

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 23-28**  
**Z.C. Case No. 23-28**  
**Hill East Parcel B, LLC**  
**(Hill East District Design Review @ Square 1112E, Lots 809 and 815**  
**(Parcel B-1 and Parcel B-2))**  
**April 8, 2024**

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on April 8, 2024,<sup>1</sup> to consider the application (the “Application”) of Hill East Parcel B, LLC (the “Applicant”) for design review of a new development pursuant to Subtitle K, Chapter 4 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR” or “Zoning Regulations” [to which all subsequent citations refer unless otherwise specified]), which applies to new construction in the Hill East Zone District pursuant to Subtitle K § 409.1, and Subtitle X, Chapter 6, which applies to a “Mandatory Design Review” as described in Subtitle X § 601.1.

The Applicant proposed to redevelop the property known as Lots 809 and 815 in Square 1112E and identified in Figure K § 400.7 as Parcel B-1 and Parcel B-2 within the Hill East zone (collectively, the “Property”) with two new buildings:

- On Parcel B-1, a residential apartment building consisting of approximately 373,157 square feet of gross floor area (“GFA”) with approximately 350 residential units (“Building B1”); and
- On Parcel B-2, a mixed-use building totaling approximately 172,867 square feet of GFA and consisting of approximately 14,044 square feet of ground floor retail with approximately 144 residential units above (“Building B2,” and together with Building B1, the “Project”).

In addition, the Applicant requested various design flexibility and the following waivers and variance relief from certain design guidelines applicable to the Hill East Zone District pursuant to Subtitle K §§ 409.2 and 409.3:

- For Building B1, an area variance from Subtitle K § 420.2, which requires that the fronts of buildings located at street intersections be constructed to the property lines abutting each intersecting street, without any setback, from a minimum of 50 feet from the intersection, along each street frontage;
- For Building B1, three waivers from the ground floor use requirement of Subtitle K § 417.1(e) and the design conditions of Subtitle K §§ 419.2 and 419.7; and
- For Building B2, two waivers from the design conditions of Subtitle K §§ 418.1(c) and 419.7.

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<sup>1</sup> The public hearing was originally scheduled for March 11, 2024, but was postponed to April 8, 2024, at the request of the Applicant and Advisory Neighborhood Commissions (“ANCs”) 7D and 7F.

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

## **FINDINGS OF FACT**

### **I. BACKGROUND**

#### **PARTIES**

1. The Applicant, a District of Columbia limited liability company, was authorized to file and process the Application on behalf of the Deputy Mayor for Planning and Economic Development (“DMPED”). (Exhibit [“Ex.”] 3H.)
2. Advisory Neighborhood Commission (“ANC”) 7F, in which the Property is located, is an “affected ANC” pursuant to Subtitle Z § 101.8.
3. ANC 7D is also an “affected ANC” pursuant to Subtitle Z § 101.8, as its jurisdictional boundary runs along Independence Avenue, S.E. and is directly to the north of the Property.
4. The Applicant and ANCs 7F and 7D are automatically parties in this proceeding pursuant to Subtitle Z § 403.5.
5. The Commission received no requests for party status.

#### **NOTICE**

6. On September 11, 2023, the Applicant mailed a Notice of Intent to file the Application to all property owners within 200 feet of the Property and to ANCs 7F and 7D, as required by Subtitle Z § 301.6. (Ex. 3F.)
7. On January 5, 2024, the Office of Zoning (“OZ”) sent notice of the originally scheduled March 11, 2024, virtual public hearing to:
  - Authorized counsel for the Applicant;
  - ANC 7D;
  - ANC 7F;
  - ANC Single Member District (“SMD”) 7D05;
  - ANC/SMD 7F07;
  - Office of the ANCs;
  - Councilmember Vincent C. Gray, the Ward 7 Councilmember in whose district the Property is located;
  - Chairman and At-Large Members of the D.C. Council;
  - Office of Planning (“OP”);
  - District Department of Transportation (“DDOT”);
  - Department of Energy & Environment (“DOEE”);
  - Department of Buildings (“DOB”) General Counsel;
  - Commission Lead Attorney; and

- The owners of property located within 200 feet of the Property. (Ex. 6, 7.)
8. OZ published notice of the originally scheduled March 11, 2024 public hearing, in the January 12, 2024, issue of the *District of Columbia Register* (71 DCR 000699 *et seq.*), as well as on the calendar on OZ’s website. (Ex. 5-7.)
  9. The Applicant submitted evidence that it posted notice of the public hearing on the Property in accordance with Subtitle Z § 402.8 and maintained said notice in accordance with Subtitle Z § 402.10. (Ex. 9, 20.)

#### **DEFERRAL OF PUBLIC HEARING**

10. On February 15, 2024, ANC 7D submitted a report to the Commission including a request for a postponement of the public hearing scheduled for March 11, 2024, to provide ANC 7D with an opportunity to meet with the Applicant and submit feedback to the Commission. (Ex. 13.)
11. On February 21, 2024, ANC 7F submitted a report, letter, and accompanying resolution to the Commission including a request for a postponement of the public hearing scheduled for March 11, 2024, to allow the Applicant time to engage in community outreach and address concerns related to construction, long-term upkeep, potential traffic impacts, and the effects on the community and local retail establishments. (Ex. 15-15B.)
12. On February 29, 2024, the Applicant submitted a request to defer the public hearing scheduled for March 11, 2024, and stated that a postponement would allow for additional time to meet with the affected ANCs. (Ex. 17.)
13. At the start of the originally scheduled March 11, 2024 public hearing, the Commission initiated proceedings and deferred the public hearing to April 8, 2024. (Transcript [“Tr.”] of March 11, 2024, Public Hearing at pp. 3-5.)

#### **THE PROPERTY AND SURROUNDING AREA**

14. The Property consists of two parcels in the Hill East neighborhood – Parcel B-1 and Parcel B-2. These two parcels total approximately 2.6 acres (approximately 113,755 square feet) and are located in the southeast quadrant of the District. The Property is generally bounded by Independence Avenue, S.E. to the north, Burke Street, S.E. to the south, 20<sup>th</sup> Street, S.E. to the west, and 21<sup>st</sup> Street, S.E. to the east.<sup>2</sup> A portion of the Property is currently used as a parking lot for St. Coletta of Greater Washington (“St. Coletta”) charter school with the remainder being undeveloped. (Ex. 3.)

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<sup>2</sup> As noted in the Application (Ex. 3.) and the DDOT Report (Ex. 27.), and as of the time of the Application, Burke Street, 20<sup>th</sup> Street, and 21<sup>st</sup> Street, S.E. are planned to be constructed by the District Department of General Services (“DGS”) in coordination with the Applicant and DDOT pursuant to development agreements which are separate from this Application.

15. The Property is part of formerly public land known as “Reservation 13” that is intended to be redeveloped with a mix of residential, commercial, institutional, and other compatible uses pursuant to the vision and objectives of the *Master Plan for Reservation 13: Hill East Waterfront*, a master plan approved by the D.C. Council in February 2003. The Property’s immediate surroundings include the St. Coletta school to the west and the following parcels within the Hill East neighborhood, which are presently undeveloped: Parcel A to the west; Parcel C to the east; and Parcels E and F-2 to the south. (Ex. 3.)
16. Two of the first developments to implement the *Master Plan for Reservation 13: Hill East Waterfront* were constructed to the southeast of the Property on Parcels F-1 and G-1. Parcel F-1 is improved with a mixed-use building known as Park Kennedy and Parcel G-1 is improved with a mixed-use building known as The Ethel. Both buildings consist of ground floor retail and residences above. (Ex. 3.)
17. To the north of the Property is the Stadium Armory and the Stadium-Armory Metro Station. An entrance to the Stadium-Armory Metro station, which is serviced by the Orange, Silver, and Blue lines and several bus routes (B2, D6, 96, and Our Bus), is located to the west of the Property at 19<sup>th</sup> Street, S.E. and Burke Street, S.E. (Ex. 3.)
18. Further west and north of the Property, across 19<sup>th</sup> Street, S.E. and Independence Avenue, S.E. is the Hill East/Capitol Hill neighborhood composed predominantly of two- and three-story rowhouses in the RF-1 zone. Further south are the old D.C. General Hospital buildings and the D.C. Correctional Facility. (Ex. 3.)

#### **HILL EAST ZONING (HE-2)**

19. The boundaries of the Hill East (HE) zone correspond to Federal Reservation 13, which is generally bounded by Independence Avenue on the north, 19<sup>th</sup> Street, S.E. on the west, Water Street, S.E. on the east, and the Congressional Cemetery on the south. (Subtitle K § 400.6.) The HE Zone District is divided into four zones for the purpose of lot occupancy, floor area ratio (“FAR”), and building height. (Subtitle K § 400.7.) The Property is located in the HE-2 Zone, which includes squares with frontage on 20<sup>th</sup> Street, S.E. (Subtitle K § 400.7(b).)
20. The HE-2 zone includes the following development standards:
  - Density: A maximum permitted density of 4.8 FAR; (Subtitle K § 402.1.)
  - Height: A minimum height of 40 feet is required and a maximum height of 80 feet and seven stories is permitted. Building height shall be measured from the lowest curb level along a street frontage abutting the lot;(Subtitle K §§ 403.1 and 403.2.)
  - Penthouses and Rooftop Structures: Penthouses and rooftop structures are subject to the regulations of Subtitle C, Chapter 15, and the height and story limitations specified in Subtitle K § 403.5; (Subtitle K § 403.4.)
  - Penthouse Height: A maximum penthouse height of 20 feet and one story is permitted, but a second story is permitted for penthouse mechanical space; (Subtitle K § 403.5.)
  - Lot Occupancy: A maximum lot occupancy of 75% is permitted; (Subtitle K § 404.1.)

- Setbacks: Buildings or structures that have street frontage on Burke Street shall provide a 12 foot setback for any part of the building that exceeds 80 feet in height; (Subtitle K § 405.2.)
  - Rear Yard: All residential buildings shall provide a rear yard in accordance with Subtitle K §§ 406.5 or 406.6 and, in either instance, not less than 12 feet; and (Subtitle K § 406.4.)
  - Side Yard: No side yard is required; however, if a side yard is provided it shall be no less than eight feet. (Subtitle K § 407.1.)
21. Parking, bicycle parking, and loading requirements for the HE-2 zone are as specified in Subtitle C. (Subtitle K §§ 408.1-408.3.)
  22. For the purposes of the HE zones and other provisions in Subtitle K, Chapter 4 that are applicable to the Property, Independence Avenue, S.E. is considered a “primary street”. (Subtitle K § 400.5(a).)
  23. For the purposes of the HE zones and other provisions in Subtitle K, Chapter 4 that are applicable to the Property, 20th Street, 21st Street, and Burke Street, S.E. are each considered a “secondary street”. (Subtitle K § 400.5(b).)

#### **HILL EAST ZONE DISTRICT REQUIREMENTS AND DESIGN CRITERIA**

24. The Commission shall review the design of all new buildings, or additions to existing buildings in the Hill East zones for consistency with the design guidelines set forth at Subtitle K §§ 419 through 420 and with the purposes as stated in Subtitle K § 400 of Chapter 4. (Subtitle K § 409.1.)

#### **Purposes of the Hill East Zone District**

25. Pursuant to Subtitle K § 400.1, the purposes of the HE zones (HE-1 through HE-4) are to:
  - Connect and integrate Reservation 13 with adjacent neighborhoods and the new waterfront park along the Anacostia River; (Subtitle K § 400.1(a).)
  - Utilize the site to meet a diversity of public needs, including health care, education, employment, government services and administration, retail, recreation, and housing; (Subtitle K § 400.1(b).)
  - Extend the existing pattern of local streets to and through the site to create simple, well-organized city blocks and appropriately scaled development; (Subtitle K § 400.1(c).)
  - Maintain a human scale of building heights that match existing neighborhood buildings and increase in height as the site slopes downward to the Anacostia waterfront; (Subtitle K § 400.1(d).)
  - Connect the Hill East neighborhood and the city at large to the waterfront via treelined public streets, recreational trails, and increased access to waterfront parklands; (Subtitle K § 400.1(e).)
  - Demonstrate environmental stewardship through environmentally sensitive design, ample open spaces, and a waterfront park that serve as public amenities and benefit the neighborhood and the city; (Subtitle K § 400.1(f).)

- Promote the use of mass transit by introducing new uses near Metro stations, and create an environment where the pedestrian, bicycle, and auto are all welcome, complementary, and unobtrusive, reducing the impact of traffic on adjacent neighborhood streets; (Subtitle K § 400.1(g).)
- Limit the Central Detention Facility and the Correction Treatment Facility to areas south of Massachusetts Avenue; and (Subtitle K § 400.1(h).)
- Create attractive “places” of unique and complementary character including: (Subtitle K § 400.1(i).)
  - A new, vital neighborhood center around the Metro station at C and 19<sup>th</sup> Streets, S.E. that serves the unmet neighborhood commercial needs of the community and extends to the waterfront with a new residential district;
  - Massachusetts Avenue as a grand Washington ‘boulevard’ in the tradition of the L’Enfant plan;
  - A district for city-wide uses and services, such as health care, education, and recreation along Independence Avenue, S.E.; and
  - A grand public waterfront park incorporating monumental places and quiet natural retreats accessed by a meandering park drive set back from the Anacostia River.

**Ground Floor Uses Where Required and Permitted (Subtitle K § 417.)**

26. For the purposes of the HE zones, “preferred uses” shall include retail, entertainment, assembly, and performing arts, and service uses. (Subtitle K § 411.1.) The following locations are required to devote not less than 65% of the ground floor frontage to preferred uses and main building entrances, or lobbies to office and residential uses, and shall comply with the design requirements of Subtitle K §§ 418 through 420:
- The west face of Square F (19<sup>th</sup> Street frontage);
  - The northwest corner of Square G;
  - The southeast corner of Square J at Massachusetts Avenue and Water Street, facing the monumental circle;
  - The northeast corner of Square M at Massachusetts Avenue and Water Street, facing the monumental circle; and
  - All Independence Avenue and Massachusetts Avenue frontages.
- (Subtitle K § 417.1.)
27. The following locations are permitted to have ground floor preferred uses, provided that the building shall be constructed so that not less than 65% of the ground floor frontage will be devoted to preferred uses and main building entrances, or lobbies to office and residential uses, and shall comply with the design requirements of Subtitle K §§ 418 through 420:
- All frontages on 19<sup>th</sup> Street;
  - All frontages on Burke Street;
  - The C Street frontage of Square H, facing the park in Square E, for a maximum length of two hundred feet (200 ft.) from Square H’s northeast corner at the intersection of C Street and 21<sup>st</sup> Street;
  - The 21<sup>st</sup> Street frontage of Square D;



- The southeast corner of Square D, which faces the intersection of C Street and Water Street;
- The northeast corner of Square I, which faces the intersection of C Street and Water Street; and
- All frontages on Water Street.

(Subtitle K § 417.2.)

**Design Standards for Ground Floor Preferred Uses (Subtitle K § 418.)**

28. Wherever preferred uses, as defined in Subtitle K § 411, are required or allowed pursuant to Subtitle K § 412, such ground floor preferred uses shall:

- If located on a corner, wrap around the corner to a minimum depth of 20 feet on the side street; (Subtitle K § 418.1(a).)
- Occupy the ground floor to a minimum depth of 30 feet; (Subtitle K § 418.1(b).)
- Have a minimum clear floor-to-ceiling height of 14 feet, measured from the finished grade, for the area of the ground floor dedicated to preferred uses; (Subtitle K § 418.1(c).)
- The street-facing façades of buildings on primary streets shall devote not less than 75% per individual use or 50% of the length and 50% of the surface area of the street wall at the ground level to windows associated with preferred uses or windows associated with main building entrances; and (Subtitle K § 418.1(d).)
- The street-facing façades of mixed-use or non-residential buildings on secondary streets shall devote not less than 75% per individual use or 30% of the length and 30% of the surface area of the street wall at the ground level to windows associated with preferred uses or windows associated with main building entrances. (Subtitle K § 418.1(e).)

**Design Conditions for the Hill East Zone District (Subtitle K § 419.)**

29. Subtitle K § 419 establishes the following design requirements for all buildings and structures located in the HE zones:

- Except as provided in Subtitle K § 418.2, the front of a building or structure shall extend to the property line(s) abutting the street right-of-way for not less than 90% of the property line and to a height of not less than 25 ft.; (Subtitle K § 419.2.)
- Whatever portion of the front of a building or structure that does not extend to the property line(s) pursuant to Subtitle K § 419.2 must extend to within 25 ft. of the front property line and to a height of not less than 25 ft.; (Subtitle K § 419.3.)
- Awnings, canopies, bay windows, and balconies may extend forward of the required building line to the extent permitted by any other regulations; (Subtitle K § 419.4.)
- For every 50 ft. of uninterrupted building façade length, the building shall incorporate modulated and articulated building wall planes through the use of projections, recesses and reveals expressing structural bays, changes in color graphical patterns, texture, or changes in building material of the façade; (Subtitle K § 419.5.)
- The articulation shall have a minimum change of plane of six inches; (Subtitle K § 419.6.)
- Façade articulation of less than two feet in depth shall qualify to meet the street frontage required building line standards of Subtitle K §§ 419.2 and 419.3; (Subtitle K § 419.7.)

- Any single articulation feature shall not exceed 60% of the building façade width; (Subtitle K § 419.8.)
- Buildings with ground floor retail shall incorporate vertical elements to create a series of storefront-type bays with entrances that are no more than 50 ft. apart; (Subtitle K § 419.9.)
- Security grilles shall have no less than 70% transparency; (Subtitle K § 419.10.)
- Street-facing façades shall not have blank walls (without doors or windows) greater than 10 feet in length; (Subtitle K § 419.11.)
- Each use within a building shall have an individual public entrance that is clearly defined and directly accessible from the public sidewalk; (Subtitle K § 419.12.)
- Exterior display of goods and exterior storage between the building line and the front lot line is prohibited. Outdoor seating for restaurants and pedestrian-oriented accessory uses, such as flower, food, or drink stands, or other appropriate vendors, are permitted to the extent consistent with other District laws; (Subtitle K § 419.13.)
- Windows shall cover the following minimum area of street-facing façades above the ground-floor level: (Subtitle K § 419.14.)

<b>Table K § 419.14: Minimum Percentage of Street-Facing Façades</b>		
Location	Minimum Percentage	
	Non-Residential	Residential
Primary Street	35%	20%
Secondary Street	40%	20%

- Buildings and structures shall clearly articulate a base, middle, and top, except for row dwellings and flats; (Subtitle K § 419.15.)
- High quality, durable materials which enhance the building and convey permanence shall be required; and (Subtitle K § 419.16.)
- The use of synthetic stucco, vinyl siding, and/or other low-grade exterior finishes is prohibited. (Subtitle K § 419.17.)

### **Design Conditions for Buildings Located on Primary Streets (Subtitle K § 420)**

30. Since Building B1 is located on Independence Avenue, S.E., which is designated as a primary street pursuant to Subtitle K § 400.5(a), the following design requirements apply:
- Notwithstanding Subtitle K §§ 419.2 and 419.3, the fronts of buildings located at street intersections shall be constructed to the property lines abutting each intersecting street, without any setback, for a minimum of 50 feet from the intersection, along each street frontage; (Subtitle K § 420.2)
  - The corner of the building at the intersection of two primary streets or a primary and secondary street shall incorporate articulation such as, but not limited to, being angled, curved, or chamfered to emphasize the corner; (Subtitle K § 420.3)
  - The distance from the corner shall not exceed 20 feet, measured from the corner of the lot to the end of the angled or curved wall segment; (Subtitle K § 420.4)
  - Entrances into a building shall be no more than 50 feet apart and recessed no more than six feet deep or 10 feet; (Subtitle K § 420.5)



- Buildings shall incorporate vertical elements in the street-facing façade to create a series of storefront-type bays where preferred uses are present; (Subtitle K § 420.6)
  - Residential buildings shall have at least one (1) primary entrance directly accessible from the public sidewalk; and (Subtitle K § 420.7)
  - Instead of the windows required by Subtitle K § 418.1(d), on primary streets artwork and displays relating to activities occurring within the building shall be permitted as a special exception if approved by the Zoning Commission pursuant to Subtitle X, provided the applicant demonstrates that:
    - The building has more than 50% of its ground level space in storage, parking, or loading areas, or in uses which by their nature are not conducive to windows (such as theaters); and
    - The artwork or displays are consistent with the objective of providing a pleasant, rich, and diverse pedestrian experience.
- (Subtitle K § 420.8.)

### **AFFORDABLE HOUSING**

31. Subtitle K § 416.1 addresses the provision of affordable housing in the HE zones, and states that development that is subject to the Inclusionary Zoning (“IZ”) requirements in Subtitle C, Chapter 10 shall be constructed according to the provisions set forth in Subtitle K § 402, notwithstanding any bonus it may be granted by Subtitle C, Chapter 10.
32. However, Subtitle C § 1001.6(a) exempts from the IZ program “[a]ny development subject to a mandatory affordable housing requirement that exceeds the requirements of [Subtitle C, Chapter 10] as a result of District Law[.]” The relevant District laws that apply to the Project are discussed immediately below. Based on the applicability of these District laws to the Project, the Application assumes that the Project will be exempt from IZ requirements pursuant to Subtitle C § 1001.6(a). However, the Commission takes no position as to whether an exemption from the IZ requirements should or will be granted.
33. The Property is located within the Anacostia Waterfront Development Zone and is thus governed by the National Capital Revitalization Corps and Anacostia Water Corporation Registration Act of 2008 (D.C. Official Code § 2-1226.01 *et seq.* (2008)) (the “AWI Act”). The AWI Act requires that at least 30% of the total housing units developed must be affordable—15% reserved for households earning up to or at 30% of the Average Median Income (“AMI”) and 15% reserved for households earning up to or at 60% of the AMI. (Ex. 3.)
34. The Property is also governed by D.C. Official Code § 10-801 *et seq.*, which applies to all real property that is being disposed of by the District. Specifically, because the disposition of the Property will result in the development of 10 or more multifamily units and the Property is located within one half mile of the Stadium-Armory Metrorail station, at least 30% of the proposed units must be dedicated as affordable housing. In the case of rental units, at least 25% of the affordable units must be reserved for households earning up to or at 30% of the AMI, which equates to 7.5% of the total number of units proposed. The remaining affordable units must be reserved for households earning more than 30% and less than or equal to 50% of the AMI. (Ex. 3.)

**MANDATORY DESIGN REVIEW STANDARDS (SUBTITLE X § 604.)**

35. Except for a Design Review required by Chapter 7 of Subtitle I, Chapter 6 of Subtitle X applies to any instance when the Zoning Regulations require the Commission's review of any building, structure, or use other than a campus plan pursuant to Subtitle X, Chapter 1. Such a review is referred to as a "Mandatory Design Review". (Subtitle X § 601.1.)
36. In addition to the standards applicable to the Hill East Zone District, the Commission must evaluate and approve the Project according to the general design review standards of Subtitle X § 604, which include the following:
- The Commission shall find that the proposed design review development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (Subtitle X § 604.5)
  - The Commission shall find that the proposed design review development will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of Subtitle X, Chapter 9; (Subtitle X § 604.6)
  - The Commission shall review the urban design of the site and the building for the following criteria: (Subtitle X § 604.7)
    - Street frontages are designed to be safe, comfortable, and encourage pedestrian activity, including:
      - Multiple pedestrian entrances for large developments;
      - Direct driveway or garage access to the street is discouraged;
      - Commercial ground floors contain active uses with clear, inviting windows;
      - Blank facades are prevented or minimized; and
      - Wide sidewalks are provided;
    - Public gathering spaces and open spaces are encouraged, especially in the following situations:
      - Where neighborhood open space is lacking;
      - Near transit stations or hubs; and
      - When they can enhance existing parks and the waterfront;
    - New development respects the historic character of Washington's neighborhoods, including:
      - Developments near the District's major boulevards and public spaces should reinforce the existing urban form;
      - Infill development should respect, though need not imitate, the continuity of neighborhood architectural character; and
      - Development should respect and protect key landscape vistas and axial views of landmarks and importance places;
    - Buildings strive for attractive and inspired façade design, including:
      - Reinforce the pedestrian realm with elevated detailing and design of first and second stories; and
      - Incorporate contextual and quality building materials and fenestration;
    - Sites are designed with sustainable landscaping; and
    - Sites are developed to promote connectivity both internally and with surrounding neighborhoods, including:

- Pedestrian pathways through developments increase mobility and link neighborhoods to transit;
- The development incorporates transit and bicycle facilities and amenities;
- Streets, easements, and open spaces are design to be safe and pedestrian friendly;
- Large sites are integrated into the surrounding community through street and pedestrian connections; and
- Waterfront development contains high quality trail and shoreline design as well as ensuring access and view corridors to the waterfront.

**COMPREHENSIVE PLAN (TITLE 10-A DCMR, THE “CP” OR “COMP PLAN”)**

37. The CP’s Future Land Use Map (“FLUM”) designates the Property as Mixed Use (Medium Density Residential / Medium Density Commercial / Institutional): (Ex. 22A, 22B.)
- According to the CP’s Framework Element, the Mixed Use designation “indicates areas where the mixing of two or more land uses is especially encouraged” and applies in various circumstances, such as “[c]ommercial corridors or districts which may not contain substantial amounts of housing today, but where more housing is desired in the future”, as well as “[d]evelopment that includes residential uses, particularly affordable housing, and residentially compatible industrial uses, typically achieved through a [PUD] or in a zone district that allows such a mix of uses.”; (CP § 227.20.)
  - The general density and intensity of development within a given Mixed Use area is determined by the specific mix of uses shown on the FLUM. The CP Area Elements may also provide detail on the specific uses envisioned; (CP § 227.21.)
  - The Medium Density Residential designation is “used to define neighborhoods or areas generally, but not exclusively, suited for mid-rise apartment buildings. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. Pockets of low and moderate density housing may exist within these areas. Density typically ranges from 1.8 to 4.0 FAR, although greater density may be possible when complying with [IZ] or when approved through a [PUD].”; (CP § 227.7.)
  - The Medium Density Commercial “designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Moderate Density Commercial areas. Retail, office, and service businesses are the predominant uses, although residential uses are common. Areas with this designation generally draw from a citywide market area. Buildings are larger and/or taller than those in Moderate Density Commercial areas. Density typically ranges between a FAR of 4.0 and 6.0, with greater density possible when complying with [IZ] or when approved through a [PUD].”; and (CP § 227.12.)
  - The Institutional “designation includes land and facilities occupied and used by colleges and universities, large private schools, hospitals, religious organizations, and similar institutions. While included in this category, smaller institutional uses such as churches are generally not mapped, unless they are located on sites that are several acres in size. Zoning designations vary depending on surrounding uses. Institutional uses are also permitted in other land use categories.” (CP § 227.18.)

38. The CP's Generalized Policy Map ("GPM") designates the Property as a "Land Use Change Area". (Ex. 22A, 22C.) According to the CP's Framework Element:
- Land Use Change Areas are areas where change to a different land use from what exists today is anticipated. In some cases, the Future Land Use Map depicts the specific mix of uses expected for these areas; (CP § 225.9.)
  - There are more than two dozen Land Use Change Areas identified on the GPM. They include many of the city's large development opportunity sites, and other smaller sites that are undergoing redevelopment or that are anticipated to undergo redevelopment. Together, they represent much of the city's supply of vacant and underutilized land; (CP § 225.10.)
  - The guiding philosophy in the Land Use Change Areas is to encourage and facilitate new development and promote the adaptive reuse of existing structures. Many of these areas have the capacity to become mixed-use communities containing housing, retail shops, services, workplaces, parks, and civic facilities. The CP's Area Elements provide additional policies to guide development and redevelopment within the Land Use Change Areas, including the desired mix of uses in each area; and (CP § 225.11.)
  - As Land Use Change Areas are redeveloped, the District aspires to create high-quality neighborhoods that demonstrate exemplary site and architectural design and innovative environmental features, compatible with nearby neighborhoods, protect cultural and historic assets, and provide significant affordable-housing and employment opportunities. Measures to ensure that public benefits are commensurate with increased density and to avoid and mitigate undesirable impacts of development of the Land Use Change Areas upon adjacent neighborhoods should be required as necessary. Such measures should prioritize equity by accounting for the needs of underserved communities. (CP § 225.12.)
39. The CP's GPM locates the Property within a Future Planning Analysis Area: (Ex. 22A, 22C.)
- The CP's Framework Element describes Future Planning Analysis Areas as "[a]reas of large tracts or corridors where future analysis is anticipated to ensure adequate planning for equitable development. Boundaries shown [on the GPM] are for illustrative purposes. Final boundaries will be determined as part of the future planning analyses process for each area. Planning analyses generally establish guiding documents. Such analyses shall precede any zoning changes in this area."; and (CP § 2503.2.)
  - The CP's Framework Element further states that "[n]otwithstanding § 2503.2, re-zoning proposals received prior to planning studies in these Future Planning Analysis Areas may be considered if the following occur or have occurred: a Small Area Plan, development framework, technical study, design guidelines, Planned Unit Development, master plan already approved by the National Capital Planning Commission, or the re-zoning proposal would have been consistent with the 2012 Future Land Use Map." (CP § 2503.3.)
40. The CP's GPM locates the Property with a Resilience Focus Area, which is where future planning efforts are anticipated to ensure resilience to flooding for new development and infrastructure projects, including capital projects, especially in areas within the 100- and

500- floodplains. In the Resilience Focus Areas, the implementation of neighborhood-scale, as well as site-specific solutions, design guidelines and policies for a climate-adaptive and resilient city are encouraged and expected. Boundaries shown on the GPM are for illustrative purposes, with final boundaries to be determined as part of any future analysis for each area. (Ex. 22A, 22C.)

41. The CP's Capitol Hill Area Element, which applies to the Property, includes the following development priorities:
  - Policies under the Capitol Hill Area Element are intended, in part, to “[d]irect growth to commercial zoned land” and ensure that the scale of development in the residential zones is sensitive to adjacent buildings and uses. “All development should reflect the capacity of roads, infrastructure, and services to absorb additional growth.”; (CP § 1507.5; CH-1.1.4: Directing Growth.)
  - “Provide improved buffering and landscaping...in the vicinity of RFK Stadium in order to reduce the effects of noise, dust, vibration, and air pollution on the adjacent Hill East community.”; and (CP § 1507.13; CH-1.1.12: RFK Stadium Area.)
  - The Capitol Hill Area Element wants to “[e]nsure that the proposed Anacostia waterfront parks are designed and planned to benefit Capitol Hill residents, enhance waterfront resilience, and promote access.” (CP § 1508.5; CH-1.2.5: Riverfront Parks.)
42. The CP's Capitol Hill Area Element places the Property in the Reservation 13/RFK Stadium Focus Area. (CP § 1509.4.) The Reservation 13/RFK Stadium Focus Area includes several planning objectives that are specifically tailored to the Property including, but not limited to:
  - “Redeveloping Reservation 13 a mixed-use neighborhood that combines housing, retail, office space, health care, civic, education, institutional, and recreational uses.” (CP § 1513.6; Policy CH-2.4.1: Redevelopment of Public Reservation 13);
  - “Connect the established Hill East neighborhood to the Anacostia waterfront by extending Massachusetts Avenue and the Capitol Hill street grid through Reservation 13 to new shoreline parks and open spaces.”; and (CP § 1513.7; Policy CH-2.4.2: Reservation 13 as an Extension of Hill East.)
  - “Capitalize on the Stadium-Armory Metro station in the design and development of Reservation 13. Should include development of a new neighborhood center near 19th and C Streets SE that serves the unmet needs of the nearby community, as well as the development of moderate- to high-density housing on the Reservation 13 site.” (CP § 1513.9; CH-2.4.4: Stadium-Armory Metro Station.)

### **Small Area Plan**

43. The Property is subject to the objectives and recommendations of the *Master Plan for Reservation 13: Hill East Waterfront* (the “Hill East SAP”) which is the approved Master Plan for the 67 acres of public land known historically as Reservation 13. The Hill East SAP:
  - Envisions “[a]n urban waterfront district that serves the District of Columbia and connects the surrounding neighborhoods to the Anacostia River via public streets and green parks. It is a public resource hosting a mixture of uses, including health care,



civic, residential, educational, community and other public uses. It is pedestrian-oriented, has a human scale, and is a convenient, safe and pleasurable place to visit, live, work and play” (Hill East SAP at p. 3.); and

- Provides nine core planning principles, among which include:
    - Extend the existing pattern of local streets to and through the site to create simple, well-organized city blocks and appropriately-scaled development;
    - Maintain a human-scale of building heights that match existing neighborhood buildings and increase in height as the site slopes downward to the Anacostia waterfront; and
    - Connect the Hill East neighborhood and the city at large to the waterfront via tree-lined public streets, recreational trails and increased access to waterfront parklands.
- (Hill East SAP at p. 15.)

## **II. THE APPLICATION**

### **THE PROJECT**

44. The Application, as amended, proposes to redevelop the Property with two new buildings, Building B1 and Building B2 (i.e., the Project), which are more particularly described immediately below.
45. Parcel B-1 consists of approximately 77,741 square feet of land area and will be improved with a residential apartment building known as Building B1, which will provide:
  - Approximately 373,157 square feet of GFA;
  - A maximum building height of 80 feet, with seven stories and a penthouse level;
  - A maximum density of 4.8 FAR; and
  - Approximately 350 residential units.

(Ex. 3-3B2, 12-12A9, 18-19A, 28-28C3.)
46. Parcel B-2 consists of approximately 36,014 square feet of land area and will be improved with a mixed-use building known as Building B2, which will provide:
  - Approximately 172,867 square feet of GFA;
  - A maximum building height of 80 feet, with seven stories and a penthouse level;
  - A maximum density of 4.8 FAR;
  - Approximately 144 residential units; and
  - Approximately 14,044 square feet of GFA devoted to ground floor retail.

(Ex. 3-3B2, 12-12A9, 18-19A, 28-28C3.)
47. The Project includes an underground parking garage consisting of approximately 238 vehicle parking spaces, 100 of which will be designated for St. Coletta. The entrances to the parking garage, as well as the loading facilities for the Project, will be accessed via the private drive between Buildings B1 and B2. (Ex. 3-3B2, 12-12A9, 18-19A, 28-28C3.)
48. The Project will provide approximately 30 short-term and 233 long-term bicycle parking spaces. (Ex. 3-3B2, 12-12A9, 18-19A, 28-28C3.)



49. As discussed above in Findings of Fact (“FF”) Nos. 33 and 34, the Project is subject to certain affordability requirements. The Applicant proposes to reserve approximately 33.4% of the total units in Buildings B1 and B2 (approximately 165 units) as affordable housing for households earning up to 50% of the Median Family Income (“MFI”),<sup>3</sup> including approximately 82 units reserved for households earning between 0% and 30% MFI and approximately 83 units reserved for households earning between 30% and 50% MFI. The Project will also reserve approximately 33.2% of the total units (approximately 164 units) for households earning between 60% and 120% MFI. (Ex. 28A3.)

## **RELIEF REQUESTED**

### **Waivers from HE Design Standards**

50. For good cause shown, the Commission, in its discretion, may waive one or more of the design standards set forth in Subtitle K §§ 417 through 419. (Subtitle K § 409.2.)
51. The Application, as amended, included the following waiver requests:
- For a portion of Building B2, a waiver from Subtitle K § 418.1(c), which requires a minimum clear floor-to-ceiling height of 14 feet, measured from grade, for the area of the ground floor dedicated to preferred uses. Building B2 dedicates all of its Burke Street frontage to retail (i.e., a preferred use), but cannot satisfy the 14-foot minimum clearance requirement for the full area of the ground floor due to the significant grade change. Of the approximately 14,044 square feet that is devoted to ground floor retail, approximately 10,555 square feet will meet this requirement, which amounts to 75% of the ground floor area;
  - For a portion of Building B1, a waiver from Subtitle K § 419.2, which requires that the front of a building or structure extend to the property line abutting the street right-of-way for not less than 90% of the property line and to a height of not less than 25 feet. Building B1 does not extend to 20<sup>th</sup> Street for not less than 90% of the property line because the building is set back to accommodate the linear park dedicated to the life and legacy of Robert F. Kennedy. The provision of this setback was part of the RFP process with DMPED and community stakeholders. In addition, Building B1 is set back from the property line to accommodate the private drive that will connect 20<sup>th</sup> and 21<sup>st</sup> Streets;
  - For Building B1, a waiver Subtitle K § 419.7,<sup>4</sup> which requires a façade articulation of less than two feet in depth to meet the street frontage required building line standards of Subtitle K §§ 419.2 and 419.3. Building B1 has a façade articulation of greater than two feet in depth;
  - For Building B2, a waiver Subtitle K § 419.7, which requires a façade articulation of less than two feet in depth to meet the street frontage required building line standards of Subtitle K §§ 419.2 and 419.3. Building B2 has a façade articulation of exactly two feet in depth on each building face; and

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<sup>3</sup> MFI is referred to as Average Median Income (“AMI”) in the AWI Act and in previous versions of the Zoning Regulations; the two terms are used interchangeably in this Order.

<sup>4</sup> The Applicant amended its Application to include this additional waiver request. (Ex. 19, 19A.)

- For the ground floor of Building B1, a waiver from Subtitle K § 417.1(e), which requires that not less than 65% of the ground floor frontage along Independence Avenue, S.E. is devoted to preferred uses and main building entrances, or lobbies to office and residential uses, and shall comply with the design requirements of Subtitle K §§ 418 through 420. While not less than 65% of Building B1's ground floor frontage along Independence Avenue will be devoted to a lobby area with access to a leasing office, communal work space, and residential amenity space, the Applicant is requesting that the Commission waive this design standard out of an abundance of caution in the event that the proposed ground floor uses, particularly the communal work space, along the Independence Avenue frontage do not satisfy the applicable design criteria.

(Ex. 3, 12, 19.)

### **Area Variance**

52. The Commission may hear and decide any additional requests for special exception or variance relief needed for the Property. Such requests shall be advertised, heard, and decided together with the application for the Commission's review and approval. (Subtitle K § 409.3.)
53. For a portion of Building B1, the Applicant requested variance relief from Subtitle K § 420.2, which requires that the fronts of buildings located at street intersections be constructed to the property lines abutting each intersecting street, without any setback, for a minimum of 50 feet from the intersection, along each street frontage. The Application stated that Building B1 cannot comply with this requirement for a portion at the intersection of Independence Avenue and 20<sup>th</sup> Street and Independence Avenue and 21<sup>st</sup> Street, due to its accommodation of the proposed linear park along Independence Avenue dedicated to the life and legacy of Robert F. Kennedy. (Ex. 3, 12.)

### **Requested Design Flexibility**

54. The Application requested the Commission approve design flexibility<sup>5</sup> to vary certain elements in the Application's final plans as approved by the Commission and still comply with the requirement of Subtitle Z § 702.8 to construct the Project in complete compliance with the final plans, specifically relating to the following:
  - Interior components;
  - Exterior materials – color;
  - Exterior details – location and dimension;
  - Number of residential units;
  - Parking layout;
  - Streetscape design;
  - Signage;

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<sup>5</sup> At the April 8, 2024, public hearing, the Commission requested the following additional design flexibility be included in this Order: (1) flexibility to remove the "baseball cap" trellis rooftop structure on Building B1; (2) flexibility to substitute Juliet balconies with full size balconies; (3) flexibility to increase the number of three-bedroom units; and (4) flexibility to include additional lighting elements in the private drive separating Buildings B1 and B2. (Hrg. Tr. pp. 83-84.) The foregoing flexibility is included in the Conditions hereof.

- Sustainable features;
- Landscape design;
- Excavation;
- Building B1's mechanical screen wall; and
- Building B1's stair tower location.

(Ex. 3, 12.)

#### **APPLICANT'S SUBMISSIONS AND TESTIMONY**

55. On December 20, 2023, the Applicant filed its original Application, which included the following materials:
  - Letters from the Applicant and DMPED authorizing the Applicant's counsel to file and process the Application;
  - A copy of the Notice of Intent that was issued to owners of property within 200 feet of the Property and the affected ANCs on September 11, 2023;
  - The Applicant's Statement in Support of the Application; and
  - A set of architectural, landscape, and civil plans.
 (Ex. 1-3H.)
  
56. On February 8, 2024, the Applicant filed a comprehensive transportation review ("CTR") report in accordance with Subtitle Z § 401.8. The CTR concluded that the proposed site is well served by a variety of transportation services and infrastructure, including Metrobus, Streetcar, Capital Bikeshare, and a connected network of sidewalks. However, the impact of the site will affect three nearby intersections that will require mitigation, and a Transportation Management Plan is recommended to mitigate the impacts.<sup>6</sup> (Ex. 10-11.)
  
57. On February 20, 2024, the Applicant filed a prehearing statement which:
  - Summarized the design changes made to the Project since the initial filing, including increasing the number of short-term bicycle parking, reconfiguring the layout of the bicycle storage room in Building B1, lowering the grey metal parapet on Building B1, straightening the Building B1 façade, proposing alternative locations for the stair tower in Building B1, and eliminating a column of windows in Building B2;
  - Provided an amended and restated request for design flexibility; and
  - Attached an updated set of architectural, landscape, and civil plans.
 (Ex. 12-12A9.)
  
58. On February 26, 2024, the Applicant filed a response to a report filed by ANC 7D,<sup>7</sup> which detailed its service of the Notice of Intent to file the Application to the address indicated on the ANC 7D's official dc.gov website as well as the Applicant's outreach to ANC 7D and recent communications with the ANC 7D Chair. In its response, the Applicant stated that it engaged with the ANC 7D Chair numerous times and served its "office email

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<sup>6</sup> As further discussed below, to offset this impact, the Applicant agreed to implement a Transportation Demand Management program including a road diet with curb extensions along Independence Avenue, S.E. and a new Capital Bikeshare station near the site. (Ex. 25, 25A.)

<sup>7</sup> As further discussed below in FF No. 116, the ANC 7D report dated February 15, 2024, claimed that the ANC's office email was not served with a copy of the Application materials. (Ex. 13.)

account” and the ANC Chair email account with the CTR and prehearing statement. (Ex. 14-14E.)

59. On February 29, 2024, the Applicant filed a request to defer the public hearing originally scheduled for March 11, 2024, to allow the Applicant additional time to meet with the affected ANC. (Ex. 17.)
60. On March 1, 2024, the Applicant filed a response to OP and DOEE’s requests for additional information, which included the following:
- In response to DOEE’s comment that the Greener Government Buildings Amendment Act of 2022 requires District-owned and -financed new construction to be all-electric and adhere to net-zero energy standards, the Applicant confirmed that the Project will comply with the requirements of the Act in effect at the time of permitting. In addition, the Applicant is evaluating the feasibility of installing photovoltaic panels to generate on-site renewable energy and will procure off-site renewable energy;
  - In response to OP’s request to integrate regular balconies into the Project, particularly on the south-facing facades, the Applicant stated it is proposing 18 Juliet balconies on Building B2, but is unable to incorporate additional walk out balconies due to the layout of the units;
  - In response to OP’s request to refine the color and materials of the Building B1 base, the Applicant stated it altered the design and color of the base and widened and darkened the belt course to provide a more pronounced visual effect;
  - In response to OP’s request to reevaluate the concentration of bike facilities in the underground parking garage, the Applicant added a bicycle storage room on the first floor of Building B2 as shown in the corresponding floor plan; and
  - In response to OP’s request to enhance the linear park, the Applicant provided further details regarding the Applicant’s efforts to design and activate the linear park devoted to the life and legacy of Robert F. Kennedy through public art, interpretive signage, seating areas, bike parking, and plantings.
- (Ex. 18-18B.)
61. On March 1, 2024, the Applicant filed a request<sup>8</sup> to amend the Application to include an additional waiver request, as described above, from Subtitle K § 419.7 to allow the proposed façade articulation of Building B1. The Applicant’s request included an updated plan sheet showing that the façade articulation proposed for Building B1 reaches a depth of up to three feet and does not qualify to meet the street frontage building line standards required by Subtitle K § 419.7. (Ex. 19-19A.)
62. On March 18, 2024, the Applicant filed a supplemental prehearing statement that analyzed the Project against the criteria of Subtitle X § 604 that are applicable to a Mandatory Design

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<sup>8</sup> The Applicant’s submission included a request for a waiver from Subtitle Z § 401.5 to allow the filing to be submitted less than 20 days before the public hearing, which was originally scheduled for March 11, 2024. However, because the Commission postponed the hearing to April 8, 2024, the Commission deems it unnecessary to grant a waiver from Subtitle Z § 401.5 because the filing was submitted more than 20 days before the rescheduled public hearing date. (Ex. 19.)

Review, and included an evaluation of the Project’s consistency with the CP, including its maps and elements, when viewed through a racial equity lens. (Ex. 22-22C.)

63. On March 21, 2024, the Applicant filed an addendum to its original CTR report, as well as a revised transportation demand management (“TDM”) plan and memorandum addressing comments received from DDOT with corresponding cover letters. The CTR addendum and revised TDM plan addressed further discussions with DDOT regarding the planned Independence Avenue road diet, which will involve reconstructing the southern curb of Independence Avenue using concrete and other DDOT standard materials, reconfiguring the southernmost lane into a parking/entry lane (to St. Coletta) with bump outs, and striping out the northernmost lane, to convert Independence Avenue from its existing three- and four-lane section to a two-lane section. In addition, secure bicycle parking will be accessible from the north side of the proposed private drive connecting proposed 20<sup>th</sup> and 21<sup>st</sup> Streets, S.E. (Ex. 24-25A.)
64. On April 4, 2024, the Applicant filed a set of updated architectural, landscape, and civil plans and requested a waiver<sup>9</sup> from Subtitle Z § 401.5 to allow the filing to be accepted less than twenty days prior to the public hearing on the Application. The updated plans reflect a darkened masonry color at the base of Building B1 and a widening of the belt course in an effort to create a stronger distinction between the base and upper floors in response to feedback from OP. (Ex. 28-28C3.)

### **Testimony**

65. At the April 8, 2024, public hearing, the Applicant presented the Application with its PowerPoint presentation, and included the testimony of three witnesses:
- Rosana Torres, Project Architect, GTM Architects of Washington DC, LLC;
  - Susan Mentus, Project Architect, GTM Architects of Washington DC, LLC; and
  - Jim Watson, Traffic Engineer, Wells + Associates.
- (Ex. 29A1-29A2; Transcript of April 8, 2024, Public Hearing [“Hrg. Tr.”] pp. 9-31.)

### **Post-Hearing Submissions**

66. On May 6, 2024, the Applicant submitted a draft order with a cover letter. (Ex. 32, 32A.)

### **APPLICANT’S JUSTIFICATIONS FOR APPROVAL – DESIGN REVIEW IN THE HE ZONE DISTRICT Hill East Zone District Requirements**

67. Purposes of the Hill East Zone District (Subtitle K § 400.1) – The Applicant asserted that the Project advances the purposes of the HE zones that are outlined in Subtitle K § 400.1 (see FF No. 25 above) because:
- In furtherance of Subtitle K § 400.1(a), the proposed development would continue connecting Hill East to the surrounding neighborhood and the Anacostia Waterfront Park. The façades of Buildings B1 and B2 would have distinctive elements, and the design of the overall Project will be consistent with the recommendations of the Hill East SAP. Further, the Project will activate the site and provide a mix of uses that are compatible with the surrounding neighborhoods of Hill East and Capitol Hill;

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<sup>9</sup> The Commission granted the waiver request at the start of the April 8, 2024 public hearing. (Hrg. Tr. pp. 5-6.)



- In furtherance of Subtitle K § 400.1(b), the development would meet current housing and affordable housing, retail, and service needs. The Project will generate approximately 494 new residential units in a desirable waterfront neighborhood. Approximately 14,044 square feet of GFA in Building B2 will be devoted to retail use, which can help satisfy demand for a variety of goods and/or services. In addition, the amenities and open spaces intended for residents and the general public would facilitate community engagement and social interaction, including the linear park along Independence Avenue, S.E.;
- In furtherance of Subtitle K § 400.1(c), new streets will be constructed in conjunction with the Project, specifically 20<sup>th</sup>, 21<sup>st</sup>, and Burke Streets, S.E. The proposed development is also consistent with the density and height requirements of the HE-2 zone, and is scaled to be compatible with the neighboring community;
- In furtherance of Subtitle K § 400.1(d), the proposed heights of Buildings B1 and B2 maintain a human-scale and match existing neighborhood buildings. Both buildings increase in height as the Property slopes downward to the Anacostia waterfront. The implementation of the “base, middle, top” architectural technique also serves to maintain a human-scale at the pedestrian level;
- In furtherance of Subtitle K § 400.1(e), the proposed development includes shade trees and are spaced to provide a consistency canopy. The dimensions of the proposed sidewalks and planting strips will meet or exceed current DDOT standards and provide adequate separation for pedestrian and vehicle movement;
- In furtherance of Subtitle K § 400.1(f), the buildings would achieve the equivalent of LEED Silver certification under the LEED v4 Multifamily Midrise standard. The Project would include sustainable design features such as stormwater management and energy efficient systems; and low-impact development measures, including bio-retention areas and vegetated roofs. These sustainable features would benefit the development, the neighborhood, and the District as a whole;
- In furtherance of Subtitle K § 400.1(g), the Project will introduce a mix of residential and non-residential uses within walking distance of the Stadium Armory Metrorail station, which is adjacent to the Property. In an effort to leverage this proximity, the Project creates an environment where pedestrians and various modes of transportation can interact safely and without conflict. The linear park planned along Independence Avenue, S.E. will serve as a major contributor to fostering a pedestrian-friendly space. The Project also includes new landscaping and a variety of streetscape improvements that promote the use of public transit and reduce the impact of traffic on adjacent neighborhood streets; and
- In furtherance of Subtitle K § 400.1(i), the Project is intended to serve as a unique and attractive gateway into the neighborhood and the future Anacostia waterfront park. The Project will provide new housing with a mixture of unit types and affordability, as well as retail uses adjacent to public transit (e.g., the Stadium Armory Metrorail station). The retail uses would serve the new development as well as the surrounding community. The linear park planned along the frontage of Building B1 will provide ample opportunities for seating, gathering, relaxing, and other forms of recreation along Independence Avenue, S.E.

(Ex. 3.)



68. Ground Floor Uses Where Required and Permitted (Subtitle K § 417.) – The Applicant asserted that the Application meets the HE zone ground floor use requirements and permissions set forth in Subtitle K § 417 (*see* FF Nos. 26 and 27 above) because:
- Building B1 – Building B1 has frontage along Independence Avenue and therefore must comply with the ground floor use requirement of Subtitle K § 417.1. Not less than 65% of Building B1's ground floor frontage along Independence Avenue, S.E. will be devoted to a lobby area with access to a leasing office, communal work space, and residential amenity space; however in the alternative and out of an abundance of caution, the Application requested a waiver in the event the proposed ground floor uses, particularly the communal work space, do not satisfy the applicable design requirements; and
  - Building B2 – The HE zones ground floor use requirements are not applicable to Building B2 because the building does not have frontage at any of the locations listed Subtitle K § 417.1. However, Building B2 has frontage along Burke Street and is therefore permitted to have ground floor preferred uses in accordance with Subtitle K § 417.2. A minimum of 65% of the Building B2 façade along Burke Street will be devoted to retail, which is a preferred use in the HE zones per Subtitle K § 411.1.
- (Ex. 3.)
69. Design Standards for Ground Floor Preferred Uses (Subtitle K § 418.) – The Applicant asserted that the Application meets the design standards for ground floor preferred uses set forth in Subtitle K § 418 (*see* FF No. 28 above) because:
- Building B1 – For Building B1, the design standards for ground floor preferred uses are not applicable because Building B1 does not include any preferred uses as defined in Subtitle K § 411; and
  - Building B2 – For Building B2, with the exception of the 14-foot minimum clearance requirement set forth in Subtitle K § 418.1(c), from which the Application requested a waiver (as further discussed below), the ground floor retail provided in Building B2's Burke Street frontage will:
    - Wrap around the corner of Burke Street, S.E. and 21<sup>st</sup> Street, S.E. to a minimum depth of 20 feet;
    - Occupy the ground floor for a minimum depth of 30 feet; and
    - Have associated windows that comprise 30% of the length and 30% of the surface area of the street wall at the ground level of Building B2.
- (Ex. 3.)
70. Design Conditions for the Hill East Zone District (Subtitle K § 419.) – With the exception of the design conditions set forth in Subtitle K § 419.2 (as applicable to Building B1) and Subtitle K § 419.7 (as applicable to Building B1 and Building B2), from which the Applicant requested waivers (as further discussed below), the Applicant asserted that the Application meets the design conditions for all buildings and structures located in the HE zones that are set forth in Subtitle K § 419 (*see* FF No. 29 above) because:
- Subtitle K § 419.2 – Building B1 does not comply with this standard and a waiver is being requested pursuant to Subtitle K § 409.2, as further discussed below. Building

- B2 complies with this standard because it extends to the west property line at 20<sup>th</sup> Street, S.E. abutting the street right-of-way for not less than 90% of the property line and to a height of not less than 25 feet. Building B2 is setback approximately 10'-9" to accommodate the private drive that will connect 20<sup>th</sup> and 21<sup>st</sup> Streets, however this does not affect compliance with this design standard;
- Subtitle K § 419.3 – All portions of the front of Building B1 and Building B2 that do not extend to the property line along 20<sup>th</sup> Street, S.E. are within 25 feet of the front property line and to a height of not less than 25 feet;
  - Subtitle K § 419.4 – Building B1 and Building B2 incorporate entrance canopies that extend forward of the required building line to the extent permitted by any other regulations. Building B2 is also designed with awnings for future retail uses, to the extent permitted by any other regulations;
  - Subtitle K § 419.5 – Building B1 incorporates modulated and articulated building wall planes through the use of recesses, reveals, and changes in materials and colors that interrupt the building façade and add visual interest while Building B2 incorporates similar modulation and design strategies. For every 50 feet of building façade length on Building B1, there is an immediate change in material, patterns, and textures to provide visual breaks. There are no portions of Building B2 that have 50 feet of uninterrupted building façade length;
  - Subtitle K § 419.6 – The articulation on Buildings B1 and B2 incorporates a minimum change of plane of six inches;
  - Subtitle K § 419.8 – The articulation features incorporated into Building B1 and Building B2 do not exceed 60% of the building façade width;
  - Subtitle K § 419.9 – This standard is not applicable to Building B1 because it is an entirely residential building. Building B2 has ground floor retail and incorporates a series of storefront bays with entrances that are no more than 50 feet apart along Burke Street, S.E.;
  - Subtitle K § 419.10 – Any security grilles provided for Buildings B1 or B2 will have no less than 70% transparency;
  - Subtitle K § 419.11 – On Buildings B1 and B2, no street-facing façade will have blank walls greater than 10 feet in length;
  - Subtitle K § 419.12 – The main residential entrance for Building B1 is clearly defined and directly accessible from 21<sup>st</sup> Street. The main residential entrance for Building B2 is clearly defined and directly accessible from 21<sup>st</sup> Street, S.E. The retail uses for Building B2 have separate entrances along Burke Street and 21<sup>st</sup> Street, S.E. which will be clearly defined and directly accessible from the public sidewalk;
  - Subtitle K § 419.13 – There will be no exterior display of goods or exterior storage between the building line of Building B1 and the front lot line or between the building line of Building B2 and the front lot line. Any outdoor seating for any eating and drinking establishments in Building B2 will comply with District laws;
  - Subtitle K § 419.14 – Buildings B1 and B2 comply with the minimum window coverage required for street facing façades above the ground floor level:
    - Independence Avenue, S.E. is a primary street that borders the northern façade of Building B1, which is entirely residential. In accordance with this standard, the windows on Building B1's Independence Avenue façade will cover a minimum of

- 20% of the area above the ground floor level. Building B1 also fronts 20<sup>th</sup> and 21<sup>st</sup> Streets. Along these secondary streets, Building B1 provides windows that cover a minimum of 20% of the street-facing facades above the ground floor level; and
- Building B2 has street-facing facades along Burke, 20<sup>th</sup>, and 21<sup>st</sup> Streets, S.E., which are secondary streets in the HE Zone District. Along these secondary streets, Building B2 provides windows that cover a minimum of 20% of the street-facing facades above the ground floor level, where the building is programmed with residential use.
  - Subtitle K § 419.15 – Buildings B1 and B2 clearly articulate a base, middle, and top because:
    - The base of Building B1 is designed with brick veneer and a case stone base wrapping around the lower level and the first floor. A clear belt course separates the base from the middle portion of the building. The top portion is distinguished with a setback at the seventh floor, change in building material, and architectural embellishments at the four corners of the building; and
    - The base of Building B2 is designed with brick veneer and a cast stone base around the first floor, and a continuous belt course separates the base from the middle portion of the building. Above the belt course, the brick veneer base transitions to a mix of brick veneer and metal panels. The top floor is accentuated with dark cementitious paneling and a cornice that caps the building. At the top floor, the brick veneer is only located at the ends to further emphasize the building corners.
  - Subtitle K § 419.16 – Both Buildings B1 and B2 will be constructed with brick veneer, case stone bases, metal paneling and glass. These are high quality and durable materials that will leverage the building’s signature features (e.g., corner towers) and convey permanence. Moreover, cementitious paneling will only be used on the seventh floor of both buildings, as well as on the building façades fronting the private driveway; and
  - Subtitle K § 419.17 – The design for Buildings B1 and B2 does not include the use of synthetic stucco, vinyl siding, and/or low-grade exterior finishes.

(Ex. 3.)

71. Design Conditions for Buildings Located on Primary Streets (Subtitle K § 420.) – With the exception of Subtitle K § 420.2, from which the Applicant requested an area variance (as further discussed below), the Applicant asserted that the Application meets the design conditions for buildings located on primary streets set forth in Subtitle K § 420 (*see* FF No. 30.), which are only applicable to Building B1<sup>10</sup> because, among other reasons:
- Subtitle K § 420.3 – At the intersection of Independence Avenue, S.E. and 20<sup>th</sup> and 21<sup>st</sup> Streets, S.E. the corners of Building B1 are accentuated with towers. In addition, the windows at these corners are grouped vertically and framed in metal in an effort to create “shadow boxes” that induce a visual play of light and shadow. The windows and doors in the shadow boxes are Juliet balconies to break up the rhythm of the façade. There are also significant architectural features integrated to emphasize the corner, such as the crown at the top of the building and the setback at the seventh floor;

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<sup>10</sup> The design conditions in Subtitle K § 420 are not applicable to Building B2 because it does not have frontage on any primary streets as defined in Subtitle K § 400.5.

- Subtitle K § 420.4 – The distance between the corner towers of Building B1 and the corners of Parcel B1 where Independence Avenue, S.E. intersects 20<sup>th</sup> and 21<sup>st</sup> Streets, S.E. does not exceed 20 feet;
- Subtitle K § 420.5 – There are no entrances into Building B1 along Independence Avenue, the primary street;
- Subtitle K § 420.6 – Building B1 also incorporates vertical elements in the street-facing façade to create a series of storefront-type bays where the ground floor lobby area with office and residential amenity space is located along Independence Avenue, S.E.;
- Subtitle K § 420.7 – Building B1 has one primary entrance that is directly accessible from the public sidewalk along 21<sup>st</sup> Street; and
- Subtitle K § 420.8 – As mentioned in FF No. 69 above, the windows described in Subtitle K § 418.1(d) are not required for Building B1, nor does Building B1 include any artwork or displays on primary streets relating to activities occurring within the building.

(Ex. 3.)

#### **APPLICANT’S JUSTIFICATIONS FOR WAIVERS AND VARIANCE RELIEF REQUESTED**

72. The Applicant provided justifications for the following waivers and area variance from the Hill East design standards requested pursuant to Subtitle K §§ 409.2 and 409.3.

#### **Waivers from Hill East Design Standards**

73. Waiver from Subtitle K § 418.1(c) for Building B2 – The Applicant asserted there is good cause for the Commission to grant a waiver from Subtitle K § 418.1(c) as the standard applies to Building B2. Building B2 cannot achieve the 14-foot minimum clearance that is required for the entire area dedicated to retail use because of the significant grade change from 20<sup>th</sup> Street to 21<sup>st</sup> Street, S.E. However, a 14-foot clearance will be provided for approximately 65% of the ground floor retail frontage along Burke Street, S.E. (Ex. 3, 29A2; *see also* Hrg. Tr. pp. 24-25.)
74. Waiver from Subtitle K § 419.2 for Building B1 – The Applicant asserted there is good cause for the Commission to grant a waiver from Subtitle K § 419.2 as the standard applies to Building B1. In this case, the front of Building B1 cannot extend to the property line abutting 20<sup>th</sup> Street, S.E. because the building is set back to accommodate the linear park that will be dedicated to the life and legacy of Robert F. Kennedy. The park is intended to foster a park-like, pedestrian-friendly experience along a primary street, thus furthering the purposes of the HE Zone District. Additionally, the front of Building B2 does not extend to the property line abutting 20<sup>th</sup> Street to accommodate sufficient space for the private driveway that will service the Project. (Ex. 3, 29A2; *see also* Hrg. Tr. pp. 25-26.)
75. Waiver from Subtitle K § 419.7 for Building B1 – The Applicant asserted there is good cause for the Commission to grant a waiver from Subtitle K § 419.7, as the standard applies to Building B1, because the facade articulation will not be less than two feet in depth as required. The proposed façade articulation has a depth of up to three feet to soften the scale of the building, add visual interest, and create a clear hierarchy of the different planes. The

proposed articulation also helps accentuate the tower elements at the building corners. (Ex. 19, Ex. 29A2; *see also* Hrg. Tr. p. 26.)

76. Waiver from Subtitle K § 419.7 for Building B2 – The Applicant asserted there is good cause for the Commission to grant a waiver from Subtitle K § 419.7 as the standard applies to Building B2. In this case, Building B2 has a façade articulation that is exactly two feet in depth on each building face. The proposed articulation is exactly two feet because the standard brick that will be used to construct the building is two feet in length. (Ex. 3, Ex. 29A2; *see also* Hrg. Tr. pp. 26-27.)
77. Waiver from Subtitle K § 417.1(e) for Building B1 – The Applicant asserted there is good cause for the Commission to grant a waiver from Subtitle K § 417.1(e) as the standard applies to Building B1 because while Building B1 devotes not less than 65% of the ground floor frontage along Independence Avenue, S.E. to a leasing office, communal work space, and residential amenity space, the Applicant, out of an abundance of caution, requested a waiver in the event the proposed ground floor uses do not (i) amount to or exceed 65% of the ground floor frontage; or (ii) comply with the design requirements of Subtitle K §§ 418 through 420. Further, the Independence Avenue frontage abutting Building B1 will be improved with a linear park. The integration of office and residential uses in the adjacent ground floor will help to cultivate a more neighborhood-like feel at this location. The interplay between residents and visitors of the park will generate a consistent level of activity during the day and into the evening, and distinguish the residential character of Building B1 from the mixed use character of Building B2. (Ex. 3, 29A2; *see also* Hrg. Tr. pp. 27.)

**Area Variance from Design Condition for Building Located on Primary Street (Subtitle K § 420.2.)**

78. The Applicant asserted that it meets the requirements of Subtitle X §§ 1001.1 and 1002.1(a) for an area variance from Subtitle K § 420.2, which requires, notwithstanding Subtitle K §§ 419.2 and 419.3, the fronts of buildings located at street intersections to be constructed to the property lines abutting each intersecting street, without any setback, for a minimum of 50 feet from the intersection, along each street frontage, as follows:
- ***Exceptional Condition or Other Extraordinary Situation*** – The design of the Project was included in the Applicant’s response to a DMPED Request for Proposal (“RFP”) for the Hill East District Phase II Redevelopment, and reflected significant input from community stakeholders. DMPED has accepted the Applicant’s proposed design, which sets back Building B1 from the northern property line in order to accommodate the linear park along Independence Avenue, S.E. Such circumstances present an extraordinary situation;
  - ***Peculiar and Exceptional Practical Difficulty*** – Strict compliance with Subtitle K § 420.2 results in a peculiar difficulty because the Applicant would be unable to deliver the Project as represented in the RFP;
  - ***No Substantial Detriment to the Public Good*** – The requested area variance would not pose a substantial detriment to the public good. To the contrary, strict compliance—i.e., constructing Building B1 all the way to the property line—would deprive the



public of a landscaped public space that will foster pedestrian activity and community interaction; and

- ***No Substantial Impairment of the Zoning Regulations*** – The requested area variance would not result in any substantial impairment of the Zoning Regulations or maps because the requested relief will enable the Applicant to construct a development that advances the purposes of the HE zone, namely to connect the Hill East neighborhood and the city at large to the waterfront via tree-lined public streets and to create recreational space along Independence Avenue, S.E. (Subtitle K §§ 400.1(e) and (i)(3).) (Ex. 3, 29A2; *see also* Hrg. Tr. pp. 25-26.)

#### **APPLICANT’S JUSTIFICATIONS FOR APPROVAL – GENERAL DESIGN REVIEW**

79. The Applicant asserted that the Application met the general design review standards of Subtitle X § 604 because of the justifications detailed immediately below. (Ex. 22, 22A.)

#### **Not Inconsistent with the CP and Public Policies (Subtitle X § 604.5.)**

80. The Applicant asserted that the Application complies with Subtitle X § 604.5 because the Application is not inconsistent with the CP as a whole, including its maps and policies and when viewed through a racial equity lens, and other public policies, as set forth below. (Ex. 22A.)

81. The Application is not inconsistent with the Property’s Mixed Use (Medium Density Residential/Medium Density Commercial/Institutional) designation on the FLUM because:

- The Property is consistent with the locational characteristics of areas typically assigned a Mixed Use designation. It is located in close proximity to public transit (e.g., the Stadium-Armory Metrorail station) where more housing and retail is desired in the future. The concept is also supported by the Comp Plan’s objectives outlined in the Capitol Hill Planning Area, and particularly those for Reservation 13, where the District envisions a mixed-use neighborhood that combines housing with non-residential uses to create an anchor, waterfront site along the waterfront; and
- The Project proposes a maximum density of 4.8 FAR, which falls within the range contemplated by the Medium Density Commercial FLUM category. In addition, as envisioned by the FLUM, the Project will also provide a mix of residential and retail uses at the Property. Building B2 is particularly emblematic of the Mixed Use concept, as it will provide upper story housing (approximately 144 units), including affordable housing, above approximately 14,044 square feet of ground floor retail. The Project also proposes landscaping and a variety of streetscape improvements intended to cultivate a pedestrian-oriented environment that is envisioned for areas designated under the “Mixed Use” category.

(Ex. 22A.)

82. The Application is not inconsistent with the Property’s designation on the GPM as a Land Use Change Area. The Property has many of the characteristics of a Land Use Change Area, as it was formerly public land (Federal Reservation 13) disposed of by the DC Council to the Applicant for redevelopment purposes, pursuant to the “Hill East Phase II Bundle 1 Surplus Declaration and Disposition Approval Act of 2002.” (DC Law No. 24-



0319.) The Property is transit accessible and located in a waterfront-oriented location that presents a prime opportunity for new development. The Applicant has leveraged this opportunity and proposes a Project that is not inconsistent with the goals of a Land Use Change Area as described in the Framework Element. The Project reflects “exemplary site and architectural design” that will help to create a mixed use community consisting of new housing, affordable housing, retail, and employment opportunities. (Ex. 22A.)

83. The Application is not inconsistent with the GPM locating the Property within a Future Planning Analysis Area. The subject Application does not seek to rezone the Property, as it has already undergone rezoning pursuant to a master plan approved by the City Council in February 2003, following its transfer of ownership from the federal government to the District of Columbia. Consequently, a CP analysis for the Property and the overall Hill East site has already been conducted, leading to the establishment of the Hill East SAP and Design Guidelines as guiding documents. (Ex. 22A.)
84. The Application is not inconsistent with the GPM locating the Property within a Resilience Focus Area. Although the Property is situated in a Resilience Focus Area, planning efforts to address resilience issues have not yet commenced. Instead, the Applicant plans to integrate numerous green features into the site design, including pursuing LEED Silver certification for the building and obtaining a net-zero energy certification through the Department of Energy (“DOE”) Zero Energy Ready Home program, following the Energy Rating Index (“ERI”) pathway. The Project will also introduce new landscaping and environmentally friendly enhancements to the adjacent streetscape, as required to comply with the Green Building Act and the District's stormwater management regulations. (Ex. 22A.)

### ***Racial Equity***

85. The Comprehensive Plan also requires the Commission to evaluate all zoning actions through a racial equity lens. (CP § 2501.8.) Consideration of equity is intended to be based on the policies of the Plan and part of the Commission’s consideration of whether the PUD in this case is “not inconsistent” with the Comprehensive Plan, rather than a separate determination about a zoning action’s equitable impact.
86. The Comprehensive Plan’s Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (CP § 213.6.) Further “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development and employment opportunities.” (CP § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (CP § 213.9.)
87. The Comprehensive Plan’s Implementation Element provides guidance for the Commission in applying a racial equity lens to its decision making. Specifically, the

Implementation Element states that “[a]long with consideration of the defining language on equity and racial equity in the Framework Element, guidance in the Citywide Elements on District-wide equity objectives, and the Area Elements should be used as a tool to help guide equity interests and needs of difference areas in the District.” (CP § 2501.6.) In addition, the Implementation Element suggests to prepare and implement tools to use as a part of the Commission’s evaluation process. (CP § 2501.8.) Consistent with Comprehensive Plan guidance, the Commission utilizes a Racial Equity Analysis Tool in evaluating zoning actions through a racial equity lens; the Commission released a revised Tool on February 3, 2023. The revised Tool requires submissions from applicants and the Office of Planning analyzing the zoning action’s consistency with the Citywide and Area Elements of the Comprehensive Plan, and Small Area Plans, if applicable (Part 1); a submission from applicants including information about their community outreach and engagement efforts regarding the zoning action (Part 2); and a submission from the Office of Planning including disaggregated race and ethnicity data for the Planning Area affected by the zoning action (Part 3).

88. The Applicant provided the following information about the community and its outreach in its responses to the Community Outreach and Engagement component of the Commission’s revised Racial Equity Analysis Tool:
- *Community Outreach and Engagement*: The Applicant stated it has made a concerted effort to understand the unique attributes of each affected ANC and engaged closely with surrounding residents to address their needs and foster meaningful dialogue. The Applicant has attended meetings with the affected ANCs, the adjacent St. Coletta school, and members of the surrounding community dating back to September 2020, when the D.C. Council was reviewing legislation that would dispose of the Property, along with other parcels in Hill East. The Applicant presented to the full ANC 7F on November 21, 2023, and held a special community meeting at the St. Coletta school on March 26, 2024. (Ex. 22A.) In addition, the Applicant requested a postponement of the originally scheduled public hearing in order to allow time to meet with the affected ANCs and present the Application at a community meeting which was held at St. Coletta on March 26, 2024. (Ex. 30, 31.)  
(Ex. 22A.)
89. The Applicant asserted that the proposed zoning action will generally result in positive outcomes and address a number of equity issues that residents in the Capitol Hill Planning Area are experiencing. Therefore, the Applicant asserted that the Application is not inconsistent with the CP when evaluated through a racial equity lens. (Ex. 22A.)

### ***Capitol Hill Area Element***

90. The Application is not inconsistent with the CP’s Capitol Hill Area Element and advances a number of related planning objectives. The Project will generate a new mixed use development inclusive of ground floor retail and upper story residential uses, along with streetscape improvements that improve visual and urban design qualities and enhance pedestrian circulation. (CH-1.1.4.) The Project will also provide new landscaping, and accommodates new open spaces (e.g., RFK Park along Independence Avenue) to facilitate outdoor recreation and connectivity to the waterfront. (CH-1.1.12, CH-1.2.5, CH-1.2.6.)

New streets will be constructed in conjunction with the Project, specifically 20th, 21st and Burke Streets, S.E., and the Project will implement a transportation demand management plan geared toward ensuring pedestrian and bicycle safety. (CH-1.1.13.) Overall, the Project advances many of the District's goals to redevelop Reservation 13 as a vibrant, mixed use neighborhood. The Project will improve the site's vitality and efficiency with new housing, as well as an urban design that cultivates an active and engaged community. (CH-2.4.1, CH-2.4.2, CH-2.4.3, CH-2.4.4, CH-2.4.5, CH-2.4.A; Ex. 22A.)

### ***Citywide Elements***

91. The Application is not inconsistent with the CP's Land Use Element because the Project will further numerous Land Use Element policies:
- The Applicant's involvement with the Hill East site began back in 2012, when it responded to an RFP for the first phase of the overall Hill East redevelopment. Similarly, the proposed redevelopment of the Property was initiated by the Applicant's response to an RFP, which has involved and will continue to require extensive coordination with the District and relevant federal agencies; (LU-3.5.1, LU-3.5.2.)
  - The proposed Project will result in the redevelopment of a large, presently vacant site with a new mixed use development consisting of new housing, including affordable housing, and ground floor retail; (LU-1.3.1, LU-1.3.2, LU-1.5.1, LU-2.1.1, LU-2.1.2, LU-2.1.3, LU-2.1.10.)
  - Because the Project must comply with the design guidelines of the HE Zone District (Subtitle K, Chapter 4), relevant Comp Plan policies related to protecting important vistas, enhancing connectivity to the waterfront, and sustainability will be advanced; (LU-1.3.4, LU-1.3.6, LU-1.3.7, LU-1.3.8, LU-2.2.5.)
  - The Hill East design requirements also ensure that the Project will achieve a certain level of visual interest and compatibility with the larger Hill East neighborhood and Capitol Hill Planning Area. (LU-2.2.4, LU-2.2.5.) Both proposed buildings consist of multifamily housing, and the proposed non-residential use (i.e., retail use) is limited to the ground floor of Building B2. (LU-2.3.1, LU-2.3.2.) Moreover, the proposed design at the ground level (e.g., double-height windows), the addition of significant landscaping, and the integration of an underground parking garage advance various Comp Plan goals related to cultivating a pedestrian-oriented environment and prioritizing transit-oriented development; and (LU-1.4.1, LU-1.4.2, LU-1.4.5, LU-2.2.4, LU-2.1.11.)
  - In furtherance of CP goals related to achieving racial equity, the Project creates important opportunities for disadvantaged persons and for deeply affordable housing. (LU-2.1.2, LU-2.1.3.) The Project will generate approximately 494 new residential units in close proximity to transit and the waterfront, thus in a highly desirable and in a high-opportunity area. (LU-1.4.3, LU-2.1.1, LU-2.1.10.) In accordance with the AWI Act and DC Code Sec. 10-801 *et seq.* that governs land dispositions, the Project reserves at least 30% of the total housing units as affordable housing. (LU-1.4.4.) (Ex. 22A.)

92. The Application is not inconsistent with the CP's Transportation Element because the Project will help to achieve the Element's overarching goal to "[c]reate a safe, sustainable, equitable, efficient, and multimodal transportation system":
- Presently, the Hill East campus is relatively disconnected from downtown and other areas of the District. However, the Project and the larger redevelopment envisioned for Hill East will result in tremendous benefits with respect to transportation and access. The proposed Project advances the overarching goal of the Transportation Element because it is a mixed-use development that will result in the construction of a new road network and significant streetscape improvements, thus connecting residents to locations throughout the city and vice versa; (T-1.1.7, T-1.2.4, T-1.3.1, T-2.2.1, T-2.2.2.)
  - Given that the Property is ideally located near various forms of public transit, including the Stadium-Armory Metrorail station, the Project will provide increased access to neighborhood-serving commercial uses, institutional uses, and employment opportunities within the surrounding area and throughout the District; (T-1.1.4, T-1.1.7, T-1.2.3, T-2.2.2, T-2.6.1, T-2.6.2.)
  - The proposed transportation improvements will cultivate a multi-modal environment where pedestrians, bicyclists, and motorists can navigate safely. (T-1.1.3, T-1.2.4, T-2.2.1, T-2.3.3, T-2.4.2.) The proposed landscaping and streetscape enhancements will improve the walkability of the surrounding area, discourage auto-oriented uses, and strengthen the residential character of the Project. (T-1.2.3, T-2.2.2, T-2.3.1, T-2.4.1, T-2.4.2.) The proposed design of the Project, particularly where Building B1 is setback along Independence Avenue, S.E. to accommodate the proposed linear park, also contributes to a pedestrian-oriented environment. A multi-modal design approach to transportation design will also result in a more equitable network that provides greater accessibility; and (T-1.1.7, T-2.6.1, T-2.6.2.)
  - The Applicant proposed a transportation demand management plan that includes strategies to manage the traffic generated by the Project and any adverse impacts to the surrounding road network. (T-2.5.4, T-3.1.1, T-3.1.A.)
- (Ex. 22A.)
93. The Application is not inconsistent with the CP's Housing Element because it creates a mixed-use development with mixed-income housing, including a substantial affordable housing component. The Project advances several Comp Plan objectives related to housing, particularly with respect to affordability, transit accessibility, and diversification, as follows:
- The Project will generate 494 new residential units within proximity to transit, including affordable units that will remain affordable for the life of the Project; (H-2.1.6.)
  - In accordance with applicable District laws, 165 of the new units will be set at 30%-60% MFI and 164 of the new units will be set aside at 60%-120% MFI;
  - Data provided in connection with the 2019 Housing Equity Report shows that, with the exception of the Rock Creek West Planning Area, Capitol Hill has generated the least amount of affordable housing units of any Planning Area;

- New production of housing and affordable housing increases the supply in a desirable neighborhood, taking the pressure off the existing housing supply and allowing it to serve a greater range of household incomes. (10-A DCMR § 500.36.) The Project will address citywide housing needs by developing new housing at an underutilized site where a mixed-use neighborhood is envisioned and desired; (H-1.1.4.)
- The affordable housing will be designed and constructed according to the same high-quality architectural design standards used for the market-rate housing, and the interior amenities, including finishes and appliances, will be comparable to the market-rate materials, durable, and consistent with contemporary standards for new housing; (H-1.1.5.)
- The Project will also contain housing for large households, including 11 three-bedroom units; and (H-1.1.9, H-1.3.1.)
- Thus, the Project represents a mixed-income development and will provide a substantial contribution to the District's affordable housing goals. (H-1.1.1, H-1.1.3, H-1.2.1, H-1.2.2, H-1.2.3, H-1.2.5, H-1.2.9, H-1.2.11.)  
(Ex. 22A.)

94. The Application is not inconsistent with the CP's Environmental Protection Element because, in accordance with the overarching goal for the Environmental Protection Element, the Project will incorporate energy efficient systems to reduce energy use and potentially provide alternative energy sources to contribute to the District's energy efficiency goals. (E-3.2.3, E-3.2.7, E-4.2.1.) Notably, the Applicant is pursuing LEED Silver certification and a net-zero energy certification using the Department of Energy (DOE) Zero Energy Ready Home program and following the Energy Rating Index ("ERI") pathway. Redevelopment of the Property will also yield new landscaping and environmentally friendly enhancements to the abutting streetscape. (E-1.1.2, E-2.1.2, E-2.1.3, E-4.1.1, E-4.1.2.) The Applicant also noted that the Project is presently required to comply with the Green Building Act and the District's storm water management regulations and will be consistent with the Sustainable DC Plan. (E-4.2.1.) Compliance efforts include the installation of green roofs that will improve storm water management and climate resilience. (E-4.1.1, E-4.1.2; Ex. 22A.)
95. The Application is not inconsistent with the CP's Economic Development Element because, in accordance with the overarching goal for the Economic Development Element, the proposed Project has the potential to grow small business and expand employment opportunities in a transit-accessible location. The ground floor of Building B2 will allocate over 14,000 square feet to retail use, thus providing new opportunities for a variety of business owners to provide neighborhood-serving retail to the Project's residents and visitors (ED-2.2.3, ED-2.2.5, ED-2.2.9.) The new retail provided with the Project may also attract future retail and other commercial uses as the overall Hill East site is redeveloped in future years (ED-3.1.1; Ex. 22A.)
96. The Application is not inconsistent with the CP's Parks, Recreation, and Open Space ("PROS") Element because, in accordance with the overarching goal for the PROS Element, the Project accommodates the creation of open spaces and opportunities for



outdoor recreation. A major component of the Applicant's RFP, and now the proposed Project, involves accommodating space for a linear park along Independence Avenue, S.E. that will be dedicated to the life and legacy of Robert F. Kennedy. (PROS-1.2.B, PROS-1.3.B, PROS-1.4.1, PROS-1.4.4, PROS-1.4.5, PROS-3.1.B.) Building B1 does not extend to the front lot line (along Independence Avenue) in order to provide sufficient space for this park and the associated landscaping and streetscape improvements and ensure accessibility for all residents and visitors to Hill East. (PROS-1.2.1, PROS-1.2.2.) In addition to accommodating the linear park, there are other aspects of the Project that advance the various objectives of the PROS Element. The design of the Project retains important viewsheds to the waterfront and represents another step in a larger effort to connect the Hill East campus to the waterfront. (PROS-3.2.1, PROS-3.2.2.) The Project also includes courtyard space, green roof elements, and substantial landscaping around the perimeter to provide visual relief and aesthetic balance with the new development. (PROS-4.3.3.)

97. The Application is not inconsistent with the CP's Urban Design Element because, in accordance with the overarching goal to enhance the beauty, equity, and livability of Washington, D.C., the proposed architecture implements the design guidelines of the HE Zone District, to the extent practical, to redevelop a large site and establish a strong mixed-use development in a transit-accessible and waterfront oriented location. (UD-1.3.6, UD-2.2.1, UD-2.2.2, UD-2.2.6, UD-2.2.8, UD-2.2.B, UD-4.2.F, UD-3.2.4, UD-4.2.1.) Because the overall massing transitions from a more traditional look toward the south end of the Property to a more modern aesthetic at the north end of the site, the architecture is able to convey a sense of longevity – i.e., that the Hill East redevelopment reinforces an established character that has existed for an extended period of time. (UD-2.2.1, UD-2.2.2.) Some notable design elements include dynamic facades that vary in articulation depth, tower elements, creation and preservation of parks and open spaces (e.g., courtyards and accommodation of space along Independence Avenue, S.E. for linear park), and active ground floor uses that foster community interaction and activity along the abutting streetscape. (UD-2.2.7, UD-3.2.1, UD-3.2.2, UD-3.2.3, UD-4.2.2, UD-4.2.4, UD-4.3.3.) The proposed Project also integrates various green building measures consistent with the District's goals for resilient and sustainable development. (UD-2.2.9; Ex. 22A.)
98. The Application discussed the extent to which the Project could be deemed potentially inconsistent with CH-1.1.13 (Traffic Management Strategies) and T-2.3.2 (Bicycle Network), since the Project does not address larger traffic initiatives in the Hill East neighborhood, nor does it propose bike lanes along Independence Avenue or the extended interior streets to improve bicycle connectivity. However, the Applicant asserted that any inconsistencies with the aforementioned policies are outweighed by the Project's advancement of policies under the Capitol Hill Area Element and the Citywide Elements and other competing considerations, including those of the 2019 Housing Equity Report. (Ex. 22A.)

#### ***Hill East SAP***

99. The Project is not inconsistent with the Hill East SAP because it will advance several goals related to expanding connectivity within the Hill East site, providing housing and



affordable housing, maintaining appropriate building heights, and cultivating an environmentally friendly and sustainable living experience. (Ex. 22A.)

**Will Not Tend to Affect Adversely the Use of Neighboring Property and General Special Exception Criteria of Subtitle X, Chapter 9 (Subtitle X § 604.6.)**

100. The Applicant asserted that the Application will be in harmony with the generally purpose and intent of the Zoning Regulations and Zoning Maps because:
- The Application advances the various purposes of the HE Zone District set forth in Subtitle K § 400.1;
  - To the extent possible, after taking into account the requested waivers and variance relief, the Project complies with the tailored standards and design guidelines of the HE Zone District, which not only serve to cultivate a particular aesthetic, but to ensure neighborhood compatibility and protection from adverse impacts. As such, the Project should not tend to affect adversely surround properties or the future development of other parcels within Hill East;
  - Although a portion of Building B1 will be constructed on land that presently includes a portion of the parking lot that serves St. Coletta, the Project will provide St. Coletta with direct, secure access to approximately 100 parking spaces in the underground parking garage; and
  - The Applicant will implement a variety of TDM measures to mitigate any adverse impacts to the surrounding traffic network.
- (Ex. 22.)

**Urban Design Criteria (Subtitle X § 604.7.)**

101. The Applicant asserted the following with respect to the urban design criteria set forth in Subtitle X § 604.7:
- Subtitle X § 604.7(a) – The street frontages along Independence Avenue, 20<sup>th</sup> Street, 21<sup>st</sup> Street, and Burke Street, S.E. are designed to be safe, comfortable, and pedestrian-oriented. To foster and encourage pedestrian activity, the Project will provide new landscaping, including shade trees and low plantings, and a variety of streetscape enhancements to calm traffic on adjacent neighborhood streets. The entrance to the parking garage and loading facilities will be accessed via the private drive between Building B1 and Building B2, thus confining vehicular activity to one, predictable area, and minimizing potential conflicts between pedestrians, bicyclists, and motorists. The proposed architecture also contributes to a comfortable pedestrian experience through deliberate articulation and large, transparent windows;
  - Subtitle X § 604.7(b) – The Property is located in close proximity to transit and is situated as a gateway into the Hill East waterfront neighborhood. Accordingly, the design of the Project is intended to create gathering spaces, encourage transit use, and enhance connectivity to the waterfront as the other parcels within the Hill East site are redeveloped in the future;
  - Subtitle X § 604.7(c) – To the extent practical, the Project complies with the HE design guidelines, and thus respects the character envisioned for the Hill East neighborhood. The building style will transition throughout the Hill East campus, with more traditional-looking buildings situated at the south end to the more modern-looking

buildings located at the north end of the site. Building B1 will be expressed in a modern transitional style with a massing articulation that will blend with the neighboring St. Coletta School and the DC Armory;

- Subtitle X § 604.7(d) – Both Buildings B1 and B2 strive for an attractive and inspired façade design. Both buildings implement the architectural principle of “base, middle, and top”, where the “base” – i.e., the lower stories – is distinguished from the upper floors by a continuous belt course and with the use of cast-stone and brick veneer. The pedestrian realm is reinforced with elevated detailing and design throughout the Project;
- Subtitle X § 604.7(e) – The proposed Project involves sustainable landscaping. Shade trees and low plantings are thoughtfully spaced along the abutting streetscape to enhance the pedestrian experience and provide year-round seasonal interest. The new landscaping will help mitigate urban heat and enhance the sustainability of the Project; and
- Subtitle X § 604.7(f) – The Property will be redeveloped to promote connectivity both internally and with the surrounding Hill East neighborhood. New streets will be constructed in conjunction with the Project, specifically 20<sup>th</sup>, 21<sup>st</sup>, and Burke Streets, S.E., thus extending the local grid pattern through the Property and the overall Hill East campus. However, the Project does not only enhance access for motorists; it fosters a multi-modal environment where pedestrians, motorists, and bicyclists can safely navigate the Property. Access to the underground parking garage and loading facilities will be via the private driveway between Buildings B1 and B2. New landscaping and streetscape enhancements will enable safe pedestrian activity through and around the site.

(Ex. 22.)

102. The Applicant further asserted that the Application satisfied the urban design criteria of Subtitle X § 604.7 in a way that is superior to any matter-of-right development possible on the Property. (Ex. 22.)

### **III. RESPONSES TO THE APPLICATION**

#### **DISTRICT AGENCIES**

##### **OP**

103. OP submitted a March 29, 2024 report (the “OP Report”) recommending that the Commission approve the Application. (Ex. 26.) OP concluded that the proposal would not be inconsistent with the CP maps and policies, including when viewed through a racial equity lens, as well as the Hill East SAP. OP stated no objection to the Applicant’s requests for waivers and variance relief from certain HE Zone design conditions, or the Applicant’s requested design flexibility.
104. In support of its recommendation that the Commission approve the Application, the OP Report made the following findings, among others:
- The proposal by the Applicant is the second development in Hill East. The proposed building would meet a majority of the Hill East District use and design requirements

and generally meet the requirements for building form and massing per Subtitle K §§ 417 through 420, and with the general purposes of the HE District in Subtitle K § 400; and

- The proposal would not be inconsistent with the recommendations of the CP maps and policies and the Hill East SAP because:
  - In this case, the HE-2 zone meets the definition of a medium density development as it allows a 4.8 FAR, which is within the range anticipated by the FLUM's Medium Density Commercial designation. Therefore, the development of each parcel at 4.8 FAR is not inconsistent with the FLUM recommendation. The OP Report noted that, while the Property is partially striped Institutional on the FLUM, the Hill East Master Plan's original vision for there to be a hospital on the northern portion of Hill East has not materialized; and the hospital envisioned to serve the eastern part of the City is now under construction at St. Elizabeth's East;
  - The Hill East Zones are specialized zones created to address the particularities of Hill East, such as its sloping terrain down towards the Anacostia River, and to ensure a desired outcome. To implement this vision, specific development parameters were created, such as FAR and height limits instead of a range and to provide the transition from lower building heights and density along 19<sup>th</sup> Street which transitions to higher FAR and heights towards the Anacostia River. The Project is designed in a way that implements the vision for Hill East;
  - The development of the Property would be in line with the development envisioned for this Land Use Change Area, and would implement the design guidelines for Hill East which aspires to create a high-quality neighborhood with exemplary site and architectural design and would be compatible to adjacent uses and future development envisioned for Hill East;
  - The development would incorporate many climate-resilient features such as green roofs, stormwater management, and landscaping to minimize water runoff to the Anacostia River, consistent with the Property's location within a Resilience Focus Area;
  - The future planning analysis for the redevelopment of Reservation 13 has already taken place through the Hill East SAP and the adoption of the Hill East zone design guidelines, consistent with the Property's location within a Future Planning Analysis Area;
  - The proposed development, on balance, would not be inconsistent with the Citywide Elements of the CP and would further the policies of the Land Use, Transportation, Housing, Environmental Protection, Parks, Recreation and Open Space, Economic Development, and Urban Design Elements, in particular:
    - Land Use Element: The proposed development would facilitate the redevelopment of a large District-owned property which is currently vacant and underutilized. As envisioned by the Comp Plan and the Hill East SAP, the development with a mix of multifamily housing and retail uses would make progress toward the redevelopment and revitalizing of the Hill East neighborhood. The proposed mix of uses would be compatible to the adjacent residential, federal and institutional uses. The landscaping around the buildings and pedestrian walkways would provide connections to the adjacent neighborhood and provide future connections to the waterfront. The many

transportation options provided would enable a pedestrian-oriented environment and a transit-oriented development;

- Transportation Element: The proposed mixed-use development would include the extension of Burke Street and the introduction of new 20<sup>th</sup> and 21<sup>st</sup> Streets which would continue the City's grid pattern and also provide connections to neighboring streets. The Property is in close proximity to public transit, the Stadium-Armory Metrorail station, with connections to various train and bus routes would provide increased access to neighborhood serving commercial uses, institutional uses, and employment opportunities within the surrounding area and throughout the City. The existing and proposed transportation improvements, including long- and short-term bicycle parking stations, would assist in creating a multi-modal environment where pedestrians, bicyclists, and motorists can navigate safely. The development would include a transportation plan with the maximization of nearby, existing transportation assets as well as providing easy access throughout the development. A multi-modal transportation system serving the development would result in a more equitable network that provides greater accessibility to residents and visitors to the site. The proposed TDM plan includes strategies to manage the traffic generated by the development and minimize any adverse impacts to the surrounding roadways;
- Housing Element: The development would be on an underutilized site and would assist in addressing the City's housing needs as part of the Hill East mixed-use neighborhood, as envisioned. The development would be a diverse, mixed-income community with 494 new residential units of which 165 units would be affordable at 30% to 60% MFI, 164 units would be for middle income residents at 60% to 120% MFI, and 165 would be market rate units. This would make a substantial contribution to the District's housing and affordable housing goals. The Capitol Hill Planning Area has generated one of the least amounts of affordable housing of the Planning Areas. Therefore, the affordable units generated by this Project would assist in meeting the housing goals for the Planning Area and advance Comp Plan policies related to housing. The development would also have a variety of unit sizes including three-bedroom units. The affordable housing would be of the same quality design and construction as the market-rate units;
- Environmental Protection Element: The development would incorporate energy efficient systems to reduce energy use, and provide alternative energy sources to contribute to the District's energy efficiency goals. The development would be at a LEED Silver certification level and a net-zero energy certification using the Department of Energy (DOE) Zero Energy Ready Home program and following the ERI pathway. The development would comply with the Green Building Act and the District's storm water management regulations and would be consistent with the Sustainable DC Plan to yield new stormwater management and environmentally friendly enhancements to the abutting streetscape. The installation of green roofs would improve storm water management and climate resilience;

- Economic Development Element: As envisioned by the Hill East SAP, the development would provide for neighborhood retail uses around the future park to the south of Building B2 along Burke Street. The 14,000 square feet of space on the ground floor of Building B2 would provide for a number and variety of retail uses. The retail uses would be approximately two blocks from the Stadium-Armory metro station entrance to serve residents and visitors to the area and contribute to the commercial vitality of Burke Street;
- Parks, Recreation and Open Space Element: A major component of the Hill East SAP and of the proposed development would be a linear park along the Independence Avenue and Building B1 frontage. The park would be public and open to residents and visitors to Hill East and would be dedicated to the life and legacy of Robert F. Kennedy. Along with landscaping and streetscape improvements, the park would have a monument, seating areas, and walking trails. The park itself and walkways through the park would provide an important connection to the Anacostia waterfront area. The development would also include a private ground level courtyard on Building B1 and a roof patio with green roof elements. Landscaping around the buildings would provide further enhancements to the buildings; and
- Urban Design Element: The proposed buildings would implement the architectural elements required by the Hill East Design Guidelines. Some design elements would include facades that vary in articulation depths on all sides of the buildings, articulated retail bays, tower elements to highlight the corners top of the buildings, and pronounced entrances. The development would include parks and open spaces, and active ground floor uses which would allow for community and social interactions. Activities along the abutting streetscape which would also engender safe and active spaces and streets. The proposed development would integrate various green building measures consistent with the District's goals for resilient and sustainable development;
- OP identified the following CP policies which would not be advanced by the proposed development:
  - Policy CH-1.1.13 (Traffic Management Strategies): In this case, the proposed development would extend streets around the property and provide connectivity through Hill East, the Project does not directly address larger traffic initiatives such as how to reduce commuter traffic on residential streets in the Hill East neighborhood; and
  - Policy T-2.3.2 (Bicycle Network): The Applicant proposes new sidewalks, and sidewalk improvements that would contribute to pedestrian safety but does not propose bike lanes along Independence Avenue or the extended interior streets to improve bicycle connectivity. The Applicant states that they will continue to work with DDOT to determine if any mitigations are needed to address this policy;
- The proposed development would help to implement the vision for Hill East as outlined in the Hill East SAP because:
  - It would provide housing, and retail uses and would extend Burke Street and create 20<sup>th</sup> and 21<sup>st</sup> Street, which would extend the grid pattern of local streets through the site;



- The building heights would be as allowed in the HE-2 zone and would be consistent with the slope of the land down towards Anacostia waterfront;
  - All the streets would be landscaped, and tree lined; and
  - A public park with walkways would be created along the Independence Avenue, S.E. frontage and would provide a connection to the future waterfront park; and
  - Overall, the development of the Property consistent with the design and scale of development envisioned by the HE zone design guidelines and the areas where waivers and a variance are requested would have no effect on the operations of functions of the adjacent buildings.
105. The OP Report concluded that when viewed through a racial equity lens, using the Commission's Revised Racial Equity Tool, the Project furthers racial equity policies of the CP Citywide Elements and the Capitol Hill Area Element because the Project would permit more mixed-use and housing, including affordable housing, at transit. The proposed development would also:
- Not result in the direct displacement of any residents or other use except for the current parking for St. Coletta, which would be replaced by parking below Building B1;
  - Not result any indirect residential displacement as a result of the development on the Property. The residential use on Parcels F and G within Hill East are fairly new and are similar to the proposed Project. The retail spaces on Parcels F and G are currently vacant and therefore businesses would not be displaced by the retail spaces on Parcel B2. However, new residents would support retail in this and adjacent sites, helping to make those spaces more viable;
  - Result in the provision of a mix of housing types and affordability at the Property;
  - Result in favorable changes to the physical environment as a result of the extension of Burke Street, S.E. and the creation of 20<sup>th</sup> and 21<sup>st</sup> Streets around the site, as well as the accommodation of the linear park along Independence Avenue, S.E.; and
  - Provide access to jobs, healthcare, or new services because of its close proximity to the Stadium-Armory Metro Station.
106. The OP Report included a racial equity analysis with the following findings in response to the revised Racial Equity Analysis Tool:
- Disaggregated Race and Ethnicity Data: The OP Report provided disaggregated race and ethnicity data for the Capitol Hill Planning Area, which showed that the population between 2012-2016 was at 58,133 persons or 8.8% of the District's population. Within that time period, Whites alone accounted for 61.03% of the Planning Area's population followed by Blacks alone at 18,457 persons or 32.74% of the Plannings Area's population. In the 2017-2021 time period, the percentages of White alone and Black alone categories decreased from 61.03% to 55.60% and from 31.74% to 24.88%, respectively. The Asian alone, Some Other Race alone, Two or More races and Hispanic or Latino categories all saw increases in the Planning Area which could indicate that the population of the Planning Area is becoming more diverse. In the 2017-2021 period, Whites only had the highest median income at \$172,758. Asian alone residents also saw a significant increase in income from \$91,453 to \$170,394.

Blacks alone and American Indian and Alaskan Native alone continue to lag behind with the lowest median income at \$63,246 and \$45,614, respectively; and

- The OP Report also noted that the 2019 Housing Equity Report set a total housing goal for the Capitol Hill Planning Area of 3,270 total housing units by 2025, with 1,400 affordable units generated through new development and the conversion of existing housing into affordable units. Data from February 2024 shows that, with the exception of the Rock Creek West Planning Area, Capitol Hill has generated the least amount of affordable housing units of any Planning Area in the District. Therefore, the affordable units generated by this Project are necessary to meet the housing goals for the Planning Area and advance Comp Plan policies related to housing.

107. The OP Report also noted that OP had asked the Applicant to amend the Project to integrate full size balconies on Building B2, specifically on its Burke Street frontage, to provide open air space for residents. In its March 1, 2024 prehearing statement (Ex. 18), the Applicant responded it is proposing 18 Juliet balconies on the southern façade of Building B2 and is unable to incorporate more walk out balconies as requested due to unit layout.
108. At the April 8, 2024, public hearing, an OP representative testified in support of the Application and reiterated the findings in the OP Report. The OP representative also restated its conclusion that, on balance, the Project would not be inconsistent with the CP, including when evaluated through a racial equity lens, because the proposal would provide housing and affordable housing at various income levels, thus helping to make the Capitol Hill Planning Area even more diverse and affordable. (Hrg. Tr. pp. 73-77.)

#### **DOEE**

109. DOEE provided comments as an attachment to the OP Report that recognized and commended the Applicant's commitment to designing the Project for using LEED for Homes: Multifamily Midrise rating systems, which is best suited for the Project and includes features that will specifically benefit residential tenants; however, DDOT urged the Applicant to go beyond the LEED Silver level and expand the sustainable aspects of the Project to achieve LEED Gold. DOEE encouraged the Applicant to continue to look at additional environmental and sustainable measures as the Project moves forward, including strategies that reduce urban heat island effects and that maximize on-site renewable energy production. (Ex. 26 at pp. 52-54.) In its March 1, 2024, prehearing statement (Ex. 18.), the Applicant responded to DOEE's comments and states it will pursue a net-zero energy certification and is evaluating the feasibility of installing solar panels and off-site renewable energy.

#### **DDOT**

110. DDOT filed a March 29, 2024 report (the "DDOT Report".) that assessed the potential impacts of the proposed Project on the District's transportation network and, as necessary, proposed mitigations that would be commensurate with the Project. (Ex. 27.) The DDOT Report stated that the Project includes approximately 238 parking spaces, which exceeds the minimum required parking by 50 spaces and "is in line with DDOT's preferred parking maximums for sites within a close proximity of Metrorail stations." The DDOT Report noted that four study intersections will unacceptably degrade in level of service (LOS) due

to the addition of site-generated vehicle trips; and that to offset this impact, the Applicant has agreed to implement a TDM plan including a road diet with curb extensions along Independence Avenue, S.E. and a new Capital Bikeshare station near the site. In addition, the Applicant has agreed to close all existing curb cuts to the site from Independence Avenue, S.E., which DDOT notes is in line with its standards to minimize vehicle access points from the public roadway network.

111. The DDOT Report concluded that DDOT had no objection to the approval of the Application, provided that this Order includes the following conditions:
- Implement the TDM plan as proposed in the revised TDM memo, for the life of the Project, unless otherwise noted; and (Ex. 25A.)
  - Include language in this Order requiring that the road diet on Independence Avenue, S.E. be constructed between 19<sup>th</sup> Street and the Bundle 1 eastern property boundary with Bundle 2, immediately east of the planned 21<sup>st</sup> Street, S.E. The road diet will consist of the reconstruction of the southern curb of Independence Avenue, S.E. using concrete and other DDOT standard materials, reconfiguring the southernmost lane into a parking/entry lane (to St Coletta) with bump outs, and striping out the northernmost lane, to convert Independence Avenue from its existing 3-4 lane section to a two-lane section. (Ex. 24.)
- (Ex. 27.)
112. At the April 8, 2024 public hearing, a DDOT representative testified in support of the Application and reiterated the conclusions made in the DDOT Report. The DDOT representative stated that it would continue to work with the Applicant with respect to the road diet for Independence Avenue, S.E., as well as the design of the streetscape and the curbside management plan as the Applicant proceeds with public space permitting. The DDOT representative also confirmed that the Applicant had accepted DDOT's proposed conditions. (Hrg. Tr. pp. 69-70.)

## **AFFECTED ANCS**

### **ANC 7F**

113. On February 27, 2024, ANC 7F submitted a report and resolution (collectively, the "First ANC 7F Report") stating that at a regularly scheduled and properly noticed meeting on January 31, 2024, with a quorum of six commissioners present, ANC 7F voted 6-0-0 to request the Commission postpone the originally scheduled March 11, 2024 public hearing, to allow further time for the Applicant to conduct community engagement with the ANC. In addition, the First ANC 7F Report raised the following concerns and issues:
- ANC 7F requests further information on the current lack of retail space on Reservation 13 and any potential issues it may pose on future vendors in newly developed space as it relates to design and impact to community;
  - ANC 7F requests further information on transportation matters to include its parking plan for proposed site to include number of new parking spaces for residents, retail(ers), and patrons; traffic impact on surrounding community pre, during, and post construction; and

- ANC 7F requests the Applicant organize two additional community engagement sessions and a final meeting with the ANC to address concerns including but not limited to construction particulars (materials and contractors), long-term upkeep of proposed properties, the potential impact of proposed changes on traffic, and the effects on the community and local retail establishments.  
(Ex. 15-15B.)

114. On February 29, 2024, ANC 7F07 Commissioner Shirley Thompson-Wright submitted a letter stating her “strong opposition to the advancement of the application scheduled for Design Review on March 11, 2024” and asking the Commission to postpone the hearing to allow time for proper engagement with ANC 7F and the community at large. Commissioner Thompson-Wright’s letter also stated that the Applicant misrepresented its outreach efforts with ANC 7F, and that the Applicant never presented her with a “thorough and complete briefing” on the Project; that the Applicant did not provide any substantive information at ANC 7F’s November 21, 2023, meeting; that the ANC never gave its tacit approval for the Application; and that ANC 7F actually expressed its displeasure at the lack of engagement. (Ex. 16.)
115. On April 8, 2024, ANC 7F submitted a report and resolution (collectively, the “Second ANC 7F Report” and together with the First ANC 7F Report, the “ANC 7F Reports”) stating that at a regularly scheduled and properly noticed special call meeting on January 31, 2024, with a quorum of 6 commissioners present, ANC 7F voted 6-0-0 to submit a resolution expressing its updated position on the Application. The Second ANC 7F Report’s cover letter states that the ANC is “pleased to report that all issues outlined in our previous communications have been fully addressed, and the Commission currently has no further concerns regarding this matter.” The Second ANC 7F Report’s attached resolution notes that a community meeting was held at St. Coletta on March 26, 2024, during which the Applicant presented the development to the community and provided information requested by the ANC. The resolution further states that the Applicant has demonstrated how the proposed development meets the relevant design review standards as well as the standards for the requested waivers and variance. (Ex. 31-31B.)

#### **ANC 7D**

116. On February 23, 2024, ANC 7D submitted a report (the “First ANC 7D Report”) stating that at a regularly scheduled and properly noticed meeting on February 13, 2024, with a quorum of 7 commissioners present, ANC 7D voted 7-0-0 to request the Zoning Commission postpone the originally scheduled March 11, 2024, public hearing to allow time for an opportunity to discuss the waivers and relief standards sought by the Applicant. The First ANC 7D Report claimed that ANC 7D’s office email was not served with the Application or other materials associated with the case.<sup>11</sup> (Ex. 13.)
117. On April 8, 2024, ANC 7D submitted a report (the “Second ANC 7D Report” and together with the First ANC 7D Report, the “ANC 7D Reports”) stating that at a regularly scheduled

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<sup>11</sup> The Applicant provided a response to ANC 7D’s claim that its office email was not served, which is discussed above at FF No. 58.

and properly noticed meeting on April 2, 2024, with a quorum of 6 commissioners present, ANC 7D voted 6-0-0 to support the Application including the waiver requests and area variance. Additionally, ANC 7D voted to make the following recommendations:

- Make residential parking permits (“RPP”) unavailable for occupants of Buildings B1 and B2. The Second ANC 7D Report notes that the purposes of the Hill East Zone District include promoting the use of mass transit and reducing the impact of traffic on adjacent neighborhoods. Therefore, restricting new occupants from obtaining RPPs would further this goal by encouraging the use of the underground parking and alternatives to vehicular transportation; and
- Reconfigure the roadways of the 1900-2200 Blocks of Independence Avenue, S.E. to allow for east and westbound access and egress to/from Reservation 13 in a manner that will promote safety for future residents and business patrons. The Second ANC 7D Report notes that the present three- and four-singularly eastbound lanes of Independence Avenue are no longer suitable given the soon to be demolished RFK Stadium.

(Ex. 30.)

#### **Persons / Organizations in Support**

118. A letter in support of the Application was submitted to the record from the Capitol Hill Restoration Society. (Ex. 23.)

#### **Persons / Organizations in Opposition**

119. Except for the letter in opposition (Ex. 16.) submitted by ANC 7F07 Commissioner Shirley Thompson-Wright discussed above, the Commission did not receive any letters from persons or organizations expressing opposition to the Application.

### **CONCLUSIONS OF LAW**

#### **AUTHORITY**

1. Pursuant to the authority granted by the Zoning Act, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a Hill East Zone District Design Review application consistent with the requirements of Subtitle K, Chapter 4, and Subtitle X, Chapter 6.
2. Pursuant to Subtitle K § 409.1, the Zoning Commission shall review the design of all new buildings, or additions to existing buildings in the HE zones for consistency with the design guidelines set forth at Subtitle K §§ 419-420 and with the purposes as stated in Subtitle K § 400.
3. Pursuant to Subtitle K § 409.2, for good cause shown, the Commission, in its discretion, may waive one or more of the HE zones design standards in Subtitle K §§ 417-419.
4. Pursuant to Subtitle K § 409.3, the Commission may hear and decide any additional requests for special exception or variance relief needed for the subject property, including the special exceptions provided for in this chapter. Such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval.



5. Pursuant to Subtitle X § 601.1, the Project is a Mandatory Design Review and is required to meet the general design review standards set forth under Subtitle X, Chapter 6, and the Commission must evaluate and approve the Application according to the standards of Subtitle X § 604, which require the Commission to find:
  - That the proposed design review development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;
  - That the proposed design review development will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of Subtitle X, Chapter 9; and
  - That the proposed design review development meets the criteria of Subtitle X § 604.7 in a way that is superior to any matter-of-right development possible on the site.
6. The Commission concludes that the Application satisfies the applicable standards for the reasons set forth below.

#### **HILL EAST DESIGN REVIEW CRITERIA**

##### **Purposes of the Hill East Zone (Subtitle K § 400.1.)**

7. Based on the case record and the Findings of Fact herein, the Commission concludes that the Application is consistent with the purposes of the HE zones set forth in Subtitle K § 400.1 for the following reasons, among others: (FF No. 25, 67.)
  - The Project will continue connecting and integrating Reservation 13 with adjacent neighborhoods by redeveloping two vacant parcels to create a new mixed-use, mixed-income community consisting of approximately 494 new residential units and approximately 14,044 square feet of ground floor retail that will meet current housing and affordable housing, retail, and service needs; as well as a linear park along the Independence Avenue frontage of Building B1 that will provide a welcoming space for pedestrians and residents to gather; (Subtitle K §§ 400.1(a), 400.1(b), 400.1(i).)
  - With the construction of 20<sup>th</sup>, 21<sup>st</sup>, and Burke Streets, S.E., the Project will extend the existing pattern of local streets to and through the site and will create simple, organized city blocks and appropriately scaled development; (Subtitle K § 400.1(c).)
  - The design of the Project is appropriately scaled for the Property's location with the Hill East site, with both Buildings B1 and B2 increasing in height as the Property slopes down to the Anacostia waterfront; (Subtitle K § 400.1(d).)
  - The proposed landscaping and streetscape improvements will promote an environment where pedestrians, bicyclists, and motorists are welcome and can interact safely, including a linear park planned along Independence Avenue that will foster a pedestrian-friendly space; and (Subtitle K §§ 400.1(e), 400.1(g).)
  - The Project is designed to achieve LEED Silver certification and utilize sustainable features such as bio-retention areas and stormwater management. (Subtitle K § 400.1(f).)

**Satisfaction of Ground Floor Uses Where Required and Permitted (Subtitle K § 417.)**

8. Based on the case record and the Findings of Fact herein, the Commission concludes that the Application complies with the ground floor use requirements set forth in Subtitle K § 417 for the reasons discussed in FF No. 68, except for the waiver requested from the requirements of Subtitle K § 417.1(e) for Building B1, which is discussed in Conclusion of Law (“COL”) No. 13 below. (FF Nos. 26, 27, 103.)

**Satisfaction of Design Standards for Ground Floor Preferred Uses (Subtitle K § 418.)**

9. Based on the case record and the Findings of Fact herein, the Commission concludes that the Application is consistent with the design standards set forth in Subtitle K § 418 for the reasons discussed in FF No. 69, except for the waiver requested from the requirements of Subtitle K § 418.1(c) for Building B2, which is discussed in COL No. 13 below. (FF Nos. 28, 103.)

**Satisfaction of Design Conditions for the Hill East Zone District (Subtitle K § 419.)**

10. Based on the case record and the Findings of Fact herein, the Commission concludes that the Application is consistent with the design conditions set forth in Subtitle K § 419 for the reasons discussed in FF No. 70, except for the waiver requested from the requirements of Subtitle K § 419.2 for Building B1 and the waivers requested from the requirements of Subtitle K § 419.7 for Buildings B1 and B2, respectively, which are discussed in COL No. 13 below. (FF Nos. 29, 103.)

**Satisfaction of Design Conditions for Buildings Located on Primary Streets (Subtitle K § 420.)**

11. Based on the case record and the Findings of Fact herein, the Commission concludes that the Application is consistent with the design conditions set forth in Subtitle K § 420 for the reasons discussed in FF No. 71, except for the area variance requested from the requirements of Subtitle K § 420.2 for Building B1, which is discussed in COL No. 18 below. (FF Nos. 30, 103.)

**Waivers**

12. Pursuant to Subtitle K § 409.2, and for good cause shown, the Commission, in its discretion, may waive one or more of the HE zone design standards in Subtitle K §§ 417-419.
13. Based on the case record and the Findings of Fact herein, the Commission concludes that there is good cause to waive, pursuant to Subtitle K § 409.2, the following design standards that are applicable to the Project:
- Subtitle K § 417.1(e) – As the design standard applies to Building B1, the Commission finds that not less than 65% of the ground floor frontage is devoted to a lobby with office and residential uses. The Commission acknowledges that the Applicant is requesting a waiver from this standard out of an abundance of caution and takes no position on whether the proposed uses satisfy the requirement of Subtitle K § 417.1; however, to the extent such uses do not comply with the design requirement, the Commission grants a waiver for good cause shown, namely that the Project must

deviate from the design standards to accommodate the linear park along Independence Avenue, S.E., as was proposed during the DMPED RFP process; (FF Nos. 26, 27, 77.)

- Subtitle K § 418.1(c) – As the design standard applies to Building B2, the Commission grants a waiver for good cause shown since the topography of the site challenges the Applicant’s ability to satisfy the minimum clear floor-to-ceiling height of 14 feet for the ground floor area along Burke Street, S.E. that is dedicated to retail. The Commission notes that of the 14,044 square feet that is devoted to ground floor retail, approximately 10,555 square feet will meet this requirement, which amounts to 75% of the ground floor area; (FF Nos. 28, 73.)
- Subtitle K § 419.2 – As the design standard applies to Building B1, the Commission grants a waiver for good cause shown since Building B1 cannot extend to the property line along Independence Avenue, S.E. for not less than 90% of the property line because additional space is being provided for the linear park. The Commission acknowledges that the provision of this setback space was part of the RFP process with DMPED and community stakeholders to allow for the provision of the linear park and the private drive connecting 20<sup>th</sup> and 21<sup>st</sup> Streets; (FF Nos. 29, 74.)
- Subtitle K § 419.7 – As the standard applies to Building B1, the Commission grants a waiver for good cause shown since the proposed facade articulation, which has a depth of greater than two feet, will add visual interest and soften the scale of the building; and (FF Nos. 29, 75.)
- Subtitle K § 419.7 – As the standard applies to Building B2, the Commission grants a waiver for good cause shown since the proposed facade articulation, which has a depth of exactly two feet, will add visual interest and matches the length of the standard brick that will be used to construct the building. (FF Nos. 29, 76.)

#### **Area Variance**

14. Pursuant to Subtitle K § 409.3, the Commission may hear and decide any additional requests for special exception or variance relief needed for the subject property. Such requests shall be advertised, heard, and decided together with the application for Commission review and approval.
15. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(3) (2018 Repl.) and Subtitle X §§ 1000.1 and 1000.3 authorize the Commission to grant variances from the Zoning Regulations “[w]here, by reason of . . . extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation . . . would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize . . . a variance. . . provided that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.”
16. An applicant for an area variance must prove that an extraordinary condition of the property would result in “peculiar and exceptional practical difficulties” by demonstrating first that compliance with the area restriction would be unnecessarily burdensome; and second, that

the practical difficulties are unique to the particular property. (*Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990); Subtitle X § 1002.1(a).)

17. The Commission concludes that the variance requested by the Application is properly an area variance, as Subtitle K § 420.2 is not a use restriction, but instead governs the location and configuration of buildings located on primary streets in the HE zones.
18. Based on the case record and the Findings of Fact herein, the Commission concludes that the Application satisfies the area variance standards for relief from the requirement of Subtitle K § 420.2, which applies to buildings located on primary streets in the HE zone, and requires that the fronts of such buildings located at street intersections be constructed to the property lines abutting each intersecting street, without any setback, from minimum of 50 feet from the intersection, along each street frontage, for the following reasons: (FF Nos. 30, 78.)
  - The Property was District owned and was awarded to the Applicant for development through an RFP process. The Project's design resulted from input from community stakeholders, which includes the creation of a new linear park along Independence Avenue, S.E. These circumstances present an extraordinary situation;
  - In order to accommodate the linear park, Building B1 is set back from the lot line along Independence Avenue such that the Project cannot satisfy the applicable design standard required by Subtitle K § 420.2. Revising the Project to achieve strict compliance presents a practical difficulty, as the Applicant would not be able to deliver the Project as represented and approved during the RFP process;
  - Granting the requested variance would not pose a substantial detriment to the public good. To the contrary, the Commission finds that granting the requested variance would result in a public benefit, as the new linear park would be open to the public and provide new opportunities for outdoor recreation and community engagement; and
  - Granting the requested variance would not substantially impair the intent, purpose, and intent of the Zoning Regulations and particularly of the HE zones. The variance would enable the Applicant to construct a Project that advances many of the zone's purposes set forth in Subtitle K § 400.1.

#### **MANDATORY DESIGN REVIEW CRITERIA**

##### **Not Inconsistent with the Comprehensive Plan (Subtitle X § 604.5.)**

19. Pursuant to Subtitle X § 604.5:

*“The Zoning Commission shall find that the proposed design review development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.”*
20. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP's purposes as:

*(a) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*

- (b) to guide executive and legislative decisions on matters affecting the District and its citizens;
- (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

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

The Comprehensive Plan is a ‘broad framework intended to guide the future land use planning decisions for the District. *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). ‘[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.’ *Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous ‘occasionally competing policies and goals,’ and, ‘[e]xcept where specifically provided, the Plan is not binding.’ *Id.* at 1167, 1168 (internal quotation marks omitted). Thus ‘the Commission may balance competing priorities’ in determining whether a PUD is consistent with the Comprehensive Plan as a whole.’ *D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013). ‘[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.’ (*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016).)

22. Based upon the case record and Findings of Fact, the Commission concludes that the Application is not inconsistent with the CP maps and elements, including when viewed through a racial equity lens, and other adopted public policies and active programs related to the site. The Commission’s conclusion that the Application is not inconsistent with the CP is based upon the following:

- FLUM: The Property is located within an area designated Mixed Use (Medium Density Residential/Medium Density Commercial/Institutional) on the FLUM. The Application proposes a set of residential and mixed-use buildings with an overall density of 4.8 FAR, which is within the density range of 4.0 to 6.0 FAR contemplated by the Medium Density Commercial FLUM category. While the Project’s density



- exceeds the typical density range of 1.8 to 4.0 FAR contemplated by the Medium Density Residential designation, the Framework Element's description of this designation states that "greater density may be possible when complying with [IZ]..." Here, the Applicant proposes to reserve approximately 33.4% of the total units in Buildings B1 and B2 as affordable housing for households earning up to 50% MFI, which exceeds the amount of affordable housing that would be required as a matter-of-right under IZ. With respect to the partial Institutional designation on the FLUM, the Commission notes OP's findings in its report that, while a hospital was originally envisioned for the northern portion of Hill East, those plans have not materialized and, instead, a hospital is now being constructed on another site in Southeast Washington at St. Elizabeth's East. Accordingly, the Commission finds that the Project is not inconsistent with the Property's FLUM designation; (FF Nos. 81, 104.)
- GPM: The GPM designates the Property as within a Land Use Change Area. These areas represent vacant or underutilized land where the District envisions a change from the land use currently in existence. Consistent with this guidance, the Project will replace currently vacant land with housing and retail uses in a new development that utilizes high-quality architecture and incorporates landscaping and streetscaping improvements. The Commission also recognizes that the Project is within a Resilience Focus Area, the purposes of which will be furthered by the Project's LEED Silver certification-level design and net-zero energy certification. Additionally, the Commission notes that the Property is located in a Future Planning Analysis Area, and OP has indicated that the planning analysis for the Property has been conducted in connection with the Hill East SAP, with which the Project is consistent as further discussed below. Accordingly, the Commission finds that the Project is not inconsistent with the GPM; (FF Nos. 82-84, 104.)
  - Citywide Elements: The Commission finds that the Project furthers several policies of the CP's Citywide Elements, including the Land Use, Transportation, Housing, Environmental Protection, Economic Development, Parks, Recreation, and Open Space, and Urban Design Elements. The Project provides approximately 494 new residential units and ground-floor retail in a new development that integrates architectural elements that (with the exception of the requested waivers and variance relief) comply with the Hill East zone design criteria as well as streetscape improvements and the creation of a new linear park along Independence Avenue. (*See e.g.*, LU-1.3.1, LU-1.3.2, LU-1.3.4, LU-1.3.6, LU-1.3.7, LU-1.3.8, LU-1.5.1, LU-2.1.1, LU-2.1.2, LU-2.1.3, LU-2.1.10, LU-2.2.4, LU-2.2.5, LU-2.3.1, LU-2.3.2.) The Project is located close to public transit, including the Stadium-Armory Metrorail Station, and incorporates streetscape improvements as well as a TDM plan which will enhance pedestrian safety and promote equitable access to transit and employment opportunities. (*See e.g.*, T-1.1.3, T-1.1.4, T-1.1.7, T-1.2.4, T-2.2.1, T-2.2.2, T-2.3.1, T-2.3.3, T-2.4.1, T-2.4.2, T-2.6.1, T-2.6.2.) The Project will advance the policies and goals of the Housing Element by reserving approximately 33.4% of the total units (approximately 165 units) as affordable housing for households earning up to 50% MFI. The Project will also include 11 three-bedroom units. (*See e.g.*, H-1.1.4, H-1.1.9, H-1.3.1, H-2.1.6.) In addition, the Project will incorporate energy efficient systems designed to achieve a LEED Silver rating and net-zero energy certification; ground-floor activating retail that will provide economic opportunities to business owners and

- residents; a new linear park along Independence Avenue and associated landscaping and streetscape improvements; and architectural features that utilize high-quality materials with an overall massing that respects the existing neighborhood fabric; (*See e.g.*, E-1.1.2, E-2.1.2, E-2.1.3, E-3.2.3, E-3.2.7, E-4.1.1, E-4.1.2, E-4.2.1; ED-2.2.3, ED-2.2.5, ED-2.2.9, ED-3.1.1; PROS-1.2.B, PROS-1.3.B, PROS-1.4.1, PROS-1.4.4, PROS-1.4.5, PROS-3.1.B; and UD-1.3.6, UD-2.2.1, UD-2.2.2, UD-2.2.6, UD-2.2.8, UD-2.2.B, UD-4.2.F, UD-3.2.4, UD-4.2.1; FF Nos. 91-97, 104.)
- Capitol Hill Area Element: The Commission finds that the Project will further the policies and goals of the Capitol Hill Area Element by redeveloping a vacant site with a new mixed-use development that incorporates landscaping and open space as well as streetscape improvements that will help transform the existing Reservation 13 site into a vibrant neighborhood; and (*See e.g.*, CH-1.1.4, CH-1.1.12, CH-1.2.5, CH-1.2.6, CH-2.4.1, CH-2.4.2, CH-2.4.3, CH-2.4.4, CH-2.4.5; FF Nos. 90, 104.)
  - Hill East SAP: The Commission finds that the Project will advance many of the Hill East SAP's goals relating to expanding connectivity within the Reservation 13 site and providing housing, affordable housing, and neighborhood-serving retail in a development that is appropriately scaled with respect to the existing neighborhood. (FF Nos. 99, 104.)
23. Potential CP Inconsistencies: As stated above, the Commission has determined that the Project is not inconsistent with the CP when read as a whole. In assessing the Project's CP consistency, the Commission must acknowledge instances where the Project may be inconsistent with CP policies and explain why such inconsistencies are outweighed by other competing CP policies and considerations. (*See D.C. Library Renaissance Project/West End Library Advisory Grp. v. District of Columbia Zoning Comm'n*, 73 A.3d 107, 126 (D.C. 2013); *Friends of McMillan Park v. District of Columbia Zoning Comm'n*, 149 A.3d 1027, 1035 (D.C. 2016); and CP § 2504.6 [“[r]ecognize the overlapping nature of the [CP] elements as they are interpreted and applied. An element may be tempered by one or more of the other elements.”].) According to the Applicant's CP evaluation, there is potential that the Project is inconsistent with the Capitol Hill Area Element policy related to addressing traffic initiatives in the Hill East neighborhood and the Transportation Element policy related to improving bicycle networks. (CH-1.1.13, T-2.3.2.) The Commission concludes that these potential inconsistencies are outweighed by the Project's overall consistency with numerous other CP policies, particularly those described above. These Commission finds these potential inconsistencies are further outweighed by the Project's advancement of the District's overall and affordable housing goals set forth in the 2019 Housing Equity Report, the Project's proposed amount of affordable housing and levels of affordability, the environmental improvements that will be made to the Property, and the Project's consistency with the Property's FLUM and GPM designations. (FF Nos. 98, 104.)

### **Racial Equity**

24. The Commission concludes that the Project is not inconsistent with the Comprehensive Plan when viewed through a racial equity lens. (FF Nos. 85-87.) The Commission reaches its conclusion based on the racial equity analyses provided by the Applicant, inclusive of community outreach and engagement information, and the OP Report, inclusive of

disaggregated race and ethnicity data for the Capitol Hill Planning Area. (FF Nos. 88, 89, 105, 106.)

25. Applicant's Racial Equity Analysis. The Commission finds that the Applicant's racial equity analysis addresses the components of the revised Racial Equity Analysis Tool. The Commission notes the following from the Applicant's analysis.
- Community Outreach and Engagement: The Applicant's racial equity analysis indicates that it conducted community outreach and engagement, including meetings with ANC 7D and 7F, St. Coletta, and community members beginning in 2020. In response to DMPED's RFP process, the Applicant refined the Project in response to community input, including reserving parking for St. Coletta and agreeing to reserve space for a linear park along Independence Avenue. The Commission acknowledges ANC 7D and ANC 7F's concerns (discussed below) that the Applicant had not conducted meaningful outreach with the ANCs or fully addressed their issues about the Project prior to the originally scheduled March 11, 2024 public hearing. However, the Commission notes that a community meeting at St. Coletta was held on March 26, 2024, during which the Applicant presented the Project to the community and answered the ANCs' questions about the Application. Following this meeting, both ANCs submitted reports indicating they had voted in favor of supporting the Application. Therefore, the Commission believes that the Applicant did conduct significant outreach with the community, including the ANCs, and that the resulting Project was informed and shaped by its engagement with the community. (FF Nos. 88, 89.)
26. OP's Racial Equity Analysis. The Commission finds that OP's racial equity analysis addresses the components of the revised Racial Equity Analysis Tool. The Commission notes the following from OP's analysis:
- Disaggregated Race and Ethnicity Data: OP's racial equity analysis included disaggregated race and ethnicity data for the Capitol Hill Planning Area showing that the area is becoming more diverse over time, but that the Black population has decreased from 31.74% to 24.88% of the population from 2017 to 2021, which is similar to District-wide trends during this period. Based on this data, the Commission is hopeful that the Project's creation of approximately 494 new residential units, with a significant affordable housing set-aside, will allow existing residents to remain in the community and allow the Planning Area to retain a diverse population while also helping advance the Mayor's housing goal for Capitol Hill, which has generated the second-to-least amount of affordable housing units of all the Planning Areas in the District. (FF No. 106.) The Commission notes that the Project will not result in the direct displacement of any residents as the Property is vacant except for the St. Coletta school parking use, and any indirect displacement impacts are not anticipated to be significant. (FF No. 105.)

**Satisfaction of the General Special Exception Criteria (Subtitle X § 604.6.)**

27. Pursuant to Subtitle X § 604.6:

*"The Zoning Commission shall find that the proposed design review development will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of Subtitle X, Chapter 9."*

28. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl.); *see also* Subtitle X § 901.2) authorizes the Board of Zoning Adjustment to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board of Zoning Adjustment, the special exceptions:
- Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map;
  - Will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map; and
  - Complies with the special conditions specified in the Zoning Regulations.
29. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." (*First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973).)
30. Based on the case record and the Findings of Fact herein, the Commission concludes that the Project will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of Subtitle X, Chapter 9 for the following reasons, among others: (FF Nos. 100, 110-112.)
- To the extent feasible, the proposed development implements the design criteria of the HE zones, which not only serve to cultivate a particular aesthetic, but to ensure neighborhood compatibility and ensure protection from any adverse impacts;
  - The proposed Project advances the purposes of the HE zones as set forth in Subtitle K § 400.1;
  - The proposed design extends the street grid as envisioned by the Hill East SAP and provides the abutting St. Coletta school with 100 parking spaces; and
  - This Order will require the implementation of a TDM plan to mitigate any adverse impacts to the surrounding traffic network resulting from the Project.
31. The Commission acknowledges ANC 7F's and ANC 7D's concerns about the Project's potential impacts on parking and traffic in the neighborhood, as stated in their reports (and further discussed below in COL Nos. 38, 41.) However, the Commission believes that the Project will not have adverse parking- or traffic-related impacts on neighboring property because the Applicant has proposed a TDM plan with several mitigation measures that were requested by DDOT, including a road diet along Independence Avenue and a new Capital Bikeshare station near the Property. In addition, the Project includes an underground parking garage with approximately 238 vehicle parking spaces, 100 of which will be reserved for St. Coletta, which exceeds the minimum number of parking spaces for the Project by 50 spaces and is in line with DDOT's recommended parking amount for the

Project. Therefore, the Commission concludes that the Project will not have an adverse impact on traffic or parking in the neighborhood. (FF Nos. 100, 110-112.)

**Consistency with the Urban Design Criteria (Subtitle X § 604.7.)**

32. The Commission has reviewed the urban design of the site and the Project pursuant to the criteria set forth in Subtitle X § 604.7. Based on the case record and the Findings of Fact herein, the Commission concludes that: (FF No. 101.)
- Subtitle X § 604.7(a) – Street frontages along Independence Avenue, S.E., 20<sup>th</sup> Street, S.E., 21<sup>st</sup> Street, S.E., and Burke Street, S.E. are designed to be safe, comfortable and encourage pedestrian activity;
  - Subtitle X § 604.7(b) – The Project accommodates open spaces and encourages public gathering spaces, particularly by setting back Building B1 for the linear park along Independence Avenue, S.E. and orienting the ground-floor retail toward future park space in Hill East;
  - Subtitle X §§ 604.7(c), (d) – The proposed architecture, which blends traditional and modern building styles, respects the historic character of Hill East, adds visual interest with effective articulation and quality building materials, and reinforces the pedestrian realm; and
  - Subtitle X §§ 604.7(e), (f) – The Project includes substantial landscaping and streetscape improvements and will promote connectivity for pedestrians, bicyclists, and motorists within Hill East and beyond.
33. Based on the case record and the Findings of Fact herein, the Commission finds that the criteria of Subtitle X § 604.7 are met in a way that is superior to any matter-of-right development possible on the site. (*Id.*)

**GREAT WEIGHT TO RECOMMENDATIONS OF OP**

34. The Commission is required to give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.9. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
35. The Commission finds OP’s analysis of the Application, including its conclusions that (i) the Application meets the purposes of the HE zones and a majority of the HE zones design conditions; and (ii) that the Project, on balance, is not inconsistent with the CP, including its maps and policies, and would lead to favorable outcomes when evaluated through a racial equity lens, persuasive. The Commission finds OP’s recommendation to approve the Application, including the requested waivers and variance, persuasive and concurs with this judgment. (FF Nos. 103-106.)
36. With respect to OP’s request that the Applicant amend the proposal to provide more full size balconies on Building B2 along the Burke Street frontage, the Commission agrees with OP that additional balconies would be preferable, but acknowledges the Applicant’s concerns regarding cost, changes to unit layout, and potential management issues. (Hrg.



Tr. p. 80.) Further, the design flexibility approved with this Order permits the Applicant to convert any Juliet balconies to full size balconies without an approved modification by the Commission, which the Commission encourages the Applicant to consider when finalizing the Project. Therefore, the Commission concludes that the Application can be approved without requiring the Project to provide additional full-size balconies.

#### **GREAT WEIGHT TO WRITTEN REPORTS OF THE ANCS**

37. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. 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 v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016.)) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).)

#### **ANC 7F**

38. The Commission gives great weight to the issues and concerns raised in the ANC 7F Reports, specifically those raised in the First ANC 7F Report, as follows: (FF No. 113.)
- ANC 7F requested further information on the current lack of retail space on Reservation 13 and any potential issues it may pose on future vendors in newly developed space as it relates to design and impact to community.
    - Commission’s Response: The Commission acknowledges ANC 7F’s concern about the lack of retail on Reservation 13. The Commission believes this issue will be addressed by the Project’s provision of ground-floor retail space in Building B2 and new residential units across the Project which will help create more demand for new and existing retail businesses in the area. In addition, the Commission notes the Second ANC 7F Report stated that this concern was satisfactorily addressed in subsequent discussions with the Applicant. Therefore, the Commission believes this concern has been resolved;
  - ANC 7F requested further information on transportation matters to include its parking plan for proposed site to include number of new parking spaces for residents, retail(ers), and patrons; traffic impact on surrounding community pre, during, and post construction.
    - Commission’s Response: The Commission acknowledges ANC 7F’s concerns about transportation impacts, but believes that the Project’s potential adverse impacts on the transportation network will be adequately mitigated by the Applicant’s TDM plan, which was reviewed and approved by DDOT. In addition, the Project will provide approximately 238 vehicle parking spaces in excess of the minimum parking required by zoning as well as various streetscape improvements that are designed to improve safety, particularly along Independence Avenue. The Commission believes that any temporary transportation impacts during construction are capable of being mitigated through the Department of Building’s

construction requirements. In addition, the Commission notes the Second ANC 7F Report stated that this concern was satisfactorily addressed in subsequent discussions with the Applicant. Therefore, the Commission believes this concern has been resolved; and

- ANC 7F requested the Applicant organize two additional community engagement sessions and a final meeting with the ANC to address concerns including but not limited to construction particulars (materials and contractors), long-term upkeep of proposed properties, the potential impact of proposed changes on traffic, and the effects on the community and local retail establishments.
  - Commission's Response: The Commission understands that, following the postponement of the originally scheduled public hearing, the Applicant attended a community meeting at St. Coletta on March 26, 2024, during which it presented the development to the ANCs and answered questions about the Application. While it is unclear whether a second community engagement session took place, the Second ANC 7F Report states that ANC 7F's concerns were satisfactorily addressed in subsequent discussions with the Applicant. Therefore, the Commission believes this concern has been resolved.

39. The Commission notes that the Second ANC 7F Report indicated that following a community meeting held on March 26, 2024, ANC 7F stated that its issues and concerns had been "fully addressed" and that ANC 7F had no further concerns regarding the Application. (FF No. 115.)
40. The Commission acknowledges the letter in opposition filed by ANC 7F07 Commissioner Shirley Thompson-Wright expressing concerns about the Applicant's outreach efforts to ANC 7F. (FF No. 114.) The Commission believes that Commissioner Thompson-Wright's claims that the ANC was not provided with a full briefing of the Project are valid, given that both ANC 7F and ANC 7D filed initial reports asking for a postponement of the originally scheduled hearing to allow more time for the Applicant to conduct community engagement and answer the ANCs' questions. The Commission understands the Applicant provided a fuller presentation of the Project at the March 26, 2024, community meeting held at St. Coletta; and that both ANCs 7F and 7D subsequently filed follow-up reports indicating that their concerns were addressed by the Applicant. The Commission notes that the Second ANC 7F Report indicated the ANC voted unanimously in favor of the Application. (FF No. 115.) Therefore, the Commission believes that Commissioner Thompson-Wright's concerns about the Applicant's community engagement were adequately addressed by the Applicant's subsequent outreach efforts.

#### **ANC 7D**

41. The Commission gives great weight to the issues and concerns raised in the ANC 7D Reports as follows:
- The First ANC 7D Report stated that the ANC 7D's official office email was not served with the Application.
    - Commission's Response: The Commission acknowledges ANC 7D's concern that its office email was not properly served with the Application materials. However, the Applicant responded stating that it served the Notice of Intent to file the

Application and it corresponded with the ANC 7D Chair; and ANC 7D participated in this case filing two reports. (FF Nos. 58, 116.) For these reasons, the Commission finds the Applicant's efforts to cure the ANC's concerns adequate; and

- In the Second ANC 7D Report, ANC 7D stated its support for the Application but recommended (i) making residential permit parking (RPP) unavailable for occupants of Building B1 and Building B2 and (ii) reconfiguring the 1900-2200 blocks of Independence Avenue, S.E. such that east and westbound access and egress to/from Reservation 13 are provided. (FF No. 117.)
  - Commission's Response: The Commission acknowledges ANC 7D's recommendations, but concludes it is not necessary to include them as conditions of this Order. With respect to the first recommendation that seeks to limit RPP availability, the Commission does not believe the condition is necessary since the Project includes a number of transit-related improvements, such as bicycle parking stations, a new Capital Bikeshare station, and new sidewalks, that promote the use of mass transit and foster a multi-modal experience. In addition, the Applicant has proposed a TDM plan which will mitigate adverse impacts on the surrounding transportation network. The Applicant has also agreed to provide an underground parking garage with approximately 238 vehicle parking spaces, which exceeds zoning requirements and is in line with DDOT's preferred maximum number of spaces for the site. (FF Nos. 110-112.) Therefore, the Commission does not believe it is necessary to impose an RPP restriction on the Project's occupants, in light of the foregoing considerations, DDOT's recommendations, and the parking mitigation measures proposed by the Applicant. With respect to the second recommendation, the Commission notes that the Applicant has worked closely with DDOT to develop a road diet for Independence Avenue, S.E., the construction of which is included as a condition to this Order. In addition, the Applicant has agreed with DDOT's recommendations to close all curb cuts to and from the site via Independence Avenue, which will improve pedestrian safety, lower vehicle speeds, and make the road safer for all users. The Commission notes that DDOT approves of the proposed vehicular access to the Property via a private drive connecting future 20<sup>th</sup> 7D's additional recommendations to reconfigure Independence Avenue and allow for east and westbound access to the Project via Independence Avenue and 21<sup>st</sup> Streets instead of from Independence Avenue. (FF Nos. 110-112.) The Commission concurs with DDOT's finding that this configuration will promote safe access to the Property when compared to the alternative of permitting access and egress via Independence Avenue. Therefore, the Commission does not believe that ANC necessary given the Applicant's alternative mitigation measures and streetscape improvements.

### **DECISION**

In consideration of the record and the Findings of Fact and Conclusions of Law contained in this Order, the Commission concludes that the Application has satisfied its burden of proof and therefore **APPROVES** the Application for:

- Design Review in the Hill East Zone District pursuant to Subtitle K § 409.1 and the applicable design standards of Subtitle K §§ 417 through 420;
- Waivers from the following design standards pursuant to Subtitle K § 409.2:
  - Subtitle K §§ 417.1(e), 419.2, and 419.7 (Building B1); and
  - Subtitle K § 418.1(c) and 419.7 (Building B2);
- An area variance from Subtitle K § 420.2 for Building B1 pursuant to Subtitle K § 409.3; and
- Mandatory Design Review pursuant to Subtitle X § 604.1 and the special exception standards of Subtitle X, Chapter 9.

This approval is subject to the following conditions, standards, and flexibility:

#### **A. PROJECT DEVELOPMENT**

1. The Property shall be developed and constructed in accordance with the Architectural, Landscape, and Civil Plans prepared by GTM Architects of Washington DC, LLC, dated April 4, 2024, and marked as Ex. 28A1-28C3 of the record (the “Approved Plans”), as modified by the guidelines, conditions, and standards herein.
2. As set forth in the Approved Plans, Building B1 shall be constructed in accordance with the following:
  - Approximately 373,157 square feet of GFA;
  - A maximum building height of 80 feet, with seven stories and a penthouse level;
  - A maximum density of 4.8 FAR; and
  - Approximately 350 residential units.
3. As set forth in the Approved Plans, Building B2 shall be constructed in accordance with the following:
  - Approximately 172,867 square feet of GFA;
  - A maximum building height of 80 feet, with seven stories and a penthouse level;
  - A maximum density of 4.8 FAR;
  - Approximately 144 residential units; and
  - Approximately 14,044 square feet of GFA devoted to ground floor retail.
4. The Project will have approximately 238 vehicle parking spaces, 100 of which will be allocated for St. Coletta of Greater Washington; approximately 233 long-term bicycle parking spaces, and approximately 30 short-term bicycle parking spaces.

#### **B. DESIGN FLEXIBILITY**

1. The Applicant shall have general design flexibility from the Approved Plans as follows:
  - Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, elevators, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the Approved Plans;

- 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 Approved Plans;
- 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 Approved Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
- Number of Units: To provide a range in the approved number of residential dwelling units of plus or minus 10%, except that (a) the total square footage of the residential dwelling units shall not be reduced, and (b) the number of units and the square footage reserved for affordable housing shall not be reduced;
- Parking Layout: To make refinements to the approved parking configuration, including layout and number of parking spaces, so long as the number of parking spaces is at least the minimum number of spaces required by the Zoning Regulations;
- 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;
- Signage: To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the Approved Plans and are compliant with the DC signage regulations;
- Sustainable Features: To vary the approved sustainable features of the project, provided the total number of LEED points achievable for the project does not decrease below the minimum required for the LEED standard specified by the Approved Plans;<sup>12</sup>
- Landscape Design: To vary the landscape design, including plant selection, and paving patterns, provided that any variations do not result in a material deviation from the Approved Plans;
- Excavation: As shown on Sheet A1.01 of the Approved Plans, to vary the extent of excavation for the underground parking garage based on the needs of the Project;
- Mechanical Screen Wall: To vary the height of the mechanical screen wall on the roof of Building B1 based on the needs of the Project and on the final selection of the mechanical equipment, so long as the height of the mechanical screen wall complies with the maximum height permitted by the Zoning Regulations; and
- Building B1 Stair Tower Location: To vary the location and design of the stair tower leading to the penthouse level of Building B1 pursuant to the alternative options shown on Sheet A1.10 of the Approved Plans, provided that the variation does not change the exterior configuration of any rooftop structures.

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<sup>12</sup> The LEED Checklist provided at Sheet A0.16 of the Approved Plans indicates that the Project will achieve a LEED Silver score using the LEED for Homes: Multifamily Midrise rating system.



2. The Applicant shall have design flexibility from specific elements of the project design as follows:<sup>13</sup>
  - Building B1 – Tower Trellis Element: To vary the design of the tower trellis element extending from the roof of Building B1 at the northwest and the northeast corner, provided that the variation does not change the exterior configuration of any rooftop structures and/or substantially alter any other design elements of the Project shown on the Approved Plans;
  - Balconies. To substitute any Juliet balconies shown on the Approved Plans with full-sized balconies, provided that the substitution does not substantially alter any other exterior elements of the building;
  - Three-Bedroom Units. To increase the number of three-bedroom units for the Project, so long as the total square footage devoted to residential dwelling units is not reduced; the project does not exceed the permitted density; and the number of units and the square footage reserved for affordable housing are not reduced; and
  - Private Drive – Lighting. To vary the design of the private drive, including any entrances to parking, loading, or mechanical areas, to accommodate additional lighting or similar features intended to enhance safety and visibility, provided that the variations do not substantially alter the configuration of the Project or the building design shown on the Approved Plans.

### **C. TRANSPORTATION DEMAND MANAGEMENT**

1. **During the operation of the Project (unless otherwise noted)**, the Applicant shall provide the following TDM measures for the overall Project:
  - a. The Applicant will identify a Transportation Coordinator once the building has opened;
  - b. The Transportation Coordinator will act as a point of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;
  - c. The Transportation Coordinator will conduct an annual commuter survey of building employees and residents on-site, and report TDM activities and data collection efforts to goDCgo once per year;
  - d. The Transportation Coordinator will develop, distribute, and market various transportation alternatives and options to residents, employees, and customers, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications;
  - e. The Transportation Coordinator will receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan;
  - f. The Transportation Coordinator will subscribe to goDCgo's residential newsletter and receive TDM training from goDCgo to learn about the

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<sup>13</sup> Decision No. B.2. includes additional design flexibility that was not specifically requested by the Applicant, but addresses the Commission's intent during the April 8, 2024, public hearing. (See Hrg. Tr. pp. 83-84.)

transportation conditions for this project and available options for implementing the TDM Plan;

- g. All transportation and TDM commitments will be posted on the building website, if such a website exists, to allow the public to see what has been promised;
- h. Post “getting here” information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for customers discouraging parking on-street in Residential Permit Perking (RPP) zones;
- i. Provide approximately 233 long-term and 30 short-term bicycle parking spaces (including both the residential and retail components);
- j. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids’ bikes, with a minimum of eight of the long-term spaces (total for both residential and retail components) designed for longer cargo/tandem bikes (10’x3’), a minimum of 17 spaces (total for both residential and retail components) designed with electrical outlets for the charging of electric bikes and scooters. There will be no fee to the residents or employees for usage of the bicycle storage room and strollers will be permitted to be stored in the bicycle storage room. 233 long-term spaces are provided. 115 spaces are planned to be vertical and 116 spaces are planned to be horizontal;
- k. One additional short-term and 67 additional long-term bicycle parking spaces exceeding the minimum requirements set forth in the Zoning Regulations will be provided on-site;
- l. A bicycle repair station will be provided in the long-term bicycle parking storage room;
- m. Three EV charging stations serving five EV Parking spaces will be provided in the garage;
- n. **Following the issuance of a Certificate of Occupancy for the Project**, the Transportation Coordinator will submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case;
- o. **Five years after the issuance of the final Certificate of Occupancy for the Project**, if the Transportation Coordinator has not established a relationship with DDOT or goDCgo, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo summarizing continued substantial compliance with the transportation and TDM conditions in the Order, unless no longer applicable as confirmed by DDOT. If such letter is not submitted on a timely basis, the building shall have 60 days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter;
- p. One Capital Bikeshare station will be installed with appropriate racks and a vertical wayfinding element. It will be installed in an easily accessible location

near other bicycle facilities in adjacent public space, in an on-street parking space, or on the property, subject to DDOT approval; and

- q. Independence Avenue, S.E. will be road dieted east of 19<sup>th</sup> Street, S.E. and along the site's frontage, reducing the travel way from three through lanes to two through lanes. This Project is subject to implementation based on the development of multiple parcels within the overall Hill East site and is expected to be implemented by 2030.
2. **During the operation of the Project (unless otherwise noted)**, the Applicant shall provide the following TDM measures for specifically the residential portion of the Project:
- a. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within one quarter mile;
  - b. The Transportation Coordinator will provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home ("GRH") brochure, and the most recent DC Bike Map;
  - c. The Transportation Coordinator will provide residents who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future;
  - d. A SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride will be provided for each unit at the time of initial occupancy;
  - e. Offer annual CaBi membership for each unit for the first three years after the building opens;
  - f. Two parking spaces will be designated for vans to be used by District residents who vanpool to work; and
  - g. One collapsible shopping cart (utility cart) for every 50 residential units will be provided, for a total of 19 to encourage residents to walk to the grocery store and run errands.
3. **During the operation of the Project (unless otherwise noted)**, the Applicant shall provide the following TDM measures specifically for the retail portion of the Project:
- a. Unbundle the cost of parking from the cost to lease the building or unit and only hourly, daily, or weekly rates will be charged. Free parking, validation, or discounted rates will not be offered;
  - b. Transportation Coordinator will demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law to participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service),

- as well as other commuter benefits related laws such as the Parking Cash-Out Law and those that may be implemented in the future;
- c. Provide employees who wish to carpool with detailed carpooling information including other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future;
  - d. Provide a SmarTrip card and one complimentary CaBi coupon good for a free ride to each new employee;
  - e. Offer an annual CaBi membership to each employee for the first three years after the building opens;
  - f. Employers will participate in the CaBi Corporate Membership program and offer discounted annual memberships to employees; and
  - g. Free parking spaces will be provided for all vehicles that employees use to vanpool to work.

#### **D. TRANSPORTATION IMPROVEMENTS**

1. **Prior to the issuance of a Certificate of Occupancy**, a road diet on Independence Avenue, S.E. will be constructed between 19<sup>th</sup> Street, S.E. and the eastern boundary of the Bundle 1 eastern property boundary with Bundle 2,<sup>14</sup> immediately east of the planned 21<sup>st</sup> Street, S.E. The road diet will consist of the reconstruction of the southern curb of Independence Avenue, S.E. using concrete and other DDOT standard materials, reconfiguring the southernmost lane into a parking/entry lane (to St. Coletta School) with bump outs, and striping out the northernmost lane, to convert Independence Avenue, S.E. from its existing 3-4 lane section to a two-lane section, as shown in Ex. 24A in the record for Z.C. Case No. 23-28.

#### **E. VALIDITY AND MISCELLANEOUS**

1. This Application shall be **valid for a period of two years from the effective date of this Order**. Within such time, an application for a building permit must be filed as specified in Subtitle Z § 702.2. Construction must begin within three years after the effective date of this Order as specified in Subtitle Z § 702.3.
2. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.*, (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities,

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<sup>14</sup> The term “Bundle 1” refers to that certain real property formerly owned by the District that was disposed of pursuant to the “Hill East Phase II Bundle 1 Surplus Declaration and Disposition Approval Act of 2022” (D.C. Law No. 24-0319.) The term “Bundle 2” refers to that certain real property formerly owned by the District that was disposed of pursuant to the “Hill East Phase II Bundle 2 Surplus Declaration and Disposition Approval Act of 2022” (D.C. Law No. 24-0322.)

matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

3. At such time as the Zoning Administrator requests, the Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order and shall simultaneously file that letter with the Office of Zoning.

**Final Action**


**VOTE (April 8, 2024): 4-0-1**

(Robert E. Miller, Joseph S. Imamura, Anthony J. Hood, and Tammy Stidham to approve, 3<sup>rd</sup> Mayoral Appointment seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 23-28 shall become final and effective upon publication in the *District of Columbia Register*; that is, on November 29, 2024.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

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

  
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**ANTHONY HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
\_\_\_\_\_  
**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING.**

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