



June 7, 2023

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

VIA IZIS

Re: OAG Comments in Support of Z.C. Case No. 22-36 of TM Associates, LLC & Washington Metropolitan Area Transit Authority (“WMATA”) - Planned Unit Development (“PUD”)

Dear Members of the Zoning Commission (the “**Commission**”):

The Equitable Land Use Section of the Office of the Attorney General (“**OAG**”) encourages the Commission to **approve** the PUD application in Z.C. Case No. 22-36, given the PUD’s significant affordable housing proffer, which includes:

- 70 Inclusionary Zoning (“**IZ**”) units or 15% of the residential gross floor area (“**GFA**”), which is almost double what is required; with
- 6 IZ units designated at the 30% median family income (“**MFI**”) level and family sized at three-bedrooms.

OAG believes that this affordable housing proffer alone satisfies the PUD balancing test by balancing out the requested development incentives¹ and by advancing the Comprehensive Plan’s (Title 10A of the DCMR, the “**CP**”) identification of affordable housing as the only high-priority PUD public benefit² needed to address the District’s “housing affordability crisis” and the CP’s goal to make the District an “equitable and inclusive city.”³ The affordable housing proffer also advances other CP priorities, including the production of affordable housing in amenity-rich areas and areas that are adjacent to public transit.⁴ Although the PUD does not take full advantage of the density available in the proposed MU-5A zone—density that could be used to provide additional housing, including affordable housing—the PUD’s significant affordable housing proffer readily satisfies the PUD balancing test. In the end, although OAG encourages the Commission and the Applicant to consider increasing utilization of the available density to construct additional affordable housing, OAG supports approval of the PUD as proposed.

I. The IZ Plus (IZ+) Formula Establishes a Metric for Assessing the Relative Value of a PUD Application’s Affordable Housing Proffer

¹ Subtitle X § 304 of Title 11 of the DCMR (“Zoning Regulations of 2016”), to which all references herein are made unless otherwise specifically identified.

² CP § 224.9.

³ CP §213.5; *See generally* the CP Framework Element’s discussion of the impacts of housing cost changes in CP § 206.

⁴ *See* CP §§ 307.3, 307.11, 307.21, 403.13, and 508.4.

The Zoning Regulations require the Commission to weigh a PUD's requested development incentives against the PUD's proffered public benefits. In weighing the relative value of a PUD's public benefits against the requested development incentives, OAG asserts that the Commission should look to the IZ and IZ+ standards as a means of understanding and valuing a PUD's affordable housing proffer vis-à-vis its requested bonus density.

The Zoning Regulations establish a reciprocal relationship between the District's provision of bonus density and an applicant's provision of a compensatory public benefit in the form of affordable units. This principle is enshrined in the basic IZ program, which authorizes developers to exceed a zone's permissible density—typically by 20%—in exchange for setting aside a proportion of the increased density for affordable housing.⁵

The IZ+ program scales up the basic reciprocal relationship between bonus density and affordable housing enshrined in the basic IZ program to account for the greater increases in density available through map amendments. The IZ+ program provides that where a map amendment allows for greater density, developers must set aside a proportion of the increased density in the new zone for affordable housing. Generally, the proportion is determined as the greater of 70% of the bonus density utilized or a percentage of residential GFA, determined by a sliding scale that increases based on the percentage change between the maximum permitted density in the current zone versus what is proposed and ultimately constructed by the final project.⁶ In essence, IZ+ establishes that the more density gained through a map amendment, the greater the affordable housing set-aside should be.

II. The PUD's Affordable Housing Proffer More than Balances Out the Limited Development Incentives Requested

The PUD's affordable housing proffer substantially outweighs its only requested development incentive - the map amendment to the MU-5A zone. The PUD does not, however, propose to use any of the density permitted under the MU-5A zone; in fact, it does not even propose to use all of the density available to it under the existing MU-4/NC-2/RA-1 zones. Instead, the PUD seeks a map amendment to the MU-5A zone to obtain a modest increase in allowable height. The affordable housing proffer, which includes not only a high percentage of the residential GFA but also deeply affordable, family-sized units, substantially exceeds what would be required for a comparable project requesting the same amount of density through a map amendment subject to IZ+, and more than balances out the limited development incentive requested.

Under the IZ+ metric, which determines the IZ set-aside percentage based on the percentage increase from the maximum permitted FAR of the existing zone to the project's total FAR constructed pursuant to the approved map amendment, the PUD would have a required set-aside

⁵ See Subtitle C §§1003.1-1003.2. The required set-aside percentages of both the bonus density and the residential GFA depend on construction type, with higher set-asides (75% of bonus density or 10% of residential GFA) required for stick-build (non-Type I) construction and lower set-asides (50% of bonus density or 8% of residential GFA) required for concrete (Type I) construction.

⁶ See Subtitle C §§1003.3 -1003.4. Note that, as with the regular IZ program, the set-aside percentages are higher for stick-build (non-Type I) construction, reflecting the lower construction costs associated with stick builds.

of 8.5%. In this case, the maximum 1.92 FAR permitted under the existing zoning exceeds the 1.69 FAR proposed by the PUD, so the IZ+ formula results in a percentage decrease of 12%.

<u>Maximum Density</u>		
Existing MU-4 Zone	2.5 FAR	340,870 square feet (“sf”)
Existing RA-1 Zone	0.9 FAR	95,693 sf
Existing NC-2 Zone	2.5 FAR	127,220 sf
Total Permitted FAR – Existing Zones	1.92 FAR⁷	563,783 sf
Proposed PUD Density	1.69 FAR	495,260 sf

The 12% decrease would fall into the IZ+ category of percentage increases of “Up to and including 20%,” which would require an 8.5% IZ set-aside.⁸ As shown below, based on the IZ+ metric, the PUD’s IZ proffer significantly exceeds this baseline⁹:

IZ+ Set-Aside (8.5% of 389,850 sf total residential GFA)	33,137 sf	~ 36 units
PUD Proffer (15% of 389,850 sf total residential GFA)	58,478 sf	~ 70 units
Extra Affordable Housing in PUD Proffer Over IZ+	25,341 sf	~ 34 units

In addition to the substantial overall IZ set-aside percentage, the PUD is proposing to dedicate 3% of the IZ proffer to families at or below the 30% MFI level (with the remaining 12% dedicated to 60% MFI households). Further, all six of the PUD’s three-bedroom units will be IZ units at the 30% MFI level. OAG applauds the provision of family-sized units at the deepest levels of affordability, which are critically needed in the District.¹⁰ The CP highlights the importance of preserving and developing more deeply affordable housing, in order to advance the District’s housing equity goals and calls for 40% of all new affordable housing units District-wide to be reserved for households earning 30% MFI or less. The CP notes that production of a greater number of “deeply affordable units is needed to advance racial equity in housing due to the racial income gap.”¹¹

The CP emphasizes the need for three-bedroom-plus units and notes that the lack of affordable family-sized units has contributed to displacement of existing residents, primarily families with children, lower-income residents, and residents of color.¹² A District-commissioned 2019 study by the Urban Institute and the Coalition for Nonprofit Housing & Economic Development determined that family-sized affordable units are particularly needed because:

⁷ Due to the existing site being split zoned, this is an estimate of the average FAR based on the maximum permitted FAR in the existing zones and their approximate maximum buildable GFA based on an estimate of their sf of the PUD Site. Total buildable GFA = 563,783.4 sf divided by the total site area of 293,562 sf. (Ex. 38A5 at A200)

⁸ Subtitle C §§ 1003.4 and 1003.5(b).

⁹ In addition, the Applicant has indicated that it has applied for funding from the D.C. Department of Housing and Community Development’s Tax Abatements for Affordable Housing in High-Needs Areas (HANTA) program. The Applicant has indicated that if it receives this funding, it will increase the affordable housing set-aside to 33% of the residential units. OAG supports this effort to further increase the affordable housing proffer.

¹⁰ CP §§504.9, 504.20; *see also* CP §§ 206.8, 220.5.

¹¹ CP § 504.7.

¹² *See*, CP §§ 206.2, 500.29-30, 500.33, 505.6.

- Three quarters of the District’s family-sized units are in single-family homes, which are often on larger lots and command higher prices, putting them beyond the reach of most low-income households;
- Three-quarters of the District’s family-sized units are owner-occupied/for-sale units that are out of reach for most low-income households; and
- By 2045, the District is anticipated to gain an additional 14,000-19,000 additional households needing family-sized units, of which 4,000-7,500 households are likely to be earning below 50% of the MFI, with many earning less than 30% of the MFI.¹³

This city-wide need for family-sized units is also reflected in the Rock Creek East Area Element, which calls for development of mixed-income housing to meet the needs of a “range of household sizes” in the Takoma Central District.¹⁴

OAG therefore asserts that the PUD’s proposed 15% IZ proffer easily satisfies the PUD balancing test given that the PUD:

- Does not request any additional development incentives beyond the map amendment to the MU-5A zone;
- Would not use any of the density authorized by the proposed the MU-5A zone; and
- Would use only six feet of the twenty feet of PUD bonus height allowed in the MU-5A zone.¹⁵

III. The PUD Furthers Various CP Policies Concerning Transit-Oriented Affordable Housing

The impacts of the PUD’s affordable housing proffer will be amplified by the PUD’s proximity to the Takoma Park Metrorail station, which will further the CP’s Land Use, Transportation, and Environmental elements’ policies, which prioritize developing affordable housing proximate to Metrorail stations to meet the demands of lower-income households, which frequently rely on public transit to perform daily activities.¹⁶

The PUD will allow for the redevelopment of the current 154-space surface parking lot adjacent to the Takoma Park Metrorail Station with a mixed-use building providing a significant amount of housing and affordable housing, as well as publicly accessible open space. This redevelopment directly supports the CP’s principles for housing around Metrorail stations, including affordable housing and a mix of unit sizes.¹⁷ The proximity to both Metrorail and Metrobus will therefore enhance the PUD’s already substantial affordable housing proffer by “reduc[ing] household expenses on transportation by providing options for car-free (or one car) living” and helping to

¹³ Bruton, S., Hende, L., and Tatian, P., *An Assessment of the Need for Large Units in the District of Columbia*, June 28, 2019, available at <https://www.urban.org/research/publication/assessment-need-large-units-district-columbia> (last accessed March 30, 2023).

¹⁴ CP § 2211.7.

¹⁵ The MU-5A permits up to 70 feet in height for an IZ project and up to 90 feet in height for a PUD. The PUD will be 76 feet high.

¹⁶ See CP §§206.2, 307.4, 307.8, 307.11, 307.21, 503.6.

¹⁷ CP § 307.4; See also, CP §§ 307.3, 307.9, 307.10, 2211.3, 2211.4; [Takoma Park Central District Plan](#) at p.29, 48

remove transportation access as “a barrier to economic, education or health opportunit[ies] for District residents.”¹⁸

The PUD’s proximity to mass transit options will also support the CP’s environmental goals by “*clustering higher-density development along major corridors, bus routes, and near Metrorail stations mean[ing] shorter and fewer car and truck trips, thus reducing vehicle miles traveled (VMT) and motor vehicle emissions, which improves air quality for residents... .*” CP § 621.4. Transportation uses are the largest overall source of air pollution, and the more vehicle miles that District residents must travel to commute for everyday activities like work, school, and shopping, the more detrimental the effect on the District’s overall air quality.¹⁹ By clustering a significant amount of housing and retail near multiple mass transit options, the PUD will help to reduce vehicle trips. These environmental benefits also have equity implications, as low-income households and communities of color tend to be the most burdened by the health effects of air pollution.²⁰

While the PUD’s affordable housing proffer will advance the foregoing city-wide CP elements and policies, the development of the site with housing and affordable housing also directly supports the goals of the Rock Creek East Area Element and the Takoma Central District Plan, which envisioned the PUD site as a key site for redevelopment given its proximity to transit options and its location at a “gateway” between Maryland and the District.²¹

In sum, the PUD would significantly advance the affordable housing and housing equity policies set forth in the CP by offering a significant number of affordable housing units, including family-sized units available at 30% MFI. Further, the benefits of these affordable units would be enhanced by their proximity to public transit, with the significant equity and environmental benefits that flow from such proximity.

IV. The PUD’s Density and Height Are Entirely Consistent with the Contemplated Scale for Developments at the Site

a. Density

Opponents of the PUD have contended that the PUD is “too massive” and “too dense” for the site.²² The PUD’s proposed density, however, is significantly below what is permitted under existing zoning, and does not use any of the density gained through the proposed MU-5A zone. Further, the PUD’s proposed density is far below what is anticipated by the CP’s Low Density Commercial/Medium Density Residential FLUM designation, and in line with what is anticipated by the FLUM for height. The RA-3 zone, specifically identified as compatible with the Medium

¹⁸ See CP §§ 307.3, 307.11, 307.21, 403.13, and 508.4 “*Concentrated residential housing combined with a mix of other uses around Metro stations and high-capacity surface transit corridors reduces District residents’ reliance on automobiles, thereby reducing GHG emissions. It is also proven to reduce a household’s combined cost of housing and transportation. This can free up disposable income to increase the rate at which households save for future needs. Affordable housing near public transit can ensure that low-income households also receive these benefits.*”

¹⁹ CP § 621.1.

²⁰ CP §§ 620.1, 628.2.

²¹ CP§ 2211.4; [Takoma Central District Plan](#) (adopted 2002) at p.7

²² See e.g. Ex. 21-21B

Density Residential FLUM designation, permits a maximum density of 4.32 FAR whereas the PUD only proposes a 1.69 total FAR.²³

The recent CP amendments approved by the Mayor and the D.C. Council after comprehensive public outreach, increased the amount of density anticipated for the PUD site. The PUD site’s FLUM designation was increased from Moderate Density Residential/Low Density Commercial/Parks Recreation and Open Space to Medium Density Residential/Low Density Commercial/Local Public Facilities to specifically permit and encourage denser development on the site, reflective of its strategic location near a major transit hub. The FLUM is adopted through the same legislative process as the rest of the CP and “carries the same legal weight as the Plan document itself.” Its stated purpose is to “express public policy for future land uses across the city,”²⁴ and it provides “generalized guidance” for development that memorializes planning objectives for the area.

As a result of this failure to utilize the additional density prescribed by the FLUM or permitted under existing zoning, the PUD will be stranding a significant amount of buildable density that could be put towards additional residential development, including additional affordable housing units.

Proposed PUD	1.69 FAR	495,260 sf
<u>Total Maximum Permitted Density</u>		
Existing MU-4/NC-2/RA-1 Zoning	1.92 FAR	563,783 sf
FLUM Consistent RA-3 Zone	4.32 FAR	1,268,188 sf
<u>Stranded Buildable Density</u>		
Existing MU-4/NC-2/RA-1 Zoning	0.23 FAR	68,523 sf
FLUM Consistent RA-3 Zone	2.63 FAR	772,928 sf

In light of this, OAG believes that the Commission and Applicant should consider utilizing more of the available density to build additional housing, especially affordable housing. Such an increase would be directly supported by the FLUM, the CP’s prioritization of the creation of affordable housing through PUDs, and the focus on maximizing residential density near transit centers.²⁵

In short, the PUD could increase utilization of available density while remaining fully consistent with the site’s FLUM designation and advancing the CP’s emphasis on the creation of new housing, especially affordable housing and especially near transit centers. The Applicant could, in fact, build additional housing and affordable housing in conformance with the *matter-of-right density limits* under *existing* zoning:

Existing MU-4/RA-1/NC-2 Zoning	
1.92 FAR	563,783 sf maximum GFA
Approx. 21% reduction for non-residential space	- 118,394 sf

²³ CP §227.7. Note – while the FLUM specifically identifies certain zones as being compatible, it does also note that other zones may also be compatible.

²⁴ CP § 227.1; *See also*, D.C. Code § 1-306.02.

Net residential GFA and ~Units	445,389 sf	~496 units
15% IZ Set-Aside	66,808 sf	~74 units

The Zoning Commission and the Applicant could also consider increasing the PUD’s housing production through other means, such as reducing the amount of proposed parking. The PUD is currently providing two-and-a-half times the amount of parking that is required by the Zoning Regulations for the PUD’s residential and retail uses, representing a significant amount of space that could be better utilized for additional housing units, including affordable housing units.²⁶ OAG concurs with the recommendation from ANC 4B that less parking should be provided “in exchange for increasing the number of affordable units and deeply affordable units.”²⁷ This strategy would directly support the CP’s focus on emphasizing affordable housing development, particularly at transit-adjacent sites, and reducing reliance on automobile transportation and would provide a means to increase the PUD’s residential component without necessarily requiring a meaningful change to the overall scale of the PUD.²⁸

In sum, concerns that the PUD is too dense for the site appear misplaced. Indeed, the PUD could utilize additional density to build more housing while remaining well within the FLUM’s contemplated density for the site. And while OAG fully supports the PUD as currently proposed, OAG would encourage the Applicant and Commission to explore options to increase the residential density in this once-in-a-generation development opportunity at a key location.²⁹

b. Height

Opponents of the PUD have also suggested that the PUD is “too tall.” The proposed project, however, will only modestly exceed the allowable height under existing zoning and is in line with heights anticipated by the PUD site’s Medium Density Residential FLUM designation. The PUD’s proposed 76-foot height is only one foot higher than the maximum allowed for a PUD in the RA-3 zone that is specifically identified as consistent with the PUD site’s Medium Density Residential FLUM designation and the FLUM explicitly states that other zones may also be consistent with this FLUM designation. However, even if the Commission determined that this de minimis one-foot height difference was inconsistent with the FLUM, OAG asserts that the PUD’s affordable housing proffer, which significantly exceeds the level of affordable housing that would be required for a similar project subject to IZ+, is more than enough to compensate and render the PUD not inconsistent with the CP as a whole, given CP § 224.9’s identification of affordable housing as the only high priority PUD public benefit.

c. Impacts on Historic District

Based on the foregoing, OAG does not believe that the PUD will result in adverse impacts to the Takoma Park Historic District based on its scale. OAG’s position is supported the Historic Preservation Review Board (“**HPRB**”) Staff Report, which did not raise any concerns with the proposed PUD’s height or density and instead concluded that given the site’s considerable size, it

²⁶ Ex. 38A5 at A200 - Total of 91 spaces required, 228 provided.

²⁷ ANC 4B Resolution in support, Ex. 10 at p. 3.

²⁸ CP § 307.9.f

²⁹ See, Project Timeline at Ex. 14A2, Sheet G005A; ANC 4B Report at Ex. 11 at p. 3

“can accommodate a large building that is compatible with the Takoma Park Historic District.”³⁰
The HPRB report found that the general concept for the PUD is “compatible with the character of the Takoma Park Historic District,” and echoed the CP and Takoma Central District Plan, noting that:

“This site has long been recognized as an important gateway to the community and an opportunity to inject vitality and activity into the existing commercial center of Takoma Park. Sitting directly adjacent to a Metro station, the project is a poster child for transit-oriented development, replacing surface parking with mixed-use development organized around public open spaces and enhanced streetscape and pedestrian connections through and around the property.”

V. Conclusion

The PUD, with its significant affordable housing proffer and especially its provision of deeply affordable family-sized units as part of a transit-oriented development, satisfies the PUD requirements and will substantially further multiple goals of the CP. OAG still encourages the Commission and Applicant to consider utilizing more of the available density to increase the development of additional housing, particularly affordable housing, but ultimately believes that even as is, the PUD constitutes a beneficial development for the District. Therefore, OAG supports approval of the PUD.

Respectively submitted,

BRIAN L. SCHWALB

Attorney General for the District of Columbia

/s/ Maximilian L.S. Tondro

Chief, Equitable Land Use Section

D.C. Bar No. 1031033

/s/ Alexandra L. Cain

Assistant Attorney General

D.C. Bar No. 1674308

Attachments: Certificate of Service

³⁰ [HPRB Staff Report](#) for June 1, 2023, Public Hearing at p.3