

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-10**

Z.C. Case No. 06-10

The Morris & Gwendolyn Cafritz Foundation

**(Consolidated and First-Stage Planned Unit Development & Related Zoning Map
Amendment for Squares 3765 and 3769 and Portions of Squares 3766, 3767, and 3768)
December 14, 2009**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held public hearings on July 2 and October 8, 2009, to consider applications from The Morris and Gwendolyn Cafritz Foundation (the "Applicant") for first-stage and consolidated review and approval of a planned unit development ("PUD"), and related Zoning Map amendment from the R-5-A and FT/C-3-A Zone Districts to the C-2-B and FT/C-2-B Zone Districts for properties in Squares 3765, 3766, 3767, 3768, and 3769. The Commission considered the applications pursuant to Chapters 24 and 30 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications with conditions.

FINDINGS OF FACT

The Applications, Parties, and Public Hearing

1. On October 8, 2008, the Applicant, the owner of property in Square 3765 (all), Square 3766 (Lots 1, 2, 3, 4, 800), Square 3767 (Lots 1-5, 806), Square 3768 (Lots 1-2), and Square 3769 (all), measuring approximately 656,298 square feet (collectively, the "Property"), filed applications for first-stage and consolidated review and approval of a PUD and related Zoning Map amendment from R-5-A and FT/C-3-A to a combination of C-2-B and FT/C-2-B for the Property (collectively, the "Applications"). Consolidated PUD approval was requested for Square 3765 (portions of Lots 800 and 802), Square 3767 (portion of Lot 806), Square 3768 (Lots 1 and 2), and all of Square 3769 for the Property.¹

¹ The Applicant originally filed applications for first-stage and consolidated PUD review and a related Zoning Map amendment on February 15, 2006, on a slightly smaller portion of the Property (not including Lots 1 and 2 in Square 3766 and Lot 5 in Square 3767), which applications were scheduled for hearing action consideration by the Commission on July 24, 2006. On July 19, 2006, the Applicant submitted a letter request to the Commission to postpone hearing action consideration to allow the Applicant opportunity to study potential modifications to the first-stage and consolidated portions of the applications.

2. By Preliminary Report dated January 30, 2009, the District of Columbia Office of Planning ("OP") recommended that the Commission schedule a public hearing for the Applications.
3. At its February 9, 2009, public meeting, the Commission determined to schedule the Applications for public hearing.
4. The Applicant filed its supplemental statement and request for hearing date with the Office of Zoning on April 22, 2009.
5. The Commission held a public hearing for the Applications on July 2, 2009, which was continued to October 8, 2009. The Commission heard testimony from the Applicant, including its expert witnesses in architecture and urban design, land use and zoning, traffic analysis and management, civil engineering, and land economics. The Commission also heard testimony in support of the Applications from Advisory Neighborhood Commission ("ANC") 5A, the ANC within which the Property is located. The Commission granted party status and received testimony in conditional support from the Lamond-Riggs Citizens Association ("LRCA"), a community organization whose boundaries include the Property. ANC 4B, whose boundary abuts a portion of the Property, was granted party status *in absentia* but did not participate in the hearing nor submit a written report for the record. Testimony was also received from OP and from persons in support and in opposition to the Applications, including the President of the Riggs Plaza Apartments Tenants Association, a number of persons currently residing at the Property, the ANC 5A Single Member District representative whose district includes a portion of the Property, and a representative of the Food & Friends organization. Testimony was received on behalf of Ward 5 Councilmember Harry Thomas in support of the Applications and on behalf of Ward 4 Councilmember Muriel Bowser in conditional support of the Applications. The District of Columbia Department of Transportation ("DDOT") submitted memoranda in support of the Applications with conditions. Correspondence was received into the record from the Deputy Mayor for Planning and Economic Development in support of the Applications.
6. In anticipation of the October 8th continuation hearing, the Applicant filed its second supplemental filing with the Commission on September 18, 2009. This supplemental filing included refined architectural designs for Building A, the portion of the Property being requested for consolidated PUD approval. The filing also included a further clarified summary of the Applicant's affordable housing commitments and standards.
7. At the conclusion of the October 8th public hearing, the Commission closed the record except for certain materials that it requested the Applicant to provide with regard to further design refinements to Building A, additional perspective drawings of portions of Building A, and a further revised and clarified summary of the Applicant's proposed

package of project amenities and community benefits, including proposed timing. The Applicant provided this additional information to the Commission by submission dated October 22, 2009.

8. At its November 9, 2009, public meeting, the Commission took proposed action to approve the Applications with conditions. At the suggestion of the Office of the Attorney General ("OAG"), the Commission ordered the Applicant to submit a final list of the public benefits and amenities it was proffering for the consolidated PUD, along with a listing of the conditions it would agree to follow in order to make each and every proffer specific and enforceable by November 16, 2009 and serve that list on OAG, OP, and the parties. The Commission instructed OAG and OP to complete any dialogue they felt was necessary with respect to any perceived deficiencies in the Applicant's proposed conditions by November 23, 2009, and for the Applicant to serve OAG, OP, and the parties with a revised list of conditions by November 30, 2009. The Commission further instructed that by December 7, 2009, OAG, OP, and the affected parties must file any responses to the revised conditions, with OAG's response to be treated as a privileged attorney-client communication.
9. By letter dated November 16, 2009, the Applicant submitted a table identifying its final proffer of benefits and amenities, and the conditions it believed would make the proffer enforceable. OAG and OP discussed the proposed conditions with the Applicant, and on November 30, 2009, the Applicant submitted a revised list of conditions. On December 7, 2009, OP and OAG submitted their comments to the revised conditions.
10. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated November 24, 2009, found that the Applications would not have any adverse impact on the federal interests.
11. The Commission took final action to approve the Applications at its public meeting on December 14, 2009.

The Property and Surrounding Area

12. The Property, which is roughly L-shaped, is located in Northeast Washington and is bounded generally on the south by Galloway Street, N.E., on the east by South Dakota Avenue, on the north by the Food & Friends operation and Riggs Road, N.E., and on the west by a 20-foot-wide public alley (located between 3rd and 4th Streets) and a WMATA right-of-way.
13. The Property consists of Lots 1, 2, 3, 4, 800, and 802 in Square 3765, Lots 1, 2, 3, 4, and 800 in Square 3766, Lots 1, 2, 3, 4, 5, and 806 in Square 3767, Lots 1 and 2 in Square 3768, and Lots 1, 2, 3, and 804 in Square 3769. The total land area for the Property, excluding abutting public rights-of-way proposed to be closed and dedicated, is

approximately 656,298 square feet (15 acres). This land area, which exceeds the minimum area requirement of 15,000 square feet for a PUD in the C-2-B Zone District established in § 2401.1(a) of the Zoning Regulations (11 DCMR), does not include approximately 153,000 square feet (3.5 acres) of portions of Hamilton, Kennedy, and 4th Streets, N.E., and public alleys in Squares 3765 and 3769 proposed to be closed. The Applicant, in turn, proposes to dedicate new public street portions for Kennedy and Ingraham Streets, N.E., running east-west through the site, measuring a total of approximately 63,415 square feet (1.45 acres).

14. The Property has been improved with a complex of 15 aging low-rise, walk-up multifamily residential buildings constructed by Morris Cafritz in the 1950s, known as the Riggs Plaza Apartments, focused primarily along 4th Street, N.E., and consisting of approximately 233 residential units. A number of these buildings are now vacant, and only approximately half of the units are currently occupied. There is no community, cultural, retail, or enclosed recreational space currently provided at the complex. The Property also includes three small warehouse buildings adjacent to the WMATA right-of-way that are currently used for food catering operations. All of the existing structures would be demolished in phases to allow for construction of the PUD.
15. The Fort Totten Metrorail Station, serving trains on three transit lines (Red, Green, and Yellow) is located a few hundred feet to the southwest of the Property.
16. South of the Property, across Galloway Street, N.E., (60 feet wide) is Fort Totten Park, part of the National Park Service's Fort Circle Parks system.
17. To the west of the Property, across a 20-foot-wide public alley, is the recently-completed Fort Totten Station Apartments, which was constructed as a matter-of-right as a complex of four- and five-story buildings devoted to multi-family residential uses, including very minimal retail uses.
18. Bounding the property to the east is South Dakota Avenue, measuring 120 feet in width, and which to the immediate north of the site intersects Riggs Road by means of an extensive connecting road network. Across South Dakota Avenue from the site is the former Bertie Backus School, which is in process of being reprogrammed for use by the University of the District of Columbia, a number of detached dwellings, the Lamond-Riggs Branch Library, a gas station, and a convenience store.
19. Along the north edge of the Property, there is a steep drop off in grade to the neighboring development, which has recently undergone redevelopment by the Food & Friends organization. The northern portion of the Property is also bounded by the WMATA right-of-way.

Existing and Proposed Zoning

20. The Property is split-zoned, with portions of the site located in the R-5-A and FT/C-3-A Zone Districts, respectively. Approximately 450,750 square feet of land is located in the R-5-A Zone District, and approximately 110,991 square feet, in portions of Squares 3766 and 3767, is located in the FT/C-3-A Zone District, not including public rights-of-way.
21. The R-5 Zone Districts are general residential districts designed to allow flexibility of design by permitting in a single district all types of urban residential development, including single family dwellings, semi-detached houses, row dwellings, and apartments, if they conform to certain established height, density, and area requirements. The R-5 Zone Districts also permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from more restrictive residential districts.
22. The maximum height permitted in the R-5-A Zone District is 40 feet and three stories. Residential development may achieve a maximum density of 0.9 floor area ratio ("FAR"). Lot occupancy is restricted to 40%.
23. The C-3-A Zone Districts permit medium-density development, with a density incentive for residential development within a general pattern of mixed-use development. Height in the C-3-A Zone Districts is permitted to a maximum of 65 feet with no limit on the number of stories. A total building density of 4.0 FAR is permitted, however not more than 2.5 of that amount may be devoted to uses other than residential uses.
24. The Fort Totten Overlay ("FT") provides a mechanism to protect existing industrial uses while at the same time promoting and protecting surrounding residential and non-residential uses consistent with the Comprehensive Plan.
25. The Applicant requests rezoning of the Property to the C-2-B Zone District, with the FT Overlay to remain applicable to that portion of the Property where it currently applies, namely Lots 1 and 2 in Square 3766 and Lot 5 in Square 3767. The C-2-B Zone District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core, and permits high-density residential and mixed-use development. The C-2-B Zone District is a general commercial district, permitting a broad range of retail, service and office uses, hotels, residential uses (single- and multi-family), and many institutional uses. The maximum permitted height in the C-2-B Zone District is 65 feet. The maximum density is 3.5 FAR, not more than 1.5 FAR of which may be devoted to non-residential uses. Maximum permitted lot occupancy in the C-2-B Zone District is 80%.
26. The Applicant proposes the rezoning of the Property to C-2-B and FT/C-2-B in combination with the PUD. Pursuant to the PUD development standards set forth in Chapter 24 of the Zoning Regulations, development in the C-2-B Zone Districts is

permitted to a maximum of 90 feet and 6.0 FAR, and not more than 2.0 FAR may be for non-residential uses. The PUD proposes an FAR substantially below what would be permitted under the new zoning.

Nature of Consolidated and First-Stage PUD

27. The Applications before the Commission are for both first-stage and consolidated review of a PUD, which, once constructed, promise to revitalize the Applicant's 15-acre property with a dramatic mixture of residential, commercial, and arts and cultural uses, as well as to bring significant economic, social, and cultural investment to a community in northeast Washington that has seen little such investment in more than a generation. The proposed redevelopment project involves the phased replacement and reprogramming of property that has been owned by the Applicant for decades, and which is currently improved with an aging complex of low-rise multifamily residential buildings and three small warehouse buildings, through the construction of a new mixed-use complex of four buildings, complete with more than 900 residential rental units and amenities, a full-service grocery store, significant community-serving retail and cultural uses, a state-of-the-art children's museum, and other significant amenities and community benefits. In addition to these significant benefits, the proposed redevelopment fulfills the District's transit-oriented development objectives for increased residential opportunities near Metrorail and ready access to public transportation.
28. To accomplish this program, the Applicant seeks first-stage PUD review and approval for the entire Property, consolidated PUD review and approval for the southernmost portion of the Property (that portion located south of, and including, the proposed extension of Ingraham Street, N.E.), and a related Zoning Map amendment from the existing R-5-A and FT/C-3-A zoning to C-2-B zoning. The portion of the Property currently subject to the FT Overlay is proposed to remain subject to the FT Overlay.
29. The Applicant proposes to demolish the aging Riggs Plaza Apartments complex in phases without displacing current residents and to construct on the Property a mixed-use project of four buildings - referenced in the Applicant's materials as Buildings A, B, C, and D. Building A is the only building presented for consolidated PUD review in the Applications. Upon completion, the PUD will consist of approximately 929 units of multi-family rental housing, including approximately 171 income-restricted units (of which, 98 units will serve as dedicated seniors' residences). With regard to income restrictions, the Applicant has identified eligible households as follows: (1) *relocating Riggs Plaza Tenants* – approximately 115 units in Building A (including 72 of which will be seniors units) serving household income not to exceed 60% of the Area Median Income ("AMI") of the Washington, DC, Metropolitan Statistical Area, adjusted for family size; (2) *remaining seniors' units* – approximately 26 units total, all in Building A, six of which will serve household income not exceeding 60% of AMI and 20 of which will serve household income not exceeding 80% of AMI; and (3) Building C affordable

units – approximately 30 units, all of which will serve household income not exceeding 80% of AMI.

30. The PUD will also include approximately 315,000 square feet of retail uses, including a grocery and anchor retail use, and approximately 300,000 square feet devoted to cultural, arts, and community uses. Throughout the PUD, approximately 2,361 parking spaces will be provided in a combination of structured parking and underground parking.
31. After completion of the proposed street and alley closings and the dedication of new public rights of way, the Property will contain approximately 656,298 square feet of land area and approximately 2,018,880 gross square feet of construction, resulting in a total building density of approximately 3.08 FAR. Of that amount, approximately 873,400 square feet (1.33 FAR) will be devoted to non-residential uses, including non-residential parking. Overall, approximately 461,270 square feet (0.70 FAR) of the total gross square footage will be devoted to above-grade structured parking. Excluding the portion of above-grade parking dedicated to non-residential uses, only approximately 0.91 FAR (595,305 square feet) of the total construction on the Property will be devoted to non-residential uses. Pursuant to the development standards of Chapter 24 of the Zoning Regulations, a maximum of 6.0 FAR, including 2.0 FAR non-residential, is permitted in the C-2-B Zone Districts. Total lot occupancy for the PUD will not exceed 73%.
32. Building heights are proposed to range from 60 feet (Building B) up to 90 feet (Buildings C and D), the permitted maximum for a PUD in the C-2-B Zone District.
33. The residential components of the PUD are proposed to be located in two separate buildings on the Property, with approximately 529 units to be provided in Building A at the southernmost portion of the Property, atop a new grocery store, additional ground floor retail uses, and structured parking. Not fewer than 141 of these units will be income-restricted units, and 98 of the 141 units will be reserved for senior citizens aged 62 years or older, as detailed below. Tenants of the Riggs Plaza Apartments will have priority to relocate to Building A, as discussed below. The Applicant has requested flexibility to vary the total number of residential units in Building A between 510 and 550 units so long as a total of approximately 526,930 gross square feet of residential uses is provided.
34. Building A will have a total gross floor area of 804,880 square feet (3.72 FAR) on its own site, of which not more than 150,205 gross square feet will be devoted to non-residential uses, including accessory parking. Non-residential uses will include a grocery store of approximately 59,000 square feet, ground floor retail totaling approximately 53,000 square feet, approximately 19,210 square feet of flexible commercial space, and a 7,250 square foot child care center. Building heights will range from 55 feet (at the corner of South Dakota Avenue and the newly-extended Ingraham Street) up to a maximum of approximately 74 feet. A total of 681 parking spaces will be provided in a

combination of underground and structured parking, 344 of which will be devoted to residential uses. Building A will have a maximum lot occupancy of approximately 87%.

35. Building B is located at the center of the Property, fronting South Dakota Avenue and bounded to the south and north, respectively, by the proposed extensions of Ingraham Street and Kennedy Street, with Building A to its south and Buildings C and D to its north. This three-story building is planned to include significant anchor retail and supporting retail uses. This building will also include a children's museum (approximately 47,000 square feet) as well as recreational and meeting space for resident and community seniors, with a total gross floor area of 456,000 square feet, all of which would be for non-residential uses. A total of approximately 1,100 parking spaces in structured parking is proposed for Building B. Building B will have a maximum lot occupancy of approximately 76%.
36. Another 400 residential units, including not fewer than 30 income-restricted units, will be provided in Building C, an eight-story, 90 foot-tall building located at the north end of the Property. This apartment building will have a total building density of approximately 3.46 FAR (520,000 gross square feet) on its own site, all devoted to residential uses. The planned income-restricted units in Building C will be rented to tenants qualified by the Applicant as having a total household income not exceeding 80% of AMI as of the date of occupancy of Building C, with an affordability control period of 20 years from initial occupancy. Building C, which will have a roughly H-shaped footprint, will contain approximately 420 parking spaces provided in structured parking wrapped by residential uses. The Applicant is designing Building C to span a private drive to end in a cul-de-sac in anticipation of a possible connection of 3rd Street, N.E., to Riggs Road should the Food & Friends property undergo redevelopment in the future. Building C will have a maximum lot occupancy of approximately 48%.
37. Building D, which will be located along South Dakota Avenue at its intersection with the reconfigured Kennedy Street, N.E., will contain rehearsal and support space for Washington-area performing arts institutions, will serve as a location for community-gatherings and performances, and is planned to include space for a state of the art branch library. This building will measure seven stories and 90 feet, with a total density of approximately 3.25 FAR (238,000 gross square feet) on its own site, all of which will be devoted to non-residential uses. Approximately 160 parking spaces will be provided in Building D, with additional parking for Building D users anticipated to be shared with Building B. Building D will have a maximum lot occupancy of approximately 71%.
38. The PUD also includes a number of ground level open spaces, including: Morris Square, immediately abutting Building D at the corner of South Dakota Avenue and Kennedy Street; the Plaza, running along South Dakota Avenue in front of Building B; the retail streetscape along both sides of the proposed Ingraham Street extension; Art Point, adjacent to Building A at the corner of South Dakota Avenue and Galloway Street;

Totten Place, the vest pocket park along Galloway immediately adjacent to the private driveway; and the courtyards and other open space adjacent to Building C. In addition to the many and varied ground level open spaces, Building A contains a series of above-grade courtyards, serving as green roofs above the retail base of Building A, to be used by residents of Building A as well as a playground for children at the child care center.

39. The Applicant also proposes to construct a third southbound traffic lane in that portion of the public space running adjacent to the Property along South Dakota Avenue. As recommended by DDOT, the Applicant anticipates that this additional lane will provide a traffic-calming effect by allowing parallel on-street parking at all hours.
40. The Applicant has indicated that it intends to pursue sustainability certification for the entire PUD under the United States Green Building Council's LEED Neighborhood Development (ND) rating system once that program takes effect. The Applicant will also pursue certification for Building A under the LEED New Construction (NC) rating standard, and has committed to achieving not fewer than 26 points under that system. Finally, the Applicant has committed to pursuing certification for Building A under the Green Communities 2008 criteria.

Description of Consolidated PUD

41. The Applicant will initiate its redevelopment at the southernmost portion of the Property, bordered by Galloway Street on the south, South Dakota Avenue on the east, a service alley on the west, and newly-extended Ingraham Street on the north. Here, the Applicant envisions a mixture of residential, retail, and service uses - a level of investment not seen in the area in decades, including a full service grocery store, community-serving ground-level retail, a child care center for Building A and neighborhood residents, an office for use by ANC 5A - all in a building constructed of high-grade materials and designed to minimize its massing and to maximize views and open spaces. Building A is proposed for consolidated PUD review.
42. Given the significant slope of this portion of the Property, from the Metrorail Station and points west, Building A reads as three separate five- to six-story apartment buildings separated by a courtyard in one instance and a private drive in another instance. These "buildings", which are actually a single building for zoning purposes given their above-grade connections, are drawn together by a central pavilion, which serves as a primary entrance to the residential building. A 7,250 square foot child care center, with adjoining tot lot, is located on the first residential level of Building A, with drop-off and pick-up to occur by virtue of a lay-by lane created along Galloway Street.
43. As viewed from South Dakota Avenue, the residential "buildings" comprising Building A are actually located atop a two-story commercial base, which includes a grocery store (approximately 60,000 square feet), multi-level retail spaces along a newly-extended Ingraham Street, as well as along South Dakota Avenue, and Galloway Street, and an

internalized loading and delivery corridor with entrance from Galloway Street and exit to South Dakota Avenue. The height of Building A measures approximately 55 feet along South Dakota Avenue between Hamilton and Ingraham Streets.

44. The Applicant is proposing to provide approximately 527,000 square feet of residential rental units in Building A. So long as the total square footage remains unchanged, the Applicant has requested flexibility to provide between 510 and 550 residential units in Building A. These rental units will include a mixture of market-rate units, income-restricted units, age-restricted units, and units reserved for relocated Riggs Plaza Apartments tenants, with general allocation of units as shown on Sheet 2.00g of the Applicant's drawings submitted on September 18, 2009. (Exhibit 71.) The residential units will be operated as follows:
 - a. Of the 141 income-restricted rental units reserved in Building A, all tenants in good standing of Riggs Plaza Apartments at the time of the completion of Building A who wish to relocate to Building A will be provided a comparable dwelling unit in Building A subject to local and federal regulations pertaining to unit size and type;
 - b. The Applicant's current anticipation is that approximately 72 households relocating from Riggs Plaza Apartments at the time of completion of Building A will qualify as seniors' households (62+ years) and will be offered comparable units in the 98-unit seniors housing portion of Building A. Approximately 43 additional Riggs Plaza Apartments households not meeting the seniors' criteria are also anticipated to be eligible to relocate to Building A. Those households will be offered comparable units in Building A, again subject to applicable rules and regulations pertaining to unit size and type;
 - c. All of these relocating Riggs Plaza Apartments households (approximately 115 households) will be eligible to move into rental units in Building A that will remain income-restricted for so long as that household remains a tenant or for 20 years, whichever is longer. The maximum household income for these units will be not more than 60% of then-applicable Metropolitan AMI. In actuality, the Applicant is working with these households, many of which have incomes far below this threshold level, to ensure that during their tenancies, their rents in the future will remain consistent with their current rent levels, subject to CPI; and
 - d. For the approximately 26 income-restricted units remaining in Building A ($141 - 115 = 26$), should all the anticipated Riggs Plaza Apartments tenants elect to relocate to Building A, all of these units are anticipated to be reserved as affordable seniors' units, which would be available to qualified area residents aged 62+ years to be determined by lottery system to be administered by the Applicant. These units would be income-restricted for a period of 20 years. Six of the 26 units are proposed to be restricted to households whose total income

does not exceed 60% of Metropolitan AMI. The remaining 20 units will be restricted to incomes not exceeding 80% of Metropolitan AMI.

45. A total of 681 parking spaces will be provided in Building A, 344 spaces of which will be devoted for residential use, and the remaining 337 spaces will be utilized for non-residential uses on the lower floors. The 344 residential parking spaces will be located in six levels of structured parking along the western edge of Building A, wrapped by residential uses on three sides and a green screen. The 337 spaces devoted to non-residential uses will be located on the lowest two levels, in a garage spanning the breadth of the Property.

Development Incentives and Flexibility Requested

46. The Applicant requests the following areas of flexibility from the C-2-B requirements and PUD standards to facilitate development of Building A:

- a. To provide multiple roof structures, not all of which meet the 1:1 setback requirement from the exterior walls of the building;
- b. To provide less than the minimum required side yard on the west side of Building A;
- c. To vary the total number of residential units provided in Building A between 510 and 550 units, so long as the total residential square footage is not diminished, and further, so long as not fewer than 141 such units are income-restricted as provided herein, and 98 of said 141 units are further restricted for rental by qualifying senior households, with relocating residents of the Riggs Plaza Apartments to have priority for relocation to Building A;
- d. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;
- e. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;
- f. To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit; and

- g. To determine the use of the approximately 19,000 square feet identified in the Applicant's plans as "flex space" between retail, service, office, and residential uses, according to market demands.

Public Benefits and PUD Amenities

47. The Commission finds that the following superior benefits and amenities will be created as a result of the PUD:

- a. *Housing and Affordable Housing.* The production of housing is a public benefit that the PUD process is designed to encourage. To that end, the single greatest benefit of the PUD is the approximately 929 new residential units that will be constructed to replace the approximately 233 aging rental units on the Property, all without dislocation of existing residents. Furthermore, a significant portion of these units, approximately 171 units, more than 18% of the total, will be income-restricted and heavily subsidized by the Applicant. A significant portion of these income-restricted units will be further restricted to provide opportunities for senior citizens, those currently residing on site as well as others in the community. Finally, through the Applicant's phased approach to the redevelopment of the Property, impacts upon existing residents will be minimized and will allow interested Riggs Plaza tenants to relocate during the first phase of redevelopment to Building A.
- b. *Urban Design and Architecture.* The PUD follows the transit-oriented development ("TOD") model, which stresses six design principles, namely: (1) orientation and connectivity; (2) quality public realm and amenities; (3) pedestrian-friendly, safe environment; (4) attractive architecture and design; (5) a mixture of uses; and (6) creative parking management. The PUD satisfies these criteria in the context of the surrounding area. Among the benefits attributed to TOD are increased neighborhood livability, reduction in automobile traffic, flexibility in housing offerings, maximization of past municipal investments and related reduction in additional infrastructure costs, improved air and water quality, and increased property values. The demonstrated results of successful TOD include increased property values, tax base, and economic strength throughout a neighborhood as well as protection of the existing neighborhood character by focusing development nearest transit.

As exemplified by the refined designs and materials proposed for Building A, the PUD offers a level of site planning and architectural design that exceeds most matter of right projects anywhere in the District.

Another aspect of the PUD that is of special urban design value to the neighborhood is the concept of Morris Square as a community focal point. Morris Square will mark the intersection of various exciting uses proposed for the

PUD—desirable retail space, children's museum, seniors' center, public library, performing arts spaces, and restaurants – forming, in conjunction with the Plaza running in front of Building B along South Dakota Avenue, a lively and diverse streetscape, a true destination for the neighborhood and the region.

- c. *Site Planning and Efficient Land Utilization.* The PUD makes very efficient use of its shape and topography. The PUD is also an efficient and economical use of land in that it will generate a significant amount of revenue for the District in the form of vastly increased property and sales taxes as well as income taxes payable by new residents. According to the Applicant, once completed, the PUD will generate annual tax revenue of approximately \$18,500,000. More than 2,000 permanent jobs are anticipated to be created as part of the development of the PUD. The Applicant's investment in the PUD likely will attract other investments in the Fort Totten neighborhood, resulting in benefits to the larger community.
- d. *Transportation.* Off-street parking and loading provided in the PUD meets or exceeds requirements set forth in the Zoning Regulations. The PUD includes a total of 929 dwelling units in Buildings A and C; a total of 764 parking spaces will be supplied for those units, all in structured parking. In addition, a total of approximately 1,597 parking spaces will be provided for the 668,620 square feet of non-residential uses included in the PUD. Loading facilities will be included for all residential and non-residential uses proposed for the PUD. With regards to Building A, loading functions are provided by means of an enclosed tunnel with ingress from Galloway Street and egress to South Dakota Avenue, with additional loading capacity within the underground parking area. In either event, loading is provided in a front-in/front-out fashion. The PUD also provides connectivity throughout the site, allowing for pedestrian and vehicular circulation opportunities and access to the Fort Totten Metrorail Station not currently available.

Several new roadway features are also proposed, including the extension of Ingraham Street to the west, from South Dakota Avenue, across the Property, connecting to the Hamilton Street right of way provided as part of the neighboring Fort Totten Station apartments project. This block of Ingraham Street is proposed to serve as a retail boulevard, marked at its east by the entrance to Building B's major retail at the intersection with South Dakota Avenue and by the grocery store proposed for Building A. At the same time, the Applicant proposes the relocation and reconfiguration of Kennedy Street, with a right of way width of approximately 70 feet. As with Ingraham Street, Kennedy Street will intersect with a right of way for 3rd Street, N.E., to be provided as part of the neighboring Fort Totten Station apartments project. In addition, first-stage plans for the PUD extend this 3rd Street right of way north to the Property's boundary with Food & Friends, offering a potential future connection with Riggs Road, N.E., should the

adjacent property be redeveloped in the future. The Applicant likewise proposes to reconstruct the curb and a new southbound lane for South Dakota Avenue along the Property's frontage. Pursuant to consultation between the Applicant and DDOT, this land would be utilized for parking during peak and non-peak hours.

Finally, the Applicant has established a transportation demand management plan in coordination with DDOT.

- e. *Employment and Training Opportunities.* The PUD will provide a number of employment and training opportunities. Approximately 3,500 construction and related jobs are contemplated to be generated over the course of construction of the PUD. At build-out, more than 2,100 permanent jobs in the retail, residential, and cultural sectors are anticipated at the site. To that end, the Applicant has entered into a First Source Employment Agreement with the District's Department of Employment Services ("DOES") in order to achieve the goal of utilizing District of Columbia residents for a significant percentage of the jobs created by the PUD.
- f. *Uses of Special Value to the Neighborhood or the District as a Whole.* The PUD offers a host of uses not currently available to the Fort Totten community. In addition to significant new retail and residential opportunities, including a full-service grocery, the PUD offers such unprecedented cultural opportunities in the community as a sizeable children's museum, a daycare facility, practice, relief and support space for major regional performing arts companies, and potentially a new library.

48. The Commission finds that the PUD is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities related to housing and affordable housing, urban design and architecture, uses of special value to the neighborhood, job training and employment opportunities, and transportation measures.

Compliance with Comprehensive Plan

49. The Commission finds that the PUD advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan, as follows:

- a. *Land Use and Policy Maps.* The Applicant's proposal to construct a mixed used development that includes residential, retail, community and arts uses not to exceed eight stories on the Property is consistent with the Future Land Use Map and Generalized Policy Map. The Future Land Use Map designates the Property

for Medium Density Commercial and Medium Density Residential land uses. The Medium Density Commercial designation defines shopping and service areas that are somewhat more intense in scale and character than the moderate-density commercial areas and generally do not exceed eight stories in height. Retail, office, and service businesses are the predominant uses. The Medium Density Residential designation defines neighborhoods or areas where mid-rise (four to seven stories) apartment buildings are the predominant use, but also applies to taller residential buildings. The Generalized Policy Map designates the Property partially as a Neighborhood Conservation Area and partially as a Land Use Change Area.

- b. *Land Use Element.* The PUD is consistent with the policy of concentrating redevelopment efforts near Metrorail station areas which offer the greatest opportunities for infill development and growth, particularly stations in areas with weak market demand, or with large amounts of vacant or poorly utilized land in the vicinity of the station entrance. The project is a five minute walk from the Fort Totten Metrorail Station, which will support transit and reduce reliance on automobile use while respecting the character and needs of the surrounding area. The proposed development includes approximately 929 residential rental units, including 98 units devoted to seniors' housing, supporting the policy of establishing housing adjacent to Metrorail stations. The PUD has been designed to encourage transit use and helps to enhance the safety, comfort, and convenience of passengers walking to the Fort Totten Metrorail Station or transferring to and from local buses.
- c. *Transportation Element.* The PUD is an example of transit-oriented development, providing a mix of uses in a location that is a five minute walk from a Metrorail Station. Residents will be able to live, shop, and participate in cultural and recreational activities on-site.
- d. *Housing Element.* The overarching goal of the Housing Element is to "[d]evelop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia." (10 DCMR § 501.1.) The PUD helps to meet the needs of present and future District residents at locations consistent with District land use policies and objectives. The development replaces approximately 233 aging dwelling units with approximately 929 new residential units, including not fewer than 171 income-restricted units, of which 98 units will also be restricted for occupancy by senior citizens. The PUD includes both market-rate and affordable housing units. Thus, the PUD will further the District's policy of dispersing affordable housing throughout the city in mixed-income communities, rather than concentrating such units in economically depressed neighborhoods. The development provides affordable housing choices

for the District's seniors within the Fort Totten community, including current residents of the Riggs Plaza complex, where many already reside.

- e. *Environmental Protection Element.* The Environmental Protection Element addresses the protection, restoration, and management of the District's land, air, water, energy, and biologic resources. This element provides policies and actions on important issues such as energy conservation and air quality. The PUD includes street tree planting and maintenance, landscaping, energy efficiency, methods to reduce stormwater runoff, and green engineering practices, and is therefore fully consistent with the Environmental Protection Element.
- f. *Economic Development Element.* The PUD furthers the policies of this element in its proposal to include approximately 310,000 square feet of retail uses, including a full-service grocery store, destination anchor retail and community-serving ground level retail uses. The retail uses will increase access to basic goods and services for the Fort Totten and surrounding neighborhoods and create new and unique shopping experiences, including along the newly-created retail corridor of Ingraham Street. The Applicant has indicated that it intends to market the proposed retail areas to a mix of nationally-recognized chains as well as locally-based chains and smaller specialty stores, which will help to reinforce existing and encourage new retail districts in the immediate neighborhood and help to improve the mix of goods and services available to residents.
- g. *Urban Design Element.* The goal of the Urban Design Element is to "[e]nhance the beauty and livability of the District by protecting its historic design legacy, reinforcing the identity of its neighborhoods, harmoniously integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and security of streets and public spaces." (10 DCMR § 901.1.) The PUD has been designed with a keen sense of its place, utilizing contextual architectural design, an appropriate mix of building heights and densities to ensure compatibility with neighboring properties and the topography of the Property, and extensive pedestrian-focus and amenities, including an enlivened streetscape along South Dakota Avenue and the newly-created Ingraham Street retail corridor, Morris Square, and the Plaza.
- h. *Arts and Culture Element.* This element sets forth the goal of expanding neighborhood arts and cultural facilities in order to foster a more stable arts community. The PUD supports the underlying policies of this element, including development of new cultural facilities, and improved distribution and siting of such facilities. The PUD offers rehearsal and support space for prominent Washington-area performing arts institutions and will serve as a location for community-gatherings and performances. In addition, it will include a groundbreaking children's museum. These new arts and cultural facilities will be of

significant value to the Fort Totten community and the city as a whole. The Fort Totten area is one in which cultural facilities have not traditionally been established. The proposed development offers substantial cultural opportunities that will benefit the surrounding community. The proposed development is in close proximity to Metrorail and Metrobus stations that will support visits to the performance space and children's museum.

- i. *Upper Northeast Area Element.* The PUD is consistent with and will help to implement a number of the policy goals identified in the Upper Northeast Area Element, which encourages new transit-oriented housing, community services, and jobs around the Fort Totten Metrorail Station and retail development along South Dakota Avenue and the area's Metro stations. The PUD provides substantial retail uses, including a grocery store, destination anchor retail, and community-serving retail uses that directly support these policies.
- j. *Area Development Plan.* The PUD is also consistent with the Riggs Road/South Dakota Avenue Area Development Plan approved by the District of Columbia Council on March 3, 2009, including a maximum building height of 90 feet for the PUD.

Office of Planning Report

- 50. By final report dated June 22, 2009, and supplemental report dated September 28, 2009, and through testimony presented at the public hearing, OP expressed its support for the Applications, noting that the PUD has the capability of transforming the area around the Fort Totten Metrorail Station into a model mixed-use transit oriented development. The PUD would provide District-wide public benefits in the form of additional tax revenues and 171 units of affordable housing. It would provide superior amenities for its residents, and would provide floor space for very significant retail services, shops and cultural uses for an underserved area of the District.
- 51. OP recommended approval of the Applications, while expressing certain continuing reservations regarding the amount of parking proposed as part of the PUD, particularly the amount of parking reserved for residential uses and need for the Applicant to de-link the leasing of the dwelling units from the parking spaces on the Property. In response to concerns raised by OP as part of its final report, the Applicant agreed to reduce by 10% the amount of parking provided as part of Building A and to consider OP's requested parking reduction for the first-stage PUD based upon the Applicant's experiences with Building A, once it is constructed. The Applicant further agreed to lease dwelling units and parking spaces independently from one another.
- 52. In its supplemental report, OP requested that the Applicant provide certain additional information to the Commission on such issues as the requested flexibility regarding

Building A's roof structures and side yard, First Source Employment Agreement status, updated list valuing the PUD's benefits and amenities, among others. The Applicant responded to the issues raised in OP's supplemental report in the Applicant's written submissions to the Record and by testimony at the public hearings.

53. The Commission concurs with OP's findings in support of the Applications and further finds that the Applicant has adequately addressed the list of requested additional information in OP's September 28th supplemental report.

Other District Agencies

54. By memorandum dated June 29, 2009, DDOT recommended support for the Applications, indicating that it had worked with the Applicant to address transportation-related concerns and that the Applicant would need to follow DDOT's policy for a transportation demand management ("TDM") program. DDOT recommended that parking be allowed at all times along the third southbound lane along South Dakota Avenue that the Applicant proposes to construct, suggested the Applicant continue to study the amount of parking needed to be provided, and recommended that signage be installed in all garages to direct drivers to signalized intersections. By memorandum dated October 6, 2009, DDOT confirmed to the Commission that the Applicant had agreed to a TDM plan with DDOT, including the following commitments: provision of bicycle parking equal to five percent of the number of vehicle parking spaces provided, employment of a freight operations manager, provision of a one-time car-sharing membership for tenants upon request, and provision of a one-time SmarTrip fare card for each residential unit in Building A upon initial occupancy. The Commission concurs with DDOT's recommendation in support of the Applications.
55. The District of Columbia Department of the Environment ("DDOE") submitted a memorandum to the Commission dated June 24, 2009, wherein DDOE noted that the Property contains approximately 0.46 acres that are identified as jurisdictional wetlands on the District of Columbia Wetland Conservation Plan. DDOE acknowledged that it was working with the Applicant to resolve issues relating to redevelopment of this particular portion of the Property and that the Commission need not delay its decision awaiting full resolution of this issue.

ANC 5A

56. By resolution dated June 26, 2009, and through testimony at the public hearing from ANC 5A Chairman Angel Alston, ANC 5A indicated its support for the Applications and chronicled the many meetings, discussions, and presentations held by the Applicant with ANC 5A and the community over the course of many months and years, including meetings and discussions with the ANC 5A Single Member District representatives whose boundaries include the Property.

57. The ANC resolution and testimony noted the importance of the PUD as a dynamic neighborhood revitalization project that will offer many public benefits, including new affordable, senior, and market-rate housing units, much needed services, new permanent jobs, new grocery and retail offerings, and facilities for arts, cultural, recreational, and entertainment purposes. The ANC further noted that the project will generate significant tax revenue for the District of Columbia. Finally, the ANC was impressed that the Applicant was committed to a phased relocation plan for existing tenants that would result in minimal inconvenience and no dislocation.

Lamond-Riggs Citizens Association

58. The Lamond-Riggs Citizens Association ("LRCA") submitted a party status application in opposition to the Applications on June 12, 2009, indicating that its boundaries included the Property and that redevelopment of the site as proposed by the Applicant would impact its constituents. Concerns raised in the party status application included: (a) potential negative effects of increased population in the area as a result of the PUD; (b) building height out of character with the neighborhood; (c) increased demands on parking in the neighborhood; and (d) increased traffic. LRCA was granted party status at the July 2, 2009, public hearing.

59. At the conclusion of the July 2nd public hearing session, the Commission suggested that the Applicant and LRCA representatives should meet to identify issues of agreement and narrow issues of disagreement and concern. The Applicant and LRCA held a meeting on July 15, 2009, and a number of issues regarding parking and traffic management, architecture and design, nature of retail uses, affordable housing, and community involvement were resolved with general agreement by the parties. At the same time, certain other issues could not be agreed upon - such as building heights, density and number of residential units, limits on the number and operating hours of retail uses, and ability of the Applicant to fund a financial package to support certain identified community amenities and programs.

60. At the October 9, 2009, continuation hearing, the LRCA representatives indicated to the Commission that LRCA had revised its position to a party in support of the Applications with conditions. These proposed conditions include the following:

- a. Limit the maximum height of all buildings to no more than five or six stories;
- b. Limit the number of total residential units to between 750-825;
- c. Require that the control period for the 171 income-restricted units be perpetual; and
- d. Require the Applicant to establish a fund in the amount of \$95,000 to fund community programs in the Lamond-Riggs neighborhood.

61. Through its testimony at the hearing and in its submissions to the Record, the Applicant responded to the proposed conditions as follows:

- a. With respect to limited building height, the Applicant noted that its proposal is consistent with the limits of the Riggs Road Area Development Plan. Building A has been refined to break up its massing and to have lowered building height in those portions closest to neighboring residential uses.
- b. With respect to the number of residential units provided, the Applicant noted that the number requested is a matter of project economics, in order to provide the extensive amount of income-restricted units (approximately 18% of total number of units provided), to off-set the heavy subsidy necessary to provide nearly 100 units of dedicated affordable seniors units and to relocate all of the interested existing Riggs Plaza Apartments tenants. The Applicant further noted that the District's transit-oriented development policy encourages increased residential density near transit corridors. Finally, a significant number of residential units is necessary in order to provide a critical mass for the mixture of non-residential retail, arts, and cultural uses included in the PUD.
- c. With respect to the affordability control period, the Applicant noted that with regard to the approximately 115 relocating Riggs Plaza Apartment households, the control period is for the term of that tenancy, which may be significantly longer than 20 years. Moreover, the Applicant noted that it is providing nearly 175 income-restricted units, approximately 18% of all residential units in the PUD, and at a significant subsidy.
- d. With regard to the proposed community fund, the Applicant advised that, as a result of its non-profit foundation status, it is not authorized to offer the sort of financial proffer that a for-profit developer may offer. The Applicant further notes that it is a long-standing property owner and member of the community with no intentions to sell or otherwise dispose of the Property.

62. The Commission appreciates the concerns raised by LRCA on behalf of its membership and is encouraged that LRCA and the Applicant have continued a dialogue and reached a number of points of agreement to allow LRCA to participate as a supporting party to the Applications, with conditions. With respect to the conditions raised by LRCA above, the Commission concurs with the Applicant and finds that such proposed conditions are not appropriate or necessary.

CONCLUSIONS OF LAW

1. Pursuant to § 2400.1 of the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided

that a PUD project, "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
3. The PUD meets the contiguity requirements of § 2401.3 of the Zoning Regulations.
4. The objective of the PUD process is to encourage high quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under conventional zoning procedures. Section 2403.9 of the Zoning Regulations provides categories of public benefits and project amenities for review by the Commission. In approving a PUD, the Commission must determine that the impact of a PUD on the surrounding area and on the operation of city services and facilities is either not unacceptable, is capable of being mitigated, or is acceptable given the quality of public benefits provided by said project. (11 DCMR § 2403.3.)
5. The development of this PUD carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
6. The PUD's benefits and amenities are reasonable for the development proposed on the Property. The impact of the PUD on the surrounding area is not unacceptable. Accordingly, the Applications should be approved.
7. Evaluating the PUD according to the standards set forth in § 2403 of the Zoning Regulations, the Commission concludes that the Applications qualify for approval. Judging, balancing, and reconciling the relative value of amenities and benefits in the Applications against the nature of the Applicant's request and any potential adverse effects, the Commission is persuaded that the proposed public benefits herein, in conjunction with the amenities discussed above, are appropriate in this case.
8. Approval of this PUD and change of zoning is not inconsistent with the Comprehensive Plan.
9. Approval of this PUD and change of zoning is not inconsistent with the purposes and objectives of zoning as set forth in the § 2 of the Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.02), including as follows:
 - a. The proposed rezoning is not inconsistent with the Comprehensive Plan;

- b. The proposed rezoning will not produce objectionable traffic conditions;
- c. The proposed rezoning will not lead to the undue concentration of population and the overcrowding of land; and
- d. Approval of this PUD will promote general welfare and tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services.

10. The Applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

11. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

12. The Commission is required under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135; D.C. Official Code § 1-309.10(d)) to give great weight to the affected ANC's recommendations. The Commission has carefully considered ANC 5A's recommendations for approval and concurs in its recommendation. The Commission affords the views of ANC 5A the great weight to which they are entitled. The Commission also qualified ANC 4B as a party to the Applications; however, ANC 4B did not participate in the proceedings before the Commission.

13. The Commission is required under § 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) to give great weight to OP's recommendations. For the reasons stated above, the Commission agrees with OP's recommendation for approval, and believes the Applicant has addressed all of OP's concerns through revisions to its Applications.

14. The Applications for a PUD and related Zoning Map amendment will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

15. The Applications for a PUD and related Zoning Map amendment are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the Applications for first-stage and consolidated review of a planned unit development and for a related Zoning Map amendment from R-5-A and FT/C-3-A to C-2-B and FT/C-2-B for the Property, located in Squares 3765, 3766, 3767, 3768, and 3769, and public rights of way to be closed. This approval is subject to the following guidelines, conditions, and standards:

1. The first-stage PUD approval shall apply to the following properties: Square 3765, Lots 1, 2, 3, 4, 800, and 802; Square 3766, Lots 1, 2, 3, 4, and 800; Square 3767, Lots 1, 2, 3, 4, 5, and 806; Square 3768, Lots 1 and 2; Square 3769, Lots 1, 2, 3, and 804.
2. The consolidated PUD approval shall apply to that portion of the Property as dimensioned on Sheet 2.09 of the drawings dated October 22, 2009 and included in the Applicant's post-hearing submission dated October 22, 2009. (Exhibit 89.)
3. The following properties shall be rezoned from R-5-A to C-2-B: Square 3765, Lots 1-4, 800, 802; Square 3766, Lots 3, 4, 800; Square 3767, Lots 1-4, 806; Square 3768, Lots 1 and 2; and Square 3769, Lots 1-3, 804.
4. The following properties shall be rezoned from FT/C-3-A to FT/C-2-B: Square 3766, Lots 1, 2, and 5; and Square 3767, Lot 5.
5. The rezoning of the properties included in the first-stage PUD shall not become effective unless a second-stage PUD application is approved for the particular property and the Applicant subsequently records the covenant required by 11 DCMR § 2409.3.
6. The consolidated portion of the PUD shall be developed in accordance with the plans submitted to the Commission on September 18, 2009, as amended and supplemented by the plans submitted on October 22, 2009, located, respectively, at Exhibits 71 and 89 of the record (collectively, the "Plans"), and the guidelines, conditions, and standards herein.
7. The PUD, upon completion, shall include a maximum of 2,018,880 gross square feet. The distribution of uses and densities, and the amount of parking and loading, shall be as shown on Sheet 8 (Development Data) of the Plans, as follows:
 - a. Building A shall have a maximum total gross floor area of 804,880 square feet (3.72 FAR) on its own site, of which not more than 150,205 gross square feet shall be devoted to non-residential uses, including accessory parking. Non-residential uses shall include a grocery store of approximately 59,350 square feet, ground floor retail totaling approximately 53,000 square feet, approximately 19,210 square feet of flexible commercial space, and a 7,250 square foot child

care center. Building heights shall range from 55 feet (at the corner of South Dakota Avenue and the newly-extended Ingraham Street) up to a maximum of approximately 74 feet. A total of approximately 681 parking spaces shall be provided in a combination of underground and structured parking, approximately 344 of which shall be devoted to residential uses. Building A shall have a maximum lot occupancy of approximately 87%;

- b. Building B shall be constructed as a three-story building not to exceed 60 feet in height and shall include approximately 203,000 square feet of anchor retail and supporting retail uses, an approximately 47,000 square foot children's museum, as well as recreational and meeting space for resident and community seniors, with a total gross floor area not to exceed 456,000 square feet, all of which would be for non-residential uses. Building B shall have a maximum lot occupancy of approximately 76% and contain approximately 1,100 parking spaces;
- c. Building C shall measure eight stories and a maximum height of 90 feet and contain approximately 400 residential units, including not fewer than 30 income-restricted units. This building shall have a total building density of approximately 3.46 FAR (not to exceed 520,000 gross square feet) on its own site, all devoted to residential uses, and shall contain approximately 420 parking spaces. Building C shall have a maximum lot occupancy of approximately 48%; and
- d. Building D shall have seven stories and a maximum height of 90 feet, with a total density of approximately 3.25 FAR (not to exceed 238,000 gross square feet) on its own site, all of which shall be devoted to non-residential uses including rehearsal and support space for Washington-area performing arts institutions, with a reservation of approximately 20,000 square feet space for a new branch library. Building D shall have a maximum lot occupancy of approximately 71%. Approximately 160 parking spaces shall be provided in Building D.

The Commission directs the Applicant to review its proposed parking numbers as it proceeds with second-stage PUD review of Buildings B, C, and D, to study the feasibility of reducing parking counts and/or sharing parking among uses and users.

8. The Applicant shall provide not fewer than 171 income- and age-restricted residential rental units pursuant to the development standards set forth at Exhibit C of the Applicant's September 18, 2009, supplemental filing, included as Exhibit 70 of the record.
9. The Applicant shall demolish existing portions of Hamilton Street, N.E., and public alleys, and construct at its own expense an extension of Ingraham Street, N.E., as generally shown on Sheet C-10 of the Plans, which right of way will be dedicated to the District of Columbia upon District of Columbia Council approval (and subject to DDOT

and DC Water and Sewer Authority review, as applicable) of street and alley closing applications and a new street dedication application. Such construction shall include installation of brick sidewalks, storm drains, LID tree pits, curbs and gutters, relocation of water and sanitary sewer, and relocation of dry utilities underground.

10. The Applicant shall construct, furnish, and maintain/operate in Building A community spaces for use by residents, as shown generally on Sheet 2.03 of the Plans, totaling approximately 20,835 square feet.
11. The Applicant shall construct and outfit approximately 7,250 square feet of space in Building A, as generally shown on Sheet 2.02 of the Plans, for market lease to a qualified child care center operator, including access to a tot lot.
12. The Applicant shall construct approximately 112,000 square feet of retail space in Building A, as generally shown on Sheet 2.02 of the Plans, including approximately 59,350 square feet of space to be constructed and reserved to be leased as a grocery store.
13. The Applicant shall construct, at its own expense, on the Applicant's property and in public space, public plazas and spaces, as generally shown on Sheets 2.22 through 2.26 of the Plans, to include a hardscaped triangular plaza at the Galloway and South Dakota Avenue intersection, the private drive across Building A from Galloway Street to Ingraham Street, and the hardscaped plaza at the intersection of Ingraham with the public alley along the west of the site.
14. The Applicant shall construct and install, at its own expense, on the Applicant's property and in adjacent public space, landscaping, hardscaping, lighting, and art, as generally shown on Sheets 2.22 through 2.26 of the Plans, to include hardscape along the new extension of Ingraham Street and along South Dakota Avenue, alley hardscape, installation of street trees, shrubs, and groundcover.
15. The Applicant shall construct and install, at its own expense, at Building A rooftop terrace landscaping and hardscaping, as generally shown on Sheets 2.22, 2.25, 2.25a and 2.26 of the Plans, to include hardscape, lightweight soil, plantings, furnishings, and a day-care playground.
16. The Applicant shall construct, outfit, and furnish in Building A approximately 600 square feet of space as generally shown on Sheet 2.02 of the Plans, to be utilized by ANC 5A for its office rent-free for the duration of the life of Building A.
17. The Applicant commits to pursuing certification for the entire project, once completed, under the LEED Neighborhood Development (ND) rating standard, or other equivalent standard then in effect.

18. The Applicant commits to pursuing certification for Building A under the LEED New Construction (NC) rating standard and to achieve not fewer than 26 points under that system.
19. The Applicant commits to pursuing certification for Building A under the Green Communities 2008 criteria.
20. The Applicant shall establish a transportation demand management plan with the following components:
 - a. Bicycle parking in each garage in an amount equal to five percent of the vehicle parking. In addition, the Applicant shall provide a minimum of 35 "U" shaped bicycle racks in public space adjacent to the entrances to the proposed development;
 - b. A member of the Applicant's on-site management shall serve as freight operation manager. Freight duties may be part of other duties assigned to that individual;
 - c. A member of the Applicant's on-site management shall serve as the Transportation Coordinator. Associated duties may be part of other duties assigned to that individual;
 - d. The Applicant shall provide, upon request, a one-time membership fee to a car-sharing program for each new residential unit upon initial occupancy. Information regarding car-sharing shall be included in new residents' welcome packages;
 - e. The Applicant shall provide \$25 SmarTrip card (including cost of card) to each new residential unit upon initial occupancy; and
 - f. The Applicant shall include bicycle information in welcome packages for new residents.
21. The Applicant shall have flexibility with the design of Building A in the following areas:
 - a. To provide multiple roof structures, not all of which meet the 1:1 setback requirement from the exterior walls of the building, as generally identified on Sheet 2.09a of the Plans;
 - b. To provide less than the minimum required side yard on the west side of Building A, as generally identified on Sheet 2.09a of the Plans;

- c. To vary the total number of residential units provided in Building A between 510 and 550 units, so long as the total residential square footage is not diminished, and further, so long as not fewer than 141 such units are income-restricted as provided herein, and 98 of said 141 units are further restricted for rental by qualifying senior households, with relocating residents of the Riggs Plaza Apartments to have priority for relocation to Building A;
- d. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;
- e. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;
- f. To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit; and.
- g. To determine the use of the approximately 19,000 square feet identified in the Applicant's plans as "flex space" between retail, service, office, and residential uses, according to market demands.

22. No building permit shall be issued for the consolidated portion of the PUD nor shall the rezoning for properties included within that portion become effective until the Applicant has recorded a covenant in the Land Records of the District of Columbia, between the property owner and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA") (the "PUD Covenant"). Such PUD Covenant shall bind the Applicant and all successors in title to construct on and use the consolidated PUD property in accordance with this Order or amendment thereof by the Commission.

23. The Office of Zoning shall not release the record of this case with respect to the consolidated portion of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Commission.

24. The consolidated PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction of Building A shall begin within three years of the effective date of this Order.

25. Second-stage PUD approval for the remainder of the Property may be requested in one or more applications. If there is to be only one second-stage application, that application shall be filed within two years of the effective date of this Order. If there is to be more than one second-stage application, the first second-stage application shall be filed within two years of the effective date of this Order, and that application shall include a phasing plan for the remaining applications.
26. No application for second-stage approval shall be filed until the Applicant has recorded the covenant required by the Zoning Regulations and Condition 22 of this Order for the consolidated PUD.
27. This first-stage approval is predicated, in part, upon the Applicant's proffer to relocate Kennedy Street and to extend Third Street. In order to assure that this proffer comes to fruition:
 - a. The application for the second-stage approval involving Building C must indicate whether the extended Third Street will be a public street or a private street.
 - (1) If Third Street is to be private, the application for second-stage approval for Building C shall include a specific proffer that Third Street will be constructed by the Applicant in accordance with DDOT's standards.
 - (2) If Third Street is to be public, the application for second-stage approval for Building C shall include a proffer that the Applicant will dedicate the land to the District for street purposes.
 - (3) In addition, the Applicant shall proffer that it will construct Third Street in accordance with DDOT's standards, or that DDOT has committed to constructing Third Street itself.
 - (4) The proffer shall also indicate that a certificate of occupancy for Building C shall not issue until DDOT confirms that Third Street has been constructed to its satisfaction.
 - b. A similar proffer of land dedication and street construction shall be made as to the relocation of Kennedy Street in the second-stage application to which it is germane. The proffer must include a proposed enforcement mechanism for assuring that this public benefit will be provided.

If these proffers are not made, the Commission will assume that the streets will not be constructed. In that event, a request to modify this first-stage approval to exclude the proffered benefit must accompany the applicable second-stage application.

Z.C. ORDER NO. 06-10

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PAGE 29

28. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that 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. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On November 9, 2009, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** these Applications at its public meeting by a by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve).

On December 14, 2009, upon the motion of Commissioner Schlater, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on January 15, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

**Z.C. ORDER NO. 06-10
Z.C. CASE NO. 06-10
PAGE 30**

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., September 15, 2008

Plot for Building Permit of **SQUARE 3765 LOTS 1, 2, 3, 4, 800 & 802**
SQUARE 3758 LOTS 1, 2, 3, 4 & 800
SQUARE 3767 LOTS 1, 2, 3, 4, 5 & 805
SQUARE 3768 LOTS 1 & 2
SQUARE 3769 LOTS 1, 2, 3 & 804

Scale: 1 inch = 120 feet: **SQUARE 3765** - Recorded in Book 138 Page 160 (Lots 1 thru 4);
A & T Book Page 3374-P (Lots 800 & 802);
SQUARE 3766 - Recorded in Book 138 Page 114 (Lots 1 & 2); Book 138 Page 115 (Lots 3 & 4); A & T Book Page 3433-K (Lot 800);
SQUARE 3767 - Recorded in Book 138 Page 150 (Lots 1 thru 4); Book 138 Page 59 (Lot 5);
A & T Book Page 3433-L (Lots 800 & 802);
SQUARE 3768 - Recorded in Book 138 Page 150 (Lots 1 thru 4);
SQUARE 3769 - Recorded in Book 138 Page 150 (Lots 1 thru 4);
A & T Book Page 3376-S (Lot 804).

Received No 16400

Date _____

(Signature of owner or his authorized agent)

Furnished to HOLLAND & VIGH

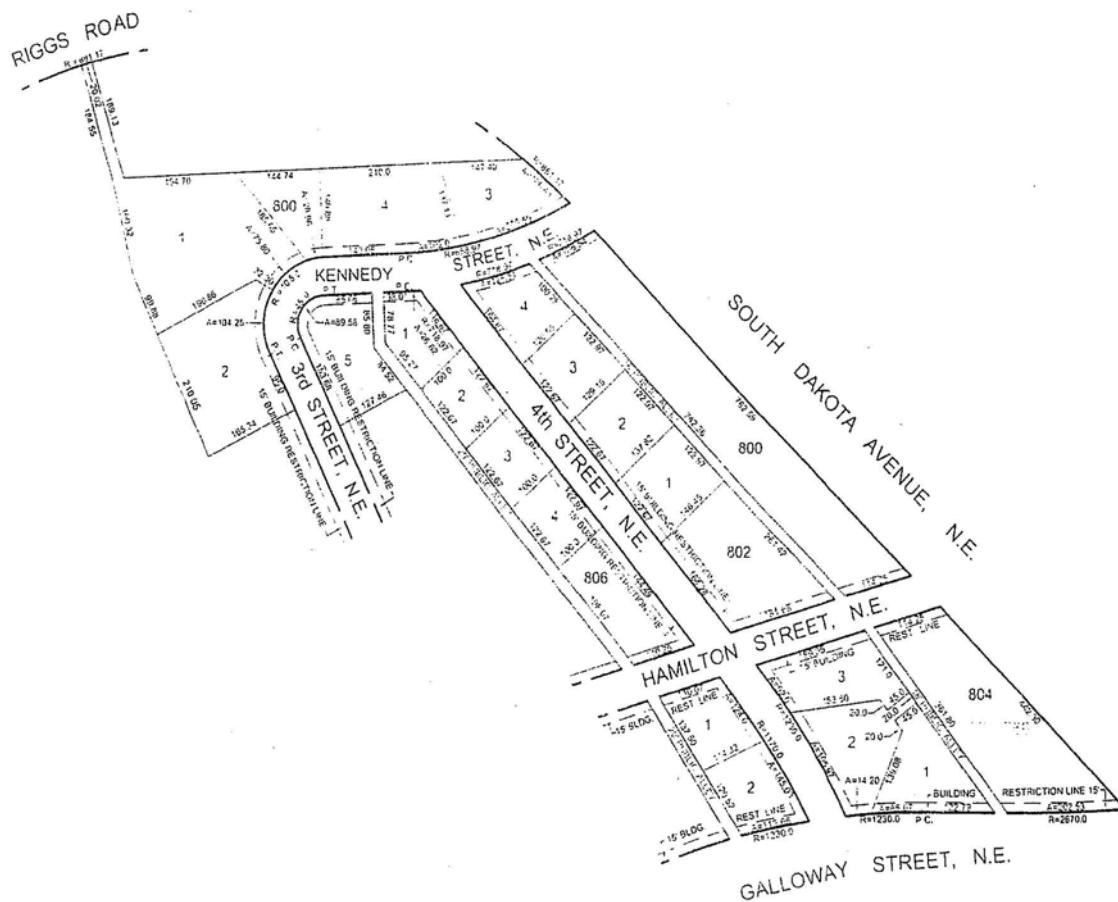
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30 JULY 2000

By E.S.



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-10

JAN 14 2010

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 06-10 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. <i>D.C. Register</i>	7. Gottlieb Simon ANC 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004
2. Whayne S. Quin, Esq. Dennis R. Hughes, Esq. Holland + Knight, LLP 2099 Pennsylvania, Avenue, N.W. Washington, D.C. 20006	8. Councilmember Harry Thomas, Jr.
3. Angel Alston, Chair ANC 5A 1322 Irving Street, N.E. Washington, DC 20017	9. Councilmember Muriel Bowser
4. Commissioner Sandi Washington ANC/SMD 5A01 32 Buchanan St., N.E. Washington, DC 20011	10. DDOT (Karina Ricks)
5. Commissioner Douglass Sloan, Chair ANC 4B 6856 Eastern Avenue, N.E., # 314 Washington, D.C. 20012	11. Melinda Bolling, Acting General Counsel DCRA 941 North Capitol Street, N.E. Suite 9400 Washington, D.C. 20002
6. Commissioner Douglass Sloan ANC/SMD 4B09 313 Nicholson Avenue, N.E. Washington, D.C. 20011	12. Office of the Attorney General (Alan Bergstein)
	13. Lamond Riggs Citizens Association c/o Charon P.W. President P.O. Box 60272 Washington, D.C. 20039

ATTESTED BY:


Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Z.C. ORDER NO. 06-10D

Z.C. Case No. 06-10D

The Morris and Gwendolyn Cafritz Foundation

(Modification to First-Stage PUD and Approval of Second-Stage PUD

Art Place at Fort Totten – Block B @ Squares 3765 and 3767)

June 10, 2019

Pursuant to notice, at its April 4, 2019 public hearing, the Zoning Commission for the District of Columbia (the “Commission”) considered an application of The Morris and Gwendolyn Cafritz Foundation (the “Applicant”) for second-stage approval of a planned unit development (“PUD”) and modification of an approved first-stage PUD (the “Application”) approved by Z.C. Order No. 06-10, as modified by Z.C. Order Nos. 06-10A and 06-10C¹ (collectively, the “Overall PUD Order”) for Square 3765, Lots 1-4 and 7-9 and Square 3767, Lots 3-4 (the “Block B Site”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the “Zoning Regulations”], to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Notice

1. On February 8, 2019, the Office of Zoning (“OZ”) sent notice of the public hearing to: (Exhibit [“Ex.”] 18.)
 - The affected Advisory Neighborhood Commissions (“ANC”) 5A and 4B;
 - The affected ANC Single Member Districts (“SMD”) 5A08 and 4B09;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Energy and the Environment (“DOEE”);
 - The D.C. Housing Authority (“DCHA”);
 - The Council of the District of Columbia (“DC Council”); and
 - Property owners within 200 feet of the Property.

¹ Z.C. Case No. 06-10A was a modification to shift the grocery store use from Building A to Building B; Z.C. Case No. 06-10B was filed as a modification but was subsequently withdrawn; and Z.C. Case No. 06-10C reduced the amount of parking provided in Building A.

2. OZ also published notice of the April 4, 2019 public hearing in the *D.C. Register* on February 15, 2019, as well as through the calendar on OZ's website. (Ex. 14.)

Parties

3. In addition to the Applicant, ANCs 5A and 4B were automatically parties in this proceeding as the "affected ANC" pursuant to Subtitle Z § 101.8. ANC 4B did not participate in this case. (Ex. 28.)
4. On March 19, 2019, the Lamond-Riggs Citizens Association ("LRCA") filed a request for party status in support of the Application. (Ex. 23.)
5. At the Public Hearing, the Commission voted to accept LRCA as a party in support. (Transcript of the April 4, 2019 Public Hearing ("4/4/19 Tr.") at 7-8.)

The Block B Site

6. The Block B Site has an area of approximately 222,541 square feet (5.18 acres) and is comprised of:
 - a. Lots 1, 2, 3, 4, 7, 8, and 9 in Square 3765;
 - b. Lots 3 and 4 in Square 3767;
 - c. The closed portion of 4th Street, N.E. between Ingraham and Kennedy Streets, N.E.²; and
 - d. A parallel 16-foot alley running between Kennedy and Ingraham Streets, N.E. (Ex. 2, 44A.)
7. The Block B Site is currently occupied by low-rise multi-family residential apartment buildings that are part of the Riggs Plaza Apartment complex. (Ex. 2.)
8. Immediately south of the Block B Site is the Modern, a residential apartment building that was approved as a consolidated PUD pursuant to the Overall PUD Order.
9. West of the Block B Site is a multi-family apartment building, north and east of the Block B Site opposite South Dakota Avenue, N.E. are detached houses as well as the Lamond Riggs Neighborhood Library, and north of the Block B Site is the headquarters of Food and Friends. (Ex. 2.)
10. The Block B Site is located only several hundred feet from the Red, Green, and Yellow line Fort Totten Metrorail stop. (Ex. 2.)
11. The Comprehensive Plan's (Title 10A of the DCMR, the "CP") Generalized Policy Map ("GPM") designates the Block B Site as Housing Opportunity Area and the Future Land

² The portion of 4th Street was closed effective January 29, 2020. (Subdivision Book 216 at 179.)

Use Map (“FLUM”) designates the site for a mix of Medium-Density Residential and Medium-Density Commercial.

First-Stage Approval

12. Pursuant to the Overall PUD Order, the Commission approved the consolidated and first-stage PUD application for Art Place at Fort Totten (the “Overall PUD”).
13. The Overall PUD Order also granted a PUD-related map amendment to a combination of the C-2-B and FT/C-2-B³ Zone Districts (currently the MU-5A zone) for the following properties (collectively, the “Overall PUD Site”):
 - a. All lots in Square 3765;
 - b. Lots 1-4, and 800 in Square 3766;
 - c. Lots 1-5, and 806 in Square 3767;
 - d. Lots 1-2 in Square 3768; and
 - e. All lots in Square 3769.
14. In the Overall PUD Order, the Commission concluded that the proposal for the Overall PUD, was not inconsistent with the CP and other adopted policies of the District, that it proposed sufficient mitigations and would not result in any unacceptable impacts, and that the requested development incentives were balanced by the proffered public benefits.
15. The Overall PUD Order also granted the following flexibility as development incentives:
 - a. Relief from the penthouse setback requirements for multiple roof structures; and
 - b. Relief from the side yard requirements for the west side of Building A.
16. The Commission also granted design flexibility from the final plans approved by the Overall PUD Order.
17. The Overall PUD Order approved the Overall PUD to be developed with four buildings (A through D) to be developed in stages.
18. The Overall PUD Order established that the Block B Site was to be developed in the C-2-B Zone (MU-5A) with a building containing a mix of residential, grocery, and museum uses (“Building B” or the “Project”) as follows: (Ex. 44.)
 - a. A three-story building not to exceed 60 feet in height;
 - b. A maximum lot occupancy of approximately 76%;

³ The FT/C-2-B Zone District is subject to the provisions of the C-2-B Zone District, and the FT Overlay of the 1958 Zoning Regulations and has no zone equivalent in the Zoning Regulations.

- c. A floor area ratio (“FAR”) of 2.09;
- d. A total gross floor area (“GFA”) not to exceed 456,000 square feet, all of which would be for non-residential uses including: (Overall PUD Order, Condition No. 7(b).)
 - i. Approximately 144,000 square feet of anchor retail and supporting retail uses;
 - ii. 59,000 square feet of grocery store use;
 - iii. An approximately 47,000 square foot children’s museum; and
 - iv. Recreational and meeting space for resident and community seniors; and
- e. Contain approximately 1,100 parking spaces. (Overall PUD Order, Condition No. 7(b).)

The Application

- 19. On September 4, 2019, the Applicant submitted the Application for a modification of the first-stage PUD and second-stage PUD approval for Block B in order to construct Building B.

Modifications to First-Stage Approval

- 20. The Application:
 - a. Proposed to modify the building design for Building B and to shift uses and density from other buildings in the Overall PUD and to modify the related conditions of the Overall PUD Order accordingly;
 - b. Did not request any additional zoning relief from what was approved by the Overall PUD Order⁴;
 - c. Noted that the requested modifications would not result in any changes to the approved heights and density of the Overall PUD that would require new analysis of the CP; and
 - d. Did not propose to modify any of the proffered public benefits.
- 21. In order to accommodate the shift in uses and building design within the overall Block B site, certain development standards have been adjusted as follows: (Exhibit 44A4 at Sheets 39-40.)

⁴ The Applicant did request rear yard relief for a portion of the Residential Building in its Pre-Hearing Statement. (Ex. 11.) However, the Applicant subsequently revised its plans and withdrew the request in its 20-Day Statement. (Ex. 22.)

Development Standard	Building A		Building B		Building C		Building D		Total	
	Approved	Proposed	Approved	Proposed	Approved	Proposed	Approved	Proposed	Approved	Proposed
Total GFA (sf)	780,201	780,201	456,000	549,996 (+93,996)	520,000	279,408 (-240,592)	238,000	384,596 (+146,596)	1,994,201	1,994,201 (same)
Residential Units (Market Rate)	379*	379	0	239 (+239)	379	0 (-379)	0	140 (+140)	758	758 (same)
Affordable Units	141	141	0	30 (+30)	30	0 (-30)	0	0	171	171 (same)
FAR	3.64	3.64	2.09	2.47 (+0.38)	3.46	1.81 (-1.65)	3.25	5.93 (+2.68)	3.04	3.04 (same)
Max Height (ft)	74	74	60	80 (+20)	90	90	90	90	90	90 (same)
Parking	601	601	1,100	750 (-350)	420	390 (-30)	160	160	2,281	1,900 (-381)

*Z.C. Order No. 06-10 granted the Applicant flexibility in the total number of residential units for Building A between 510 and 550, provided that the Applicant maintain the 141 affordable units.

22. The Project complies with the general parameters established for the site in the Overall PUD Order but differs from the specific development plans for the Block B Site. Therefore, the Applicant seeks the following modifications to the First Stage PUD:

- In addition to the uses contemplated in the Overall PUD Order, the Application proposes the addition of residential uses to the Block B Site in addition to the Family Entertainment Zone (the “FEZ”), as well as retail and museum space, and reduced grocery store space; (Ex. 2.)
- The residential portion will include approximately 275,117 square feet of GFA, resulting in approximately 239 market-rate units due to a relocation of residential GFA from Building C to Buildings B and D;
- The residential portion will also include 30 of the residential units that will be reserved for artists and will be offered at 60% of AMI. The artist units will be interspersed throughout the east and west residential buildings (but will not be located in the top two floors of the west residential building or the top floor of the east residential building). This will bring the total number of income-restricted units in the Overall PUD to 171 units in compliance with the Overall PUD Order; (Ex. 11, 43, 44A.)
- In order to facilitate the tenant relocation process for the existing tenants of the Riggs Plaza Apartments, the residential portion will include one of the existing Riggs Plaza Apartment buildings which will remain and be incorporated into the Project; and (Ex. 44.)

- e. Rather than a single large building occupying the entire Block B Site, the Project has been redesigned to maintain the closed portion of 4th Street, N.E., as pedestrian and flex space with residential and mixed-use structures created to the east and west. This modified design creates a more open, light, and active environment on the Block B Site and the adjacent public streets. (Ex. 2.)
- 23. The Applicant noted that these proposed modifications are consistent with the development, policy objectives, impacts, planning objectives, character, and appropriateness of the Overall PUD and were undertaken to accelerate the delivery of residential units and following detailed evaluation of the Project's site plan, architecture, landscaping, and transportation, as well as current market conditions. (Ex. 25.)
- 24. The Block B Site contain of a mixed-use building, with two primary components – the FEZ, and a residential building (the “Residential Building”, with the FEZ, the “Project”).
- 25. The FEZ fronts on South Dakota Avenue, N.E., and contains:
 - a. Retail space;
 - b. Theater/interactive space;
 - c. Gala/events space;
 - d. Cultural space - including Meow Wolf (an innovative arts collective) and the Explore! Children’s Museum;
 - e. A food hall;
 - f. An Aldi grocery store;
 - g. Artist maker space; and
 - h. Residential uses.

(Ex. 2, 11, 33.)

- 26. The Residential Building will be located on the west side of the closed portion of 4th Street, N.E. and will contain two towers connected by an amenity terrace, ground-floor retail uses, and artist/studio maker spaces. The east and west residential buildings will be connected by a pedestrian bridge over the closed portion of 4th Street, N.E. Multiple outdoor plazas and a pedestrian-oriented outdoor area will be located on a portion the closed portion of 4th Street, N.E., as well as along South Dakota Avenue, N.E. and Ingraham and Kennedy Streets, N.E. (Ex. 44A.)
- 27. The Project will have varying heights with the FEZ reaching a maximum height of 77 feet, 6 inches, and the Residential Building towers reaching a maximum height of 80 feet. (Ex. 44A.)

28. The southwest tower of the west residential building will contain approximately 70 units, the northwest tower of the west residential building will contain approximately 110 units, and the east residential building will contain approximately 90 units for a total of approximately 269 residential units.
29. The Project was initially proposed to include 930 parking spaces, reduced from 1,100 in the Overall PUD Order. However, in response to comments from DDOT, the Applicant reduced this number to 750 parking spaces (subject to plus or minus five percent design flexibility) across a garage level, ground floor, and mezzanine level. The parking areas will be accessible from Kennedy Street N.E. and Ingraham Street N.E. The Applicant requested that it be provided the design flexibility from the final plans to raise or lower the number of parking spaces by plus or minus five percent. (Ex. 44A and 54.)

Second-Stage PUD

30. As discussed above, the Application finalized the design of Building B and surrounding spaces part of the first-stage modification.
31. Building B now contains numerous public gathering spaces. The closed portion of 4th Street, N.E. will become a flexible pedestrian zone that will be bounded by trees and include street furniture, landscaping, and café zones. The pedestrian zone and the service and loading areas will be separated by the pedestrian bridge connecting the east and west residential buildings. (Ex. 22, 44A.)
32. Building B also includes the HUB Plaza located on the corner of South Dakota Avenue N.E. and Ingraham Street N.E., which will function as a gathering area for arriving and departing groups; the Central Plaza, containing a splash fountain and built-in seating; Art Place Plaza, which is the gateway to the food hall and the flexible pedestrian zone; and Kennedy Plaza, which is located along Kennedy Street and may host markets or outdoor events. An outdoor dog run will also be located along Kennedy Street. (Ex. 22, 44A.)
33. In addition to the various plazas, Building B will include ground-floor artist studio/maker space, located along the east residential building and the northwest tower of the west residential building, which will be curated by a third-party group. (Ex. 11, 44A.)
34. Consistent with the first-stage approval, as modified, the loading for Building B will continue to be accessed through Kennedy Street and along a portion of the closed portion of 4th Street, N.E., and loading for the residential towers will be accessed from Kennedy Street, N.E. and the public alley behind the residential towers. (Ex. 44A.)

PUD Timeline

35. As required by Condition No. 25 of Z.C. Order No. 06-10, the Applicant also proposed timing for the filing of the second-stage PUD applications for the development of Blocks C and D.

36. The Applicant noted that it intends to start construction of the Project during the first quarter of 2020 and the project will take approximately 30 months to build. The project is expected to be completed during the Fourth Quarter of 2022. All elements of the Project, the residential component and The HUB (Meow Wolf, Explore! Children's Museum, Aldi) component will be constructed at the same time.
37. The Applicant will file a second-stage PUD application for either Block C or Block D by December 31, 2024, which is expected to be two years after Block B is open and operating.
38. The second-stage PUD application for the final development parcel included in the Overall PUD will occur by December 31, 2030.
39. The Applicant asserted that such time periods are appropriate in order to allow each development parcel to be constructed and have a period of operation prior to the beginning of the next round of development of the Overall PUD. The Applicant also noted that it anticipates that Block C will include non-residential uses and Block D will include residential uses. However, the Applicant requested flexibility to modify the ultimate mix of uses on these blocks at the time each of the second-stage PUD applications are filed. (Ex. 2, 22.)

Applicant's Submissions

40. The Applicant submitted five main submissions to the record in support of the Application in addition to its Public Hearing testimony:
 - a. A pre-hearing statement dated January 25, 2019 (the "Pre-Hearing Statement"); (Ex. 11-11I.)
 - b. A Comprehensive Transportation Review dated March 5, 2019 (the "CTR"); (Ex. 19-20A2.)
 - c. A supplemental statement dated March 15, 2019 (the "20-Day Statement"); (Ex. 22-22C.)
 - d. A second supplemental statement dated April 4, 2019, responding to requests from OP and DDOT for additional information. (the "Second Supplemental Statement"); and (Ex. 31-34.)
 - e. A post-hearing statement dated May 2, 2019 (the "Post-Hearing Statement"). (Ex. 44-44H.)

Pre-Hearing Statement

41. The Pre-Hearing Statement responded to the issued raised in the OP Setdown Report by providing the following:

- a. A request for zoning flexibility from the rear yard requirements for a portion of the western residential building; (Ex. 11B4A at Sheet 30.)
- b. Modifications to the FEZ design, as well as information regarding its intended programming and potential impacts;
- c. Updated plans showing modifications to the massing of the residential buildings, introduction of new amenity and artist studio space, and modifications to the parking and loading access;
- d. Design details regarding façade materials, the retail frontage on South Dakota Avenue, and the western façade of the seven-story western building;
- e. A statement that the Applicant would be providing a traffic impact study and demand management plans in advance of the public hearing;
- f. A breakdown, by count, of residential unit types and clarification of projected residential totals for the entire PUD if Phase B modifications area approved; and
- g. Details on requested zoning relief and design flexibility.

CTR

- 42. The CTR concluded that the Project would result in approximately 250 a.m. peak-hour vehicle trips and 480 p.m. peak-hour vehicle trips. The CTR noted that other pipeline projects in the surrounding area would be expected to further increase the number of vehicle trips upon their completion.
- 43. The CTR concluded that the parking and loading spaces provided by the Project were sufficient and in compliance with the zoning requirements.
- 44. The CTR also noted the Overall PUD Site's proximity to the Fort Totten Metro Station and alternate means of transit as being beneficial to reducing vehicular traffic connected to the site.
- 45. The CTR recommended the following improvements and mitigations for the Project:
 - a. The design and installation of a full traffic signal at the intersection of South Dakota Avenue and Kennedy Streets;
 - b. The inclusion of separated left and through-right lanes at the intersection of South Dakota Avenue and Kennedy Streets;
 - c. Implementation of a transportation demand management (“TDM”) plan; and
 - d. Implementation of a loading management plan.

20-Day Statement

46. The 20-Day Statement responded to issues raised by OP and included:

- a. Revised architectural plans for the Residential Buildings, including a modification to the Residential Building removing the need for rear yard relief; (Ex. 22A6 at Sheet 30.)
- b. Revised plans and materials for the six major public areas of the Project;
- c. An update on the grocery and retail tenants, including that the Applicant had signed a lease with Aldi for the grocery store space;
- d. Additional information on the selection process for the artist residential and workspace;
- e. An update on the Applicant's outreach to the community including the Affected ANCs and LRCA. The Applicant noted that in response to some of the specific concerns it was providing:
 - i. A construction management plan; and (Ex. 22B.)
 - ii. A set of security policies and procedures for the Project; and (Ex. 22C.)
- f. An update on the phasing and timing of the outstanding phases of the Overall PUD.

Second Supplemental Statement

47. The Second Supplemental Statement responded to specific questions raised in the OP Hearing Report by providing the following:

- a. A summary of proposed transportation mitigations; (Ex. 31.)
- b. An analysis of the impacts of the reduced parking supply; (Ex. 32.)
- c. A list of all proffered benefits and amenities; (Ex. 33.)
- d. Clarification of overall lot occupancy and FAR with and without public streets and alleys, distinguishing between those that would remain open and those proposed for closure;
- e. Clarification of proposed square footages and FARs of particular uses, noting the size of particular uses both with and without space that does not count towards FAR;
- f. Clarification that while the Applicant will seek LEED-Gold Certification for the Overall PUD, it is not seeking it for the Project specifically;

- g. Submission of additional illustrations of the relationship between Building A and the proposed Building B, particularly a ground level view from the closed portion of 4th Street, N.E., to Building A;
- h. Submission of larger-scale drawings of façade details;
- i. Submission of diagrams showing the distribution of residential unit types throughout the east and west wings of Building B;
- j. The addition of balconies to residential elements;
- k. Amenities focused on project residents;
- l. Clarification that there was no plan to relocate the dog run after the future realignment of Kennedy Street;
- m. Confirmation that approximately 55% of the retail spaces for Block A have been leased, as well as a description of the tenant uses;
- n. Additional detail about wayfinding elements for pedestrians and emergency vehicles; and
- o. Confirmation that the Applicant did not anticipate providing any solar panels in the Project in order to satisfy the GAR and stormwater requirements through green roofs.

Applicant's Public Hearing Testimony

- 48. At the April 4, 2019 Public Hearing, the Commission accepted Matthew Bell as an expert in the field of architecture, Ben Wood as an expert in the field of architecture, and Barbara Mosier as an expert in the field of traffic engineering. The Applicant provided testimony from these experts, as well as from Jane Lipton Cafritz, a director of The Morris and Gwendolyn Cafritz Foundation. (4/4/19 Tr. at 9-10.)
- 49. The Applicant presented evidence and testimony that it engaged in significant outreach to the surrounding community prior to the public hearing. The Project reflects the extensive engagement with the surrounding community. The Applicant and its development team met with and presented the Project to ANC 5A08, ANC 4B, ANC 5A, the LRCA, the LRCA Development Task Force, Queens Chapel Civic Association, and the Executive Director of the South Dakota Avenue Riggs Road Main Streets organization. (Ex.22; 4/4/19 Tr. 15-17.)
- 50. The Applicant responded to a question from the Commission that it has designed the Project to be accessible to seniors, including providing access points that avoid stairs or steps. The Project will feature many public gathering spaces, including along the pedestrian-oriented portion of 4th Street, N.E., which will be open to all, including seniors. (4/4/19 Tr. at 71.)

51. At the close of the hearing, the Commission asked the Applicant for further information responding to questions from the Commission, OP, DDOT, the LRCA, Ms. Grimstead, Mr. Baker, and Casey Trees. (4/4/19 Tr. at 145.)

Post-Hearing Statement

52. The Post-Hearing Statement addressed the comments from the Commission, OP, DDOT, the LRCA, Casey Trees, Ms. Grimstead, and Mr. Baker as further discussed below.

Responses to the Commission

53. In response to the Commission's comments related to the architectural details of the Residential Building and FEZ structures, the Applicant:

- a. Modified the color palette of the residential building and updated the residential building façades to include a refined material palette. The Applicant stated that the updated material palette presents the ensemble as coordinated in color and materials but is also designed so that the supporting residential buildings along Ingraham and Kennedy Streets, N.E., and the closed portion of 4th Street, N.E., provide the proper backdrop for the FEZ, resulting in an authentic and varied streetscape; (Ex.44, 44A.)
- b. Provided an updated materials list, depicting the proposed materials the Applicant intends to use for Block B, including materials showing the range of colors that are under consideration for certain façades for which the exact material has not yet been determined; (Ex. 44, 44A.)
- c. Provided updated plans showing balconies on three sides of the south tower and the north tower on the closed portion of 4th Street, N.E., which are strategically located to provide interesting relief to the façades and suggest a more vertical proportion to each of the residential elevations. The Applicant also redesigned the pedestrian bridge to include a simpler form of a box truss; (Ex. 44, 44A.)
- d. Provided enhanced renderings and views of the seven-sided structure in front of FEZ hub, and a view of Building A from the pedestrian/flex portion of the closed portion of 4th Street, N.E., in response to the Commission's requests; (Ex.44A.)
- e. Refined the exterior appearance of the FEZ Building to reflect the various uses that will occur inside. Specifically, the Applicant removed several of the angled façade embellishments, as well as the kinetic façade and the tri-vision panels; (Ex. 44-44A.)
- f. Proposed a series of design guidelines for ground-floor retail tenants to enable the retail tenants to display brand-specific design elements while maintaining overall design cohesion throughout the ground-floor façade and retail spaces; (Ex. 44, 44A.)

- g. Confirmed that solar panels can be installed on the roofs of the building without significant detrimental impact to the project's ability to satisfy GAR and stormwater management requirements. The Applicant requested that the Commission provide the Applicant flexibility to include solar panels on the roof of the building if it is economically feasible. The Applicant noted that if solar panels are provided, they will be set-back from all building walls at a 1:1 ratio to minimize any appearance from adjacent public spaces; (Ex. 44, 44A.)
- h. Noted that the retail offerings, including the food hall, will also be open to visitors of all ages and that the Children's Museum is intended to welcome all families, including grandparents visiting with grandchildren. Additionally, Meow Wolf will have a reduced entrance fee for seniors; (Ex. 33, 44.)
- i. Committed to offering a Neighborhood Appreciation Day on a quarterly basis, during which the Explore! Children's Museum will offer discounted admission of 25% off of then-prevailing ticket prices for residents of Ward 4 and Ward 5. The Applicant also noted that Meow Wolf will establish separate admissions prices for adults, children, and seniors/military members and will provide a discounted admission fee for District residents of 15% less than the admissions fees charged for similar non-District residents; (Ex. 33, 44.)
- j. Plans to provide the LRCA, ANC 5A, and ANC 4B with regular updates as to the status of the retail plans and food hall development at Block B. As the food hall development progresses, the Applicant plans to provide the LRCA, ANC 5A, and ANC 4B with detailed information regarding the leasing and tenant selection process for the food hall. The Applicant will also make presentations, as appropriate, at ANC and LRCA meetings to further explain the tenant selection process to interested retailers for the food hall; (Ex. 44.)
- k. Provided information detailing that the Applicant will enter into a contract with an arts organization that will interview and select the artists for the studio and maker spaces. The Applicant stated that it will rent these spaces to artists at a dollar/sf net monthly lease rate not to exceed 50% of the average dollar/sf net monthly lease rate charged to the other retail tenants in Block B; (Ex. 33, 44.)
- l. Confirmed that the artist affordable units will be distributed throughout the residential building in Block B (but not on the upper two floors) at a ratio of unit types that is consistent with the market-rate unit types; (Ex. 44.)
- m. Agreed to lower the affordability level of the 30 artist units from 80% MFI to 60% MFI. The Applicant additionally noted that the principal benefits and amenities of this case are the arts and cultural uses that are provided in the FEZ building and the artist studio/maker spaces, which can only be achieved through significant financial subsidy from the Applicant; (Ex. 44.)
- n. Committed to increasing the amount of money loaded onto SmarTrip cards provided to residents to \$20.00; (Ex. 44, 44D.)

- o. Provided the LEED certification information for Block A; (Ex. 44, 44B.)
- p. Provided a detailed explanation of how the development of Block B is compatible with the FLUM and underlying zoning of the first-stage PUD approval; and (See further discussion in Finding of Fact [“FF”] No. 102.)
- q. Committed to relocating the dog run in the development of Block C or Block D to accommodate the realignment of Kennedy Street, as requested by the Commission. (Ex. 44.)

Responses to OP

54. The Applicant responded to the two issues raised by OP at the Hearing as follows:

- a. The residential component of the Overall PUD that is not subject to IZ is based on the total number of units, 950, approved by Commission under the Overall PUD Order; and
- b. Confirmed that the residential amenities provided in Block A will be available to residents of Block B. (Ex. 34.)

Responses to DDOT

55. The Applicant responded to the three issues raised by the DDOT Report at the Hearing and in its Post-Hearing Statement as follows: (FF 24.)

- a. At the public hearing, the Applicant committed to removal of the crosswalk and associated curb tamps across South Dakota at Jefferson Street;
- b. The preliminary signal warrant study included in the Applicant’s CTR indicates that a traffic signal would likely be warranted at the intersection of Ingraham Street and South Dakota Avenue upon full buildout of the Project. The Applicant intends to submit a full signal warrant study, and if found to be warranted, design and fund the construction of a full traffic signal concurrent with the construction of the Project. If the traffic signal is not warranted, then the traffic impact of the Project concluded based on the traffic analysis would not have been realized, and a commitment to the mitigation measure would not be required; and (Ex. 44C.)
- c. In its Post-Hearing Statement, the Applicant evaluated the costs necessary to create the pedestrian sidewalk and bike trail connection at 3rd Street, N.E. (which is located outside of the Block B development), and provided a plan showing a new concrete six-foot-wide DDOT standard sidewalk as well as an eight-wide wide asphalt bike lane and a preliminary analysis, showing that the approximate cost of these improvements would be a minimum of \$50,000. The Applicant noted that it is committed to creating a safe and accessible circulation path for both pedestrians and vehicles as part of the Block B development and is making substantial improvements to the pedestrian infrastructure on the Block B site and immediately adjacent to the site. However, the Applicant believes that upgrading

the pedestrian path on 3rd Street, N.E., falls outside the scope of the Block B development and does not believe that it is a required mitigation in order for the Commission to approve this project. (Ex. 44A, 44E, 44F.)

Responses to LCRA

56. With regard to LCRA's comments, the Applicant responded by:

- a. Confirming that a no-parking sign will be installed behind the crosswalk at the pathway through Block A (closed portion of 4th Street, N.E.) and Galloway Street, N.E., and the Applicant committed to including monitoring of the bus and pick-up/drop-off areas as part of the loading manager's responsibilities;
- b. Committing to completing the design and funding the construction of a full traffic signal on South Dakota Avenue, N.E. and Ingraham Street, N.E., subject to DDOT approval and concurrent with construction of the Project, consistent with requests of community organizations;
- c. Committing to improving any existing traffic signal poles that will be impacted by the Project, to investigate various traffic calming and pedestrian crossing improvements on Ingraham Street, N.E. during the public space approval process, and to improve the site frontage along South Dakota Avenue, consistent with the frontage along Block A; (Ex. 44C.)
- d. Committing to installing pedestrian-oriented lighting for all pedestrian areas, sidewalks, and the closed portion of 4th Street, N.E., and removed the kinetic façade from the FEZ design; (Ex. 44, 44A.)
- e. Noting that its TDM plan will provide a move-in kit to new residents that includes a carshare membership at a value of \$85.00 and two spaces will be designated in the garage for car-sharing vehicles. Additionally, the Applicant will provide new residents with a SmarTrip card preloaded with \$20.00; (Ex. 44D.)
- f. Providing a Proposed Security Policies and Procedures at APFT, which addresses security policies and restrictions for the Project including surveillance measures, generous lighting, motion sensor lighting, night vision cameras, and coordination with the Metropolitan Police Department ("MPD"). Additionally, the Applicant has committed to provide pet waste bags and receptacles in the proposed dog park to reduce trash; (Ex. 22C, 44.)
- g. Providing a robust construction management plan ("CMP") which addresses construction debris, trash, pest control, truck routing, and sidewalk closure in accordance with the LRCA requests; (Ex. 44G.)
- h. Committing to monitor inlets during construction to ensure that they are not blocked and will not increase flooding problems and the Applicant's CMP notes that the Applicant will work with DCRA to maintain temporary stormwater

management systems throughout the construction of the Project so as to avoid any adverse water impacts to the adjacent neighborhood. Furthermore, the development of the Project will include robust landscaping features that are complementary to those in Block A; (Ex. 44A, 44G.)

- i. Committing to continue to regularly engage with the LRCA and the ANCs to facilitate coordination of input from residents. The Applicant will make information on retail plans available at the Lamond Riggs library for individuals without computer access and will continue to engage with the LRCA and the ANC to hear community feedback on the retail plans; (Ex. 44.)
- j. As discussed in FF 53 above, both the Explore! Children's Museum and Meow Wolf will provide discounted admission to residents of Ward 4 and Ward 5, and to District residents, respectively;
- k. As discussed in FF 31 above, Block B will introduce several public gathering spaces, particularly along the closed portion of 4th Street, N.E., pedestrian/flex area, that will be open to visitors of all ages. Block B will also include a variety of retail offerings and a food hall that will appeal to adults and seniors;
- l. Committing to continue to abide by the terms of the First Source Employment Agreement that were followed during the development of Block A. Furthermore, the grocery store operator will hold at least three monthly hiring open houses in the four months prior to the opening of the Aldi store. The open houses will provide local job candidates with information about employment opportunities with the grocery store operator; (Ex. 33, 44.)
- m. Noting that as part of the relocation process for Riggs Plaza residents, the Applicant has relocated all but four of the original Riggs Plaza tenants. The Applicant will continue to work with the few remaining Riggs Plaza tenants to ensure a smooth and respectful relocation; (Ex. 44.)
- n. Noting that the charter school is expected to begin operations in the fall of 2020; (Ex. 44.)
- o. Noting that the Overall PUD Order approved an affordable housing requirement of 171 affordable housing units. Block A included 141 affordable units and the remaining 30 affordable units originally to be provided in Block C will be provided in Block B. Upon the delivery of the Block B residential units, the affordable units in Block A and Block B will fulfill the affordable housing requirement set forth in the approved first-stage PUD order. As discussed above, the Applicant is maintaining one of the Riggs Plaza Apartment buildings as part of the tenant relocation plan and the artist units will be offered at 60% AMI for 20 years from the issuance of the first Certificate of Occupancy in Block B. As discussed further below, the Applicant does not believe that IZ requirements should apply to the residential units in Block B. However, the Applicant noted

that if the Commission determined that the IZ requirements do apply, it requests flexibility from those requirements; (Ex. 46.)

- p. Noting that, to the extent that additional housing units above the 950 approved in the Overall PUD Order are provided in future phases, such additional housing will be subject to IZ; and (Ex. 44.)
- q. Noting that shared library parking is not appropriate for Block B because the Lamond-Riggs library is an institution that primarily serves its immediately surrounding neighbourhood. Due to the close proximity to its primary patrons' residences, library patrons may walk or bike to the library. The Applicant further noted that it would be difficult for the Applicant and the library to develop and coordinate a parking validation system. Furthermore, the Applicant stated its concern that commuters using the Fort Totten Metrorail station will utilize the parking at Block B as commuter parking and stop by the library simply for validation at the end of the day, placing a significant burden on library staff to manage a parking validation system. (Ex. 44.)

57. In response to LRCA's post-hearing submission, the Applicant agreed to continue to explore the possibility of shared or validated parking for the library in a post-hearing submission. (Ex. 47, 54.)

Response to Casey Trees

58. The Post-Hearing Statement addressed Mr. Balog and Casey Trees' comments as follows: (Ex. 44, 44H.)

- a. Protection of Seven Existing Trees. The Applicant noted that six of the seven trees identified by Casey Trees are in the proposed excavation area of Block B and therefore cannot be preserved. However, the Applicant will preserve one of these seven trees. While this tree will be preserved during the construction of Block B, the future realignment of Kennedy Street, N.E., will require the removal of this tree;
- b. Protection of Three Trees along Perimeter and One Tree beside the Residential Building. The Applicant noted that one of the trees identified by Casey Trees along the perimeter of the Art Place building no longer exists. The two other trees identified along the perimeter of the future Art Place building cannot be preserved as they are located within the limits of the project's excavation and disturbance area. The tree identified on the north side of the residential building can be preserved. While this tree will be preserved during the construction of Block B, the future realignment of Kennedy Street, N.E. will require the removal of this tree; and
- c. Adopt a 3:1 Planting Ratio. The Applicant noted that as Block B is an urban project, the ability to introduce new plantings is limited and a 3:1 planting ratio cannot be met. However, Block B is designed as an environmentally sensitive

project, including its proximity to mass transit, provision of bikeshare facilities, and robust landscaping and planting plans. Block B will fulfill the Green Area Ratio requirements as well as the applicable stormwater management requirements.

Responses to Public Testimony

59. The Post-Hearing Statement addressed Ms. Grimstead's requests by noting that maintenance of traffic plans are required to be reviewed and approved by DDOT prior to construction impacts to public streets and that the projects identified by Ms. Grimstead will be required to submit Maintenance of Traffic plans for their respective construction schedules. The Applicant committed to work with DDOT to coordinate the Maintenance of Traffic plans for the adjacent developments to the extent possible, pending a formalized timeline of building for the various projects. (Ex. 44C.)
60. The Post-Hearing Statement addressed Mr. Baker's requests as follows:
 - a. Shared and Validated Parking: The Applicant stated that it does not believe that shared library parking is appropriate for the Project as stated above but agreed to explore the possibility of shared or validated parking; (FF 51.)
 - b. Bicycle Parking: The Applicant will provide the amount of bicycle parking required by the Zoning Regulations. The Applicant wants to ensure that space is used optimally and efficiently at Art Place at Fort Totten and that excess bicycle storage does not go unused. Currently, at Block A, 232 long-term bicycle storage spaces are offered, but only approximately 75 are regularly used. There are 18 retail bicycle storage spaces offered in Block A, and they are also rarely used and often empty; and (Ex. 44.)
 - c. Traffic Signal: As noted in Finding of Fact 48.b, the Applicant will fund a signal warrant study for the intersection at Ingraham Street, N.E. and South Dakota Avenue, N.E., upon full buildout of the Project. The Applicant will also design and fund the construction of a full traffic signal if warranted. (Ex. 44C.).

Responses to the Application

OP Reports

61. OP submitted a total of three reports regarding the Application:
 - a. A report dated November 9, 2018 recommending that the Commission set down the Application for a public hearing (the "OP Setdown Report"); (Ex. 10.)
 - b. A hearing report dated March 25, 2019 recommending approval of the Application (the "OP Hearing Report"); and (Ex. 25.)

- c. A post-hearing report dated May 20, 2019 (the “OP Post-Hearing Report”). (Ex. 53.)

The OP Setdown Report

- 62. The OP Setdown Report concluded that the Commission’s prior determination in the Overall PUD Order that the Overall PUD is not inconsistent with the Comprehensive Plan is not affected by any subsequent changes to the Comprehensive Plan. OP also noted that the Property is identified by the Generalized Policy Map as a Housing Opportunity Area and the addition of a residential component to Block B is consistent with this designation. OP further concluded that the FAR of 2.55⁵ proposed at the time of the report is not inconsistent with the Property’s FLUM designation.
- 63. The OP Setdown Report requested additional information from the Applicant related to the Application.
- 64. The Applicant responded to the questions raised in the OP Setdown Report in its Pre-hearing Statement and 20-Day Statement. (FF 41, 46.)

The OP Hearing Report

- 65. The OP Hearing Report recommended approval of Application. OP noted the Applicant worked closely with OP throughout the application process on the Project’s design and the Applicant had significantly improved the Project’s massing, building elements, proposed facades, landscape architecture, design of public spaces, and publicly accessible private outdoor spaces.
- 66. The OP Hearing Report also discussed the two main benefits of the Application: the shift of residential units from Block C to Block B, including the retention of the existing Riggs Plaza Apartments and the Applicant’s proffer of a First Source Agreement. OP encouraged the Applicant to implement policies and procedures to promote hiring and training of neighborhood residents for on-site jobs and to encourage leasing to neighborhood-serving retail establishments. As discussed further herein (FF 56(l)), the grocery store operator will hold at least three monthly hiring open houses in the four months prior to the opening of the Aldi store. (FF 56(l).) The open houses will provide local job candidates with information about employment opportunities with the grocery store operator.
- 67. OP noted that it had referred the application to several agencies, including:
 - a. DDOT;
 - b. DOEE;

⁵ The Applicant further reduced the FAR since the date of the OP Hearing Report to 2.47.

- c. DC Public Libraries (“DCPL”);
- d. MPD; and
- e. Department of Housing and Community Development (“DHCD”).

68. The OP Hearing Report stated that:

- a. DDOT recommended several changes that the Applicant has accepted, including the elimination of the curb cut and garage entry previously proposed on South Dakota Avenue;
- b. The Applicant worked closely with DOEE on sustainability and stormwater plans;
- c. DCPL has no objection to the Project and will not be filing a separate report; and
- d. MPD will not be filing a separate report.

69. The OP Report noted that DCHD raised the following issues:

- a. That additional information was needed regarding:
 - i. The subsidy and terms for the artist housing and any application that may be filed for related funding; and
 - ii. The relocation plans for remaining Riggs Plaza Apartment residents; and
- b. That IZ should apply to the residential units that would be relocated from Block C to Block B and that the change in use from the approved first-stage PUD warrants the proffering of additional IZ units.

70. The OP Report also requested additional information from the Applicant related to the Application.

71. The Applicant responded specifically to each item raised by OP in its Second Supplemental Statement, as well as during the Applicant’s presentation at the public hearing and the Applicant’s Post-Hearing Statement. (Ex. 34, 44, 47.)

OP’s Public Hearing Testimony

72. At the Public Hearing, OP recommended that the Commission approve the Project but requested three pieces of additional information from the Applicant. (4/4/19 Tr. at 102.)

The OP Post-Hearing Report

73. The OP Post-Hearing Report responded to the Commission’s two requests made at its May 20, 2019 public meeting, specifically OP stated that:

- a. The FLUM designates the site as appropriate for medium-density residential/medium-density commercial uses; and
- b. DDOT's standard for electric vehicle charging stations is one station for every 50 parking spaces, and that accordingly, for the proposed 750 spaces in Building B, 15 charging stations would be required to meet DDOT standards. It stated that the Applicant agreed that it will specify the number of charging stations that will be required to meet LEED ND standards, and that if this number is smaller than the number required by DDOT Standards, the Applicant will meet the DDOT standard.

DDOT Reports

74. DDOT submitted a total of three reports regarding the Application:

- a. A report dated March 25, 2019 (the "DDOT Report"); (Ex. 24.)
- b. A supplemental report dated May 17, 2019 (the "Supplemental DDOT Report"; and (Ex. 50.)
- c. A second supplemental report dated May 28, 2019 (the "Final DDOT Report"). (Ex. 55.)

The DDOT Report

75. The DDOT Report stated that it had no objection to the approval of the second-stage PUD Application, subject to certain revisions and conditions. The DDOT Report noted that it found the Applicant's proposed LMP to be sufficient and that the preliminary public space plans are generally consistent with DDOT standards. (Ex. 24.)

The Supplemental DDOT Report

76. The Supplemental DDOT Report listed the mitigations that DDOT recommended to be included in the final order in the case, and stated that there were several mitigations that the Applicant did not accept, including:

- a. Funding a possible traffic signal at the intersection of South Dakota Avenue and Ingraham Street, N.E., if a warrant study showed that it should be constructed two years after the full buildout of the project;
- b. Improvements to the pedestrian infrastructure at the intersection of Hamilton Street, Ingraham Street and the public alley; and
- c. Pedestrian and bicycle improvements on 3rd Street, N.E.

DDOT Public Hearing Testimony

77. DDOT also stated that some elements of the Project do not meet DDOT standards, including vaults in public space and a noncontinuous row of trees on South Dakota Avenue.
78. DDOT additionally noted that the Applicant did not concur with two of DDOT's revisions to the TDM plan, but that given the reduction in parking, DDOT finds the TDM plan to be sufficient as proposed by the Applicant. (4/4/19 Tr. at 106.)
79. In its Post-Hearing Statement, the Applicant proposed to improve the site frontage along South Dakota Avenue consistent with the frontage on Block A. (Ex. 44C.)

The Final DDOT Report

80. The Final DDOT Report stated that DDOT and the Applicant had come to an agreement about the proposed mitigations, described them, and requested that they be included as conditions of this Order.
81. DDOT testified that the Applicant did not accept the following proposed mitigations: (4/4/19 Tr. 105-107.)
 - a. Dedication of funds that would have been applied to a full signal at South Dakota Avenue, N.E., and Ingraham Street, N.E., if the full signal is ultimately not warranted;
 - b. Improvement of pedestrian infrastructure at the intersection of Hamilton Street, N.E., Ingraham Street, N.E., the public alley, and on 3rd Street, N.E.; and
 - c. Removal of the crosswalk and associated curb ramps across South Dakota at Jefferson Street, N.E.

ANC 5A

82. ANC 5A submitted a report stating that at its duly noticed and regularly scheduled meeting on March 27, 2019, with a quorum present, ANC 5A approved a resolution in support of the project (the "ANC Report"), noting specifically: (Ex. 28.)
 - a. The ANC was supportive of the overall mix of uses for the Block B development, particularly the Aldi grocery store;
 - b. The ANC believes that the Applicant has addressed concerns about traffic, parking, pedestrian travel, stormwater and infrastructure, and security at the site; and
 - c. The ANC found the Applicant to be responsive to questions and comments from the community.

LCRA

83. LRCA testified in support of the Project but made several comments regarding the development of the Project, and requested additional information including:
 - a. More information on traffic and transportation issues, including parking signage, traffic signals, pick up/drop off zones, crosswalks, and pedestrian improvements;
 - b. Details regarding construction management, including, debris, pest control, truck routing, and sidewalk closures;
 - c. Pedestrian-oriented lighting and the formerly proposed kinetic façade;
 - d. Opportunities for carsharing services and SmarTrip cards for residents;
 - e. Proposed security and trash cleanup measures;
 - f. Details regarding flooding control and landscaping;
 - g. Appropriate retail offerings and solicitation of community feedback on retail tenants;
 - h. Admission discounts for offerings at the FEZ;
 - i. Seniors accessibility;
 - j. Neighborhood-based hiring;
 - k. Relocation of remaining Riggs Plaza residents;
 - l. Proposed use of existing warehouse buildings;
 - m. Affordable housing; and
 - n. Shared parking. (Tr. 116-130; Ex. 37.)
84. LRCA submitted a post-hearing response to the Applicant's proffered public benefits and draft conditions which generally supported the Applicant's proffers but requested that it consider the possibility of shared parking with the Lamond-Riggs neighborhood library. (Ex. 47.) The Applicant responded that they would continue to explore options (FF 56.)
85. LRCA submitted a second post-hearing response to the Applicant's submission. (Ex. 56.) It stated that LRCA supported the installation of a traffic signal at South Dakota and Ingraham Streets, N.E., supported the pedestrian and bicycle infrastructure improvements associated with the Project, and that LRCA appreciated the Applicant's agreement to work with LRCA to explore the potential for shared or validated parking in the Project for visitors to the library.

Additional Responses

86. The South Dakota Avenue/Riggs Road Main Streets program submitted a letter of support for the Project. The letter noted that the South Dakota Avenue/Riggs Road Main Streets program believes the Project will be an exciting addition to the Ft. Totten and Lamond Riggs neighborhoods and will help foster and encourage a dynamic and vibrant streetscape along South Dakota Avenue and that the proposed mix of uses – including the arts, a museum, retail, and a grocery store – will help create a signature destination for the community. (Ex. 27.)
87. At the public hearing, Deborah Grimstead and Gavin Baker testified as persons in support of the Application: (Tr. 132-137.)
 - a. Ms. Grimstead testified in support of the Project but asked that the Applicant consider the combined effects of the development of Block B, the Lamond-Riggs library, and a nearby townhome development on transportation connectivity; and (Tr. 132-134.)
 - b. Mr. Baker requested that the Applicant explore using shared parking, particularly with respect to the Lamond-Riggs library, and provide validated parking in Block B for visitors to the Lamond-Riggs library. Mr. Baker also requested that the Applicant provide a 1:1 ratio of bedrooms to long-term bicycle parking in the residential portion of Block B and address the traffic signal at Ingraham Street, N.E. and South Dakota Avenue, N.E. (4/4/19 Tr. At 134-137.)
88. The Commission received testimony from Spenser Balog, a representative of Casey Trees. In his testimony, Mr. Balog requested that the Applicant:
 - a. Protect seven of the existing street trees along the closed portion of 4th Street, N.E.:
 - b. Protect three trees that are on the perimeter of the future Art Place building and one tree beside the residential buildings on the west side; and
 - c. Adopt a 3:1 planting ratio
89. The Applicant responded to Ms. Grimstead, Mr. Baker and Casey Trees in its Post-Hearing Submission discussed above at FF 58-60.

CONCLUSIONS OF LAW

1. The Applicant requested approval, pursuant to Subtitle X, Chapter 3 and Subtitle Z, Chapter 7, of a second-stage PUD and related first-stage PUD modifications. The Commission is authorized under the Zoning Act to approve a second-stage PUD and PUD modifications consistent with the requirements set forth in Subtitle X §§ 302, 304, and 309 and Subtitle Z § 704.

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

(Subtitle X § 300.1.)

3. In evaluating a PUD, the Commission shall find that the proposed development:
 - a. *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - b. *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
 - c. *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*

(Subtitle X § 304.4)

First-Stage Modifications

4. Pursuant to Subtitle X § 302.2(a), when considering a two-stage PUD:

“the first-stage application involves general review of the site’s suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with the Comprehensive Plan, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project...” (emphases added.)
5. *The scope of the hearing conducted pursuant to this section shall be limited to the impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision.* (Subtitle Z § 704.4.)
6. While the Application proposes changes to the heights, density and permitted uses of individual building, it does so by shifting these elements from other buildings within the

Overall PUD Site. As a result, there is no change to approved heights or density of the Overall PUD which the Commission determined was not inconsistent with the CP in the Overall PUD Order. (FF 14.)

7. The Application also proposes to change the use mix for Building B by:
 - a. Adding residential uses, including affordable units;
 - b. Increasing the cultural and art spaces; and
 - c. Reducing the size of the grocery store and children's museum uses.
8. Regarding the addition of residential uses to Building B, the Application simply proposed to move residential units from later phases to Building B. The Commission concurs with the analysis of OP and considers the provision of housing – both affordable and market-rate – in earlier phases of the overall development of the Overall PUD as a benefit and also notes that the Project will facilitate the relocation of existing residents by maintaining the existing Riggs Place Apartments.
9. With regards to the changes in the other uses, the Commission finds that the reduction in the size of the grocery and museum uses are a result of the Applicant's desire to incorporate residential uses in Building B, and to increase the amount of other culture and arts-centric spaces including maker space and Meow Wolf, and therefore the mix of uses continues to be a benefit of the Overall PUD.
10. The Commission also concludes that the modifications proposed by the Application will not result in a significant change to the potential adverse impacts of the Overall PUD as contemplated in the Overall PUD Order. In particular, the Commission notes that the development standards for the Overall PUD remain largely unchanged. The one area that has changed is the reduction in the amount of parking being provided on site which the Commission, in concurrence with DDOT, finds to be a benefit.
11. The Commission notes that the Application does not seek any additional flexibility from what was approved by the Overall PUD Order. The Commission concludes that there have been minor changes to the public benefits in terms of the proposed uses, but the Commission concludes that this is primarily due to the shift of uses between buildings in the Overall PUD and the Applicant's desire to provide more residential units in earlier phases and therefore concludes that there is no change to the balancing test.

Requested Flexibility Balanced by Public Benefits (Subtitle X § 304.3.)

12. The Commission notes that the Public Benefits continue to benefit the surrounding neighborhood and the District as a whole to a significantly greater extent than would a matter-of-right development and readily satisfy the Public Benefit Criteria. In particular the Commission notes that the Project will now provide 239 units of market-rate housing, and 30 affordable units. The Commission also notes that the inclusion of residential uses

in the Project allows the Applicant to retain the existing Riggs Plaza Apartments and facilitate the relocation of the existing residents.

Affordable Housing Requirement

13. The Commission finds that the Overall PUD Order approved the Overall PUD with a total of 171 affordable units. (Order No. 06-10, FF 47.a and Condition No. 8.) As noted above, Block A provided 141 affordable units and the Project will provide an additional 30, thereby meeting the requirements of the Overall PUD Order. The Commission concludes that should future phases of the Overall PUD provide additional residential units in excess of the 950 approved by the Overall PUD Order, that those units will be subject to the IZ regulations applicable at the time of application.

Second-Stage PUD

14. Pursuant to Subtitle X § 302.2(b):
“the second-stage application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and this title” (emphases added.)

Consistency with First Stage Approval (Subtitle X § 302.2.)

15. *If the Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Zoning Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Zoning Commission's decision.* (Subtitle X § 309.2.)
16. The Commission has found that the Application is in accordance with the Zoning Purposes, the PUD process, and the Overall PUD Order, as modified by this Order. Accordingly, the Commission concludes that it must approve the Application subject to the Conditions of this Order.

Potential Adverse Impacts - How Mitigated or Outweighed (Subtitle X §§ 304.3 and 304.4(b).)

17. The Commission concludes that the potential adverse impacts specific to Building B are either being mitigated or outweighed by the public benefits.
18. The Commission finds that the Project has been designed to avoid potential adverse effects of the second-stage PUD development of Building B. The Commission finds that while the Project will result in some, predominantly traffic-related, impacts — the Applicant's mitigation efforts and the proffered Public Benefits provide sufficient justification for the Project. Moreover, the Public Benefits generally accrue most significantly to the area immediately surrounding the Project. Therefore, those most likely to be adversely affected by the Project nonetheless also benefit from it.
19. The Commission finds that the Applicant responded fully to DDOT's questions raised in the DDOT Report and at the public hearing and has provided satisfactory evidence to

support its responses. The agreed upon mitigations have been incorporated as conditions of this Order.

20. The Commission finds that the Applicant has fully and satisfactorily responded to Casey Trees' comments. The Applicant's responses are supported by substantial evidence in the record, including the Applicant's tree inventory and tree removal plans.

“Great Weight” to the Recommendations of OP

21. 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 § 405.8; *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
22. OP confirmed that the Applicant responded completely to OP's questions at the public hearing and in its Post-Hearing Statement, specifically that the residential component of the Overall PUD not subject to IZ is based on the total number of units approved in the Overall PUD Order and that the amenities provided in Block A will be available to the residents of Block B.
23. The Commission finds persuasive OP's analysis and recommendation that the Commission approve the Application and therefore concurs in that judgment.

“Great Weight” to the Written Report of the ANC

24. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC 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. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
25. The Commission carefully considered the ANC 5A Report supporting approval of the Application, in particular the mix of uses to be provided by the Project. The Commission also concludes that the Applicant addressed the ANC Report's concerns regarding traffic, parking, stormwater and site impacts to ANC 5A's satisfaction and concurred in its recommendation of approval.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and

therefore **APPROVES** the Application for a second-stage PUD for and modification of a first-stage PUD for the Property for the mixed-use development described herein, subject to the Overall PUD Order and plans as modified by the following guidelines, conditions, and standards:

A. First-Stage PUD Modifications

1. Condition No. 7 of Z.C. Order No. 06-10, as modified by Z.C. Order No. 06-10A, is modified by revising (b)-(d) and adding (e) as follows (deleted text in **bold and strike through**; new text in **bold and underlined**):
 - 7.b. Building B shall be constructed as **a three-story buildings** not to exceed **60 80** feet in height and shall include approximately **144,000 52,470** square feet of **anchor retail and supporting retail uses**, **59,000 9,267** square feet of grocery, an approximately **47,000 26,070** square foot children's museum, **61,872 square feet of cultural uses**, **80,308 square feet for Meow Wolf**, as well as **recreational and meeting space for resident and community seniors** **275,117 square feet of residential uses including 239 market rate residential units, and no fewer than 30 affordable artist housing units**, with a total gross floor area not to exceed **456,000 549,996** square feet, **and a floor area ratio of 2.47 all of which would be for non-residential uses**. Building B shall have a maximum lot occupancy of approximately **76% 62.9%** and contain approximately **1,100 750** parking spaces;
 - 7.c. Building C shall measure eight stories and a maximum height of 90 feet and contain approximately **400 residential units, including not fewer than 30 income restricted units** **279,408 square feet of educational uses**. This building shall have a total building density of approximately **3.46 1.81** FAR (**not to exceed 520,000 gross square feet**) **on its own site, all devoted to residential uses**, and shall contain approximately **420 390** parking spaces. Building C shall have a maximum lot occupancy of approximately 48%; **and**
 - 7.d. Building D shall have seven stories and a maximum height of 90 feet, with a total density of approximately **3.25 5.93** FAR (not to exceed **238,000 384,596** gross square feet) on its own site, all of which shall be devoted to **non-residential uses including rehearsal and support space for Washington-area performing arts institutions, with a reservation of approximately 20,000 square feet for a new branch library**. Building D shall have a maximum lot occupancy of approximately 71%. Approximately 160 parking spaces shall be provided in Building D; **and**
 - 7.e. **The Applicant shall have flexibility to modify the ultimate mix of residential and non-residential uses on Blocks C and D at the time the Second-Stage PUD applications are filed for each building.**

B. Block B Development

1. Building B will be developed in accordance with the architectural drawings submitted into the record as Exhibits 44A1-44A10, as modified by the guidelines, conditions, and standards herein (collectively, the "Approved Plans").
2. The Applicant shall have design flexibility from the Approved Plans in the following areas:
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - b. To vary final selection of the exterior colors and materials within the color ranges and general material types approved, based on availability at the time of construction;
 - c. To vary the final selection of landscaping materials utilized, based on availability and suitability at the time of construction;
 - d. To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
 - e. To provide solar panels on the roof of Building B if it is economically feasible, if solar panels are provided, they will be set back from all building walls at a ratio of 1:1 to minimize any appearance from adjacent public spaces;
 - f. To increase or decrease the number of parking spaces provided Building B within five percent of 750 parking spaces; and
 - g. To modify the ultimate mix of residential and non-residential uses on Blocks C and D at the time each of the second-stage PUD applications are filed.

C. Transportation and Mobility Impact Mitigations

1. **For the life of the Project**, the Applicant shall abide by the terms of the transportation demand management plan, which requires compliance with the following:

- a. The Applicant will work with DDOT to identify a space for a Capitol Bikeshare station on or near the site and provide funding for that station;
- b. A member of the property management team will be designated as the Transportation Management Coordinator (“TMC”). The TMC will be responsible for ensuring that information regarding transportation options is disseminated to retail and residential tenants of the building. The position may be part of other duties assigned to the individual. The contact information for the TMC will be provided to DDOT and goDCgo, and the TMC will work with them to promote sustainable and active transportation options to and from the site;
- c. The property management website will include information on and/or links to current transportation programs and services, such as:
 - Capital Bikeshare;
 - Car-sharing services;
 - Ride-hailing services (e.g. Lyft or Uber);
 - Transportation Apps (e.g. Metro, Citymapper, Spotcycle, Transit); and
 - The requirements of the transportation demand management plan.
- d. A move-in kit will be provided to each new resident **for the first 10 years of the development** containing:
 - A Get Around Guide highlighting local transportation options;
 - A one-year annual membership to Capital Bikeshare (\$85);
 - A carshare membership of equivalent value (\$85); and
 - A SmarTrip Card preloaded with \$20.00.
- e. The retailers and performing arts space tenants will work with DDOT and goDCgo to tailor and share transportation options to/from the site;
- f. The performing arts space tenant will share “Getting Here” information with attendees and guests ahead of any events and post the same information on the website;
- g. An electronic display will be provided in the residential lobby as well as the main cultural building lobby and will provide public transit information such as nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital BikeShare locations indicating the number of bicycles available at each location;
- h. Shower and changing facilities will be provided in the retail bike parking area building for employees who bike, walk, or jog to work;

- i. Convenient and covered secure bike parking facilities will be provided in accordance with the minimum required by the Zoning Regulations;
 - j. A bicycle repair station will be provided on the P1 level of the garage;
 - k. A sufficient number of electric car charging stations as required under LEED-ND standards will be provided in the garage;
 - l. The cost of parking spaces for tenants will be unbundled from leases and will be based on market rates, and spaces will not be leased to outside groups with exceptions for district services;
 - m. Two spaces will be designated in the garage for carsharing vehicles, and the applicant will work with regional carsharing companies to locate vehicles on this site if possible based on demand;
 - n. Two spaces will be designated in the garage for vanpooling spaces to be used by commuters who vanpool to the area for work;
 - o. Two annual transportation events will be held for residents, such as walking tours of local transportation options, a transportation fair, lobby events, and resident socials;
 - p. The TMC will monitor parking demands so as to minimize spillover parking in surrounding neighborhood; and
 - q. The TMC will monitor the use of the Capital Bikeshare and bicycle use around the Block B site to look for opportunities to implement elements of the moveDC plan, particularly with respect to bicycle infrastructure.
2. **For the life of the Project**, the Applicant shall abide by the terms of the loading management plan detailed in Exhibit 20A2 at pages 33-34, which requires compliance with the following:
 - a. A loading dock manager will be designated by the building management (duties may be part of other duties assigned to the individual). He or she will coordinate with vendors and tenants to schedule deliveries and will coordinate with the community and neighbors to resolve any conflicts should they arise;
 - b. All tenants will be required to schedule deliveries that utilize the loading dock (any loading operation conducted using a truck 20' in length or larger) and all loading activities are required to occur at the loading docks;
 - c. The dock manager will schedule deliveries such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time

when a berth will be available so as not to compromise safety or impede street or intersection function;

- d. The dock manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic along the alley (except during those times when a truck is actively entering or exiting a loading berth);
- e. Trucks larger than a WB-50 will not be permitted to make deliveries to the residential loading docks. Trucks larger than a WB-67 will not be permitted to make deliveries to the commercial loading dock;
- f. Trucks using the loading docks will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route Map (godcgo.com/truckandbusmap);
- g. The dock manager will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading dock as well as notifying all drivers of any access or egress restrictions. The dock manager will also distribute materials as DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws. The dock manager will also post these documents and notices in a prominent location within the service areas; and
- h. An approximately 180-foot designated bus area is proposed on the west curb of South Dakota Street, N.E., midway between Ingraham and Kennedy Streets, N.E. This area will be monitored and programmed by the loading dock manager of the building. The loading dock manager will be responsible for coordinating the different uses in the building and authorizing group sizes and arrival times for the bus area. Further, the loading dock manager will be responsible for disseminating information on the bus parking and loading area to potential visiting groups. In addition to the designated bus area, three PUDO zones are proposed. Buses would be able to perform pick-up drop-off operations at a PUDO zone and park off-site if desired;

3. **Prior to the issuance of the first certificate of occupancy for the Project (except as provided in (c),** the Applicant shall, subject to approval by DDOT at permitting:

- a. Extend the northbound left-turn storage at Riggs Road and South Dakota Avenue at 550 feet of total storage length (including half of the lane taper distance);
- b. At South Dakota and Kennedy Streets, N.E., restripe the eastbound leg of Kennedy Street, N.E. approaching South Dakota Avenue, N.E. to provide two outbound lanes. The Applicant will work with DDOT through the permitting process to determine the appropriate lane widths and configuration;
- c. At South Dakota Avenue, N.E. and Ingraham Street, N.E., the Applicant will design and pay for the installation of a full traffic signal as an upgrade to the currently planned HAWK signal being installed at this location, if warranted. The Applicant proposes to perform a full signal warrant study for future total conditions upon zoning approval, and if warranted, design and fund installation of the signal in conjunction with construction of the project, subject to DDOT approval at permitting. If the initial traffic signal warrant analysis (which is based on forecasted conditions) does not meet the standards for the installation of a traffic signal at the intersection of South Dakota Avenue, N.E., and Ingraham Street, N.E., the Applicant will submit a second traffic signal warrant analysis, which will be based on traffic counts after the full building of the Block B project, with the second stage PUD application for either Block C or Block D that is required to be filed with the Zoning Commission by December 31, 2024. If the second traffic signal warrant analysis meets the warrant standards, the Applicant will design and fund the installation of the signal during the processing of that second stage PUD application;
- d. Improve pedestrian infrastructure at the intersection of Hamilton, Ingraham and the public alley to the southwest corner of the site. The Applicant will work with DDOT through the public space permitting process for the project to ensure that public space and other features within the public rights of way are designed and built to DDOT standards; and
- e. The Applicant will improve pedestrian infrastructure of 3rd Street, N.E. by providing a new concrete 6-foot wide standard sidewalk, as well as an 8-foot-wide asphalt bicycle lane, as shown on Exhibit 44E of the record.

D. Construction: The Applicant will abide by the terms of the Construction Management Plan submitted into the record as Exhibit 44G.

E. Promotion of the Arts and Uses of Special Value to the Neighborhood or the District of Columbia as a Whole:

1. **Prior to the issuance of a certificate of occupancy for the Meow Wolf space**, the Applicant will provide evidence to the Zoning Administrator that residents of the District of Columbia will be able to receive discounted entry fees that are 15% less than the admissions fees charged for similar non-DC residents. These discounted entry fees will be applicable for the life of the Project.
2. **Prior to the issuance of a certificate of occupancy for the Explore! Children's Museum space**, the Applicant will provide evidence to the Zoning Administrator that residents of Ward 4 and Ward 5 will receive discounted entry fees of 25% off then prevailing ticket prices on a quarterly basis. These discounted entry fees will be applicable for the life of the Project.
3. **Prior to the issuance of the certificate of occupancy for the residential building**, the Applicant will provide evidence to the Zoning Administrator that it has entered into a contract with a qualified arts organization that will interview and select the qualified artists for the artist studio and maker spaces.
4. **For the life of the Project**, the Applicant will rent the artist studio and maker spaces to artists at a dollar/sf net monthly lease rate not to exceed 50% of the average dollar/sf net monthly lease rate charged to the other retail tenants in the Project.

F. Benefits and Amenities:

1. *Affordable Housing.* **Prior to the issuance of a building permit for the residential portion of the Project**, the Applicant shall provide the Zoning Administrator with evidence that the recorded Affordable Housing Covenant for the entire PUD project has been amended to reserve the 30 artist housing units in Block B to households with incomes not exceeding 60% MFI. The period of affordability will be 20 years from the issuance of the first Certificate of Occupancy in Block B. Consistent with the affordable housing requirements of the First-Stage PUD Order, the 30 artist affordable units will be distributed vertically and horizontally through the residential building in Block B, but not on the upper two floors, at a ratio of unit types that are consistent with the market-rate unit types.

The Overall PUD Order's 929 maximum residential units (up to 520 in Block A and 409 in Block C, location modified by this Order) are vested and so not subject to IZ requirements, but any additional residential units shall be subject to the IZ regulations applicable at the time of the second-stage PUD application proposing the additional residential units.

2. *Sustainability.* **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide evidence to the satisfaction of DOEE and the Zoning Administrator that the entire PUD will be able to secure certification under the LEED ND rating system.

3. *Employment and Training Opportunities.*
 - a. **Prior to the issuance of the first building permit for the Project**, the Applicant shall provide evidence of the signed First Source Employment Agreement that was followed during the development of Block A; and
 - b. **Prior to the issuance of a certificate of occupancy for the grocery store space**, the Applicant (or the grocery store operator) will provide evidence to the Zoning Administrator that at least three monthly hiring open houses were held in the four months prior to the opening of the store. The open houses will provide local job candidates with information on employment opportunities with the grocery store operator.
4. *Mass Transit Improvements.* **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence to the Zoning Administrator that it has paid for the installation of a Capital Bikeshare Station on the site, or at a nearby location identified by DDOT.
5. *Superior Landscaping and Creation of Open Spaces.* **For the life of the Project**, the Applicant will maintain the plaza and pedestrian areas shown on the Plans, including the dog-run.
6. *Dog Run.* The Applicant will relocate the dog-run prior to the issuance of a Certificate of Occupancy for the development of Block D, in order to accommodate the realignment of Kennedy Street, N.E.

G. Miscellaneous

1. No building permit shall be issued for the Project until the Applicant has recorded a Notice of Modification of the PUD Covenant in the land records of the District of Columbia. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the Notice with the records of the Office of Zoning.
2. The approval for construction of the Project on Block B shall be valid for a period of two years from the effective date of this Order. Within such time, an application(s) must be filed for a building permit(s). Construction of the project must begin within three years of the effective date of this Order.
3. The Applicant shall file a second-stage PUD application for either Block C or Block D by **December 31, 2024**, and the second-stage PUD application for the other final development parcel included in the Overall PUD will occur by **December 31, 2030**.

VOTE (June 10, 2019): 5-0-0

(Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Michael G. Turnbull, and Peter G. May to **APPROVE**.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 06-10D shall become final and effective upon publication in the *D.C. Register*; that is, on March 20, 2020.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA ZONING COMMISSION ORDER NO. 06-10E Z.C. Case No. 06-10E The Morris and Gwendolyn Cafritz Foundation (Modification of Consequence of Second-Stage PUD @ Square 3765, Lots 1-4 and 7-9 and Square 3767, Lots 2-4) June 8, 2020

At its properly noticed public meeting on June 8, 2020, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of The Morris and Gwendolyn Cafritz Foundation (the “Applicant”) for a modification of consequence to the conditions of, and plans approved by, Z.C. Order No. 06-10D (the “Second-Stage Order”) that approved a second-stage planned unit development (“PUD”) and modification to the first-stage PUD approved by Z.C. Order No. 06-10 (the “First-Stage Order”) for Lots 1-4 and 7-9 in Square 3765 and Lots 2-4 in Square 3767 (collectively, the “Property”).

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PRIOR APPROVALS

1. Pursuant to the First-Stage Order, effective January 15, 2010, the Commission granted a consolidated and first-stage PUD with a related Zoning Map amendment for the Property to the C-2-B and FT/C-2-B Zone Districts (now the MU-5-A zone) to construct the Art Place at Fort Totten Project, a mixed-use complex with residential, retail, cultural, arts, and community uses to be constructed in multiple phases on Blocks A-D (the “Overall PUD”).
2. Pursuant to Z.C. Order No. 06-10A, the Commission approved a modification of the First-Stage Order to shift the grocery store use from Building A to Building B.
3. Pursuant to Z.C. No. Order 06-10C¹, the Commission approved a modification of the First-Stage Order to reduce the amount of parking provided in Building A.

¹ Z.C. Case No. 06-10B was withdrawn.

4. Pursuant to the Second-Stage Order, the Commission approved a mixed-use building on Block B with two primary components:
 - A residential component (the “Residential Component”), fronting on the former 4th Street, N.E. (closed pursuant to D.C. Act 23-214), with approximately 269 units (30 reserved as artist affordable units) and ground-floor retail and artist maker spaces; and
 - The Family Entertainment Zone (“FEZ,” and collectively with the Residential Component, the “Block B Project”), fronting on South Dakota Avenue, N.E., which includes:
 - A retail space/food hall;
 - A theater/interactive space;
 - A gala/events space;
 - Meow Wolf (an innovative arts collection);
 - Explore! Children’s Museum; and
 - An Aldi grocery store.

PARTIES AND NOTICE

5. In addition to the Applicant, the only parties to Z.C Case No. 06-10 were Advisory Neighborhood Commissions (“ANC”) 5A and 4B, the “affected” ANCs pursuant to Subtitle Z § 101.8, and the Lamond-Riggs Citizens Association (“LRCA”).
6. The Applicant provided evidence that on April 21, 2020, it served the Application on ANCs 5A and 4B, LRCA, the District Department of Transportation (“DDOT”), and the Office of Planning (“OP”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2.)

II. THE APPLICATION

7. The Application requested approval to modify the conditions and plans of the Second-Stage Order to authorize the following modifications to the exterior architectural elements and landscaping of the Block B Project:
 - To the exterior of the Residential Component:
 - Change the fenestration and articulation of the mass and use of materials, to better integrate with the design of Block A;
 - Introduce a balcony story above the retail story;
 - Differentiate the top story of the structure through the use of different colors and materials;
 - Raise the pedestrian bridge across the closed 4th Street by one level;
 - Group the 30 affordable artist units in the northern tower;
 - Create a central lobby for the Residential Component; and
 - Create separate loading areas for each portion of the Residential Component;
 - To the exterior of the FEZ:
 - Increase in the height of the drum and fins by 18 inches;
 - Reduce the massing of the structure above the Aldi grocery store along South Dakota Avenue;

- Internal modifications that result in minor adjustments to the square footage for the various uses; and
- Flexibility for the final square footages that are proposed for the uses within the FEZ, including adding 10,593 square feet of gross floor area due mostly to introducing a mezzanine level in the food hall area without making any discernable visual impacts to the exterior; and
- To the landscaping:
 - Remove the previously approved circular drive and vehicular drop-off area of the Kennedy Street Plaza;
 - Relocate the proposed dog park to property adjacent to Block B on the west side of the former 4th Street; and
 - Provide terraced landscape elements and a private outdoor area with a pedestrian focus, as well as a sloped planting area in the former vehicular drop-off area and dog park area.

8. The Applicant asserted that the Application is properly classified as a modification of consequence because the proposed modification to the Block B Project change conditions of the Second-Stage Order and redesign or relocate architectural elements and open spaces depicted in the plans approved by the Second-Stage Order, and so correspond to examples of Modifications of Consequence as described by Subtitle Z § 703.4. The proposed modifications to the FEZ are also consistent with the design flexibility from the approved plans granted in Condition No. B.2.a of the Second-Stage Order.

III. RESPONSES TO THE APPLICATION

OP REPORT

9. On May 29, 2020, OP submitted a report (the “OP Report”) stating no objection to the Application being considered as a modification of consequence and recommending approval of the Application based on its conclusion that the proposed modifications would not change the massing, size, and mix of uses were originally approved by the Commission in the Second-Stage Order. (Ex. 5.)

10. The OP Report reported that DDOT did not have concerns about the Application and that DDOT is evaluating transportation improvements to accommodate both the Overall PUD and a future development at the parking lots for the Fort Totten Metrorail station.

ANC 5A

11. On May 28, 2020, ANC 5A submitted a written report (the “ANC 5A Report”) stating that at its duly noticed public meeting of May 27, 2020, at which a quorum was present, ANC 5A voted to support the Application and noted that the proposed modifications improve the Block B Project and do not warrant a public hearing. (Ex. 4.)

ANC 4B

12. ANC 4B Vice-Chair Alison Brooks submitted an email into the record dated June 8, 2020, indicating that ANC 4B did not intend to participate in the case. (Ex. 7.)

LRCA

13. Rodney Foxworth, president of LCRA, submitted an email into the record on June 8, 2020, indicating that LCRA had reviewed the Application and had no objection to the proposed modifications. (Ex. 6.)

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make modifications of consequence to final orders and plans without a public hearing.
2. Subtitle Z § 703.3 defines a modification of consequence as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.”
3. Subtitle Z § 703.4 includes “a proposed change to a condition in the final order” and “a redesign or relocation of architectural elements” as examples of modifications of consequence.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 5A and 4B and LRCA.
5. The Commission concludes that the Application qualifies as a modification of consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify the conditions and architectural elements approved by the Second-Stage Order, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that because ANC 5A and 4B and LRCA filed responses to the Application, the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties to the original proceeding had been met, and therefore the Commission could consider the merits of the Application at its June 8, 2020, public meeting.
7. The Commission concludes that the Application is consistent with, and improves, the Block B Project, as authorized by the First-Stage and Second-Stage Orders, because the Application:
 - Is consistent with the massing, size, and mix of uses approved by the Second-Stage Order;
 - Proposes modifications to the FEZ component consistent with the internal design flexibility granted in the Second-Stage Order;
 - Further the original intention of the Block B Project to be an urban location to experience art, both through its programming and through the building’s superior design and materials;

- Continues to foster a synergistic artistic environment within the Property, including allowing for flexibility within the FEZ to enable a range of cultural and artistic uses to be explored; and
- Creates additional open spaces for pedestrians to enjoy while experiencing the FEZ.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

8. The Commission must 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 § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
9. The Commission notes OP’s lack of objection to the Application being considered as a modification of consequence and finds OP’s recommendation that the Commission approve the Application persuasive and concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

10. 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)) and Subtitle Z §406.2, the Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC. To satisfy this great weight requirement, District agencies 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. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).)
11. Although the ANC 5A Report did not raise any issues or concerns with the Application to which the Commission can give great weight, the Commission notes the ANC 5A Report’s support for the Application and the Commission concurs in that judgment.
12. Since ANC 4B did not respond to the Application, there is nothing to which the Commission can give great weight.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a modification of consequence to modify Condition Nos. A.1 and B.1 of Z.C. Order No. 06-10D, and the plans it approved, to read as follows (deletions shown in **bold and strikethrough** text; additions in **bold and underlined** text). All other conditions in Z.C. Order No. 06-10, as modified by Z.C. Order Nos. 06-10A, 06-10C, and 06-10D, remain unchanged and in effect.

A. First-Stage PUD Modifications

1. Condition No. 7 of Z.C. Order No. 06-10, as modified by Z.C. Order No. 06-10A, is modified by revising (b)-(d) and adding (e) as follows ...:

...

7.b. Building B shall be constructed as buildings not to exceed 80 feet in height and shall include approximately ~~52,470~~ 57,218 square feet of anchor retail and supporting retail uses, ~~9,267~~ 8,784 square feet of grocery, ~~an approximately~~ ~~26,070 square foot children's museum, 61,872 approximately 168,850~~ square feet of cultural uses, ~~80,308 square feet for including a children's museum and~~ Meow Wolf, ~~as well as~~ ~~275,117~~ 279,224 square feet of residential uses including ~~239~~ 241 market rate residential units, and no fewer than 30 affordable artist housing units, with a total gross floor area not to exceed ~~549,996~~ 560,589 square feet, and a floor area ratio of ~~2.47~~ 2.52. Building B shall have a maximum lot occupancy of approximately 62.9% and contain approximately ~~750~~ 717 parking spaces comprising approximately 46,513 square feet;²

...

B. Block B Development

1. Building B will be developed in accordance with:

- The architectural drawings ~~submitted into the record as dated May 2, 2019, at Exhibits 44A1-44A10 in Z.C. Case No. 06-10D; and~~
- ~~As amended and supplemented by the plans dated April 14, 2020, at Exhibits 2C-2C11 in Z.C. Case 06-10E~~, as modified by the guidelines, conditions, and standards herein (collectively, the “Approved Plans”).

VOTE (June 8, 2020): 5-0-0

(Michael G. Turnbull, Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Peter G. May, to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 06-10E shall become final and effective upon publication in the *D.C. Register*; that is, on September 4, 2020.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL

² The text incorporates the deletions and additions made by Z.C. Order No. 06-10D.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-10G**

Z.C. Case No. 06-10G

**The Morris and Gwendolyn Cafritz Foundation
(Modification of Significance of Second-Stage PUD @
Square 3765, Lot 10 and Square 3767, Lot 1)
December 13, 2021**

Pursuant to notice, at its December 13, 2021 public hearing, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of The Morris and Gwendolyn Cafritz Foundation (the “Applicant”) for a modification of significance to the conditions of and plans approved by Z.C. Order Nos. 06-10D and 06-10E¹ (collectively, the “Second-Stage Order”) that approved the following: in Z.C. Order 06-10D, a second-stage planned unit development (“PUD”) to construct a mixed-use building on Block B and modification to the first-stage PUD approved by Z.C. Order No. 06-10 (“First-Stage Order”); and, in Z.C. Order 06-10E, modification to the second-stage PUD to modify conditions of Z.C. Order 06-10D.

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

SUMMARY ORDER

Parties and Organizations

1. The following were automatically parties to this proceeding pursuant to Subtitle Z § 403.5:
 - The Applicant;
 - Advisory Neighborhood Commission (“ANC”) 5A in which the Block B Project is located and so an “affected ANC” per Subtitle Z § 101.8; and
 - ANC 4B, which is located across South Dakota Avenue, N.E. from property included in the First-Stage Order and therefore deemed to be an “affected ANC” pursuant to Subtitle Z § 101.8.²

¹ Z.C. Case No. 06-10F was withdrawn.

² ANC 4B did not participate in Z.C. Case Nos. 06-10D or 06-10E.

2. The Lamond-Riggs Citizens Association (“LRCA”) was a party in ZC Case Nos. 06-10, 06-10D, and 06-10E. LRCA submitted a letter into the record of this case, which is discussed below in the Responses to the Application section.
3. The Commission received no requests for party status.

Notice

4. The Applicant initially filed a Modification of Consequence Application (ZC Case No. 06-10F³) on August 26, 2021, seeking certain modifications of the plans that were approved for the Block B PUD Project. At the Commission’s October 14, 2021 public meeting, the Commission determined that the application should be processed as a Modification of Significance, rather than a Modification of Consequence. On October 19, 2021, the Applicant filed this Modification of Significance application. (Exhibit [“Ex.”] 1.)
5. On October 26, 2021, the Applicant requested a waiver from the requirements of Subtitle Z § 400.9 in order to allow the Commission to take set-down action less than 35 days after the application is filed. In addition, the Applicant requested a waiver from Subtitle Z § 402.1 which requires a 40-day notice of the public hearing. The Applicant requested that a 30-day notice period be provided and that the Commission schedule the case for a public hearing on December 13, 2021. (Ex. 10, 10A.)
6. At the Commission’s public meeting on October 28, 2021, the Commission granted the Applicant’s waiver requests, pursuant to Subtitle Z § 101.9, after it determined that the Applicant had demonstrated good cause to waive the notice periods in order to maintain financing and project delivery timelines and because the community and Parties to this case would not be adversely affected or prejudiced by approving the waiver requests.
7. Pursuant to Subtitle Z § 402, the Office of Zoning (“OZ”) sent notice of the December 13, 2021 public hearing, to the following on November 3, 2021: (Ex. 17.)
 - The Applicant;
 - ANC 5A;
 - ANC 4B;
 - ANC Commissioner 5A08, whose District includes the Block B Project;
 - The Office of the ANCs;
 - The Ward 5 Councilmember, whose ward includes the Block B Project;
 - The Ward 4 Councilmember, whose ward includes the property across South Dakota Avenue, N.E. from property included in the First-Stage Order;
 - The Office of Planning (“OP”);
 - The Department of Energy and Environment (“DOEE”);

³ Z.C. Case No. 06-10F was withdrawn.

- The District Department of Transportation (“DDOT”);
- The Department of Consumer and Regulatory Affairs (“DCRA”);
- The Office of Zoning Legal Division (“OZLD”);
- The Chair and At-Large Members of the Council of the District of Columbia; and
- The owners of property within 200 feet of the property included in the First-Stage Order.

8. OZ also published notice of the December 13, 2021 public hearing, in the November 12, 2021 *D.C. Register* as well as on the calendar of the OZ website. (Ex. 15.)

PRIOR APPROVALS

9. The following prior approvals were granted by the Commission:

- Pursuant to the First-Stage Order, effective January 15, 2010, the Commission granted a consolidated and first-stage PUD with a related map amendment for the Property to the C-2-B and FT/C-2-B zone (now the MU-5-A zone) to construct the Art Place at Fort Totten Project, a mixed-use complex with residential, retail, cultural, arts, and community uses to be constructed in multiple phases on Blocks A-D (the “Overall PUD”);
- Pursuant to Z.C. Order 06-10A, effective January 20, 2012, the Commission approved a modification of the First-Stage Order to shift the grocery store use from Building A to Building B;
- Pursuant to Z.C. Order 06-10C⁴, effective September 5, 2014, the Commission approved a modification of the First-Stage Order to reduce the amount of parking provided in Building A;
- Pursuant to the Second-Stage Order⁵, the Commission approved a mixed-use building on Block B with two primary components:
 - A residential component (the “Residential Component”), fronting on the former 4th Street, N.E. (closed pursuant to DC Act 23-214), with approximately 271 units (30 reserved as artist affordable units) and ground-floor retail and artist maker spaces; and
 - The Family Entertainment Zone (“FEZ”, and collectively with the Residential Component, the “Block B Project”), fronting on South Dakota Avenue, N.E., which includes:
 - A retail space/food hall;
 - A theater/interactive space;
 - A gala/events space;
 - Meow Wolf (an innovative arts collection);

⁴ Z.C. Case No. 06-10B was withdrawn.

⁵ Z.C. Case No. 06-10D was effective March 20, 2020; and Z.C. Case No. 06-10E was effective September 4, 2020.

- Explore! Children's Museum; and
- An Aldi grocery store; and
- Pursuant to Z.C. Order 06-10E, the Commission approved a Modification of Consequence to modify conditions of Z.C. Order 06-10D to allow modification to the exterior architectural elements of the Residential Component and the FEZ, internal modifications to the FEZ which resulted in minor adjustments to the square footages in the FEZ, the ability to group the artist housing units in the northern tower, and modifications to the approved landscaping.

THE APPLICATION

10. The Application requested the following modifications to the Block B Project approved in the Second-Stage Order:

Residential Component

- The extension of the north residential tower (to include Lot 1 in Square 3767) to allow 23 additional residential units (three of the additional 23 units (13%) will be reserved as Inclusionary Zoning (“IZ”) units) to be added to the Block B Project, for a total of 294 residential units;
- The relocation of the dog park to the corner of former 4th Street and Kennedy Street; and
- Revision of the color palette on the residential towers to a more neutral set of colors;⁶ and

FEZ Component

- The removal of the Meow Wolf (immersive arts collective) tenant;⁷
- Internal modifications that result in modified square footage for the various uses (reducing commercial use square footage by approximately 33,500 sq. ft. (13%);
- Reduction in the number of parking spaces from 717 to 494, and related reduction in the area needed for excavation;
- Reduction in height of the drum by approximately 22 feet, 6 inches and removal of the “fort” at the corner of Ingraham Street and former 4th Street;
- Addition of a terrace level above the retail uses along South Dakota Avenue, N.E.;
- Relocation of electrical switchgear; and
- Addition of another loading berth accessed from the former 4th Street, N.E. to enhance the loading flexibility for commercial tenants.

(Ex. 2)

⁶ In its Supplemental Statement, the Applicant indicated that it was no longer proposing any changes to the color palette that was approved in Z.C. Case No. 06-10D. (Ex. 20.)

⁷ Meow Wolf was not mandated as a tenant in the conditions of the Second-Stage Order.

11. The Applicant also proposed the following transportation infrastructure improvements:

- Pedestrian safety enhancements in the public space surrounding the property along South Dakota Avenue, N.E., Ingraham Street, N.E. and Kennedy Street, N.E., subject to DDOT approval; and
- Funding and construction of the approximately 200-foot missing segment of 3rd Street, N.E. located at the western/southern terminus of Kennedy Street, N.E. for vehicular and bicycle travel, subject to DDOT approval. (Ex. 2, 20.)

RESPONSES TO THE APPLICATION

OP Reports

12. OP submitted a set down report dated October 26, 2021, recommending that the Commission set down the application for a public hearing. The set down report encouraged the Applicant to provide dedicated affordable units among the 23 additional units being proposed, clarification of the gross and net lot occupancy proposed, clarification regarding specific square footages of proposed uses, and additional details with regard to the status of discussions with potential operators of the proposed FEZ, the proposed children's museum, and the proposed grocery store. (Ex. 11.)

13. On November 22, 2021, the Applicant submitted a supplemental statement responding to OP's set down report by agreeing to reserve three of the additional 23 units as IZ units, clarifying the lot occupancy proposed for the Block B buildings and the square footages of proposed uses, and indicating that an operating agreement with the Venue Group had been executed to manage and program the food hall and performing arts spaces. (Ex. 20.)

14. OP submitted a final report on December 6, 2021, recommending approval of the application. In its report OP acknowledged that the Applicant agreed to provide three IZ units among the additional 23 units but encouraged the Applicant to consider increasing the number. OP's report also requested that the Applicant provide information about the IZ unit types and their distribution. This information was provided by the Applicant at the public hearing on December 13, 2021. (Ex. 24.)

DDOT

15. DDOT submitted a report dated December 3, 2021, which determined that the proposed application will not have any adverse impacts on the District's transportation network and that DDOT had no objection to the application with the following conditions: Condition C from Z.C. Case No. 06-10D (TDM Plan, Loading Plan, and Transportation Improvements) should remain fully in effect for this application; and as shown in Exhibit 20A, the Applicant will fund and construct the approximately 200-foot missing segment of 3rd Street, N.E. located at the western/southern terminus of Kennedy Street, N.E., subject to DDOT approval. (Ex. 23.)

ANC 5A and 4B

16. ANC 5A submitted a written resolution stating that at its duly noticed public meeting of November 17, 2021, at which a quorum was present, ANC 5A voted 6-0-0 to support the application. The resolution noted that in ANC 5A's previous support for the application included a condition that the Applicant provide a protected bike lane in the portion of 3rd Street, N.E. that the Applicant has committed to construct. However, based on the new information from the Applicant regarding the limited street right-of-way width, the fact that a dedicated bike lane would not be provided in the existing 3rd Street, and the proposed signage/reduced speed limit/pavement markings in the new 3rd Street, N.E. extension, ANC 5A no longer requires the condition to provide a protected bike lane to support the application. Finally, the resolution noted that the proposed modifications are all improvements to the previously approved project and that the proposed infrastructure improvements in and around the property will help support a safe environment for bikes and pedestrians. (Ex. 28.)
17. ANC 4B submitted a written resolution stating that at its duly noticed public meeting of November 22, 2021, at which a quorum was present, ANC 4B voted 6-0-0 to support the application, but requested enhancements to the affordable housing proffered in the project and to the street safety proposed for the new 3rd Street segment. The ANC 4B resolution requested: that the additional IZ units proposed by the applicant be family-sized units; that the additional IZ units be at the 50% MFI level; that the Commission require that the 84 Riggs Plaza leaseholder apartments be permanently designated as affordable, senior housing in perpetuity; that the Applicant significantly improve the physical traffic calming on 3rd Street, N.E. to include street treatments, chicanes, raised crosswalks or other physical treatments designed to reduce vehicle speeds; and that the Applicant create a comprehensive school zone safety plan developed in cooperation with DDOT's Safe Routes to School program. (Ex. 21.)

LRCA

18. LRCA submitted a letter dated December 10, 2021, which noted that it did not object to the modifications proposed in this application. The letter noted that the Applicant's supplemental statement (Ex. 20 at pp. 4-5) addressed the concerns that LRCA raised about the proposed application. LRCA's letter included the following recommendations: the Applicant should work with the adjacent charter school's to develop a safe school drop-off and pick-up plan; the Applicant should work with DDOT to ensure that changes to 3rd Street, N.E. include treatments to reduce vehicular blind spots and to slow down cars; and when the Applicant realigns Kennedy Street, N.E. it will notify the parties when design and construction of the realignment will take place and ensure that the realignment prioritizes pedestrian/cyclist safety, mobility, and access. (Ex. 27.) Both, in Exhibit 20A of the case record, and at the public hearing, the Applicant responded to LRCA's recommendations (in conjunction with discussing community outreach efforts and the recommendations of ANC 4B. (See Hearing Transcript at pp. 44-47.)

CONCLUSIONS OF LAW

1. Pursuant to the authority granted by the Zoning Act (June 20, 1938, 52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a PUD and modifications to an approved PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z, Chapter 7.
2. Subtitle Z § 704 authorizes the Commission to review and approve modifications of significance to final orders of the Zoning Commission. Subtitle Z § 703.5 defines a modification of significance as a “modification to a contested case order or the approved plans of greater significance than a modification of consequence.” Subtitle Z § 703.6 includes “change in use” and “additional relief or flexibility” as examples of a modification of significance.
3. The Commission concludes that the Application qualifies as a modification of significance within the meaning of Subtitle Z §§ 703.5 and 703.6.
4. The Commission concludes that the Applicant has satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 5A, ANC 4B, and LRCA.⁸ The Commission notes that ANC 5A, ANC 4B and LRCA all participated in this application.
5. Since no persons or parties appeared in opposition to the Application and the parties to the original proceeding, ANC 5A, ANC 4B, and LRCA supported the Application, a decision by the Commission to grant this Application would not be adverse to any party. Therefore, pursuant to Subtitle Z § 604.7, the Commission authorized a summary order in this case and determined it may waive the requirement that findings of fact and conclusions of law accompany the Order because such waiver will not prejudice the rights of any party.
6. As set forth in Subtitle Z §§ 703.5 and 704.4, modifications of significance require a public hearing where the scope is limited to the impact of the modification on the subject of the original application and shall not permit the Commission to revisit its original decision. Further, Subtitle X § 304.3 requires that in deciding a PUD application, the Commission shall judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.
7. The Commission finds that the Application is consistent with, and improves, the Block B Project, as authorized by the First-Stage Order and the Second-Stage Order because it furthers the original intention of the Block B Project to be an urban location to experience art, both through its programming and through the buildings’ superior design and materials.

⁸ ANC 5A, ANC 4B, and LRCA were all parties to the original proceeding in Z.C. Case 06-10.

The Application also continues to foster a synergistic artistic environment within the Property, which will enable a range of cultural and artistic uses to be explored and creating additional open spaces for pedestrians to enjoy while experiencing the FEZ. The Commission supports the addition of 23 additional residential units in the Residential Component of the Block B Project.

8. The Commission notes its previous determination in ZC Case No. 06-10D (Conclusion of Law No. 13 and Finding of Fact No. F.1.) that the Applicant is not required to provide any additional affordable housing in the Block B Project until the total number of residential units in the Overall PUD project exceeds 929. The Commission supports the Applicant's proffer of reserving three of the additional 23 residential units as IZ units.
9. The Commission concludes that the proposed modifications, including the reduction in the height of the drum and the removal of the "fort", are improvements to the design of the original Block B Project and are consistent with the massing, size, and mix of uses that were originally approved by the Commission in the Second-Stage Order.
10. The Commission agrees with the Applicant and DDOT that the proposed design and construction of the missing 3rd Street, N.E. segment is appropriate as currently proposed and will enhance pedestrian, bicycle, and vehicular safety. The Commission concludes, that through the DDOT approval process for the final design of the new 3rd Street, N.E. roadway, issues related to creating an appropriate and safe environment for the drop-off and pick-up of students at the schools located on Kennedy Street, N.E. will be appropriately addressed.

"Great Weight" to the Recommendations of OP

11. Pursuant to § 13(d) 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 (2001)) and Subtitle Z § 405.8, the Commission must give "great weight" to the recommendations of OP. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
12. The Commission notes OP's support for the Application and concurs in that judgment.

"Great Weight" to the Written Report of the ANC

13. 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)) and Subtitle Z § 406.2, the Commission must give "great weight" to the issues and concerns raised in the written report of the affected ANCs. To satisfy this great weight requirement, District agencies 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. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).)

14. The Commission finds ANC 5A's resolution in support for the Application persuasive and concurs in the judgment that the proposed modifications are all improvements to the previously approved Block B Project.
15. The Commission finds ANC 4B's resolution in support of the Application persuasive. However, the Commission does not support the request of ANC 4B that the three IZ units be required to be family-sized and that they be limited to households making up to 50% MFI.⁹ The Commission believes that the benefits and amenities proposed by the Applicant are significant and are consistent with the Commission's previous approval of the Block B Project in the Second-Stage Order. The Commission does not believe that it is necessary to require additional benefits or amenities from the Applicant in order to approve this modification application. As noted above, the Commission concludes that through the DDOT approval process for the construction of the missing 3rd Street, N.E. street segment, ANC 4B's concerns regarding creating a safe environment for pedestrians, bicyclists, vehicles will be achieved. Similarly, the Commission concludes that the DDOT approval process for the construction of the missing 3rd Street, N.E. street segment will be able to appropriately address the creation of a safe environment for the drop-off and pick-up of students at the schools located on Kennedy Street, N.E.

DECISION

In consideration of the case record, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the request for a Modification of Significance to modify Condition Nos. A.1, B.1, B.2.f., C.3.e, E.1, and F.1 of Z.C. Order Nos. 06-10D and 06-10E, and the plans it approved, to read as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and underlined text). All other conditions in Z.C. Order No. 06-10, as modified by Z.C. Order Nos. 06-10A, 06-10C, 06-10D, and 06-10E, remain unchanged and in effect.

Condition No. A.1 of the Second-Stage Order is revised as follows:

A. First-Stage PUD Modifications

- 7.b. Building B shall be constructed as buildings not to exceed 80 feet in height and shall include approximately **57,218** 58,383 square feet of anchor retail and supporting retail uses; **8,784** 11,920 square feet of grocery; approximately **168,850** 138,356 square feet of cultural uses including a children's museum, immersive arts experience, and performance venue Meow Wolf; **279,224** 311,133 square feet of residential uses including **241** 261 market rate residential units, and no fewer than 30 affordable artist housing units and three IZ units; with a total gross floor area not to exceed **560,589** 551,020 square feet, and a floor area

⁹ The Commission concludes that ANC 4B's request related to the leases in the building on Block A with the former Riggs Plaza tenants are outside of the scope of this Modification of Significance application, which is related to the Block B Project.

ratio of 2.52 2.2. Building B shall have a maximum lot occupancy of approximately 62.9% 57.5% and contain approximately 717 494 parking spaces comprising approximately 46,513 31,228 square feet¹⁰;

Condition Nos. B.1 and B.2.f of the Second-Stage Order are revised as follows:

B. Block B Development

1. Building B will be developed in accordance with:
 - The architectural drawings dated May 2, 2019, at Exhibits 44A1-44A10 in Z.C. Case No. 06-10D; **and**
 - As amended and supplemented by the plans dated April 14, 2020 at Exhibits 2C-2C11 in Z.C. Case No. 06-10E; **and**
 - **As amended and supplemented by the plans dated November 21, 2021, at Exhibits 20C1-20C6 and 26A1-26A2**, as modified by the guidelines, conditions, and standards herein (collectively, the “Approved Plans”).
2. The Applicant shall have design flexibility from the Approved Plans in the following areas:
 - f. To increase or decrease the number of parking spaces provided in Building B within in five percent of 750 494 parking spaces; and

Condition No. C.3.e of the Second-Stage Order is revised as follows:

C. Transportation and Mobility Impact Mitigations:

3. **Prior to the issuance of the first certificate of occupancy for the Project (except as provided in (c),** the Applicant shall, subject to approval by DDOT at permitting:
 - e. The Applicant will fund and construct improve the pedestrian and vehicular infrastructure for the approximately 200-foot missing segment of 3rd Street, N.E. located at the western/southern terminus of Kennedy Street, N.E., subject to DDOT approval, and consistent with the materials provided in Exhibit 20A of the record. ~~by providing a new concrete 6-foot wide standard sidewalk, as well as an 8-foot wide asphalt bicycle lane, as shown on Exhibit 44E of the record~~

Condition No. E.1 of the Second-Stage Order is revised as follows

E. Promotion of the Arts and Uses of Special Value to the Neighborhood or the District of Columbia as a Whole:

10 The text incorporates the deletions and additions made by Z.C. Order Nos. 06-10D and 06-10E.

1. **Prior to the issuance of a certificate of occupancy for the Immersive Arts Space Meow Wolf Space**, the Applicant will provide evidence to the Zoning Administrator that residents of the District of Columbia will be able to receive discounted entry fees ~~that are 15% less than~~ compared to the admissions fees charged for similar non-DC residents. These discounted entry fees will be applicable for the life of the Project.

Condition No. F.1 of the Second-Stage Order is revised as follows

F. Benefits and Amenities:

1. *Affordable Housing.* **Prior to the issuance of a building permit for the residential portion of the Project**, the Applicant shall provide the Zoning Administrator with evidence that the recorded Affordable Housing Covenant for the entire PUD project has been amended to reserve the 30 artist housing units in Block B to households with incomes not exceeding 60% MFI. The period of affordability will be 20 years from the issuance of the first Certificate of Occupancy in Block B. Consistent with the affordable housing requirements of the First-Stage PUD Order, the 30 artist affordable units will be distributed vertically and horizontally through the **northern** residential building in Block B, but not on the upper two floors, at a ratio of unit types that are consistent with the market rate unit types.

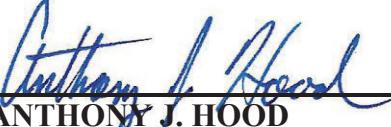
In addition, with regard to the three IZ units, the Applicant shall provide the Zoning Administrator with evidence of the filing of the covenant required by the Inclusionary Zoning Implementation Amendment Act of 2006 (D.C. Law 16-275, as amended; D.C. Official Code §§ 6-1041.05(a)(2) (2012 Repl.)). The location of the 30 artist units and the three IZ units shall be generally consistent with the locations shown in Exhibit 26A2 of the record.

The Overall PUD Order's 929 maximum residential units (up to 520 in Block A and 409 in Block C, location modified by this Order) are vested and so not subject to IZ requirements, but any additional residential units shall be subject to the IZ regulations at the time of the second-stage PUD application proposing the additional residential units.

VOTE (December 13, 2021): 5-0-0

(Robert E. Miller, Joseph S. Imamura, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 06-10G shall become final and effective upon publication in the *DC Register*; that is, on February 25, 2022.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-10H
Z.C. Case No. 06-10H
The Morris and Gwendolyn Cafritz Foundation
(Modification of Consequence of Second-Stage PUD @ Square 3765, Lot 11)
June 8, 2023

Pursuant to notice, at its June 8, 2023 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of The Morris and Gwendolyn Cafritz Foundation (the “Applicant”) for a Modification of Consequence to the conditions approved by Z.C. Order Nos. 06-10D, 06-10E, and 06-10G¹ (collectively, the “Second Stage Order”) that approved the following: in Z.C. Order No. 06-10D, a second-stage planned unit development (“PUD”) to construct a mixed-use building on Block B and modification to the first-stage PUD approved by Z.C. Order No. 06-10 (“First-Stage Order”); in Z.C. Order No. 06-10E, modification to the second-stage PUD to modify conditions of Z.C. Order No. 06-10D; and in Z.C. Order No. 06-10G modification to the second-stage PUD to modify conditions of Z.C. Order Nos. 06-10D and 06-10E.

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations”, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Background

1. In Z.C. Order No. 06-10, effective as of January 15, 2010, the Commission approved the consolidated and first-stage PUD application for Art Place at Fort Totten (“APFT”). The APFT project included development of four blocks, Blocks A-D, with Consolidated PUD approval for Block A, and First-Stage PUD approval for Blocks B, C, D. That approval was subsequently modified in Order 06-10A (which was a modification to shift the grocery store use from Building A to Building B) and 06-10C (which reduced the amount of parking provided in Building A), (collectively, the “First-Stage Order”). The First-Stage

¹ Z.C. Case No. 06-10F was withdrawn.

Order also granted a PUD-related map amendment for the Property to a combination of the C-2-B and FT/C-2-B zone, which became the MU-5A zone effective September 2016.

2. The Block B PUD Project, which was approved by Z.C. Order No. 06-10D (effective March 20, 2020), consists of a mixed-use building with two primary components – the Family Entertainment Zone (“FEZ”) and a residential component. The FEZ fronts on South Dakota Avenue and included the following uses: retail space/food hall; theatre/interactive space; gala/events space; Meow Wolf (an innovative arts collective); Explore! Children’s Museum; and an Aldi grocery store. The residential component of the Block B PUD Project, with frontage along the former 4th Street, N.E. (which was closed pursuant to DC Act 23-214), included approximately 271 units (30 reserved as artist affordable units) with ground floor retail spaces and ground floor artist maker spaces.
3. On April 21, 2020, the Applicant filed Modification of Consequence Application No. 06-10E which sought approval of modifications of the exterior architectural elements of the residential and FEZ components and to the open space along Kennedy Street, N.E. In addition, that application sought modifications of the internal square footages of the various FEZ components. The Commission approved the Modification of Consequence application in Z.C. Order No. 06-10E, which became effective on September 4, 2020.
4. On August 26, 2021, the Applicant filed Modification of Consequence Application No. 06-10F. The Commission determined the Application was more appropriately a Modification of Significance and Application No. 06-10F was withdrawn.
5. On October 19, 2021, the Applicant filed Modification of Significance Application No. 06-10G, which modified the residential (for a total of 294 units) and FEZ components of the building and included transportation infrastructure improvements. The Commission approved the Modification of Significance Application in Z.C. Order No. 06-10G, which became effective on February 25, 2022.

Parties and Notice

6. The parties to Z.C. Case Nos. 06-10D and 06-10E other than the Applicant were Advisory Neighborhood Commissions (“ANC”) 5A and 4B, the “affected” ANCs pursuant to Subtitle Z § 101.8, and the Lamond-Riggs Citizens Association (“LRCA”). In Z.C. Case No. 06-10G, other than the Applicant, ANCs 5A and 4B were automatically parties; LRCA did not request party status but did submit a letter to the record noting no objection to the modifications proposed in the application.
7. On April 28, 2023, the Applicant served the Application on ANCs 5A and 4B and LRCA, as well as the Office of Planning (“OP”) and the District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2, p. 7.)

The Application

8. On April 28, 2023, the Applicant filed the Application requesting to modify Z.C. Order Nos. 06-10D, 06-10E, and 06-10G to add a condition to provide for construction and

occupancy sequencing in order for the Applicant to deliver the Aldi Grocery Store and the Children's Museum spaces for tenant occupancy (as required by the leases for these spaces); and then continue with construction of other elements of Block B PUD Project without decommissioning of construction activity on the site. The Application and noted that it was not proposing any changes to the size, height, uses, or appearance of the Block B PUD Project. (Ex. 2.)

9. The Applicant also noted that there are currently no conditions in Z.C. Order Nos. 06-10D, 06-10E, or 06-10G that address the ability of the Applicant to open portions of the building as they are ready for occupancy. The Applicant stated that the purpose of the Application is to create a specific condition of the Commission's approval of the Block B PUD Project that the Applicant can refer to as it processes certificate of occupancy applications with the Department of Buildings, and specifically the Zoning Administrator's Office. (Ex. 2.)
10. The Applicant provided evidence that it had commenced construction activity on the site in January 2022, and to date has spent over \$75,000,000 on that activity. This work has included the following:
 - Undergrounding of all utilities along South Dakota Avenue, N.E. from Ingraham Street, N.E. to Kennedy Street, N.E.;
 - Abatement and demolition of the eight vacant residential buildings that previously were located on the property;
 - Enhancing the District's vehicular, bicycle and pedestrian circulation and safety through the construction of the missing portion of 3rd Street, N.E., allowing a connection to Kennedy Street, N.E.;
 - Construction of the underground parking structure (approximately 500 spaces) that services the entire Block B PUD Project;
 - Construction of the foundations for all of the Block B PUD Project elements;
 - Installation of all utilities (electric, gas, data, water and sewer) to the site to service each of the development's mixed-uses;
 - Environmental remediations and dewatering filtration systems;
 - Construction of a new traffic signal at South Dakota Avenue, N.E. and Ingraham Street, N.E.; and
 - Costs associated with the issuance of construction permits for the entire project. (Ex. 2.)
11. The Applicant proposed three distinct construction sequences. The details of these phases are as follows:

1st CONSTRUCTION AND OCCUPANCY SEQUENCE:

- Build the FEZ north block, which includes the ALDI grocery store and Children's Museum core and shell. The core and shell will be complete, including rooftop green roof areas. The Applicant intends to allow the ALDI grocery store to occupy their space first, with parking provided on B1 level of garage;

- In support of the occupancy of the ALDI grocery store and Children's Museum space within the commercial north block, construction of the below-grade garage, the north parking ramp to Kennedy Street, and the commercial loading docks will occur; and
- The extent of site development includes construction of the ALDI facades to the curb along South Dakota Avenue, with attendant civil improvements. In addition, the sidewalks up Kennedy Street and along South Dakota will be installed for pedestrian access to the ALDI and Children's Museum entrances/exits. The internal private road connection from Kennedy Street to the commercial loading dock will be built in order to provide access to the dock.

2nd CONSTRUCTION AND OCCUPANCY SEQUENCE:

- Construction of the balance of the FEZ central block, and the Residential East, North, and South buildings. The residential buildings will include at-grade, retail core and shell space; and
- The extent of site development includes construction of the approved site features to access the residential and retail entrances and exits. The alley will be constructed in order to provide access to the residential loading dock, rear entrance, and connection to the private street.

3rd CONSTRUCTION AND OCCUPANCY SEQUENCE:

- Construction of the balance of the FEZ building, primarily southern block, including the rotunda; and
- The extent of site development will include the remaining approved site features along the pedestrian sections of the private street and the perimeter of the FEZ building along Ingraham Street and South Dakota Avenue. (Ex. 2, 2C.)

12. In addressing the need for the proposed condition, the Applicant noted that despite the significant impediments that it has faced in commencing the construction of the Block B PUD Project (a global pandemic, the loss of tenants, unprecedented inflation and supply chain logistical issues, as well as global financial turmoil), construction activity is well under way. The creation of a condition in the Commission's approval of the Block B PUD Project that explicitly allows the identified uses to sequentially and safely occupy each block of space while construction activity continues on remaining portions of the site is essential to the Applicant's ability to finance and continue the construction of this important project. (Ex. 2.)

Responses to the Application

OP Report

13. OP submitted a report dated May 19, 2023, stating that it did not object to the Application being considered a Modification of Consequence and recommending approval of the Application (the "OP Report"). The OP Report noted that the proposed modifications would not change the material facts upon which the Commission based its previous

approvals in Z.C. Case Nos. 06-10D, 06-10E, and 06-10G. The OP Report also noted that the Application does not affect the project benefits or proffers and the project would contain the same mix of uses; however, the uses would be provided in sequence rather than simultaneously. (Ex. 4.)

Responses from Parties

14. ANC 5A submitted a written report dated June 1, 2023, stating that at its duly noticed public meeting of May 25, 2023, at which a quorum was present, ANC 5A voted 9-0 to support the Application (the “ANC 5A Report”). The ANC 5A Report noted that approval of the Application will help make sure that the community-supported uses in the Block B PUD Project can open as soon as possible. (Ex. 5.)
15. ANC 4B, submitted an e-mail on June 5, 2023, which stated that the Applicant made a presentation to ANC 4B at its May 22, 2023 Public Meeting. The ANC’s email informed the Commission that it did not intend to participate in this Application. (Ex. 6.)
16. LRCA, submitted an e-mail on June 7, 2023, which stated that the Applicant made a presentation to LRCA at its May 1, 2023 Public Meeting. LRCA’s email informed the Commission that it did not intend to participate in this Application. (Ex. 7.)

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make Modifications of Consequence to final orders and plans without a public hearing.
2. Subtitle Z § 703.3 defines a Modification of Consequence as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance”.
3. Subtitle Z § 703.4 includes “a proposed change to a condition in the final order” as an example of a Modification of Consequence.
4. The Commission concludes that the Application qualifies as a Modification of Consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify the conditions approved by the Block B Order, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.1.
5. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANCs 5A and 4B and LRCA.
6. The Commission concludes that because ANC 5A filed a response to the Application and because ANC 4B and the LRCA both submitted e-mails into the record noting that they did not intend to participate in the Application, the Commission could consider the merits of the Application at its June 8, 2023 public meeting, without first setting a timeframe for

the parties in the original proceeding to file responses as required by Subtitle Z § 703 17(c)(2).

7. The Commission finds that the Application is consistent with the Block B Project, as authorized by the First Stage Order and Block B Order because it furthers the original intention of the Block B Project. No changes to the size, height, uses, or appearance of the Block B PUD Project are proposed, no changes are proposed to the Block B PUD Project's benefits or proffers, and the purpose of the Application is solely related to construction and occupancy sequencing.
8. The Commission concludes that the proposed new condition to provide for construction and occupancy sequencing is appropriate and consistent with the Commission's prior approvals.

“Great Weight” to the Recommendations of OP

9. 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 (2001).) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
10. The Commission notes OP's lack of objection to the Application being considered as a Modification of Consequence and finds persuasive OP's recommendation that the Commission approve the Application and therefore concurs in that judgment.

“Great Weight” to the Written Report of the ANC

11. 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).) and Subtitle Z §406.2, the Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC. To satisfy this great weight requirement, District agencies 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. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).)
12. The Commission finds ANC 5A's support for the Application persuasive and concurs in that judgment.

DECISION

In consideration of the case record, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application's request for a Modification of Consequence to add a new condition to Z.C. Order Nos. 06-10D, 06-10E, and 06-10G and the plans it approved, to read as follows (additions in **bold** and underlined text). All other conditions

in Z.C. Order No. 06-10, as modified by Z.C. Order Nos. 06-10A, 06-10C, 06-10D, 06-10E, and 06-10G remain unchanged and in effect.

Condition No. B of the Second-Stage Order is revised to add the following condition:

B. Block B Development

The Applicant shall have the flexibility to process certificate of occupancy applications with the Department of Buildings for portions of the Project that are ready for occupancy, prior to the completion of construction of the entire Project and while construction activity is occurring on the Project. The Applicant anticipates a need to process certificate of occupancy applications for the ALDI grocery store tenant and the Children's Museum tenant to accommodate lease commitments while construction activity continues on various portions of the Project, including site infrastructure and improvements. Continuing construction activity shall occur in accordance with the construction and occupancy sequence details shown in the record for Z.C. Case No. 06-10H. (Ex. 2C.)

VOTE (June 8, 2023): 4-0-1

(Robert E. Miller, Joseph S. Imamura, Anthony J. Hood and Peter G. May to **APPROVE**; third mayoral appointee seat vacant, not voting).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 06-10H shall become final and effective upon publication in the *DC Register*; that is, on September 29, 2023.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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