

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 23-19**

**Z.C. Case No. 23-19**

**The NHP Foundation and Elm Gardens Owner, LLC**  
**(Consolidated Planned Unit Development and**  
**Related Map Amendment @ Square 3351, Lot 813)**

**April 25, 2024**

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on February 15, 2024, to consider an application (the “Application”) submitted by The NHP Foundation and Elm Gardens Owner, LLC (collectively, the “Applicant”) for approval of a consolidated planned unit development (“PUD”) and related map amendment from the RA-1 and MU-4 zones to the RA-2 zone for Lot 813 in Square 3351 (the “Property”). The Application proposes to replace the existing 36-unit Elm Gardens Apartments with a new 80-unit building. The Commission considered the Application pursuant to Subtitles X and Z of the District of Columbia Zoning Regulations of 2016 (“Zoning Regulations” or “ZR16”) (Title 11 of the District of Columbia Municipal Regulations [“DCMR”], to which all references are made unless otherwise specified). The Applicant also requested the following relief under the Zoning Regulations:

- A waiver from the minimum land area requirements for a PUD in the RA-2 zone pursuant to Subtitle X § 301.2; and
- Such design flexibility as are set forth in the Conditions hereof.

The Commission considered the Application as a contested case pursuant to Subtitle Z, Chapter 4. For the reasons set forth below, the Commission hereby **APPROVES** the Application.

**FINDINGS OF FACT**

**I. BACKGROUND**

**Parties**

1. Elm Gardens Owner, LLC, the owner of the Property (“Owner”), is a single-purpose entity of The NHP Foundation (“NHPF”). Together, Owner and NHPF, are the Applicant and have authorized land use counsel to file and process the Application. (Exhibit [“Ex.”] 3A.)
2. Advisory Neighborhood Commission (“ANC”) 4B, the ANC in which the Property is located, is the “affected ANC” pursuant to Subtitle Z § 101.8.

3. The Applicant and ANC 4B are automatically parties in this proceeding pursuant to Subtitle Z § 403.5.
4. There were two requests for party status, both of which the Commission granted at the start of the February 15, 2024 public hearing:
  - Elm Garden Tenants Association (“EGTA”), representing the tenants in the existing 36-unit Elm Gardens Apartments building on the Property, was granted party status in support of the Application; and (Ex. 27.)
  - The Eastmont Cooperative, Inc. (“Eastmont”), the owner of the 56-unit cooperative housing association abutting the Property to the north, was granted party status in opposition to the Application. (Ex. 35.)

### **Notice**

5. On June 9, 2023, the Applicant mailed a Notice of Intent to file the Application to ANC 4B and the owners of all property within 200 feet of the Property pursuant to Subtitle Z § 300.7. (Ex. 3B.)
6. On December 15, 2023, in accordance with Subtitle Z § 402.1, the Office of Zoning (“OZ”) sent notice of the public hearing to be held on February 15, 2024 to:
  - Applicant;
  - ANC 4B;
  - ANC Single Member District (“SMD”) 4B04;
  - Office of the ANC;
  - Office of Planning (“OP”);
  - D.C. Department of Transportation (“DDOT”);
  - D.C. Department of Buildings (“DOB”);
  - Lead attorney for the Zoning Commission;
  - D.C. Department of Energy and Environment (“DOEE”);
  - Ward 4 Councilmember Lewis-George and the At-Large D.C. Councilmembers; and
  - Owners of property within 200 feet of the Property.(Ex. 22, 23.)
7. OZ also published notice of the February 15, 2024 public hearing, in the *District of Columbia Register* on December 22, 2023 (70 DCR 016119 *et seq.*), as well as through the calendar of OZ’s website. (Ex. 21, 22.)
8. The Applicant submitted evidence that it had posted notice of the public hearing on the Property on January 4, 2024, as required by Subtitle Z §§ 402.8 and 402.9 and maintained the posted notice in accordance with Subtitle Z § 402.10. (Ex. 26, 49.)

### **The Property and the Surrounding Area**

9. The Property is located in the Takoma neighborhood of Ward 4 and fronts on Eastern Avenue, N.W., the District’s eastern boundary line with Montgomery County, Maryland.

Piney Branch Avenue, N.W., is to the northwest, and Cedar Street, N.W., is to the southeast. The Property is long and narrow, measuring approximately 75 feet wide at Eastern Avenue with a depth of approximately 350 feet. (Ex. 3, 3H1-3H4.)

10. The Property is currently improved with the Elm Gardens Apartments, a three-story residential building with 36 units. The building is divided into three components, each with its own entrance oriented toward the south. A long driveway along the south lot line leads from Eastern Avenue to a surface parking lot at the rear. (*Id.*)
11. The Property has a land area of approximately 26,682 square feet. The rear (west) lot line abuts the concrete wall and elevated Metrorail tracks of the Takoma Park Metrorail Station. The southern rear portion of the Property is immediately adjacent to the bus bays of the Metrorail Station, which serve at least eight bus lines and seven Ride-On buses to Montgomery County, Maryland. The Property is located less than one-half mile north of the Takoma Park commercial center. (*Id.*)
12. Two- to four-story apartment buildings are located on either side of the Property, all of which are part of the Takoma Park Historic District. While neither the Property nor the adjacent buildings contribute to the character of the historic district, they are subject to the design review by the D.C. Historic Preservation Review Board (“HPRB”).<sup>1</sup> (*See* D.C. Official Code §§ 6-1101 *et seq.*)

### **Current Zoning**

13. Currently the Property is split-zoned in the RA-1 and MU-4 zones. Approximately 22,382 square feet of the land is located in the RA-1 zone and approximately 4,300 square feet is zoned MU-4.
14. The RA-1 zone is designed for areas predominantly developed with low- to moderate-density developments, including detached dwellings, rowhouses, and low-rise apartments. (Subtitle F § 101.4.)
15. Buildings in the RA-1 zone may be constructed to a maximum height of 40 feet and three stories, with a maximum density of 0.9 Floor Area Ratio (“FAR”) (or 1.08 FAR for Inclusionary Zoning [“IZ”] developments), and up to 40 percent lot occupancy.<sup>2</sup> (Subtitle F §§ 201.1, 203.2, 210.1.) Penthouses may be constructed to a height of 12 feet/one story. (Subtitle F § 205.1.)

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<sup>1</sup> As discussed below, the Applicant submitted into the case record a copy of an HPRB staff report, which approved the Project’s (defined below) revised concept design and found it to be compatible with the height, massing, and materials of the Takoma Park Historic District. (Ex. 3E.)

<sup>2</sup> Public Libraries in the RA-1 zone are allowed a maximum FAR of 2.0. (Subtitle F § 201.1.) Public Recreation and Community Centers are allowed a maximum lot occupancy of 20%; and Places of Worship and Public Libraries are allowed a maximum lot occupancy of 60%. (Subtitle F § 210.1.)

16. The MU-4 zone is designed to permit moderate-density mixed-use development; 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 be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers. (Subtitle G § 101.9.)
17. Buildings in the MU-4 zone may be constructed to a maximum height of 50 feet with no limit on the number of stories, and up to 60% lot occupancy (or 75% for IZ developments). The maximum density permitted is 2.5 FAR (or 3.0 FAR for IZ developments), of which no more than 1.5 FAR may be devoted to non-residential uses. Habitable penthouses may be constructed to a height of 12 feet/one story, while mechanical penthouses may be 15 feet in height/a second story above the building roof. (Subtitle G §§ 201.1, 203.2, 205.1, 210.1.)

**Comprehensive Plan (Title 10-A DCMR)**

18. The Generalized Policy Map (“GPM”) of the Comprehensive Plan designates the Property in a “Neighborhood Conservation Area.” The Comprehensive Plan describes the Neighborhood Conservation Area as one with “little vacant or underutilized land.” It notes that when change occurs, “it will typically be modest in scale” although “some new development and reuse opportunities are anticipated, and these can support conservation of neighborhood character where guided by Comprehensive Plan policies and the Future Land Use Map.” (10-A DCMR § 225.4.)
19. The Framework Element further provides that the “guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs. Limited development and redevelopment opportunities do exist within these areas. The diversity of land uses and building types in these areas should be maintained and new development, redevelopment, and alteration should be compatible with the existing scale, natural features, and character of each area....In areas with access to opportunities, services, and amenities, more levels of housing affordability should be accommodated....” (10-A DCMR § 225.5.)
20. The Future Land Use Map (“FLUM”) classifies the Property as Moderate Density Residential.
21. The Moderate Density Residential designation “is used to define neighborhoods generally, but not exclusively, suited for row houses as well as low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings. In some neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). Density in Moderate Density Residential areas is typically calculated either as the

number of dwelling units per minimum lot area, or as a FAR up to 1.8, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The R-3, RF, and RA-2 zones are consistent with the Moderate Density Residential category, and other zones may also apply.” (10-A DCMR § 227.6.)

22. The Comprehensive Plan also requires the Commission to evaluate all zoning actions through a racial equity lens. (10-A DCMR § 2501.8.) Consideration of equity is intended to be based on the policies of the Plan and part of the Commission’s consideration of whether the PUD in this case is “not inconsistent” with the Comprehensive Plan, rather than a separate determination about a zoning action’s equitable impact.
23. The Comprehensive Plan’s Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (10-A DCMR § 213.6.) Further “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development and employment opportunities.” (10-A DCMR § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (10-A DCMR § 213.9.)
24. The Comprehensive Plan’s Implementation Element provides guidance for the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states that “[a]long with consideration of the defining language on equity and racial equity in the Framework Element, guidance in the Citywide Elements on District-wide equity objectives, and the Area Elements should be used as a tool to help guide equity interests and needs of difference areas in the District.” (10-A DCMR § 2501.6.) In addition, the Implementation Element suggests to prepare and implement tools to use as a part of the Commission’s evaluation process. (10-A DCMR § 2501.8.) 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).
25. The Property is also located within the boundaries of the Takoma Central District Plan (“CDP”), a small area plan adopted by the District of Columbia Council in 2002. The CDP was designed to define revitalization goals; provide a predictable development guide for

compatibility of new development; promote a consistent and integrated planning and design approach for the commercial and mixed-use areas of Takoma Park; reinforce development and revitalization initiatives based on smart growth principles and transit-oriented development; and to create a process that encourages citizen participation.<sup>3</sup> Key elements of the CDP were incorporated into the Rock Creek East Area Element of the Comprehensive Plan, which provides more current guidance due to the CDP's residential and retail market analysis. (10-A DCMR § 2211.3.)

## **II. THE APPLICATION**

### **The Applicant and EGTA**

26. The NHP Foundation is a Nonprofit Affordable Housing Developer as defined under D.C. Official Code § 47-1004.02(a)(1). In 2021, EGTA was formed by Elm Gardens Apartments residents to exercise their rights under the Tenant Opportunity to Purchase Act (“TOPA”), when the then-owner of the Property accepted a third-party offer to purchase the Property. EGTA assigned its TOPA rights to NHPF due to its commitment to construct an all-affordable replacement building, provide relocation assistance to the existing residents, and allow each of them the right to return to the new building. Elm Gardens Owner, LLC purchased the Property in October 2022, just prior to the expiration of EGTA’s TOPA rights. (Ex. 3.)

### **The Project**

27. The Applicant proposes to replace the existing 36-unit Elm Gardens rental apartment building constructed in 1966 with a new four-story, 80-unit all-affordable apartment building (“Project”). The new building would include 36 replacement units for existing Elm Gardens Apartments tenants and 44 new units. The 44 new units would be restricted to households earning no more than 50% of the median family income (“MFI”) for the Washington, D.C. metropolitan area. The 36 replacement units would be offered to the existing tenants and would be restricted to households earning no more than 30%-80% of MFI, except in cases where returning residents have a household income exceeding the 80% MFI cap. During construction the existing tenants would be relocated to a site chosen by the Applicant with tenant input, as further detailed herein and in the Applicant’s summary of its tenant relocation plan submitted. (Ex. 115.) The Applicant would pay all costs associated with the relocation. The Project includes eight permanent supportive housing units for formerly unhoused people and an on-site service provider. (Ex. 3, 115.)
28. The Application states that the Applicant received financing from the D.C. Department of Housing and Community Development (“DHCD”) to purchase the Property and intends to finance construction of the Project through DHCD funding programs and low-income housing tax credits (“LIHTC”). The Applicant intends for the Project to be reserved for households earning no more than 80% MFI for approximately 40 years (“Initial Control Period”), which would exceed the IZ requirements of Subtitle C, Chapter 10 of the Zoning

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<sup>3</sup> Takoma Central District Plan, 2002, at 1.



Regulations.<sup>4</sup> Following the Initial Control Period, if the Project becomes market rate, the Applicant has committed to reserve a minimum of 30% of the Project’s residential gross floor area (“GFA”) for IZ units, which exceeds current IZ minimum set aside requirements (i.e., 10% for the proposed Project). (Ex. 3; Transcript [“Tr.”] from February 15, 2024 public hearing at p. 42.)

29. The new four-story building would have approximately 61,850 square feet of GFA devoted to affordable housing, or a density of approximately 2.32 FAR (“Project”). Approximately 8,093 square feet of GFA (0.3 FAR) will be located in a habitable penthouse with approximately seven affordable units. The building will provide a total of approximately 80 affordable units. Amenity space and residential service areas will comprise approximately 3,770 square feet of GFA. A rooftop deck at the penthouse level is located at the front of the building, and a landscaped patio and garden are at the rear of the building at grade level. The overall height of the building is approximately 40 feet; the habitable penthouse is approximately 11 feet in height, with the mechanical penthouse rising to a height of no more than 15 feet. Parking and loading facilities are located in the below-grade garage accessed from Eastern Avenue, N.W. The Project will provide approximately 23 vehicle parking spaces in a below grade garage and approximately 27 long-term and 4 short-term bicycle parking spaces. (Ex. 3, 3H1-3H4, 95B.)

### **Proposed Zoning**

30. As part of the Application, the Applicant seeks a PUD-related zoning map amendment to the RA-2 zone, which allows the following development parameters in comparison to the existing RA-1 and MU-4 zoning: (Ex. 3H1-3H4.)

	RA-1 <sup>5</sup>	MU-4	RA-2	RA-2 PUD	Proposed Project
Density	0.9 (1.08 with IZ)	2.5 (3.0 with IZ)	1.8 (2.16 with IZ)	2.59 (20%+)	2.32
Height	40’ (60’ PUD)	50’ (65’ PUD)	50’ (60’ PUD)	60’ PUD	40’
Penthouse Height	12’	12’; 15’ mech.	12’; 15’ mech.	12’; 15’ mech.	11’; 12’8” mech.
Lot Occupancy	40%	60%	60%	60%	60%

<sup>4</sup> The all-affordable housing program for the Project described in Findings of Fact No. 27 assumes that the Project will be exempt from IZ requirements pursuant to Subtitle C § 1001.6(a). However, as noted in the final conditions of this Order, the Commission takes no position as to whether an exemption from the IZ requirements should or will be granted.

<sup>5</sup> As noted above, Public Libraries in the RA-1 zone have a maximum FAR of 2.0. (Subtitle F § 201.1.) Public Recreation and Community Centers have a maximum lot occupancy of 20%; and Places of Worship and Public Libraries have a maximum lot occupancy of 60%. (Subtitle F § 210.1.)

Side Yard	8' min., or 3"/ft of ht.	None required for multi- dwellings	Not req.; 4' min. if provided	Not req.; 4' min. if provided	10'
Rear Yard	20' min.	15' min.	15' min; 4"/ft of ht.	15' min; 4"/ft of ht.	26.5'

(See Subtitle F, Chapter 2; Subtitle G, Chapter 2.)

### **The Project Design**

31. The Application states the Project has been designed to fit within the Takoma Park Historic District. The overall building height of 40 feet is consistent with the three- to four-story multi-family residential buildings throughout the Takoma neighborhood. The massing of the building's front elevation is broken down with two bays. The primary front bay is set back 25 feet, while the second bay with the garage entry is set back 35 feet, allowing for a transition between the varying setbacks of the buildings to the north and south. The main entrance is located at the primary front bay, which features brick to the top of the facade, and is further articulated with a rustic metal canopy. The secondary front bay features brick up to the third-floor level with wood tone siding above, setting a datum line that relates to the adjacent lower building to the south. The windows in the brick areas are detailed with a projecting brick course at the sill, head, and jams. Along the sides of the building the massing is broken down into four smaller volumes through articulations of grey, white, and wood tones of panel siding and lap siding, and through projections. A mix of recessed and Juliette balconies creates visual interest on the front and side elevations. The rear of the building terminates at an angle approximately parallel to the rear property line and rail tracks and features recessed balconies. Parking and loading facilities are located below grade and are accessed through a single entrance at the south side of the front façade where the building is set back 35 feet. The open space at the front of the building is enhanced with an entrance garden and landscaping to buffer the private areas from the public realm and to enhance the streetscape experience. The site plan includes plantings and a stormwater retention landscape around the perimeter of the building and a garden patio at the rear for the use and enjoyment of the residents. In correspondence submitted by the Applicant into the case record, the HPRB determined the Project design is compatible with the Takoma Park Historic District. (Ex. 3, 3E, 3H1-3H4, 97; Tr. from February 15, 2024 public hearing at pp. 15-23.)

### **Other Project Elements**

32. The Project will provide a community room and rooftop deck located at the penthouse level at the front of the building for use by all building residents. Several units include outdoor balconies, and all residents can enjoy the outdoor living spaces of the development. The studio and one-bedroom units average approximately 450 square feet and 640 square feet, respectively. The Project includes eight units devoted to permanent supportive housing for those formerly without homes. The supportive services are designed to build independent living and tenancy skills and connect people with community-based health care, treatment,



and employment services. An on-site service provider will assist these support housing residents to help ensure their success in the new residential community. Separate meeting space will be set aside for EGTA, for resident services provided by NHPF's subsidiary, Operation Pathways, and for the on-site manager. Additionally, there will be an office for a resident coordinator working with permanent supportive housing ("PSH") residents. (Ex. 3, 3H1-3H4.)

33. Although the Property is long and narrow, the Applicant has incorporated landscaping into the plan. The front of the building features an entrance court with plantings and vegetation separating the public sidewalk from the building. The area will feature two Okame cherry trees, variegated liriopse, knockout roses, hydrangea, and inkberry holly, or similar plantings, and will incorporate a bioretention facility. Along the north and south side yards toward the front of the Property, eastern redbud trees, switchgrass and northern bayberry will provide a landscape buffer between the Project and the adjacent residential buildings. A patio area is located at the rear of the building that features star magnolia trees, liriopse, littleleaf boxwood and a seating area for the residents. (*Id.*)
34. Within the public space, the Applicant will expand the existing sidewalk onto its private property and install a grass planting strip at the street in coordination with DDOT. These improvements will bring this segment of the public sidewalk into compliance with DDOT standards and improve pedestrian safety and walkability in the immediate area. (*Id.*; Ex. 111, 111A.)

### **Transportation Analysis**

35. On January 10, 2024, the Applicant submitted to the record a transportation memorandum<sup>6</sup> dated December 21, 2023 ("Transportation Memo"), from its consultant, Gorove/Slade Associates, assessing the potential transportation impacts of the proposed Project on the surrounding network. The Transportation Memo concluded that, due to the Project's vehicular trip generation of eight total vehicle trips (2 inbound and 6 outbound) in the AM peak hour and 11 total vehicle trips (7 inbound and 4 outbound) in the PM peak hour, the Project is not expected to have a detrimental impact on the surrounding transportation network. The Transportation Memo noted that the overall net impact would be lower when existing trips are removed from the calculation. Because the number of vehicular trips anticipated is less than 25 net new peak trips, the Project fell below DDOT's threshold for requiring a full vehicular analysis. (Ex. 24.)
36. The Transportation Memo also assessed the existing network of transit, bicycle, and pedestrian facilities surrounding the Project site and concluded that they provided an environment for safe and effective non-vehicular transportation. The Transportation Memo also noted that the Project will provide sufficient short- and long-term bicycle parking and

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<sup>6</sup> The Transportation Memorandum subject line incorrectly references Z.C. Case No. 22-33, a previous standalone map amendment case to the RA-3 zone involving the same Property as this case, Z.C. Case No. 23-19; however, the Transportation Memorandum correctly describes the Project in this case, Z.C. Case No. 23-19, as a PUD and related map amendment to the RA-2 zone.

will include Transportation Demand Management (“TDM”) measures that adequately promote non-vehicular modes of travel. (*Id.*)

37. On February 14, 2024, the Applicant submitted a response to recent discussions with DDOT, including a cover letter, a Transportation Memo dated February 2, 2024, and revised drawings reflecting changes that raised the garage entrance height by several inches resulting in adjustments to the interior layout of the units above the garage ramp and to the exterior facade.<sup>7</sup> Specifically, a one-bedroom unit and a two-bedroom unit were both converted to studios.<sup>8</sup> The Applicant’s cover letter noted that the D.C. Historic Preservation Office confirmed the design changes were compatible with the building composition and overall preservation law. (Ex. 95-95B.)
38. Later on February 14, 2024, the Applicant submitted a Supplemental Transportation Memo (“Supplemental Memo”), dated February 5, 2024, advising that the Supplemental Memo was the correct attachment to the Applicant’s response to DDOT and supersedes the Transportation Memo dated February 2, 2024. The Supplemental Memo stated the Applicant’s updated additional streetscape commitments based on coordination with DDOT, including providing a minimum 10-foot wide sidewalk section on its private property; and its agreement to work with DDOT to provide an additional two feet of sidewalk width on its private property to help facilitate the Metropolitan Branch Trail bicycle connection; provided, however, that the expansion would not affect vehicular clearance height along the garage ramp in a way that would reduce or otherwise compromise the size of residential units located above the ramp.<sup>9</sup> (Ex. 111, 111A.) If the full two feet could not be provided in such a manner, the Applicant agreed to provide as close to two feet as is possible. Subject to DDOT approval, the Applicant would provide an easement allowing public access and giving DDOT authority for maintenance, permitting, and the ability to modify the space to facilitate improved pedestrian and bicycle facilities in this space. (Ex. 111, 111A.)

### **III. APPLICANT’S JUSTIFICATION FOR RELIEF**

#### **Requested Relief**

39. **Minimum Land Area.** Pursuant to Subtitle X § 301.1, a PUD in the RA-2 zone is required to have a minimum land area of one acre, or 43,560 square feet. The Property has a total of 26,682 square feet of land area, or only 61.2% of the required land area. The Applicant requests a waiver of this requirement. Pursuant to Subtitle X § 301.2, the Commission may waive up to 50% of the minimum area requirement, provided the Commission finds that

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<sup>7</sup> The Applicant requested a waiver from Subtitle Z § 401.5 to submit the updated materials less than 20 days before the February 15, 2024, public hearing, which was granted by the Commission at the start of the hearing.

<sup>8</sup> The Project’s unit count is now 19 studio units, 35 one-bedrooms units, and 26 two-bedroom units.

<sup>9</sup> The maximum slope of a garage ramp is 12% to ensure that service trucks can access indoor trash receptacles and loading facilities. If the start of the ramp slope were to start an additional two feet closer to the proposed Project, it would extend the length of the ramp further into the building, potentially requiring an increase in the clearance height that would affect the residential units above.

the development is of exceptional merit and is in the best interest of the District of Columbia or the country and one of the following: (i) the development is identified in an approved Small Area Plan and will be generally not inconsistent with the Small Area Plan; (ii) the development will be constructed or operated by the District of Columbia or federal government and serves a compelling government interest; or (iii) if the development is located outside the Central Employment Area, at least 80% of the GFA must be used exclusively for dwelling units and uses accessory thereto. The Applicant stated that the proposed PUD is of exceptional merit and in the best interest of the District and meets the third condition by devoting 100% of the Project's GFA to dwelling units and uses accessory thereto. (Ex. 3.)

40. Additional Height and Density Under PUD Standards. The Applicant requests a PUD-related map amendment to the RA-2 zone, which is considered flexibility pursuant to Subtitle X § 303.12. As a result of the PUD-related map amendment to the RA-2 zone, the Project can achieve additional height and density as follows:
- Height: The Project proposes a height of approximately 40 feet. The existing partial MU-4 zone permits a maximum height of 50 feet, or 65 feet for a PUD; and the existing partial RA-1 zone permits a maximum height of 40 feet, or 60 feet for a PUD. The proposed RA-2 zone permits a maximum height of 50 feet, or 60 feet for a PUD. Therefore, the Project's 40-foot height is within the allowable height for a matter-of-right development in the existing RA-1 and MU-4 zones; and
  - Density: The Project proposes a density of approximately 2.32 FAR. The existing partial MU-4 zone permits a density of 2.5 FAR, or 3.0 FAR for an IZ development; and the existing partial RA-1 zone permits a density of 0.9 FAR (2.0 FAR for Public Libraries), or 1.08 FAR for an IZ development. The proposed RA-2 zone permits a density of 1.8 FAR (2.0 FAR for Public Libraries), or 2.16 FAR for an IZ development. Therefore, the Project's density of approximately 2.32 FAR is within the allowable density for a matter-of-right development in the existing partial MU-4 zone; but it is 1.42 FAR greater than the density allowed for a matter-of-right development in the existing partial RA-1 zone.  
(Ex. 3.)
41. No Zoning Relief Requested. The Applicant does not seek any zoning relief from the RA-2 development parameters. (Ex. 3.)
42. Design Flexibility Requested. The Applicant requested various design flexibility. (Ex. 3.)

### **Satisfaction of PUD Evaluation Standards**

The Project is Not Inconsistent with the Comprehensive Plan (Subtitle X § 304.4(a).)

43. Overview. The Applicant asserted that the Application complies with Subtitle X § 304.4(a) because the Project is not inconsistent with the Comprehensive Plan as a whole, including its maps and policies when viewed through a racial equity lens, and other adopted public policies and active programs related to the Property, as set forth below.

44. Generalized Policy Map. The Project is not inconsistent with the Property's Neighborhood Conservation Area designation on the GPM because, consistent with 10-A DCMR §§ 225.4 and 225.5, the Project is:
- Compatible with the existing moderate density building heights and scales, and natural features of the Takoma neighborhood. There are numerous multi-family apartments within the area;
  - Consistent with the guiding philosophy in Neighborhood Conservation Areas because it will contribute significantly to addressing city-wide housing needs; and
  - Creates a welcoming streetscape design with ample setbacks and well-designed street façade instead of a blank wall.
- (Ex. 3.)
45. Future Land Use Map. The Project is not inconsistent with the FLUM's Moderate Density Residential designation because:
- The proposed RA-2 zone is specifically identified as consistent with the Moderate Density Residential FLUM designation;
  - The Framework Element states that density greater than 1.8 FAR may be possible in a Moderate Density Residential area when approved through a PUD; and, as here, the proposed 2.32 FAR is less than the maximum permitted density of 2.59 FAR for a PUD with IZ bonus density in the RA-2 zone; and
  - At 40 feet, the proposed height of the Project is well below the maximum permitted height of 60 feet for a PUD in either the RA-1 or RA-2 zone and is consistent with the maximum matter-of-right height of 40 feet in the existing RA-1 zone.
- (Ex. 3.)
46. City-Wide Elements. The Applicant asserted that the Project will foster numerous policies of the Land Use, Housing, Transportation, and Historic Preservation Elements of the Comprehensive Plan (*Policies LU-1.4.3, LU-1.4.4, LU-1.4.6, LU-2.1.1, LU-2.1.3, LU-2.1.8, T-1.1.7, H-1.1.1, H-1.1.3, H-1.2.1, H-1.2.2, H-1.2.9, H-1.5, H-2.1.4, H-2.1.5, H-2.1.6, HP-1.6.3, HP-1.6.4, HP-2.5.3; Action H-1.2.J.*) by reinforcing the Takoma Park Metrorail Station as an anchor for new housing, enabling increased residential density near the station, and the production of an all-affordable apartment building. The Property's location in the Takoma Park Historic District will ensure that any replacement building under the proposed PUD with RA-2 rezoning will be compatible in height, massing, and design with the surrounding area. The Project will preserve the number of existing units on the Property and introduce over 40 additional units, thereby helping to conserve the residential quality of the neighborhood. It will prioritize affordable housing while serving a mix of incomes for the Washington region. The Project's location adjacent to the Takoma Metrorail/Bus Station will offer greater transportation options, as well as lower transportation costs, thereby increasing the affordability of the units for moderate- and low-income households and encouraging car-free or "car-light" living. The Project will also help the Takoma neighborhood play a role in ensuring the city meets the broader District-

wide need for more affordable housing. The rezoning to the RA-2 zone is one of the many approaches encouraged by the Land Use Element to accommodate a modest increase in density and more diverse housing types in low-density and moderate-density neighborhoods in order to produce additional housing, accommodate population growth, and advance racial equity and affordability. (Ex. 3, 3F.)

47. Rock Creek East Area Element. The Applicant asserted that the Project is not inconsistent with the Rock Creek East Area Element and fosters its policies by strengthening the Takoma Park neighborhood while providing new housing opportunities for a range of incomes and household sizes, ensuring that the design is compatible with the surrounding area, and concentrating new housing and affordable housing around the Takoma Metro station area. (Policies RCE-1.1.1, 1.1.3, 1.1.6; Ex. 3.)
48. Takoma Central District Plan. The Applicant noted that the key elements of the CDP were adopted in 2002, with much of the planning projections extending for a 10-year period through 2010. Most of the key elements were incorporated into the Rock Creek East Area Element, and thus the Project is not inconsistent with the CDP as discussed above. (*See* Findings of Fact (“FF”) No. 25. The Project is not inconsistent with the CDP’s goals for revitalization, compatible new development, and smart-growth principles and transit-oriented development. (Ex. 3.)

### **Racial Equity**

49. Project Not Inconsistent with the Comprehensive Plan When Viewed Through a Racial Equity Lens. The Applicant provided the following information about the community and its outreach in its responses to the Community Outreach and Engagement component of the Commission’s revised Racial Equity Analysis Tool:
  - Community Outreach and Engagement: The Applicant states it engaged in community outreach beginning in August 2022 when it introduced plans to develop the Property with a six-story building at 60 feet in height under the previous standalone map amendment application to the RA-3 zone in Z.C. Case No. 22-33. While the overwhelming community input was supportive, the Eastmont was opposed to the height and massing of the project the standalone map amendment would have facilitated, and the Applicant ultimately withdrew the previous application and pursued the current Application for a PUD and related map amendment to the RA-2 zone, which proposes a smaller four-story 40-foot Project. The Applicant provided a list of meetings and outreach efforts with ANC 4B, its Housing Justice Committee, HPRB, and other community stakeholders regarding the Project that also included a meeting with Eastmont to discuss the revised four-story PUD design; and (Ex. 3, 4.)
  - Displacement: As a result of the Project, the existing Elm Gardens Apartments residents would be temporarily displaced and relocated with assistance from the Applicant. However, the Applicant states that displacement impacts would be mitigated through a robust relocation plan, which is described in the Applicant’s post-hearing submission. (Ex. 115.) The summary indicates that NHPF has entered into an agreement with EGTA containing provisions requiring NHPF to pay and arrange for



all aspects involved with the moving process. In their relocated place during construction, residents would not have to pay a rent that is more than their current rent at Elm Gardens. When residents return to the new building, they will pay their current rent plus a two percent increase. The subsequent annual rent increases for these existing tenants would be the greater of two percent or a change in the Consumer Price Index, capped at seven percent.  
(Ex. 3, 115.)

**No Unacceptable Impacts on the Surrounding Area or on District Services (Subtitle X § 304.4(b).)**

50. Overview. In accordance with Subtitle X § 304.4(b), the Applicant asserted that the Project would not have any unacceptable impacts on the surrounding area or on the operation of city services and facilities but instead would be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the Project, as outlined below.
- a. Zoning and Land Use Impacts – Favorable Outcome. The proposed Project is consistent with the Comprehensive Plan’s FLUM designation for Moderate Density Residential. The proposed RA-2 zone is specifically identified as a compatible zone for the Moderate Density Residential category. The proposed multi-family residential Project is consistent with the RA-2 zone. The additional 0.16 FAR (above the 2.16 FAR allowable for an IZ development in the RA-2 zone) achieved for the Project through the PUD process will result in more affordable housing units on the site;
  - b. Housing Market Impacts – Favorable Outcome. The Project will produce new, high-quality, transit-accessible all-affordable housing units for households earning up to 30%-80% MFI. Eight units will be devoted to permanent supportive housing for formerly unhoused individuals. This housing component will have a favorable impact on the affordability of housing in the District, one of the city’s most pressing issues. The Project is not expected to depreciate neighboring property values due to the Project’s all-affordable housing component. An Urban Land Institute study indicates that “no discernible difference exists in the appreciation rate of properties located near higher-density development and those that are not. Some research even shows that higher-density development can increase property values.”<sup>10</sup> Similarly, studies involving the effect of LIHTC properties on the surrounding community show that “stability of neighborhood residents may also increase due to housing subsidies, indirectly decreasing crime through the greater social organization.”<sup>11</sup> A comprehensive study in May 2022 similarly found there was “no evidence of negative impacts of LIHTC investment on neighborhood property values.”<sup>12</sup>;

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<sup>10</sup> Uli.org/wp-content/uploads/ULI-Documents/HigherDensity\_MythsFacts.ashx\_.pdf.

<sup>11</sup> <https://www.novoco.com/notes-from-novogradac/how-do-lihtc-properties-affect-their-surroundings#:~:text=The%20reviewed%20research%20found%20property,additional%20studies%20found%20modest%20i mpacts.>

<sup>12</sup> “Effects of Concentrated LIHTC Developments on Surrounding House Prices, May 9, 2022,” <https://econsultsolutions.com/lihtc-development-effects/>.



- c. Open Space, Urban Design and Massing Impacts – Favorable or Acceptable Outcome. The Project has favorable impacts on the public realm through the construction of improved sidewalks, landscaping, and other streetscape improvements. The permitted lot occupancy on the Project site will increase from the current 40% coverage to 60% coverage under the RA-2 zoning, thereby potentially extending the shade and shadow impacts of a confronting building wall on adjacent properties. However, the affected portion of the adjacent property to the north is improved with a parking lot, and the new building would have only minimal impacts to any west-facing residential units. To the south, the extended footprint of the Project will confront a tree buffer and the bus turnaround at the Takoma Metrorail station. To the extent there are negative impacts from the Project's density or lot occupancy, those limited impacts are more than acceptable in light of the Project's significant all-affordable housing development, which would not be possible absent the Project's height, density, and lot occupancy. The Applicant has purposefully limited the Project height to the maximum permitted in the existing RA-1 zone, such that the height does not create any adverse impacts. The Project's shade and shadow impacts on adjacent properties will be comparable to what is currently permitted on the site;
- d. Design and Aesthetic Impacts – Favorable Outcome. The Project's design and architecture have a favorable outcome, produce no unacceptable impacts, and enhance the Eastern Avenue streetscape and the Takoma Park Historic District at large. HPRB deemed the height, massing, and design to be compatible with the historic district;
- e. Construction-Period Impacts on Neighbors – Capable of Mitigation Temporary construction impacts are capable of being mitigated through DOB construction requirements. The Applicant states it has experience successfully completing construction projects in infill locations without disturbances;
- f. Transportation, Mobility and Public Safety Impacts – Favorable Outcome. The Project does not have any unacceptable impacts on the public transportation facilities or roadways that it relies on for service. The Project is estimated to generate less than 25 vehicular trips per day, which is the DDOT threshold for conducting a full transportation impact study. The Project's adjacency to the Takoma Park Metrorail station will provide safe, reliable public transportation to the Project's residents and will discourage auto travel. Bikeshare stations and Metrobuses are also located at the Metrorail station, further discouraging personal vehicle travel. Approximately 23 parking spaces will be provided on site, which exceeds the zoning requirement, in order to accommodate the needs of the residents of the existing Elm Gardens apartments. A locked bike storage will be located in the garage of the building. The number of new residents in the 44 net additional units on site are not expected to have any appreciable impact on the transportation network. The Project will also enhance pedestrian safety by expanding the sidewalk width into private property and will dedicate an easement for public use, with maintenance of the space by DDOT;
- g. Economic Impacts – Favorable Outcome. The creation of 44 net new rental apartments will expand the District income tax base and support the commercial retail businesses along the Takoma Park commercial corridor, creating a positive economic impact for the city;

- h. Stormwater Management – Favorable Outcome. The Project has been designed to meet or exceed the stormwater retention standards of DOEE. The design includes bioretention basin planters, a green roof, and permeable pavers to meet DOEE requirements;
- i. Solid Waste Services – Favorable Outcome. Solid waste and recycling materials generated by the Project will be collected regularly by a private collection service, with all receptacles located within the building. It will not have any adverse impact on municipal waste services and will have a favorable impact by eliminating exterior trash receptacles;
- j. Environmental Protection – Favorable Outcome. The Project has been designed to be an energy-efficient building with an all-electric non-combustion energy source. It will meet the standards for Enterprise Green Communities Plus (“EGC+”), which equate to LEED Gold;
- k. Public Schools – No Adverse Impact. The Project falls within the boundaries of Takoma Elementary, Ida B Wells Middle School, and Coolidge High School, all of which were below capacity for the 2021-2022 school year, per datasets maintained by the Deputy Mayor’s Office on Education.; and
- l. Community Services and Facilities – No Adverse Impact. There will be a potential modest increase in the utilization of community facilities at Takoma Public Library, The Jaunita E. Thorton Library, the Takoma and Lamond recreation centers, emergency service facilities. Any potential impacts due to this modest increase are capable of being mitigated. No objections to Project were received from D.C. Public Library or D.C. Fire Emergency Medical Services.  
(Ex. 3, 97, 115.)

**Public Benefits and Project Amenities (Subtitle X § 304.4(c).)**

- 51. Overview. In accordance with Subtitle X § 304.4(c), the Applicant states the Project will provide specific public benefits and amenities that are not inconsistent with the Comprehensive Plan and other adopted public policies and active programs related to the Property. The Applicant states its proposed benefits and amenities exceed what could result from a matter-of-right development, are tangible, measurable, and able to be arranged prior to issuance of the certificate of occupancy, and benefit either the immediate neighborhood or address District-wide priorities. (See Subtitle X §§ 305.2, 305.3.) The Applicant states that the Project’s proposed public benefits and amenities are within the categories described under Subtitle X § 305.5 and meet the requirements under Subtitle X § 305.12. The Application proposes the following public benefits and project amenities.
- 52. Housing Exceeding Existing Matter-of-Right Zoning (Subtitle X § 305.5(f).) The Property is currently zoned RA-1 and provides 36 units in the existing Elm Gardens Apartment building. Based on the development parameters of Subtitle F of the Zoning Regulations, approximately 29 units could be constructed in a new, energy-efficient building on the Property in the existing RA-1 zone. This assumes approximately 1000 square feet of gross floor area per unit, which includes approximately 750 square feet of living space and a proportional allocation for common areas, mechanical space, and other “core” factors of

the building. Under the proposed PUD with rezoning to the RA-2 zone, the Applicant will provide 80 units. This represents an additional 44 units compared to the existing Elm Gardens Apartment building, or 50 units more than what could be provided in a new, energy-efficient building in the existing RA-1 zone. Thus, the Applicant states the proposed Project constitutes a public benefit under Subtitle X § 305.5(f) of the Zoning Regulations because it exceeds the amount of housing that could be achieved under existing zoning. (Ex. 3, 18A1.)

53. Affordable Housing (Subtitle X § 305.5(g).) The proposed PUD will provide 80 units<sup>13</sup> that will be devoted to households earning up to between 30% and 80% MFI, including 44 units reserved for households earning up to 50% MFI, for a period of approximately 40 years (i.e., the Initial Control Period). This provision of affordable housing exceeds what could be achieved under the IZ requirement (i.e., 10% of residential GFA) for matter-of-right development parameters under the existing RA-1 and MU-4 zoning. In the event the Project were to convert to market-rate after the 40-year Initial Control Period, the Project would still provide a minimum of 30% of the residential GFA to IZ units, and thus continue the affordable housing benefit for the life of the Project. The affordable housing proffer is even more valuable because it not only preserves the 36 existing affordable units, but also adds 44 new affordable units. Together these units are even more impactful because of their proximity to mass transit and other amenities. (Ex. 3, 18A1.)
54. Social Services and Facilities for the Duration of the PUD (Subtitle X § 305.5(i).) The Project includes eight units devoted to permanent supportive housing for those formerly without homes. The supportive services are designed to build independent living and tenancy skills and connect people with community-based health care, treatment, and employment services. An on-site service provider will assist these PSH residents to ensure their success in the new residential community. A separate office space will be provided for a resident coordinator working with these residents. (Ex. 3, 18A1.)
55. Superior Urban Design, Architecture, Site Planning, Landscaping, and Historic Preservation (Subtitle X § 305.5 (a), (b), (c), and (e).) The Project provides a contextual design that reflects the scale and height of the surrounding garden-style apartments while at the same time enhancing the quality of the architectural aesthetic along Eastern Avenue and the Takoma Park Historic District as a whole. The most significant urban design improvement is the replacement of the existing blank street wall with a fully articulated façade along Eastern Avenue. The street elevation incorporates setbacks of 25 and 35 feet to create a stepped transition between the Eastmont Cooperative buildings to the north, which are set back 10 feet from the street, and the garden apartment to the south, which is

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<sup>13</sup> Since the Project will reserve 36 of the 80 total units for returning Elm Gardens tenants, some or all of those 36 units may initially house over-income residents depending on how many Elm Gardens tenants who are above the 80% MFI income level return. However, in the event any of those 36 units become occupied by tenants who are not returning Elm Gardens tenants, they will be reserved for households earning up to between 30% and 80% MFI. The remaining 44 units (which are not reserved for returning Elm Gardens tenants) will be reserved for households earning up to 50% MFI. (Ex. 18A1.)

set back 38 feet. Landscaping and an entrance court further enhance the urban streetscape in a warm and welcoming fashion. The materials are expressed in a variety of textures and earth tones that complement those of the historic district. HPRB found that the Project significantly improves the existing conditions, but more importantly, enriches the historic district through sensitive siting and architectural treatment. (Ex. 3, 18A1.)

56. Environmental and Sustainable Benefits That Exceed the Standards Required by Zoning or Other Regulations (Subtitle X § 305.5(k).) The Project is designed to meet the requirements of the Enterprise Green Communities Plus and the Department of Energy's Zero Energy Ready Homes standards, which equates to the LEED Gold standard. The Applicant submitted a copy of the Enterprise Green Communities checklist at Exhibit 18A2. As LEED Gold equivalent, the Project will exceed the standards required by zoning or other regulations. However, as further discussed in Conclusion of Law 36 below, the Commission concluded that the Project's compliance with EGC+ standards does not qualify as a public benefit based on OP's findings in its reports, as further discussed below. (Ex. 3, 18A1.)
57. In addition to the public benefits described above, the Applicant also included the following items in its list of proffered public benefits and project amenities:
- Community Space, Balconies, and Larger Units. A community room and rooftop deck are located at the penthouse level at the front of the building for use by all building residents. Several units include outdoor balconies, and all residents can enjoy the outdoor living spaces of the development. The studio and one-bedroom units average approximately 450 square feet and 640 square feet, respectively; and
  - Landscaping and Outdoor Features. The Project will provide extensive landscaping around the perimeter of the building, with gathering space at the front and rear of the property. The front of the building features an entrance court with lush plantings and vegetation separating the public sidewalk from the building. A patio area is located at the rear of the building that features star magnolia trees, liriope, littleleaf boxwood and a seating area for the residents. Within the public space, the Applicant will expand the existing narrow sidewalk onto its private property and install a grass planting strip at the street. These improvements will bring this segment of the public sidewalk into compliance with DDOT standards and improve pedestrian safety and walkability in the immediate area.
- (Ex. 3, 18A1.)

#### **Applicant's Testimony**

58. At the February 15, 2024, public hearing in this case, the Applicant presented four witnesses: Mr. Eric Price, President of NHPF; Mr. Michael Simon of NHPF and the project manager for the Project; Mr. Fernando Bonilla-Verdesoto of Soto Architecture, who was qualified as an expert in architecture; and Mr. William Zeid of Gorove/Slade Associates, who was qualified as an expert in transportation engineering. Mr. Mansur Abdul-Malik of NHPF appeared as a rebuttal witness. The Applicant's land use counsel, Ms. Carolyn Brown of the Brown Law Firm PLLC, presented legal argument on the Application's

compliance with the PUD evaluation standards. The Applicant's testimony followed its slide presentation submitted to the record. (Ex. 97; Tr. from February 15, 2024, public hearing at pp. 9-38.)

59. The Applicant's NHPF witnesses described the background and history of NHPF as an affordable housing provider, its experience using the TOPA process to preserve affordable housing in the District, and its successes with other properties in the city. They discussed the genesis of the Project, working with EGTA to acquire its TOPA rights, development of the tenant relocation program, the Project's affordable housing plan, and outreach efforts with the community, and the Eastmont Cooperative in particular. (Tr. from February 15, 2024 public hearing at pp. 13-14, 35, 60-62, 210.)
60. Mr. Bonilla-Verdesoto described the architectural plans for the Project, including the development parameters; the design intent and form of the building, particularly in relation to its setting and the surrounding neighborhood; and the building's amenities and landscape features. (Tr. from February 15, 2024 public hearing at pp. 15-23, 43-45, 51-52, 70-78.)
61. Mr. Zeid addressed the transportation features of the building, including vehicle and bicycle parking, loading facilities, and dedication of private property to expand the public sidewalk and tree box area as a result of coordination with DDOT, including an additional expansion of the public space area into Applicant's property for the Metropolitan Branch Trail. Mr. Zeid described the lack of transportation impacts due to the minimal number of trips generated by the Project, which was fewer than 25 trips per day, and the close proximity of the Takoma Park Metro station to the Property. He also discussed the TDM measures the Applicant would implement to encourage non-auto trips to and from the site. (Tr. from February 15, 2024 public hearing at pp. 24-27, 46-51.)

#### **Applicant's Rebuttal Testimony**

62. In response to questions from the Commission and issues raised by opponents to the Application, Mr. Bonilla-Verdesoto presented shadow studies showing the modest impacts the Project would have on the Eastmont. He opined that the shadow impacts would be comparable to a matter-of-right RA-1 building envelope, except that the proposed Project would cast some shadow additional shadow on the Eastmont's parking lot due to Project's greater lot occupancy that would allow it to extend farther toward the rear of the Property. (Ex. 113A1-113A2; Tr. from February 15, 2024, public hearing at pp. 193-195.)
63. With respect to the concern that the Project would create a "canyon" effect between the Eastmont and the new building, Mr. Bonilla-Verdesoto explained that while the proposed RA-2 zone does not require a side yard, the Project provides a side yard to the north of approximately 10 feet in width. Additionally, he testified that the front of the proposed building is set back 25 to 35 feet from the front property line, which would now allow more light to reach the front tier of units in the Eastmont's south building. (Ex. 3H1; Tr. from February 15, 2024 public hearing at pp. 19, 45; 193-95.)



64. Mr. Bonilla-Verdesoto also rebutted the alternative design proposal submitted by Eastmont in written and oral testimony to the record, which (as further described below) involved lowering the height of the front of the Project and shifting massing towards the rear to match the taller buildings across the Metrorail tracks. He explained that Eastmont's proposal was unworkable for several reasons. First, reducing the height of the Project to three stories where it aligned with the Eastmont's south would require recapturing the density in a six-story wing at the rear of the Project. He testified that this would require concrete construction, adding significant costs to the building. Second, he explained that the Eastmont proposal would require relocation of the trash chute, rendering trash and loading truck access extremely difficult and potentially infeasible. The added height to the rear wing would require an additional egress stair tower, further adding to increased Project costs. He opined that the building mass would not exacerbate the Eastmont's concerns regarding the "Great Wall" effect and excessive shadows. (Tr. from February 15, 2024 public hearing at pp. 203-05.)
65. Mr. Simon explained that the added construction costs of a concrete podium required for the Eastmont alternative would make it difficult to secure DHCD financing. He stated that the Project would not score as well under the DHCD's scoring rubric or could not be underwritten because the costs would have exceeded the cap of the subsidy the would be provided. The financing risk would be exacerbated if all 80 units could not be recaptured in the Eastmont alternative design because the cost per unit would increase, making the project less attractive to DHCD. (Tr. from February 15, 2024 public hearing at pp. 205-06.)
66. Mr. Simon and Mr. Abdul-Malik provided rebuttal testimony on the outreach efforts to the Eastmont and the tenant relocation plan for the existing Elm Garden residents. The Applicant also submitted a post-hearing submission explaining the tenant relocation program. (Tr. from February 15, 2024 public hearing at pp. 196-99; Ex. 115.)

#### **Applicant's Post-Hearing Statement**

67. On February 22, 2024, the Applicant submitted a post-hearing statement in response to the Commission's request at the February 15, 2024 public hearing, for additional details about the relocation assistance being offered by the Applicant to Elm Gardens tenants and their rights to return. The Applicant's statement provides a detailed summary of the provisions of its relocation plan agreement with Elm Gardens Tenants Association, noting that a copy of the agreement is not included because it contains proprietary information. The Applicant states it entered into an agreement with the Elm Gardens Tenants Association in August 2022 including such provisions as: guaranteeing all tenants will have the option to return to the Project at their current rent plus two percent, with rent increases capped at the greater of two percent or CPI (max of seven percent); tenants will have their relocation costs paid for and will have input on the relocation housing; the Applicant will contract with a relocation service provider to provide consulting services, circulate information, follow up with tenants to address standing concerns, etc. Furthermore, tenants will be provided with



moving materials, professional movers, and oversight by the Applicant over their temporary relocation units. (Ex. 115.)

#### IV. RESPONSES TO THE APPLICATION

##### OP Reports

68. OP submitted a report dated November 17, 2023 (“OP Setdown Report”), recommending the Commission set down the Application for a public hearing and stating that the Project, on balance, would not be inconsistent with the Comprehensive Plan Elements, the FLUM, the GPM, and the Takoma CDP, including when viewed through a racial equity lens. (Ex. 14.) The OP Setdown Report included the following findings:
- The proposed map amendment to the RA-2 zone would allow for redevelopment that is not inconsistent with the Moderate Density Residential designation of the FLUM and consistent with other development in the Takoma neighborhood;
  - The Project is not inconsistent with the GPM designation because the Neighborhood Conservation Area does not preclude development, and the additional density would support multifamily housing and affordable housing for a diversity of residents;
  - The Project furthers various policies of the Comprehensive Plan Land Use Element, Housing Element, and the Rock Creek East Area Element; and (*Land Use Policies LU-1.4.3, LU-1.4.4, LU-1.4.6, LU-2.1.3, LU-2.1.8; Housing Policies H-1.1.1, H-1.1.3, H-1.2.1, and Action H-1.2.J; Rock Creek East Policies RCE-1.1.1, RCE-1.1.3, RCE-1.1.6*)
  - The Project would not be inconsistent with the 2002 Takoma CDP. The OP Setdown Report noted that the CDP is over 20 years old, such that the Comprehensive Plan provides more current guidance. OP noted that the CDP discusses revitalizing the local retail market in the Takoma Central Business District. Because the Project would add more households to a site that is adjacent to the Takoma Central Business District, OP concluded that the proposal would bring more residents who would likely become new customers to support the local retail market.
- (Ex. 14.)
69. The OP Setdown Report included a racial equity analysis with the following findings in response to the revised Racial Equity Analysis Tool:
- Disaggregated Race and Ethnicity Data: The OP Setdown Report provided disaggregated race and ethnicity data for the Rock Creek East Planning Area, which showed that during the 2017 to 2021 period, it had a majority minority population with 53% of its residents being Black and 22% of its residents being Hispanic. Though in the majority, the Black population decreased from 60% of the population to 53% of the population from 2012 to 2021, which is similar to the District-wide trend during this period. Meanwhile, the white population increased from 21% to 24%. During the period from 2017 to 2021, both Black and Hispanic residents had a lower median income than the District’s median of \$93,547. However, almost every group of residents had a higher percentage of homeowners than their District-wide percentage. This can be seen in the 2017-2021 period where 55% of Black residents in Rock Creek East owned a home whereas 36% of Black residents District-wide owned their home.

Also, during this same period 37.4% of Hispanic residents in Rock Creek East owned a home whereas District-wide only 34.8% owned their home;

- Based on the foregoing data, the OP Setdown Report concluded that the proposal would allow the existing Elm Gardens residents, most of whom are Black and Hispanic, to remain on the Property and in the neighborhood. It would also likely attract new minority residents from various economic households to the area. All the additional units proposed would go to households making 50% MFI or less. It would add 44 new rental housing units to the area at no more than 50% MFI. Though Rock Creek East appears to be an attractive area for homeownership for all race/ethnic groups, the addition of new rental units would provide more housing options to the area. In addition, the Project would help advance the Mayor's DC Comeback plan to increase the affordable housing stock in the Rock Creek East planning area by 1,500 units. As of January 2023, the Planning Area was over halfway toward the Mayor's goal and is projected to reach 84.4% of the goal by 2025. The proposed building would add 44 net new affordable units to help achieve the Mayor's goals; and
- The OP Setdown Report noted that Elm Gardens residents would voluntarily relocate with assistance from the Applicant as a result of the Project, but that the Applicant would pay and arrange for all aspects involved with the moving process and residents would be allowed to return, thus mitigating the risk of permanent displacement.

(Ex. 14.)

70. On February 5, 2024, OP submitted a hearing report ("OP Hearing Report" and, together with the OP Setdown Report, the "OP Reports") recommending that the Commission approve the Application. (Ex. 39.) The OP Hearing Report reiterated that the Project would not be inconsistent with the Comprehensive Plan, when viewed through a racial equity lens, as noted in the OP Setdown Report.

71. The OP Hearing Report analyzed the Applicant's proposed public benefits and amenities as follows:

- *Housing and affordable housing (Subtitle X § 305.5(f) and (g).)* – The proposal provides both a housing benefit and an affordable housing benefit by adding more residential units on the property and eventually restricting all 80 units to 30%-80% of MFI. This exceeds the 10% IZ requirement that would have been provided if the building were constructed as a matter-of-right. The Applicant intends to maintain the units as affordable as long as it owns the building. However, in the event the building becomes market rate in the future, the Applicant committed to setting aside 30% of the GFA as affordable units consistent with the IZ program, which exceeds the typical amount of eight to 12.5% for IZ, and up to 20% for IZ Plus. Most critically, this is a TOPA project, so existing affordable units at risk of loss would be maintained over the long term. All existing residents would have the right to return to the new building, allowing existing residents to stay in their neighborhood and in the District;
- *Superior urban design and architecture, superior landscaping, site planning, and streetscape plans (Subtitle X § 305.5(a), (b), (c) and (l).)* – The Project's design and architecture would be a public benefit. The building would enhance the visual

- attractiveness of the area while maintaining compatibility with the neighboring buildings. The design includes building materials and design elements and features that break up the massing, incorporating recessed and Juliette balconies, and replacing the existing blank wall along Eastern Avenue, N.W. with a fully articulated façade and entrance. The building would be setback 25 to 35 feet along Eastern Avenue, N.W. to provide a stepped transition between the adjacent Eastmont Cooperative building to the north, which has a 10-foot setback from the street to the garden apartment to the south, which has a 38-foot setback from the street. The HPRB approved the building’s design and found it to be a significant improvement from the existing building and that it would enrich the Historic District through sensitive siting and architectural treatment;
- *Environmental and sustainable benefits to the extent they exceed the standards required by zoning or other regulations (Subtitle X § 305.5(k).)* – In the OP Setdown Report, OP discussed the building’s compliance with Enterprise Green Community Plus standards as an environmental/sustainability public benefit that exceeds DOEE regulations. After the OP Setdown Report was issued, DOEE advised OP that DOEE would be requiring projects such the current proposal and all large affordable housing projects to comply with EGC+ standards. Accordingly, OP determined that the environmental and sustainable features of the building equating to LEED Gold would not qualify as a public benefit;
  - The OP Hearing Report concluded that the remainder of the Applicant’s proposed public benefits and project amenities, principally the affordable housing, but also the site design and architecture, to be commensurate with the related map amendment and relatively minor amount of flexibility (i.e., waiver of minimum PUD land area requirement and design flexibility) requested through the PUD; and
  - The OP Hearing Report also noted that it worked with the Applicant, and the Applicant agreed to OP’s suggested revised design flexibility language regarding the Project’s sustainability features, as follows:  
 “To vary the approved sustainable features of the Project, including the final layout of the landscape elements, or making adjustments to meet DHCD standards for funding as long as the Project continues to achieve 0.4 GAR, the Enterprise Green Communities Plus, and the Department of Energy’s Zero Energy Ready Homes standards.”

(Ex. 39.)

72. At the February 15, 2024, public hearing, OP testified in support of the Application and summarized the findings in the OP Reports. OP restated its conclusion that, on balance, the proposed affordable housing development would not be inconsistent with the Comprehensive Plan. (Ex. 112; Tr. from February 15, 2024 public hearing at pp. 100-01.)

### **DHCD Comments**

73. DHCD provided comments to OP, which were included in the OP Hearing Report, stating that it had no objection to the proposed Project. (Ex. 39.)

### **DOEE Comments**

74. DOEE provided comments to OP, which were included in the OP Hearing Report (“DOEE Comments”). DOEE commended the Applicant’s commitment to EGC+ certification, asserting that this is a minimum requirement for projects of this size pursuing DHCD funding, but is nevertheless an ambitious target. DOEE also applauded the Applicant for meeting the 0.4 GAR minimum required in zone RA-2 through incorporation of stormwater management controls and bioretention facilities on the site. DOEE also recognized the Applicant’s commitment to maximize rooftop solar energy generation while committing to further stormwater management with the use of the solar panels installed over the vegetated green roof. Finally, DOEE recommended that the Applicant incorporate electric vehicle charging stations in the parking garage, which the Applicant had already included on Sheet A-200 of the Applicant’s plans included in Ex. 95B. (Ex. 39.)

### **DDOT Report**

75. By report dated February 5, 2024, DDOT submitted comments on the Application to the Commission. DDOT found that (i) the site is within 1,200 feet of the WMATA Takoma Metro station; (ii) all vehicular access to the site is proposed through a driveway to Eastern Avenue, N.W., consistent with DDOT standards; and (iii) the Applicant proposes to widen the sidewalk onto private property to provide a DDOT-standard sidewalk width (four-foot buffer and six-foot wide sidewalk). (Ex. 38.)
76. Based on the Applicant’s Transportation Memo and Supplemental Memo, DDOT had no objection to the approval of the Application with the following conditions which the Applicant agreed to and are included in the Conditions hereof:
- Implementation of the TDM Plan as proposed in the December 21, 2023 CTR (Ex. 24.) for the life of the Project, with the revisions requested by DDOT in its report and as proposed in Exhibits 24 and 111A, specifically:
    - The Applicant will provide a minimum 10-foot sidewalk section (4-foot tree box and 6-foot sidewalk) including approximately 2’-10” on private space. Subject to DDOT approval, the Applicant will provide an easement allowing public access and giving DDOT authority for maintenance, permitting, and the ability to modify the space to facilitate improved pedestrian and bicycle facilities would be provided for this space;
    - Prior to public space permitting, the Applicant agrees to work with DDOT to provide an additional two feet of sidewalk width on private property, provided it does not affect vehicular clearance height along the ramp in a way that would reduce or otherwise compromise the size of the residential units located above the ramp. If the full two feet cannot be provided in such a manner, the Applicant agrees to provide as close to two feet as is possible. Subject to DDOT approval, the Applicant will provide an easement allowing public access and giving DDOT authority for maintenance, permitting, and the ability to modify the space to facilitate improved pedestrian and bicycle facilities would be provided for this space; and

- The Transportation Coordinator will offer a free SmarTrip card preloaded with \$100 of value to each resident for the initial lease of each unit after the building opens.
  - Implementation of the sidewalk widening commitments as documented in the Applicant's Supplemental Memo (Ex. 111A.), which include (i) widening the sidewalk onto private property to provide a minimum 10-feet, inclusive of a six-foot clear pedestrian walkway and four-foot wide tree planting strip; and (ii) continuing evaluation of the feasibility of widening the sidewalk an additional two feet to accommodate a potential future buildout of the Metropolitan Branch Trail;
  - Subject to DDOT approval, the Applicant must record easements for these areas granting public access and giving DDOT authority for maintenance, permitting, and the ability to modify the space to facilitate improved pedestrian and bicyclist facilities; and
  - Install at least one electric vehicle charging station.
- (Ex. 38; Tr. from February 15, 2024, public hearing at p. 27.)

#### **ANC 4B Report**

77. ANC 4B submitted a resolution dated September 26, 2023 (the "ANC Report"), stating that at a regularly scheduled and properly noticed meeting on September 26, 2023, at which a quorum was present, ANC 4B voted 7-1-0 in favor of the Application. (Ex. 12.) The ANC stated its strong support for the PUD and related map amendment, noting that the affordable housing development proposed under the Application "provides substantial community benefits by avoiding displacement, providing substantial new affordable housing and deeply affordable house, and preserving existing affordable housing, all of which are high-priority benefits under the Comprehensive Plan and significant such that they meet the balancing test for a proposed planned unit development." The ANC recognized that the proposal contains additional public benefits, including a non-required side yard and on-site stormwater mitigation where none currently exists. Other amenities that are less common in affordable housing developments are also provided, including a fitness center, a community space, and roof deck. Additionally, the proposed new building would include a higher percentage of larger two-bedroom units than the extant building and larger unit sizes. The ANC also noted that the proposed development would meet the D.C. green building and stormwater requirements through on-site mitigation and solar panels, and substantially improve the pedestrian experience along Eastern Avenue, N.W., an important pedestrian route for access to the Takoma Metrorail Station. (Ex. 12.)
78. The ANC noted that the current proposal for an 80-unit building would be 90%-95% affordable with an average MFI of 60% and eight permanent supportive housing units for formerly unhoused neighbors. The ANC recognized the benefit of the Project's inclusion of an on-site service provider to support the PSH residents. The ANC noted that all non-income-restricted units would accommodate current over-income tenants and would revert to income-restricted affordable units if vacated. (Ex. 12.)



79. The ANC recognized the opposition to the Project expressed by Eastmont Cooperative based on issues of light, air and space. The ANC noted that NHPF met multiple times with Eastmont leadership in 2022 regarding the map amendment in Z.C. Case No. 22-33 and offered multiple plan revisions in an attempt to find agreement on the architectural plans, including increased side yard setbacks and lowered building heights. Under the current Project, the height was further reduced to just 40 feet and the massing by 34%, but the Eastmont informed the ANC of its continued opposition to the Project. (Ex. 12.)
80. The ANC identified multiple elements of the Comprehensive Plan fulfilled by the Project, consistent with the Comprehensive Plan Elements noted in the OP Reports. The ANC expressed its strong belief that “housing is a human right, and all District residents are entitled to safe, stable, and secure housing” and stated that the District must use every tool available to increase the supply of affordable housing. For these reasons, the ANC supported the proposed Application. (Ex. 12.)
81. Commissioner Evan Yeats, ANC 4B04, the single-member district in which the Property is located, testified at the public hearing. He reiterated the support outlined in the ANC resolution and further noted the extensive community outreach and meetings the ANC had on the redevelopment of the Property over the past two years before the Commission and HPRB. (Tr. from February 15, 2024 public hearing at pp. 104-08.)

#### **Office of Attorney General (“OAG”) Report**

82. OAG submitted a letter on February 9, 2024, in support of and recommending approval of the Application. (Ex. 43.) OAG’s letter included attachments with Comprehensive Plan references, IZ calculations, and a PowerPoint presentation.<sup>14</sup> (Ex. 43-43B, 44.)

#### **No Other Agencies**

83. Apart from OP, which noted comments received from DHCD and DOEE in its hearing report, DDOT, OAG, and ANC 4B, no other agencies filed written comments in the record.

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<sup>14</sup> OAG’s letter argues that the Commission should use the IZ Plus requirement as a baseline for evaluating a PUD’s affordable housing proffer vis-a-vis its requested bonus density; and that the Comprehensive Plan, specifically 10-A DCMR § 224.9, identifies the provision of affordable housing as the only high-priority public benefit for a PUD. The Commission reiterates that the correct standard for evaluating a PUD’s affordable housing proffer is provided under Subtitle X § 305.5(g)(1), which states that affordable housing is considered a public benefit “to the extent it exceeds what would have been required through matter-of-right development under existing zoning.” In addition, the Commission notes that while affordable housing is desirable under the Comprehensive Plan, the Commission must consider the entirety of a PUD’s proffered public benefits and amenities in its evaluation of whether it meets the balancing test required by Subtitle X § 304 *et seq.*



## **PARTY, ORGANIZATIONS, AND PERSONS IN SUPPORT**

### **Elm Garden Tenants Association – Party in Support**

84. As referenced above, EGTA submitted a request for party status in support which was granted by the Commission at the start of the February 15, 2024 public hearing. At the hearing, EGTA presented three witnesses:

- Deborah Jacobson, a resident of Elm Gardens Apartments and the EGTA president, stated EGTA's support for the Project. She testified to the demographics of the existing tenants, the conditions of the existing Elm Gardens apartment building, the timeline of the TOPA process, and NHPF's proposed building plan that led EGTA to assign its TOPA rights to the Applicant. Ms. Jacobson explained that the Elm Garden tenants are 39% African American, 39% Hispanic, 19% White, and 3% Asian. She stated that 44 percent of the tenants earn less than 60% of MFI. She identified the many shortcomings of the existing building, including: the lack of elevators (a safety issue for residents with disabilities) and sprinkler systems given date of construction; asbestos; unprotected pedestrian access along driveway to parking lot and trash receptacles; limited building amenities; and unwelcome and unattractive building design with blank wall facing street. In contrast, Ms. Jacobson testified, the proposed building would remediate all these deficiencies by providing community-friendly design that is modern and efficient and includes interior and exterior gathering spaces, a roof deck, larger unit sizes, in-unit laundry, elevators, among numerous other amenities. She noted that the Project was laudatory for its provision of 44 net new units, with eight PSH units and the support services to assist the newly housed individuals, and the commitment to guarantee unit affordability for the life of the Project;
- Katja Schulz, also a resident of Elm Gardens Apartments and the EGTA secretary, testified to the benefits the Project will provide the community at large, including the improved pedestrian experience along Eastern Avenue, N.W.; an attractive, street-facing design with community-friendly greenspace; a transit-oriented development for a larger number of residents; and increased density that will support more retail, services and other opportunities. She discussed the uncertainty and temporary disruption the Project will cause the existing Elm Gardens tenants, who are the District residents most directly affected by the Project, but concluded that NHPF is committed to providing quality affordable housing for the existing tenants; and
- Neil Satterlund, an attorney with the D.C. Tenants' Rights Center representing EGTA during the 2022 TOPA process, testified on behalf of EGTA in support of the Project. He discussed the EGTA TOPA process, and the limited options presented to the existing residents. He also described the current challenges for TOPA and affordable housing in the District, and the difficulties EGTA could face if the Commission did not approve the Project. Moreover, he testified that he believes the only way to sustain the affordability of the Elm Gardens Apartments in the long-term is to significantly add to the number of units.

(Tr. from February 15, 2024 public hearing at pp. 110-124; Ex. 15, 27, 100, 100A.)

### **Other Organizations and Persons in Support**

85. The Commission received several letters and written testimony in support from residents of Elm Gardens Apartments and other individuals and organizations. (Ex. 28-34, 36-37, 40-41, 45-48, 50-93, 96, 99, 101, 106-108.) Their comments expressed the following reasons for supporting the Application:
- The Project will create a new all-affordable residential building that will help existing tenants avoid displacement through the Applicant's proposed relocation plan;
  - The Project will provide existing and new tenants with a modern building in close proximity to a Metrorail Station with public benefits and project amenities that will help revitalize the neighborhood;
  - The Project advances racial equity by providing replacement housing to Elm Gardens Apartment residents, the majority of whom are Black and Latino;
  - The Project's height and density are compatible with the neighborhood and Takoma historic district;
  - The Project incorporates a pedestrian-friendly façade and sidewalk improvements; and
  - The Project includes permanent supportive housing units for those formerly without homes and on-site counseling.
86. At the February 15, 2024, public hearing, several individuals and organizations testified in support of the Application and largely reiterated the reasons for their support as summarized above. (Tr. from February 15, 2024, public hearing at pp. 128-143.)

## **PARTY, ORGANIZATIONS, AND PERSONS IN OPPOSITION**

### **The Eastmont Cooperative – Party in Opposition**

87. As referenced above, Eastmont submitted a request for party status in opposition which was granted by the Commission at the start of the February 15, 2024 public hearing. (Ex. 35.) In addition, Eastmont filed a letter in opposition stating that it opposes the Application because the Project's proposed height and density are excessive and encroach upon the Eastmont residents' dwellings. Eastmont stated the Application was inconsistent with the Comprehensive Plan, including the FLUM's Moderate Density Residential and the GPM's Neighborhood Conservation Area designations for the Property, since the Project exceeds what can be considered "modest in scale" for the neighborhood. Eastmont also stated the Applicant had disregarded the community by not accepting input on the Project or offering any public benefits which Takoma residents can access and appreciate. (Ex. 13.)
88. At the hearing, Eastmont presented three witnesses:
- Mr. Jeremi Jones, an Eastmont Cooperative Board member, asserted in both his oral and written testimony, that the Application is inconsistent with the Comprehensive Plan and circumvents the intent of the Zoning Regulations. He argued that the Applicant failed to meaningfully engage with the Eastmont and that the Project would be too large for the small-scale buildings on Eastern Avenue, creating a "Great Wall" effect that would negatively affect the light of Eastmont residents and cast shadows on the Eastmont buildings. Mr. Jones noted that the Project would be effectively 52 feet tall

- and five stories when taking into consideration the penthouse height. He stated that the Project's massing and density would dramatically depreciate property values. He stated that the Applicant failed to provide a compensation package to the Eastmont as a direct result of the damage the Eastmont building will suffer. He also stated that when viewed through a racial equity lens, the Project inequitably burdens the Eastmont's 54-unit community of predominantly Black and Brown residents. Mr. Jones further stated that the Applicant rejected the Eastmont's reasonable alternative proposal to limit the portion of the new building adjacent to the Eastmont to three stories and recapture that density by adding floors to the rear portion of the new building where it abuts the Eastmont parking lot; (Ex. 13, 16, 94, 94A; Tr. from February 15, 2024 public hearing at pp. 144-57.)
- Mr. George Alan Smith, the Eastmont Cooperative Treasurer, in both his oral and written testimony, argued that the Applicant's proposal under the RA-2 zone still is incompatible with the small-scale adjacent buildings, increases the size 2.5 times in comparison to those adjacent properties, and exceeds the RA-1 development parameters that governed development of the Eastmont and other apartments along this segment Eastern Avenue, N.W. He stated that ANC's are not automatically representative of the concerns of the community and property owners should be heard. Mr. Smith argued that the Applicant is circumventing the Zoning Regulations through the PUD process because the Project would be inconsistent with the purposes and intent of the Zoning Regulations to prevent overcrowding, allow adequate light and air around property, and protect residents from adverse impacts including safety, health, and reduced property values. Mr. Smith claimed that at a meeting with the Applicant, the Applicant's representative stated it was not open to suggestions on how to improve the Application; and in his written testimony Mr. Smith included copies of the letter correspondence between the Eastmont Board and the Applicant to demonstrate that the Applicant was unwilling to consider Eastmont's suggested alternative three-story design; and (Ex. 102; Tr. from February 15, 2024 public hearing at pp. 158-65.)
  - Ms. Linda Gray, the Eastmont Cooperative Vice-President, testified that the Project would create negative impacts with respect to construction, including possible structural damage to the Eastmont buildings, rodent infestations, changed traffic patterns particularly during rush hour, given the narrow width of Eastern Avenue, which is also used as a bus route. She also questioned the effect of the Project on Eastmont property values and the reduced enjoyment of their property if the zoning approvals are granted. (Tr. from February 15, 2024, public hearing at pp. 165-68.)
89. On February 29, 2024, Eastmont submitted a post-hearing response to the Applicant's post-hearing statement asking the Commission to deny the Application. Eastmont's response stated that the PUD's massing and height are inconsistent with the surrounding neighborhood as well as the GPM and FLUM designations for the Property. (Ex. 117.)
90. The Commission received several letters and written testimony in opposition from various individuals and organizations. (Ex. 13, 16, 94, 98, 102-105, 109, 110.) Their comments expressed the following reasons for opposing the Application:

- The Project’s height and density are inconsistent with the Comprehensive Plan and exceed what is contemplated in Comprehensive Plan Framework Element for a Property designated as Moderate Density Residential on the FLUM and designated as a Neighborhood Conservation Area on the GPM;
- The Project’s height and density will result in adverse light, air, and construction impacts on neighboring properties, specifically the south-facing units within the Eastmont, and will lower property values;
- The Project will exacerbate vehicular traffic on neighboring streets including Eastern Avenue;
- The Applicant failed to comply with the revised Racial Equity Analysis Tool by not soliciting community input, including Eastmont’s suggestions to shift the height and massing of the Project toward the rear of the Property; and
- The Application’s proposed public benefits are inadequate, especially when compared to other PUDs that have been approved in the area, because they only benefit residents of the Project and fail to provide meaningful benefits to the overall community.

91. At the February 15, 2024, public hearing, several individuals testified in opposition to the Application and largely reiterated the reasons for their opposition as summarized above. (Tr. from February 15, 2024 public hearing at pp. 180-190.)

#### **NATIONAL CAPITAL PLANNING COMMISSION (“NCPC”)**

92. On March 25, 2024, the Commission referred the Application to NCPC for the 30-day review period required by § 492(b)(2) of the District Charter (Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(b)(2); D.C. Official Code 6-641.05.) (Ex. 118.)
93. On April 29, 2024, NCPC staff filed a letter stating that the Application falls under exception 12 listed in Chapter 8 of NCPC’s submission guidelines and is exempt from NCPC review. (Ex. 119.)

### **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 Rep.)), the Commission may approve a Consolidated PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 300, a PUD-related map amendment pursuant to Subtitle X § 303.12.

#### **STANDARD OF REVIEW FOR APPROVAL OF PUD AND PUD-RELATED MAP AMENDMENT**

2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD (a) Results in a project superior to what would result from the matter-of-right standards; (b) Offers a commendable number or quality of meaningful public benefits; and (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.

3. Pursuant to Subtitle X § 303.1: “As part of the PUD process, the Zoning Commission may grant relief from any building development standard or other standard referenced in the zone reference table with the exception of use regulations. Housing and arts credits are considered use regulations and are not eligible for flexibility through the PUD process.”
4. Pursuant to Subtitle X § 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. The Comprehensive Plan Act of 1984 (D.C. Law 5075; D.C. Official Code § 1-306.01(b)) established that the Comprehensive Plan’s purposes are (i) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development; (ii) to guide executive and legislative decisions on matters affecting the District and its citizens (iii) to promote economic growth and jobs for District residents; (iv) to guide private and public development in order to achieve District and community goals; (v) to maintain and enhance the natural and architectural assets of the District; and (vi) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.
6. Small Area Plans supplement the Comprehensive Plan “by providing detailed direction for areas ranging in size from a few city blocks to entire neighborhoods or corridors.” 10-A DCMR § 104.8. Small Area Plans are prepared with community input to provide more detailed planning guidance and typically are approved by resolution of the Council. Unless a Small Area Plan has been made binding on the Commission through its enactment as part of a Comprehensive Plan amendment, a Small Area Plan provides only supplemental guidance to the Commission, and it does so only to the extent it does not conflict with the Comprehensive Plan. (10-A DCMR § 224.5.)
7. In determining whether a PUD is not inconsistent with the Comprehensive Plan, the Commission shall balance the various elements of the Comprehensive Plan. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related zoning map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6).) (the “McMillan PUD”). In its decision affirming the Commission’s approval of the McMillan PUD, the Court stated the following:

The Comprehensive Plan is a “broad framework intended to guide the future land use planning decisions for the District.” *Wisconsin-Newark Neighborhood Coal. V. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011.) (internal quotations 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 (Durant I)*, 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 1167-68 (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 consideration....’” (*Durant I*, 65 A.3d at 170.” *Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1033-35. (D.C. 2016.))

8. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application, the Commission must “judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effect according to the specific circumstances of the case” and must find that the proposed development (i) is not inconsistent with the Comprehensive Plan and other adopted public policies and active programs related to the subject site; (ii) 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 (iii) includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted policies and active programs related to the subject site.
9. A PUD public benefit 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 provision.” Subtitle X § 305.2. Each public benefit must (i) be a tangible and quantifiable item; (ii) measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; and (iii) may primarily benefit a particular neighborhood or area of the city or service a critical city-wide need. Subtitle X § 305.3. Further, the majority of a PUD’s public benefits should relate to the geographic area of the ANC in which the application is proposed. Subtitle X § 305.4. A project need only be particularly strong in one area or a few of the categories of public benefits listed in Subtitle X § 305 but must be acceptable in all proffered categories and superior in many in order for a project to qualify for approval. Subtitle X § 305.12.

**SATISFACTION OF PUD ELIGIBILITY STANDARDS (SUBTITLE X § 301.1.)**

10. For a PUD in the RA-2 zone, the Zoning Regulations require a minimum land area of one acre, or 43,560 square feet, pursuant to Subtitle X § 301.1. However, the Property has a land area of approximately 26,682 square feet, or approximately 61% of the minimum land area requirement, and the Applicant has requested a waiver of approximately 39% of the minimum land area. (FF 39.)



11. The Commission concludes that the Application meets the standards for a waiver of the minimum land area requirement for a PUD in the RA-2 zone of Subtitle X § 301.1. Pursuant to Subtitle X § 301.2 the Commission may waive up to 50% of that requirement – or up to 21,780 square feet of the required land area. Subtitle X § 301.2 provides that this waiver may be granted only if the Commission finds, after a public hearing, that the development is of exceptional merit, is in the best interests of the District, and one of the following: “(a) The development is identified in an approved Small Area Plan and will be generally not inconsistent with the Small Area Plan; (b) The development will be constructed or operated by the District of Columbia or federal government and serves a compelling government interest; or (c) If the development is to be located outside the Central Employment Area, at least eighty percent (80%) of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto.”
12. The Commission concludes that Applicant meets the waiver standards because the Project is of exceptional merit due to its all-affordable housing program for households earning up to 30-80% of MFI, with the exception of over-income returning Elm Gardens tenants who would otherwise be displaced by the redevelopment of the Property. The Project is also exceptional for its provision of eight units as permanent supportive housing for formerly unhoused individuals, services to help support those individuals, and larger unit sizes and building amenities. Finally, the PUD will devote at least 80% of the GFA for exclusive use as dwelling units or accessory thereto, in conformance with Subtitle X § 301.2(c). As such, the Commission waives the minimum land area for the Application to approximately 26,682 square feet. (FF 11, 13, 39.)

**CONSISTENCY WITH THE COMPREHENSIVE PLAN AND PUBLIC POLICIES (SUBTITLE X § 304.4(A).)**

13. Based on the case record and the Findings of Fact above, the Commission concludes that the Application, including the PUD and PUD-related Zoning Map amendment to the RA-2 zone, is not inconsistent with the Comprehensive Plan and with other public policies and active programs related to the Property. The Commission notes that the Eastmont and opposition testimony argue the Project is inconsistent with the Comprehensive Plan because its proposed massing and density conflicts with Comprehensive Plan Framework Element guidance regarding the Property’s Neighborhood Conservation Area GPM and Moderate Density Residential FLUM designations; the Project is too large in scale and conflicts with Comprehensive Plan policy guidance encouraging development of scale, context, and character consistent with the surrounding neighborhood and buildings; the Applicant failed to meaningfully engage and incorporate community input into the Project’s design contrary to the requirements of the Commission’s racial equity tool; and the Project will inequitably burden the Eastmont community of predominately Black and Brown long standing residents. (FF 87-91.) The Commission disagrees with the Eastmont and opposition arguments for the reasons discussed below in Conclusions of Law (“COL”) 14-18, 20-22.

### **Generalized Policy Map**

14. The Commission concludes that the Project is not inconsistent with the Property's "Neighborhood Conservation Area" designation on the Comprehensive Plan's GPM because the Project is an affordable housing infill development that transforms and revitalizes an underutilized site, and will address city-wide housing needs in an architecturally distinctive building that respects the height of the adjacent RA-1 zone, compliments the surrounding building stock, and is compatible with the Takoma Park Historic District in which it is located. The Commission acknowledges concerns raised by Eastmont and others in opposition to the Application that the Project's height and density exceed the "modest in scale" redevelopment envisioned for a Neighborhood Conservation Area. (FF 87, 89, 90.) However, the Commission believes that any potential inconsistency with the GPM is outweighed by the Project's overall consistency with Comprehensive Plan policy goals as the Project's height and density will help further critical Comprehensive Plan policies that encourage the creation of more housing and affordable housing in proximity to transit. (FF 43-48, 68, 70, 72.)

### **Future Land Use Map**

15. The Commission concludes that the Project is, on balance, not inconsistent with the Property's Moderate Density Residential designation on the FLUM for the following reasons:
- The Application is seeking a PUD-related map amendment to the RA-2 zone, which is cited in the Framework Element as a zone that is consistent with the Moderate Density Residential category. 10-A DCMR § 227.6. The Commission notes that the Applicant is not requesting any zoning relief from the RA-2 zone's development parameters for the Project; (FF 30, 41.)
  - The Framework Element also states that the typical densities for the Moderate Density Residential category range "up to 1.8" FAR. (*Id.*) While the Project's density of approximately 2.32 FAR exceeds 1.8 FAR, the Framework Element also states that "greater density may be possible when complying with [IZ] or when approved through a [PUD]." (*Id.*) Here, the Applicant is seeking approval of the Project as a PUD with public benefits that consist primarily of affordable housing that exceeds what would have been required by IZ for a matter-of-right development under existing zoning. Therefore, the Commission believes that the Project's density is not inconsistent with what the FLUM envisions for a property designated Moderate Density Residential; and (FF 21, 45, 68, 70, 72.)
  - The Project's proposed height of approximately 40 feet is lower than the 50-foot building height permitted for a matter-of-right development in the portion of the Property that is split-zoned MU-4, and it is equal to the 40-foot building height permitted for a matter-of-right development in the portion of the Property that is split-zoned RA-1. Therefore, the Applicant is not requesting any additional height beyond what would be permitted for a matter-of-right development under the Property's existing RA-1 (maximum height 40 feet) and MU-4 (maximum height 50 feet) split zoning. While the Project would result in a building height that exceeds the height and number of stories of the existing Elm Gardens Apartments building currently on the

site, the Commission finds the Project's proposed 40-foot height equivalent to the height that would be allowed if the Property were developed as a matter-of-right and well below the 60 foot height allowed for a PUD under the proposed RA-2 zone. The Commission understands the Property is situated on a densely packed block and the Project's density of 2.32 FAR exceeds the density range contemplated by the Property's FLUM designation; however, the Commission finds any potential Comprehensive Plan inconsistency, including policy guidance encouraging development of a scale, context, and character consistent with the surrounding neighborhood and buildings, to be outweighed; specifically, by Comprehensive Plan policies of the Citywide and Rock Creek East Area Elements that encourage the creation of more housing and affordable housing in proximity to transit, as discussed in more detail below. (FF 43-48, 68, 70, 72.) The Commission acknowledges Eastmont's observation that the Project's penthouse height adds additional height beyond the Application's stated Project height of 40 feet resulting in a Project that is effectively 52 feet high and five stories. (FF 88.) However, the Commission notes that building height is measured separately from penthouse height under the Zoning Regulations, and penthouse height can exceed the building height authorized by a zone. (*See* Subtitle C §§ 1500, 1502.) Accordingly, the Commission is not persuaded by Eastmont's suggestion that the Project's penthouse height should be included in or added to the Project's building height of 40 feet.

#### **Citywide Elements**

16. The Commission concludes that the proposed PUD and related RA-2 map amendment further the goals of the Comprehensive Plan's Citywide Elements, including the Land Use, Housing, Transportation, and Historic Preservation Elements. In particular, the Project will help achieve multiple goals and policies of the Land Use Element because it will facilitate redevelopment of an older building by allowing additional density on a site that can accommodate more housing than currently exists. (FF 46, 68; *see also* Land Use Policies LU-1.4.3, LU-1.4.4, LU-1.4.6, LU-2.1.3, LU-2.1.8.) The Commission also concludes that the proposed Project helps achieve multiple goals and policies of the Housing Element because it will allow for more housing and affordable housing than can currently be accommodated on the site, in close proximity to a Metrorail Station. Housing policies would also be furthered through the preservation of an existing quantity of affordable rental housing and the continuation and construction of family-sized units. (FF 46, 68; *see also* Housing Policies H-1.2.1, H-1.2.6, H-1.5, H-2.1.5, and Action H-1.2.J.) The Commission also concludes the proposed Project helps achieve the goals and policies of the Transportation Element because it will encourage equitable access to transportation options for residents of the Project. (FF 46, 68; *see also* Transportation Policy T-1.1.7.); as well as the goals and policies of the Historic Preservation Element because it will facilitate a new development that is architecturally compatible with the Takoma Park Historic District and respects the character of the neighborhood. (FF 46, 68; *see also* Historic Preservation Policies HP-1.6.3, HP-1.6.4, HP-2.5.3.) The Commission concludes that to the extent the Project is potentially inconsistent with Comprehensive Plan policies and goals, such inconsistencies are outweighed by the Project's advancement of overriding goals that weigh in favor of redeveloping the Property with more affordable housing adjacent to

Metrorail and public transportation, and nearby commercial businesses and retail services. Overall, the Project will transform an underutilized site.

### **Rock Creek East Area Element**

17. The Commission concludes that the proposed Project furthers multiple goals and policies of the Rock Creek East Area Element by strengthening the Takoma Park neighborhood, concentrating new affordable housing opportunities around the Takoma Metrorail station. Additionally, it will allow existing multi-family housing to be redeveloped with replacement units reserved for existing residents. (Rock Creek East Policies RCE-1.1.1, RCE-1.1.3, RCE-1.1.6.) (FF 47, 68.)
18. The Commission concludes that the Project will further the housing goals of Mayor's Order 2019-036 by introducing approximately 80 residential units, 36 of which replace the existing Elm Gardens units and be affordable to households earning up to between 30-80% of MFI, except for the returning tenants who are over-income. The remaining 44 new units will be affordable to households earning up to 50% of MFI. Eight of those units will be reserved as PSH for formerly unhoused members of the community. The Commission concludes this Project serves the city's priority for high-quality affordable housing adjacent to Metro stations. (FF 27-29, 32.)

### **Racial Equity**

19. Pursuant to 10-A DCMR §§ 2501.4-2501.6, 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. (10-A DCMR § 213.6.) Further, "[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development, and employment opportunities." (10-A DCMR § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (10-A DCMR § 213.9.) In addition, 10-A 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.)

20. The Commission concludes that the Project is not inconsistent with Comprehensive Plan when viewed through a racial equity lens. The Commission reaches its conclusion based on the racial equity analyses provided by the Applicant, inclusive of community outreach and engagement information, and the OP Reports, inclusive of disaggregated race and ethnicity data for the Rock Creek East Planning Area. (FF 49, 68-70.) The Applicant's analysis concluded that the anticipated goal of the Application is to provide new housing principally in the form of affordable housing serving a racially diverse community, well beyond what could be constructed as a matter-of-right, with larger unit sizes and amenities. The Applicant states that the Project will generally expand housing opportunities for District residents, particularly minority populations. (FF 49.)
21. Applicant's Racial Equity Analysis. The Commission finds that the Applicant's racial equity analysis addresses the components of the revised Racial Equity Analysis Tool. The Commission notes the following from the Applicant's analysis:
- Community Outreach and Engagement: The Applicant's racial equity analysis indicates that it conducted community outreach and engagement, including meetings with ANC 4B, its Housing Justice Committee, HPRB, and community stakeholders. The Applicant's representatives also attended meetings with residents of the Eastmont, the party in opposition. (FF 49.) The Commission acknowledges Eastmont's testimony that the Applicant was not receptive to its Project input at these meetings. Specifically, Eastmont's suggestion for an alternative design to limit the portion of the new building adjacent to the Eastmont to three stories and recapture that density by adding floors to the rear portion of the new building where it abuts the Eastmont parking lot, which the Applicant explained was not a financially feasible alternative. (FF 64-66, 87-91.) The Commission notes that the Property was the subject of a previous standalone map amendment application to the RA-3 zone in Z.C. Case No. 22-33, which would have facilitated development of a project having a height of 60-feet and approximately 90-110 affordable units. In that case, the Commission indicated its intention to deny the application based on finding the proposed RA-3 zoning too intense for the Property primarily because of its Moderate Density Residential FLUM designation. As a result, Z.C. Case No. 22-33 was withdrawn by the applicant, and this Application for a PUD and related map amendment to the RA-2 zone was filed. In a standalone map amendment case, the Commission is only evaluating whether the matter-of-right development standards of the proposed zone are not inconsistent with the Comprehensive Plan and other adopted policies and programs related to the subject site. Subtitle X § 500.3. While in a PUD and related map amendment case such as this, the Commission is evaluating a project and weighing various project specific factors to determine whether the project is not inconsistent with the Comprehensive Plan and other adopted policies and programs related to the subject site. (Subtitle X §§ 304.3, 304.4.) The Commission notes that this Application proposes a building height of 40 feet and also notes that the reduced size of the building was balanced against the competing community requests, as reflected in the ANC Report and the comments received in support, for a larger building with more affordable units. (FF 77-81, 84-86.)



Overall, the Commission concludes that the Applicant conducted outreach with the community, including Eastmont, and that the resulting Project was informed and shaped by its engagement with the community. The Commission believes the resulting Project represents a compromise, understanding that the Applicant and some community members would prefer a larger project while Eastmont would prefer a smaller project. Ultimately, the Commission finds this to evidence that the Applicant's community outreach and engagement achieved the primary objective of Part 2 of the Commission's Racial Equity Analysis Tool, which is community participation in the overall Application process. The Commission acknowledges Eastmont's assertions that the Project will inequitably burden the Eastmont community of predominately Black and Brown long-standing residents but disagrees. (FF 87-91.) The Commission is persuaded that the Project will both replace existing housing, for predominately Black and Brown residents, and create new affordable housing opportunities that are critically needed at a scale that is larger than the existing Elm Gardens building, but still compatible with the surrounding neighborhood and buildings; and (FF 49, 69, 84, 85.)

- Displacement: The Commission recognizes that the proposed building under the RA-2 zoning will have the greatest impact on the predominantly Black and Brown tenants of the Elm Gardens Apartments through temporary displacement. However, as discussed herein, the Applicant's tenant relocation plan mitigates potential displacement impacts by offering tenants financial and logistical assistance with moving to a temporary location as well as a right to return to the Project. (FF 26, 27, 49.) The Commission notes that EGTA supports the Application and that several Elm Gardens Apartments residents submitted comments and testified in support of the Application. (FF 84-86.) The Commission also acknowledges that the Project may create light and air impacts on several of the predominantly Black and Brown shareholders of the Eastmont Cooperative, which could result in indirect displacement. However, as demonstrated by the rebuttal testimony of the Applicant's architectural expert, these impacts are not materially different from what would be allowed for a matter-of-right development under the existing RA-1 zone, as further discussed below. (FF 50, 62-64, 87-91.)

22. OP's Racial Equity Analysis. The Commission finds that OP's racial equity analysis addresses the components of the revised Racial Equity Analysis Tool. (FF 68-70.) The Commission notes the following from OP's analysis:

- Disaggregated Race and Ethnicity Data: OP's racial equity analysis included disaggregated race and ethnicity data for the Rock Creek East Planning Area showing it had a majority minority population during the 2017 to 2021 period, with 53% of its residents being Black and 22% of its residents being Hispanic. The data also showed that the Black population decreased from 60% to 53% of the population from 2012 to 2021, which is similar to District-wide trends during this period. Based on this data, the Commission is hopeful that the Project will allow existing Elm Gardens residents, most of whom are Black and Hispanic, to remain on the Property and create more affordable housing that will allow the Planning Area to retain a diverse population while also helping advance the Mayor's housing goal for Rock Creek East. (FF 69.)



**Takoma Central District Plan (“CDP”)**

23. The Commission concludes the Project is not inconsistent with and furthers the CDP’s goals for revitalization, compatible new development, and smart-growth principles and transit-oriented development. (FF 25, 48.) The Commission notes OP’s conclusion that the CDP is over 20 years old thus the Comprehensive Plan provides more current guidance. (FF 68, 70.)
24. Based on the evidence provided in the case record, the Commission concludes that the Project is not inconsistent with the Comprehensive Plan as a whole or other adopted and applicable public policies when viewed through a racial equity lens.

**POTENTIAL ADVERSE IMPACTS – HOW MITIGATED OR OUTWEIGHED (SUBTITLE X § 304.4(B).)**

25. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts that are not capable of being mitigated or are not outweighed by the Project’s proffered public benefits. The Commission notes that the Eastmont and opposition testimony argue the Project will result in various negative adverse impacts to Eastmont specifically, including reduced enjoyment of property and reduced light and air, increased traffic along Eastern Avenue and neighboring streets, construction impacts such as structural damage and rodent infestations, and reduced property values. (FF 87-91.) The Commission responds to these concerns in COL 27-29, 32 below.
26. The Commission concludes that the Project will result in favorable land use impacts because the Project will transform an underutilized site, currently improved with an obsolete, energy-inefficient apartment building, into a modern, transit-oriented affordable residential development that will address citywide housing needs. (FF 50.)
27. The Commission concludes that the Project will have zoning impacts that are capable of being mitigated or acceptable given the quality of public benefits. The Project proposes a density of approximately 2.32 FAR, which is less than the maximum permitted density of 2.59 FAR for a PUD in the RA-2 zone with IZ bonus density. The Commission notes Eastmont’s concerns about the Project’s potential adverse impacts on enjoyment of property and light and air. The Commission acknowledges that the increased lot occupancy and density of the Project will create adverse impacts resulting in increased shadows and loss of privacy. However, the Commission concludes that the Applicant has mitigated these potential impacts by limiting the Project height to 40 feet, which is the maximum height permitted in the existing RA-1 zone. The Applicant’s shadow studies demonstrate that the impacts of the Project on the Eastmont are modest overall and would be most noticeable along the Eastmont’s surface parking lot to the rear. (FF 62-63.) The Commission notes that the Project provides side yard setbacks where none are required in the RA-2 zone in order to ensure greater protection to the Eastmont’s light and privacy. (*Id.*) The Commission concludes that any resulting impacts of bulk of the Project are mitigated or acceptable given the quality of the benefits of the Project, namely the critically

needed affordable housing with larger unit sizes, the Project amenities, the inclusion of PSH units in the Project coupled with other supportive services for those individuals, and the overall quality of the Project design, architecture, and site planning. (FF 50, 62-64.)

28. The Commission concludes that the Project will result in transportation, mobility and public safety impacts that are capable of being mitigated because the Project is anticipated to generate fewer than 25 daily vehicular trips, will provide TDM measures that were reviewed and approved by DDOT to encourage the use of public transportation, include indoor bicycle storage for residents and short-term bicycle spaces at the Project's entrance plaza, enhance pedestrian circulation and the public realm by extending the public sidewalk area approximately two to four feet into the private property and protecting it for public use through an access easement in coordination with DDOT. (FF 35-38, 50, 75, 76.) The Commission notes Eastmont and opposition concerns about the Project's potential to increase traffic along Eastern Avenue and neighboring streets. (FF 88, 90.) Based on DDOT's Report and approval of the Project's TDM measures and the Project's close proximity to the Takoma Metrorail station, the Commission is persuaded that the Project will encourage non-vehicular modes of transport. (FF 35-38, 50.) Notwithstanding, the Commission concludes that any adverse traffic impacts resulting from the Project are capable of being mitigated or acceptable given the quality of the benefits of the Project.
29. The Commission concludes that the Project will have housing impacts that are favorable because the residential development will be affordable to households earning up to 30-80% of MFI, with the affordability levels maintained for the first 40 years of the Project. Following the 40-year Initial Control Period, the Applicant has committed to preserve at least 30% of the units as affordable to households earning no more than 60% of MFI. The Commission acknowledges the Eastmont's concern that the Project will reduce its property values. (FF 88, 90.) The Commission notes the evidence presented by the Applicant that the Project is more likely to have no effect or a positive effect on neighboring property values. (FF 50.) The Commission readily acknowledges that property values can fluctuate up or down for any number of reasons but is not persuaded that the Project alone will reduce Eastmont property values.
30. The Commission concludes that the Project will result in favorable impacts to the environment because the Project will be built to EGC+ standards, which equates to LEED-Gold, and will include a variety of measures to promote sustainability to achieve long-term resiliency. (FF 50.)
31. The Commission also concludes that the Project's design and aesthetic will result in favorable impacts by greatly enhancing the Eastern Avenue streetscape, and the architectural quality of the Takoma Park Historic District. The Commission credits the findings of HPRB, which found the height, massing, and design to be compatible with the historic district. (FF 31, 50.)

32. The Commission concludes that the temporary construction-period impacts of the Project on neighbors are capable of being mitigated through D.C. Department of Building construction requirements. The Commission acknowledges Eastmont's concerns about structural damage and rodent infestations and suggestions by some opposition that the Applicant set aside funds to address these concerns. The Commission notes that District construction code and environmental regulations are designed to protect adjacent property owners and the community at large from such negative impacts. (FF 50.) The Commission encourages the Applicant to work with Eastmont and other neighbors to address any construction-period impacts that may arise. The Commission notes that it cannot compel an applicant to add proffered public benefits. (*See* Subtitle X § 305.11.) Given that the Commission finds the proffered public benefits package adequate and commendable as a whole, as discussed below in Conclusion of Law 36, the Commission does not agree that the Applicant should set aside funds to address construction-period impacts. The Commission acknowledges that there are PUD cases where applicants have proffered to enter into agreements to address construction impact concerns; however, this is not a requirement under the Zoning Regulations and the Commission is satisfied with the Applicant's statement that any temporary construction period impacts are capable of being mitigated through DOB's construction requirements. (FF 50.)
33. The Commission concludes that given the modest size of the Project, it will not have any unacceptable impacts on the District's utility services and infrastructure. The Commission concludes the Project will have impacts on stormwater management, and solid waste services that are capable of being mitigated. (FF 50.)
34. The Commission concludes that the Project's impacts to facilities will be favorable or acceptable based on the enrollment levels of Takoma Elementary School, Ida B. Wells Middle School, and Coolidge High School, all of which were below capacity for the 2021-2022 school year. Similarly, the Commission concludes that impacts to community services and facilities are favorable or acceptable given the quality of public benefits and because of the Property's proximity to various community resources. (FF 50.)

**PUD BALANCING AGAINST PUBLIC BENEFITS (SUBTITLE X §§ 304.3, 304.4(C), 305.)**

35. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies the balancing test under Subtitle X § 304.3 because the Project includes specific public benefits and project amenities that are not inconsistent with the Comprehensive Plan or other public policies and active programs related to the Property. Furthermore, the Project includes public benefits that outweigh the requested zoning flexibility as well as any potential adverse impacts that are not capable of being mitigated, and therefore justify approval of the PUD.
36. The Commission concludes that the Applicant's proffered public benefits and project amenities, including housing and affordable housing, supportive services for PSH units, superior urban design and architecture, superior landscaping, site planning, historic preservation, and streetscape plans meet the criteria of Subtitle X § 305 and are

commendable as a whole. While the Applicant proffered the Project's compliance with the Enterprise Green Community Plus (EGC+) standards as an environmental and sustainability public benefit, the Commission is persuaded by OP's finding in its reports that complying with EGC+ no longer qualifies as a public benefit since DOEE is now requiring all large affordable housing projects to comply with EGC+. However, even without considering this a public benefit, the Commission concludes that the Applicant's other proffered public benefits and project amenities are commendable and commensurate with the flexibility requested. (FF 51-56.) The Commission notes Eastmont and opposition's argument that the Applicant's proffered public benefits and project amenities are inadequate because they only benefit the tenants of Elm Gardens and fail to provide meaningful benefits to the larger surrounding community. (FF 87, 90.) The Commission finds the Applicant's proffered benefits and amenities adequate and compliant with the criteria enumerated in Subtitle X § 305, and particularly Subtitle X § 305.2 and 305.3. (*See* COL 9.) Namely, the Applicant's proffers are tangible and quantifiable, measurable and able to be completed, primarily benefit the Takoma Park neighborhood, service the critical city-wide need for more housing and affordable housing and benefit the public in general to a significantly greater extent than matter-of-right development as the Project is all affordable with the exception of some over-income replacement units and provides PSH units. (*Id.*) The Commission views the provision of affordable housing, specifically 36 replacement units and 44 new units including 8 PSH units with onsite supportive services, to meaningfully benefit the larger surrounding community and the District overall. However, the Commission recognizes that this is a subjective determination within its discretion. The Commission also notes that the Zoning Regulations do not mandate that all public benefits and amenities benefit a particular neighborhood or area. (*See* Subtitle X § 305.3(c).)

37. The Commission concludes that the requested waiver from the minimum PUD land area requirement can be approved for the reasons discussed in COL 10-12 above.
38. The Commission concludes that the Applicant's proposed PUD-related zoning map amendment to the RA-2 zone is appropriate for the Property because it is (i) consistent with the Moderate Density Residential designation on the FLUM, (ii) is not inconsistent with the Comprehensive Plan when taken as a whole, as discussed above; (iii) the Property is underutilized given its improvement with an obsolete, energy-inefficient apartment building; (iv) the Property can be better utilized given its close proximity to the Takoma Metro station, numerous bus lines, and the retail and commercial spine of the Takoma Park neighborhood; and (v) the PUD-related map amendment will allow the production of additional affordable housing, one of the most critical needs of the city.
39. The Commission concludes that the requested design flexibility is appropriate for the Project and is balanced by the proffered benefits and amenities resulting from the Project. (FF 42, 71.)

**“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP**

40. Pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP. (*See Metropole Condo. Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087. (D.C. 2016).)
41. The Commission concludes that OP’s reports, which provided an in-depth analysis of the proposed Project and its consistency with the Comprehensive Plan and advancement of Comprehensive Plan racial equity policies, are persuasive and concurs with OP’s recommendation to approve the consolidated PUD and related map amendment to the RA-2 zone, as discussed above. The Commission also concurs with OP’s recommendation to approve the Applicant’s request for a waiver from the minimum PUD land area requirement as well as the Applicant’s requested design flexibility, with the modifications requested by OP in its report. (FF 68-72.)

**“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC**

42. Pursuant to section 13(d) of the Advisory Neighborhood Commissions Act of 1975 (effective March 26, 1976, D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2, the Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public.
43. The Commission finds the recommendation in ANC 4B’s report persuasive and concurs in its recommendation of support for the Application. The ANC report cites no issues and concerns; however, the report notes that the Application will facilitate replacement of 100% of the existing units and support existing residents through the relocation and guarantee the right to return for all eligible households. (FF 77-81.)

**DECISION**

In consideration of the record and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and, therefore, **APPROVES** the Application, subject to the following guidelines, conditions, and standards set forth below for a consolidated PUD, pursuant to Subtitle X, Chapter 3, and Subtitle Z, Chapter 3; a PUD related map amendment from the RA-1 and MU-4 zones to the RA-2 zone; and a waiver from the minimum PUD land area requirement of the RA-2 zone.

**A. PROJECT DEVELOPMENT**

1. The Project shall be developed and constructed substantially in accordance with the plans prepared by Soto Architecture dated July 28, 2023, and submitted to the record as Ex. 3H1-3H4, as amended by the supplemented drawings submitted



February 14, 2024 to the record as Ex. 95B (collectively, “**Approved Plans**”), as modified by the guidelines, conditions, and standards set forth below.

2. In accordance with the Approved Plans, as modified by the guidelines, conditions, standards, and flexibility herein, the approved PUD shall have:
  - a. A maximum building height of approximately 40 feet;
  - b. Approximately 61,849 square feet of GFA devoted to residential uses, and a density of approximately 2.32 FAR;
  - c. A maximum habitable penthouse height of 12 feet, and a maximum mechanical penthouse height of 15 feet;
  - d. A maximum lot occupancy of 60%;
  - e. Approximately 80 units, all of which shall be devoted to affordable housing, in accordance with the affordability schedule described in Condition A.3. below;
  - f. Approximately 23 parking spaces in the below grade garage;
  - g. Approximately 27 long-term and four short-term bicycle parking spaces;
  - h. A minimum green area ratio of 0.4;
  - i. Residential amenities space consisting of an office for a resident service provider in support of PSH residents, an office for the EGTA, communal recreation space on the penthouse level, and a rooftop deck; and
  - j. Landscaping improvements as shown on the Approved Plans.
3. **For the life of the Project**, the residential units in the Approved PUD shall be subject to the following affordability controls:
  - a. Except as otherwise described herein, all residential units shall be reserved for households earning up to between 30%-80% of MFI for 40 years (“Initial Control Period”), commencing upon the issuance of the first certificate of occupancy;
  - b. Up to 36 units in the approved PUD shall be set aside for tenants relocated from the existing Elm Gardens Apartments on the Property (“Returning Tenants”) who wish to return to the site. Returning Tenants shall not be subject to the affordability income restriction of Condition A.3.a. above. Upon the termination of a Returning Tenant’s lease, that unit shall become subject to the affordability income restrictions as set forth in Decision A.3.a;
  - c. A minimum of 44 units in the approved PUD shall be set aside for households earning no more than 50% of MFI during the Initial Control Period. Eight of the 44 units shall be designated as PSH units for individuals who were formerly without homes;
  - d. The unit mix in the approved PUD shall be as provided in the chart below:

<u><b>Unit Mix</b></u>	
<b>Studios</b>	19
<b>One-Bedrooms</b>	35
<b>Two-Bedrooms</b>	26
<b>Total</b>	80 units

- e. The above conditions assume that the Project will be exempt from IZ requirements pursuant to Subtitle C § 1001.6(a). However, the Commission takes no position as to whether an exemption from the IZ requirements should be granted. Should the exemption from the IZ requirements be denied, the Applicant shall provide affordable housing in accordance with this condition, unless the IZ requirements impose more restrictive standards, and the Applicant shall record the covenant required by the Inclusionary Zoning Act and shall execute the monitoring and enforcement documents required by Subtitle X § 311.6 prior to the issuance of the first certificate of occupancy for the Project. Should the exemption from the IZ Regulations be granted, the affordable housing requirements of this condition shall be stated in the covenant required under Subtitle C § 1001.6(a)(4), and such covenant shall be recorded prior to the issuance of the first certificate of occupancy for the Project. After the expiration of the Initial Control Period, the approved PUD shall be subject to the IZ requirements of Subtitle C, Chapter 10, and the Applicant shall set aside a minimum of 30% of the residential GFA as IZ units for households earning no more than 60% MFI.
4. The Applicant shall have design flexibility in the following areas for the approved PUD:
- Number and Mix of Dwelling Units.* To provide a range in the number of residential units of plus or minus 10% to respond to affordable housing market demand for unit size and number of bedrooms, except that the total square footage reserved for affordable housing shall not be reduced;
  - Number and Layout of Parking Spaces.* To make refinements to the approved parking configuration, including layout and number of parking spaces plus or minus 10%, so long as the number of parking spaces is at least the minimum number of spaces required by the Zoning Regulations;
  - Interior Components.* To vary the location and design of all interior components, including amenities, partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, and to vary the layout and exact size of the residential amenity space, provided that the variations do not materially change the exterior configuration of the building as shown on the plans approved by the order;

- d. Exterior Materials. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the plans approved by the order, subject to final HPRB approval;
- e. Exterior Details. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the plans approved by the order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, windows, and skylights, subject to final HPRB approval;
- f. Exterior Courtyards and Rooftop: To vary the configuration and layout of the exterior courtyards and rooftops provided the courtyards and rooftops continue to function in the manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained, subject to final HPRB approval;
- g. Streetscape Design. To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division; and
- h. Sustainable Features. To vary the approved sustainable features of the Project, including the final layout of the landscape elements, or making adjustments to meet DHCD standards for funding as long as the Project continues to achieve 0.4 GAR, the Enterprise Green Communities Plus (EGC+), and DOE's Zero Energy Ready Homes standards.

## **B. BUILDING PERMIT REQUIREMENTS**

- 1. **The Applicant shall submit with its building permit for the Project** a checklist evidencing that the Project has been designed to EGC+ and DOE's Zero Energy Ready Homes standards.
- 2. **Prior to the issuance of the building permit for the Project,** the Applicant shall submit an application to the Public Space Committee seeking approval for the public realm improvements along Eastern Avenue, N.W. in front of the Property.

## **C. CERTIFICATE OF OCCUPANCY REQUIREMENTS**

- 1. **Prior to the issuance of final certificate of occupancy for the Project,** the Applicant shall provide documentation to the Zoning Administrator evidencing that the approved PUD meets the EGC+ and DOE's Zero Energy Ready Homes standards.
- 2. **Prior to the issuance of a final certificate of occupancy for the Project,** the Applicant shall provide evidence to the Zoning Administrator that it has recorded

an Affordable Housing Covenant against the Property, as required under Subtitle C § 1001.6(a)(4), and consistent with the affordability income restrictions set forth both in Decision A.3. above and Decision D below.

3. **Prior to the issuance of the final certificate of occupancy for the Project**, the Applicant shall provide evidence to the Zoning Administrator that it has provided the amenity space identified in Decision A.2.i. above.

#### **D. REQUIREMENTS FOR THE LIFE OF THE PROJECT**

1. **For the life of the Project**, the Applicant shall comply with the affordable housing parameters identified in Decision A.3.
2. **For the life of the Project**, the Applicant shall maintain an average unit size of 450 square feet for studios and 640 feet for one-bedroom units.

#### **E. TRANSPORTATION DEMAND MANAGEMENT**

1. **During the operation of the Project (unless otherwise noted)**, the Applicant shall provide the following TDM measures:
  - a. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile;
  - b. Identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;
  - c. The project can potentially provide a pick-up/drop-off area at the frontage of the building to avoid any inconvenience for the vehicles driving along Eastern Avenue, N.E. during any pick-up/drop-off or food delivery activities related to the building;
  - d. 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;
  - e. The Transportation Coordinator will develop, distribute, and market various transportation alternatives and options to the residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications;
  - f. 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;

- g. The Transportation Coordinator will offer a free SmarTrip card preloaded with \$100.00 of value to each resident for the initial lease of each unit after the building opens;
- h. 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](mailto:info@godcgo.com);
- i. Provide residents 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 (MWCOC) or other comparable service if MWCOC does not offer this in the future.
- j. Post all transportation and TDM commitments on building website, publicize availability, and allow the public to see what has been promised.
- k. Offer a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident;
- l. Provide at least four short- and 27 long-term bicycle parking spaces;
- m. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids bikes, with a minimum 5% of spaces (minimum two) be designed for longer cargo/tandem bikes (10'x3'), a minimum of 10% of spaces (three spaces for this project) will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum of 50% of spaces (14 spaces 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;
- n. 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 OZ for inclusion in the IZIS case record of the case;
- o. 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 60 days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter;
- p. The Applicant will provide a minimum 10-foot sidewalk section (four-foot tree box and six-foot sidewalk) including approximately 2'-10" on private



space. Subject to DDOT approval, the Applicant will provide an easement allowing public access and giving DDOT authority for maintenance, permitting, and the ability to modify the space to facilitate improved pedestrian and bicycle facilities would be provided for this space;

- q. Prior to public space permitting, the Applicant agrees to work with DDOT to provide an additional two feet of sidewalk width on private property, provided it does not affect vehicular clearance height along the ramp in a way that would reduce or otherwise compromise the size of the residential units located above the ramp. If the full two feet cannot be provided in such a manner, the Applicant agrees to provide as close to two feet as is possible. Subject to DDOT approval, the Applicant will provide an easement allowing public access and giving DDOT authority for maintenance, permitting, and the ability to modify the space to facilitate improved pedestrian and bicycle facilities would be provided for this space; and
- r. Install at least one EV charging station.

#### **F. 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 Division, Department of Buildings (the “PUD Covenant”). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the 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. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that 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.

4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the OZ.

**Proposed Action**

**VOTE (March 14, 2024): 4-0-1** (Tammy Stidham, Robert E. Miller, Anthony J. Hood and Joseph S. Imamura to approve; 3<sup>rd</sup> Mayoral Appointee seat vacant.)

**Final Action**

**VOTE (April 25, 2024): 4-0-1** (Anthony J. Hood, Robert E. Miller, Joseph S. Imamura, and Tammy Stidham to approve; 3<sup>rd</sup> Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, Order No. 23-19, shall become final and effective upon publication in the *District of Columbia Register*; that is, on November 29, 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**

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