



July 8, 2024

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

Re: OAG Comments in Support of Z.C. Case No. 23-24 – Application for a Planned Unit Development (“PUD”) of Eckington Mews LLC

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

The Office of the Attorney General (“OAG”) supports the PUD application because its significant affordable housing proffer meets the Comprehensive Plan’s (“CP”) call for affordable housing—the only “high priority” public benefit for residential PUDs.¹ The PUD’s affordable housing proffer more than compensates for its requested density increase, satisfying the PUD balancing test. Three of the PUD’s 26 units are Inclusionary Zoning (“IZ”) units, with additional features addressing needs specifically identified by the CP: two IZ units will be offered at the 60% Median Family Income (“MFI”) level, instead of the 80% MFI level required for homeownership units, and two IZ units are family-sized three-bedroom units.² Access to transit and proximity to many community amenities further enhances the value of these affordable units.³

I. The CP Prioritizes Affordable Housing to Create an Equitable and Inclusive City

The Zoning Act charges the Commission to promote the general welfare through zoning, based on the guidance of the CP.⁴ The Council and Mayor, the District’s elected representatives, adopted the CP as law to establish the District’s land use and planning goals and principles. Therefore, the CP should guide the Commission’s evaluation of the PUD.

Addressing the District’s Affordable Housing Crisis. The CP emphasizes the creation of new affordable housing: the rising cost of housing is one of the most pressing and critical issues facing the District.⁵ An increase in higher-income households in the District has increased housing costs, creating a “crisis of affordability, particularly for the District’s lowest-income residents.”⁶ In response, the CP calls for an equitable distribution of affordable housing across the District, which should make up at least 15% of all units in each planning area by 2050.⁷ Further, one-third of all new housing produced should be affordable, with an interim goal of at least 12,000 new affordable units by 2025.⁸ The CP identifies PUDs as a critical tool to achieve the 15% goal for each planning area because only 10% of by-right residential square footage must be affordable.⁹

¹ [D.C. Law L23-127](#) (Comprehensive Plan Framework Amendment Act of 2019), [D.C. Law L24-20](#) (Comprehensive Plan Amendment Act of 2021), & [D.C. Resolution R24-0292](#) (Comprehensive Plan Future Land Use Map and Generalized Policy Map Approval Resolution of 2021) (CP text published as Title 10A of the DCMR); CP § 224.9.

² Ex. 22A.

³ CP § 225.5.

⁴ The Zoning Act of 1938, enacted 20 June 1938 ([52 Stat. 797](#); [D.C. Code § 6-641.01-02](#)).

⁵ CP § 206.1.

⁶ CP § 500.19; *see also*, CP §§ 500.4, 500.15, 500.18.

⁷ CP §§ 310.10, 504.17.

⁸ CP § 501.1.

⁹ CP § 224.9.

Addressing the Need for Deeper Affordable Units (60% MFI). The CP encourages the provision of deeper levels of housing affordability to meet the needs of a wider share of District households.¹⁰ Rising housing costs, combined with slower income growth, have resulted in greater and more widespread housing cost burdens, particularly on lower income families.¹¹ In response, the CP calls for roughly 70% of affordable units to be available at the 60% MFI level or lower.¹² This goal responds to the District’s ongoing affordability crisis and is also critical to address the racial income gap.¹³

Addressing the Need for Affordable Home-ownership Units. The CP identifies the need for more homeownership opportunities at all income levels to support the long-term stability of neighborhoods and families and provide opportunities for lower income households to build long-term personal and intergenerational wealth.¹⁴ Rising home prices present a “significant obstacle” to widespread homeownership, particularly for moderate and lower income households, given that the District’s median home value is \$705,000.¹⁵ Furthermore, historic patterns of racial exclusion have resulted in “gaps in wealth, and access to opportunity by the District’s communities of color.”¹⁶ As a result, only 35% of Black households own their homes versus 47% of White households, contributing to the District having one of the lowest overall homeownership rates in the country (41%).¹⁷ The CP therefore encourages projects and programs that address these concerns by providing opportunities for first-time and lower income homeownership.¹⁸

Addressing the Need for Family-Sized Units. The CP calls for more family-sized units of three or more bedrooms—for both affordable and market-rate units—to respond to the District’s population growth trends and ensure that the District remains a viable place for families of all income levels to live and grow.¹⁹ The CP prioritizes the production of these units in areas close to amenities such as transit, employment centers, schools, public facilities, and recreation to ensure that these resources “remain accessible to families.”²⁰ A 2019 study on the need for large units in the District reinforced the CP’s emphasis on the provision of affordable family-sized units.²¹ The study found that there was a considerable need for large units among low-income households, noting that only 12.7% of large units for sale were affordable to households at 80% MFI.²² The study found that this lack of options has racial equity implications as the heads of large households are more likely to be people of color. The disparities in median household income between white households and households of color means that most of these households are unable to afford to purchase larger units.²³ Finally, large units are not distributed equitably throughout the city - the vast majority are located in Wards 7 and 8 – meaning that low-income families are limited as to where they are able to live.²⁴

¹⁰ CP § 503.4

¹¹ CP §§ 206.4, 206.6.

¹² CP § 504.9

¹³ CP § 504.7.

¹⁴ CP §§ 512.1, 513.7.

¹⁵ CP §§ 500.15, 504.4, 513.2, 513.3a-b; [OP Racial Equity Data, ACS 2018-2022](#).

¹⁶ CP §§ 511.5, 512.2.

¹⁷ CP § 513.1, [OP Racial Equity Data, ACS 2018-2022](#).

¹⁸ CP §§ 513.5, 513.7.

¹⁹ CP §§ 203.12, 206.2, 503.11, 505.8.

²⁰ CP §§ 503.11, 505.8.

²¹ [An Assessment of the Need for Large Units in the District of Columbia](#), prepared for the Deputy Mayor for Planning and Economic Development by Urban Institute and Coalition for Nonprofit Housing Development, June 2019.

²² [An Assessment of the Need for Large Units in the District of Columbia](#) (n. 21 above) at p. iv, vi, 18-19.

²³ [An Assessment of the Need for Large Units in the District of Columbia](#) (n. 21 above), at p. 35-36.

²⁴ [An Assessment of the Need for Large Units in the District of Columbia](#) (n. 21 above), at p. 19-22, 27.

Mid-City Area Element and Mid-City East Small Area Plan (“SAP”). The CP’s Mid-City Area Element and the supplemental SAP for the eastern portion of the planning area both call for more affordable housing in eastern neighborhoods, including Eckington, to balance out the concentration of affordable housing in the west side of the planning area.²⁵ But adding density is challenging because less than 1% of the planning area’s land is vacant.²⁶ The limited opportunities for new housing pose difficulties for lower-income families to remain in the neighborhood.²⁷ To meet this need for affordable housing, the CP designates the PUD site as appropriate for moderate density residential development—up to 2.59 floor area ratio (“FAR”), including IZ and PUD bonus density—with the RA-2 specifically listed as a consistent zone.²⁸ The CP anticipates increases in density, particularly for affordable housing, through increased site use, infill development on vacant parcels, and repurposing vacant buildings.²⁹ These measures create “opportunities for new development on a smaller scale” to provide housing and strengthen the overall neighborhood fabric.³⁰ The CP encourages row house neighborhoods like Eckington to “maintain and augment the mix of large and small unit size and opportunities for both homeownership and renting.”³¹

Housing Equity Report. The 2019 Housing Equity Report implemented the CP’s affordable housing directive by establishing specific affordable housing targets for each planning area to achieve the 15% affordable housing goal by 2050 based on the principle that one-third of all new units be affordable.³² To achieve the CP’s 15% affordable housing goal per planning area, Mid-City needs additional affordable housing despite having achieved its interim 2025 housing goal.³³

II. The PUD Satisfies the CP’s Affordable Housing Goals and the PUD Balancing Test

The PUD’s affordable housing proffer advances the CP’s affordable housing goals and satisfies the PUD balancing test by compensating for the requested increase in density, when accounting for the additional affordable benefits of deeper affordability and family-sized IZ units. The PUD requests an additional 22,557 square feet (“sf”) of density, a 110% increase over the maximum 20,506 sf allowed by-right in the current RF-1 zone (excluding the IZ bonus per Subtitle X § 502.4) (for a proposed total of 42,695 sf). The PUD compensates for this 110% density increase with an affordable housing proffer that exceeds the 8,539 sf IZ set-aside called for by application of the IZ+ metric to the requested 110% density increase (20% per Subtitle X § 502.4). The three IZ units total 5,568 sf, or 13% of residential GFA, for a shortfall of 2,971 sf. However, OAG believes that the PUD’s proposed deeper affordability and family-sized units should receive credits reflecting the CP’s prioritization of these features.

Since the two IZ ownership units are reserved for 60% MFI households—double the affordability of the 80% MFI level of basic IZ—OAG believes these units should receive a credit to reflect the 54% difference between the maximum purchase price for a 60% and 80% MFI IZ ownership unit.³⁴ This

²⁵ CP § 2000.6; Mid-City East SAP, p. 6. SAPs supplement the CP but are not part of it (CP § 104.8).

²⁶ CP § 2002.7.

²⁷ Mid-City East SAP, p. 37.

²⁸ CP § 227.6.

²⁹ CP §§ 225.4-5, 503.5; Mid-City East SAP, p. 42.

³⁰ Mid-City East SAP, p.42.

³¹ CP § 2008.6.

³² CP § 504.17; [Housing Equity Report, October 2019](#).

³³ See [DMPED 36,000 by 2025 Dashboard](#).

³⁴ [2023 IZ Maximum Income, Rent, and Purchase Price Schedule](#), DMPED/DHCD (\$222,300 maximum price for a one-bedroom IZ unit vs. \$287,800 for a three-bedroom IZ unit at the 80% MFI unit required for ownership units).

54% credit would add 1,950 sf to the “value” of the PUD proffer. Similarly, the PUD’s proffer of two three-bedroom IZ units should receive a 29% credit, which reflects the difference between the maximum purchase price for an IZ unit with one bedroom (the median unit size in the District) and an IZ unit with three bedrooms. This 29% credit would add 1,131 sf to the “value” of the PUD proffer. Combining these two credits for deeper affordable units and for the family-sized units would add 3,081 sf to the 5,568 sf of IZ units, resulting in an equivalent adjusted affordable housing proffer of 8,649 sf. As this 8,649 sf exceeds the 8,539 sf that corresponds to the 20% IZ set-aside required for the same 110% density increase per the IZ+ metric, OAG believes that the PUD’s adjusted affordable housing proffer satisfies the PUD balancing test.³⁵

The PUD achieves this significant affordable housing proffer while fulfilling the land use objectives of the CP, the Housing Equity Report, and SAP. The provision of affordable units above the matter-of-right requirement constitutes a high-priority public benefit.³⁶ The PUD’s location enhances the value of these affordable units because of its proximity to key community amenities, including schools, parks, recreation centers, and bus lines. The PUD uses its added density strategically to develop a rare infill lot with extensive housing and affordable housing consistent with the scale and architectural character of the surrounding rowhouse neighborhood.³⁷ The PUD’s 1.86 FAR is well within the CP’s anticipated density (2.59 FAR) for the proposed RA-2 zone, which is specifically listed as consistent with the site’s Moderate Density Residential designation.

* * *

OAG therefore recommends that the Commission approve the PUD because of its significant affordable housing benefit, enhanced by the inclusion of critically needed ownership units at deeper affordability and the family-sized units for both IZ and market-rate units, as well as by the proximity to community amenities. This benefit compensates for the PUD’s requested density and furthers the CP’s directive to prioritize affordable housing in residential PUDs to address the housing crisis and create an equitable and inclusive city.

Respectfully submitted,

BRIAN L. SCHWALB

Attorney General for the District of Columbia

/s/ Maximilian L.S. Tondro

Chief, Equitable Land Use Section

D.C. Bar No. 1031033

/s/ Noelle Wurst

Assistant Attorney General

D.C. Bar No. 90006493

³⁵ Square footage data from Exhibit 22A.

³⁶ CP § 224.9.

³⁷ CP §§ 308.6, 310.14, 310.15, 503.5; Mid-City East SAP, p. 6, 38, 42.

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2024, a copy of the foregoing application was served on the following by email.

District of Columbia Office of Planning

Jennifer Steingasser
1100 4th Street, SW, Suite 650E
Washington, DC 20024

Via Email

Jennifer.steingasser@dc.gov

Advisory Neighborhood Commission 5F

ANC Chair Joe Bishop-Henchman (5F05)
ANC SMD Sylvia Pinkney (5F07)

Via Email

5F05@anc.dc.gov

5F07@anc.dc.gov

Office of the ANCs

Gail Fast (Program Specialist)

Via Email

Gail.fast@dc.gov

Eckington Mews, LLC (Applicant)

Cary Kadlecek
Goulston & Storrs, LLP

Via Email

ckadlecek@goulstonstorrs.com

/s/ Noelle Wurst

Assistant Attorney General
D.C. Bar No. 90006493