Comprehensive Plan and did not appear to substantively alter the OP's recommendations in the original case (Ex. 4 at 1).
8. ANC 5D, ANC 5C, nor the parties in support filed responses into the record.

CONCLUSIONS OF LAW

Authority

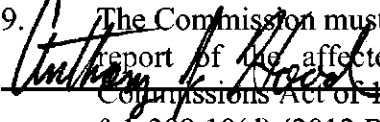
1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make modifications without hearings to final orders and plans without a public hearing.
2. Subtitle Z § 703.6 defines a Modification without Hearing as “a modification in which impact may be understood without witness testimony, including, but not limited to a proposed change to a condition in the final order, ... or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission.”
3. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.10 to serve the Application on all parties to the original proceeding, in this case—ANC 5D, ANC 5C, and the parties in support— and OP at the same time the Application was filed with the Office of Zoning.
4. The Commission concludes that the Application qualifies as a Modification without Hearing within the meaning of Subtitle Z § 703.6 since the modification can be understood without witness testimony, as a redesign or relocation of architectural elements from the final design approved by the Commission in the Approved PUD, and therefore the modifications can be granted without a public hearing pursuant to Subtitle Z § 703.15(c).
5. The Commission concludes that although ANC 5D, ANC 5C, and the parties in support did not submit responses to the Application prior to the Commission's consideration of the Application at its July 31, 2025, public meeting, they were allowed 30 days after the Application was filed and served on June 6, 2025, to respond in accordance with Subtitle Z § 703.12. The Commission further concludes that, in accordance with Subtitle Z § 703.13, this Application for a modification without hearing was filed with the Office of Zoning at least 35 days prior to the July 31, 2025, public meeting, at which the Application was considered by the Commission.

6. The Commission finds that the Application is consistent with the Approved PUD because the requested modifications relate only to minor refinements to the project's design and minor relocations of the project's architectural elements, and that the proposed modifications do not result in any change in use nor require any additional relief from the Zoning Regulations.

"Great Weight" to the Recommendations of OP

7. The Commission must give "great weight" to the recommendations of OP pursuant to § 5(d) of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)) and Subtitle Z § 405.9. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).
8. The Commission finds OP's recommendation to approve the Application persuasive and concurs in that judgment.

"Great Weight" to the Recommendations of the ANC

9.  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.
10. ANC 5D and ANC 5C did not submit responses into the record for the Commission to consider.

DECISION

In consideration of the case record and the above Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia concludes that the Applicant has satisfied its burden of proof and therefore **ORDERS APPROVAL** of a Modification without Hearing to permit modifications to the Approved PUD approved in Z.C. Order No. 22-21. The conditions in the Approved PUD remain unchanged, except that Condition No. A.1. of Z.C. Order No. 22-21 is revised; and new Conditions D.4. and D.5. are added, as follows (deletions shown in **bold** and **strikethrough** text; additions in **bold** and underlined text):

A.1. The Project shall be developed in accordance with the architectural plans and drawings submitted on March 13, 2023 (~~the "Plans"~~). (Ex. 47B1-47B5 **in the record for Z.C. Case No. 22-21,** as modified by the plans submitted on June 6, 2025 (Ex. 2C1-2C3 in the record for Z.C. Case No. 22-21A) (collectively, the "Plans")).

D.4 Prior to the issuance of a Final Certificate of Occupancy, the Applicant shall provide notice to the Zoning Commission to demonstrate that the Project has applied for Passive Housing certification in the form of a written submission to the Z.C. Case No. 22-21A record.

D.5. Within thirty (30) days of the Project obtaining Passive Housing certification, the Applicant shall provide notice to the Zoning Commission to demonstrate that the Project has obtained Passive Housing certification in the form of a written submission to the Z.C. Case No. 22-21A record.

★ ★ ★

Final Action

VOTE (July 31, 2025): 5-0-0

(Joseph E. Imamura, Anthony J. Hood, Robert E. Miller, Tammy S. Stidham and Gwen Marcus Wright to approve).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 22-21A shall become final and effective upon publication in the *District of Columbia Register*; that is, on October 17, 2025.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

**ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION**

**SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING**

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION ORDER NO. 22-21B
Z.C. Case No. 22-21B
2229 M Street, N.E. Owner, LLC
(Two-Year Time Extension of the Approved Consolidated Planned Unit Development and
Related Zoning Map Amendment @ Square 4465, Lot 40)
December 18, 2025

Pursuant to notice, at its public meeting on December 18, 2025, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of 2229 M Street, N.E. Owner, LLC (the “Applicant”)¹ for a two-year time extension of Z.C. Order No. 22-21 (the “Original Order”), which approved a consolidated planned unit development (“PUD”) and related zoning map amendment for Lot 40² in Square 4465 (the “Property”).

The Commission considered the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle 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

1. The Property consists of approximately 15,068 square feet of land area and is improved with a three-and-a-half-story building formerly used as a child development center and a two-story building formerly used as residential housing. The Property is bound by the Arboretum Condominium complex to the west, M Street, N.E. to the north, a federally owned triangular lot to the east, and a public alley to the south (Exhibit (“Ex.”) 2).
2. The Property is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 5D³ (Ex. 2).

Prior Approvals and the Project

3. The Original Order became effective on November 10, 2023, and was set to expire on November 10, 2025. The Original Order approved construction of a seven-story building

¹ The Applicant recently acquired the subject property from the Original Applicant, 2229 M Street, N.E., LLC, and is therefore acting as applicant for Z.C. Case No. 22-21B.

² The Property previously comprised two record lots—Lots 36 and 39—that were subsequently combined to form Lot 40.

³ The Property is adjacent to ANC 5C and so is an “affected ANC” per Subtitle Z 101.8. ANC 5C did not participate in this case although it was provided all application documentation.

with approximately 92 dwelling units (the “Building”) and a PUD-related map amendment from RA-2 to RA-4 (Ex. 2B1).

4. The Building will be entirely dedicated as affordable senior housing (the “Project” or “Approved PUD”) for seniors aged 55 and older earning between 30-80% of Median Family Income (“MFI”). For the first 40 years of operation, 80% of the units will be affordable for households at or below 60% MFI, and 20% of the units will be affordable for households at or below 80% MFI (Ex. 2).
5. On June 6, 2025, the Applicant’s predecessor, 2229 M Street, N.E., LLC (the “Original Applicant”)⁴ applied for a Modification without Hearing to the Approved PUD to make changes to exterior materials, balconies, entryway landscaping, internal window arrangements, and miscellaneous design refinements of the Project (the “Modification Application”). The Commission approved the Modification Application (the “Approved Modification”) as Z.C. Order No. 22-21A, which became final and effective on October 17, 2025 (“Order 22-21A”) (Ex. 2).
6. Although the Original Applicant timely filed a building permit application on May 6, 2025 (Permit No. B2505855), within the two-year period provided under the Original Order, that building permit application reflected the design originally approved in the Original Order. The Applicant now intends to re-submit a building permit application based on the Approved Modification. To that end, the Applicant has engaged architectural and consulting services to prepare a set of construction drawings for the permit re-submission (Ex. 2).
7. Despite the best efforts of the Original Applicant and the Applicant, financing was simply not available due to wider market conditions. However, the Applicant is planning to close on Low-Income Housing Tax Credits (“LIHTC”) financing in the first quarter of 2026. In addition, the Property was transferred from the Original Applicant to the Applicant during the Original Order’s validity term (Ex. 2).

Parties

8. Other than the Original Applicant, the only parties to the Original Order and Order 22-21A were ANC 5D and ANC 5C and, as parties in support, Kara and Justin Rollins and Ryun Lee (“Lee-Rollins”)⁵ (Ex. 2).

Notice

9. The Applicant served the Application on the Office of Planning (“OP”), the District Department of Transportation, ANC 5D, ANC 5C, and Lee-Rollins on November 10, 2025, as indicated by the Certificate of Service submitted with the Application (Ex. 2, 3).

⁴ The Original Applicant sought partners or purchasers for the Project, ultimately finding the Applicant. The Applicant closed on the ownership of the Property on September 22, 2025.

⁵ Lee-Rollins requested and were granted party status in opposition in the original application to the Approved PUD. Lee-Rollins changed their party status from opposition to support based on modifications that the Applicant made to the proposed project in response to concerns raised by Lee-Rollins.

II. The Application

10. On November 10, 2025, the Applicant filed this Application with the Commission requesting a two-year time extension to file a building permit application until November 10, 2027 (Ex. 1, 2).
11. Pursuant to Subtitle Z § 705.2, the Applicant asserted that it met the standards of review for the time extension, including:
 - a. The Applicant served the Application on all parties to the Application, and all parties were allowed 30 days to respond;
 - b. There was no substantial change in any of the material facts upon which the Commission based its original approval of the Application that would undermine the Commission's justification for approving the original Application; and
 - c. There was good cause under Subtitle Z § 705.2(c)(1) due to economic and market conditions beyond the Applicant's reasonable control, specifically:
 - i. High interest rates, suppressed financing market environment, and significant construction costs, which continue to chill the ability to attract and deploy capital into commercial real estate investment; and
 - ii. Recent Federal government actions focused on downsizing the Federal footprint in the Washington, DC area, further straining investment in the local real estate economy.(Ex. 2).
12. For the foregoing reasons, the Applicant has been unable to secure financing for the Project and complete drawings to incorporate more stringent sustainability design principles related to Passive House certification (as detailed in Order 22-21A) and file for a building permit that incorporates the Approved Modification by November 10, 2025 (Ex. 2).
13. Despite these significant and fundamental challenges in market conditions that have impeded the Applicant's ability to finalize financing for the Project, the Applicant has continued to devote substantial resources towards moving development of the Property forward, including preparation for building permit application re-submission and plans to close on financing in first quarter 2026, as discussed in paragraphs 6 and 7 above (Ex. 2).

III. Responses to the Application

14. In its report dated December 5, 2025 ("OP Report"), OP recommended approval of the requested two-year time extension concluding that the Application met the requirements of Subtitle Z § 705.2 because: (1) the Application included a Certificate of Service attesting that it was served to parties; (2) there have been no substantial changes in the material facts upon which the Commission based its original approval that would undermine its justification; and (3) the Applicant demonstrated substantial evidence that the tight equity and lending environment, high interest rates, and elevated construction costs have made it difficult for it to secure the necessary financing (Ex. 5).

15. ANC 5D, ANC 5C, and Lee-Rollins did not submit a response or report for this Application despite being given at least 30 days to respond.

CONCLUSIONS OF LAW

1. Pursuant to Subtitle Z § 705.2, the Commission may extend the time period of an order upon determining that such request demonstrates satisfaction of the requirements of Subtitle Z § 705.2 and compliance with Subtitle Z §§ 705.3, 705.5, and 705.6.
2. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that parties are allowed 30 days to respond.
3. The Commission concludes that the Applicant satisfied Subtitle Z § 705.2(a) by demonstrating that it had served all parties on November 10, 2025, and that the parties were given at least 30 days to respond.
4. Subtitle Z § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval that would undermine the Commission's justification for that approval.
5. The Commission concludes that the Applicant satisfied Subtitle Z § 705.2(b) based on the Application and OP Report, and that there is no substantial change in any of the material facts upon which the Commission based its original approval of the Application that would undermine the Commission's justification for approving the original Application.
6. Subtitle Z § 705.2(c) requires that an application demonstrate with substantial evidence one or more of the following criteria:
 - (1) *An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;*
 - (2) *An inability to secure all required governmental agency approvals for a development by the expiration date of the order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or*
 - (3) *The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.*
7. The Commission concludes that the Applicant demonstrated with substantial evidence that it meets the standards of Subtitle Z § 705.2(c)(1). The Project has been negatively impacted by high interest rates, suppressed financing market environment, significant construction costs, and a recent downsizing of the Federal footprint in the Washington, DC area, which ~~has~~ *has* ~~impeded~~ *impeded* ~~the ability to attract and deploy capital into commercial real estate investment, despite the Applicant's diligent efforts.~~ *the ability to attract and deploy capital into commercial real estate investment, despite the Applicant's diligent efforts.*

8. For the foregoing reasons, the Commission concludes that the Applicant meets the standards of review for a time extension request and finds that good cause exists to grant the Application.

“Great Weight” to the Recommendations of OP

9. The Commission must give “great weight” to the recommendations of OP pursuant to § 5(d) of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)) and Subtitle Z § 405.9 (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).
10. The Commission finds OP’s recommendation to approve the Application persuasive and concurs in that judgment.

“Great Weight” to the Recommendations of the ANC

11. 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)).
12. As noted above, ANC 5D and ANC 5C did not file a response or report for this Application.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia concludes that the Applicant has met the standards of review for a time extension request and demonstrated that good cause exists to grant the Application. Therefore, the Commission **APPROVES** the Applicant’s request for a two-year time extension of the Original Order, as modified by Order 22-21A to extend the deadline to file a building permit application until November 10, 2027, and the deadline to commence construction until November 10, 2028.

VOTE (December 18, 2025): 4-0-1

(Gwen Wright, Joseph Imamura, Anthony Hood, and Robert Miller to approve; Tammy Stidham and not present, not voting).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 22-21B shall become final and effective upon publication in the *District of Columbia Register*; that is, on February 20, 2026.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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

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SPRING WARD
RECORDER OF DEEDS
WASH DC RECORDER OF DEEDS
RECORDING FEES \$25.00
SURCHARGE \$5.00
TOTAL: \$30.00