

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 22-36

Z.C. Case No. 22-36

TM Associates, LLC & Washington Metropolitan Area Transit Authority
(Consolidated Planned Unit Development and Related Zoning Map Amendment
@ Lot 806 in Square 3351; Lots 820, 822, 823, 829, 831, 839-841,
& 845-851 in Square 3352; and Lots 811-813 in Square 3353)
September 28, 2023

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on June 15, 2023 to consider an application (the “Application”) from TM Associates, LLC (referred to hereinafter as “EYA”) & the Washington Metropolitan Area Transit Authority (“WMATA”) (collectively, the “Applicant”), for review and approval of a consolidated planned unit development (“PUD”) for Lot 806 in Square 3351; Lots 820, 822, 823, 829, 831, 839-841, and 845-851 in Square 3352; and Lots 811-813 in Square 3353 (the “Property” or “Site”) and related amendment to the Zoning Map from the NC-2, MU-4, and RA-1 zones to the MU-5A zone. The Commission considered the Application pursuant to Subtitles X and Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016¹, the “Zoning Regulations,” or “ZR16,” and to which all citations to regulations herein are made unless otherwise specified). For the reasons stated below, the Commission hereby APPROVES the Application.

FINDINGS OF FACT

I. Procedural Background

1. On November 28, 2022, the Applicant filed the Application for review and approval of a consolidated PUD and related zoning map amendment and requested that the Commission set down the Application for a public hearing. (Exhibit [“Ex.”] 2.)
2. At a public meeting of the Commission on February 9, 2023, the Commission voted to set down the Application for a public hearing. (Transcript of the Commission’s Public Meeting [“Tr.”] at 42-43 (February 9, 2023).)

Notice

3. On April 21, 2022, the Applicant sent a copy of its notice of intent to file a zoning application for a consolidated PUD and related map amendment to Advisory Neighborhood Commission

¹ On August 25, 2023, amendments to the Zoning Regulations became final and effective that reorganized the regulations. (See Z.C. Case Nos. 18-16, 19-27, 19-27A, 19-27B.) The amendments were not substantive in nature, but they did change several zone names, including changing the NC-2 zone to the NMU-4/TK zone. The references herein are to the amended Zoning Regulations; however, there are several places where the NC-2 zone is referenced instead of the now NMU-4/TK zone.

(“ANC”) 4B and to owners of property within 200 feet of the perimeter of the property that is the subject of the Application, pursuant to the Zoning Regulations. (Ex. 3C.) On April 5, 2023, the Office of Zoning (“OZ”) sent notice of the public hearing to the affected ANC 4B; the affected ANC Single Member District 4B04; the Office of the ANC; the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Department of Buildings (“DOB”); the Lead Attorney for the Commission; the District Department of Energy and Environment (“DOEE”); DC Councilmember Lewis-George and the At-Large DC Councilmembers; and property owners owning property within 200 feet of the Property located in the District.² (Ex. 18-19.)

4. OZ also published notice of the June 15, 2023, public hearing in the *District of Columbia Register* on April 14, 2023 (70 DCR 4373), as well as through the calendar on OZ’s website. The Applicant posted notice on the Property and maintained such notice, pursuant to the Zoning Regulations. (Ex. 17, 20, 126.)

Parties

5. The parties to the case were the Applicant, ANC 4B, the ANC in which the Property is located, and the Opponent Party, a Party in opposition that included one organization and four individuals and was represented by a single counsel.³ ANC 4B submitted multiple letters in support of the Application and presented testimony in support of the application at the June 15, 2023 public hearing. (Ex. 10, 11, 19, 21, 22, 24, 25, 37, 231A, 231B.)

The Property and Surrounding Area

6. The Property is located adjacent to the Takoma Metrorail Station and is bounded by the Metrorail tracks to the west, Carroll Street, N.W. to the south, Cedar Street, N.W. to the east, Eastern Avenue, N.W. to the northeast, and private property to the north. The Property is owned by WMATA and is located in the Takoma neighborhood of Ward 4. The Property contains approximately 6.78 acres of land area and is within the boundaries of the Takoma Historic District. (Ex. 3.)
7. The Property slopes from its high point at the intersection of Carroll and Cedar Streets, N.W. down approximately 20.5 feet to its low point adjacent to Eastern Avenue, N.W. The Property is currently improved with a surface parking lot that includes 154 WMATA short-term parking spaces, Kiss and Ride spaces, additional significant hardscape elements (over 50% of the Property is currently impervious), a bus loop and adjacent bus stops for nine buses, bicycle racks and bicycle lockers, and Capital Bikeshare stations. The Applicant noted that the open spaces that currently exist on the Property are disjointed and significantly underutilized. (Ex. 3.)
8. The Property is served by the Red Line in the Metrorail system, as well as by several Metrobus lines, including the 52, 54, 59, 62, 63, F1, F2, and K2 lines. Additionally, the Property is served by eight Montgomery County Maryland Ride-On buses. The Property

² See Conclusion of Law 10 below for a discussion of the notice to property owners owning property located within 200 feet of the Property located in Maryland.

³ The Opponent Party consisted of Historic Takoma, Inc., Sabrina Eaton, Ellen Kurlansky, Sharon Broderick, and Peter Feiden.

currently consists of a mix of zones—the MU-4 zone covers the northern and western portions of the Property while the southern portion is in the NC-2 zone (now NMU-4/TK) and the eastern portion is in the RA-1 zone. (Ex. 3.)

9. The immediate neighborhood around the Property is comprised of a mix of uses. Along Carroll Street, N.W. are smaller retail buildings and larger multi-family buildings, including some mixed-use buildings. Ground level retail uses are provided along Carroll Street, N.W. to the north into Maryland and further to the south along Carroll Street, N.W., and nearby on 4th Street, N.W. There are also additional multi-family residential buildings and single-family homes surrounding the Property and on the opposite side of the Metrorail and CSX tracks. The private property immediately northwest of the Property is improved with apartment buildings, while there are single-family homes across Eastern Avenue from the Property in Maryland. (Ex. 3.)

II. The Project

10. The Application seeks to redevelop the Property with a mixed-use project consisting of a new multi-use building providing approximately 430-440 residential units (at least 15% of the residential gross floor area will be reserved as Inclusionary Zoning (“IZ”) affordable units – 12% at 60% MFI and 3% at 30% MFI⁴); 15,000 – 18,000 square feet of ground level retail; a new Metro zone adjacent to the Metrorail station to provide improved Metrobus and Metrorail operations; and approximately 1.8 acres of permanent open space that includes passive recreation park areas and a retail/cafe plaza (the “Project”). The Project will have a FAR of 1.69 and a measured building height of 76 feet. (Ex. 3.)
11. The Applicant stated that the Project will benefit the District of Columbia by facilitating the long-planned redevelopment of an underutilized, large surface parking lot at a Metrorail Station with a mixed-use development that includes a significant amount of new and affordable housing and community/neighborhood serving retail uses. The Project will also benefit the surrounding neighborhood through the provision of a large community park and retail plaza, a shared use pedestrian/bicycle path, and enhanced WMATA facilities. The Project’s public benefits include housing and affordable housing; superior urban design/architecture; superior landscaping and creation of open spaces, environmental and sustainability benefits; mass transit improvements; and uses of special value. The Applicant stated that the Project creates a strong, appropriately scaled and fully articulated architectural treatment of all sides of the building with appropriate buffers and setbacks to the surrounding residential uses. In sum, the Project exhibits the appropriateness, character, scale, height, uses, and design for approval as a consolidated PUD. (Ex. 3.)

⁴ The Applicant also noted that it had applied for funding from the DC Department of Housing and Community Development (DHCD)’s Tax Abatements for Affordable Housing in High-Needs Areas (HANTA) program. At the Public Hearing and in pre-hearing and post-hearing submissions, the Applicant noted that it had been in regular contact with DHCD and anticipates approval of the HANTA application that will allow the Project to increase the number of affordable units (IZ and non-IZ units) to 33% of the total number of units (approx. 144 units). The 74 HANTA units would consist of 6 studios, 49 one-bedroom units, and 19 two-bedroom units. (Ex. 38, 222.)

12. The Applicant also noted the urban design goals of the Project which seek to: strengthen the network of open and accessible gathering spaces in the Takoma neighborhood by creating a high-quality transit-oriented design with an emphasis on bicycle and pedestrian access; connect the retail corridors of Takoma DC and Takoma Park, MD along Carroll Street, N.W.; and create clearly defined development zones on the Property (transit zone, building zone, and open space/buffer zone). The Applicant posited that the Project's program furthers the following goals:
- *Balance the Creation of New Housing/Affordable Housing with Neighborhood Context:* The Project seeks to contribute much-needed new housing and affordable housing at a scale and density that is appropriate for the Property (WMATA owned land adjacent to the entrance to the Takoma Metro Station) and is also compatible with the adjacent residential uses and the Takoma Historic District. The Applicant argued that the Project's housing and affordability program are consistent with the Mayor's housing goals, and various elements of the Comprehensive Plan. These planning documents specifically call for greater housing density on the Property, commercial revitalization of the surrounding area, and more generally highlight the acute need for more affordable housing and equitable inclusion in housing;
 - *Creation of Permanent Public Open Space and Neighborhood Serving Retail:* The creation of approximately 1.8 acres of open space on the Property, that includes both passive recreational park space and a retail/café plaza, will help create an important community gathering space in the Takoma neighborhood that is consistent with the goals of the Rock Creek East Area Element and the 2002 Takoma Central District Plan (the "Takoma SAP" or "Takoma Central District Small Area Plan"). The introduction of 15,000 – 18,000 square feet of retail/commercial uses in the Project, along with the retail/café plaza, will add a sense of vibrancy and activity to the area as people travel to and from the adjacent Takoma Metro station; and
 - *Balance Parking/Transportation and WMATA Infrastructure Demand Impacts:* In addition to ensuring that the amount of parking (vehicular and bicycle parking) provided in the Project is appropriate and will meet the needs of the residential units and the retail tenants, the Project provides WMATA with the necessary and updated infrastructure and facilities to conduct Metrobus and Metrorail operations on the Property. (Ex. 3.)
13. The Applicant noted that the proposed development of the Property has been guided by utilizing the Property into three distinct zones: a transit zone for Metro uses and operations closer to the Metrorail station and entrance, a building zone that engages with the surrounding uses, and an open space/buffer zone that includes dedicated active and passive recreation spaces for the general public and residents of the Project as follows:
- Transit Zone - The transit zone is located against the WMATA/CSX train tracks and the existing entrance to the Takoma Metrorail Station. This zone includes the new WMATA bus loop that allows buses to enter and exit the Property from Eastern Avenue, N.W. and from Carroll Street, N.W., 10 bus stops (nine of which have a bus shelter and one of which will have a bus stop pole), two bus layover spaces, and a

separate lane dedicated to 16 Kiss & Ride spaces (including two accessible spaces). A specifically designed breakroom and restroom for WMATA Staff will be located within the Level 1 garage area. In addition, the transit zone will include a WMATA Bike & Ride facility with a final count to be determined by WMATA, as well as outdoor bicycle u-racks. The Applicant stated that the clustering of these uses on this portion of the Property enhances pedestrian safety by limiting potential conflicts between buses and pedestrians and also reduces the visual and noise impact of the bus infrastructure on the surrounding neighborhood. Enhanced pedestrian safety measures including well marked and thoughtfully located crosswalks, accessibility, and curb bump-outs to reduce the crossing distance. In addition, a new traffic signal will be installed at the location of the new bus and Kiss and Ride entrance/exit along Carroll Street, N.W.; (Ex. 3, 38.)

- Building Zone - The building zone consists of the area generally in the middle of the Property. It will include the structure that houses the approximately 430-440 residential units (with a mix of studios, one-bedroom, two-bedroom, and three-bedroom units), 15,000–18,000 square feet of retail/ service uses and associated structured parking. The overall massing of the building is broken down into different façade typologies in order to respond and relate to the varied neighboring uses; and

The architecture of the building includes four distinct typologies:

- Mixed-Use Carroll Street Façade and Retail/Café Plaza – Urban Character: The overall design creates a vibrancy that ties together the Takoma urban fabric. Furthermore, one of the major design goals is the preservation of existing trees throughout the site and specifically along Carroll and Cedar Streets, N.W. This goal not only respects the existing conditions, but also shapes the contours and design of the public realm to create an experience that nestles into the topography of the site. At the intersection of Carroll and Cedar Streets, N.W. the plaza transitions to a series of terraces that creates a special experience for the Takoma neighborhood. The new ground level retail/service uses lining the plaza provide approximately 17,650 square feet of high-quality space creating a dynamic public plaza experience. In addition, the plaza includes areas for retailers to have outdoor dining and to take advantage of indoor/outdoor uses. The retail scale is consistent with nearby Takoma retail. The residential façade above the retail uses scale, layering, and materiality to relate to adjacent mixed-use residential buildings across Cedar and Carroll Streets, N.W.; (Ex. 3, 38.)
- Eastern Avenue Residential Façade – Residential Scale: The Cedar Street, N.W. and Eastern Avenue, N.W. facades provide a transition from the active Carroll Street, N.W. façade to the more residential character of Eastern Avenue, N.W. As the building transitions from Carroll Street, N.W., a hyphen single-loaded corridor creates a hierarchy that establishes the main residential building entrance and access to the internal courtyard that serves as multipurpose access to the building. The main residential lobby is tastefully defined by an intimate arrival with enhanced materiality surrounded by double-height glazing that embraces both the courtyard and the public park. This space will create transparency and connect the building with its surroundings. As the building transitions closer to Eastern Avenue, N.W., the combination of alternating large and small punch windows and projecting balconies underscore a residential façade vocabulary. In addition, the building has

a meaningful setback on the upper two levels to reduce the massing closer to the single-family homes on the opposite side of Eastern Avenue, N.W.; (Ex. 3, 38.)

- Façade Along the Metrobus Facilities and WMATA/CSX Train Tracks – Dynamic Visual Presence: The architecture adjacent to the Metrorail station is intended to capture the sense of motion from the Metro trains. Similar to the Eastern Avenue, N.W. façade, the composition of scale and materiality creates a residential vocabulary, while layering of alternating horizontal and vertical articulations play off of the movement of the neighboring elevated Metrorail trains. There is also a marquee moment for signage to further the sense of arrival to the Takoma neighborhood. Due to the grade of the site the parking at this façade is partially exposed but is creatively screened with greenery creating a pleasant experience for the Metrobus and Kiss & Ride users that will travel along this area; and (Ex. 3, 38.)
- Internal Courtyard: The primary access to the parking spaces provided in the Project will occur via a woonerf from Cedar Street, N.W. Vehicles will pass underneath the hyphen portion of the building that connects the Cedar Street/Eastern Avenue, N.W. façade and the Carroll Street, N.W. façade, and then into the internal courtyard where the primary entrance/exit to the parking spaces. A secondary residential entrance/exit to the parking spaces is accessible from the shared portion of the access road from Eastern Avenue, N.W. Both delivery and moving vehicles will also utilize the woonerf to access the loading berths/spaces. This design ensures that all of the loading occurs off of the surrounding neighborhood streets. This space is thoughtfully programmed for pedestrian and bicycle access and the prioritization of safety with extra pedestrian crossing points, differentiation in paving between vehicular areas and pedestrian areas, bollards and appropriate signage. The internal courtyard also includes plantings, ornamental paving, functional and festive lighting, and outdoor furnishings. The residential bicycle room faces the internal courtyard and provides direct and easy access for cyclists. Retail patrons who park in the garage will also travel through this amenity courtyard and pedestrians and bicyclists can also cut through to the Metro services through this courtyard (in addition to from the Plaza and major streets). (Ex. 3, 38.)
- Open Space and Buffer Zone - The open space/buffer zone is generally provided along the Eastern Avenue frontage of the Property. This area includes open space that is intended for passive recreation use and also creates a significant buffer area between the building and the residential properties on the Maryland side of Eastern Avenue. This area includes meandering pedestrian paths as well as a 10-12-foot-wide shared pedestrian/bicycle path that provides a more direct route to the Metro Station entrance. A central gathering space that will include a “signature” piece of public/climbable art is proposed in this area as well. The Applicant intends to engage with female artists and/or artists of color in the design and integration of this art into this open space. (Ex. 3.)

14. The Project includes up to approximately 495,260 square feet of gross floor area (“GFA”), 389,850 square feet of residential GFA, 87,760 square feet of parking spaces, and 17,650 square feet of retail/service uses, for an overall floor area ratio (“FAR”) of approximately 1.69. The Project will have a maximum measured building height of 76 feet. The Project

also includes 228 below grade vehicle parking spaces (162 residential parking spaces and 66 retail parking spaces), satisfies the loading requirements of the Zoning Regulations, and exceeds the bicycle parking requirements of the Zoning Regulations. (Ex. 3, 38A5, 240A4.)

15. The building includes multiple, scaled facades to reflect the differing sides of the building and the scale each engages. The building's ground floor includes significant pedestrian activation, and the overall massing is broken up to create an appropriately sized building immediately adjacent to transit but respectful of the surrounding community. The Project will include 188 units with balconies, which is 43% of the total number of units. The breakdown of the balcony types is: 10 units with French balconies; 63 units with fully recessed balconies, and 115 units with projecting balconies. (Ex. 3, 233.)
16. The 434 units proposed in the Project includes a mix of studios, one-bedroom, two-bedroom and three-bedroom units. The market rate units include: 49 Studios (approximately 8% of the total number of units); 121 one-bedroom units (approximately 26% of the total number of units); 83 Junior one-bedroom units (approximately 17% of the total number of units); 34 one-bedroom with den units (approximately eight percent of the total number of units); and 77 two-bedroom units (approximately 26% of the total number of units). The proposed Inclusionary Zoning ("IZ") Units include: 11 Studios (all at 60% MFI); 43 one-bedroom units (41 at 60% MFI and two at 30% MFI); 10 two-bedroom units (eight at 60% MFI and two at 30% MFI); and six three-bedroom units (all at 30% MFI). (Ex. 38A5, 240A4.)
17. The site plan layout takes into account the existing tree canopy, capitalizing on creating a building that is "nestled" into the site, integrating the existing trees into the overall exterior/open space design and programming. In a post-hearing submission, the Applicant stated that there are currently one 133 trees on the site, with 64 trees deemed to be in good condition, 57 trees deemed to be in fair condition with a slow decline, and 12 trees deemed to be either in poor condition or dead. Although development of the PUD Project requires the removal of 118 trees, (including 69 unregulated trees, three dead trees, and two trees in poor condition), the PUD Project proposes the retention of 15 trees (consisting of four Heritage Trees, 10 Special Trees, and one unregulated tree) and the planting of 70 new trees (with the potential for six additional trees near the WMATA facilities discussed above). (Ex. 3, 233, 233C.)
18. The Project will include the following programmed and thoughtfully designed spaces: 0.55 acres for the retail plaza open space (which includes public seating areas), 1.15 acres for the community park open space, and 0.15 acres of additional community park open space, located north of the vehicular access on Eastern Avenue. The Applicant noted that it is committed to working with ANC4B and the DC Department of Recreation to refine the specific community park elements and open space furnishings to enhance the safe enjoyment of the space for all. (Ex. 233.)
19. The exiting site area is approximately 50% impervious and has minimal stormwater management controls to treat or to slow down stormwater exiting the property. After

development of the Project, approximately 69% of the site area will be impervious. The development of the Project will include the installation of numerous bioretention facilities and extensive and intensive green roof areas that allows the PUD Project to meet all District Department of Energy and Environment (DOEE) stormwater standards and regulations. (Ex. 233.)

Revisions to Project in Response to Setdown Comments

20. In its January 30, 2023, report (the “OP Setdown Report”) OP recommended that the application be set down for a public hearing, as the Project would not be inconsistent with the Comprehensive Plan. The OP Setdown Report stated that OP would work with the Applicant to adequately address the following issues prior to a public hearing:
 - Provide an update on the HANTA-funding application and if the IZ set-aside will increase to 33%;
 - Provide more details on the pedestrian circulation in the courtyard; and
 - Provide more details on if there is an entrance/exit for the portion of the building along Carroll Street, N.W. (Ex. 12.)
21. At the February 9, 2023, public meeting, during which the Commission voted to set the Application down for a hearing, the Commission concurred with the OP Setdown Report and requested the Applicant address the following issues:
 - Address the need for the amount of parking provided in the Project;
 - Provide further study of the courtyard to reduce the potential for auto/pedestrian conflicts;
 - Provide relevant information using the Racial Equity Analysis Tool; and
 - Address the affordable housing requirements noted in the Takoma Central District Plan. (Tr. at 37-42.)
22. In its March 17, 2023, and May 25, 2023, pre-hearing filings, the Applicant responded to the requests from OP and the Commission for additional information. (Ex. 14-14D, 38-38D.)

Zoning Relief Requested

23. The Applicant requested a PUD-related map amendment to the MU-5A zone. As a result of the PUD-related map amendment, the Project could achieve a greater height (76 ft. proposed) than permitted under the existing matter-of-right zoning (40 ft. under RA-1, and 50 feet under NC-2 and MU-4). The MU-5A zone permits a maximum FAR of 5.04 and a maximum building height of 90 feet if approved as a PUD. The Project is consistent with the Zoning Regulations with respect to all development standards applicable to the MU-5A zone; therefore, the Application did not request zoning relief from any development standards of the Zoning Regulations. (Ex. 3, 59.)

Applicant’s Justification for Satisfaction of PUD Evaluation Standards

24. The purpose of the PUD process is to provide for higher quality development through flexibility in building controls, provided that the project that is the subject of the PUD (i) results in a project superior to what would result from the matter-of-right standards; (ii) offers a commendable number or quality of meaningful public benefits; and

(iii) protects and advances the public health, safety, welfare, and convenience, does not circumvent the intent and purposes of the Zoning Regulations, is not inconsistent with the Comprehensive Plan, and does not result in action inconsistent therewith. (11-X DCMR §§ 300.1, 300.2, 300.5, 307.1.) The Applicant asserted that the Project satisfies each of the above PUD requirements.

(i) The Project Is Superior to the Development of the Property under the Matter-of-Right Standards.

The Project's contribution of housing, including affordable housing, permanent dedicated community open space, a commitment to providing public art, and the community engagement process that accompany this PUD process all exceed what would be provided under matter-of-right standards. Specific aspects of the Project superior to a matter-of-right development include:

- Housing and Affordable Housing – The Project's contribution of approximately 430-444 housing units along with the amount of affordable housing and levels of affordability (15% of the residential gross floor area, with 3% of that amount reserved for families with incomes of less than 30% MFI) included in the Project exceeds the amount that would be required in a matter-of-right development pursuant to the IZ requirements. Moreover, there are currently zero housing units or affordable units provided on the Property, so the delivery of this Project adds needed housing to the City's housing stock and affordable housing;
- Community Open Space and Public Benefits – The Project's contribution of 1.8 acres of open space and retail/cafe plaza to be made available to the public, the commitment to providing public art (with a goal of including art from artisans including local women or women of color), and the wide multi-use paths that extend across the Property exceed what would be provided in a matter-of-right development; and
- Community Engagement – The Applicant conducted a comprehensive public outreach and engagement process with multiple opportunities for neighbor, community group, and public agency participation. Those opportunities, and future ones, would not exist for a matter-of-right development of the Property. (Ex. 3.)

(ii) The Public Benefits Are Commendable in Number and Quality.

The Project delivers Public Benefits and other project amenities. These Public Benefits fulfill goals set forth in the Comprehensive Plan and the Takoma Central District Plan, the priorities of District agencies and stakeholders, and the preferences, needs, and concerns of the ANC and community residents identified during the Applicant's community engagement process. Accordingly, the Public Benefits package is a meaningful series of commitments that satisfy the intent and purposes of the PUD process. (Ex. 3.)

(iii) The Project Protects and Advances Public Health, Safety, Welfare, and Convenience and Does Not Circumvent the Purposes of the Zoning Regulations.

The Project advances and protects the intent and purposes of the Zoning Regulations, which are set forth in Subtitle A, Section 101 of the Zoning Regulations:

- Through the development of an underutilized parcel owned by WMATA and adjacent to the Takoma Metro station, the Project improves major public interests and priorities such as housing and affordable housing, permanent open space, ground level activating design and retail uses, and high-quality, environmentally sustainable design. Moreover, for the reasons discussed below, the Project does not adversely affect public safety and public infrastructure or otherwise impose adverse impacts on the surrounding community. Moreover, the proposed enhancements to Metrobus and Metrorail operations that will be created as a result of the Project are significant improvements to public infrastructure. In addition, the Project satisfies numerous goals and objectives for the District as set forth in the Comprehensive Plan and the Takoma Central District Plan;
- The development of the underutilized Property with housing and affordable housing and enhanced Metrobus and Metrorail facilities advances the public health, safety, welfare, and convenience goals of the District by converting underutilized lots to more productive use. Accordingly, the Project advances these purposes of the Zoning Regulations; and
- The Project does not seek to circumvent the Zoning Regulations. The Zoning Map Amendment seeks to amend the Zoning Map to rezone the Property from the MU-4/NC-2/RA-1 zones to the MU-5A zone, which – as further described below – is consistent with the Property’s FLUM designation and the Comprehensive Plan. The MU-5A zone is intended to permit medium density, compact mixed-use development with an emphasis on residential use and is to be located at rapid transit stops. The Project conforms to all of the requirements for the MU-5A zone, is compatible with the existing neighborhood, and will support active use of transit and newly established public spaces. (Ex. 3.)

25. The Project includes eight categories of substantive Public Benefits as defined according to the public benefits categories set forth in 11-X DCMR § 305 of the Zoning Regulations:

- Superior Urban Design and Architecture (11-X DCMR § 305.5(a).). The Project’s urban design and architecture are superior and can be considered to be project amenities for a project proceeding under a PUD;
- Site Planning, and Efficient and Economical Land Utilization (*id.* § 305.5(c).). Subtitle X § 305.5(c) states that site planning and efficient and economical land use are considered a public benefit of a PUD. Here, the Project takes a significantly underutilized site and creates a thoughtfully planned, community-oriented development. The Property’s current use as a large surface parking lot, with conflicting bus, car, pedestrian, and bicycle infrastructure is inefficient and outdated. By contrast, the Project will create a safe, efficient development with integrated multi-modal transit facilities, large open spaces to serve the community, and focuses new housing and retail uses immediately adjacent to Metro; (Ex. 3.)

- Housing and Affordable Housing (*id.* § 305.5(f)(3), (g).). Pursuant to Subtitle X, Subsection 305.5(f)(3), the production of units with three or more bedrooms is considered a public benefit of a PUD Project. The Project includes six three-bedroom units, all reserved as affordable units for tenants at 30% MFI or lower. All such three-bedroom units constitute public benefits. Pursuant to Subtitle X § 305.5(g), the production of housing that exceeds the amount that would have been required under the IZ provisions is a public benefit of a PUD. The Project includes 15% of the residential gross floor area of the building as affordable units. The IZ Regulations only require 10% of the residential gross floor area be reserved as affordable units. In addition, three percent of the affordable housing square footage will be reserved for tenants with incomes of 30% or less of MFI, with the remaining reserved for tenants with incomes of 60% or less of MFI. The IZ Regulations only require that the IZ units be reserved for tenants at 60% MFI; (Ex. 3.)
- Superior Landscaping and Open Spaces (*id.* § 305.5(b).) Subtitle X § 305.5(b) states that superior landscaping or creation or preservation of open spaces are considered a public benefit of a PUD. The Project includes an approximately 1.8-acre open space. The Project's public open spaces include design principles interlacing communal, intergenerational, inclusive, and active recreation elements. A key feature of the community park is envisioned to be a multigenerational climbable element. The community park design also includes multiple seating options that allow for relaxation, observation, and socializing. The open space is designed with the existing canopy trees on site in mind and careful attention to the planning and integration of all site amenities and required infrastructure such as bio-retention areas. With a holistic approach to sustainability via retention of mature canopy, minimizing heat island effect, integrated bio-retention areas a part of the park's natural amenities, legible and accessible pedestrian connectivity, public art and quality materials, the Project's open spaces will be converted from being just a tree/lawned area, to becoming an engaging neighbor-oriented park suitable for small day-to-day activities as well as neighborhood scale community events; (Ex. 3, 233.)
- Environmental and sustainable benefits (*id.* § 305.5(k).). The Project will provide a number of environmental benefits, including the installation of numerous bioretention facilities and extensive and intensive green roof areas, on a site that has minimal stormwater management controls to treat or to slow down stormwater exiting the property and the Project will be designed to achieve LEED Gold certification pursuant to the LEED B+C: Multifamily Midrise v4 standards; (Ex. 3, 233.)
- Streetscape Plans (*id.* § 305.5(l).) Subtitle X § 305.5(l) states that streetscape plans are considered to be public benefits and project amenities of a PUD. The Project will include improvements to the streetscape along Carroll Street, Cedar Street, and Eastern Avenue, in accordance with DDOT standards; (Ex. 3.)
- Uses of Special Value (*id.* § 305.5(q).) Subtitle X § 305.5(q) lists uses of special value to the neighborhood or the District of Columbia as a whole as public benefits and project amenities of a PUD. The Applicant has agreed to work with the Takoma community and ANC 4B to identify and create art projects as part of the PUD with a goal to include art from local women or women of color and participatory or playable art in the open spaces; and (Ex. 3.)

- Other Public Benefits Which Substantially Advance the Comprehensive Plan (*id.* § 305.5(r)). The proposed Project is consistent with many of the District’s policy goals and objectives. The Zoning Regulations provide that elements of a project that advance the Comprehensive Plan and related policies are public benefits. (Ex. 3.)
26. Based on the extensive evidence provided in the record, the Commission agrees that the Project satisfies the PUD Evaluation standards. The Commission’s analysis of the PUD benefits is at Conclusions of Law 18, and the PUD balancing test is at Conclusions of Law 19.

The Project Has No Unacceptable Impacts on the Surrounding Area or on the Operation of District Services or Facilities

27. The Applicant prepared and submitted a Comprehensive Transportation Review (“CTR”). The CTR concluded that the Project will not have a detrimental impact on the surrounding transportation network assuming the proposed site design elements and Transportation Demand Management measures are implemented. The CTR noted the following design elements of the Project that minimize transportation impacts:
- The inclusion of secure long-term and short-term bicycle parking spaces;
 - The inclusion of a shared use path on the property which provides a connection to nearby bicycle facilities;
 - The inclusion of extensive pedestrian improvements around the property and at the Carroll Street intersection with the WMATA bus-loop, including the signalization, curb extensions and installation of the missing crosswalk on the east leg of Carroll Street;
 - A Loading Management Plan (LMP) that facilitates safe and orderly loading operations; and
 - A Transportation Demand Management (TDM) Plan that reduces the demand of single-occupancy, private vehicles during peak period travel times and shifts single-occupancy vehicular demand to off-peak periods. (Ex.27, 27A.)
28. In addition, the CTR included a TDM, which included the following elements:
- Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit or commercial lease and charge a minimum rate based on the average market rate within a quarter mile. Only hourly, daily, weekly or monthly rates will be charged. Free parking, validation, or discounted rates will not be offered;
 - 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;
 - The Transportation Coordinator will conduct an annual commuter survey of building employees and residents on-site, and report TDM activities and data collection efforts to goDCgo once per year for three years;
 - Transportation Coordinator will develop, distribute, and market various transportation alternatives and options to residents, employees and customers, including promoting

- transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications for three years;
- The Transportation Coordinator will subscribe to goDCgo's residential newsletter and receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan;
 - Provide residents and employees who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future;
 - Offer a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident or employee for the initial lease up period of the building operations;
 - Provide at least 27 short- and 149 long-term bicycle parking spaces;
 - Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids' bikes, with a minimum five percent of spaces (eight for this project) being designed for longer cargo/tandem bikes (10' x 3'), a minimum of 10% of spaces (15 for this project) will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum of 50% of spaces (75 for this project) will be placed horizontally on the floor. There will be no fee to the residents or employees for usage of the bicycle storage room and strollers will be permitted to be stored in the bicycle storage room;
 - Install a minimum of five electric vehicle (EV) charging stations;
 - Following the issuance of a Certificate of Occupancy for the Project, 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;
 - Following the issuance of a Certificate of Occupancy for the Project, the Transportation Coordinator will submit a letter 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 in the Order, unless no longer applicable as confirmed by DDOT. If such letter is not submitted on a timely basis, the building shall have sixty (60) days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter;
 - Install a Transportation Information Center Display (electronic screen) within the building amenities containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
 - Provide a bicycle repair station in the long-term bicycle parking storage room;
 - Hold a transportation event for residents, customers, employees, and members of the community once per year for a total of three years. Examples include resident social,

walking tour of local transportation options, goDCgo lobby event, transportation fair, WABA Everyday Bicycling seminar, bicycle safety/information class, bicycle repair event, etc.);

- Collect parking demand and trip generation data, annually, for three years after building opening and report this information to DDOT's Planning and Sustainability Division (PSD);
- The Applicant will provide \$100,000 in funding for Capital Bikeshare improvements, with the type and location of the improvements to be determined by DDOT;
- The Applicant will offer an annual Capital Bikeshare membership to each resident over the age of 18 years for each of the first three (3) years after the building opens;
- Provide welcome packets to all new residents that should, 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;
- Post all transportation and TDM commitments on building website, publicize availability, and allow the public to see what has been promised;
- Provide one collapsible shopping cart (utility cart) for every 50 residential units, for a total of nine, to encourage residents to walk to the grocery store and run errands;
- Post "getting here" information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for [customers, attendees, patrons] discouraging parking on-street in Residential Permit Parking (RPP) zones;
- Transportation Coordinator will demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law to participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future such as the Parking Cash-Out Law;
- Provide at least one locker for use by employees; and
- Coordinate with WMATA and DDOT on a way finding plan along walking routes to the property from the Takoma Metro station. (Ex. 38B.)

29. The Applicant also proposed the following pedestrian and safety improvements subject to DDOT approval:

- Realign and reconfigure the Carroll Street and WMATA bus loop intersection to include the following pedestrian safety improvements:
 - Concrete curb extensions on the northwest corner to replace the existing striping and flex-posts;
 - Expanded concrete median divider on Carroll Street to replace the existing striping and flex-posts;
 - Concrete curb extensions on the south curb of the intersection to replace the existing striping and flex-posts; and

- New crosswalk on the eastern leg of the intersection, which currently lacks a crosswalk;
- Provide a new mid-block raised pedestrian crossing across the realigned kiss-and-ride lane connecting to a striped crossing of the new bus loop, connecting the Project with the Takoma Metro station entrance;
- Install a traffic signal at the Carroll Street intersection with the realigned bus loop, including pedestrian phasing/signals, subject to DDOT Traffic Engineering and Signal Division (TESD) approval. Signal warrant analysis and signal design plans will be provided to TESSD for review prior to issuance of a building permit. If approved by TESSD, the traffic signal will be installed prior to issuance of the first Certificate of Occupancy for the Project. If TESSD determines the signal is not warranted or is not ready for installation to occur, the Applicant will contribute \$250,000 to the DDOT Transportation Mitigation Fund;
 - The traffic signal will be critical to provide efficient operations for buses leaving the loop, as well as facilitating safe pedestrian movements immediately adjacent to the Metro Station entrance; and
- The Applicant will fund and construct pedestrian safety enhancements at the intersection of Eastern Avenue and Cedar Street, N.W., subject to DDOT approval. The construction will include a new concrete curb extension on the west side, removal of the concrete island, installation of any missing curb ramps, and signage/stripping changes. (Ex. 38B.)

30. The Applicant carefully studied the Project's potential impacts and provided evidence into the record that the Project has no unacceptable adverse impacts on the surrounding area or on the operation of District services or facilities that cannot be mitigated or that are not acceptable in light of the Public Benefits.

- Zoning Impacts. The Project has no unacceptable Zoning impacts on the surrounding area and any impacts are instead either favorable, capable of being mitigated or acceptable given the quality of public benefits of the Project. The Applicant requests a Zoning Map Amendment for the Property to the MU-5A zone. This proposed zone is consistent with the Comprehensive Plan. The FLUM designates the Property for Mixed-Use: Medium Density Residential/Low Density Commercial, with an added Local Public Facilities stripe in the southern portion. The Zoning Regulations (Subtitle G, Section 101.10.) notes the following with regard to the MU-5 zones:

The MU-5 zones are intended to:

- (a) Permit medium density, compact mixed-use development with an emphasis on residential use;
- (b) Provide facilities for shopping and business needs, housing and mixed-uses for large segments of the District of Columbia outside of the central core; and
- (c) Be located on arterial streets, in uptown and regional centers, and at rapid transit stops.

The proposed MU-5A zone is consistent with the Comprehensive Plan and the Zoning Regulations. Further, the proposed use is consistent with the uses otherwise allowed in surrounding zones, including multi-family housing and retail. While the 76-foot height proposed by the Project exceeds heights in the existing community, the creation of significant green buffer space and set-backs coupled with the Property's immediate adjacency to the Metro Station, makes the proposed height appropriate. Further, the Project's proposed density is less than that of many surrounding developments given the priority of open space at the Project. Finally, the Property is buffered on three of four sides by streets or Metrorail lines, and the design maintains a significant setback from the adjacent multi-family housing to ensure appropriate transitions into the community. The Applicant provided information at the Public Hearing which noted that based on the land area of the current RA-1, MU-4, and NC-2 zones, a total of 576,750 square feet of GFA could occur as a matter-of-right on the Property. The Project proposes the development of only 495,260 square feet of GFA; (Ex. 3, 222.)

- Land Use Impacts. The Project has no unacceptable land use impacts on the surrounding area and any impacts are either favorable, capable of being mitigated or acceptable given the quality of public benefits of the Project. The Project is fully consistent with the goals and policies of the Comprehensive Plan. Specifically, the Project will create a transit-adjacent, mixed-use development prioritizing housing, including affordable housing, retail, open green space, and enhanced WMATA facilities. The proposed uses, height, and density of development is entirely consistent with the Comprehensive Plan – including the FLUM, GPM, Land Use Element, other city-wide elements, the Rock Creek East Area Element and the 2002 Takoma Central District Small Area Plan. The Project will create community-serving use in a development thoughtfully designed for its context within the neighborhood; (Ex. 3.)
- Housing Market Impacts. The Project's addition of new housing and affordable housing is a favorable impact. The Project creates new, high-quality, transit-accessible housing units on an underutilized parcel. Such units are in high demand across the District. The addition of new housing also has favorable impacts by adding residents to support the nearby commercial uses. The Project's inclusion of affordable units has favorable impacts because it helps address the District's ongoing affordable housing shortage in an inclusive, mixed-income community. The Project's addition of new housing units helps buffer increasing housing costs, insofar as increasing the supply of housing is widely understood to dampen rent increases; (Ex. 3.)
- Construction-Period Impacts. During the construction period for the Project, impacts on the surrounding area are capable of being mitigated. The Applicant has experience successfully completing construction projects in infill locations while ensuring minimal disturbance to any neighboring properties; (Ex. 3.)
- Economic Impacts. The Project likely has favorable economic impacts on the neighborhood and the District more generally. The Project will have a stabilizing and positive effect on the economy of Ward 4 and the District as a whole. The introduction of new residential uses contributes patrons for the existing retail uses along the retail corridors of Takoma DC and Takoma Park, MD. The Project will have positive tax revenue effects for the District. To the extent there are any adverse effects from the Project, such effects are more than offset by the Project's Public Benefits; (Ex. 3.)

- Cultural and Public Safety Impacts. The Project has favorable impacts on the culture of the surrounding area and on public safety. The Project adds many new residents who will contribute to the immediate neighborhood and the District in diverse and meaningful ways. The design of the Project adds street activity, promotes “eyes on the street”, adds quality lighting, and makes other improvements all of which have positive effects on crime deterrence and help establish a true gathering place for the Takoma community; (Ex. 3.)
- Environmental Impacts. The Project does not have any unacceptable impacts and in fact has favorable environmental impacts on the Property. The Applicant supplied the required information noting that the general environmental infrastructure systems around the Property have capacity for the Project. Additionally, the Project will meet the Green Area Ratio and stormwater management retention and detention requirements, which currently does not occur on the Property; and (Ex. 3, 3J.)
- Facilities Impacts. The Project will not have an adverse impact on the facilities that it will rely on for service. The utility and infrastructure facilities the Project will rely on, including electricity, water, sewer, and natural gas, have the capacity for the Project’s anticipated impact. The Project is also not expected to have an adverse impact on the schools in the area. The local schools that serve the Property are Takoma Elementary School, Ida B. Wells Middle School, and Coolidge High School. Takoma Elementary School operates near its total capacity but not over, while both Ida B. Wells Middle and Coolidge High operate under their total capacity. In addition to these neighborhood schools, the District also has a robust community of public charter schools and private schools that serve the neighborhood. Therefore, given the unit mix at the Project, the population of school-age children are not expected to be significant enough to negatively impact the school populations. (Ex. 3, 3J.)

31. Based on the extensive evidence provided in the record, the Commission agrees that the Project does not create any unacceptable impacts on the surrounding area. The Commission’s analysis of the impacts is found at Conclusions of Law 17.

The Project Is Not Inconsistent with the Comprehensive Plan (10A DCMR, the “CP” or the “Comp. Plan”)

32. The Applicant provided a detailed analysis of the Project’s consistency with applicable objectives of the Comprehensive Plan and other adopted public policies, or active programs related to the subject site (including the Takoma Central District Plan and the Mayor’s Housing Order). Specifically, the Applicant noted the following:

- Future Land Use Map (“FLUM”): Adopted by the D.C. Council as part of the 2021 amendments to the Comprehensive Plan, the northern portion of the Property is designated on the FLUM as Mixed Use (Medium Density Residential / Low Density Commercial) and the southern portion of the Property is designated as Mixed Use (Medium Density Residential / Low Density Commercial / Local Public Facilities). The Project’s proposed height, density, and mix of uses is appropriate given the Property’s medium-density mixed-use designation on the FLUM. The Project has a proposed density of approximately 1.69 FAR, which is consistent with Framework

Element guidance which states “the general density and intensity of a development within a given Mixed-Use area is determined by the specific mix of uses shown”. (10A DCMR § 227.21.) The Project’s density is well within even typical [matter-of-right] guidance on density for the components of its Mixed-Use designation that state typical density ranges and consistent zone districts in the description of the FLUM category (i.e., the Medium Density Residential and Low-Density Commercial categories). Consistent with Framework Element guidance, the measured building height of 76 feet is appropriate as part of the proposed PUD since, “the goal of a PUD is to permit development flexibility greater than specified by matter-of-right zoning, such as increased building height or density, provided that the project offers a commendable number or quality of public benefits, and protects and advances the public health, safety, welfare, and convenience.”; (10A DCMR § 224.7.)

- Generalized Policy Map (“GPM”): The Property is predominantly located within a Neighborhood Enhancement Area on the Generalized Policy Map, with the southern portion of the Property within a Main Street Mixed Use Corridor. The Project is not inconsistent with the GPM Neighborhood Enhancement Area and Main Street Mixed Use Corridor⁵ designations. Consistent with Framework Element guidance on Neighborhood Enhancement Areas, the Project represents a compatible infill development that will expand the range of housing types in the Rock Creek East area by providing substantial new multi-family housing immediately adjacent to Metrorail, including affordable and deeply affordable housing. The housing and retail use within the Project is consistent with the Property’s FLUM designation, and take full advantage of an extremely underutilized site to advance District housing and economic development goals in a way that promotes inclusivity and is complementary to the surroundings. Finally, the location and orientation of the Project’s retail component at the southern end of the Property aligns with Framework Element guidance on Main Street Mixed Use corridors as being pedestrian-oriented with traditional storefronts and upper-story residential uses that support transit use and enhance the pedestrian environment;
- Framework Element: The Applicant noted numerous policies of the Framework Element that the Project furthers, by providing new housing, including significant affordable housing, where none currently exists, immediately adjacent to transit, coupled with new retail, new transit infrastructure, and public open space – which can become “common ground”. The Applicant noted the following specific Framework Element Policies that are furthered by the Project:
 - The rising cost of housing is one of the most pressing and critical issues facing the District and the region. To achieve our goal of an inclusive city, we must meet the challenge of providing housing for a variety of household types, including families, the elderly, and the homeless: housing for owners and renters; housing for existing

⁵ The Commission acknowledges that a small southern portion of the Property is designated Main Street Mixed Use Corridor on the Comprehensive Plan’s GPM. The OP Reports in the case record (Ex. 12, 59.) make no mention of this GPM designation; however, based on the Applicant’s submissions to the case record and the Comprehensive Plan’s description of the Main Street Mixed Use Corridor category, the Commission finds that the Project is not inconsistent with the Main Street Mixed Use Corridor designation. (See 10A DCMR § 225.14; See Commission’s discussion of GPM consistency below in Conclusions of Law 16.)

- and new residents; workforce housing; and housing affordable at all income levels. Tied in with housing cost issues are deeper concerns about displacement, the impacts of gentrification, and long-term competitiveness.; (10A DCMR § 206.1.)
- As an example, the stress of poverty, combined with substantial population growth, has created a housing affordability crisis that must be addressed. The need for more housing, and more affordable housing, has become an important policy goal that, if addressed and achieved, will help the city be more resilient; (10A DCMR § 213.5.)
 - The District seeks to create and support an equitable and inclusive city. Like resilience, equity is both an outcome and a process, Equity exists where all people share equal rights, access, choice, opportunities, and outcomes, regardless of characteristics such as race, class, or gender. Equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities. Equity is not the same as equality; (10A DCMR § 213.6.)
 - Redevelopment and infill opportunities along corridors and near transit stations will be an important component of reinvigorating and enhancing our neighborhoods. Development on such sites must be designed to respect the integrity of stable neighborhoods and the broader community context, and encourage housing and amenities for low-income households, who rely more on transit. Adequate infrastructure capacity should be ensured as growth occurs; (10A DCMR § 219.7.)
 - Increased mobility can no longer be achieved simply by building more roads. Priority must be on investment in other forms of transportation, particularly transit. Mobility can be enhanced further by improving the connections between different transportation modes, improving safety and security of users of all transportation modes, and increasing system efficiency; and (10A DCMR § 222.1.)
 - Residents are connected by places of “common ground,” such as Union Station and Eastern Market. Such public gathering places should be protected and should be created in all parts of the city as development and change occurs. (10A DCMR § 222.6.)
 - District Wide/City Wide Elements: The Project advances numerous individual objectives of the District Wide/City Wide Elements and the Rock Creek East Area Element, all as summarized in Exhibit 3 of the record.
 - Land Use Element – The Applicant identified nine specific policies of the Land Use Element (Policies LU-1.4.1, 1.4.2, 1.4.3, 1.4.4, 1.4.5, 1.4.7, 2.1.8, 2.2.4, and 2.4.5.) that are furthered by the Project. The Applicant stated that the Project takes an existing, large surface parking lot immediately adjacent to the Takoma Metro Station and repurposes it as a transit-oriented, neighborhood-centered, mixed-use, mixed-income development. The Project will provide significant housing, including affordable housing, in a thoughtfully designed building that provides new retail/service uses, an appropriate amount of vehicular parking for the building and the Metro Station, incorporates a new transit zone for buses, and creates a large public park and retail/cafe plaza. The Project satisfies the priorities of the Land Use Element noted above regarding an underutilized Metrorail station site;
 - Transportation Element – The Applicant identified seven specific policies of the Transportation Element (Policies T-1.1.4, 1.1.5, 1.2.3, 1.3.A, 2.3.1, 2.3.3, and 2.4.1.) that are furthered by the Project. The Applicant noted that the Project, provides a transit-oriented development immediately adjacent to a Metrorail

station, removing a large surface parking lot. The proposed shared use path in the Open Space/Buffer Zone portion of the Property, the siting of the Transit Zone, and the significant bicycle facilities included in the Project are all evidence of the thoughtful bicycle and pedestrian planning and infrastructure included in this application. This mixed-use building, with housing/affordable housing and retail uses, is the result of joint development with WMATA;

- Housing Element – The Applicant identified four specific policies of the Housing Element (Policies H-1.1.3, 1.1.4, 1.1.8, and 1.2.3.) that are furthered by the Project. The Applicant noted that the Project will create approximately 430-440 new units of housing, including approximately 70 new units of affordable housing on an existing surface parking lot. The Project creates no direct displacement and instead offers rental housing in a highly sought after neighborhood, immediately adjacent to transit;
- Environmental Protection Element - The Applicant identified seven specific policies of the Environmental Protection Element (Policies E-3.2.3, 3.2.6, 3.2.7, 4.1.2, 4.2.1, 4.4.1, and 5.1.5.) that are furthered by the Project. The Applicant stated that the Project will achieve LEED Gold certification. Solar Panels will be provided on top roof levels and green roofs will be provided on lower levels. The Project removes a large surface parking lot with virtually no stormwater management controls and provides a new development immediately adjacent to Metrorail and Metrobus facilities, reducing dependency of auto uses for residents, employees and visitors to the Project;
- Economic Development Element - The Applicant identified two specific policies of the Economic Development Element (Policies ED-2.2.3 and 2.2.9.) that are furthered by the Project. The Applicant noted that by creating a new high quality retail space adjacent to the Metrorail station (in an otherwise missing link between the retail in the Takoma DC and Takoma Park, MD and the historic Takoma retail space along 4th Street), the Project not only increases neighborhood shopping opportunities at transit but furthers the economic strength of the Takoma retail economy;
- Parks, Recreation and Open Space Element – The Applicant noted that the Project furthers the Parks, Recreation, and Open Space Element’s policy 4.3.3: Common Open Space in New Development and its direction to create “common open space areas that provide visual relief and aesthetic balance.” (10A DCMR § 819.5.) The Project’s open and green passive recreational space will be accessible, and open to the public to create a true meeting space serving the Takoma neighborhood;
- Urban Design Element - The Applicant identified twelve specific policies of the Urban Design Element (Policies UD-2.1.4, 2.1.7, 2.2.1, 2.2.5, 2.3.1, 2.4.1, 3.2.2, 3.3.2, 4.1.3, 4.1.4, 4.2.2 and 4.2.4.) that are furthered by the Project. The Applicant stated that the Project’s building includes multiple, scaled facades to reflect the differing sides of the building and the scale each engages. The building’s ground floor includes significant pedestrian activation, and the overall massing is broken up to create an appropriately sized building immediately adjacent to transit but respectful of the surrounding community. The Project not only includes more than just the new building in its Urban Design, but also improves the connection of the public space to the Metro station with the transit-zone, focused pedestrian and

bicycle infrastructure planning, and screened, enclosed parking. Finally, the Project includes open space that provides appropriate outdoor gathering and play community space for the Takoma community; and

- Historic Preservation Element - The Applicant identified two specific policies of the Historic Preservation Element (Policies HP-1.1.3 and 2.5.3) that are furthered by the Project. The Applicant stated that it has coordinated directly with the Historic Preservation Office to ensure that the Project balances goals for vacant land within historic districts while also respecting the historic architecture and influence within the neighborhood.
- Rock Creek East Area Element - The Property is located within the Rock Creek East Area Element. The Rock Creek East Area Element focuses on balancing the policies of “preserving established neighborhoods” and “provid[ing] a variety of housing choices.” The Rock Creek Area East Element notes that this area “has always taken pride in the fact that it is economically integrated, with housing options for older adults, lower-income households, young professionals, moderate- income families, and persons with disabilities, as well as high-income households” and new development “should be in keeping with the scale of the surrounding community, provide ample green space, address parking and traffic issues, upgrade infrastructure where needed, and serve a variety of incomes.” (10A DCMR § 2207.3.) The Applicant stated that the Project addresses each of these goals for new development. The Applicant identified seven specific policies of the Rock Creek East Area Element (Policies RCE-1.1.3, 1.1.7, 2.1, 2.1.3, 2.1.4, 2.1.C, 2.1.D.) that are furthered by the Project. The Applicant noted that the Project provides the called for housing, retail, and open green space at the Takoma Metro Station. The Project provides approximately 430-440 housing units, including approximately 70 affordable units, where none currently exist. The units provided are a mix of studios, one- two- and three-bedroom units, providing rental housing for a variety of family sizes. Further, in an area with a larger supply of single-family housing and ownership opportunities than elsewhere in the District, the Project’s provision of multi-family rental housing fills a needed mix of housing within the area. Retail uses within the Takoma neighborhood currently consists of retail along Carroll Street, N.W. in Takoma DC, adjacent to the retail at Carroll and Laurel Avenues in Takoma Park, MD, and retail along 4th Street, N.W. in Takoma DC. Currently, there is a gap of retail along Carroll Street, N.W. at the Metro Station, creating a “dead zone” for retail activation and connectivity needed to serve the retail community in Takoma. The Project remedies that missing link by providing 15,000–18,000 square feet of retail. Finally, the Project’s inclusion of a 1.8-acre open space area creates the Village Green as the signature open space feature called for in the Rock Creek East Area Element;
- Takoma Central District Small Area Plan - The Applicant stated that the Project is fully consistent with those parts of the 2002 Takoma SAP that remain applicable to the Property, and that are not inconsistent with the current Comprehensive Plan. The Rock Creek East Area Element – Takoma Central District Policy Focus Area contains nine policies and actions that relate to development on the PUD Site. The height, massing, and overall design of the Project have been developed in close consultation with Historic Preservation Office Staff and the D.C. Historic Preservation Review Board

- (“HPRB” or “Board”). This close consultation and the Applicant’s thoughtful consideration of the surrounding context have resulted in a Project that recognizes and respects Takoma’s historic character while balancing other competing demands for housing, transit-oriented development, open space, and environmental protection. (RCE-2.1.1, RCE-2.1.3.) The Project also addresses the demand for additional neighborhood-serving retail and service uses, and consistent with the Takoma SAP does so with active ground-floor uses that are concentrated along Carroll Street (RCE-2.1.4). The Project successfully advances the Takoma SAP’s housing and retail strategies while still being able to meet all transit needs (Metrorail, Metrobus, Ride-On) on the PUD Site itself, and provide a substantial “village green” that will serve as a signature open space feature. (RCE-2.1.5, RCE-2.1.D.) The Project adheres to the Takoma SAP redevelopment guidelines for the PUD Site in a manner that is not inconsistent with the updated FLUM that supports medium-density, mixed-use development. Indeed, with the exception of the redevelopment guidelines that refer to specific building heights or number of dwelling units, the Project is fully consistent with all supplemental guidance provided in the Takoma SAP that is not inconsistent with the current Comprehensive Plan; (Ex. 233B.)
- Mayor’s Housing Order: The Mayor’s Housing Order outlines her administration’s aggressive and commendable goals for increasing housing production, and particularly affordable housing production, in the District. The Housing Order notes that “Increased housing production and preservation is required to address growth and ensure the District lives up to its values of being diverse and inclusive. To do this, the District must create 36,000 new residential units by 2025.” The Project is exactly the type of new development necessary to achieve the housing goals of the Housing Order. The Project helps address the District’s compelling need for new family-sized housing at a site such as the Property. The Project is more than just consistent with the Mayor’s Housing Order; the Project is precisely the type of transit-oriented, contextually designed, mixed-income new development with permanent affordable housing units that will be essential to achieving the Mayor’s housing objectives; and (Ex. 3.)
 - Racial Equity Analysis: Equity, and particularly racial equity, is a primary focus of the Comprehensive Plan, especially in the context of zoning where certain priorities stand out, including affordable housing, avoiding displacement of existing residents, and creating / increasing access to opportunity. The Commission is tasked with evaluating the Project’s consistency with the Comprehensive Plan through a racial equity lens. (10A DCMR §§ 2501.4-.6, 2501.8.) The Comprehensive Plan Framework Element states that equity is both an outcome and a process achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (10A 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.” (10A 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. (10A DCMR § 213.9.) To do this, the Implementation Element calls for agencies to prepare and implement tools that will assist in evaluating and implementing the Comprehensive Plan through a “racial equity lens.” Consistent with Comprehensive Plan guidance, the Commission utilizes a Racial Equity Analysis Tool in evaluating zoning actions through a racial equity lens; the Commission released a revised Tool on February 3, 2023. The revised Tool requires submissions from applicants and the Office of Planning analyzing the zoning action’s consistency with the Citywide and Area Elements of the Comprehensive Plan, and Small Area Plans, if applicable (Part 1); a submission from applicants including information about their community outreach and engagement efforts regarding the zoning action (Part 2); and a submission from the Office of Planning including disaggregated race and ethnicity data for the Planning Area affected by the zoning action (Part 3):

- The Applicant submitted a thorough Comprehensive Plan Racial Equity Impact Evaluation, which was guided by the Commission’s Racial Equity Tool and was also informed by the D.C. Office of Planning’s (“OP”) Equity Crosswalk (effective August 21, 2021) (the “Equity Crosswalk”), which highlights Comprehensive Plan policies and actions that explicitly address racial equity. The planning guidance and data pertaining to the Rock Creek East (“RCE”) Planning Area was also considered in the preparation of the Applicant’s Comprehensive Plan racial equity evaluation.
- The Applicant’s Comprehensive Plan Racial Equity Impact Evaluation addressed all components of the Commission’s Racial Equity Tool. The Comprehensive Plan Racial Equity Impact Evaluation provided further analysis of Comprehensive Plan consistency (including policies that explicitly focus on advancing racial equity) and it addressed the process that the Applicant undertook with regard to community outreach and engagement. The Comprehensive Plan Racial Equity Impact Evaluation also addressed the “outcome” of the Project when viewed through a lens of racial equity and concluded:
 - [t]he outcomes of the Project have the potential to positively impact racial equity through substantial improvements in housing, affordable housing, retail and service amenities, and environmental sustainability. Of the many substantial benefits of the Project, perhaps the most important is the over 400 new units of housing that will be provided, of which approximately 70 will be devoted to affordable housing at the 30% and 60% MFI levels of affordability. The Project will contain six (6) 3-bedroom units that will all be devoted to households earning no more than 30% MFI. Through the proposed ground-floor retail and service program the Project will bring desired neighborhood-serving retail and service uses to RCE residents, which will also strengthen the Takoma Park business district on both sides of the District / Maryland border. Finally, another major aspect of the Project that contributes to advancing racial equity is the new 1.8-acre open space. The open space will be open to the public for small day-to-day recreation and larger community events, and will contain play equipment for local children, and public art created by local woman or women of color.
- Community Outreach and Engagement- The Applicant engaged in outreach with the community and community stakeholders/organizations regarding the Project, including ANC 4B, the ANC 4B Housing Justice Committee, Single Member

District's ANC 4B01, 4B02, and 4B07, the Takoma Park neighbors, Maryland residents along Eastern Avenue, and Old Takoma Business Association. The Applicant made observations and conclusions about the neighborhood community based on the Project input received through its Community Outreach and Engagement efforts to respond to the Commission's Racial Equity Tool.

- The Applicant has included the following elements in the Project's design in response to or in conjunction with input received from the community:
 - Set aside 15% of residential square footage as dedicated IZ units for 30% and 60% MFI households for the life of the Project, including 3-bedroom units devoted to 30% MFI households;
 - Continue to pursue Tax Abatements for Affordable Housing in High-Needs Areas (HANTA) program to increase the number of affordable units to 33% (incremental 18% from the 15%);
 - Provide 1.8 acres of public open space (including park and retail plaza) and work with ANC 4B and the community for best practices to include in the design;
 - Create a retail plaza that serves as an opportunity to connect local business and community events;
 - Include park space and engage with the community on programming elements including public art with a particular emphasis on art from local women and people of color;
 - Provide a permanent public use easement for the proposed park;
 - Include sidewalk and trails that provide a safe a low-stress pedestrian experience;
 - Provide no more than 0.33 parking spaces per residential unit and provide 20-79 short-term retail parking spaces (depending on the amount of retail) that includes accessible parking spaces;
 - Preserve as many healthy trees on site and preserve heritage trees including through relocation to another location on the site;
 - Provide a shared multiuse path to ensure Metro access that is at least 12 feet wide to traverse the proposed park space and work the DDOT to ensure the proposed shared use path is routed to minimize the impact on trees;
 - Work with DDOT to implement pedestrian safety measures and traffic calming;
 - Construct the Project in a manner that the building and grounds are accessible to persons with disabilities;
 - Coordinate with WMATA to replace bike racks in kind and improve the existing bicycle storage facilities;
 - Provide substantial storm water mitigation; currently the site has no storm water treatment and creates significant issues for residents on the Maryland side of Eastern Avenue. The Project's storm water treatment will eliminate this issue;
 - Install solar panels on unobstructed flat roof surfaces;
 - Preserve green space between the Property and adjacent neighbors on Eastern Avenue; and

- Step down and step back building along Eastern Avenue.
 - The Applicant incorporated several concerns of the affected community from both the District and Takoma Park, MD in the Project's design. However, some residents within the affected community in Takoma Park, MD would prefer less density at the Property, a lower building, and a greater amount of parking that is located below grade. Though the Applicant did not incorporate these specific concerns in the Project's design, it did step down the building by one level where it is closest to Eastern Avenue. In addition, along Eastern Avenue, the building is buffered by a large green space. (Ex. 3, 14B.)
33. The Applicant concluded that the Project is not inconsistent with the Comprehensive Plan when reviewed as a whole and is not inconsistent with any other adopted public policies or active programs related to the subject site, including the Takoma Central District Plan, and the Mayor's Housing Order. (Ex. 3, 14B, 233.)
34. Based on the extensive evidence provided in the record, the Commission agrees that the Project is not inconsistent with the Comprehensive Plan or other adopted and applicable public policies. The Commission's analysis of Comprehensive Plan consistency is found at Conclusions of Law 16.

III. RESPONSES TO THE APPLICANT'S FILINGS

OP Reports

35. As noted in Findings of Fact No. ("FF") 20, the OP Setdown Report recommended that the Application be setdown for a public hearing. The OP Setdown Report provided the following analysis (Ex. 12.):
- Project Description – The building is designed so that each façade uses architectural elements that reflect the different neighboring land uses facing that side. Therefore, there would be a residential façade side, an urban/retail façade side, and a train-inspired façade side. The building's residential façade side would primarily be along Eastern Avenue which faces the single-family dwelling residential neighborhood across the street in Maryland. Alternating large and small punch windows and projecting balconies establish a residential appearance to this side of the building. A significant setback on the upper two levels is used to reduce the impact of the building's size and massing away from the houses across the street. The building's urban/retail façade would primarily be along Carroll and Cedar Streets, N.W. On this side the building's ground floor retail shops and cafes would line an outdoor public plaza and a series of terraces. The scale of the retail would be consistent with the neighboring Takoma retail shops located along Carroll Street, N.W. The building's urban/train-inspired façade would be along the sides facing the Takoma station and the adjacent multifamily buildings. The building's scale and materiality on these sides would have an urban residential feel and a feel of movement. The layering of alternating horizontal and residential articulation would reflect the movement of the trains. This side will also

- have signage to welcome people from the Metrorail station to the Takoma neighborhood. Parking on this side will be screened with greenery;
- Comprehensive Plan – FLUM - The OP Setdown Report concluded that the Project would not be inconsistent with the FLUM land use recommendation for the site, which encourages a mix of medium-density residential development, low density commercial development, and local public facility use on the site. The Project is for a medium density residential building with retail on the ground floor. The Project also includes improvements to the Takoma Metrorail station’s Kiss and Ride and bus stop area;
 - Comprehensive Plan – GPM – The OP Setdown Report concluded that the Project would not be inconsistent with the GPM’s Neighborhood Enhancement Area designation. It would comply with the policy’s guidance by improving an underutilized site with a building that provides both market rate and affordable units. This would invite more households to the area and help to make the area more inclusive. The Project also includes a public park that would provide a space for community gathering;
 - Comprehensive Plan -Racial Equity - The OP Setdown Report concluded that the Project would not be inconsistent with the Comprehensive Plan when viewed through a racial equity lens. Primarily because the Project would create additional housing and affordable housing on an underutilized site located in an area that is not as expensive as other parts of the District; therefore, the Project would allow for more minority households to reside in the area and allow more people to access both recreation and employment opportunities close to Metro;
 - *Disaggregated Race and Ethnicity Data* - OP’s Setdown Report noted that 2020 Census Data for the Rock Creek East Planning Area, in which the property site is located, showed a low Black (29.1%) and Hispanic (7.9%) population compared to the Districtwide percentages of 45.4% Black and 11% Hispanic. In addition, the Planning Area showed a median home value of \$455,920 and median rent of \$2,077 while the corresponding Districtwide values were \$618,100 and \$1,607;
 - Comprehensive Plan – Land Use Element – The OP Setdown Report identified eight policies of the Land Use Element (Policies LU-1.4.1, 1.4.2, 1.4.3, 1.4.5, 1.4.7, 2.1.8, 2.2.4, and 2.4.5.) that are furthered by the Project. OP stated that the Project furthers these Policies by providing housing near a Metrorail station. It would also transform the station area into a neighborhood center by replacing a surface parking lot with a mixed-use building, neighborhood-focused retail plaza, and a community park. As a mixed-use project the development’s location near a Metrorail station should encourage more non-auto transportation to the site;
 - Comprehensive Plan – Transportation Element - The OP Setdown Report identified six policies of the Transportation Element (Policies T-1.1.4, 1.2.3, 1.3.A, 2.3.1, 2.3.3, and 2.4.1.) that are furthered by the Project. OP stated that the Project would provide a transit-oriented development in close proximity to the Takoma Metrorail station and includes considerable bicycle and pedestrian improvements. The Project proposes a new pedestrian/bike shared use path and bicycle facilities. Furthermore, the building itself with its residential units and pedestrian-oriented retail near a Metrorail station encourages non-auto transportation to the site;
 - Comprehensive Plan – Housing Element - The OP Setdown Report identified four policies of the Housing Element (Policies H-1.1.3, 1.1.4, 1.1.8, and 1.2.3.) that are

furthered by the Project. OP stated that the Project would replace an underutilized parking lot with a mixed-use development that includes 430-440 residential units. Approximately 70 of these units would be affordable through the IZ program. The affordable units would include units dedicated to households making 60% MFI and 30% MFI or below;

- Comprehensive Plan – Environmental Protection Element - The OP Setdown Report identified seven policies of the Environmental Protection Element (Policies E-3.2.3, 3.2.6, 3.2.7, 4.1.2, 4.2.1 4.4.1, 5.1.5.) that are furthered by the Project. OP stated that the site's location adjacent to the Metrorail station should result in many of the new residents and visitors opting not to use a vehicle. The Project will be designed to achieve LEED Gold certification. On the roof, solar panels will be installed on the top roof levels and green roof areas will be installed on the lower roof levels. Tree preservation is an important component in the design of open space. The Applicant has committed to preserving as many healthy trees as possible on the site, which includes relocating Heritage Trees;
- Comprehensive Plan – Economic Development Element - The OP Setdown Report identified two policies of the Economic Development Element (Policies ED-2.2.3, and 2.2.9) that are furthered by the Project. OP stated that along with the new residential units the Project would add 15,000 – 18,000 square feet of high-quality retail/service space to this currently underutilized site. This retail/service space would be located along the high foot traffic area along Carroll Street, N.W. that leads to the Metrorail entrance. Providing retail in this location would also connect the Takoma DC and Takoma Park, MD retail core with the Takoma retail area along 4th Street, N.W. The retail/service space would also provide opportunities for local employment;
- Comprehensive Plan – Urban Design Element - The OP Setdown Report identified eleven policies of the Urban Design Element (Policies UD-2.1.4, 2.1.7, 2.2.1, 2.2.5, 2.3.1, 2.4.1, 3.2.2, 3.3.2, 4.1.4, 4.2.2, 4.2.4.) that are furthered by the Project. OP stated that the Project would connect the Takoma Metrorail station entrance to a mixed-use building with a retail plaza. This retail plaza will be activated by the ground floor retail in the new residential building. The building would also have features that significantly engage the pedestrian experience along the plaza, such as having storefront windows. Each side of the building would have a massing and scale that reflects the scale of the adjacent properties. The Project's community park and retail plaza would provide an outdoor gathering space and community play space for the neighborhood;
- Comprehensive Plan – Parks, Recreation and Open Space Element - The OP Setdown Report identified one policy of the Parks, Recreation and Open Space Element (Policy PROS 4.3.3.) that is furthered by the Project. OP stated that a key component of the Project is providing public open space to the community for passive recreation use;
- Comprehensive Plan – Rock Creek East Area Element - The OP Setdown Report identified seven policies of the Rock Creek East Area Element (Policies RCE-1.1.3, 1.1.7, 2.1, 2.1.3, 2.1.4, 2.1.C and 2.1.D.) that are furthered by the Project. OP stated that the Project would provide a multi-family building with affordable units adjacent to the Takoma Metrorail station. The Project will also fill in the gap in retail along Carroll Street, N.W. at the Metrorail station by providing 15,000 - 18,000 square feet of retail along Carroll Street, N.W. The Project will also fulfill the Rock Creek East

Area Element's recommendation for a Village Green by providing a large public open space; and

- Takoma Central District Plan – The OP Setdown Report concluded that the Project would not be inconsistent with the Takoma Central District Plan because on balance it would not be inconsistent with the Comprehensive Plan. The 2002 Takoma Central District Plan is over 20 years old and contains recommendations that are not consistent with the current Comprehensive Plan. The Comprehensive Plan encourages mixed-use development with medium density residential at the site, but the Takoma Central District Plan recommends more moderate density town house development at the site. The Project furthers many of the general recommendations of the Takoma Central District Plan, including having more housing and retail near the Metrorail station and the creation of a Village Green. (Ex. 12.)

36. OP submitted its report dated June 2, 2023, to the Commission in advance of the public hearing (“OP Hearing Report”). (Ex. 59.) The OP Hearing Report detailed the Applicant’s responses to comments from OP as well as the Commission. In addition, it analyzed the Public Benefits and Amenities provided in the Project and balanced those Benefits and Amenities with the development incentives that are requested in the Application. The OP Hearing Report provided the following:

a. Recommendation

The OP Hearing Report made the following recommendation:

The Office of Planning recommends approval of the PUD.

On balance the Project would be not inconsistent with the Comprehensive Plan and would further the District’s efforts towards meeting its housing and land use goals by redeveloping an underutilized suite with a mixed-use development that would provide a significant amount of housing and retail near a Metrorail station. The benefits provided would balance the flexibility requested. Though the proposed building’s height would be taller than permitted under the existing zoning, its density would be significantly lower than is permitted under existing zoning. (Ex. 59.)

However, the OP Hearing Report stated that additional information is needed prior to the Commission taking proposed action. Specifically, the following:

- Revised drawings and details reflecting design revisions submitted to HPRB (see p. 20); and
- Clarification of the requested post-approval flexibility (see p. 17) that:
 - The number of parking spaces on the site must not exceed the number of parking spaces approved in the Final Plans; and
 - The LEED points achieved must not decrease below the LEED Gold certification under the LEED for Homes: Multifamily Midrise rating system.”

b. Applicant’s response to comments from the Commission and OP

The OP Hearing Report included a table that summarized the Commission and OP comments on the Application. It stated:

Question/Comment	Applicant Response
Commission and OP requested an update on the Applicant's HANTA funding application and if the affordable housing set-aside would increase to 33%.	The Applicant is regularly working with DHCD and anticipates obtaining approval. Approval would result in 33% of the units being affordable (which includes their 15% IZ set-aside of residential square footage) with the following MFIs: • HANTA units at 80% MFI • IZ units at 30% and 60% MFI.
The Commission requested that the 2002 Takoma Central District Small Area Plan be reviewed to see if it recommends that 5% of new housing units on the site should go to households making no more than 30% MFI.	The Applicant reviewed the 2002 Takoma Central District Small Area Plan and the status reports published on OP's website but was unable to find an affordable housing requirement at any AMI or MFI level in the plan. (OP also reviewed the small area plan and was unable to find this requirement.) The project is proposing approximately 2% of its units for households making up to 30% MFI (includes all six of the 3-bedroom units) and 14% of its units for households making up to 60% MFI. ⁶
The Commission and OP requested more details on the pedestrian circulation in the courtyard because of concern about pedestrian/vehicular conflicts.	The Applicant provided additional diagrams on pp. L502 to L505 of Exhibit 38A13 that more clearly show the use of pedestrian crossing points, bollards, and signage.
OP requested more details on if there is to be an entrance/exit for the portion of the building along Carroll Street, N.W.	The Applicant intends for there to be a secondary entrance for residents to the wing of Carroll St., N.W. side of the building.
The Commission requested that all renderings of the proposed building's rooftop show the equipment on it.	The renderings were updated so that all rooftop views show equipment on the roof. The Applicant provided updated renderings at Ex. 38A4.
The Commission and OP requested that the Applicant reduce the number of on-site parking spaces because the site is adjacent to a Metrorail station.	The Applicant reduced the number of parking spaces by 2 spaces to incorporate a WMATA breakroom and restroom in the garage. In an Interagency meeting with OP, DDOT, and DOEE the Applicant explained they are unable to reduce the parking further because doing so would jeopardize their ability to secure funding for the project.

c. Comprehensive Plan and racial equity analysis

With respect to the Comprehensive Plan's Future Land Use Map, the OP Hearing Report concluded that:

- The project would not be inconsistent with the FLUM land use recommendations for the site, which encourages a mix of medium-density residential development, low density commercial development, and local public facility use on the site. The project is proposed to be a medium density residential building with retail on the

⁶ This characterization of the Project's affordable housing was apparently an oversight or typographical error. The Application proposes 3% of the residential GFA at 30% of MFI and 12% of the residential GFA at 60% of MFI. (See Ex. 3, 239.)

ground floor. The project also includes improvements to the Takoma Metrorail station's Kiss and Ride and bus stop area.

With respect to the Comprehensive Plan's Generalized Policy Map, the OP Hearing Report concluded that:

- The project would not be inconsistent with the Generalized Policy Map's Neighborhood Enhancement Area designation. It would respond to the opportunity for compatible infill development and comply with the policy's guidance by improving an underutilized site with a building that would have both market rate and affordable units. This would invite more households to the area and help to make the area more inclusive. The project also includes a public park with space for the community to gather.

The OP Hearing Report also included OP's Racial Equity Analysis, which included the following:

- Disaggregated Data Regarding Race and Ethnicity – OP compared the Rock Creek East planning area with District-wide data. In reviewing the Project through a racial equity lens for the planning area, the OP Hearing Report noted that:
 - The project would provide new housing units to the area with a minimum of 15% of the residential square footage being affordable at 60% MFI and some at the 30% MFI level under the Inclusionary zoning program. For the period of 2017-2021, over 75% of Rock Creek East Area residents were Black and Hispanic, but the Black population declined over the approximately 10-year period of 2012-2021. Both groups, Black (\$51,562) and Hispanic (\$89,480) had a lower median income than the District's median income of \$93,547 for the period from 2017-2021 so the proposed new affordable units could be helpful in retaining and attracting new Black and Hispanic residents to the area. The project would also bring new employment opportunities to the metro area with its retail, service and site/building maintenance jobs. These jobs would be close to a metro station so they could be accessible to more people than jobs that require car ownership. They could potentially go to minority residents in the area or attract minority residents from other areas; (Ex. 59.)
- Affordable Housing Goal: Mayor's January 2023 DC Comeback Plan – According to the Mayor's January 2023 DC Comeback Plan, the Rock Creek East planning area was over halfway to the Mayor's goal in January of 2023 but is expected to reach 84.4% of the goal by 2025. The proposed building would provide approximately 70 more affordable units to Rock Creek East, which would help the area move closer to the Mayor's 2025 goal; (Ex. 59.)
- Commission Evaluation Factors – The OP Hearing Report also addressed the factors of: Direct Displacement, Indirect Displacement, Housing, Physical, Access to Opportunity and Community and determined that the Project would not have any negative impacts related to racial equity; and (Ex. 59.)

- Evaluation of Comprehensive Plan Policies Through a Racial Equity Lens – The OP Hearing Report contained analysis of many elements of the Comprehensive Plan through a racial equity lens, including policies in the Housing, Transportation, Rock Creek East and Environmental Protection Elements:
 - In doing so, the OP Hearing Report noted the Project was potentially inconsistent with one policy, stating the Project “does not further the tree canopy protection goals of the Environmental Protection Element, Section E-2.1 Conserving and Expanding Washinton D.C.’s Urban Forests.” The OP Hearing Report then went on to conclude that “when viewed as a whole, and in consideration of the other environmental policies furthered by the Project and the priority given affordable housing as a PUD benefit, that results from the development of the site, OP finds the project to not be inconsistent with the environmental protection elements on balance.” The OP Hearing Report stated that the Project would further the following Environmental Protection Element policies:
 - Policy E-3.2.3: Renewable Energy;
 - Policy E-3.2.6: Alternative Sustainable and Innovative Energy Sources;
 - Policy 3.2.7: Energy-Efficient Building and Site Planning;
 - Policy E-4.1.2: Using Landscaping and Green Roofs to Reduce Runoff;
 - Policy E-4.2.1: Support for Green Building; and
 - Policy E-4.4.1: Mitigating Development Impacts.

d. PUD balancing

The OP Hearing Report included a zoning comparison table, and a table containing a summary of the additional entitlements gained through the PUD. Both showed that the primary benefit gained through the PUD was additional height as a result of the PUD-related map amendment to the MU-5A zone.

The OP Hearing Report stated that the Project would have the following potential adverse effects:

- The project would have a significant negative impact on the tree canopy in the area. Though there are clear tree preservation plans (p. L301.) (policy) submitted to the record, the information on the number of trees being removed is not clearly shown. (Ex. 38A12.) HPRB has requested detailed mapping and treatment of the heritage trees and the design and programming of the public park and DOEE has requested plans showing the net loss of trees resulting from the project. The Sediment and Control Plan appears to show that approximately 120 trees would be removed, 15 would be retained, and 41 new trees would be planted. (Ex. 14A12.) The existing trees on the site provide stormwater retention and heat island mitigation benefits so losing them without retaining and planting more new ones outweighs the other sustainable efforts on the site. OP encourages the applicant to work with DOEE on minimizing the removal of trees and on maximizing the number of new trees planted on-site or in the surrounding community.

The OP Hearing Report stated that the following were public benefits of the Project:

- Environmental and Sustainable Benefits – The project is designed for LEED Gold certification under the LEED for Homes: Multifamily Midrise rating system and includes installation of solar panels on the rooftop;
- Superior Urban Design and Architecture – The plans show that the building's design uses different massing, scale, and design features to mimic the surroundings faced on each side. Along the side facing the Metrorail the building is designed with alternating vertical and horizontal articulation to play off the movement of the Metrorail trains. On the other side, facing the Takoma Park residential community the building's design uses elements such as balconies and small punch windows to express a residential façade vocabulary along the Eastern Avenue side. Along its retail plaza side, the building's ground floor would have attractive signage and storefront windows to help activate the pedestrian plaza. The project is in the Takoma Park Historic District and the design is being reviewed by HPRB. On June 1, 2023, the Board commented that the site plan and general conceptual approach to the project were well thought out. However, the members thought that the architecture of the building facing Carroll Street needed to be edited and commented that further evaluation of color, materials, detailing and composition were needed for the building to be found compatible with the Takoma Park Historic District. The Board also asked that more detailed mapping and treatment of the heritage trees and the design and programming of the public park be provided. The project should return to the Board for further review when ready;
- Superior Landscaping or Creation or Preservation of Open Spaces – The Project would provide 1.8 acres of open space as a universally accessible park for public use. This would be more open space than exists on the site today. The open space would be designed around maintaining the existing mature tree canopy on the site. It would include public art, various site amenities, and required infrastructure such as bio-retention areas. The open space would help to create a retail plaza, community park, and buffer area between the site and the surrounding residential community;
- Site Planning and Efficient and Economical Land Utilization – The Project would redevelop an underutilized transit-oriented site with a community-oriented mixed-use development that includes public open space. The project would create a safe, efficient development that would integrate transit facilities, large open space, and provide new transit-oriented housing and retail to the area. The development should be better utilized than the almost empty parking lot that is on the site today;
- Housing & Affordable Housing – Though the Project proposes less residential development than is achievable by right, it is replacing a longstanding underutilized property with 430-440 housing units. The new building would have a mix of unit types: studios, one-bedroom, two-bedroom, and three-bedroom units. The new building would also have at least 70 affordable units with 10 being reserved for households earning no more than 30% of the MFI and 60 units for households making up to 60% of the MFI. All would be transit-oriented because of the building's adjacency to the Takoma Metrorail station;

- Streetscape Plans – The Project includes streetscape improvements along Carroll St., Cedar St., and Eastern Ave. These improvements retain some existing trees and construct a shared use path. The Project’s retail plaza and community would activate the pedestrian experience along the street and the décor and park furniture would enhance the street’s attractiveness; and
- Other Public Benefits and Project Amenities – The Applicant has agreed to work with the Takoma community and ANC 4B to incorporate art projects from artists who are local women or women of color. The Applicant has also incorporated participatory or playable artwork in Conclusions the plans for the park.

The report concluded that OP considers the 15% IZ set-aside, the public open space with park and retail plaza, the site’s transit-oriented location, and the streetscape plans to be proffers commensurate with the flexibility requested through the PUD and related map amendment.

e. Comments From Other Agencies Included in the OP Hearing Report

The OP Hearing Report noted the following comments from other agencies regarding the Application:

- Department of Energy and the Environment (“DOEE”) – DOEE is disappointed by the Applicant’s representation of the Project’s environmental impacts, especially the impact to the site’s tree canopy. While it is notable that the Applicant intends to preserve a few of the largest trees on the site, DOEE believes that the Applicant should provide the same level of transparency for their tree removal plans. The Sediment and Erosion Control Plan seems to show that 15 trees would be retained, 41 new trees would be planted, and 120 trees would be removed. (Ex. 14A12.) DOEE continues to request clearer plans showing the net tree loss. DOEE wants the applicant to minimize and compensate for the tree canopy loss by preserving more of the existing trees and planting more trees on site or in the nearby community. DOEE’s full comments were attached to the OP Report. They include a number of suggestions for ways in which the Project could improve its environmental impacts in the areas of stormwater management, climate resilience and embodied carbon reduction, but also identified that those improvements were not required, and that DOEE was encouraging them as additional improvements of the Project rather than identifying them as potential adverse effects;
- Department of Housing & Community Development (DHCD) – In an email to OP, DHCD staff stated they have no objection to the proposed PUD;
- District Department of Transportation (DDOT) – DDOT will submit a separate report to the record;
- Department of Parks and Recreation (DPR) – In an email and through conversations with OP, DPR staff expressed support for the proposed public park. They especially appreciate its adjacency to a Metrorail station. DPR noted that the park appears to be mostly for passive recreation, so they encourage the applicant to include opportunities for active recreation as well. DPR provided their comments to the Applicant over the phone. The Applicant summarized their response in their Supplemental Statement concerning agency comments. (Ex. 38.) They state that the

planned sculptural play space and the nature walking path provide opportunities for physical activity;

- Department of Public Works (DPW) – In an email to OP, DPW staff stated they performed a site visit on April 7, 2023, and inspected the site. They did not see any impact on DPW collections operation; and
- Washington Metropolitan Area Transit Authority (WMATA) – WMATA is a co-applicant on the project. In an email to OP, they confirmed their desire to replace the parking lot with the proposed development, as shown in the plans. They also provided OP with their own project report on the case which includes a summary of the public comments they received about the project. Out of the 736 respondents 40% supported the project, 31% opposed it, and 29% had no opinion.

f. Design flexibility

The OP Hearing Report also stated that OP had “concerns” about two of the forms of design flexibility the Applicant requested to be included in any order that approved the Application, and suggested alternative language to include in the conditions that addressed its concerns:

- Sustainable Features – OP recommends that the LEED standard be specified to reflect the proffered public benefit in the Project and avoid confusion during permitting; thus, OP recommends the bullet be amended to read:
 - To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the Project does not decrease below the minimum required for the LEED Gold certification under the LEED for Homes: Multifamily Midrise rating system;
- Parking Configuration – OP objects to any increase in the number of parking spaces and recommends that the number of parking spaces approved in the Final Plans be the maximum permitted on the site; thus, OP recommends the bullet be amended to read:
 - To make refinements to the approved parking configuration, including layout and number of parking spaces of ~~plus or~~ minus ten percent (10%) provided the number of parking spaces maintains a ratio of no more than 0.37 spaces per residential unit.

The OP Hearing Report further stated that it had no objection to the remaining forms of design flexibility the Applicant requested to be included in the final order.

DDOT Report

37. On June 5, 2023, DDOT filed a report regarding the Project. DDOT’s report noted that “after an extensive review of the case materials submitted by the Applicant, DDOT finds:

- The project includes the multi-family building on one portion of the site and a reconfigured bus loop, bus bays, and kiss & ride for the Takoma Metrorail station on the other portion;

- A new driveway from Carroll Street to Eastern Avenue will be constructed serving the Metrorail station. WMATA is proposing a traffic signal, which will be reviewed by DDOT during permitting;
- Vehicular access to the multi-family building is via a parking garage entrance from the shared WMATA driveway and another entrance from the internal motor court from Cedar Street. All existing curb cuts to the site will be closed, consistent with DDOT standards;
- The project meets the DCMR 11 and DCMR 18 minimums for long- and short-term bicycle parking, which DDOT supports. Applicant should ensure that the short-term spaces are in easily accessible locations within the public realm;
- A voluntary Loading Management Plan in Exhibit 27A is proposed to ensure safe and efficient management of trash collection and move-ins/outs. Since loading relief or back-in loading through public space is not proposed, DDOT does not request it be included as a condition;
- A shared-use path connecting to the Metropolitan Branch Trail is proposed across the site. DDOT requests the Applicant provide an easement for the portion on private property;
- The project exceeds zoning requirements for vehicle parking and the parking supply exceeds DDOT's preferred parking minimums for sites within immediate proximity to priority transit;
- DDOT estimates a project of the size, mix of uses, and distance from transit should provide less than 130 spaces. The availability of excess parking has the potential to induce additional demand for driving, which has been accounted for in the traffic analysis;
- The capacity analysis indicated minor impacts at two (2) study area intersections. The analysis demonstrated signal timing adjustments could improve LOS back to Background conditions;
- DDOT does not implement independent signal timing adjustments since there are upstream and downstream impacts to coordinated signal networks. In lieu, DDOT prefers Transportation Demand Management (TDM) programming to encourage non-auto travel; and
- The Applicant has agreed to implement a TDM Plan which DDOT finds sufficiently robust. It includes a 23-dock Capital Bikeshare station, pedestrian improvements at the intersection of Cedar Street & Eastern Avenue, improvements to the intersection of the WMATA bus loop and Carroll Street, N.W., and three (3) years of bikeshare memberships.” (Ex. 63.)

38. The DDOT report concluded by recommending that it “has no objection to the approval of the Application with the following conditions included in the Commission’s final Order:

- Implement the Transportation Demand Management (TDM) Plan as proposed in the May 25, 2023, Technical Memo (Exhibit 38B and Attachment 1, for the life of the project, unless otherwise noted; and
- Prior to issuance of a Certificate of Occupancy for the multi-family building, the Applicant will provide an easement, subject to DDOT approval, for the portion of

shared-use path proposed across the site. The Trail must be constructed at a minimum of 12 feet where possible and maintained in perpetuity by the Applicant. The materials and design of the shared-use path will be coordinated with DDOT.” (Ex. 63.)

39. The DDOT report provided a site plan showing the Project and its surroundings, including the Takoma Metro Station, the new alignment of the bus loop/kiss and ride driveway, the current parking/kiss and ride driveway to be consolidated with bus loop/kiss and ride driveway and Project garage access, the shared use paths for access from Cedar Street, the curbless driveway to be used for vehicular and loading access, the narrowed entrance to the bus loop, and the raised crossing for the kiss and ride and bus loop. The report also provided a detailed analysis of the vehicular parking, bicycle parking, loading, heritage and special trees, streetscape and public realm, mode split and trip generation, and pedestrian network. (Ex. 63.)

ANC 4B Report

40. On January 24, 2023, ANC 4B filed a letter noting that it was strongly supportive of the Application. The ANC letter noted that at a duly noticed public meeting on January 23, 2023, with a quorum present, ANC 4B voted 10-0-0 to support the PUD application. The ANC noted that this letter supplemented ANC 4B’s prior actions on this Application (*See* Ex. 10, a letter dated June 27, 2022.) and incorporates them by reference. ANC 4B acknowledged the Applicant’s response (Ex. 3I.) to ANC 4B’s conditions of support outlined in Ex. 10, as the Applicant’s response did not agree to all conditions of support as proposed by the ANC. The ANC’s letter noted the following:
- The current Planned Unit Development is significantly improved from the plan proposed by the Developer in 2005 and approved through the WMATA compact hearing process by offering almost twice as much public area recreational and green space, twice as much housing, and three times as much affordable housing, as well as better bicycle and pedestrian facilities and improved connections to neighborhood businesses and retail in Takoma, Washington, DC and Takoma Park, Maryland;
 - The Developer’s application is reflective of extensive engagement with both the community and the Commission [ANC 4B]. The design and proffered amenities have iteratively improved through that process and are aligned with community priorities and the Commission’s [ANC 4B] extensive feedback. The Commission [ANC 4B] looks forward to the ongoing engagement around the public spaces as part of this project, as provided in the Developer’s application. The changes to the project since the Commission’s [ANC 4B] June 27, 2022, letter have been relatively minor and in-line with the Commission’s [ANC 4B] goals;
 - The Developer’s application is responsive to the feedback provided in the Commission’s [ANC 4B] June 27, 2022, letter. The Commission [ANC 4B] requests that the Zoning Commission order specifically include the requirement that the Developer engage in ongoing efforts (not just efforts via the initial application or cycle) to seek participation in the Tax Abatements for Affordable Housing in High Needs Areas (HANTA) program offered by the Department of Housing and Community Development (until granted or no longer available) that will increase the percentage of

residential square footage dedicated to income-restricted affordable housing to at least 33%; and

- The Commission [ANC 4B] appreciates the prominent placemaking and signage in the current renderings and plans and requests the Developer and the Zoning Commission preserve them in future revisions. (Ex. 11.)

OAG Report

41. On June 7, 2023, the Equitable Land Use Section of the Office of the Attorney General (“OAG”) submitted a report in support of the Application. OAG encouraged the Commission to approve the Application given the PUD’s significant affordable housing proffer. OAG believed that this affordable housing proffer alone satisfies the PUD balancing test by “balancing out the requested development incentives and by advancing the Comprehensive Plan’s identification of affordable housing as the only high-priority PUD public benefit needed to address the District’s ‘housing affordability crises’ and the CP’s goal to make the District an ‘equitable and inclusive city’”. OAG also noted that it finds the Project’s density and height to be entirely consistent with the contemplated scale for Development of the site. The OAG Report noted that the Project’s proposed density is significantly below what is permitted under existing zoning and does not use any density gained through the proposed MU-5A zone. The OAG also noted that it does not believe that the Project will result in adverse impacts to the Takoma Park Historic District based on its scale. OAG stated that this conclusion was based on the HPO 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 ‘can accommodate a large building that is compatible with the Takoma Park Historic District’ ”. (Ex. 100A, 195A.)

No Other Agencies

42. Apart from OP (which noted comments received from DOEE, DHCD, DPR, WMATA, and DPW in its Hearing Report), and DDOT, no other agencies filed written comments in the record of this proceeding.

Persons and Organizations in Support

43. Approximately 101 letters/e-mails of support were submitted to the record. In general, these letters noted their support for the Project’s creation of a transit-oriented development that provides housing and much needed affordable housing on an underutilized parking lot that will better serve transit riders. The supporters also noted the Project’s creation of dedicated public open spaces and the creation of a community place with increased retail opportunities. (Ex. 229B, list of names and mailing addresses of letters in support.)
44. Coalition for Smarter Growth (“CSG”) submitted two letters and provided testimony in support of the Application. CSG identified the proposed affordable units as a major benefit of the Project and how the proposed housing advances the housing equity goals for the Rock Creek East planning area. CSG also noted that the proposed reconfiguration of the Metro Station fits into the existing community while improving access to transit and bringing new community benefits. In conclusion, CSG stated:

Making the most of the Takoma Metro station, as this proposal does, helps DC and the region address critical goals of equity, sustainability and affordability. The project offers an inviting, human-scale environment with increased access to transit and community spaces. It also enables more households in our region to access sustainable transportation options, reducing their reliance on private vehicles, and promotes energy efficiency by incorporating LEED Gold buildings into their living spaces. (Ex. 138, 160.)

Opponent Party

45. The Opponent Party submitted a detailed written analysis of its objections to the Application and provided testimony at the Public Hearing. The Opponent Party raised the following issues:

- Building Height – The Opponent Party stated that while the chosen building height measuring point of 76 feet was lawful, looking at the height of the building as it will actually appear all around the Property is essential for proper evaluation of compatibility. The building will range in actual height from a low of 78 feet along Carroll Avenue (the south side) to over 90 feet on the north side. The Opponent Party also argues that the proposed 76’ zoning height may be at or near the maximum available height that can be allowed considering the constraints of the D.C. Height Act. The Opponent Party argued that if 76’ is not the actual limit under the Height Act, it is close enough to it that the Applicant could not design the building to accommodate even one more floor without violating the Height Act; (Ex. 123A.)
- Scale – The Opponent Party employed a “mathematical equivalent” to FAR and determined that the Project comprises a GFA of approximately 11.4 acres of floor space spread over 6-8 floors of the building. The Opponent Party stated that the Application fails to disclose any existing building in the surrounding neighborhood that comes close to approaching the GFA of the Project. The Opponent Party analyzed the areas of the Transit Zone, the Building Zone, and the Open Space/Buffer Zone and calculated that the actual development proposed in the Building Zone would produce a FAR at the top end of what would be allowed in the MU-5A zone without a PUD. The Opponent Party concludes that the Applicant’s decision to utilize “only” 1.69 of the allowable FAR, fairly and objectively considered, is not an act of moderation by the Applicant in recognition of the need to achieve neighborhood compatibility but is in fact limited by the Height Act constraints; (Ex. 123A.)
- Comprehensive Plan – The Opponent Party stated that the Project is not consistent with the Comprehensive Plan because its height and scale are in overpowering contrast to the surrounding neighborhood and to the larger context of its location amidst two historic districts. The Opponent Party argues that the Applicant and OP only make conclusory assessments of Comprehensive Plan policies and the Project’s consistency with those policies and that the Applicant and OP fail to address competing policies in the Comprehensive Plan. The Opponent Party notes that central to its objections to the size and scale of the Project is Urban Design Policy UD-2.2.5, which prescribes that “[n]ew construction . . . should respond to and complement the defining visual and spatial qualities of the surrounding neighborhood [and] [a]void overpowering contrasts of scale and height . . .”. (Ex. 123A.) The Opponent party further notes

that, “[n]umerous other policies ... include language about the necessity for new developments to respect the character and needs of the surrounding neighborhoods. See LU-1.4.1, LU-1.4.2, LU 2.4.5, UD-2.2.1, UD-4.2.4, HP-2.5.3, and RCE-2.1.1. (Ex. 123A.) and argues that there are multiple ways that a modest reduction in the size and scale of the Project could result in a satisfactory level of compatibility with the surrounding neighborhood. (*Id.*)

In furtherance of this argument the Opponent Party states: “The Opposing Parties’ major objections are not centered on any of the following attributes of the Project or the fact that these attributes advance Comprehensive Plan Policy goals: (1) transformation of the 6.78 acres of WMATA Property adjacent to the Takoma Metro Station into a three-part combination of Bus Loop, mixed-use housing with ground floor retail; and 1.8 acres of open space; (2) a major increase in the availability of both market-rate and affordable housing in the neighborhood; (3) EYA’s tree preservation plans; (4) the increase in permeable surface on the Property; and (5) the Project’s energy efficiency goals. But the Opposing Parties’ position is that these and other worthy goals can all be furthered while not conflicting with the Policy goals that promote respecting the character and needs of the surrounding neighborhood. [A] modest reduction in the size and scale of the Project could result in a satisfactory level of compatibility with the surrounding neighborhood. The required Project adjustments are such that no competing policy need be sacrificed in the process: the 1.8 acres of open space, the redesigned Bus Loop; the size and location of the new retail space, and all other identified Project amenities. [A]t most what might be lost in the process is a relatively small number of market rate and affordable housing units.”; (Ex. 123A.)

- Comprehensive Plan – Framework Element – The Opponent Party argues that the Applicant’s analysis of the Framework Element is also defective and states that a more complete and objective analysis of consistency with the Framework Element would assess whether a reduction in size and scale of Project along the lines proposed by the Opponent Party would or would not be more likely to result in an invigoration and enhancement of Takoma Park. The Opponent Party stated that Framework Element policies include § 219.7, which the Opponent Party stated closely echoes UD-2.2.5, reiterating that infill development should “respect the integrity of stable neighborhoods and the broader community context ...”; (Ex. 123A.)
- Comprehensive Plan – Historic Preservation Element – The Opponent Party argues that neither the Applicant nor OP has discussed compliance with the Historic Preservation Element in detail. The Opponent Party claims the Application is inconsistent with the following policies in the Historic Preservation Element of the Comprehensive Plan: (Ex. 123A.)
 - The Historic Preservation Element “[r]equires that ‘full consideration’ be given to concerns expressed in the SAP. Policy HP-1.1.3. 1003.6. That Policy also expressly recognizes the important role of ‘community preservation groups in planning matters affecting historic preservation.; and (*Id.*)

In historic districts ...Policy HP-2.5.3 specifies that ‘new construction’ should be ‘in scale with and respect their historic context through sensitive siting and design, and the appropriate use of materials and architectural detail.” (*Id.* §1014.9.)

- Comprehensive Plan – FLUM – The Opponent Party asks the Commission to reject the Applicant’s “simplistic” analysis that a rezoning to MU-5A is not inconsistent with the FLUM simply because the MU-5A zone is oriented to “medium-density, compact mixed-use development”. The Opponent Party argues that the Commission should not ignore the strategically selected building height measuring point (“BHMP”) near the highest land elevation on the entire Property resulting in a mostly 90’ tall, 8-story building. A height of 76 feet might work out well in the typical context of side-by-side medium density residential buildings on flat earth fronting just one street, but it is a wholly different matter on sloping ground where the building’s increased exposure from the slope will be readily visible by the public on all sides; (Ex. 123A.)
- Comprehensive Plan – GPM - The Opponent Party notes that the Neighborhood Enhancement Area calls for “compatible infill development” that is not achieved by the Project. The Opponent party also alleged that the Applicant did not address the GPM; (Ex. 123A.)
- 2002 Takoma Central Business District SAP/Rock Creek East Element – The Opponent Party argues that the Comprehensive Plan, Action RCE-2.1.C, requires the Zoning Commission to review the SAP redevelopment guidelines in accordance with the updated FLUM and Rock Creek East Area Elements. What is contemplated by the Comprehensive Plan is that approval of the Project must be mindful of recommendations in the SAP and the Rock Creek Area East Elements, even as the proposed increased level of development anticipated in the FLUM is considered. The Opponent Party requests that the Zoning Commission reject, if only for this Property, the Applicant’s attempt to characterize its massive building of over 11 acres of GFA, fully exposed on all sides, and rising to over 90’ for most of its facades, as what the FLUM envisioned here. The Opponent Party also argues that the Application is inconsistent with the provision of the Rock Creek East element that provides that “the Plan specifies that development of the WMATA Property ‘should maximize Metro access while taking care to provide appropriate buffers and transitions to adjacent uses.’” See Subtitle §2211.4. Furthermore, the Applicant’s discussion of the Takoma SAP fails to reference all of the policies in the Rock Creek East Area Element bearing on redevelopment of the WMATA property. Specifically, Policy RCE-2.1.1: Historic Preservation in Takoma, is not mentioned. See Subtitle §2211.5; (Ex. 123A.)
- Alternative MU-4A Application – The Opponent Party argued that a proposed rezoning to the MU-4A zone would promote and advance all of the Comprehensive Plan policies that the Project is claimed to serve and will be consistent with the Takoma SAP, the FLUM and the Comprehensive Plan; (Ex. 123A.)
- PUD Balancing Test – The Opponent Party states that the Applicant’s appraisal of the PUD balancing test of public benefits and project amenities against the requested development incentives is significantly overstated. The Opponent Party claims that in general many of the Project’s public benefits and project amenities are overstated or erroneous and in some instances the Applicant fails to detail how the benefits and amenities are tangible, quantifiable, and measurable or how they are superior features that are beneficial to a significantly greater extent than would occur under matter-of-right development; and (Ex. 123A.)

- Response to OAG Report – The Opponent Party responded to the OAG Report and stated that “the AG Memo is so lacking in even-handed, objective assessment of the Project under all considerations that must go into the Commission’s evaluation of the Project that it all but self-destructs as credible advice to the Commission. It warrants only a brief, separate discussion here, demonstrating that it is owed no credence by the Commission.” (Ex. 123A.)

Persons and Organizations in Opposition

46. Approximately 72 letters/e-mails of opposition were submitted to the record. In general, opposition to the Application was based on the height and scale of the Project, purported incompatibility with the Takoma Historic District and the surrounding neighborhood, and the loss of parking spaces at the Metro Station parking lot. (Ex 229A, list of names and mailing addresses of letters in opposition).
47. On June 15, 2023, the Commission held a duly noticed public hearing in accordance with its rules and regulations. The Applicant presented witnesses on behalf of the Applicant (Mr. Evan Goldman, Executive Vice President of Acquisition and Development of EYA; Ms. Caren Garfield, Vice President of Multifamily Development of EYA, and Mr. Steven Segerlin of WMATA) and five experts: Mr. Federico Olivera-Sala as an expert in architecture, Ms. Gabriela Canamar-Clark as an expert in landscape architecture, Mr. Kyle Oliver as an expert in civil engineering, Mr. William Zeid as an expert in transportation analysis and engineering, and Mr. Shane Dettman as an expert in land use and zoning. The Commission accepted Mr. Olivera-Sala, Ms. Canamar-Clark, Mr. Oliver, Mr. Zeid, and Mr. Dettman as experts in their respective fields. Thereafter, the Applicant’s representatives and the experts presented testimony about the Project as follows:
 - The Applicant testified in support of the Project. In its testimony, the Applicant stated that:
 - It consented to the:
 - Conditions listed in the OP Hearing Report related to design flexibility;
 - Conditions listed in the DDOT report; and
 - Conditions listed in the first ANC 4B report as stated in its response to the ANC at Ex. 3I.
 - The density of the Project was lower than the guidelines listed in the FLUM for the site, and less than would be possible under matter of right zoning;
 - The primary benefit of the Project was the additional housing and affordable housing it would provide at a transit rich location;
 - it was seeking the PUD related map amendment primarily so it could achieve additional height;
 - It rejected the idea of underground parking because it would reduce the number of housing units; and
 - It rejected the notion of developing under existing zoning because it wanted the ability to aggregate the density across the site and would not be able to achieve the 76-foot height that allows it to build a more compact building.

- In response to questions by the Commission, the Applicant stated as follows:
 - In response to the issue raised about the loss of the kiss and ride and metro parking, the Applicant stated that utilization of the kiss and ride was low, longer-term parking was more common, and Metro decided to direct longer term parking to the parking facility at Ft. Totten. The Applicant further stated that users can utilize the 66 retail parking spaces in the Project, and the 16 dedicated Metro kiss and ride spaces in the Project. The Applicant further testified that it would provide handicap accessible spaces in the Kiss and Ride facility and additional handicap accessible spaces outdoors adjacent to the Metro elevator;
 - In response to the issue raised about stormwater runoff, the Applicant stated the Project improves runoff over current conditions for all levels of storms;
 - In response to the DOEE letter criticizing the tree plan, the Applicant stated that it would respond in a post hearing submission;
 - In response to criticism about the large size of the bus loop area and related concerns about pedestrian safety, and lack of trees, the Applicant discussed the mitigation measures it was providing and the design of the area and stated it would address the large bus loop size in a post-hearing submission;
 - In response to community comments in the design process, the Applicant stated it pulled the building back from Eastern Avenue, added retail, reduced parking, included 30% MFI level affordable housing, added family sized units, moved the driveway to preserve existing trees, and refined the stormwater management plan. The Applicant further stated that MD residents wanted it to preserve all existing metro parking, which it did not do;
 - In response to a question about the HANTA financing and related additional affordable units, the Applicant described the additional affordable units, but that it did not yet know whether it would qualify so could not commit to providing those units in the Project;
 - In response to a question about whether the proposed park will be open to the public, the Applicant stated that it would be privately owned, but that the Applicant would commit to record an easement allowing public access;
 - In response to a question about how many balconies would be provided, the Applicant said it would respond in a post-hearing submission;
 - In response to a question about the number of heritage trees that will be removed, the Applicant stated that none would be removed, and one would be moved on site;
 - In response to a question about handicapped parking, the Applicant stated that there were currently six handicapped spaces on the site, and it would provide three spaces for metro, and four spaces in the retail parking area;
 - In response to questions about the playground, the Applicant stated it would be similar to a park located in Michigan Park built as part of a recent PUD project, and it would provide playground information in a post-hearing submission; and
 - In response to a question of what would happen to the Project if the Applicant was required to remove one floor, the Applicant stated that it would reduce the amount of affordable housing included as a public benefit of the Project.

- In response to cross examination by the Opponent Party, the Applicant stated as follows:
 - In response to questions about the percentage of green roof, the Applicant stated that it would respond in a post-hearing submission;
 - In response to a question about the width of the Carroll Street ROW, and the location of the building height measuring point, the Applicant stated that it varied and would respond further in a post-hearing submission;
 - In response to questions about the height of building relative to the building height measuring point, the Applicant conceded that the building will appear taller because of the grade change, that Slides⁷ 29-30 show that it will be 2-3 feet taller on Carroll Street side, and that Slide 56 shows that appearance of building will be approximately 10 feet taller than “measured height” on the other side, and that buildings shown on Slide 24 are not the same height;
 - In response to questions about ownership of the park shown on Slides 36-38, the Applicant stated that it would retain ownership, but that it was willing to provide a public access easement;
 - In response to questions about the amount of impervious surface on the site, the Applicant conceded it was increasing, and would provide the amount in a post-hearing submission;
 - In response to a question about the recent FLUM change for the site, the Applicant conceded that the change was proposed by WMATA with assistance from EYA;
 - In response to a question about whether the “available GFA” listed on Slide 54 would actually be achievable in a project that included the bus loop and public amenity space included in this Project, the Applicant didn’t directly respond but conceded that the figure in the slide was the maximum achievable under existing matter of right zoning for the site;
 - In response to a question about the statement on Slide 55 that the CP does not provide specific guidance on building height, the Applicant conceded that there were references in the Comprehensive Plan to height that pertain to the Project.
 - In response to a question about whether there was any difference between the MU-5 and MU-4 other than height, the Applicant said no; and
 - In response to a question about whether the Applicant was applying for the maximum amount under HANTA, the Applicant stated it would respond in a post hearing submission.

48. At the public hearing, OAG noted its support of the Application, based on the amount of affordable housing provided.
49. At the public hearing, OP noted its support for the Application, with conditions, that the Applicant said it would meet.

⁷ The Slide references in this and the remaining bullets in this subsection reference the Applicant’s PowerPoint presentation. (Ex. 222.)

50. At the public hearing, DDOT testified it had no objection to the approval of the Application, with conditions that the Applicant said it would meet.
51. At the public hearing, individuals and representatives of organizations testified in support of the Application: four persons testified in support.
52. At the public hearing, witnesses on behalf of the Opponent Party testified in opposition to the Application as described below.
- Ms. Kohn testified on behalf of Historic Takoma Inc.
 - Concerned about height and density;
 - Mentions other developments that have been built that are 50-55 feet tall and three stories, claims that is what is compatible with Takoma neighborhood; and
 - Traffic is gridlocked and would be worsened by Project;
 - Mr. Feiden
 - Lives across from the driveway access point of Project;
 - Mr. Feiden testified that he lives within 200 feet of the Project, is a resident of Maryland, did not receive written notice of the hearing, and that this lack of written notice to him was a notice defect of the Application;
 - Height;
 - Traffic;
 - Runoff;
 - Pollution;
 - Says setback is insufficient;
 - Neighborhood compatibility; and
 - Says 50-55 feet in height, three stories are compatible; and
 - Claims he would support building if it was shorter;
 - Ms. Eaton
 - Lives across from site on Eastern;
 - Wants to reduce height; and
 - Her property is at the topographical low point in neighborhood, concerned about runoff, asks for condition related to stormwater runoff;
 - Ms. Kurlansky
 - Lives at 202 Cedar Street, N.W.;
 - Height and mass are out of character with Historic Takoma;
 - Thinks underground parking would result in lower height;
 - Air quality; and
 - Increased traffic and noise from driveway;
 - Mr. Brown testified as counsel for the Opponent Party
 - Refers to arguments made in brief submitted before hearing;
 - Says needs to scale back height and density;
 - Height – 76 feet if MU-5 and additional PUD height;
 - Says reason Applicant is not going higher is that adding another floor would result in Height Act violation;
 - Says the slope/topography makes the perceived height higher;

- Bulk of building;
 - Says the building is lower than MU-5 max because much of the lot is not buildable;
 - Says that OP and OAG do not mention the potential inconsistencies with CP; and
 - Claims MU-4 rezoning and knocking off a floor would result in 65 less units.
53. At the public hearing, individuals and representatives of organizations testified in opposition to the Application as described below:
- Ms. Wheeler – Concerned about reduction of green space and preservation of trees;
 - Mr. Kovar – Asked Commission to do ongoing consultation with neighborhood regarding compliance and mitigations;
 - Ms. Green
 - Endorsed the Committee of 100 written submission;
 - Wants to know how much of the developer contribution for affordable housing is a tax benefit;
 - Doesn't think the Applicant should get credit as a public benefit for affordable housing that is a tax credit; and
 - Thinks the private space called park is not a park because it's privately owned; and
 - Ms. Richards testified on behalf of the Committee of 100
 - Concerned about Comprehensive Plan consistency;
 - Believes the Takoma Small Area Plan been given short shrift; and
 - Preservation of neighborhood character is part of Comprehensive Plan policies.

Post Hearing Submissions

54. On June 29, 2023, the Applicant filed a post-hearing submission, which addressed the Commission's requests for additional information. The Applicant's post-hearing statement addressed the following issues: information on the size of the existing green space and the proposed retail plaza/public park and open spaces; a "point-by-point" response to the Opponent Party's pre-hearing statement and public hearing testimony – including information regarding the right-of-way width of Carroll Street at the Building Height Measuring Point; further analysis of the ability to remove hardscape or enhance green space in the areas adjacent to the bus loop and parking spaces; additional information on tree removal, retention, and planting; information on the number of residential units with balconies; information on the design of the community park adjacent to Eastern Avenue; information on the percentage of roof area along Eastern Avenue; information regarding the existing and proposed impervious surface areas; further analysis of the ability to place green roof under the solar panels; information on the amount of the HANTA real estate tax abatement; and information regarding the outreach and contacts with Takoma Park Maryland residents (Ex. 233.), with Plans Depicting Green Space (Ex. 233A.), "Point-by-point" rebuttal to the Opponent pre-hearing brief (Ex. 233B.), Sediment Control Erosion Plan (Ex. 233C.), Community Park Site Plan and Park Safety Strategies (Ex. 233 D.), and Applicant's draft order (Ex. 235.)
55. The Applicant's post-hearing submission provided the following information listed immediately above.

- With respect to the size of the existing green area and multifaceted community park, the Project will include 0.55 acres for the retail plaza open space (which includes public seating areas), 1.15 acres for the community park open space, and 0.15 acres of additional community park open space, located north of vehicular access on Eastern Avenue; (See depiction at Ex. 233A.)
- With respect to removing hardscape or enhancing green elements adjacent to the bus loop and parking spaces, the Applicant stated it is working to explore the possibility of planting additional trees within the bus station while adhering to WMATA regulations and believes that approximately six additional trees could be added to the site;
- With respect to the number of existing trees, the number of trees to be removed or retained, and the number of trees to be planted, the Applicant stated that there are 133 trees on site, the Project requires removal of 118 trees and retention of 15 trees, and the Project proposes the planting of 70 new trees, with the potential for six additional trees near WMATA facilities discussed immediately above (See Sediment Control and Erosion Plan reflecting tree inventory at Ex. 233C.);
- With respect to the number of units with balconies, the Applicant stated that the Project will include 188 units with balconies;
- With respect to the design of the community park, the Applicant stated that a key feature is a multigenerational climbable element, with safety strategies that prioritize containment, buffer, and location. The design also includes multiple seating options with the goal of safe enjoyment of space for all; (See Community Park Site Plan and Safety Strategies at Ex. 233D.)
- With respect to the percentage of Eastern Avenue roof area that is lowered compared to total roof area, the Applicant stated that the total roof area of the building is approximately 65,935 square feet, of which the lowered area of the roof along Eastern Avenue is approximately 5,571 square feet or approximately 8% of the total roof area of the building;
- With respect to the existing and proposed impervious surface area, the Applicant stated that the existing site area is approximately 50% impervious area and after development of the PUD Project, approximately 69% of the site area will be impervious;
- With respect to the ability to include green roof areas under the solar panels, the Applicant stated that it recognizes that DOEE allows for this design, and it will consider this factor as the PUD Project goes through the final building permit process;
- With respect to the amount of real estate tax abatement requested as part of the HANTA application, the Applicant stated that it requested an annual real estate tax abatement of \$1,725,419 with annual market escalations; however, the Applicant explained it has not yet received written approval or confirmation of this amount; and
- With respect to the outreach and contacts with Takoma Park Maryland residents, the Applicant stated it had an extensive list of meetings with local Maryland officials, groups, and residents. These meetings included a meeting with the Opposition party itself, and two meetings with the residents of Eastern Avenue that faced the Project before the hearing, and an additional meeting with the residents of Eastern Avenue after the hearing to discuss stormwater runoff issues. (Ex. 233.)

56. The Applicant's post hearing submission's point-by-point analysis of the Opponent Party's pre-hearing statement and public hearing testimony noted the following (Ex. 233B.):

- Building Height - The Opponent Party does not dispute the legality of the manner in which the Applicant has located the building height measuring point for the Project, nor whether the proposed height complies with the technical requirements of the Zoning Regulations, both generally and specifically with respect to the proposed MU-5A zone. The Applicant provided a plat that depicted a 1974 street closing and dedication which widened Cedar Street to 65 feet and Carroll Street to 60 feet. Further, 10-foot BRLs were recorded on the WMATA Property along Cedar and Carroll Streets, resulting in a street width for Height Act purposes of 75 feet and 70 feet, respectively. Based on either of these street widths, the Height Act allows the Applicant to fully realize the 90-foot maximum height permitted under the proposed MU-5A PUD, a fact that is critical in two respects. First, from a technical perspective the location of the PUD Project's BHMP and proposed 76-foot building height are both fully compliant with the Zoning Regulations and the Height Act. Second, and more importantly, the fact that the proposed height of the PUD Project is well below the 90 feet that could be achieved under an MU-5A PUD clearly demonstrates the Applicant's cognizance of responding to and respecting neighborhood context and character, while also advancing other competing Comprehensive Plan policies and priorities related to housing, land use, transportation, environmental protection, and parks and open space; (Ex. 233B.)
- Project Scale – The fatal flaw in the Opponent Party's "scale" comparison becomes clearer upon review of its theoretical evaluations of the Project's GFA, which involve calculating FAR using a fictitious lot area that is based solely on the proposed building's footprint, and a second lot area that excludes the PUD site's Transit Zone and Open Space/Buffer Zone. The Opponent Party's second FAR calculation, that bases the PUD Project's density on the land area of the Building Zone only, results in a density of 4.2 FAR which the Opponent Party specifically acknowledges is within the density that is permissible in the MU-5A zone as a matter-of-right. In other words, the Applicant does not even need to rely upon the land area of the Transit Zone or Open Space/Buffer Zone, nor does it need to utilize any of the bonus density that is available through the requested PUD-related map amendment to MU-5A. Together with the fact that the PUD Project could achieve even greater building height than what is proposed, this further proves that the Applicant has indeed exercised moderation in recognition of the need to achieve neighborhood compatibility. The Opponent Party's unconventional way of evaluating the Project's scale using irrelevant land areas is misleading and ignores the critical fact that this is a PUD, a process that exists for the purpose of providing flexibility from the underlying Zoning Regulations, in part to achieve Comprehensive Plan consistency and goals in ways that are not possible under matter-of-right development. The PUD regulations address this flexibility as it relates to the calculation of density. Specifically, "the FAR of all buildings shall not exceed the aggregate of the FARs as permitted in the zone or zones included in the PUD boundary." (11-X DCMR § 303.2.) The flexibility to shift/concentrate density within a PUD to achieve other planning objectives or advance other Comprehensive Plan policies (such as providing open space) is also expressly addressed in the Framework Element, and in decisions of the Commission and the D.C. Court of Appeals. The

Opponent Party incorrectly treats scale as a wholly quantifiable topic, ignoring several other critical qualitative design techniques that, taken together with quantifiable measures such as FAR and lot occupancy, establish the PUD Project's scale and how it relates to its context. These techniques include the PUD Project's setbacks; massing reductions; material type, color, and texture; façade articulation; and open spaces. These techniques are proven, and routinely employed in developments, both matter-of-right and PUD, to address contextual compatibility and character. In fact, the numerous qualitative design techniques that are incorporated into the PUD Project's site plan and building design play critical roles in the PUD Project's overall success in addressing Comprehensive Plan policies related to neighborhood compatibility and character while still significantly advancing other competing policies and priorities related to housing, land use, transportation, environmental protection, and parks and open space; (Ex. 233B.)

- Comprehensive Plan Consistency – The Opponent Party asserts that the Applicant's Comprehensive Plan evaluation omits and downplays the relevance of the various Comprehensive Plan policies related to neighborhood character and compatibility. The Applicant conducted a full evaluation of the Project's consistency with the Comprehensive Plan, including the Land Use, Urban Design, Historic Preservation, and Rock Creek East Area Element policies cited by the Opponent Party, and, in accordance with the Implementation Element, has determined that the Project is “not inconsistent” with the Comprehensive Plan when read as a whole through a racial equity lens. In reference to the Applicant's Comprehensive Plan evaluation, the Opponent Party states “[i]nstead of explaining Policy-by-Policy how the Project furthers each identified Policy, a brief, conclusory discussion of the Project in relation to each Element is provided.” However, as made clear by the Court in *Durant I*, the Applicant need not address each individual Comprehensive Plan policy, stating, in relevant part, “we do not suggest that the Commission must exhaustively review, or even cite, every policy in the entire [Comp] Plan; we hold only that it is insufficient to recite that a particular action is consistent with the Plan as a whole.” *Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013). The Applicant's Comprehensive Plan evaluation goes far beyond a mere statement that the Project is not inconsistent with the Comprehensive Plan. Rather, the Applicant's Comprehensive Plan determination is informed by a thorough review that addresses, both individually and as a whole, the FLUM, GPM, and the policies of the Citywide and Rock Creek East Elements. In fact, the Applicant's Comprehensive Plan evaluation and public hearing testimony address every Comprehensive Plan policy that was noted by the Opponent Party; (Ex. 233B.)
- Comprehensive Plan – FLUM Consistency- The Opponent Party challenges the Project's consistency with the FLUM because the Applicant's discussion of the proposed PUD-related map amendment to MU-5A would also be true of a rezoning to MU-4A, and because no examples of comparable MU-5A zoned properties with similar height or density were provided. The Applicant is not required to compare the proposed PUD and related map amendment to other zones or other projects. This is particularly true of a PUD-related map amendment which sets no precedent for the Commission's consideration of a standalone map amendment or future PUDs. This is because a PUD

is evaluated on a case-by-case basis upon its own merits and allows the Commission to fully evaluate a proposed PUD-related map amendment against a specific project's design, site planning, provision of open spaces and amenities. A PUD-related map amendment is analyzed in the narrow context of the proposed project, and through the flexibility afforded in the PUD process the Commission may grant a PUD-related map amendment in circumstances where it might reject a standalone map amendment. This flexibility is also expressly addressed in the Framework Element (“[A]s part of the PUD process, the Zoning Commission may include a zoning map amendment for the purpose of the PUD, which is applicable only for the duration of the PUD, and subject to PUD conditions”) and in decisions of the Court. The Opponent Party also states that the Applicant fails to explain how the Project is “truly emblematic of FLUM-defined ‘Medium Density Residential Development.’” The Project’s FLUM designation calls for medium density Mixed-Use development that favors residential use over commercial use. The Project is not inconsistent with the FLUM. The Project’s 1.69 FAR is consistent with the guidance provided by the Framework Element which states “the general density and intensity of development within a given Mixed Use area is determined by the specific mix of uses shown” 10A DCMR § 227.21. In this case, the Project’s density is well within even the typical [matter-of-right] guidance on density for two components of its Mixed-Use designation (Low Density Commercial and Medium Density Residential⁸). The Comprehensive Plan does not provide any specific guidance on building height and consistency with the FLUM (feet, stories, or otherwise). The only general guidance provided on building height relative to PUDs is that the Commission has flexibility to permit greater height than specified by matter-of-right zoning. While the Commission has substantial latitude to grant additional height when considering a PUD, general, non-binding guidance on height may be obtained from the land use categories that make up the PUD Site’s Mixed Use FLUM designation. Specifically, the Framework Element identifies the MU-4 zone as being consistent with the Low Density Commercial FLUM category. The Opponent Party argues that an MU-4 PUD can achieve a height of 68’-3” (including the additional 5% height that may be obtained under 11-X DCMR § 303.10). The Framework Element identifies the RA-3 zone as being consistent with the Medium Density Residential FLUM category. Applying the same assumptions as the Opponent Party, an RA-3 PUD may achieve a height of 78’-9”. Clearly, the proposed 76-foot height of the Project is within the range of the above-stated heights. Notably, consistent with the FLUM’s preference for residential use on the PUD Site, the proposed height of the Project trends slightly closer to the height that could potentially be achieved through an RA-3 PUD. In attempting to make its case regarding FLUM inconsistency, the Opponent Party states that the Commission “should not ignore the strategically selected BHMP near the highest land elevation on the Property, which slopes away from this point for most of the Property, resulting in a mostly 90’ tall, 8-story building.” Observations regarding the inaccuracy of this statement are necessary. First, the Project’s BHMP was not “strategically selected,” but rather it was legally selected by the Applicant in accordance with the Zoning Regulations and the Height Act. Secondly, the proposed

⁸ The Property’s designation as Local Public Facilities is not included in this discussion because the Local Public Facilities FLUM category does not identify typical density ranges or any zones as being consistent with the category.

building is not 90 feet and 8 stories. Rather, as measured in accordance with the Zoning Regulations the proposed building's height is 76 feet. While the change in grade will cause the perceived height of the proposed building to appear taller at certain points around the PUD Site compared to the height as it is measured at the BHMP, this does not render the Project to be inconsistent with the FLUM. When evaluating FLUM consistency, the Commission correctly considers the actual height and density of the Project because that is what the FLUM land use descriptions focus on. In that regard, and without any consideration of the qualitative site planning and design techniques employed by the Applicant to address neighborhood compatibility and character, the actual height and density of the Project are both well within the parameters for areas on the FLUM that are designated for medium-density mixed-use development. Finally, the proposed MU-5A zone is perfectly suited for the PUD Site's Mixed-Use FLUM designation where, as stated by the Framework Element, "a variety of zoning designations are used...depending on the combination of uses, densities, and intensities." [Emphasis added (10A DCMR § 227.23; Ex. 233B.)]

- Comprehensive Plan – Citywide and Rock Creek East Area Element Consistency – The Opponent Party's argument that the Project is inconsistent with the Comprehensive Plan hinges on its subjective opinion that the proposed height and scale "are in overpowering contrast to the surrounding neighborhood and to the larger context of its location amidst two historic districts." The Opponent Party's Comprehensive Plan evaluation solely focuses on 11 Comprehensive Plan policies that all address the same consideration, namely compatibility with surrounding neighborhood context and character. This is contrary to Comprehensive Plan and Court guidance that a zoning action shall be evaluated against the Comprehensive Plan when read as a whole. The Opponent Party's 18-page legal memorandum evaluates the Project against only a select number of policies within the Land Use, Urban Design, Historic Preservation, and Rock Creek East Elements of the Comprehensive Plan. Its evaluation ignores the numerous other policies within those same Elements that are advanced by the Project, not to mention the substantial number of policies in other Elements that are also advanced by the Project, most importantly the Housing Element. The DC Court of Appeals has made clear that a Comprehensive Plan evaluation need not review or cite every Comprehensive Plan policy. The Opponent Party further states that proper assessment of a zoning action's consistency with the Comprehensive Plan requires "consideration of whether conflicts between competing Policies can be avoided or significantly ameliorated, such that, ideally, virtually all relevant Policies are furthered by the Project." This assertion is also incorrect. While the number of potential Comprehensive Plan inconsistencies factors into the Commission's determination of whether a zoning action is "not inconsistent" with the Comprehensive Plan when considered as a whole, there is no express requirement that a zoning action be modified to avoid or minimize potential inconsistencies until "virtually all relevant policies are furthered." The Opponent Party then offers multiple alternatives to the Project design that involve what it refers to as a "modest reduction in size and scale" that it believes will resolve its alleged Comprehensive Plan inconsistencies while still maintaining consistency with all other aspects of the Comprehensive Plan. The Commission and the Applicant are not required to evaluate alternatives to a proposed zoning action. More importantly, however, is while the Opponent Party promotes how its alternatives

would continue to provide the proposed “1.8 acres of open space, the designed Bus Loop, the size and location of new retail space, and all other identified Project amenities,” it downplays the significant impact its alternatives would have on housing. The Opponent Party states, “at most what might be lost in the process is a relatively small number of market rate and affordable housing units.” The “modest reductions” in the Opponent Party’s alternatives would result in the loss of approximately 70 dwelling units, including approximately 13 affordable units. This amounts to an approximately 16% and 18.5% reduction in total dwelling units and affordable units, respectively. During the Public Hearing, the Applicant specifically stated that having to remove a floor from the Project would require reconsideration of the entire building program and proffered public benefits and amenities, specifically the affordable housing proffer. This is particularly salient given the Framework Element’s statement that “in light of the acute need to preserve and build affordable housing the production of new affordable housing units above and beyond existing legal requirements should be considered a high-priority public benefit in the evaluation of residential PUDs.” (10A DCMR § 224.9.) The Court’s guidance is abundantly clear that to the extent certain Comprehensive Plan policies are at odds with each other when evaluated against the Project, the Commission may balance said policies in its determination as to whether the PUD Project is consistent with the Comprehensive Plan as a whole. Further, if the Commission does indeed find the Project inconsistent with one or more Comprehensive Plan policies, it simply must explain why said inconsistencies are outweighed by other competing considerations before approving the Project. As noted above, the Applicant’s Comprehensive Plan evaluation considered every policy that is referenced by the Opponent Party. Contrary to the Opponent Party’s assertions, the record clearly reflects that the Applicant was aware of these policies and took them into consideration while designing the PUD Project and preparing its Comprehensive Plan evaluation. Upon careful consideration of these policies, the Applicant concluded that the PUD Project is not inconsistent with each of these specific policies and with the Comprehensive Plan as a whole. The Opponent Party acknowledges the Court of Appeal’s recognition that the Comprehensive Plan reflects policies that sometimes compete with each other. This is not the same as a zoning action being inconsistent with one or more Comprehensive Plan policies. Where Comprehensive Plan policies promote competing planning objectives, such as one policy encouraging maximizing housing on a site while another policy encourages maximizing open space, the Commission can balance these competing priorities and find that a proposed zoning action advances both policies. Such is the case with the proposed PUD Project and its consistency with the Comprehensive Plan policies cited by the Opponent Party. All of the Comprehensive Plan policies referred to by the Opponent Party address subjective planning and design considerations of the Project’s compatibility with the scale and character of the Takoma Park historic district and surrounding context. These are more matters of design than quantifiable considerations. Furthermore, the Opponent Party treats these Comprehensive Plan policies as if they are mandates, when in fact all of them are worded in non-mandatory terms. For example, UD-2.2.5 (Infill Development), a policy the Opponent Party says is central to its objections to the size and scale of the PUD Project, says that new construction “should respond to and complement the defining visual and spatial qualities of the surrounding neighborhood.”

Emphasis added. Per the Court's guidance, these policies do not mandate that the Applicant take a specific course of action. This is in contrast to, for example, the mandatory language of the Housing Element policy regarding density bonuses for affordable housing, which states:

- H-1.2.7: Density Bonuses for Affordable Housing: Provide zoning incentives, such as through the PUD process, to developers proposing to build affordable housing substantially beyond any underlying requirement. Exceeding targets for affordable housing can refer to exceeding the quantity or depth of affordability otherwise required. Affordable housing proffered shall be considered a high priority public benefit for the purposes of granting density bonuses, especially when the proposal expands the inclusiveness of high-cost areas by adding affordable housing. When density bonuses are granted, flexibility in development standards should be considered to minimize impacts on contributing features and the design character of the neighborhood. [Emphasis added.] (See 10A DCMR § 504.15.)
- Notwithstanding the non-mandatory, non-binding language of these policies the Applicant still gave them substantial consideration while designing the Project to ensure neighborhood compatibility. The Applicant did not disregard these Comprehensive Plan policies in favor of other policies. The Applicant also worked closely with D.C. Historic Preservation Office staff to give full consideration of historic preservation interests and concerns and ensure compatibility with the Takoma Park Historic District. As a result, through its moderated height and density, compact site plan, massing reductions and use of bay projections, façade articulation, provision of open space setbacks/buffers, and use of context-sensitive materials, the Project is not inconsistent with all of the Comprehensive Plan policies cited by the Opponent Party that promote visual and spatial compatibility and respecting the character and needs of the surrounding community. Through these effective planning and design techniques, the Project successfully avoids overpowering contrasts in scale and balances Comprehensive Plan policies promoting increased density, particularly for housing, around Metrorail stations (LU-1.4.C, H-1.1.2, H-1.1.3, H-1.1.4, H-1.2.7.) with those that promote consideration of neighborhood scale and compatibility (LU-1.5.1, UD-2.2.5, HP-1.1.3, HP-2.5.3, RCE-2.1.1.) This is supported by the June 1, 2023, concept review of the PUD Project by HPRB which commented favorably on the site plan and general conceptual approach of the Project. In its deliberation, HPRB members did not express any objections to the height and massing of the Project and asked for further refinement of the architecture of the building facing Carroll Street. HPRB also requested further evaluation of color, materials, detailing and composition of the proposed building; (Ex. 233B.)
- Takoma Central District Small Area Plan – The “Takoma SAP” was adopted by the D.C. Council in 2002. At that time, development at the Takoma Metrorail Station, an identified “Opportunity Site” in the Takoma SAP, generally envisioned redevelopment of the PUD Site with a 3-4 story townhome or garden-style apartment project with approximately 65-95 total dwelling units, limited retail uses, and a “village green.” Following adoption of the Takoma SAP, the Comprehensive Plan was amended to incorporate the recommendations of the Takoma SAP. Since then, the Comprehensive Plan has been amended twice (2012 and 2021), and both times included amendments

to the PUD Site's FLUM designation and to the Rock Creek East policies that address development on the PUD Site. The 2021 Comprehensive Plan amendments made the following notable amendments:

- Changed the GPM designation for the portion of the PUD Site designated as Neighborhood Conservation Area to Neighborhood Enhancement Area;
- Changed the FLUM designation of the PUD Site to support medium-density mixed-use development with a preference for residential uses; and
- Made policy changes to support redevelopment of the PUD Site with multi-family residential development to accommodate housing demand in accordance with the amended FLUM;
- The Opponent Party inquires how to properly synthesize the SAP in relation to the 2021 Comprehensive Plan amendments, including the FLUM, but fails to mention the specific guidance that was included in the updated Framework Element and Implementation Element regarding this question. The Framework Element states, "unless a Small Area Plan has been made binding on the Zoning Commission through its enactment as part of a Comprehensive Plan amendment, a Small Area Plan provides only supplemental guidance to the Zoning Commission and it does so only to the extent it does not conflict with the Comprehensive Plan." (10A DCMR § 224.5.) Additional language from the Implementation Element states that "a Small Area Plan provides supplemental guidance to the Comprehensive Plan, unless incorporated into the Comprehensive Plan by a D.C. Council act." (10A DCMR § 2503.1.) This guidance is important in the context of the Takoma SAP and the Project, and specifically as it relates to instances where Takoma SAP recommendations to moderate development on the PUD Site conflict with the site's current FLUM designation and recommendations to increase density around Metrorail stations to accommodate the critical, high priority need for new housing in the District. The Applicant reiterates that the Project is fully consistent with those parts of the 2002 Takoma SAP that remain applicable to the PUD Site, and that are not inconsistent with the current Comprehensive Plan. The Rock Creek East Element – Takoma Central District Policy Focus Area contains nine policies and actions that relate to development on the PUD Site. The Applicant's written submissions and testimony at the public hearing have already demonstrated how the Project is not inconsistent with these policies. The height, massing, and overall design of the Project have been developed in close consultation with Historic Preservation Office Staff and HPRB. This close consultation and the Applicant's thoughtful consideration of the surrounding context have resulted in a Project that recognizes and respects Takoma's historic character while balancing other competing demands for housing, transit-oriented development, open space, and environmental protection (RCE-2.1.1, RCE-2.1.3.) The Project also addresses the demand for additional neighborhood-serving retail and service uses, and consistent with the Takoma SAP does so with active ground-floor uses that are concentrated along Carroll Street (RCE-2.1.4.) Through effective site planning the Project successfully advances the Takoma SAP's housing and retail strategies while still being able to meet all transit needs (Metrorail, Metrobus, Ride-On) on the PUD Site itself, and provide a substantial "village green" that will serve as a signature open space feature (RCE-2.1.5, RCE-2.1.D.) Finally, the Project adheres to the Takoma SAP redevelopment guidelines (*see* Takoma SAP pp. 52-53.) for the PUD Site in a manner that is not inconsistent with the

- updated FLUM that supports medium-density, mixed-use development. Indeed, with the exception of the redevelopment guidelines that refer to specific building heights or number of dwelling units, the Project is fully consistent with all supplemental guidance provided in the Takoma SAP that is not inconsistent with the current Comprehensive Plan. (Ex. 233B.)
57. On July 6, 2023, the Opponent Party submitted a cover letter, its response to Applicant's rebuttal of its pre-hearing brief, and its draft order. (Ex. 236-236B, 236C.)
 58. On July 6, 2023, Faith Wheeler submitted her comments in opposition. (Ex. 237.)
 59. On July 19, 2023, the Applicant submitted its initial list of final proffers and draft conditions, (Ex. 238.), and on August 3, 2023, submitted its final list (Ex. 239.)
 60. On August 14, 2023, the Applicant submitted a cover letter and its final architectural plans. The Applicant indicated that the plans had been approved by HPRB. (Ex. 240, 240A-240A18.)
 61. The Application was referred to the National Capital Planning Commission ("NCPC") on August 21, 2023. (11-Z DCMR §§ 603.1(b)(2), 603.4(a).)
 62. On October 6, 2023, NCPC submitted a report stating that NCPC found that the Application is not inconsistent with the Federal Elements of the Comprehensive Plan and would not adversely impact any identified federal interest. (Ex. 242.)

Contested issues

63. The Commission considered the entire record and finds that the following are the contested issues in the case:

A. Alleged Comprehensive Plan inconsistencies.

1. FLUM – The Opponent Party asks the Commission to reject the Applicant's "simplistic" analysis that a rezoning to MU-5A is not inconsistent with the FLUM simply because the MU-5A zone is oriented to "medium-density, compact mixed-use development". The Opponent Party argues that the Commission should not ignore the strategically selected BHMP near the highest land elevation on the entire Property resulting in a mostly 90' tall, 8-story building. A height of 76 feet might work out well in the typical context of side-by-side medium density residential buildings on flat earth fronting just one street, but it is a wholly different matter on sloping ground where the building's increased exposure from the slope will be readily visible by the public on all sides; (Ex. 123A.)
2. GPM - The Opponent Party notes that the Neighborhood Enhancement Area calls for "compatible infill development" that is not achieved by the Project. The Opponent party also alleged that the Applicant did not address the GPM, and that

the OP argument that characterizes the “one-acre park planned for the Project as a ‘neighborhood enhancement’ is an absurdity” because the Site already includes what they allege is a park of the same size. (Ex. 123A.)

3. Citywide and Rock Creek East, Framework, and Historic Preservation Elements – The Opponent Party stated that the Project is not consistent with the Comprehensive Plan because its height and scale are in overpowering contrast to the surrounding neighborhood and to the larger context of its location amidst two historic districts. The Opponent Party argues that the Applicant and OP only make conclusory assessments of Comprehensive Plan policies and the Project’s consistency with those policies and that the Applicant and OP fail to address competing policies in the Comprehensive Plan. The Opponent Party notes that central to its objections to the size and scale of the Project is Urban Design Policy UD-2.2.5, which prescribes that “[n]ew construction . . . should respond to and complement the defining visual and spatial qualities of the surrounding neighborhood [and] [a]void overpowering contrasts of scale and height . . .”. (Ex. 123A.) The Opponent party further notes that numerous other policies . . . include language about the necessity for new developments to respect the character and needs of the surrounding neighborhoods. (See LU-1.4.1, LU-1.4.2, LU 2.4.5, UD-2.2.1, UD-4.2.4, HP-2.5.3, RCE-2.1.1; Ex. 123A.); and argues that there are multiple ways that a modest reduction in the size and scale of the Project could result in a satisfactory level of compatibility with the surrounding neighborhood. (*Id.*) The Opponent Party made a related argument that the Applicant’s analysis of the Framework Element is defective and states that a more complete and objective analysis of consistency with the Framework Element would assess whether a reduction in size and scale of Project along the lines proposed by the Opponent Party would or would not be more likely to result in an invigoration and enhancement of Takoma Park. The Opponent Party stated that Framework Element policies include § 219.7, which the Opponent Party stated closely echoes UD-2.2.5, reiterating that infill development should “respect the integrity of stable neighborhoods and the broader community context . . .” (*Id.*) The Opponent Party further contends that its major objections are not centered on any of the following attributes of the Project or the fact that these attributes advance Comprehensive Plan Policy Goals: (1) transformation of the 6.78 acres of WMATA Property adjacent to the Takoma Metro Station into a three-part combination of Bus Loop, mixed-use housing with ground floor retail; and 1.8 acres of open space; (2) a major increase in the availability of both market-rate and affordable housing in the neighborhood; (3) EYA’s tree preservation plans; (4) the increase in permeable surface on the Property; and (5) the Project’s energy efficiency goals. The Opponent Party’s position is that these and other worthy goals can all be furthered while not conflicting with the Policy goals that promote respecting the character and needs of the surrounding neighborhood. A modest reduction in the size and scale of the Project could result in a satisfactory level of compatibility with the surrounding neighborhood. The required Project adjustments are such that no

competing policy need be sacrificed in the process: the 1.8 acres of open space, the redesigned Bus Loop; the size and location of the new retail space, and all other identified Project amenities. At most what might be lost in the process is a relatively small number of market rate and affordable housing units. (*Id.*)

4. 2002 Takoma Central Business District SAP/Rock Creek East Area Element – The Opponent Party argues that the Comprehensive Plan, Action RCE-2.1.C, requires the Commission to review the SAP redevelopment guidelines in accordance with the updated FLUM and Rock Creek East Area Elements. What is contemplated by the Comprehensive Plan is that approval of the Project must be mindful of recommendations in the SAP and the Rock Creek Area East Elements, even as the proposed increased level of development anticipated in the FLUM is considered. The Opponent Party requests that the Commission reject, if only for this Property, the Applicant’s attempt to characterize its massive building of over 11 acres of GFA, fully exposed on all sides, and rising to over 90’ for most of its facades, as what the FLUM envisioned here. The Opponent Party also argues that the Application is inconsistent with the provision of the Rock Creek East element that provides that “the Plan specifies that development of the WMATA Property ‘should maximize Metro access while taking care to provide appropriate buffers and transitions to adjacent uses.’” (§ 2211.4.) Further, the Application’s discussion of the Takoma Central District Small Area Plan fails to reference all of the policies in the Rock Creek East Area Element bearing on redevelopment of the WMATA property. Specifically, Policy RCE-2.1.1: Historic Preservation in Takoma, is not mentioned. (§ 2211.5.) The Opponent Party also argued that Takoma Central District Small Area Plan “recommends more moderate density town house development at the site;” (Ex. 123A.)
5. The Commission made a related request that the Applicant review the 2002 Takoma Central District Small Area Plan to see if it recommends that five percent of new housing units on the site should go to households making no more than 30% MFI.
6. Historic Preservation Element – The Opponent Party argues that neither the Applicant nor OP has discussed compliance with the Historic Preservation Element in detail. The Opponent Party claims the Application is inconsistent with the following policies in the Historic Preservation Element of the Comp. Plan:
 - The Historic Preservation Element “[r]equires that ‘full consideration’ be given to concerns expressed in the SAP. Policy HP-1.1.3. 1003.6. That Policy also expressly recognizes the important role of ‘community preservation groups in planning matters affecting historic preservation.’
 - In historic districts ...Policy HP-2.5.3 specifies that ‘new construction’ should be ‘in scale with and respect their historic context through sensitive siting and design, and the appropriate use of materials and architectural detail.’”(Ex. 123A.)

B. Alleged potential adverse effects/impacts

1. The Opponent Party and persons in opposition raised concerns about several alleged adverse effects of the Project as follows:
 - Concerns about height and density of the Project, the impact of the height and density on neighborhood character, and compatibility with the historic district, and alleged insufficiency of setbacks to adequately mitigate;
 - Impact of the increased traffic and noise from the new driveway location on the directly adjacent neighbors, as well as more general impacts related to increased traffic and noise on the general vicinity of the Site;
 - Access to metro station and loss of commuter lot;
 - Neighbor at the topographical low point in neighborhood, concerned about runoff, asks for condition related to stormwater runoff;
 - Reduction of open space on site;
 - Insufficient setback between building and neighboring properties; and
 - Increased pollution.
2. The Commission believes, based on its review of the Site Plan attached to the DDOT report, that the Project will create an adverse impact on the residences located on Eastern Avenue near the combined vehicular entrance due to traffic and associated noise and pollution from the buses and vehicles entering and exiting the Site.
3. The OP Hearing Report and DOEE comments therein stated that the Project would have a significant negative impact on the tree canopy in the area. The DOEE comments requested that the Applicant provide more detailed information about the net tree loss as a result of the Project.
4. The Commission and OP requested more details on the pedestrian circulation in the courtyard because of concern about pedestrian/vehicular conflicts.

C. Public benefits

The Opponent Party alleged the Application did not demonstrate the claimed public benefits in the following categories:

1. Affordable housing/HANTA units – The Opponent Party alleged that there is no indication in the record about whether the Applicant intends to claim the HANTA units in the Project as a public benefit, and that the Commission should state that the HANTA units are not considered a public benefit of the PUD;
2. Superior design and architecture – The Opponent Party claimed the Applicant provides only a conclusory claim that the Project exhibits many characteristics of exemplary urban design, and that this is not sufficient;
3. Superior Landscaping and Open Spaces – The Opponent Party argued that the Applicant's claim it is replacing a "just a tree/lawned area" with an "engaging neighborhood-oriented park," is insufficient without a better comparison of the value of what is existing vs. what is being provided. The Opposition party argues

that the development will result in a reduction on vacant land, which necessarily reduces open space;

4. Site Planning and Land Use. The Opponent Party argued the Applicant should not get credit for site planning as a public benefit because the “Applicant claims this public benefit by comparing the current use of the Property with what is proposed. This is the wrong comparison because the benefit must be significantly greater than matter of right development;”
5. Streetscape Plans – The Opponent Party argued the Applicant should not get credit for streetscape plans as a public benefit because Applicant’s submission does not explain how what it is proposing for the streetscape is superior to matter of right development;
6. Environmental and Sustainability Benefits – The Opponent Party argued the Applicant should not get credit for some of the claimed environmental benefits because the development’s adjacency to Takoma Metro Station should not count as a public benefit because it would also be true of matter of right development of the site; and the Applicant claims rooftop solar as a public benefit, but does not state an amount, and therefore the benefit is not quantified or measurable;
7. Uses of Special Value – The Opponent Party argued the Applicant should not get credit for some of the claimed uses of special value because the Applicant states it has agreed to work with the community to identify art projects but does not identify what these projects are, and that this is a mere promise that needs to be further developed before it can count as a benefit; and
8. Comprehensive Plan - The Opponent Party argued the Applicant should not get credit for consistency with the Comprehensive Plan as a public benefit because the Applicant claims that the Project substantially advances the Comprehensive Plan but does not explain what “substantial advancement” will occur.

D. Relief required

The Opponent Party made three arguments about the relief required:

1. Height. The Applicant misrepresented the 76-foot height of the Project and its related impact on neighbors because of the topography of the site, and the fact the building height measuring point was taken from Carroll Street;
2. Height Act. The Applicant did not adequately explain how it is entitled to the 76-foot height, under the constraints of the Height Act limit, because it has not shown sufficient information; and
3. Density. The scale of the Project is greater than its 1.69 FAR suggests because the Project site also includes the bus turn around transit zone and the open space buffer zone, and if these were excluded the same building placed elsewhere on MU-5A zoned property would produce a FAR at the top end of that allowed in the MU-5A zone without a PUD. Therefore, the Applicant’s utilization of 1.69 of the allowable FAR is not an act of moderation in recognition of achieving neighborhood compatibility.

CONCLUSIONS OF LAW

Authority

1. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a Consolidated PUD consistent with the requirements of 11-X DCMR, Chapter 3 and 11-Z DCMR § 300, and a PUD-related map amendment pursuant to 11-X DCMR § 303.12.

Purpose, Flexibility, and Evaluation Standards

2. Pursuant to 11-X DCMR § 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 11-X DCMR § 303.11: *“The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission.”*
4. Pursuant to 11-X DCMR § 303.12: *“A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD.”*
5. Pursuant to 11-X DCMR §§ 304.3 and 304.4, in reviewing a PUD application the Commission must: *“Judge, balance, and reconcile the relative value of the of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case;”* and must find that the proposed development:
 - (a) *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - (b) *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
 - (c) *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
6. Pursuant to 11-X DCMR §§ 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.”

7. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b).) established the CP’s purposes as:
 - (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; and*
 - (c) to promote economic growth and jobs for District residents;*
 - (d) to guide private and public development in order to achieve District and community goals;*
 - (e) to maintain and enhance the natural and architectural assets of the District; and*
 - (f) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*

8. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)) (the “McMillan PUD”). In its decision affirming the Commission’s approval of the McMillan PUD, the Court stated the following:

“The Comprehensive Plan is a ‘broad framework intended to guide the future land use planning decisions for the District. *Wisconsin-Newark Neighborhood Coal. V. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). ‘[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.’ *Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous ‘occasionally competing policies and goals,’ and, ‘[e]xcept where specifically provided, the Plan is not binding.’ (*Id.*) At 1167, 1168 (internal quotation marks omitted.) Thus ‘the Commission may balance competing priorities’ in determining whether a PUD is consistent with the Comprehensive Plan as a whole.’ (*D.C. Library Renaissance Building/West End Library Advisory Grp. V. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013).) ‘[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they

are outweighed by other, competing considerations.” (*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016).)

Procedural and Jurisdictional Conclusions

9. A PUD application must adhere to certain procedural requirements. (11-X DCMR § 307.1; 11-Z DCMR §§ 205, 300, 400-08, 600-06, 700-707.) The Commission must hear any PUD in accordance with the contested case procedures of its Rules of Practice and Procedure. (11-X DCMR § 300.3.) The Commission has found and hereby concludes: (i) the Application satisfies the PUD application requirements, and (ii) the Applicant, OZ, OP, and this Commission have satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations. (FF 3-4.)
10. The Commission considered the argument raised at the hearing by Mr. Feiden of the Opposition Party that the notice requirements of the Zoning Regulations were not satisfied because written notice mailed to owners of property within 200 feet of the Property did not include owners of properties located in Maryland.

The Commission acknowledges that written notice was not mailed to property owners in Maryland within 200 feet of the Property.

The Commission notes that there is ample evidence in the record that the owners of property within 200 feet of the Property located in Maryland received actual notice of the hearing. This Project has been well known in the community for a very long time. The Applicant submitted a list of the extensive meetings before the hearing it held with Maryland officials, groups, and residents, including the Opposition party who raised the issue, and Maryland residents of Eastern Avenue who were within 200 feet and most likely to be directly impacted by the Project. (FF 55.) The Applicant posted notice of the hearing on the Property and advertised in the District of Columbia Register. (FF 3, 4.) Several Maryland neighbors clearly had actual notice of the hearing because they attended and participated in the hearing, including Mr. Feiden. (FF 53.)

The Commission voted to waive the requirements of 11-Z DCMR § 300.7 that the Applicant file a written notice of its intent to file the Application to owners of property within 200 feet of the Property for the properties located in Maryland. As well as the corresponding requirements of 11-Z DCMR § 300.11 to submit a list of the Maryland property owners to the Office of Zoning, and 11-Z DCMR § 402.1(d) that the Office of Zoning use that list to mail notice to those property owners in Maryland.

The Commission has the explicit authority to waive this alleged notice defect pursuant to 11-Z DCMR § 402.12, which authorizes the Commission to hold the hearing as scheduled despite a minor notice defect after a consideration of the nature and extent of the actual notice received by the parties and public from all sources, attendance, or lack thereof, at the public hearing, and the nature and extent of the construction and/or use involved in the application. The Commission also has the authority to waive the alleged defect pursuant to 11-Z DCMR § 101.9 which authorizes the Commission to waive any of the provisions

of Subtitle Z for good cause if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

The Commission believes that the notice defect is minor, and there is ample evidence of actual notice to the affected Maryland residents, some of whom attended and participated in the hearing, and the Applicant even met with some of them in person to discuss the Application prior to the hearing. The Commission further believes the type of construction and use was such that there was additional actual notice of the Application because the Property is located at a busy metro station where the neighbors were likely to see the signs notifying the public about the hearing. The Commission further concludes there is good cause for the waiver because of the extensive actual notice, and had the Commission not proceeded with holding the hearing as scheduled it would have prejudiced the Applicant's rights.

The Commission believes the Zoning Regulations cited above that require notice to property owners within 200 feet were only intended to apply to properties located in the District of Columbia and should not apply to properties in Maryland. The Commission notes that the longstanding practice has been for Applicants to provide the Office of Zoning with the list of property owners within 200 feet generated from the list of District of Columbia property taxpayers maintained by the District's Office of Tax and Revenue. It is the Commission's understanding that the District's Office of Tax and Revenue only maintains District of Columbia property taxpayer information and therefore could not generate a list of properties outside of the District of Columbia. The Commission nonetheless recognizes that the text of the rules themselves do not explicitly limit the notice requirements to just District of Columbia properties within 200 feet. For these reasons, the Commission believes granting the waiver was the appropriate decision in these factual circumstances.

11. The minimum area included within a proposed PUD must be no less than 15,000 square feet and all such area must be contiguous. (11-X DCMR § 301.) The Application satisfies these minimum area and contiguity requirements. (FF 6.)
12. The Application is subject to compliance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. (the "Act"). The Conditions of this Order require that the Project and the Applicant comply with the Act.

Evidentiary Standards

13. The Applicant has the burden of proof to justify the granting of the Application according to the PUD evaluation standards. (11-X DCMR § 304.2.) The Commission's findings in relation to a PUD must be supported by substantial evidence. (*See Howell v. District of Columbia Zoning Comm'n.*, 97 A.3d 579 (D.C. 2014).) Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support" the conclusions contained herein. (*D.C. Library Renaissance Project v. District of Columbia Zoning Comm'n.*, 73 A.3d 107, 125 (D.C. 2013).) The Applicant's filings, testimony, and expert witness presentations are credible and thorough and reasonably adequate to support the Commission's analysis and conclusions contained herein. Accordingly, the Applicant

has provided substantial evidence to demonstrate that the Project satisfies the relevant PUD evaluation standards and has carried its burden of proof sufficiently to allow the Commission to approve the Application.

14. The Commission is required to give “great weight” to the issues and concerns of the affected ANC. D.C. Code § 1-309.10(d)(3)(A). 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).)

The Commission has considered the written testimony from ANC 4B, which included proposed conditions of support. (FF 40.) The Commission concludes that the Applicant appropriately engaged in dialogue with the ANC 4B providing suggested revisions to ANC 4B’s conditions of support, and ANC 4B supports the Project with such conditions. (*Id.*) The Commission affords the requisite great weight to the ANC’s written submission with the conditions of support as agreed to by the ANC and Applicant.

ANC 4B requested that this Order include a condition requiring the Applicant engage in “ongoing efforts (not just efforts via the initial application or cycle) to seek participation in the ... (HANTA) program ...that will increase the percentage of residential square footage dedicated to income-restricted affordable housing to at least 33%.” (*Id.*)

In response to this issue, the Commission requested that the Applicant provide an update on the pending HANTA application at the public hearing and in its post-hearing submission. In response, the Applicant noted that it had been in regular contact with DHCD and anticipates approval of the HANTA application that will allow the Project to increase the number of affordable units (IZ and non-IZ units) to 33% of the total number of units (approx. 144 units). The 74 HANTA units would consist of 6 studios, 49 one-bedroom units, and 19 two-bedroom units. (FF 10 n.4.)

The Commission believes this is adequate to address the ANC’s concern about the HANTA application. The Commission has not included the requested condition because it believes the condition would not be effectively enforceable, and that relying on the Applicant’s good faith efforts thus far is sufficient.

15. The Commission is also required to give great weight to the written reports of OP. D.C. Code § 6-623.04. (11-Z DCMR § 405.8.)

The Commission found the recommendation and analysis in the OP Setdown Report persuasive and accordingly set the case down for a hearing and requested that the Applicant address the issues listed in the OP Setdown Report before the hearing. (FF 20-21, 35.)

The Commission also found the recommendation and analysis in the OP Hearing Report persuasive. (FF 36-37.) Specifically, OP recommended approval of the PUD with revisions to the condition language to further specify the Applicant’s LEED commitment for the Project, and to further limit parking space design flexibility. The Report further

recommended that the Applicant submit final plans that included all revisions required by HPRB.

OP's proposed condition language further specifying the Applicant's LEED commitment is incorporated into the conditions of this Order below.

With respect to OP's proposed language limiting parking flexibility, the Applicant proposed alternative language that captures the intent of OP's proposed revision in its final proffers and draft condition. The Applicant's alternative is acceptable to the Commission and is incorporated into the conditions of this Order below.

The Applicant submitted final plans approved by HPRB. (FF 61.)

The Commission gives great weight to OP's support of the Application and concurs with OP's conclusions and findings with respect to the Project's consistency with the Comprehensive Plan (and the Takoma Central District Plan), satisfaction of the PUD Balancing Test, and racial equity analysis.

Consistency with the CP and Public Policies (Subtitle X § 304.4(a).)

16. Based on the case record and the Findings of Fact above, the Commission concludes that the Project, including the PUD and related Zoning Map amendment, is not inconsistent with the Comprehensive Plan and with other public policies and active programs related to the Property. (FF 17, 32, 35-36, 55-56, 63.) In reaching this conclusion, the Commission balanced several competing policies:
 - a. The Commission concludes the Application is consistent with the Comprehensive Plan policies cited by the Applicant and OP and recited in this Order. The Commission found the Project was particularly strong because it advanced the following policies:
 - Comprehensive Plan – FLUM – The Project would not be inconsistent with the FLUM land use recommendation for the site, which encourages a mix of medium-density residential development, low density commercial development, and local public facility use on the site. The Project is for a medium density residential building with retail on the ground floor. The Project also includes improvements to the Takoma Metrorail station's Kiss and Ride and bus stop area;
 - Comprehensive Plan – GPM – The Project would not be inconsistent with the GPM's Neighborhood Enhancement Area designation. It advances the policy's guidance by improving an underutilized site with a building that provides both market rate and affordable units. This would invite more households to the area and help to make the area more inclusive. The Project also includes a public park that would provide a space for community gatherings. The Project would also not be inconsistent with the small southern portion of the site designated Main Street Mixed Use Corridor on the GPM as it would enhance an underutilized corridor with redevelopment that supports transit use and enhances the pedestrian environment;
 - Comprehensive Plan – Land Use Element – The Project furthers at several policies of the Land Use Element (Policies LU-1.4.1, 1.4.2, 1.4.3, 1.4.4, 1.4.5, 1.4.7, 2.1.8, 2.2.4, 2.4.5.) The Project furthers these Policies by providing housing near a

Metrorail station. It would also transform the station area into a neighborhood center by replacing a surface parking lot with a mixed-use building, neighborhood-focused retail plaza, and a community park. As a mixed-use project the development's location near a Metrorail station should encourage more non-auto transportation to the site;

- Comprehensive Plan – Transportation Element – The Project furthers several policies of the Transportation Element (Policies T-1.1.4, 1.1.5, 1.2.3, 1.3.A, 2.3.1, 2.3.3, 2.4.1.) The Project would provide a transit-oriented development in close proximity to the Takoma Metrorail station and includes considerable bicycle and pedestrian improvements. The Project proposes a new pedestrian/bike shared use path and bicycle facilities. Furthermore, the building itself with its residential units and pedestrian-oriented retail near a Metrorail station encourages non-auto transportation to the site;
- Comprehensive Plan – Housing Element – The Project furthers several policies of the Housing Element (Policies H-1.1.2, 1.1.3, 1.1.4, 1.1.8, 1.2.3, 1.2.7.). The Project would replace an underutilized parking lot with a mixed-use development that includes 430-440 residential units. Approximately 70 of these units would be affordable through the IZ program. The affordable units would include units dedicated to households earning 60% MFI and 30% MFI or below;
- Comprehensive Plan – Environmental Protection Element – The Project furthers several policies of the Environmental Protection Element (Policies E-3.2.3, 3.2.6, 3.2.7, 4.1.2, 4.2.1, 4.4.1, 5.1.5.) The site's location adjacent to the Metrorail station should result in many of the new residents and visitors opting not to use a vehicle. The Project will be designed to achieve LEED Gold certification. On the roof, solar panels will be installed on the top roof levels and green roof areas will be installed on the lower roof levels. Tree preservation is an important component in the design of open space. The Applicant has committed to preserving as many healthy trees as possible on the site, which includes relocating Heritage Trees;
- Comprehensive Plan – Economic Development Element – The Project furthers policies of the Economic Development Element (Policies ED-2.2.3, 2.2.9.) Along with the new residential units the Project would add 15,000 – 18,000 square feet of high-quality retail/service space to this currently underutilized site. This retail/service space would be located along the high foot traffic area along Carroll Street, N.W. that leads to the Metrorail entrance. Providing retail in this location would also connect the Takoma DC and Takoma Park, MD retail core with the Takoma retail area along 4th Street, N.W. The retail/service space would also provide opportunities for local employment;
- Comprehensive Plan – Urban Design Element – The Project advances several policies of the Urban Design Element (Policies UD-2.1.4, 2.1.7, 2.2.1, 2.2.5, 2.3.1, 2.4.1, 3.2.2, 3.3.2, 4.1.3, 4.1.4, 4.2.2, 4.2.4.) OP stated that the Project would connect the Takoma Metrorail station entrance to a mixed-use building with a retail plaza. This retail plaza will be activated by the ground floor retail in the new residential building. The building would also have features that significantly engage the pedestrian experience along the plaza, such as having storefront windows. Each side of the building would have a massing and scale that reflects

the scale of the adjacent properties. The Project's community park and retail plaza would provide an outdoor gathering space and community play space for the neighborhood;

- Comprehensive Plan – Parks, Recreation and Open Space Element – The Project advances at least one policy of the Parks, Recreation and Open Space Element (Policy PROS 4.3.3.) A key component of the Project is providing public open space to the community for passive recreation use; and
- Comprehensive Plan – Rock Creek East Area Element - The Project advances several policies of the Rock Creek East Area Element (Policies RCE-1.1.3, 1.1.7, 2.1, 2.1.3, 2.1.4, 2.1.C, 2.1.D.) The Project would provide a multi-family building with affordable units adjacent to the Takoma Metrorail station. The Project will also fill in the gap in retail along Carroll Street, N.W. at the Metrorail station by providing 15,000 - 18,000 square feet of retail along Carroll Street, N.W. The Project will also fulfill the Rock Creek East Area Element's recommendation for a Village Green by providing a large public open space.

b. The Commission carefully considered whether the Application is inconsistent with the text of the Comprehensive Plan and other policies cited by the Opponent Party. The Commission will address each below:

1. FLUM – The Opponent Party asks the Commission to reject the Applicant's "simplistic" analysis that a rezoning to MU-5A is not inconsistent with the FLUM simply because the MU-5A zone is oriented to "medium-density, compact mixed-use development". The Opponent Party argues that the Commission should not ignore the strategically selected BHMP near the highest land elevation on the entire Property resulting in a mostly 90' tall, 8-story building. A height of 76 feet might work out well in the typical context of side-by-side medium density residential buildings on flat earth fronting just one street, but it is a wholly different matter on sloping ground where the building's increased exposure from the slope will be readily visible by the public on all sides;

Commission's Response: The Commission does not need to compare the Project to what would be possible under other zones. The Project's 1.69 FAR is within the guidelines for the components of the Property's Mixed Use Medium Density Residential/Low Density Commercial designations, which both have FLUM descriptions that list typical density ranges and consistent zone districts. The 1.69 FAR is also not inconsistent with the guidelines for the Property's Local Public Facilities designation as its FLUM description does not list typical density ranges and consistent zone districts. Heights are not explicitly mentioned in the FLUM descriptions. The height is within the range contemplated by the RA-3 Zone mentioned in the Medium Density Residential designation FLUM description, and not much taller than the maximum permitted under the MU-4 mentioned in the Low-Density Commercial designation FLUM description. The Commission acknowledges that the Project will appear taller than the measured height because of the topography of the Site and the change in grade, but it concludes the appropriate measurement of height, that is the

zoning height, for analyzing Comprehensive Plan consistency was calculated from a building height measuring point in compliance with the Zoning Regulations;

2. GPM – The Opponent Party notes that the Neighborhood Enhancement Area calls for “compatible infill development” that it claims is not achieved by the Project. The Opponent party also alleged that the Applicant did not address the GPM, and that the OP argument that characterizes the “one-acre park planned for the Project as a ‘neighborhood enhancement’ is an absurdity” because the Site already includes what they allege is a park of the same size;

Commission Response: The Commission disagrees that this is not a compatible infill development as called for in Neighborhood Enhancement Areas. While the Project is denser than much of the surrounding development, this is consistent with the FLUM guidance for the Site, which calls for a denser node of development in close proximity to the existing Metrorail station. While the Project’s density is greater than much of the surrounding development, it also is surrounded by thoughtfully designed open space which provides sufficient buffering. In addition, the higher activity level of the Site is driven in large part because it is already a very active Metrorail station. The Commission disagrees that the Applicant did not address the GPM as the Applicant’s submissions to the case record describe the Property’s GPM designations (Neighborhood Enhancement Area and Main Street Mixed Use Corridor) and provide analysis for why the Project is not inconsistent with these designations. While it is true that the Site currently functions as community open space, the owner of the property is under no obligation to continue this use in the future. Significantly, the Project includes Community Park open space and, as a public benefit of the Project, the Applicant has agreed to record a permanent public use easement to ensure that the space is public and maintained by the Applicant;

3. Citywide and Rock Creek East, Framework, and Historic Preservation Elements – The Opponent Party stated that the Project is not consistent with the Comprehensive Plan because its height and scale are in overpowering contrast to the surrounding neighborhood and to the larger context of its location amidst two historic districts. The Opponent Party argues that the Applicant and OP only make conclusory assessments of Comprehensive Plan policies and the Project’s consistency with those policies and that the Applicant and OP fail to address competing policies in the Comprehensive Plan. The Opponent Party notes that central to its objections to the size and scale of the Project is Urban Design Policy UD-2.2.5, which prescribes that “[n]ew construction . . . should respond to and complement the defining visual and spatial qualities of the surrounding neighborhood [and] [a]void overpowering contrasts of scale and height . . .”. The Opponent party further notes that numerous other policies . . . include language about the necessity for new developments to respect the character and needs of the surrounding neighborhoods. (See LU-1.4.1, LU-1.4.2, LU 2.4.5, UD-2.2.1, UD-4.2.4, HP-2.5.3, RCE-2.1.1.); and argues that

there are multiple ways that a modest reduction in the size and scale of the Project could result in a satisfactory level of compatibility with the surrounding neighborhood. The Opponent Party made a related argument that the Applicant's analysis of the Framework Element is defective and states that a more complete and objective analysis of consistency with the Framework Element would assess whether a reduction in size and scale of Project along the lines proposed by the Opponent Party would or would not be more likely to result in an invigoration and enhancement of Takoma Park. The Opponent Party stated that Framework Element policies include § 219.7, which the Opponent Party stated closely echoes UD-2.2.5, reiterating that infill development should "respect the integrity of stable neighborhoods and the broader community context ..." The Opponent Party further contends that its major objections are not centered on any of the following attributes of the Project or the fact that these attributes advance Comprehensive Plan Policy Goals: (1) transformation of the 6.78 acres of WMATA Property adjacent to the Takoma Metro Station into a three-part combination of Bus Loop, mixed-use housing with ground floor retail; and 1.8 acres of open space; (2) a major increase in the availability of both market-rate and affordable housing in the neighborhood; (3) EYA's tree preservation plans; (4) the increase in permeable surface on the Property; and (5) the Project's energy efficiency goals. The Opponent Party's position is that these and other worthy goals can all be furthered while not conflicting with the Policy goals that promote respecting the character and needs of the surrounding neighborhood. The required Project adjustments are such that no competing policy need be sacrificed in the process: the 1.8 acres of open space, the redesigned Bus Loop; the size and location of the new retail space, and all other identified Project amenities. A modest reduction in the size and scale of the Project could result in a satisfactory level of compatibility with the surrounding neighborhood, at most what might be lost in the process is a relatively small number of market rate and affordable housing units;

Commission Response: The Commission interprets the CP policies cited by the Opponent Party as saying essentially the same thing, that new construction should be of a scale and height that suits the visual and spatial context of the neighborhood. The Commission disagrees with and rejects the Opponent Party's suggestion that consideration of an alternative Project of smaller scale with less housing units (and/or an alternative MU-4A PUD related map amendment) is required so that no competing CP policy objectives are sacrificed in the CP consistency evaluation process. The Commission is not required to consider alternative projects that are not before it, rather the Commission is charged with evaluating whether the proposed Project is not inconsistent with the CP, on the whole, when its competing policy objectives are considered and weighed. The Commission recognizes that the Project is taller and denser than the surrounding buildings but believes that this height and density is appropriate because the FLUM calls for more intense uses on the Site because it is a large parcel adjacent to a Metrorail Station, and the Project includes sufficient open space to buffer surrounding properties so that it does suit the visual and spatial context of the neighborhood. To the extent that the Project is

inconsistent with the Opponent Party cited CP policies, the Commission believes they are outweighed by the density guidance of the FLUM, and by other CP policies that support density bonuses for affordable housing (H-1.2.7.), promoting increased density for housing, particularly near Metrorail stations (LU-1.4.C, H-1.1.2, H-1.1.3, H-1.1.4, H-1.2.7.), providing retail/service space on an underutilized site at a Metrorail station (ED-2.2.3, 2.2.9.), providing common open space (PROS 4.3.3.), and providing activated ground floor retail plaza space and community play space (UD-2.3.1, 3.3.2, 4.2.2.);

4. 2002 Takoma Central Business District SAP/Rock Creek East Area Element – The Opponent Party argues that the Comprehensive Plan, Action RCE-2.1.C, requires the Zoning Commission to review the SAP redevelopment guidelines in accordance with the updated FLUM and Rock Creek East Area Elements. What is contemplated by the Comprehensive Plan is that approval of the Project must be mindful of recommendations in the SAP and the Rock Creek Area East Elements, even as the proposed increased level of development anticipated in the FLUM is considered. The Opponent Party requests that the Zoning Commission reject, if only for this Property, the Applicant’s attempt to characterize (what the Opponent Party describes as) its massive building of over 11 acres of GFA, fully exposed on all sides, and rising to over 90’ for most of its facades, as what the FLUM envisioned here. The Opponent Party also argues that the Application is inconsistent with the provision of the Rock Creek East element that provides that “the Plan specifies that development of the WMATA Property ‘should maximize Metro access while taking care to provide appropriate buffers and transitions to adjacent uses.’” (§ 2211.4.) Further, the Application’s discussion of the Takoma Central District Small Area Plan fails to reference all of the policies in the Rock Creek East Area Element bearing on redevelopment of the WMATA property. Specifically, Policy RCE-2.1.1: Historic Preservation in Takoma, is not mentioned, § 2211.5, and that there were other policies that were not addressed by the Applicant. The Opponent Party also argued that Takoma Central District Small Area Plan “recommends more moderate density town house development at the site.”

At setdown, the Commission made a related request that the Applicant review the 2002 Takoma Central District Small Area Plan to see if it recommends that five percent of new housing units on the site should go to households making no more than 30% MFI.

Commission Response: The Commission acknowledges that the Project is significantly taller and denser than the townhouse and garden style apartment development envisioned in the Takoma SAP. However, the Commission believes that this guidance has been superseded by changes to the Comprehensive Plan in the 20+ years since the Takoma SAP was adopted, and that this newer guidance outweighs the inconsistency. Since the Takoma SAP was adopted, the Comprehensive Plan has been amended twice (2012 and 2021), and both times included amendments to the PUD Site’s FLUM designation and to the Rock Creek East policies that address

development on the PUD Site. The 2021 Comprehensive Plan amendments made the following notable amendments:

- Changed the GPM designation for the portion of the PUD Site designated as Neighborhood Conservation Area to Neighborhood Enhancement Area;
- Changed the FLUM designation of the PUD Site to support medium-density mixed-use development with a preference for residential uses; and
- Made policy changes to support redevelopment of the PUD Site with multi-family residential development to accommodate housing demand in accordance with the amended FLUM.

The Framework Element states, “unless a Small Area Plan has been made binding on the Zoning Commission through its enactment as part of a Comprehensive Plan amendment, a Small Area Plan provides only supplemental guidance to the Zoning Commission and it does so only to the extent it does not conflict with the Comprehensive Plan.” (See 10A DCMR § 224.5.) Additional language from the Implementation Element states that “a Small Area Plan provides supplemental guidance to the Comprehensive Plan, unless incorporated into the Comprehensive Plan by a D.C. Council act.” (See 10A DCMR § 2503.1.) The Commission concludes that this guidance is important in the context of the Takoma SAP and the Project, where Takoma SAP recommendations to moderate development on the PUD Site conflict with the Site’s current FLUM designation and recommendations to increase density around Metrorail stations to accommodate the critical, high priority need for new housing in the District. The Commission believes that the additional density called for in the FLUM, and other more recently adopted policies supersede the guidance of the Takoma SAP that call for lower intensity development of the Site. Accordingly, the Commission disagrees with the Opponent Party’s assertions that the Applicant failed to adequately respond to policies in the Rock Creek East Area Element that cite Takoma SAP guidance specific to development of the Site.

With respect to the Commission’s question related to whether the Takoma SAP recommends that 5% of new housing units go to households making less than 30% of MFI, the Commission is satisfied with the Applicant and OP’s responses that there is no such requirement in the Takoma SAP.

5. Historic Preservation Element – The Opponent Party argues that neither the Applicant nor OP has discussed compliance with the Historic Preservation Element in detail. The Opponent Party claims the Application is inconsistent with the following policies in the Historic Preservation Element of the Comp. Plan:
 - The Historic Preservation Element “[r]equires that ‘full consideration’ be given to concerns expressed in the SAP. (Policy HP-1.1.3. § 1003.6.) That Policy

also expressly recognizes the important role of ‘community preservation groups in planning matters affecting historic preservation;’ and (*Id.*)

- In historic districts ...Policy HP-2.5.3 specifies that ‘new construction’ should be ‘in scale with and respect their historic context through sensitive siting and design, and the appropriate use of materials and architectural detail.’ (Subtitle §1014.9.)

Commission Response: With respect to the first policy, the Commission believes the Project does give full consideration to the concerns expressed in the Takoma SAP. The Commission further believes for the reasons discussed above the guidance in the Takoma SAP relating to a townhouse development on the Site has been superseded by subsequent Comprehensive Plan amendments that direct for higher density development on the Site to advance other important policies. The Commission also acknowledges the Applicant’s coordination with the D.C. Historic Preservation Office in furtherance of efforts to develop a Project design that respects the historic architecture and influence within the neighborhood.

With respect to the second policy, the Commission believes the Project is in scale with and respects the historic context of the Site, notwithstanding the fact that the Project is larger than the surrounding buildings. This is because the Project includes generous setbacks and is sensitively designed, including appropriate use of materials and architectural detail to lessen impacts on surrounding properties.

For both cited Historic Preservation Element policies, the Commission also agrees with the Applicant that the language is worded in non-mandatory terms, and that to the extent the Project is inconsistent with the language, this policy guidance is outweighed by other CP policies that support density bonuses for affordable housing (H-1.2.7.), promoting increased density for housing, particularly near Metrorail stations (LU-1.4.C, H-1.1.2, H-1.1.3, H-1.1.4, H-1.2.7.), providing retail/service space on an underutilized site at a Metrorail station (ED-2.2.3, 2.2.9.), providing common open space (PROS 4.3.3.), and providing activated ground floor retail plaza space and community play space. (UD- 2.3.1, 3.3.2, 4.2.2.)

- c. OP identified a potential CP inconsistency in its Hearing Report, namely that the Project “does not further the tree canopy protection goals of the Environmental Protection Element, Section E-2.1 Conserving and Expanding Washington D.C.’s Urban Forests.”

Commission Response: The Commission agrees with OP that the Project is inconsistent with this policy because it involves the removal of so many trees. However, the Commission notes that this is mitigated by the fact that the Applicant is taking care to preserve and plant so many trees on the Site. The Commission further agrees with the OP that this inconsistency is outweighed by the many ways the Project advance’s other themes of the Environmental Protection Element (listed in the OP Hearing Report summary at FF 36.)

- d. The Commission concludes that the ways in which the Project advances the CP policies discussed in section (a), far outweigh the inconsistencies and potential inconsistencies with the CP policies discussed in sections (b), and (c), above.
- e. Racial Equity – Pursuant to 10A DCMR §§ 2501.4-2501.6 and 2501.8, the Commission is tasked with evaluating the Application’s consistency with the Comprehensive Plan through a racial equity lens. The Comprehensive Plan 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. (10A 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.” (10A 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. (10A DCMR § 213.9.) In addition, 10A DCMR § 2501.8 suggests to prepare and implement tools to use as a part of the Commission’s evaluation process. Consistent with Comprehensive Plan guidance, the Commission utilizes a Racial Equity Analysis Tool in evaluating zoning actions through a racial equity lens; the Commission released a revised Tool on February 3, 2023. The revised Tool requires submissions from applicants and the Office of Planning analyzing the zoning action’s consistency with the Citywide and Area Elements of the Comprehensive Plan, and Small Area Plans, if applicable (Part 1); a submission from applicants including information about their community outreach and engagement efforts regarding the zoning action (Part 2); and a submission from the Office of Planning including disaggregated race and ethnicity data for the Planning Area affected by the zoning action (Part 3).

The Commission concludes that the Project is not inconsistent with the Comprehensive Plan overall when evaluated through a racial equity lens. The Commission reaches this conclusion based on the case record, which includes:

- The Applicant and OP’s racial equity analysis submissions, required by Part 1 of the Commission’s revised Racial Equity Tool;
- The Applicant’s community outreach and engagement submission, required by Part 2 of the Tool; and
- The disaggregated race and ethnicity data for the Rock Creek East Planning Area provided by OP, required by Part 3 of the Tool. (FF 32, 35-36.)

The Commission concludes that the racial equity analyses provided by the Applicant and OP address the components of the Commission’s Racial Equity Tool.

The Commission further concludes that the Project will further Comprehensive Plan policies related to racial equity. The outcomes of the Project have the potential to positively impact racial equity through substantial improvements in housing, affordable

housing, retail and service amenities, and environmental sustainability. Of the many substantial benefits of the Project, perhaps the most important is the over 400 new units of housing that will be provided, of which approximately 70 will be devoted to affordable housing at the 30% and 60% MFI levels of affordability. The Project will contain six 3-bedroom units that will all be devoted to households earning no more than 30% MFI. Through the proposed ground-floor retail and service program, the Project will bring desired neighborhood-serving retail and service uses to Rock Creek East residents, which will also strengthen the Takoma Park business district on both sides of the District / Maryland border. Finally, another major aspect of the Project that contributes to advancing racial equity is the new 1.8-acre open space. The open space will be open to the public for small day-to-day recreation and larger community events, and will contain play equipment for local children, and public art created by local woman or women of color. In addition, the Project will not displace any existing residents as there is currently no residential use on the Site. (*Id.*)

The Commission is satisfied with the community outreach and engagement performed by the Applicant. The Applicant provided evidence in the case record to demonstrate that it engaged in outreach with the community and community stakeholders/organizations regarding the Project, including ANC 4B, the ANC 4B Housing Justice Committee, Single Member District's ANC 4B01, 4B02, and 4B07, the Takoma Park neighbors, Maryland residents along Eastern Avenue, and Old Takoma Business Association. Based on the input received through its outreach and engagement efforts, the Applicant made adjustments to the Project design and to its affordable housing proffer to respond to community input, as detailed in FF 32.

Moreover, the Commission notes that the disaggregated race and ethnicity data for the Rock Creek East Planning Area provided by OP showed several trends. For the period of 2017-2021, over 75% of Rock Creek East Area residents were Black and Hispanic, but the Black population declined over the approximately 10-year period of 2012-2021. Both groups, Black (\$51,562) and Hispanic (\$89,480) had a lower median income than the District's median income of \$93,547 for the period from 2017-2021. In addition, the data showed that more than half of Planning Area residents (56.2%) owned their homes for the period of 2017-2021, a much higher percent than Districtwide (41.5%) for the same period. The Planning Area also had a lower cost burdened percent of households (33.3%) for the 2017-2021 period than Districtwide (36.1%); this indicates that Rock Creek East is one of the more affordable neighbors to purchase a home in the District. The Commission is encouraged that the Project's proposed new affordable units could be helpful in retaining and attracting new Black and Hispanic residents to the area. The Project would also bring new employment opportunities to the area with its retail, service and site/building maintenance jobs. These jobs would be close to a Metro station so they could be accessible to more people than jobs that require car ownership. They could potentially go to minority residents in the area or attract minority residents from other areas. (FF 35-36.)

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

17. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts, and that any potential adverse impacts are favorable, capable of being mitigated, or are acceptable given the quality of the Project's proffered public benefits. (FF 12-14, 19-21, 25, 27-29, 32, 35-37, 47, 55-56.)

A number of potential adverse effects were identified in the record. (FF 63.)

- The Opponent Party raised concerns about several alleged adverse effects of the Project:

- Concerns about height and density of the Project, and alleged insufficiency of setbacks to adequately mitigate the adverse effects on neighboring properties, and on neighborhood character, and compatibility with the historic district.

Commission Response: The Commission acknowledges that the Project is taller and denser than surrounding properties, and this creates potential adverse effects and impacts. The Commission also acknowledges that because of existing topography and change in grade, the building will seem taller. However, these effects and impacts are mitigated by the thoughtful design of the Project, which includes extensive setbacks and buffering, as well as thoughtful building design, and landscaping and hardscaping that sufficiently mitigate these effects and impacts so that they do not rise to an unacceptable level;

The Commission is satisfied with the evidence the Applicant presented showing that the Project building height complies with the Height Act, with the caveat that the Mayor, not the Commission is the ultimate arbiter of Height Act compliance;

With respect to bulk and scale, the Commission notes that while the building is large and bulky, it is located on a large lot that includes open space and setbacks that mitigate the potential adverse effects and impacts of the bulk and scale. The building's 1.69 FAR is well below the maximum contemplated on the FLUM for the Site; and

The Commission believes that this is a very unique site and the Project responds well to the neighborhood context, such that it does not adversely impact neighborhood character, or compatibility with the historic district;

- Impact of the increased traffic and noise from the new driveway location on the directly adjacent neighbors, as well as more general impacts related to increased traffic and noise on the general vicinity of the Site;

Commission Response: The Commission believes the Project will have an adverse impact on the residences located on Eastern Avenue, particularly on those located near the combined vehicular entrance due to the traffic, and associated noise and pollution from the buses and vehicles entering and exiting the Site;

The Commission further believes that the induced vehicular demand created by the Project will have adverse effects on nearby traffic, availability of on-street parking, and increased noise and pollution;

The Commission concludes that the mitigation measures proposed by the Applicant are sufficient to prevent these from becoming unacceptable, and that public benefits of the Project justify the adverse effects;

- Access to metro station and loss of commuter lot;

Commission Response: The Commission believes that this is an adverse effect of the Project, but it is partially mitigated by the inclusion of adequate Kiss and Ride spaces and handicap accessible spaces in the Project, as well as the Project's integrated and enhanced multi-modal transit facilities, streetscape and pedestrian safety improvements, and improved bicycle and pedestrian shared path access. The Commission believes that the loss of the commuter lot does not rise to the level of an unacceptable impact, and that the public benefits of the Project justify the adverse effects;

- Neighbors at the topographical low point in neighborhood expressed concerns about stormwater runoff and asked for a condition related to stormwater runoff;

Commission Response: The Commission believes the Project will not have an adverse effect related to stormwater runoff;

The existing site area is approximately 50% impervious surfaces and has minimal stormwater management controls to treat or to slow down stormwater exiting the property. After development of the Project, approximately 69% of the site area will be impervious, so the Commission understands the neighbors' concern.

However, the development of the Project will include the installation of numerous bioretention facilities and extensive and intensive green roof areas that will allow the PUD Project to meet all DOEE stormwater standards and regulations, on a site that currently has minimal stormwater management controls to treat or to slow down stormwater exiting the property. The Project improves runoff over current conditions for all levels of storms.

The Commission therefore concludes that the Project will not create an adverse impact related to stormwater runoff and in fact will be a significant improvement. For these reasons, the Commission does not believe a condition related to stormwater runoff is necessary;

- Reduction of open space on site, and a related concern that the open space will be privately owned and therefore not accessible to the public;

Commission response: The Commission does not believe that the Project will in fact result in a reduction in open space on the Site, because much of what the opponents are counting as "open space" is in fact a lightly used parking lot. However, assuming for the sake of argument that the large existing surface parking lot on the Site is "open space", the Commission believes that the reduction in the amount of "open space" is mitigated by the ways in which the Project will improve the quality of the open space provided. The Commission further believes that the Project's open space, while privately owned, will be permanently open to the public, and therefore should count as open space. The Commission concludes that the public benefits of the Project outweigh any adverse effects related to a reduction in existing "open space.";

- Insufficient setback between building and neighboring properties.
Commission Response: The Commission carefully studied the plans, particularly the Applicant's and DDOT's Site Plans (FF 39.) showing the setbacks from the neighboring properties on Eastern Avenue. The Commission notes that the building is oriented, so the greatest amounts of buffering and open space are arranged to buffer these adjacent properties, and that the Project's landscape plan includes extensive plantings to further buffer the impact. Nonetheless, the Commission recognizes that the height and bulk of the Project, and the fact that the primary driveway access point is on Eastern Avenue creates adverse impacts on neighboring properties. The Commission believes these impacts, while significant, are sufficiently mitigated that they are not unacceptable. The Commission notes that the Applicant stepped down the building closest to Eastern Avenue and the building is buffered by a large green space along Eastern Avenue. (FF 32.) The Commission further concludes that the public benefits of Project justify these adverse effects;
- Increased pollution;
Commission Response: Pollution related to increased vehicular traffic is addressed above. Regarding general pollution, the Commission believes the Project will contribute to pollution, but that this is adequately mitigated such that it is not an adverse effect of the Project. Specifically, the Project will provide a number of environmental benefits, including the installation of numerous bioretention facilities and extensive and intensive green roof areas, on a site that has minimal stormwater management controls to treat or to slow down stormwater exiting the Property, and the Project will be designed to achieve LEED Gold certification pursuant to the LEED B+C: Multifamily Midrise v4 standards. Solar Panels will be provided on top roof levels and green roofs will be provided on lower levels. The Project removes a large surface parking lot with virtually no stormwater management controls and provides a new development immediately adjacent to Metrorail and Metrobus facilities, reducing dependency of auto uses for residents, employees and visitors to the Project;
- The OP Hearing Report and DOEE comments stated that the Project would have a significant negative impact on the tree canopy in the area. The DOEE comments requested that the Applicant provide more detailed information about net tree loss as a result of the Project.
Commission Response: The Commission notes that the Applicant provided additional information about the net tree loss as a result of the Project. (FF 55.) The Commission believes that the loss of trees is an adverse impact of the Project. The Commission concludes that the Applicant's tree plan mitigates some of the impact, but not all of it. The Commission concludes these impacts are acceptable given the quality of the public benefits of the Project.; and
- Pedestrian/vehicular conflicts between the Project, pedestrian courtyard, bus loop and Metro access.

Commission response: At setdown, the Commission requested more details about pedestrian circulation in the courtyard because of concern about pedestrian/vehicular conflicts. In response, the Applicant provided additional diagrams that more clearly show the use of pedestrian crossing points, bollards, and signage, and stated that there will be a secondary entrance for residents to the wing of Carroll Street, N.W. side of the building. After reviewing the supplemental information, the Commission is satisfied that the proposed pedestrian circulation plan is sufficient to mitigate this potential adverse impact.

Evaluating the Public Benefits (Subtitle X §§ 304.4(c) and 305.)

18. 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 pursuant to 11-X DCMR §§ 304.4(c), and 305. The Commission evaluated the benefits proffered by the Applicant and concludes as follows: (FF 10, 12-13, 15, 20, 24-25, 27, 32, 35-36, 54-55, 56, 63.)
- a. The Commission believes the Application has demonstrated public benefits in several of the categories under 11-X DCMR § 305.5 (FF 25.) and for the reasons set forth above. The Commission further believes that the Project's contribution of affordable housing, permanent dedicated community open space, a commitment to providing public art, and the community engagement process that accompanied this PUD process all exceed what would be provided under matter-of-right standards. The Application is also particularly strong in proffered public benefits in the area of site planning. The Project takes a significantly underutilized site and creates a thoughtfully planned, community-oriented development. The Property's current use as a large surface parking lot, with conflicting bus, car, pedestrian, and bicycle infrastructure is inefficient and outdated. By contrast, the Project will create a safe, efficient development with integrated multi-modal transit facilities, large open spaces to serve the community, and focuses on new housing and retail uses immediately adjacent to Metro;
 - b. The Commission concurs with the recommendation of OP that the impacts of the Applicant's requested zoning flexibility are outweighed by the Project's benefits of furthering the District's efforts towards meeting its housing and land use goals by redeveloping an underutilized site with a mixed-use development that would provide a significant amount of housing, including affordable housing, and retail near a Metrorail station, and that the benefits provided would balance the flexibility requested;

Opponent Party Arguments Regarding Public Benefits

The Opponent Party made several arguments regarding the Project's public benefits;

- c. The Opponent Party alleged that there is no indication in the record about whether the Applicant intends to claim the HANTA affordable housing units in the Project as a public benefit;

Commission Response: The Applicant clarified that it could not guarantee it would qualify for the HANTA units, so it was not proffering them as a public benefit of the PUD. The Commission therefore did not count the HANTA units as a public benefit for purposes of the PUD balancing test. The Commission nonetheless recognizes that the possibility of the Project including this additional affordable housing is commendable;

- d. The Opponent Party claims the Applicant provides only a conclusory claim that the Project exhibits many characteristics of exemplary urban design, and that this is not sufficient;

Commission Response: The Commission disagrees with this assertion and instead agrees with the analysis that the Office of Planning provided in its hearing report (FF 36.), stating that the plans show that the building's design uses different massing, scale, and design features to mimic the surroundings faced on each side. Along the side facing the Metrorail the building is designed with alternating vertical and horizontal articulation to play off the movement of the Metrorail trains. On the other side, facing the Takoma Park residential community the building's design uses elements such as balconies and small punch windows to express a residential façade vocabulary along the Eastern Avenue side. Along its retail plaza side, the building's ground floor would have attractive signage and storefront windows to help activate the pedestrian plaza. The Commission therefore concludes that the Applicant has demonstrated superior urban design;

- e. The Opponent Party argues that the Applicant's claim it is replacing a "just a tree/lawned area" with an "engaging neighborhood-oriented park," is insufficient without a better comparison of the value of what is existing versus what is being provided, and a related claim that the development will result in a reduction on vacant land, which necessarily reduces open space;

Commission response: The Applicant provided supplemental information about the landscaping and open space at the hearing and in its post-hearing submission. (FF 55.) The Commission notes that the Opponent Party is at times claiming that the surface parking lot on the Site is "open space." The Commission does not believe the parking lot should count as open space, even if it is underutilized for its intended purpose. The Commission concurs with the analysis provided by the OP that concludes that the Project would provide 1.8 acres of open space as a universally accessible park for public use. This would be more open space than exists on the site today. The open space would be designed around maintaining the existing mature tree canopy on the site. It would include public art, various site amenities, and required infrastructure such as bio-retention areas. The open space would help to create a retail plaza, community park, and buffer area between the site and the surrounding residential community. The Project would redevelop an underutilized transit-oriented site with a community-oriented mixed-use development that includes public open space. The Project would create a safe, efficient development that would integrate transit facilities,

large open space, and provide new transit-oriented housing and retail to the area;

- f. The Opponent Party contended that the Applicant should not get credit for the site planning, streetscape plans, and environmental and sustainability benefits as public benefits of the Project because the Applicant had not demonstrated the Project was superior to a matter of right development in those areas;

Commission response: The Commission concludes that the site planning, streetscape plans, and environmental and sustainability benefits listed in FF 25 are public benefits and amenities of the Project, including site because it believes they are superior to what would be required as a matter of right, which is a somewhat subjective standard. With respect to Site Planning, the Commission believes the Project is exemplary in the way that it strengthens the network of open and accessible gathering spaces in the Takoma neighborhood by creating a high-quality transit-oriented design with an emphasis on bicycle and pedestrian access; connects the retail corridors of Takoma DC and Takoma Park, MD along Carroll Street, N.W.; and creates clearly defined development zones on the Property (transit zone, building zone, and open space/buffer zone). In doing so, it creates a safe, efficient development with integrated multi-modal transit facilities, large open spaces to serve the community, and focuses on new housing and retail uses immediately adjacent to Metro. Similarly, the Commission believes the streetscape plans are a public benefit because they will be superior to what is required as a matter of right. The Commission notes that the Project will include improvements to the streetscape along Carroll Street, Cedar Street, and Eastern Avenue, in accordance with DDOT standards. DDOT commented that these will include extensive pedestrian improvements around the Property and at the Carroll Street intersection with the WMATA bus-loop, including the signalization, curb extensions and installation of the missing crosswalk on the east leg of Carroll Street. The Commission further believes the environmental and sustainability features should count as public benefits. The Project will be designed to achieve LEED Gold certification pursuant to the LEED B+C: Multifamily Midrise v4 standards and will include installation of numerous bioretention facilities and extensive and intensive green roof areas, on a site that has minimal stormwater management controls to treat or to slow down stormwater exiting the property. The Commission notes that the Applicant did not claim proximity to the Metro station or solar panels as public benefits of the PUD. Nonetheless, if it had chosen to do so, the Commission would consider the Project's proximity to Metro to be an environmental public benefit because of the way the Project integrates such a large amount of housing in a location proximate to transit. Similarly, the Commission considers the Project's use of solar panels to be an environmental public benefit, even if the amount was not explicitly stated in the record, because the Applicant stated that it required flexibility on this issue because of several competing concerns related to the roof of the building. The Commission did not consider the Project's proximity to Metro or its

inclusion of solar panels as environmental public benefits. However, for the reasons stated above, the Commission concludes that the Applicant's proffered site planning, streetscape plans, and environmental and sustainability benefits qualify as public benefits because they benefit the surrounding neighborhood to a significantly greater extent than would likely result from development of the Site under the matter-of-right provisions of the Zoning Regulations, and therefore meet the standard of public benefits under 11-X DCMR § 305.2;

- g. The Opponent Party asserted that the Applicant's promise to work with the community to identify and select art projects to include in the Project should not count as a use of special value because the Applicant has not identified what those projects will be, and therefore it is a mere promise that needs to be further developed before it can be properly assessed;

Commission Response: The Applicant has agreed to work with the Takoma community and ANC 4B to identify and create art projects as part of the PUD with the goal to include art from local women or women of color and participatory or playable art in the open spaces. This Order includes a condition requiring the Applicant to show that it has done so in order to receive a certificate of occupancy for the Project. The Commission believes it is commendable that the Applicant has sought community input for this feature, and believes the condition is sufficient to ensure that it is actually performed. When evaluating the value of art, the Commission is aware that "beauty is in the eye of the beholder" and is always hard to quantify. The Commission therefore believes that the Applicant has done enough to show that its commitment qualifies as a public benefit of the Project; and

- h. The Opponent Party asserted that the Applicant should not get credit for consistency with the Comprehensive Plan as a public benefit because the Applicant claims that the Project substantially advances Comprehensive Plan but does not explain what "substantial advancement" will occur;

Commission Response: The Commission believes this Project is truly exceptional in the ways in which it advances so many policies of the Comprehensive Plan, as discussed in detail herein, and therefore qualifies as providing a public benefit in this category.

Judging, balancing, and reconciling the benefits, development incentives, and potential adverse effects (Subtitle X, § 304.3.)

- 19. Based on the case record, the Findings of Fact, and the Conclusions of Law above, the Commission concludes that the Application satisfies the PUD balancing test under 11-X DCMR § 304.3 because it concludes the value of the Application's public benefits sufficiently outweigh the requested zoning and design flexibility as well as any potential adverse impacts that are not capable of being mitigated. (FF 10, 23-24, 32, 35-36, 47, 55-56.)

- a. The Commission concludes that the Applicant's proffered public benefits and amenities collectively advance the major themes and objectives of the CP and are commendable. The Commission's analysis of the public benefits is above Conclusions of Law 18.
- b. The Opponent Party alleged the Applicant was misrepresenting the zoning flexibility required for the Project because:
 - The Applicant misrepresented the 76-foot height of the Project and its related impact on neighbors because of the topography of the site, and the fact the building height measuring point was taken from Carroll Street;
 - The Applicant did not adequately explain how it was entitled to the 76 foot height, under the constraints of Height Act limit, because it has not shown sufficient information; and
 - The scale of the Project is greater than its 1.69 FAR suggests because the Project site includes the bus turn around transit zone and the open space buffer zone, and if these were excluded the same building placed elsewhere on MU-5A zoned property would produce a FAR at the top end of that allowed in the MU-5A zone without a PUD. Therefore, the Applicant's utilization of 1.69 of allowable FAR is not an act of moderation in recognition of achieving neighborhood compatibility.

Commission Responses:

- The Applicant acknowledged the topography of the Site and that it would result in a building that appeared taller than the 76-foot building height, and the Commission agrees. The Commission believes that the appropriate measure of the height of the building when assessing a zoning application is the zoning height, and the zoning height was calculated from a building height measuring point in accordance with the Zoning Regulations. The Commission nonetheless considered that the building will feel taller than the 76-foot height in its assessment of the Application;
 - The Applicant provided additional information to support its claim that the Project height complied with the Height Act. The Commission reviewed this information and believes it is sufficient to show that the Project complies. However, the Commission further states that the Mayor is the ultimate arbiter of whether the Project complies with the Height Act when it reviews the building permit application; and
 - The Applicant argued that it appropriately aggregated FAR across the Site in accordance with the calculation rules of the Zoning Regulations. The Commission agrees with the Applicant that the proper way to assess the scale of the building is a FAR calculation in accordance with the rules established by the Zoning Regulations;
- c. The Commission concludes that the requested PUD-related map amendment of the Property from the NC-2, MU-4 and RA-1 zones to the MU-5A zone is appropriate because:

- The Project’s height of 76 feet is appropriate for the Site given the Project’s buffering of surrounding uses, thoughtful design; the Project’s density is within the range of matter-of-right guidance for the individual components of the Site’s FLUM designation; and the Project’s uses are appropriate for the Site; and
 - The Project is a high-quality development that is superior to what could be constructed on the Property as a matter-of-right via the underlying zoning. The Project public benefits and amenities are meaningful and commendable both in number and quality. Finally, the Project advances the public health, safety, welfare and convenience, and is not inconsistent with the Comprehensive Plan or other adopted public policies applicable to the Property;
- d. The Commission further concludes that the requested zoning flexibility, specifically the PUD-related map amendment to the MU-5A Zone District, is appropriately balanced by the value of the proffered benefits and amenities resulting from the Project, and any adverse effects or impacts of the Project. The Commission notes that the Application did not request any zoning relief from the development standards of the Zoning Regulations;
 - e. The Commission concludes that the requested design flexibility is appropriate for the Project and is balanced by the value of the proffered benefits and amenities resulting from the Project, and any adverse effects or impacts of the Project; and
 - f. The Commission’s analysis of the potential adverse effects/impacts of the Project is at Conclusions of Law 17.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a consolidated PUD and related map amendment, subject to the following guidelines, conditions, and standards:

A. PROJECT DEVELOPMENT

1. The Project shall be constructed in accordance with the plans and materials dated May 25, 2023 (Ex. 38A1-38A17.), as modified in the materials presented to the Zoning Commission on June 15, 2023 (Ex. 222.) and as modified by the plans submitted to the Commission on August 14, 2023 (the “Final Plans”). (Ex. 240A1-240A18.) The Applicant shall have flexibility from the Final Plans 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, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the Project as shown on the Final Plans;

- 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, provided such colors are within the color ranges shown on the Final Plans; and to make minor refinements to exterior details, dimensions and locations, including curtainwall mullions and spandrels, window frames and mullions, glass types, belt courses, sills, bases, cornices, balconies, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or to address the structural, mechanical, design, or operational needs of the building uses or systems;
- c. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the Project as shown on the Final Plans; examples of exterior details include, without limitation, retail signage and storefronts, doorways, canopies, railings, and skylights;
- d. To provide a range in the number of residential units in the Project of plus or minus five percent relative to the number depicted on the Final Plans, subject to the housing requirements of Condition No. B.1;
- e. To make refinements to the approved parking configuration, including layout and number of parking spaces of minus 10%, provided the number of parking spaces maintains a ratio of no more than 0.3 spaces per residential unit;
- f. To vary the design of the public space surrounding the Property and/or the selection of plantings in the landscape plan depending on seasonal availability within the range and quality as proposed in the Final Plans or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, DOB, or other applicable regulatory bodies and/or service to the Property from utilities;
- g. To vary the amount, location and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the Project achieves a minimum GAR required by the Zoning Regulations;
- h. To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the Project does not decrease below the minimum required for LEED Gold certification under the LEED B+C: Multifamily Midrise v4 standards.
- i. To vary the final design and layout of the mechanical penthouses to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Final Plans and remain compliant with all applicable penthouse dimensional requirements of the Zoning Regulations; and

- j. To vary the final design and size of the sculptural playspace included within the Community Park space, in coordination with public input.
2. The Property shall be subject to the requirements of the MU-5A zone.

B. PUBLIC BENEFITS

1. **For the life of the Project**, the Project shall provide housing, including affordable housing as set forth in the following chart:

Residential Unit Type	Total Residential Gross Floor Area ("GFA")	Units (Type)	Affordable Control Period
Total	389,850 sf of GFA	434	
Market Rate	331,372 sf of GFA (net)	364 (49 studios, 238 one-bedrooms, 77 two-bedrooms)	
IZ	38,800 sf GFA (net) (12% of Residential GFA) at 60% MFI	60 (11 studios, 41 one-bedrooms, 8 two-bedrooms)	Life of Project
	9,700 sf of GFA (net) (3% of Residential GFA) at 30% MFI	10 (2 one-bedrooms, 2 two-bedrooms, and 6 three-bedrooms)	Life of Project

2. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall demonstrate that it has registered the Project with the USGBC to commence the LEED Gold certification process by furnishing a copy of its LEED Gold certification application to the Zoning Administrator. The building permit application shall indicate that the Project has been designed to achieve at least the minimum number of points necessary to achieve Gold certification under the USGBC's LEED B+C: Multifamily Midrise v.4 standards.
3. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator, with a copy delivered to OZ, with information showing that:
 - a. The Applicant has recorded a public use easement in the land records of the District of Columbia for the Community Park and the Retail/Café plaza, such easement will require the Applicant to repair and maintain the Community Park and the Retail/Café plaza **for the life of the Project**;
 - b. The Applicant has recorded a public use easement in the land records of the District of Columbia for the portion of shared-use path proposed across the Property, such easement will allow the public to access the shared-use path every day of the year 24 hours per day and will require the Applicant to repair and maintain the shared-use path **for the life of the Project**;
 - c. The Applicant has engaged local female artists and/or female artists of color in the creation of public art to be located on the Property, with the Applicant's

contracts with the local female artists and/or female artists of color requiring such artists to engage members of the community in the creation of the public art; and

- d. The Applicant has provided 15-20 electric vehicle parking spaces and has made 20% of the residential parking spaces “EV make ready” equipped with conduits to facilitate the installation of future electric chargers.

C. MITIGATION

1. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with information showing that:

- a. The Applicant has completed the following pedestrian and safety improvements, subject to DDOT approval:
 - Realign and reconfigure the Carroll Street and WMATA bus loop intersection to include the following pedestrian safety improvements:
 - Concrete curb extensions on the northwest corner to replace the existing striping and flex-posts;
 - Expanded concrete median divider on Carroll Street to replace the existing striping and flex-posts;
 - Concrete curb extensions on the south curb of the intersection to replace the existing striping and flex-posts; and,
 - New crosswalk on the eastern leg of the intersection, which currently lacks a crosswalk.
 - Provide a new mid-block raised pedestrian crossing across the realigned kiss-and-ride lane connecting to a striped crossing of the new bus loop, connecting the Project with the Takoma Metro station entrance;
 - The Applicant will fund and construct pedestrian safety enhancements at the intersection of Eastern Avenue and Cedar Street, N.W., subject to DDOT approval. The construction will include a new concrete curb extension on the west side, removal of the concrete island, installation of any missing curb ramps, and signage/stripping changes; and
 - Install a traffic signal at the Carroll Street intersection with the realigned bus loop, including pedestrian phasing/signals, subject to DDOT Traffic Engineering and Signal Division (TESD) approval. Signal warrant analysis and signal design plans will be provided to TESSD for review prior to issuance of a building permit. If TESSD determines the signal is not warranted or is not ready for installation to occur, the Applicant will contribute \$250,000 to the DDOT Transportation Mitigation Fund;
- b. The Applicant shall provide \$100,000 in funding for Capital Bikeshare improvements, with the type and location of improvements to be determined by DDOT;
- c. The Applicant shall complete the superior landscaping and open space improvements described in FF 25, and the community park element shall be

constructed consistent with the design principles and site plan attached as Ex. 233D.

2. **For the life of the Project**, the Applicant shall implement the following Transportation Demand Management program:
- a. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit or commercial lease and charge a minimum rate based on the average market rate within a quarter mile. Only hourly, daily, weekly or monthly rates will be charged. Free parking, validation, or discounted rates will not be offered;
 - b. 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. Transportation Coordinator will conduct an annual commuter survey of building employees and residents on-site, and report TDM activities and data collection efforts to goDCgo once per year for three years;
 - d. Transportation Coordinator will develop, distribute, and market various transportation alternatives and options to residents, employees and customers, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications for three years;
 - e. Transportation Coordinator will subscribe to goDCgo's residential newsletter and receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan;
 - f. Provide residents and employees who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future;
 - g. Offer a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident or employee for the initial lease up period of the building operations, as amended by Paragraph n. below with regards to the residents of the building;
 - h. Provide at least 27 short- and 149 long-term bicycle parking spaces;
 - i. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids' bikes, with a minimum five percent of spaces (eight for this project) being designed for longer cargo/tandem bikes

(10' by 3'), a minimum of 10% of spaces (15 for this project) will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum of 50% of spaces (75 for this project) will be placed horizontally on the floor. There will be no fee to the residents or employees for usage of the bicycle storage room and strollers will be permitted to be stored in the bicycle storage room;

- j. Install a minimum of five electric vehicle (EV) charging stations;
- k. Install a Transportation Information Center Display (electronic screen) within the building amenities containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
- l. Provide a bicycle repair station in the long-term bicycle parking storage room;
- m. Hold a transportation event for residents, customers, employees, and members of the community once per year for a total of three years. Examples include resident social, walking tour of local transportation options, goDCgo lobby event, transportation fair, WABA Everyday Bicycling seminar, bicycle safety/information class, bicycle repair event, etc.);
- n. The Applicant will offer an annual Capital Bikeshare membership to each resident over the age of 18 years for each of the first three years after the building opens;
- o. Provide welcome packets to all new residents that should, 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;
- p. Post all transportation and TDM commitments on building website, publicize availability, and allow the public to see what has been promised;
- q. Provide one collapsible shopping cart (utility cart) for every 50 residential units, for a total of nine, to encourage residents to walk to the grocery store and run errands;
- r. Post "getting here" information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for [customers, attendees, patrons] discouraging parking on-street in Residential Permit Parking (RPP) zones;

- s. Transportation Coordinator will demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law to participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future such as the Parking Cash-Out Law;
- t. Provide at least one locker for use by employees; and
- u. Coordinate with WMATA and DDOT on a way finding plan along walking routes to the property from the Takoma Metro station.

3. Following the issuance of a Certificate of Occupancy for the Project:

- a. The Transportation Coordinator will submit a letter 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 in the 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 date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter; and
- b. The Transportation Coordinator shall collect parking demand and trip generation data, annually, for three years after building opening and report this information to DDOT's Planning and Sustainability Division (PSD).

D. MISCELLANEOUS

- 1. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of Zoning Legal Division and the Zoning Administrator (the "PUD Covenant"). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of OZ.
- 2. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.
- 3. In accordance with the 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 also prohibited by the Act. In addition, harassment

based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

FINAL ACTION


VOTE (September 28, 2023): 4-0-1

(Joseph S. Imamura, Anthony J. Hood, Robert E. Miller, and Tammy Stidham to approve, 3rd Mayoral Appointee seat vacant.)

In accordance with the provisions of 11-Z DCMR § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *District of Columbia Register*; that is, on July 26, 2024.

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