

APPLICANT'S DRAFT ORDER

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 23-24**

Z.C. Case No. 23-24

Eckington Mews LLC

**(Planned Unit Development and Related Zoning Map Amendment @ Square 3524, Lots 52,
53, 800, 802 and 803)**

September 12, 2024

Pursuant to notice, at its September 12, 2024¹ public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Eckington Mews LLC (the “Applicant”) requesting review and approval of the following:

- (i) A consolidated Planned Unit Development (“PUD”) and related Zoning Map Amendment to the RA-2 Zone District for the property located at 1708-1710 1st Street, N.E., the adjacent alley lots, and a portion of the existing public alley proposed to be closed (Square 3524, Lots 52, 53, 800, 802 and 803) (the “Property”) to construct a residential building with 27 units (the “Project”);
- (ii) Zoning flexibility from the penthouse single enclosure requirements of Subtitle C § 1503.1 and the Inclusionary Zoning (“IZ”) unit location requirements of Subtitle C § 1005.5; and
- (iii) Such other design flexibility as is set forth in the Conditions hereof.

The Commission considered the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. Pursuant to Subtitle Z § 403.5(a), the Applicant is automatically a party to the Application.

¹ On July 18, 2024, the Commission held a public hearing on the Application.

2. Pursuant to Subtitle Z §§ 101.8 and 403.5(b), Advisory Neighborhood Commission (“ANC”) 5F is automatically a party to the Application as the ANC in which the Property is located.
3. The Commission received no other requests for party status.

NOTICE AND SETDOWN

4. Pursuant to Subtitle Z §§ 300.7 and 300.8, on July 20, 2023, the Applicant mailed a Notice of Intent to file the Application to all property owners within 200 feet of the Property and to ANC 5F. (Exhibit (“Ex.”) 3B.)
5. Pursuant to Subtitle Z § 300.9, subsequent to the mailing of such notice but prior to filing the Application with the Commission, the Applicant offered to present to ANC 5F, but the ANC deferred a presentation until after the Application was filed. (Ex. 3.)
6. Pursuant to Subtitle Z §§ 400.9-400.12, on February 8, 2024, at its duly noticed public meeting the Commission considered the Application and voted to set the case down for a public hearing.
7. Pursuant to Subtitle Z §§ 402.1-402.2 and 402.6, on May 22, 2024, the Office of Zoning (“OZ”) sent notice of the July 18, 2024 public hearing concerning the Application to:
 - (a) The Applicant;
 - (b) ANC 5F;
 - (c) The ANC 5F07 Single Member District Commissioner, whose district includes the Property;
 - (d) The Office of ANCs;
 - (e) The Ward 5 Councilmember, in whose district the Property is located;
 - (f) The Office of Planning (“OP”);
 - (g) The District Department of Transportation (“DDOT”);
 - (h) The Department of Buildings (“DOB”);
 - (i) The Office of Zoning Legal Division;
 - (j) The District Department of Energy and Environment (“DOEE”);
 - (k) The Chair and At-Large Members of the D.C. Council; and
 - (l) The owners of property within 200 feet of the Property.(Ex. 17.)
8. Pursuant to Subtitle Z § 402.1(a), OZ published notice of the July 18, 2024 public hearing concerning the Application in the May 31, 2024 issue of the *D.C. Register* (71 DCR 006489) as well as on the calendar on OZ’s website. (Ex. 15 and 16.)
9. Pursuant to Subtitle Z §§ 402.3-402.4, 402.8-402.10, on June 6, 2024, the Applicant submitted evidence that it had posted notices of the public hearing on the Property and on July 15, 2024 submitted evidence that it had thereafter maintained such notices. (Ex. 18 and 30.)

PROPERTY AND SURROUNDING AREA

10. The Property is located in the Northeast quadrant of the District in the Eckington neighborhood in Ward 5. (Ex. 3.)
11. The Property consists of 22,940 square feet of land area, including the portion of the dead-end public alley proposed to be closed. Square 3524 is bounded by R Street, N.E. to the south, 1st Street, N.E. to the east, District-owned land to the north and Lincoln Road, N.E. to the west. (*Id.*)
12. The Property is currently improved with two rowhomes facing 1st Street, N.E., with the alley lot portion of the Property being currently improved with dated alley structures and gravel surface lots that have been used as storage yards and parking. (*Id.*)
13. The surrounding area is characterized primarily by a mix of moderate density residential, public education and recreation, and retail uses. Immediately north of the Property is a large District-owned tract that includes the Emery Work Bay employment-support shelter and a school building previously housing now-closed CHOICE Academy at Emery, both abutting the Property; the co-located McKinley Technology High School and McKinley Middle School campus; Harry Thomas Recreation Center; and Langley Elementary School. The area to the south consists of typical two- and three-story rowhomes constructed in the late 1800s and early 1900s. Further west beyond Lincoln Road, N.E. is the North Capitol Street commercial corridor with a mix of retail, residential, and service uses. Additional commercial offerings are nearby in the NoMa neighborhood a short walk away just south of Florida Avenue. (*Id.*)
14. The surrounding area is zoned primarily RF-1, with MU-4 zoning mapped for much of the commercial corridors along North Capitol Street and Florida Avenue to the west and south of the Property. Further south and east are areas with PDR zoning designations, as well as the NoMA district south of Florida, which is zoned D-5. (*Id.*)

COMPREHENSIVE PLAN (TITLE 10-A DCMR)

15. The Comprehensive Plan's Future Land Use Map ("FLUM") designates the Property as Local Public Facilities.
 - (a) The Comprehensive Plan Framework Element describes the Local Public Facilities designation as "land and facilities occupied and used by the District of Columbia government or other local government agencies (such as WMATA), excluding parks and open space. Uses include public schools including charter schools, public hospitals, government office complexes, and similar local government activities. Other non-governmental facilities may be co-located on site. While included in this category, local public facilities smaller than one acre — including some of the District's libraries, police and fire stations, and similar uses — may not appear on the map due to scale. Zoning designations vary depending on surrounding uses."
 - (b) There is no evidence that the Property has ever been owned or used by the District of Columbia for local public facilities purposes. The same designation is also applied to

the existing residential uses immediately east of the Property, the bulk of the Local Public Facilities mapping covers the large District-owned tract to the north. The remaining area immediately surrounding the property is mapped for Moderate Density Residential development. Given the imprecise and “soft-edge” manner in which the FLUM is drawn and interpreted, the Property’s current FLUM designation is most likely due to unintentional cartographic error due to all of the land area to the north of the Property being devoted to District schools and recreational facilities.

- (c) The guidelines for using the GPM and FLUM set forth in the Framework Element state that the FLUM “does not show density or intensity on institutional and local public sites. If a change in use occurs on these sites in the future . . . the new designations should be generally comparable in density or intensity to those in the vicinity.” 10-A DCMR § 228.1(h); *see also* Z.C. Order Nos. 16-11, 11-02/11-02A, 11-10, and 17-27 (applying such guidance by comparing the proposed site density to the surrounding neighborhood context and FLUM designations when approving PUDs and Zoning Map amendments for properties designated as Local Public Facilities).

(Ex. 3 and 3F.)

- 16. The Comprehensive Plan’s Generalized Policy Map (“GPM”) designates the Property as a Neighborhood Conservation Area. The Framework Element describes Neighborhood Conservation Areas as those that “have little vacant or underutilized land and are generally residential in character.” 10-A DCMR § 225.4. The Framework Element further provides that “[m]ajor changes in density over current (2017) conditions are not expected but some new development and reuse opportunities are anticipated, and these can support conservation of neighborhood character where guided by [Comprehensive Plan] policies and the [FLUM].” *Id.* “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 . . . The diversity of land uses and building types in these areas should be maintained and new development, redevelopment, and alterations should be compatible with the existing scale, natural features, and character of each area . . . Densities in Neighborhood Conservation Areas are guided by the [FLUM] and [Comprehensive Plan] policies.” *Id.* § 225.5. (Ex. 3 and 3F.)
- 17. The Comprehensive Plan also includes the Property within the Mid-City Area Element, which includes the following development priorities:
 - (a) Retain and reinforce the historic character of Mid-City neighborhoods, particularly its mix of row houses, apartment houses, as well as historic districts, and walkable neighborhood shopping districts. The Planning Area’s squares, alleyways, and historic alley lots offer opportunities for preservation and creative development. The area’s rich architectural heritage and cultural history should be preserved and enhanced. 10-A DCMR § 2008.2.
 - (b) Encourage redevelopment of vacant lots and the rehabilitation of abandoned structures within the community, particularly along Georgia Avenue NW, Florida Avenue NW, 11th Street NW, and North Capitol Street NW and in the Shaw, Bloomingdale, and Eckington communities. Similarly, encourage the redevelopment of vacant lots and the rehabilitation of vacant buildings located at

the interiors of the Planning Area's squares. Infill development should be compatible in scale and character with adjacent uses and encourage more housing opportunities. *Id.* § 2008.4.

- (c) Maintain the cultural diversity of Mid-City by encouraging housing and business opportunities for all residents, sustaining a strong network of social services for immigrant groups, and retaining affordable housing for families and other households within the Planning Area. *Id.* § 2009.1.

(Ex. 3 and 3F.)

II. THE APPLICATION

THE PROJECT

- 18. The Application, as amended, proposes to raze the existing dilapidated alley structures and convert the storage yards and parking lots into a residential development. The Project will include closure of a portion of the dead-end north-south public alley stub bisecting the Property and consolidate the existing lots into a single lot of record underlying the development. The Project consists of a for-sale multifamily residential building designed to be owned and operated in form and function as rowhomes. The Project provides:
 - (a) A height of approximately 34 feet, plus a mechanical penthouse with a maximum height of 12 feet;
 - (b) An FAR of approximately 1.86;
 - (c) A total of 27 residential units, all of which will be for-sale, including a minimum of 15 units with three or more bedrooms;
 - (d) A lot occupancy of approximately 60%;
 - (e) A minimum of 10.75% of the base residential GFA set aside as affordable housing under IZ reserved for households earning no more than 60% of Median Family Income ("MFI"), below the maximum 80% of MFI otherwise required for for-sale IZ units;
 - (f) A total of 13 vehicle parking spaces;
 - (g) Approximately 13 long-term and 12 short-term bicycle parking spaces;
 - (h) A minimum GAR of 0.5; and
 - (i) LEED Gold design.(Ex. 3, 13, 13A, 34, and 38.)
- 19. The Project is designed to be a natural extension of the existing moderate density rowhome neighborhood in which the Property is located. While for zoning purposes the Project is considered a single multifamily building, it is designed to be owned and operated in form and function as rowhomes. The Project retains and incorporates the two existing rowhomes fronting on 1st Street, N.E., with the balance of new units fronting onto a newly created landscaped pedestrian way along the north side of the Property. Each of the ten "rowhomes" on the west side of the Project will be sold as one but consist of two units each — a three-bedroom primary unit above a one-bedroom accessory unit — similar to the existing rowhomes to the south along R Street, N.E. (Ex. 3 and 13A.)

20. The Application includes a proposed PUD-related Zoning Map Amendment to the RA-2 Zone District to support the proposed building and site configuration, while achieving development that is closely in line with the height and density of the existing RF-1 zoning that characterizes the residential community in which the Project is located. Echoing the two- and three-story rowhomes across the public alley immediately south of the Property, the Project will be three stories in height, stepping down to two stories moving east to the existing rowhomes facing 1st Street, N.E. (Ex. 3 and 13A.)
21. The Project includes extensive landscaping, trees, and other plantings and bioretention features, and it will exceed the minimum required 0.4 GAR by at least 0.1. The private gardens along the north side of the Property provide an outdoor amenity for residents, which are supplemented by roof terraces providing additional outdoor access that will be lined with plantings and topped by solar canopies. The Project's LEED Gold design will include tiered stormwater management gardens with native perennial and grasses and solar pergolas on the proposed roof terraces, in addition to the proposed extensive plantings. (Ex. 3 and 13A.)
22. The Project's site plan orients the building towards the new landscaped mews on the north side of the Property, while maintaining a "front" on 1st Street, N.E. for the two existing rowhomes that will be preserved. Situating the building immediately along the alley and facing north emphasizes the private gardens area and the shared pedestrian path on the north end of the lot and maximizes privacy for residents of both the Project and the existing rowhomes to the south. The Project utilizes the public alley network abutting the site and the natural topography of the site, which drops in grade toward the south side of the Property, to enable easy vehicular access to covered parking for the residents. Twelve of the 13 parking spaces will be enclosed, which also minimizes the visual impact of surface parking. The north-south public alley on the west side of the Property provides access for short-term bicycle parking and one of the two entrances to the mews that serves the units' formal front entrances on the north side of the site, with the other pedestrian entrance on 1st Street, N.E. at the east. (Ex. 3 and 13A.)
23. The Project's façade and materials are designed to relate to and complement the surrounding rowhome development, utilizing traditional, natural brick hues while providing modern fenestration schemes to maximize the availability of natural light, particularly for the north façade of the building facing the private gardens, with more moderated glazing patterns on the south side of the building to preserve privacy between the Project and existing rowhomes to the south. (Ex. 3 and 13A.)
24. In addition to the standard design flexibility requested for the Project, the Application requests two areas of zoning flexibility:
 - (a) Flexibility from the penthouse single enclosure requirements of Subtitle C § 1503.1 to permit separate solar pergolas for each of the rooftops; and
 - (b) Flexibility from the IZ unit location requirements of Subtitle C § 1005.5 to allow the IZ units to be located towards the east side of the Property.(Ex. 3 and 13.)

25. As part of the Application, the Applicant requested a waiver of the minimum area requirement. The minimum area included in a PUD in the RA-2 Zone District must be no less than one (1) acre, and all such area must be contiguous. Here, the Property constitutes approximately 0.52 acres (22,940 square feet), including a portion of an existing public alley in the middle of the site that the Applicant proposes to close and incorporate into the development site, with all of such land being contiguous. The Applicant stated that the Application met the criteria for waiver of the minimum area requirement under Subtitle X § 301.2 because the Project is of exceptional merit and in the best interests of the District. Specifically, the Project will transform a fallow, underutilized site into a vibrant residential development that has been carefully scaled to be compatible with the existing residential community. The Project represents infill residential development that will be a natural extension of the surrounding rowhome neighborhood, eliminating the existing storage yards and parking lots that are inconsistent with the adjacent residential uses and detract from the overall quality of this area of Eckington. Over half of the Project's units will have three or more bedrooms, adding to the District's supply of housing for families, and the Project provides affordable housing well above the minimum required under IZ and creating affordable homeownership opportunities. In addition, the Property is located outside the Central Employment Area, and the Project will be devoted entirely to residential use, as required under Subtitle X § 301.2. (Ex. 3.)
26. As part of the Project, the Applicant proffered public benefits and amenities, as set forth in detail in the Conditions of this Order. The Applicant's proffered public benefits and amenities are as follows:
- (a) Superior Urban Design and Architecture. The Project's high-quality design carefully echoes and respects the traditional rowhome design qualities of the existing residential development in the surrounding neighborhood to create a natural extension of the residential community in which the Property is located.
 - (b) Superior Landscaping. The Project features richly planted gardens on the north side of the Property and includes extensive tree and other landscape plantings throughout the site.
 - (c) Site Planning and Efficient Land Utilization. The Project introduces residential uses, including affordable housing, on a currently underutilized parcel within the center of the square that is walkable to transit and proximate to the District's commercial core. The Project leverages the access provided by 1st Street, N.E. and the existing alley network while maximizing green space and preserving privacy for both the new residents of the Project and the existing rowhomes on the north side of R Street, N.E.
 - (d) New Housing. The Project creates 27 new, for-sale housing units, including 15 units with three or more bedrooms.
 - (e) Affordable Housing. The Project sets aside 10.75% of the residential GFA, totaling three (3) units, all of which will be reserved at 60% of MFI, below the maximum 80% of MFI otherwise applicable to for-sale IZ units.
 - (f) Environmental and Sustainability Benefits. The Project is designed to meet environmental design standards at the LEED Gold level, and the Project will achieve a GAR that exceeds the minimum 0.4 requirement by at least 0.1. The

Project includes bioretention, extensive tree and landscape plantings, and rooftop solar.

- (g) Non-Mitigation Transportation Infrastructure. The Applicant will implement traffic calming measures, subject to DDOT approval, as follows:
 - (i) Install two (2) TAPCO speed bump assemblies in the east-west public alley abutting the Property with a gap of at least two (2) feet provided between the speed bumps and with no speed bump placed directly in front of an existing or future driveway;
- (Ex. 3, 13A, 34, and 38.)

APPLICANT'S REVISIONS, SUBMISSIONS, AND TESTIMONY

- 27. Initial Application. Pursuant to Subtitle Z §§ 300.1-300.4, 300.6, and 300.10-300.13, on October 6, 2023, the Applicant filed its initial application materials. (Ex. 1-3G.)
- 28. Prehearing Submission. Pursuant to Subtitle Z §§ 401.1 and 401.3-401.4, on April 11, 2024, the Applicant filed a prehearing submission and supporting materials responding to the issues and comments raised by the Commission at the February 8, 2024 public meeting and by OP in its January 29, 2024 setdown report (*see* Ex. 12) and providing additional and updated information regarding the Application. (Ex. 13-13D.) Specifically, the prehearing submission included:
 - (a) Revised Rooftop Design for Eastern Units. In response to OP's request, the Applicant incorporated terraces and solar panel pergolas into the rooftop design for the Project's eastern units.
 - (b) Façade Design. In response to OP and the Commission's feedback, the Applicant revised the façade design to incorporate a cornice and adjustments to the south façade fenestration to modestly increase the overall degree of fenestration.
 - (c) Site Sections. In response to OP's request, the Applicant incorporated section drawings that include the adjacent development.
 - (d) IZ Flexibility. The Applicant provided additional information in support of its request for flexibility from the IZ tenure requirements to permit the IZ units to be offered for rent in the event the IZ units are not sold within a reasonable time and flexibility from IZ unit location requirements to locate the IZ units on the east side of the Project.
 - (e) Updated Plans. The Applicant provided updated plans for the Project reflecting refinements to the design since the initial submission, including incorporating an additional bicycle parking rack in response to DDOT's request and reconfiguring certain units, in addition to the revisions noted above.
 - (f) Flexibility for Penthouse Single Enclosure Requirements. The Applicant added a request for zoning flexibility from the penthouse single enclosure requirements of Subtitle C § 1503.1 to permit separate solar pergolas for each of the rooftops because they will be separately owned and managed by each homeowner.
 - (g) Prehearing Materials. The Applicant provided additional prehearing materials required under the Commission's Rules of Practice and Procedure and certification of the Applicant's compliance with filing requirements.

29. Applicant's Transportation Report. Pursuant to Subtitle Z §§ 401.7-401.78, on June 18, 2024, the Applicant filed a Transportation Statement, prepared by Gorove Slade, regarding the Project. (Ex. 20-20A.)
30. Applicant's Supplemental Pre-Hearing Submission. Pursuant to Subtitle Z § 401.5, on June 28, 2024, the Applicant filed a supplemental submission with updated information regarding the Application. (Ex. 22-22B.)
- (a) District Agency Outreach. The Applicant provided an update regarding its outreach with District agencies, including OP, the Department of Housing and Community Development ("DHCD"), DDOT, the Department of Parks and Recreation ("DPR"), the D.C. Fire and Emergency Medical Services Department ("FEMS"), and DC Water.
 - (b) Updated IZ Proffer and Flexibility Request. The Applicant provided a revised IZ proffer and IZ unit selection in response to feedback from OP and DHCD, and, specifically, proffered to set aside approximately 12.03% of the Project's residential gross floor area for IZ and reserve two of the IZ units at 60% of MFI, below the maximum 80% of MFI otherwise applicable to for-sale IZ units. The Applicant also withdrew its request in its initial submission for flexibility for the tenure type of IZ units and agreed to offer all of the IZ units for sale.
 - (c) Community Outreach. The Applicant provided updated and supplemental information regarding its outreach with the surrounding community, including the Eckington Civic Association, neighboring residents, and ANC 5F.
 - (d) Executive Summary. The Applicant provided a one-page overview re-summarizing the Project and Application.
 - (e) Expert Resume. The Applicant provided a new resume for the Project's transportation consultant testifying at the public hearing.
31. Applicant's Hearing Presentation and Testimony. In advance of the July 18, 2024 public hearing for the Application, the Applicant filed a presentation. (Ex. 34.) At the public hearing, the Applicant presented the Application and proposed Project and addressed questions raised by the Commission.
- (a) The Applicant provided testimony from four (4) witnesses:
 - (i) Brian Brown of NextGen Development, on behalf of the Applicant;
 - (ii) Greg Powe of Powe Studio Architects PC, as the Project's architect, admitted as an expert;
 - (iii) Danielle Alexander of Studio AKA, the Project's landscape architect, admitted as an expert; and
 - (iv) Dan VanPelt of Gorove Slade, the Project's transportation consultant, admitted as an expert.
 - (b) The Applicant's presentation included a summary of the Project background; the Applicant's outreach with OP, DDOT, and other District agency staff, and with the community, neighboring residents, and ANC 5F; the requested zoning and design flexibility; the proffered public benefits and amenities; the building design, site planning, and landscaping features; information regarding the existing tenants of the two rowhomes on 1st Street, N.E. as requested by OP in its hearing report (Ex. 24); and information in response the Commission's questions during the hearing.

(Transcript of July 18, 2024 Public Hearing (“Public Hearing Tr.”) at pp. 8-27.)

32. Request to Reopen the Record and Supplemental Post-Hearing Submission. On July 25, 2024, the Applicant submitted a request to reopen the record and to provide corrected and updated information regarding the Project’s IZ proffer. Specifically, the Applicant stated that, while it continued to propose to set aside three (3) of the Project’s residential units for IZ, as agreed upon with OP and DHCD, due to a clerical error in the calculation of the total residential floor area of the Project and the selected IZ units, prior submissions and statements at the hearing had incorrectly stated the resulting IZ set-aside as being 12.03% of the Project’s residential floor area when the correct IZ set-aside for these three (3) units is in fact approximately 10.75% (or 5,568 square feet) of the Project’s residential floor area. In order to offset the erroneous reduction in residential floor area devoted to IZ units, the Applicant proposed to revise its IZ proffer to reserve all three (3) of the IZ units for households at or below 60% of MFI, below the maximum 80% of MFI otherwise required for IZ for-sale units. The Applicant stated that it had discussed the corrected and updated IZ proffer with OP, which had confirmed its support for the revised proffer. (Ex. 38.)
33. Draft Conditions. Pursuant to Subtitle X §§ 308.8 and 308.10, on July 25, 2024, the Applicant submitted its draft proffers and Conditions. (Ex. 39.)
34. Final Conditions. Pursuant to Subtitle X § 308.6, on August 8, 2024, the Applicant submitted its final proffers and conditions reflecting revisions made in response to comments received from the Office of Zoning Legal Division. (Ex. 41-41A.)
35. Draft Findings of Fact and Conclusions of Law. Pursuant to Subtitle Z § 601.1, on August 30, 2024, the Applicant submitted its proposed findings of fact and conclusions of law. (Ex. __.)

III. JUSTIFICATION FOR RELIEF

RELIEF REQUESTED

36. The Application requested the Commission approve a PUD and related Zoning Map Amendment to the RA-2 Zone District to redevelop the Property with a residential building with 27 for-sale residential units.
37. The Application further requested additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1 for:
 - (a) The penthouse single enclosure requirements of Subtitle C § 1503.1 in order to permit separate solar pergolas for each of the rooftops; and
 - (b) The IZ unit location requirements of Subtitle C § 1005.5 to allow the IZ units to be located towards the east side of the Property.

**CONSISTENCY WITH THE COMPREHENSIVE PLAN AND OTHER ADOPTED PUBLIC POLICIES
RELATED TO THE PROPERTY (SUBTITLE X § 304.4(a))**

38. Comprehensive Plan. The Applicant provided evidence that the Application complies with Subtitle X § 304.4(a) and is not inconsistent with (i) the Comprehensive Plan as a whole, including its maps, District Element policies, and Area Element policies, or (ii) other public policies related to the Property.
- (a) FLUM. The Project is not inconsistent with the FLUM's Local Public Facility designation for the Property.
- (i) The Framework Element describes the Local Public Facilities designation as "land and facilities occupied and used by the District of Columbia government or other local government agencies (such as WMATA), excluding parks and open space. Uses include public schools including charter schools, public hospitals, government office complexes, and similar local government activities . . ."
 - (ii) There is no evidence that the Property has ever been owned or used by the District of Columbia for local public facilities purposes. The same designation is also applied to the existing residential uses on the east side of the Property. Given the imprecise and "soft-edge" manner in which the FLUM is drawn and interpreted, the Property's current FLUM designation is most likely due to unintentional cartographic error due to all of the land area to the north of the Property being devoted to District schools and recreational facilities.
 - (iii) The guidelines for using the GPM and FLUM set forth in the Framework Element state that the FLUM "does not show density or intensity on institutional and local public sites. If a change in use occurs on these sites in the future...the new designations should be generally comparable in density or intensity to those in the vicinity." 10-A DCMR § 228.1(h); *see also* Z.C. Order Nos. 16-11, 11-02/11-02A, 11-10, and 17-27 (applying such guidance by comparing the proposed site density to the surrounding neighborhood context and FLUM designations when approving PUDs and Zoning Map amendments for properties designated as Local Public Facilities). The proposed density of the Project is not inconsistent with the FLUM. The areas to the west, east, and south of the Property are designated Moderate Density Residential on the FLUM.
 - (iv) The Framework Element describes the Moderate Density Residential designation as: "[N]eighborhoods 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...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 Zone Districts are consistent

with the Moderate Density Residential category, and other zones may also apply.”

- (v) Through the PUD process, the Applicant proposes to rezone the Property to the RA-2 Zone District, which is specifically referred to in the Framework Element as being consistent with the Moderate Density Residential FLUM designation that surrounds the Property. Moreover, the density of the Project is well within the range that is contemplated in an RA-2 PUD. Specifically, the maximum density permitted in the RA-2 zone is 1.8 FAR (2.16 FAR with IZ). The Project has a maximum density of 1.86 FAR, which is only slightly above RA-2 matter-of-right density excluding the IZ bonus density. Finally, the height and massing of the Project is compatible with the existing residential structures in the vicinity. Indeed, the Project is roughly in line with the density permitted in the RF-1 zoning of the surrounding area, which has an allowable height of three (3) stories and 40 feet and lot occupancy of 60% for typical rowhome development, translating into 1.8 FAR.

(Ex. 3 and 3F.)

- (b) GPM. The Project is not inconsistent with the Property’s Neighborhood Conservation Area designation on the GPM.

- (i) The Framework Element describes Neighborhood Conservation Areas category as those that “have little vacant or underutilized land and are generally residential in character.” 10-A DCMR § 225.4. The Framework Element further provides that “[m]ajor changes in density over current (2017) conditions are not expected but some new development and reuse opportunities are anticipated, and these can support conservation of neighborhood character where guided by [Comprehensive Plan] policies and the [FLUM].” *Id.* “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 . . . The diversity of land uses and building types in these areas should be maintained and new development, redevelopment, and alterations should be compatible with the existing scale, natural features, and character of each area . . . Densities in Neighborhood Conservation Areas are guided by the [FLUM] and [Comprehensive Plan] policies.” *Id.* § 225.5.

- (ii) The Project is compatible with the diversity of land uses and building types found in the surrounding area, as well as with the scale and character of the neighborhood. Generally, the prevailing character and scale of the area surrounding the Property is residential with rowhouses and scattered multi-family apartment buildings that generally contain 2-3 stories. Some larger multi-family buildings are located to the southeast of the Property along Eckington Place, N.E. and Harry Thomas Way, N.E. Consistent with the established character of the area, the Project consists of a multiple dwelling building that contains 27 units, that has been designed to function as a series of attached townhouses. The proposed height and density of the Project are generally consistent with that which is found in a typical moderate density rowhouse neighborhood.

(Ex. 3 and 3F.)

(c) Racial Equity. The Project advances racial equity for the following reasons:

- (i) The proposed Project will redevelop a currently underutilized site with 27 units of new for-sale housing, including 15 units with three or more bedrooms, and three (3) IZ units, all reserved for households earning no more than 60% of MFI, providing more affordable housing than is otherwise required under IZ and at deeper affordability levels than otherwise required under the IZ program. The Project's new and affordable housing will create new homeownership opportunities, especially for larger, family-sized units.
- (ii) The Project and Application proffer other public benefits in addition to the significant affordable housing commitment, including significant building design and site planning that is superior to what is required as a matter of right project and will complement the existing residential development in surrounding the Property; significant sustainability benefits including LEED Gold design and GAR that exceeds the minimum required 0.4 GAR by at least 0.1; and traffic calming measures implemented in the surrounding transportation network to reduce hazardous traffic in the adjacent public alley and improve traffic circulation in the neighborhood.
- (iii) The Project provides new and affordable housing in a transit-accessible location that is walkable to the NoMa/Gallaudet University Metrorail station.
- (iv) The Project is being pursued through the PUD process, which includes significant outreach with the surrounding community, including the Eckington Civic Association, neighboring residents, and ANC 5F, allowing community and neighbor feedback to be incorporated into the Project design and configuration.

(Ex. 3 and 3G.)

(d) Land Use Element. The Project strongly supports the policy objectives of the Land Use Element, which is the Element that should be given the greatest weight. 10-A DCMR § 300.3. The Project is a classic example of infill development, revitalizing currently underutilized land in a central and transit-rich location. The Project contributes to the area's housing and affordable housing stock, including the need for larger, family-sized units, and promotes sustainability objectives as called for in the Land Use Element. *See* Land Use Element Policies LU-1.5.1, LU-2.1.1, LU-2.1.3, LU-2.1.7, LU-2.1.8, and LU-2.1.9. (Ex. 3F.)

(e) Transportation Element. The Project contributes to the pedestrian network and will implement traffic calming measures to improve pedestrian safety in the transportation network surrounding the Property. *See* Transportation Element Policies T-2.4.1 and T-2.4.3. (Ex. 3F.)

(f) Housing Element. The Project will create 27 new units of high-quality, for-sale housing, including a mix of both market rate and affordable housing and including 15 units with three or more bedrooms, all in a centrally-located and transit-rich area of the District. *See* Housing Element Policies H-1.1.1, H-1.1.3, H-1.1.5, H-1.1.8, H-1.1.9, H-1.2.1, H-1.2.2, H-1.2.7, H-1.2.11, H-1.3.1, H-1.3.2, and H-3.1.1. (Ex. 3F.)

- (g) Environmental Protection Element. The Project includes significant sustainability features, including extensive landscaping, trees, and other plantings, bioretention features, and rooftop solar. The Project will be designed to LEED Gold standards and will exceed the minimum required 0.4 GAR by at least 0.1. *See* Environmental Protection Element Policies E-1.1.2, E-2.1.2, E-2.1.3, E-2.1.5, E-3.2.3, E-3.2.6, E-3.2.8, and E-4.1.2. (Ex. 3F.)
 - (h) Urban Design Element. The Project is designed to be a natural extension of the existing moderate density rowhome neighborhood of which the Property forms a part. The Project, while for zoning purposes considered a single multifamily building, is designed to be owned and operated in form and function as rowhomes. *See* Urban Design Element Policies UD-2.2.1, UD-2.2.4, UD-2.2.5, UD-4.2.4, and UD-4.2.5. (Ex. 3F.)
 - (i) Mid-City Area Element. The Project will redevelop an underutilized site near transit with a residential development containing 27 dwelling units and designed to reinforce the prevailing row house character of the surrounding neighborhood. The provision of new for-sale housing and affordable housing will help maintain Mid-City as a socially and economically diverse area within the District. *See* Mid-City Area Element Policies MC-1.1.1, MC-1.1.3, and MC-1.2.1. (Ex. 3F.)
39. Mayor's Housing Order. The Project advances the Mayor's Order 2019-036 on housing which sets a goal of creating 36,000 new housing units by 2025, including 12,000 affordable housing units. (Ex. 3.)

NO UNACCEPTABLE PROJECT IMPACTS ON THE SURROUNDING AREA OR THE OPERATION OF CITY SERVICES (SUBTITLE X § 304.4(b))

40. The Applicant provided evidence that the Application complies with Subtitle X § 304.4(b); that is, the Project does not create unacceptable impacts on the surrounding area:
- (a) Zoning and Land Use Impacts. The Project has no unacceptable zoning or land use impacts on the surrounding area. The Project will revitalize the Property and activate the site with a well-designed and appropriately scaled residential development that will activate a fallow site in the surrounding rowhome neighborhood. The Project will utilize the access provided by 1st Street, N.E. and the existing alley network and has been carefully arranged to function as rowhomes supported by generous gardens. The proposed Zoning Map Amendment to the RA-2 zone is consistent with the Property's Local Public Facilities designation on the FLUM, which provides that land use changes should reflect the density of the surrounding area, in this case a rowhome community designated for Moderate Density Residential on the FLUM. While the RA-2 zone allows for greater height and density, the Project does not maximize either and instead utilizes the proposed zoning to achieve a more efficient site plan to support a height and density that are congruent with that of typical rowhome development and the two- and three-story homes that constitute the surrounding neighborhood. The proposed residential use is appropriate for the site given its location and neighborhood context, and the rowhome-like scale and configuration of the development and traditional material selections, consisting primarily of natural-tone brick. It also accomplishes

objectives of the GPM designation as a Neighborhood Conservation Area, which encourages infill housing consistent with the existing scale and character of the area.

- (b) Housing Market Impacts. The Project will have favorable housing impacts. The Project adds new, high-quality family-sized housing units to an existing stabilized neighborhood that is walkable to transit and proximate to the District's commercial core. The addition of housing in this location and replacement of the existing storage yards and parking lots with a more appropriate use will help to fill in the existing gap in the neighborhood and further stabilize the surrounding residential community. The Project's provision of larger units, including 15 units with three or more bedrooms, serves the important goal of better meeting the need for family-sized units in this area and in the District as a whole. The Project's inclusion of affordable housing in excess of the minimum required under the IZ program and at deeper affordability levels than otherwise required for for-sale IZ units has favorable impacts because it helps further the objective that the Eckington neighborhood continue to exist as an inclusive, mixed-income community.
- (c) Construction-Period Impacts. The Project's construction-period impacts on the surrounding area are capable of being mitigated. The Applicant has experience successfully completing construction projects in infill locations without unreasonably disturbing neighbors. The Applicant will work closely with abutting property owners and residents to manage and mitigate any construction impacts associated with the Project's development and will maintain regular communication and coordination throughout the Project's construction.
- (d) Open Space, Urban Design and Massing Impacts. The Project has been configured to create a natural extension of the existing rowhome community and to provide open green space for the new residents in the gardens on the north side of the Property, while leveraging the access provided by 1st Street, N.E. and the existing alley network. The Project focuses the mass of the building on the south side of the lot with the building's formal "front" oriented north, which also maximizes privacy for both the new residents and the existing rowhomes immediately south of the Property across the alley and facing R Street, N.E. The Project will preserve the two existing rowhomes on the east side of the site, maintaining the character of the public realm along 1st Street, N.E. The Project's extensive landscaping and tree plantings will transform the site from its current state and will have a strongly favorable impact on the overall area. The Project's rowhome style design and details will echo and strengthen the character of the existing residential development in the area and are favorable for the neighborhood.
- (e) Design and Aesthetic Impacts. The Project incorporates high quality architecture and design and will improve the aesthetic impact of the Property on the surrounding area. The materials will blend the structure into the surrounding rowhome development with natural brick hues, while providing modern fenestration to maximize natural light for the new units. Accordingly, the design and aesthetic impacts will be favorable to the surrounding area.
- (f) Transportation and Mobility Impacts. The Project will not have any unacceptable impacts on the public transportation facilities or roadways that it relies on for service. Instead, the Project's transportation impacts are either capable of being

mitigated or acceptable given the quality of public benefits arising from the Project. In particular, the Project includes implementation of traffic calming measures within the east-west public alley and surrounding transportation network, which will help address incidents of unsafe vehicle speeds that have occurred in the alley and pose a threat to safety and general disruption for residents utilizing the alley. The Project's vehicular traffic impacts will be mitigated by both nearby transit options and the Applicant's Transportation Demand Management ("TDM") plan. The Property is well-served by transit and vehicular infrastructure with a Metrorail station approximately 0.5 mile walking distance from the Property and multiple Metrobus lines nearby. The Project's favorable pedestrian, bicycle, and transit access help mitigate any expected traffic concerns. The Project contains 13 parking spaces to accommodate the parking demand of residents without over-parking the site given its location and proximity to transit options. Bicycle usage is integrated into the Project design, with long-term spaces provided throughout the building and short-term spaces provided in a convenient location at the west entrance to the pedestrian walkway and gardens.

- (g) Economic Impacts. The Project will have favorable economic impacts on the neighborhood and the District more generally. The Project will have a stabilizing and positive effect on the economy of Ward 5 and the District as a whole. The Project will provide 27 new high-quality for-sale housing units, including 15 units with three or more bedrooms and three IZ units, that will help meet the existing housing shortfall in the District, including the need for family-sized and affordable housing. The introduction of new residential uses contributes patrons for the existing businesses. The Project's moderate and site-appropriate intensification of land use on the Property has positive tax revenue effects for the District by generating additional property taxes. To the extent there are any adverse effects from the Project, such effects are more than offset by the Project's Public Benefits.
- (h) Cultural and Public Safety Impacts. The Project will have favorable impacts on the culture of the surrounding area. The Project adds new residents who will contribute to the immediate neighborhood and the District in diverse and meaningful ways. The infilling of the Property helps complete the neighborhood and signifies investment and stewardship of the neighborhood with multiple new homeowners. The traffic calming measures included in the Project will improve safety conditions within the public alley and surrounding street network, and the Project itself represents an improvement in public safety by creating more "eyes on the street" for 1st Street, N.E. and the alley network, which will have a positive effect on crime deterrence.
- (i) Public Facilities and/or District Services Impacts. The Applicant submitted evidence that the Project will not result in any negative impacts to public facilities and infrastructure or District services. Furthermore, in addition to being reviewed by OP and DDOT, the Application was circulated by OP to numerous other District agencies and authorities for review, including the Metropolitan Police Department, the DHCD, the Washington Metropolitan Area Transit Authority, FEMS, DOEE, DC Water, DPR, the Department of Public Works, DC Public Library, and DC Public Schools, all of which were also invited to submit written comments on the Project. No agency comments were submitted raising issues or concerns regarding

the Project's impact on public facilities or services. The average daily water demand for the Project can be met by the existing District water system. The proposed sanitary sewer connections for the Project are from within the existing distribution system and will be coordinated with DC Water during the permitting process. The Project has been designed to achieve high levels of on-site stormwater retention. The requisite inlets and closed pipe system are designed and constructed to be in compliance with the standards set by DOEE, DC Water, and DDOT. Solid waste and recycling materials generated by the Project will be collected regularly by the District Department of Public Works. Electricity for the Project will be provided by the Potomac Electric Power Company ("Pepco") in accordance with its usual terms and conditions of service. All electrical systems are designed to comply with the D.C. Energy Code. Transformers will be installed on the Property or covered in the adjacent public space in accordance with Pepco's and DDOT's design guidelines. The Applicant further provided evidence that the Project will not have an unacceptable impact on area schools or public parks, recreation centers, or library services.

- (j) Environmental Impacts. The Project will not have any unacceptable impacts on the environment, but rather will be an improvement over existing conditions and will enhance adjacent parkland due to improved on-site stormwater management and landscaping. The Project is designed to achieve LEED Gold design standards. During excavation and construction, erosion on the Property will be controlled in accordance with District of Columbia law. The Project is designed in compliance with the Energy Conservation requirements of the District of Columbia Building Code. The Project designed to achieve high levels of environmental performance as evidenced by its satisfaction of the LEED Gold design standards and will also exceed minimum GAR requirements by at least 0.1. The Project will include bioretention, tree and other plantings, and rooftop solar in furtherance of sustainability objectives. The Project's delivery of high-quality environmental design as well as usable outdoor spaces is a net improvement to the existing storage yards use.

(Ex. 3.)

INCLUDES PUBLIC BENEFITS AND PROJECT AMENITIES THAT ARE NOT INCONSISTENT WITH THE COMPREHENSIVE PLAN, SMALL AREA PLAN, OR OTHER ADOPTED PUBLIC POLICIES RELATED TO THE PROPERTY (SUBTITLE X § 304.4(c))

41. The Applicant provided evidence that the Application complies with Subtitle X § 304.4(c). The Applicant also provided evidence that the Project's public benefits and project amenities are not inconsistent with the Comprehensive Plan or other public policies and such benefits and amenities satisfy the criteria of Subtitle X § 305. As discussed in detail below, the proffered benefits exceed what could result from a matter-of-right development, are tangible, measurable, and able to be delivered prior to issuance of the certificate of occupancy, and benefit either the immediate neighborhood or address District-wide priorities. *Id.* §§ 305.2, 305.3. The majority of the benefits accrue to the benefit of the area of ANC 5F, the ANC in which the Project is located. *Id.* § 305.4. (Ex. 3, 13, and 38.)

42. The Application, as amended, enumerated the following benefits and amenities, superior to a matter-of-right project, organized under the categories defined by Subtitle X § 305.5:
- (a) Superior Urban Design and Architecture (*Id.* § 305.5(a)). The Project's high-quality design carefully echoes and respects the traditional rowhome design qualities of the existing residential development in the surrounding neighborhood to create a natural extension of the residential community in which the Property is located.
 - (b) Superior Landscaping and Preservation of Open Spaces (*Id.* § 305.5(a)). The Project features richly planted gardens on the north side of the Property and includes extensive tree and other landscape plantings throughout the site and incorporates ample open space for residents.
 - (c) Site Planning and Efficient Land Utilization (*Id.* § 305.5(c)). The Project introduces residential uses, including affordable housing, on a currently underutilized parcel within the center of the square that is walkable to transit and proximate to the District's commercial core. The Project leverages the access provided by 1st Street, N.E. and the existing alley network while maximizing green space and preserving privacy for both the new residents of the Project and the existing rowhomes on the north side of R Street, N.E.
 - (d) New Housing (*Id.* § 305.5(f)). The Project creates 27 units of new for-sale housing, including 15 units with three or more bedrooms.
 - (e) Affordable Housing (*Id.* § 305.5 (g)). The Project sets aside 10.75% of the residential GFA, totaling three (3) units, all of which will be reserved at 60% of MFI, below the maximum 80% of MFI otherwise applicable to for-sale IZ units.
 - (f) Environmental and Sustainability Benefits (*Id.* § 305.5(k)). The Project is designed to meet environmental design standards at the LEED Gold level, and the Project will achieve a GAR that exceeds the minimum 0.4 requirement by at least 0.1. The Project includes bioretention, extensive tree and landscape plantings, and rooftop solar.
 - (g) Non-Mitigation Transportation Improvements (*Id.* § 305.5(o)). The Applicant will implement calming measures, subject to DDOT approval, as follows:
 - (i) Install two (2) TAPCO speed bump assemblies in the east-west public alley abutting the Property with a gap of at least two (2) feet provided between the speed bumps and with no speed bump placed directly in front of an existing or future driveway;
- (Ex. 3, 13, and 38.)

SATISFACTION OF THE PUD ELIGIBILITY STANDARDS

43. The Applicant provided evidence that the Application complies with the purposes of a PUD set forth in Subtitle X § 300.1:
- (a) Superior to matter-of-right development. The Project is superior to a matter-of-right development because it provides more housing and affordable housing than what could be constructed on the Property without a PUD and related Zoning Map Amendment. Specifically, the existing RF-1 zoning does not allow multifamily residential use, would not allow as many units as the Project proposes, and imposes greater site constraints with respect to setbacks and lot occupancy that would foreclose the proposed development configuration, which allows the Project to

balance achieving a moderate level of density without requiring excessive height in order to do so. Further, the amount of housing included in the Project and the amount of affordable housing in the Project exceed the amount and depth of affordability that would be required in a matter-of-right development pursuant to the Zoning Regulations' IZ requirements. The Project's construction supports a significant package of benefits and amenities as outlined above, which exceed what would be provided in any matter-of-right development. Finally, the Project is undergoing a public review process with opportunities for neighbor, community group, and public agency participation. Those opportunities would not exist for a matter-of-right development of the Property.

- (b) Protects and advances the public health, safety, welfare, and convenience. The Project protects and advances the public policies underlying the Zoning Regulations by redeveloping currently underutilized vacant land with housing and affordable housing in a centrally-located, transit-rich area of the District. The development of underutilized property with new housing and affordable housing advances the public health, safety, welfare, and convenience goals of the District by converting an underutilized lot into a more productive and context-appropriate use.
- (c) Does not circumvent the intent and purposes of the Zoning Regulations. The Project and proposed Zoning Map Amendment to the RA-2 zone are consistent with the purposes of the Zoning Regulations. Broadly, the RA-2 zone is intended to permit moderate density residential development. 11-F DCMR § 101.5. The RA-2 zone is appropriate for the Property, which is located within an existing moderate density residential neighborhood that is also walking distance to a Metrorail station and proximate to the District's commercial core. The RA-2 zone allows for a broad mix of residential uses and thus is suitable for the proposed multifamily residential use. The Project's proposed use, height and density are consistent with the character of the RA-2 zone, while also maintaining the intensity of development reflected in the existing surrounding rowhome community. The Project's development of currently underutilized land commensurate with the RA-2 standards further encourages the stability of the neighborhood and strengthens the surrounding Eckington area more broadly.

(Ex. 3.)

- 44. The Application included a requested waiver from the minimum area requirements under Subtitle X § 301.2, pursuant to which the Commission has the authority to waive up to 50% of the area requirement for applications in the RA-2 zone if the Commission finds that the development: (i) "is of exceptional merit and is in the best interests of the District of Columbia or the country"; and (ii) also meets one of three possible criteria, which include, "[i]f 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." The minimum area included in a PUD in the RA-2 Zone District must be no less than one (1) acre, and all such area must be contiguous. Here, the Property constitutes approximately 0.52 acres (22,940 square feet), all of which is contiguous. The Applicant provided evidence that the Project is of exceptional merit and in the best interests of the District because it will transform a fallow, underutilized site into

a vibrant residential development that has been carefully scaled to be compatible with the existing residential community. The Project provides infill residential development that will be a natural extension of, and will help to strengthen, the surrounding rowhome neighborhood, eliminating the existing storage yards and parking lots that are inconsistent with the adjacent residential uses and detract from the overall quality of this area of Eckington. The Project will add to the District's supply of housing for families and provides affordable housing well above the minimum required under IZ, creating affordable homeownership opportunities for three households. The Property is located outside the Central Employment Area, and the Project will be devoted entirely to residential use, as required under Subtitle X § 301.2.

IV. RESPONSES TO THE APPLICATION

OP

45. Pursuant to Subtitle Z §§ 400.5 and 405.3, on January 29, 2024 OP filed a report recommending that the Commission set the Application down for a public hearing. (Ex. 12, the "OP Setdown Report"). The OP Setdown Report stated that the Project would be not inconsistent with the maps and policies of the Comprehensive Plan and, specifically, would not be inconsistent with the Property's Neighborhood Conservation Area designation on the GPM and Local Public Facilities designation on the FLUM. OP stated that it did not appear that Property had been previously used for local public uses and that the subject site was given its designation only because it was adjacent to the educational campus to the north. The OP Setdown Report also included the following comments:
- (a) OP was supportive of the Project's design direction but would work with the Applicant to discuss what changes to the design might be appropriate, which the Applicant incorporated into the updated plans submitted with its prehearing submission (Ex. 13 and 13A);
 - (b) OP requested that the Applicant examine providing rooftop terraces and solar panels on the Project's eastern units, which the Applicant incorporated into the updated plans submitted with its prehearing submission (Ex. 13 and 13A);
 - (c) OP requested that the Applicant submit a section of the Project that includes the adjacent rowhouses, which the Applicant incorporated into the updated plans submitted with its prehearing submission (Ex. 13 and 13A);
 - (d) OP stated that it would review the requested IZ flexibility further and provide a recommendation prior to the hearing.
46. Pursuant to Subtitle Z §§ 405.6 and 405.7, on July 5, 2024 OP filed a hearing report recommending that the Commission approve the Application. (Ex. 24, the "OP Hearing Report").
- (a) The OP Hearing Report summarized OP's comments on the Application and the Applicant's responses.
 - (b) The OP Hearing Report recommended approval of the requested flexibility from IZ unit location requirements and acknowledged the Applicant's withdrawal of the previously requested flexibility from the tenure type requirements for IZ unit. OP also recommended approval of the requested penthouse single enclosure

requirements for the proposed rooftop solar pergolas and the Applicant's requested design flexibility, which OP requested be further tailored to the Project.

- (c) The OP Hearing Report stated that OP supported the Project's site plan, massing, and architecture, including the design changes incorporated in response to OP's and the Commission's feedback.
 - (d) The OP Hearing Report re-summarized OP's analysis of the Project under the various Citywide and Area Elements of the Comprehensive Plan and restated that the Project is not inconsistent with the Comprehensive Plan.
47. At the July 18, 2024 public hearing, OP testified in support of the Application and summarized its comments in its prior reports. (Hearing Tr. at pp. 38-39.)
48. On July 26, OP submitted a supplemental report stating that OP finds the Applicant's corrected and updated IZ proffer acceptable. (Ex. 40.)

DDOT

49. On July 8, 2024, DDOT filed a report (Ex. 27) expressing no objection to the Application subject to the Applicant implementing the TDM measures set forth in the Applicant's Transportation Statement (Ex. 20A) and implementation of the traffic calming measures proposed for the public alley and surrounding transportation network.
50. At the July 18, 2024 public hearing, DDOT testified in support of the Application and confirmed the Applicant's coordination with DDOT on the Project's transportation impacts and agreement on the proposed TDM plan and traffic calming measures. (Hearing Tr. at p. 37-38.)

OTHER DISTRICT AGENCIES

51. The OP Hearing Report stated that OP had referred the Application to relevant government agencies for comment and had convened an interagency meeting with Applicant, which was attended by DHCD, DOEE, FEMS, DC Water, DPR, and DDOT. No other agency comments were submitted in OP's report. (Ex. 25.)
52. The Office of the Attorney General Equitable Land Use Section ("OAG") submitted comments on the Application in a letter dated July 8, 2024 (Ex. 28 and 28A) and also testified at the July 18, 2024 public hearing (Ex. 32; Hearing Tr. at p. 28-34). OAG's written comments and testimony stated that OAG supported the Application based on the Applicant's significant affordable housing proffer and elaborated on its support based on provisions of the Comprehensive Plan.

ANC

53. Pursuant to Subtitle Z § 406.2, on July 17, 2024, ANC 5F submitted a report (Ex. 33, "ANC Report") stating that at its properly noticed public meeting on July 15, 2024, at which a quorum was present, the ANC voted 5-1-1 in support of the Application. ANC 5F stated

that it supports the Application and summarized the submissions to the PUD record and the Applicant's outreach with the ANC.

ORGANIZATIONS AND INDIVIDUALS IN SUPPORT

54. On October 23, 2023, the Eckington Civic Association submitted a letter stating that it supported the Project and its "efforts to responsibly expand the housing supply." (Ex. 11.)
55. The following nearby residents of the Property submitted letters in support of the Application: Michelle Keegan, Manjula Gunasekera, Carey Campbell, Kagan Whitten, Richard D'Carlo, Michael Sessa, and Will Pendergast. (Ex. 21, 23, 25, 26, 29, 31, and 35)

ORGANIZATIONS AND INDIVIDUALS IN OPPOSITION

56. No organizations or persons filed written comments in the record or testified in opposition at the July 18, 2024 public hearing.

OTHER ORGANIZATIONS AND INDIVIDUALS

57. No other organizations or persons filed written comments in the record or testified at the July 18, 2024 public hearing.

NCPC

58. The Commission referred the Application to NCPC on July 25, 2024, for review and comment. [. . .]

CONCLUSIONS OF LAW

AUTHORITY

1. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve: (a) a PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z; (b) a PUD-related amendment to the Zoning Map pursuant to Subtitle X § 303.12, Subtitle X, Chapter 5 and Subtitle Z; (c) related zoning flexibility pursuant to Subtitle X §§ 303.1 and 303.13.

STANDARD OF REVIEW FOR APPROVAL OF A PUD AND RELATED ZONING MAP AMENDMENT

2. Public Review. Pursuant to Subtitle X § 300.5, "A comprehensive public review by the Zoning Commission of a PUD is required in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits."
3. Land Area and Contiguity. Pursuant to Subtitle X §§ 301.1 and 301.5, the minimum area for a PUD in the applicable RA-2 zone is one (1) acre, all of which must "be contiguous, except that the property may be separated only by public streets, alleys, or rights-of-way."

4. PUD Purpose. Pursuant to Subtitle X §§ 300.1 and 300.2, 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 building superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits and project amenities; (c) protects and advances the public health, safety, welfare, and convenience; and (d) does not circumvent the intent and purposes of the Zoning Regulations.²
5. Comprehensive Plan. Pursuant to Subtitle X §§ 300.1, 300.2, and 304.4(a), the Commission must find that the PUD “is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.” The Commission is directed to review the Application against the Comprehensive Plan “as a whole.”³ The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the Comprehensive Plan’s purposes are:
 - (a) To define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;
 - (b) To guide executive and legislative decisions on matters affecting the District and its citizens;
 - (c) To promote economic growth and jobs for District residents;
 - (d) To guide private and public development in order to achieve District and community goals;
 - (e) To maintain and enhance the natural and architectural assets of the District; and
 - (f) To assist in conservation, stabilization, and improvement of each neighborhood and community in the District.

² The RA zones provide for residential areas suitable for multiple dwelling unit development and supporting uses. The RA zones are intended to: permit flexibility by allowing all types of residential development; promote stable residential areas while permitting a variety of types of urban residential neighborhoods; promote a walkable living environment; allow limited non-residential uses that are compatible with adjoining residential uses; encourage compatibility between the location of new buildings or construction and the existing neighborhood; and ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. 11-F DCMR § 101.2. In addition, the purposes of the RA-1 through RA-5 zones are to: permit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for these districts; and permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones. *Id.* § 101.3. More specifically, the RA-2 zone provides for areas developed predominantly with moderate-density residential development. *Id.* § 101.5.

³ *Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016) (“The Comprehensive Plan is a broad framework intended to guide the future land use planning decisions for the District. Even 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*. The Comprehensive Plan reflects numerous occasionally competing policies and goals and except where specifically provided, the Plan is not binding. Thus, the Commission may balance competing priorities in determining whether a PUD is consistent with the Comprehensive Plan as a whole. If the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.”) (internal citations and quotations omitted.)

6. Impacts. Pursuant to Subtitle X § 304.4(b), the Commission must find the Application “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.”
7. Benefits and Amenities. Pursuant to Subtitle X § 304.4(c), the Commission must find the PUD “[i]ncludes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.” Pursuant to Subtitle X §§ 305.2, 305.3, 305.4, and 305.12, the PUD’s benefits and amenities must “benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions,” in majority part “relate to the geographic area of the Advisory Neighborhood Commission in which the application is proposed,” and “meet the following criteria: (a) Benefits shall be tangible and quantifiable items; (b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) Benefits may primarily benefit a particular neighborhood or area of the city or service a critical city-wide need.” Moreover, a PUD “may qualify for approval by being particularly strong in only one (1) or a few categories [of public benefits] but must be acceptable in all proffered categories and superior in many.”
8. PUD Balancing Test. Pursuant to Subtitle X § 304.3, 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 effects according to the specific circumstances of the case.” Pursuant to Subtitle X §§ 303.11 and 303.12: “The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission”, and “[a] PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD.”
9. Evidentiary and Evaluative Standards. Pursuant to Subtitle X § 308.6, “the applicant shall carry the burden of justifying” the Application according to the applicable standards. Moreover, “the Commission must address each material contested issue of fact.”⁴

SATISFACTION OF PUD ELIGIBILITY STANDARDS

10. Land Area and Contiguity. The minimum area included in a PUD in the RA-2 Zone District must be no less than one (1) acre, and all such area must be contiguous. The Property constitutes approximately 0.52 acres (22,940 square feet), all of which is contiguous. The Applicant requested a waiver from the minimum area requirements pursuant to Subtitle X § 301.2, under which the Commission has the authority to waive up to 50% of the area requirement for applications in the RA-2 zone if the Commission finds that the development: (i) “is of exceptional merit and is in the best interests of the District of Columbia or the country”; and (ii) also meets one of three possible criteria, which include,

⁴ *Barry Farm Tenants and Allies Ass’n. v. D.C. Zoning Comm’n.*, 182 A.3d 1214, 1224 (D.C. 2018) (citations omitted).

“[i]f 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.” The Commission concludes that the Project is of exceptional merit and in the best interests of the District because it will transform a fallow, underutilized site into a vibrant residential development that has been thoughtfully scaled to be compatible with the existing residential community. The Project provides infill residential development that will be a natural extension of, and will help to strengthen, the surrounding rowhome neighborhood, eliminating the existing storage yards and parking lots that are inconsistent with the adjacent residential uses and detract from the overall quality of this area of Eckington. The Project will add to the District’s supply of housing for families and provides affordable housing well above the minimum required under IZ, creating affordable homeownership opportunities for three households. The Property is located outside the Central Employment Area, and the Project will be devoted entirely to residential use, as required under Subtitle X § 301.2. Accordingly, the Commission concludes that the Application satisfies the contiguity requirements and waives the minimum area requirement of Subtitle X §§ 301.1 and 301.5 for a PUD. (FF ¶¶ 25 and 44.)

11. Public Review. Based on the July 18, 2024 public hearing (*see* Hearing Tr.) and the Commission’s review of the record, the Commission undertook “[a] comprehensive public review . . . of [the Application] . . . to evaluate the flexibility or incentives requested in proportion to the proposed public benefits” in satisfaction of Subtitle X § 300.5.
12. PUD Purpose. The Commission concludes that the Project satisfies the purposes of a PUD:
 - (a) The Project is superior to a matter-of-right development because it provides more housing and affordable housing than what could be constructed on the Property without a PUD and related Zoning Map Amendment. The existing RF-1 zoning does not allow multifamily residential use and imposes greater site constraints with respect to setbacks and lot occupancy that would foreclose the proposed development configuration, which allows the Project to balance achieving a moderate level of density without requiring excessive height in order to do so. The amount of housing and affordable housing included in the Project exceed the amount and depth of affordability that would be required in a matter-of-right development pursuant to the Zoning Regulations’ IZ requirements. The Project’s construction supports a significant package of benefits and amenities as outlined above, which exceed what would be provided in any matter-of-right development. Finally, the Project is undergoing a public review process with opportunities for neighbor, community group, and public agency participation. Those opportunities would not exist for a matter-of-right development of the Property. (FF ¶ 43(a).)
 - (b) The Project offers a commendable number and quality of meaningful public benefits and project amenities. The Project’s high-quality design echoes and respects the traditional rowhome design qualities of the existing residential development in the surrounding neighborhood to create a natural extension of the residential community in which the Property is located, all of which achieves a level of urban design and architecture superior to a matter-of-right development. The Project also features significant landscape plantings on the north side of the Property and includes extensive tree and other landscape plantings throughout the

site, all of which constitute superior landscaping and open space. The Project's site planning and efficient land utilization also constitute a public benefit by introducing residential uses, including affordable housing, on a currently underutilized parcel within the center of the square that is walkable to transit and proximate to the District's commercial core. The Project leverages the access provided by 1st Street, N.E. and the existing alley network while maximizing green space and preserving privacy for both the new residents of the Project and the existing rowhomes on the north side of R Street, N.E. In addition to these design features, the Applicant has proffered: to provide a minimum of 15 units with three or more bedrooms; to set aside a minimum of 10.75% of the residential GFA for IZ, all reserved at 60% of MFI, below the maximum of 80% of MFI otherwise applicable to for-sale IZ units; to meet LEED Gold design standards, achieve a GAR that exceeds the minimum 0.4 requirement by at least 0.1, and to incorporate sustainable design features such as bioretention, extensive tree and landscape plantings, and rooftop solar; to implement traffic calming measures in the adjacent public alley and surrounding transportation network, as requested by the community and agreed upon with DDOT. (FF ¶ 42.)

- (c) The Project protects and advances the public health, safety, welfare, and convenience. The Project redevelops currently underutilized vacant land with housing and affordable housing in a centrally-located, transit-rich area of the District. (FF ¶ 43(b).)
- (d) The Project does not circumvent the intent or purposes of the Zoning Regulations. The Project and proposed Zoning Map Amendment to the RA-2 zone are consistent with the purposes of the Zoning Regulations. The RA-2 zone is intended to permit moderate density residential development, 11-F DCMR § 101.5, and the RA-2 zone is appropriate for the Property, which is located within an existing moderate density residential neighborhood that is also walking distance to a Metrorail station and proximate to the District's commercial core. The RA-2 zone allows for a broad mix of residential uses and thus is suitable for the proposed multifamily residential use. The Project's proposed use, height and density are consistent with the character of the RA-2 zone, while also maintaining the intensity of development reflected in the existing surrounding rowhome community. The Project's development of currently underutilized land commensurate with the RA-2 standards further encourages the stability of the neighborhood and strengthens the surrounding Eckington area more broadly. (FF ¶ 43(c).)

CONSISTENCY WITH THE COMPREHENSIVE PLAN AND OTHER ADOPTED PUBLIC POLICIES RELATED TO THE PROPERTY (SUBTITLE X § 304.4(a))

- 13. The Commission concludes that pursuant to Subtitle X §§ 300.1, 300.2, and 304.4(a), the Application is not inconsistent with the Comprehensive Plan and with other public policies and active programs, when the Comprehensive Plan is considered as a whole, for the following reasons:
 - (a) FLUM. The Project is not inconsistent with the FLUM's Local Public Facility designation for the Property. There is no evidence that the Property has ever been owned or used by the District of Columbia for local public facilities purposes. The

same designation is also applied to the existing residential uses on the east side of the Property. Rather, the Property's current FLUM designation appears to be due to all of the land area to the north of the Property being devoted to District schools and recreational facilities. Through the PUD process, the Applicant proposes to rezone the Property to the RA-2 Zone District, which is specifically referred to in the Framework Element as being consistent with the Moderate Density Residential FLUM designation that surrounds the Property, consistent with the Framework Element guidance for the Local Public Facility designation. The density of the Project is well within the range that is contemplated in an RA-2 PUD and, indeed, is only slightly above RA-2 matter-of-right density excluding the IZ bonus density. Moreover, the height and massing of the Project is compatible with the existing residential structures in the vicinity, and the Project is roughly in line with the density permitted under RF-1 zoning parameters, which equates to 1.8 FAR. (FF ¶ 38(a).)

- (b) GPM. The Project is not inconsistent with the Property's Neighborhood Conservation Area designation on the GPM. The Project is compatible with the range of land uses and building types found in the surrounding area and with the scale and character of the neighborhood. The prevailing character and scale of the area surrounding the Property is residential with rowhouses and scattered multi-family apartment buildings that generally contain 2-3 stories. Consistent with the established character of the area, the Project has been designed to function as a series of attached townhouses. The proposed height and density of the Project are generally consistent with that which is found in a typical moderate density rowhouse neighborhood. (FF ¶ 38(b).)
- (c) Land Use Element. The Project is not inconsistent with the Land Use Element, which is the Element that should be given the greatest weight. 10-A DCMR § 300.3. The Project constitutes infill development, revitalizing currently underutilized land in a central and transit-rich location. The Project contributes to the area's housing and affordable housing stock, including the need for larger, family-sized units, and promotes sustainability objectives as called for in the Land Use Element. (FF ¶ 38(d).)
- (d) Other District-Wide Elements. The Application is also not inconsistent with other District-wide Elements, including the Transportation, Housing, Environmental Protection, and Urban Design Elements. The Commission recognizes that the Project may result in modest inconsistencies with individual policy objectives, but overall the Project advances the objectives of the other Elements, a conclusion in which OP concurs and to which the Commission gives great weight. (FF ¶¶ 38(e)-(h).)
- (e) Mid-City Area Element. The Application is also consistent with the Mid-City Area Element. The Project will redevelop an underutilized site near transit with a residential development containing 27 dwelling units and designed to reinforce the prevailing row house character of the surrounding context. The provision of new for-sale housing and affordable housing will help maintain Mid-City as a socially and economically diverse area within the District. (FF ¶ 38(h).)
- (f) Racial Equity Analysis. The Application is not inconsistent with the Comprehensive Plan when viewed through the lens of racial equity. The Project

redevelops a currently underutilized site with new for-sale housing, including family-sized housing, and provides more IZ housing than is otherwise required under IZ and at deeper affordability levels than otherwise required. The Project's new and affordable housing will create new homeownership opportunities, and the Project and Application proffer other public benefits as wells, including building design and site planning that is superior to what is required as a matter of right project and will complement the existing residential development in surrounding the Property; significant sustainability benefits including LEED Gold design and GAR that exceeds the minimum required 0.4 GAR by at least 0.1; and traffic calming measures implemented in the surrounding transportation network to reduce dangerous traffic in the adjacent public alley and improve traffic circulation in the neighborhood. The Project provides new and affordable housing in a transit-accessible location that is walkable to the NoMa/Gallaudet University Metrorail station. Furthermore, the Project is being pursued through the PUD process, which includes significant outreach with the surrounding community, including the Eckington Civic Association, neighboring residents, and ANC 5F, allowing community and neighbor feedback to be incorporated into the Project design and configuration. (FF ¶¶ 38(c).)

- (g) Mayor's Housing Order. The Application is not inconsistent with the Mayor's Housing Order to add units and affordable units. The Commission concludes there is no inconsistency with such Order and the Project's delivery of 27 new for-sale housing units, including IZ units at affordability levels below what is otherwise required by IZ. (FF ¶ 39.)
- (h) Benefits and Amenities. As discussed above, the Project's benefits and amenities are also consistent with the Comprehensive Plan and Mayor's Housing Order. The Comprehensive Plan and Mayor's Housing Order identify new, family-sized, and affordable housing, and the Project delivers those items as benefits. The Project's architecture and site planning benefits are also consistent with the relevant planning guidance. The Project's proposed landscaping and sustainability features and the proffered traffic calming improvements are also all consistent with the applicable planning and policy documents. (FF ¶¶ 26, 42.)
- (i) Overall. The Commission concludes that the Application is not inconsistent with the Comprehensive Plan, including the GPM and FLUM designations for the Property, as discussed above.

PROJECT IMPACTS – FAVORABLE, MITIGATED, OR ACCEPTABLE (SUBTITLE X § 304.4(b))

- 14. The Commission concludes that for the reasons given below and pursuant to Subtitle X § 304.4(b), the Application does not result in any unacceptable impacts on the surrounding area or District services or facilities that cannot be mitigated or that are not acceptable given the Project's benefits and amenities:
 - (a) Zoning and Land Use Impacts. The Commission concludes that the Project has no unacceptable zoning or land use impacts on the surrounding area. The Project will revitalize the Property and activate the site with a well-designed and appropriately scaled residential development that will fill in an existing gap in the surrounding rowhome neighborhood. The Project utilizes the access provided by 1st Street, N.E.

and the existing alley network and has been carefully arranged to function as rowhomes with an extensive landscaped area. The proposed Zoning Map Amendment to the RA-2 zone is consistent with the Property's Local Public Facilities designation on the FLUM, which provides that land use changes should reflect the density of the surrounding area, in this case a rowhome community designated for Moderate Density Residential on the FLUM. Furthermore, the Project does not maximize the permitted height and density and instead utilizes the proposed zoning to achieve a more efficient site plan to support a height and density that are congruent with that of typical rowhome development and the two- and three-story homes that constitute the surrounding development. Residential use is appropriate for the site given the location and neighborhood context, and the rowhome-like scale and configuration of the development and traditional material selections, consisting primarily of natural-tone brick. It also accomplishes objectives of the GPM designation as a Neighborhood Conservation Area, which encourages infill housing consistent with the existing scale and character of the area. (FF ¶ 40(a).)

- (b) Housing Market Impacts. The Commission concludes that the Project's addition of new housing is a favorable impact by adding new, high-quality family-sized housing units to an existing stabilized neighborhood that is walkable to transit and proximate to the District's commercial core. The addition of housing in this location and replacement of the existing storage yards and parking lots with a more appropriate use will help to fill in the existing gap in the neighborhood and further stabilize the surrounding residential community. The Project's provision of larger units, including 15 units with three or more bedrooms, serves the important goal of better meeting the need for family-sized units in this area and in the District as a whole. The Project's inclusion of affordable housing in excess of the minimum required under the IZ program and at deeper affordability levels than otherwise required for as favorable impacts because it helps further the objective that the Eckington neighborhood continue to exist as an inclusive, mixed-income community. (FF ¶ 40(b).)
- (c) Construction-Period Impacts. The Commission concludes that any potential construction-related impacts that the Project may generate on the surrounding area during the development period are capable of being mitigated. The Commission credits the Applicant's statement that it has experience successfully completing construction projects in infill locations without disturbing neighbors and that the Applicant will work closely with abutting property owners and residents to manage and mitigate any construction impacts associated with the Project's development and will maintain regular communication and coordination throughout the Project's construction. (FF ¶ 40(c).)
- (d) Transportation. The Commission concludes that the Project will not have any unacceptable impacts on the transportation facilities that surround the Property and that, to the extent there are any potential transportation impacts, such impacts are capable of being mitigated. The Project's proposed traffic calming measures within the east-west public alley and surrounding transportation network will help address incidents of unsafe vehicle speeds that have occurred in the alley and pose a threat to safety and general disruption for residents utilizing the alley. The Project's vehicular traffic impacts will be mitigated by nearby transit options and will be

further mitigated by the Applicant's TDM plan. The Property is well-served by transit and vehicular infrastructure with a Metrorail station approximately 0.5 mile walking distance from the Property and multiple Metrobus lines nearby. The Project's favorable pedestrian, bicycle, and transit access help mitigate any expected traffic concerns. The Project contains 13 parking spaces to accommodate the parking demand of residents without over-parking the site given its location and proximity to transit options. Bicycle usage is integrated into the Project design, with long-term spaces provided throughout the building and short-term spaces provided in a convenient location at the west entrance to the pedestrian walkway and gardens. (FF ¶¶ 40(f), 49-50.)

- (e) Public Facilities and/or District Services Impacts. The Commission concludes that the Project will not result in any unacceptable negative impacts to public facilities and infrastructure or District services. The Project was reviewed by numerous District agencies — specifically, OP, DDOT, the Metropolitan Police Department, DHCD, the Washington Metropolitan Area Transit Authority, FEMS, DOEE, DC Water, DPR, the Department of Public Works, DC Public Library, and DC Public Schools — and no agency indicated any adverse impacts on public infrastructure or services. (FF ¶¶ 40(i) and 51.)
- (f) Overall. In summary, the Commission concludes that, taken as a whole, the Project is unlikely to result in impacts and any resulting impacts are fully capable of being mitigated and none are unacceptable in light of the proposed mitigation, particularly when considered with the benefits and amenities proffered by the Project.

BENEFITS AND AMENITIES (SUBTITLE X § 304.4(c))

- 15. The Commission concludes that for the reasons given below the Project's benefits and amenities satisfy the relevant criteria:
 - (a) Specific Benefits and Amenities. Each of the Project's benefits and amenities is specifically described. (FF ¶ 42.)
 - (b) Not Inconsistent with the Comprehensive Plan. As described above, the Application is not inconsistent with the Comprehensive Plan nor are the benefits and amenities inconsistent with the Comprehensive Plan or other public policies applicable to the Property. (FF ¶ 38.)
 - (c) Relative to Matter-of-Right Development. The Project's benefits are superior to a matter-of-right development of the Property. The Project provides more affordable units, at deeper levels of affordability, than would be possible or required as a matter of right. Likewise, the Project's sustainability features are superior to any matter-of-right development, and the Project's other benefits would not be possible or required as part of a matter-of-right development. (FF ¶¶ 42 and 43(a).)
 - (d) Relate to Geographic Area of ANC. The Project's benefits relate primarily to the area of ANC 5F. (FF ¶ 42.)
 - (e) Tangible and Quantifiable. Each of the Project's benefits is tangible and/or quantifiable. (*Id.*)
 - (f) Measurable and Satisfied Prior to Certificate of Occupancy. Each of the Project's benefits is capable of being delivered or arranged prior to the issuance of a full Certificate of Occupancy for the proposed multifamily residential use. (*Id.*)

- (g) Primarily Benefiting Neighborhood or Serving a Critical City-Wide Need. The Project's benefits primarily benefit the neighborhood around the Property (e.g., by mitigating house prices and by providing a sustainable building), but some benefits serve a critical city-wide need (e.g., affordable housing open to all residents of the District). (*Id.*)
- (h) Acceptable in All and Superior in Many. The Project's design, landscaping, site planning, affordable housing, sustainability, and other benefits are superior. All of the Project's benefits are acceptable. (*Id.*)
- (i) Overall. In sum, the Commission concludes that the Project's benefits and amenities satisfy the applicable criteria.

PUD BALANCING (SUBTITLE X §§ 304.3, 308.6)

16. The Commission concludes that the requested zoning flexibility from the penthouse single enclosure requirements of Subtitle C § 1503.1 to permit separate solar pergolas for each of the rooftops and from the IZ unit location requirements of Subtitle C § 1005.5 to allow the IZ units to be located towards the east side of the Property, as well as the requested design flexibility, are balanced by the proffered benefits and amenities resulting from the Project, including, superior urban design, architecture, and landscaping, site planning and efficient land utilization, housing, affordable housing, environmental and sustainable benefits, and non-mitigation transportation improvements not required for a matter-of-right development. (FF ¶ 42.)
17. The Commission concludes that the benefits more than outweigh the requested flexibility and other development incentives, which are relatively modest in this case, and the potential adverse effects of the Project that are not otherwise favorable or adequately mitigated. (*Id.*)
18. The Commission concludes that the Applicant has carried its burden of justifying the request set forth in the Application by providing substantial evidence, reasonably acceptable, as to each element of the Commission's review of the Application as set forth above. The Commission concludes that the plans and drawings filed by the Applicant are expertly prepared and highly credible. (FF ¶¶ 27, 30 and 31.) The Commission also evaluated the testimony and written evidence of the Applicant's expert witnesses and finds them all credible. (FF ¶¶ 29 and 31.)
19. In addition, the Commission has made findings on "each material contested issue of fact." In particular, the Commission notes that it is not its function to consider all the possible alternatives to development of the Property, but rather to evaluate whether the PUD satisfies the applicable standards for the Application (including whether the Project "results in unacceptable project impacts on the surrounding area").⁵ In this case, there were no contested issues and no written comments or testimony submitted in opposition to the Project. Nevertheless, the Commission has evaluated the Project's potential impacts and

⁵ See *Spring Valley-Wesley Heights Citizens Ass'n v. District of Columbia Zoning Comm'n*, 88 A.3d 697, 715 (D.C. 2013) ("It was not the function of the Commission to consider all the possible alternatives to development of the East Campus; its only task was to evaluate whether the proposed site will become objectionable to neighboring properties").

the interpretation and application of various provisions of the Comprehensive Plan and Zoning Regulations.

GREAT WEIGHT TO RECOMMENDATIONS OF OP

20. The Commission is required to give “great weight” to the recommendation of OP pursuant to Section 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. *See Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).
21. The Commission finds OP’s detailed analysis of the Application, its overall conclusion that the Application satisfied the PUD requirements and is not inconsistent with the Comprehensive Plan, and its ultimate recommendation to approve the Application persuasive and concurs with OP’s recommendation. (FF ¶¶ 45-48.)

GREAT WEIGHT TO THE WRITTEN REPORT OF ANC 5F

22. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC 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, Section 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass’n*, 141 A.3d at 1087. The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).
23. The ANC 5F Report stated that ANC 5F voted to support the Application. The Commission finds the ANC’s support for the Project persuasive and agrees that the Application merits approval. (FF ¶¶ 53; Ex. 33.)

DECISION

In consideration of 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 for:

- (a) A consolidated PUD and related Zoning Map Amendment to the RA-2 Zone District;
- (b) Zoning flexibility from the penthouse single enclosure requirements of Subtitle C § 1503.1 and the IZ unit location requirements of Subtitle C § 1005.5; and
- (c) Such other design flexibility as is set forth in the Conditions hereof.

A. **Project Development**

1. The Project shall be built in accordance with the plans and elevations dated April 5, 2024 (Ex. 13A), as updated by the plans dated July 18, 2024 (Ex. 34) (collectively, the “**Final Plans**”), and as modified by the guidelines, conditions, and standards herein.
2. The Property shall be developed with a residential building with 27 units and having a height of approximately 34 feet and FAR of approximately 1.86.
3. The Project shall be developed pursuant to the RA-2 Zone District, as permitted through a PUD, except as set forth herein or modified hereby as shown in the Final Plans, and with flexibility from the penthouse single enclosure requirements of Subtitle C § 1503.1 and the IZ unit location requirements of Subtitle C § 1005.5 in order to locate the IZ units on the east side of the Project.
4. The Project shall provide a minimum of fifteen (15) units with three or more bedrooms.
5. The Project shall have design flexibility as follows:
 - a. Interior Components. Interior partitions and configurations may vary upon final construction drawings so long as they do not modify the exterior configuration or appearance of the building.
 - b. Exterior Materials – Color. 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 shown on the plans approved by the order.
 - c. Exterior Details – Location and Dimension. 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 include, but are not limited to, doorways, canopies, railings, and skylights.
 - d. 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.
 - e. Signage. To vary the final design of the signage for the Project, subject to full compliance with applicable signage restrictions under the D.C. Building Code and consistent with the indicated dimensions.
 - f. Residential Units. The Applicant is granted flexibility from Subtitle C § 1005.5 to shift the distribution and locations of the IZ units as the floor plans are refined, so long as their location and distribution continues to meet

the requirements of Subtitle C, Chapter 10 of the Zoning Regulations, except for the flexibility from Subtitle C § 1005.5 granted by the Zoning Commission.

- g. Sustainable Features. The Applicant is granted flexibility to vary the features, means and methods of achieving the proffered GAR and LEED Gold standards.

B. Public Benefits

1. **For the life of the Project,** the Applicant shall set aside no less than approximately 10.75% of the residential gross floor area as affordable housing.
2. **For the life of the Project,** the Applicant shall reserve two (2) three-bedroom units at no more than 60% MFI and one (1) two-bedroom plus den unit at no more than 60% MFI.
3. **For the life of the Project,** the affordable housing for the Project shall be administered by the DC Department of Housing and Community Development through the IZ program. The affordable housing shall comply with all development standards, tenancy regulations and implementation requirements for IZ units as set forth in DCMR Chapter 10 of Title 11-C and Chapter 22 of Title 14.
4. **For the life of the Project,** the Inclusionary Zoning units in the Project shall be in accordance with the following chart, subject to the flexibility noted herein: [*see chart below*]

Residential Unit Type	Residential GFA/% of Total	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	51,796 sf		Life of Project	For-Sale	NA
Market Rate	46,228 sf	Market	Life of Project	For-Sale	NA
IZ	5,568 sf / ~10.75%	3 units at 60% MFI	Life of Project	For-Sale	NA

The Inclusionary Zoning Covenant required by D.C. Official Code § 6-1041.05(a)(2) (2012 Repl.) shall include a provision or provisions requiring compliance with all the terms of this Condition.

5. **Prior to the issuance of a final certificate of occupancy for the Project,** in accordance with the requirements in Subtitle X § 305.5(k)(5), the Applicant shall provide the Zoning Administrator with evidence that the Project will meet the

minimum standards necessary for LEED Gold certification, but the Project does not need to achieve actual LEED certification.

6. **Prior to the issuance of a building permit for the Project**, the Applicant shall submit evidence the Zoning Administrator with evidence that the Project achieves a minimum GAR of 0.5.
7. **Prior to issuance of the final Certificate of Occupancy for the Project**, the Applicant shall provide evidence to the Zoning Administrator demonstrating completion of the following public space improvements subject to DDOT approval:
 - a. Install two (2) TAPCO speed bump assemblies in the east-west public alley immediately south of the Property with a gap of at least two (2) feet provided between the speed bumps and with no speed bump placed directly in front of an existing or future driveway.

C. **Transportation Management**

1. **Prior to issuance of the final Certificate of Occupancy for the Project and for the life of the Project**, the Applicant shall adhere to the following Transportation Demand Management plan measures:
 - a. Provide welcome packets to all new residents that, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing info@godcgo.com.
 - b. Provide a SmarTrip card and one (1) complimentary Capital Bikeshare coupon good for a free ride to every new resident for initial sale.
 - c. Provide at least one (1) short- and nine (9) long-term bicycle parking spaces in accordance with ZR16 minimums. The current plan proposes 13 long-term and 14 short-term spaces across the site.
 - d. The Applicant shall provide evidence to the Zoning Administrator demonstrating completion of the following public space improvements subject to DDOT approval:
 - i. Provide striped parking boxes along the east side of Lincoln Road NE;
 - ii. Add intersection daylighting at the crosswalks at R Street NE and Randolph Street NE; and

- iii. Install one (1) additional one-way sign at the east-west alley entrance on Lincoln Road NE.

D. Miscellaneous

1. No building permit shall be issued for the Project until the Applicant has recorded a covenant binding the Property in the land records of the District of Columbia by the Applicant for the benefit of the District of Columbia that is satisfactory to the Office of Zoning Legal Division and to the Zoning Administrator (the “PUD Covenant”). The PUD Covenant shall bind the Applicant and all successors in the title to construct and use the Property in accordance with this Order, as may be amended by the Commission. The Applicant shall file a certified copy of the PUD covenant with the Office of Zoning.
2. The Applicant shall file an application for building permit for the Project within two (2) years of the effective date of this Order, and construction must begin within three (3) years from the effective date of this Order.
3. In accordance with the DC Human Rights Act of 1977, as amended, DC Official Code § 2-1401.01 et al (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 identify or expression, familial status, familial 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.

Vote (September 12, 2024):

In accordance with the provisions of Subtitle Z § 604.9, this Order shall be final and effective upon publication in the *D.C. Register*; that is, on _____.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ANTHONY HOOD
CHAIRMAN
ZONING COMMISSION

SARA BARDIN
DIRECTOR
OFFICE OF ZONING