

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-05E

Z.C. Case No. 13-05E

FC Ballpark, LLC

(First-Stage PUD Modification of Significance & Second-Stage PUD Approval
@ Square 744-S, Lots 807-813 and Square 744-SS, Lots 805, 808, & 809¹)
December 8, 2022

Pursuant to notice, at its December 8, 2022 public hearing, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of FC Ballpark, LLC (“Applicant”) for the following approvals for Square 744-S, Lots 807-813 and Square 744-SS, Lots 805, 808, and 809 (“Property”) under 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):

- Modification of significance to the First-Stage Planned Unit Development (“PUD”) approved by the Commission in Z.C. Order No. 13-05 (2014) (the “2014 Order”); and
- Second-Stage PUD approval for the development of the G1, G2, and G3 Parcels and the related privately-owned streets.

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

SUMMARY ORDER

Background and Prior Approvals

1. Pursuant to the 2014 Order, the Commission approved a First-Stage PUD for the portions of the Property known as the G1, G2, and G3 Parcels. The 2014 Order established the overall four-parcel configuration for the PUD, the re-establishment of the street grid, and the height, massing, and uses for the G1, G2, and G3 Parcels with a mix of residential and retail use.

¹ Originally, the application included Square 744-SS, Lots 805 and 802. Lot 805 is unchanged and remains part of the PUD. Lot 802 was subdivided into new Assessment and Taxation Lots 807 and 808. The new Lot 807 was removed from the PUD. The new Lot 808 remains part of the PUD. In addition, the new Assessment and Taxation Lot 809 is added to the PUD. (See Exhibit 20I of the case record showing newly created lots 807, 808, and 809; see narrative discussion of the modified PUD boundary lots at Exhibit 12; and see n.4 below regarding the addition of Lot 809.)

2. Pursuant to the 2014 Order, the Commission also approved a Consolidated PUD for the portion of the Property known as the F1 Parcel. The 2014 Order approved plans for the construction of a movie theater with above-ground parking on the F1 Parcel (“F1 Building”). Pursuant to Z.C. Order No. 13-05B (2016), the Commission approved a modification to the plans for the F1 Building.
3. Under the 2014 Order (which was issued under the 1958 Zoning Regulations), the Commission also approved a related map amendment from the CG/W-2 zone to the CG/CR zone (now CG-4 zone) for all of the Property except the G3 Parcel, for which the Commission approved a map amendment from the CG/W-2 zone to the CG/W-1 zone (now CG-6 zone).
4. The 2014 Order set forth the approved benefits and amenities of the PUD.
5. Under the 2014 Order, a building permit for the F1 Building was required to be filed within two years of the effective date of the 2014 Order, and Second-Stage PUDs for the remaining parcels were required to be filed within 12 years of the effective date of the 2014 Order. Pursuant to Z.C. Order Nos. 13-05A (2016), 13-05C (2018), 13-05D (2020), 13-05D(1) (2021), and 13-05D(2) (2022), the validity of the 2014 Order was extended; and as of the most recent extension the 2014 Order’s validity is set to expire on February 7, 2023.

Parties

6. The parties to the 2014 Order included both Advisory Neighborhood Commission (“ANC”) 6D as well as District of Columbia Water and Sewer Authority (“DC Water”) as a party in support.
7. In addition to the Applicant, ANC 6D, as the ANC in which the Property is located, was automatically a party to this proceeding as an “affected ANC” pursuant to Subtitle Z §§ 101.8 and 403.5(b). No other requests for party status were received.

Notice

8. Pursuant to Subtitle Z § 300.7, the Applicant mailed a Notice of Intent to File the Application on April 14, 2022 to ANC 6D, DC Water, and the owners of all other property within 200 feet of the Property. (Exhibit [“Ex.”] 3C.) On July 8, 2022, the Applicant served the Application on the D.C. Office of Planning (“OP”), the District Department of Transportation (“DDOT”), ANC 6D, and DC Water, attested to by the certificate of service included in the Application. (Ex. 2.)
9. Pursuant to Subtitle Z § 402, the Office of Zoning (“OZ”) sent notice of the December 8, 2022 public hearing, on October 6, 2022, and published notice of the public hearing in the October 21, 2022 *D.C. Register* (69 DCR 012812 *et seq.*), as well as on the calendar on OZ’s website. (Ex. 13, 14, 16.)
10. Pursuant to Subtitle Z §§ 402.8-402.10, the Applicant submitted affidavits of posting and maintenance dated October 27, 2022 and December 2, 2022, respectively, confirming all posting and maintenance requirements were met. (Ex. 18, 23.)

Property and Current Zoning

11. The Property consists of approximately 5.4 acres of land area that is bounded by N Place, S.E., 1st Street, S.E., the Anacostia Riverwalk Trail, and DC Water’s Headquarters and Main Pumping Station. The Property is currently improved with a handful of one-story buildings, including the Fleet Maintenance building on the G1 Parcel. (Ex. 3.)
12. Pursuant to the 2014 Order, the F1, G1, and G2 Parcels as well as the intervening privately-controlled streets are located in what is now the CG-4 zone under the 2016 Zoning Regulations. The G3 Parcel is located in what is now the CG-6 zone under the 2016 Zoning Regulations. (Ex. 3.)

Comprehensive Plan (Title 10-A DCMR)

13. The bulk of the Property is designated as mixed-use Medium Density Residential and Medium Density Commercial on the Future Land Use Map (“FLUM”) of the Comprehensive Plan for the National Capitol, Title 10-A DCMR (DC Law 24-20, effective August 21, 2021) (“Comprehensive Plan” or “Plan”). The portion of the Property along the Anacostia River is designated as Parks, Recreation, and Open Space on the FLUM. (Ex. 3H.)
14. The Property is designated as a Neighborhood Enhancement Area on the Comprehensive Plan’s Generalized Policy Map (“GPM”). The GPM also places the Property within a Resilience Focus Area. (Ex. 3H.)

Summary of the Application

Introduction

15. On July 8, 2022, the Applicant submitted the Application requesting:
 - Modification of the First-Stage PUD to:
 - Adjust the public benefits and amenities to increase the affordable housing commitment and increase the sustainability commitment to LEED Gold on the G1 and G2 Parcel buildings; add a public benefit commitment of approximately 3,000 square feet of retail incubator space to the G1 Parcel building; increase the footprint of the public park on the G3 Parcel; and eliminate the proposed movie theater on the F1 Parcel;
 - Adjust the southern site boundary to align with the edge of the Anacostia Riverwalk trail including a net change of approximately 1,726 square feet added to the G3 Parcel;
 - Replace above-grade parking on the G1 and G2 Parcels with additional residential use;
 - Adjust the design of the privately-controlled streets to introduce curbless design features and accommodate of DC Water access needs via O Street as shown on the Final Plans; and
 - Adjust the phasing and timing of the development of the PUD, including to allow development of the G Parcels to precede the F1 Parcel and allow flexibility to return to the Commission to update the plans for the F1 Parcel; and (together, the “Modification”)

- Second-Stage PUD approval for the G1, the G2, and G3 Parcels and the associated privately-owned streets. (Ex. 3, 20.)

Project Description

16. As set forth on pages MP-05 and MP-06 of the master plan, the F1 and G1 Parcels will comprise a single lot of record consisting of two buildings together with the intervening section of Yards Place, the G2 Parcel will be located on a single lot of record together with the surrounding sections of Yards Place and Potomac Avenue, and the G3 Parcel will be located on a single lot of record. (Ex. 3K2A.)
17. The G1 Parcel will be developed with a mixed-use building containing approximately 433 residential units, approximately 23,204 square feet of ground-floor retail space, and approximately 119 parking spaces (“G1 Building”). The G1 Building will be constructed to a maximum height of 130 feet as measured from O Street, S.E., a maximum FAR of approximately 3.9 as measured against the record lot (8.1 FAR as measured against the G1 Parcel, or approximately 416,986 square feet of gross floor area), and lot occupancy of approximately 40% (84% as measured against the G1 Parcel). (Ex. 20C1.)
18. The G2 Parcel will be developed with a mixed-use building containing approximately 248 residential units, approximately 24,750 square feet of ground-floor retail space, and approximately 108 parking spaces (“G2 Building”). The G2 Building will be constructed to a maximum height of 130 feet as measured from O Street, S.E., a maximum FAR of approximately 4.0 as measured against the record lot (7.5 as measured against the G2 Parcel, or approximately 305,284 square feet of gross floor area), and lot occupancy of approximately 36% (75% as measured against the G2 Parcel). (Ex. 20D1.)
19. The G3 Parcel will be developed with a 33,000 square foot expansion of Diamond Teague Park (“Park”). The Park will be developed with a variety of areas including an urban plaza, an open green space, an area comprised of garden mounds and play nooks with children’s play equipment, a grove, and a “get down” area along the river edge. (Ex. 20B.)
20. The streets (“Streets”) will consist of (a) privately-owned curbless streets along Yards Place and Potomac Avenue, including a large plaza and café zone along the north side of Potomac Avenue adjacent to the G2 Parcel, and (b) O Street, which will serve as a primary vehicular access location and will be a more traditional curbed street. (Ex. 3, 3K4.)
21. The G1 Building, G2 Building, Park, and Streets together comprise the “Project.”
22. In addition to the previously approved PUD-related rezoning to the CG-4 and CG-6 zones, the Applicant requested the following areas of relief and flexibility:
 - Flexibility from the rear yard, public open space/plaza, and penthouse single enclosure, screening, and uniform height² requirements for the G1 Building;
 - Flexibility from the public open space/plaza requirements for the G2 Building;

² In its supplemental pre-hearing submission, the Applicant requested additional flexibility from penthouse screening and uniform height requirements. (Ex. 20.)

- Flexibility from the waterfront setback requirements for the Park;
- Flexibility to phase the development and construction of the Project; and
- Flexibility to return to the Commission for updated plans for the F1 Parcel. (Ex. 3, 20.)

Applicant's Submissions

23. In addition to the initial Application and testimony at the public hearing, the Applicant made the following submissions into the record, which updated and supplemented the Application:
- A September 29, 2022, pre-hearing submission containing information that clarified the lots associated with the Modification of the southern site boundary, including the creation of Lot 809 to represent the accreted land comprising part of the G3 Parcel (Ex. 12, 12A-12C);
 - An October 24, 2022, Comprehensive Transportation Review (“CTR”) concluding that the Project will not have a detrimental impact to the surrounding transportation network assuming the proposed site design elements, mitigation measures, and Transportation Demand Management Plan are implemented (Ex. 17, 17A-17B.);
 - A November 18, 2022 supplemental pre-hearing submission containing updated plans for the Park design (Ex. 20B); updated plans for the G1 Building (Ex. 20C1-20C2.) and the G2 Building (Ex. 20D1-20D2.) façade design and materials and updated signage plans; a request for additional flexibility relief from the penthouse screening and uniform height requirements for the seating and penthouse enclosure on the southwest side of the G1 Building as shown on Pages G1-21 and G1-47 of Ex. 20C1 and 20C2, respectively; the addition of approximately 3,000 square feet of retail incubator space on the ground floor of the G1 Building to the Application’s public benefits and amenities proffer; and other supporting information, including a Racial Equity Analysis (Ex. 20, 20A, 20E – 20I.); and
 - A December 8, 2022 hearing submission, including the Applicant’s presentation as well as an updated Transportation Demand Management Plan (“TDM Plan”) incorporating comments from DDOT. (Ex. 25A, 25B1-B5).
24. On January 27, 2023, the Applicant filed draft findings of fact and conclusions of law. (Ex. 27).

Zoning Commission Consideration of the Application

25. At a September 29, 2022, virtual public meeting, the Commission considered the Application and voted to set the Application down for a public hearing.
26. The Commission held a public hearing on the Application pursuant to notice via videoconference at 4:00 PM on December 8, 2022.
27. At the close of the December 8, 2022 public hearing, the Commission took final action by a vote of 3-0-2 to approve the Application.

PUD Evaluation Standards

Balancing Standard (Subtitle X § 304.3)

28. For the reasons set forth in the record and summarized in this Order, the Applicant asserted that the development incentives and impacts of the PUD are appropriate and fully justified given the public benefits, project amenities, and positive impacts of the PUD as modified.

Not Inconsistent with the Comprehensive Plan (Subtitle X § 304.4(a))

29. In the 2014 Order, the Commission concluded that the First-Stage PUD, including its proposed height, density, and mix of uses, were not inconsistent with the Comprehensive Plan. Since that time, the Comprehensive Plan has been amended, with a particular focus on advancing racial equity and ensuring environmental resiliency. The amended Comprehensive Plan requires the Commission to evaluate all actions through a racial equity lens as part of its Comprehensive Plan consistency analysis. (10-A DCMR § 2501.8.) In this Application, the Applicant stated that the PUD, as amended by the Modification and supplemented by the Second-Stage PUD, remains not inconsistent with the Comprehensive Plan (as the Plan has been amended) for the reasons set forth below:

- The PUD remains consistent with the Medium Density Residential / Medium Density Commercial and Parks, Recreation, and Open Space FLUM designations. Among other reasons, the approved CG-4 zoning, which is analogous to the MU-10 zone, is directly consistent with the Medium Density Commercial designation; the density of the Project, at 5.8 FAR, is within the 4.0-6.0 FAR range noted as consistent with the Medium Density Commercial designation. Though the Project FAR, and the FAR of both the G1 and G2 Buildings (based on the underlying Parcel), exceed the 1.8-4.0 FAR range noted as consistent with the Medium Density Residential designation, the designation notes that greater density is possible when approved through a PUD. In this case the density is justified by the additional affordable housing generated from the PUD (which will quadruple from approximately 48 to 204 units with the Modification thus greater density would be consistent with the designation). In addition, the Modification will ensure that the Park portion of the Project, which is closest to the Anacostia River, is improved as a space for public recreation increasing consistency with the Parks, Recreation, and Open Space designation for the Property (Ex. 3H.);
- The PUD is consistent with the Neighborhood Enhancement Area GPM designation³ because it will revitalize the currently underutilized site and reintroduce the urban street grid (Ex. 3H.);
- The Project advances racial equity as a process, consistent with the Comprehensive Plan, 10-A DCMR § 213.6, through the Applicant's successful community engagement efforts and integration of community priorities such as increased affordable housing, family-sized units, retail incubator space, and an enlarged public park, as evidenced by ANC 6D's unanimous support (Ex. 3H, 20E.);
- The Project advances racial equity through multiple outcomes, per 10-A DCMR § 213.6, including extensive amounts of affordable housing and with half at levels of deep affordability, job creation and entrepreneurial / small business support through

³ The 2014 Order evaluated the PUD under the then-applicable "Land Use Change" designation on the GPM.

the construction of the PUD as well as through the retail incubator space, and through increased open space. The PUD will not result in any physical displacement of residents or private businesses (Ex. 3H, 20E.);

- The Project incorporates many specific building and site resilient design strategies to manage impacts from flooding, extreme heat, and along waterfront areas as recommended by the “Resilient Design Guidelines” methodology published by the District Department of the Environment (“DOEE”) (Ex. 20F.);
- The PUD remains consistent with many other policies and goals of the Comprehensive Plan’s Citywide Elements (Ex. 3H.); and
- The PUD remains consistent with the policies and goals of the Plan’s Area Elements (Ex. 3H.).

No Unacceptable Project Impacts (Subtitle X, § 304.4(b))

30. In the 2014 Order, the Commission concluded that the PUD was consistent with the scale and character of the surrounding area, the impacts of the PUD on city services were not unacceptable, and the transportation impacts were acceptable given the quality of the public benefits of the PUD. Here, the Applicant asserted that the impacts of the PUD, as modified and supplemented by the Application, remain acceptable for the following reasons:

- Zoning and Land Use Impacts. The Application is consistent with the zone categories, uses, and height and density parameters already approved by the Commission in the First-Stage PUD. The zoning, uses, height, and density all remain compatible with the surrounding area, which is generally marked with urban mixed-use development of a similar scale (Ex. 3.);
- Housing Impacts. The Modification more than quadruples the amount of affordable housing generated by the PUD and reserves such housing for low- and very low-income households. The Project also contains a mix of unit types, including three-bedroom family-sized apartments, to accommodate a variety of household sizes. All housing is net new housing that will not displace any existing residents, and the increase in housing supply will help to meet the continued demand for new housing in the Capitol Riverfront market (Ex. 3.);
- Economic Impacts. The Project will generate revenue through tax revenue and other spinoff economic benefits (Ex. 3.);
- Open Space, Urban Design, and Massing Impacts. The Park, private streets, and building design and materials all create positive impacts on the surrounding built environment. The Applicant has also maintained its preservation commitments, which further ground the Project in the unique site context (Ex. 3.);
- Transportation and Mobility Impacts. The Applicant’s CTR affirmed that the Project will not have a detrimental impact on the surrounding transportation network based on the site design elements, mitigation measures, and TDM Plan included in the PUD, as evidenced by DDOT’s report in support (Ex. 17A, 21.);
- Environmental and District Utility Impacts. The Modified PUD’s program and uses, which have not appreciably changed, continue to have no unacceptable impacts on the surrounding environment or District utilities and, indeed, the Project now incorporates current best practices with respect to floodplain resiliency and sustainable design (Ex. 3, 20F.);

- Public Facilities: DC Water. The modified PUD incorporates several revisions and modifications that address DC Water’s concerns and ensure that the impact of the development on DC Water is not unacceptable, as evidenced by DC Water’s letter in support (Ex. 3, 24.);
- Public Facilities: Parks. The Modification includes a more expansive publicly accessible park that includes a variety of active and passive spaces; its impacts will be favorable for surrounding residents of all ages (Ex. 3.); and
- Public Health and Safety Impacts. The Project will be designed in accordance with all construction codes, integrate sustainable and wellness design features, locate vehicular entrances away from the primary pedestrian streets, and incorporate ground-floor and upper-story pedestrian-activating uses, all of which further public safety (Ex. 3.).

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

31. As amended by the Modification and supplemented by the Second-Stage PUD, the PUD includes the following public benefits and project amenities, which the Applicant maintained are not inconsistent with the Comprehensive Plan and other adopted public policies and active programs related to the Property:

- Superior Urban Design (X § 305.5(a)). The massing, articulation, materiality, balconies, terraces, and other design features of the Project;
- Creation of Open Spaces (X § 305.5(b)). The creation of a new permanent, approximately 33,000-square-foot waterfront park;
- Site Planning and Efficient Land Utilization (X § 305.5(c)). The redevelopment of the former District-owned utility yard into four new city blocks and reconnection to the waterfront;
- Historic Preservation of Structures and Places (X § 305.5(e)). The preservation of the Fleet Maintenance building and architectural acknowledgement of the historic Potomac Avenue right of way;
- Housing in Excess of Amount Required under Matter-of-Right Zoning (X § 305.5(f)(1)). The provision of greater than 7.0 FAR of housing on the G1 and G2 Parcels, which significantly exceeds the 4.8 FAR permitted by right under the underlying CG-5 zoning. This includes the Modification’s replacement of above-grade parking with housing and the inclusion of habitable penthouses, both of which further increase the amount of housing within each building;
- Three-Bedroom Units (X § 305.5(f)(3)). The incorporation of three-bedroom units in both the G1 and G2 Buildings;
- Affordable Housing (X § 305.5(g)). Affordable housing that is far superior to both matter-of-right development and the requirements of the First-Stage PUD, both in terms of set-aside amount (30%) and levels of affordability (half at 30% of Median Family Income (“MFI”) and half at 60% of MFI). As modified, the PUD will deliver approximately 204 affordable housing units, more than four times the 48 units proffered in the First-Stage PUD and at levels of affordability well below the 80% of MFI proffered in the First-Stage PUD;
- Environmental and Sustainable Benefits (X § 305.5(k)). The commitment to LEED Gold design under the v4 rating system – a significant increase over the LEED Silver

commitment from the First-Stage PUD – as well as the incorporation of multiple resilient design measures;

- Outdoor Children’s Play Area (X § 305.5(m)). The inclusion of over 1,500 square feet of dedicated area for children’s play equipment in the Park, which satisfies a commitment from the First-Stage PUD;
- Private Street Infrastructure (X § 305.5(o)). The construction of new private streets that will be open to public use and incorporate high-quality materials and curbsless design, all well in excess of what is needed to mitigate the impacts of the PUD and which go beyond the First-Stage PUD commitments; and
- Uses of Special Value (X § 305.5(q)). The reservation of approximately 3,000 square feet of retail incubator space on the ground floor of the G1 building fronting Yards Place for emerging and start-up businesses, as shown on Pages G1-12 and G1-13 of the G1 Building Plans (Ex. 20C1), which goes above and beyond what was proffered in the First-Stage PUD and is therefore an additional public benefit offered in this Application.

(Ex. 20.)

Consistency with the First-Stage PUD (Subtitle X §§ 308.3, 309.2)

32. The Applicant submitted evidence that the Project is consistent with the First-Stage PUD, as modified by the Application. (Ex. 3I.)

Responses to the Application

33. OP submitted a set down report dated September 19, 2022, recommending that the Commission set down the Application for a public hearing. OP concluded the Application is not inconsistent with the goals and intent of the Comprehensive Plan and the policies viewed through the racial equity lens or the requirements of the Zoning Regulations. OP expressed support for the overall site design changes and the updated public benefits package requested in the Modification. (Ex. 11.)
34. OP submitted a hearing report dated November 28, 2022, recommending the approval of the Application, including the Modification, the Second-Stage PUD, and the Applicant’s proposed conditions of approval. Again, OP affirmed that the proposal remained not inconsistent with the Comprehensive Plan maps and written elements and meets the requirements of the Zoning Regulations because the PUD will not result in unacceptable impacts and its public benefits will balance the requested development flexibility. OP remains in support of the modification to the First-Stage PUD and expressed support for the Applicant’s plans to return to the Commission for a revised F1 Parcel program and design in a subsequent Second-Stage PUD application. OP evaluated the Second-Stage PUD requests for all three G Parcels and supported the zoning flexibility requested for each Parcel. OP also expressed support for the updated public benefits package. Again, OP evaluated the Project through a racial equity lens and concluded the outcomes would be meaningfully positive. (Ex. 22.)
35. DDOT submitted a report dated November 28, 2022, expressing no objection to the Application provided that the Applicant implement its TDM Plan and supplement it with additional strategies proposed by DDOT. DDOT expressed support for the location and

design of site access, including the proposed G1 Parcel curb cuts on N Place, the amount of vehicle and bicycle parking, and the proposed mitigation measures (as supplemented by DDOT's recommendations). (Ex. 21.) At the hearing, the Applicant submitted an updated TDM Plan incorporating recommendations from DDOT, and DDOT and the Applicant each testified that the updated TDM Plan was acceptable. (Ex. 25A; Transcript ["Tr.,"] December 8, 2022, at 11-12, 33.)

36. By letter dated October 11, 2022, ANC 6D stated that at its October 11, 2022, regularly scheduled and duly noticed public meeting, with a quorum present, it voted unanimously to support the Application. ANC 6D expressed strong support for the positive changes to the PUD, including the increased affordable housing, the proposed Park, and the inclusion of retail incubator space. ANC 6D also expressed support for the design of the Project. The report did not list any issues or concerns. (Ex. 19.)
37. By letter dated November 29, 2022, the District of Columbia Deputy Mayor for Planning and Economic Development submitted a letter in support of the Application. (Ex. 26.)
38. By letter dated December 7, 2022, DC Water submitted a letter in support of the Application, noting that the Applicant had collaborated with DC Water to integrate all of its requirements for O Street. (Ex. 25.) DC Water recommended modifications to the Applicant's proposed conditions to memorialize these agreements, and the Applicant agreed to these conditions. (Ex. 25A; Tr. Dec. 8 at 12, 38.)

CONCLUSIONS

Authority

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 Rep1.)), the Commission may approve a PUD and modifications to an approved PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 704.
2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
 - (a) *Results in a project superior to what would result from the matter-of-right standards;*
 - (b) *Offers a commendable number or quality of meaningful public benefits; and*
 - (c) *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
3. Pursuant to Subtitle X § 304.3, in evaluating a proposed PUD, 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.

4. Pursuant to Subtitle X § 304.4, to approve a proposed PUD, the Commission must determine 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.*

5. A PUD's proposed public benefits must comply with Subtitle X § 305.12:

A project may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many.

6. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the Plan's purposes as:
 - (1) *to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
 - (2) *to guide executive and legislative decisions on matters affecting the District and its citizens;*
 - (3) *to promote economic growth and jobs for District residents;*
 - (4) *to guide private and public development in order to achieve District and community goals;*
 - (5) *to maintain and enhance the natural and architectural assets of the District; and*
 - (6) *to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*

7. In determining whether a PUD is not inconsistent with the Comprehensive Plan, the Commission shall balance the various elements of the Plan. The District of Columbia Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)):

“The Comprehensive Plan is a ‘broad framework intended to guide the future land use planning decisions for the District. Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). ‘[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.’ (Durant v. District of Columbia Zoning Comm’n, 65 A.3d 1161, 1168 (D.C. 2013).) The Comprehensive Plan reflects numerous ‘occasionally competing policies and goals,’ and, ‘[e]xcept where specifically provided, the Plan is not binding.’ (Id. at 1167, 1168 (internal quotation marks omitted).) Thus ‘the Commission may balance competing

priorities’ in determining whether a PUD is consistent with the Comprehensive Plan as a whole.’ (*D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013).) ‘[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.’”

(*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016) (internal quotation marks and references omitted).)

8. The Comprehensive Plan also requires the Commission evaluate all zoning actions through a racial equity lens. (10-A DCMR § 2501.8.) Consideration of equity is intended to be based on the policies of the Plan, and part of the Commission’s consideration of whether the PUD and modifications to an approved PUD in this case are “not inconsistent” with the Plan, rather than a separate determination about a zoning action’s equitable impact.
9. The Plan’s Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (10-A DCMR § 213.6.) Further, “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development, and employment opportunities.” (10-A DCMR § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (10-A DCMR § 213.9.)
10. The Plan’s Implementation Element provides guidance to help guide the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states that “[a]long with consideration of the defining language on equity and racial equity in the Framework Element, guidance in the Citywide Elements on District-wide equity objectives, and the Area Elements should be used as a tool to help guide equity interests and needs of different areas in the District.” (10-A DCMR § 2501.6.)

Modification - Scope of Review

11. Pursuant to Subtitle Z § 704.4, the scope of the Commission’s hearing to evaluate the modification “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.” The Commission interprets this to mean that the scope of the Commission’s review of modification is limited to impact of the changes to the original application and does not include revisiting aspects of the original decision that are not changing.
12. As described in detail in Findings of Fact Nos. 15, 22, and 23, this Application includes the following requests that are either new or modified from the original application and which accordingly are subject to Commission review in this case:
 - Modification of Significance to the First-Stage PUD approved by the 2014 Order; and

- Second-Stage PUD approval for the G1, G2, and G3 Parcels as well as the associated privately-owned streets (together, the “Modified PUD”).

The requested Modification does not change the PUD-related map amendments approved through the 2014 Order.⁴ Accordingly, the Commission will not revisit this aspect of its original decision, and considers it vested for purposes of considering the impact of the modifications sought through this Application.

13. Pursuant to Subtitle A § 102, the PUD approved by the Order is vested under the 1958 Zoning Regulations under which it was approved and is subject to those rules, except that any modification shall be subject to the current 2016 Zoning Regulations. However, because of the comprehensive scope and number of changes included in Modified PUD, the Commission applied the current Zoning Regulations to its review of the Application.

Consistency with the Comprehensive Plan (Subtitle X § 304.3(a))

14. As discussed above, the Commission did not revisit the decision made in the 2014 Order to approve the PUD-related map amendments. Accordingly, there was no need to consider whether the PUD-related map amendments were consistent with the Comprehensive Plan in deciding this new application.
15. The Commission considered whether the Modified PUD is not inconsistent with Comprehensive Plan, and concludes the revised Project is not inconsistent with the Plan for the reasons set forth in the record and summarized in Finding of Fact No. 29.

Potential Adverse Impacts – How Mitigated or Outweighed (Subtitle X § 304.4(b))

16. The Commission concludes that any moderate adverse impacts created by the Modified PUD are acceptable and sufficiently mitigated for the reasons summarized in Finding of Fact No. 30 and detailed in the record.

PUD Flexibility Balanced Against Public Benefits and Potential Adverse Effects (Subtitle X §§ 304.4(c) and 304.3)

17. The Commission balanced: (a) the enhanced public benefits of the Modified PUD; against (b) the reduction in the public benefits by removing the movie theater from the F1 Parcel; (c) the additional flexibility relief required by the Project; and (d) the potential adverse effects of the Project as a result of the Modified PUD. The Commission concludes that the enhanced public benefits of the Modified PUD, summarized in Finding of Fact No. 31 and detailed in the record, are sufficient to justify the additional flexibility requested and approval of the Project.

⁴ At the hearing, counsel for the Applicant confirmed that Lot 809—the parcel being added to the PUD site—constituted accreted land that was also subject to the PUD and related rezoning by operation of law. Pursuant to § 107.6 of the 1958 Zoning Regulations (now codified as Subtitle A Section 206.6), the Commission’s 2014 Order rezoned not only the Property but also the riparian rights associated with the Property. Under this section, a rezoning extends out to the greater of the pierhead or the mean high water level; here, this means that the 2014 Order extended beyond the then-recognized property line to include not only the submerged lands within the Anacostia River but also the land that is now Lot 809, which is considered accreted land that had not been previously noted in the District’s land or tax records. (Tr. Dec. 8, 2022, at 12-13.)

Second-Stage PUD Approval

18. 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.”
19. If the 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 Commission shall grant approval to the Second-Stage application, including any guidelines, conditions, and standards that are necessary to carry out the Commission’s decision. Subtitle X § 309.2.
20. The Commission concludes the Application is in accordance with the purposes of the Zoning Regulations, the PUD process, and the First-Stage Order, as modified by this Order. Accordingly, the Commission concludes that approval of the Second-Stage PUDs for the G1, G2, and G3 Parcels and the privately-owned streets, is justified.

Great Weight to 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. The Commission found OP’s analysis of the Application, its conclusion that the Application remained not inconsistent with the Comprehensive Plan maps and written elements and satisfied the PUD requirements, and its recommendation to approve the Application persuasive, and concurs with this judgment.

Great Weight to Written Reports of the Affected ANC

23. 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 acknowledge the ANC’s issues and/or concerns, then articulate with particularity and precision the reasons why the affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo.*, 141 A.3d at 1087.) If there are no issues or concerns expressed, then there is nothing to which to give “great weight.” (*Id.*)
24. The Commission finds persuasive ANC 6D’s support for the Application, which was provided in a written report as noted in Finding of Fact No. 36, above, and the Commission concurs with ANC 6D’s support. The ANC report did not list any issues or concerns.

Summary Order

25. Since no persons or parties appeared in opposition to the Application, a decision by the Commission to grant the Application would not be averse to any party. Indeed, both ANC 6D and DC Water, parties to the original proceeding, supported the Application. Therefore, pursuant to Subtitle Z § 604.7, the Commission authorized a Summary Order in this case and determined it may waive the requirement that exhaustive findings of fact and conclusions of law accompany the Order because such waiver will not prejudice the rights of any party.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Commission concludes the Applicant has satisfied its burden of proof and therefore APPROVES the Application subject to the following conditions (whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in **bold and underlined text**):

A. Project Development

1. The Project shall be built in accordance with the plans and elevations dated July 5, 2022 (Ex. 3K1-3K5G, 3L1-3L2, 3M1-3M3.), as updated by the plans dated November 18, 2022 (Ex. 20A, 20B, 20C1-C2, 20D1-D2.); collectively, the “Final Plans”), as modified by the guidelines, conditions, and standards herein.
2. The Project shall consist of the following:
 - a. The G1 Parcel shall be developed with a mixed-use building with approximately 433 multifamily residential units and approximately 23,200 square feet of ground-floor commercial use and having a height of 130 feet and FAR of 8.1 (“G1 Building”);
 - b. The G2 Parcel shall be developed with a mixed-use building with approximately 248 multifamily residential units and approximately 24,750 square feet of ground-floor commercial use and having a height of 130 feet and FAR of 7.5 (“G2 Building” and, together with the G1 Building, the “Buildings”);
 - c. The G3 Parcel shall be developed with a park consisting of approximately 33,000 square feet of landscaped and hardscaped park space (“Park”); and
 - d. The Street Parcels shall be developed with a privately-owned street network (“Streets”).
3. The ground-floor commercial use in the G1 and G2 Buildings shall consist of uses in the retail; service; eating and drinking establishment; entertainment, assembly, and performing arts; arts, design, and creation; education; medical care; daytime care; and/or animal care use groups as set forth in Subtitle B of the Zoning Regulations.
4. The G1 and G2 Parcels shall be developed pursuant to the CG-4 zone, and the G3 Parcel shall be developed pursuant to the CG-6 zone, except as set forth herein or

modified hereby as shown on the Final Plans, and with the following areas of flexibility:

- G1 Parcel: flexibility from the rear yard, plaza, and penthouse single enclosure, uniform height, and screening requirements;
- G2 Parcel: flexibility from the plaza requirements; and
- G3 Parcel: flexibility from the waterfront setback requirement.

5. The Project shall have design flexibility as follows:

- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not substantially change the exterior configuration or appearance of the structure, and do not prevent compliance with the conditions of this Order that require the Applicant to provide the identified public benefits;
- b. To vary the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Final Plans;
- c. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the Final Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
- d. To make refinements to the approved unit mix and number of residential dwelling units, including affordable units, of plus or minus five percent (5%), so long as a minimum of 30% of the units are set aside as affordable housing pursuant to the Land Disposition Agreement with the District;
- e. To make refinements to the approved parking configuration, including layout and number of parking spaces plus or minus five percent (5%);
- f. To increase the approved GFA of the G1 Building by up to 3,000 square feet in order to accommodate relocation of the building's electrical room if necessary to comply with applicable floodplain regulations;
- g. To vary the location, attributes, and general design of the approved streetscape and other design elements in public space to comply with the requirements of, and the approval by, the DDOT Public Space Division;
- h. To vary the final streetscaping and landscaping materials on private property as shown on the Final Plans based on availability and suitability at the time of construction, to incorporate materials consistent with adjacent public space, or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, Department of Buildings, or other applicable regulatory bodies;
- i. To vary the amount, location/orientation and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long the G1 and G2 Buildings each achieve a minimum GAR of 0.2;
- j. To modify the final building designs to the extent necessary in order to achieve compliance with applicable floodplain regulations;

- k. To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Final Plans and remain compliant with all applicable penthouse requirements;
- l. To vary the final design and layout of the indoor and outdoor amenity spaces to reflect their final design and programming; and
- m. To vary the final design of the ground floor frontage, including the number, size, design, and location of windows and entrances, signage, awnings, canopies, marquees, and similar storefront design features, to accommodate the needs of the specific tenants and users within the parameters set forth in the Final Plans.

B. **Public Benefits**

1. **Incubator Retail. For the life of the Project**, the Applicant shall reserve a minimum of 3,000 square feet within the G1 Building, as shown on Pages G1-12 and G1-13 of Ex. 20C1, for “incubator” retail tenants intended to serve small, local, and start-up businesses. Incubator space shall be provided to tenants built out as conditioned and lit space. The Applicant shall make reserved incubator space available to qualified tenants at a rate that is a minimum of 10% below then prevailing market-rate rents.
2. **LEED**. The G1 and G2 Buildings shall each achieve certification from the U.S. Green Building Council at the level of LEED Gold v4, provided that the Applicant shall have the flexibility to vary the approved sustainable features of the Project as long as the total number of LEED points achievable for the Project does not decrease below the minimum required for the foregoing LEED standard. **Prior to the issuance of a building permit for each Building**, the Applicant shall submit evidence of registration of that Building with the U.S. Green Building Council as well as a copy of the applicable LEED scorecard, and further, the Applicant shall submit an updated LEED scorecard **prior to the issuance of a Certificate of Occupancy for that Building**, each to demonstrate compliance with this condition.
3. **Diamond Teague Park. For the life of the Project**, the Applicant shall provide a minimum of 32,957 square feet of public open space on the G3 Parcel to expand the existing Diamond Teague Park, a minimum of 1,500 square feet of which shall be dedicated for children’s play equipment, each as shown on Ex. 20B. In addition to the flexibility set forth in Condition A.5, the Applicant shall have flexibility as follows:
 - a. To modify the design of the in-water park areas as required to secure necessary approvals from the U.S. Army Corps of Engineers, DOEE, and other regulatory authorities;
 - b. To vary the final location, type, and layout of landscaping and hardscaping improvements, fixtures (including play equipment), and lighting for the

park based on availability and suitability of materials at the time of construction, so long as the final design and improvements are generally consistent with the plans shown on Pages LA01-LA15 of Ex. 20B;

- c. To add programming and improvements that support outdoor waterfront recreational activities (e.g., kayaking and paddle boarding), including storage racks, as shown on Page LA03 of Exhibit 20B; and
- d. To add temporary uses and structures that support park activities and programming.

4. **Street Network.**

- a. **Prior to the issuance of a Certificate of Occupancy for Parcel G2,** the Applicant shall construct the Streets as shown on Pages ST01-ST13 of Ex. 3K4, including but not limited to, the layouts and plans agreed to with DC Water for the private streets encompassing (i) the O Street layout and intersection; (ii) the curb cut zones for Parcels G1 and G2; (iii) the DC Water truck queuing areas on the south side of O Street; (iv) grading of O Street and its intersection with the DC Water Headquarters site, with all drainage from Yards Place, O Street, Diamond Teague Park, and Parcels G1, G2, and G3 draining toward the Anacostia River and away from the DC Water Headquarters; and (v) the prohibition of curbside parking in front of the DC Water Headquarters site along Yards Place North and Yards Place South in conformance with DC Water security requirements;
- b. **Prior to the issuance of a building permit for the G1 Building,** the Applicant shall demonstrate to the Zoning Administrator that the Omnibus Agreement between the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, FC Ballpark LLC, and DC Water, which governs the disposition and treatment of the new private O Street (among other things), has been executed;
- c. In addition to the flexibility set forth in Condition A.5, the Applicant shall have flexibility to construct the streets in accordance with the phasing set forth in Condition D.5.c below and as shown on Page MP-23 of Ex. 3K2C, which allows for construction of interim improvements for the portions of the Streets that abut undeveloped parcels prior to construction of the final improvements on those parcels.

5. **Housing and Affordable Housing**

G1 Building

- a. **Prior to issuance of a Certificate of Occupancy for the residential portion of the G1 Building,** the Applicant shall demonstrate to the Zoning Administrator the following:
 - (1) **For the life of the G1 Building,** the Applicant shall set aside no less than 30% of the residential units as affordable housing, with 15% of the units reserved for households earning no more than 30% of MFI and 15% of the units reserved for households earning no more than 60% of MFI, as set forth in the following chart:

Residential Unit Type	Gross Residential Square Feet (Percent of Total)	Units	MFI	Affordability Control Period	Tenure
Total	393,782 sf + <u>10,217 sf⁵</u> 403,999 sf (100%)	433		Varies	Rental
Market Rate	282,799 sf (70%)	303	N/A	N/A	Rental
IZ Required	0 sf	0	60% MFI	N/A	Rental
Affordable Units	60,599 sf (15%)	65/15%	30% MFI	Life of Project	Rental
Affordable Units	60,599 sf (15%)	65/15%	60% MFI	Life of Project	Rental

(2) The affordable housing described in Condition B.5.b above assumes that the Zoning Administrator will approve an exemption from the requirements of the IZ program of Subtitle C, Chapter 10, pursuant to Subtitle C § 1001.6 (“IZ Exemption”), although the Commission takes no position as to whether the IZ Exemption should be approved:

- (i) Should the Zoning Administrator approve the IZ Exemption, the affordable housing requirements of such Condition shall be memorialized in the covenant required by Subtitle C § 1001.6(a)(4), such covenant shall be recorded **prior to the issuance of a Certificate of Occupancy for the Project’s residential use**, and any units required pursuant to Subtitle C § 1507 may be satisfied by such affordable housing; and
- (ii) Should the Zoning Administrator deny the IZ Exemption, the Applicant shall **prior to the issuance of a Certificate of Occupancy for the Project’s residential use** execute the monitoring and enforcement documents required by Subtitle X § 311.6, which documents shall memorialize the affordable housing requirements of such Condition(s);

(3) **Prior to the issuance of a Certificate of Occupancy for the G1 Building**, the Applicant shall record the monitoring and enforcement documents required by 11-X DCMR § 311.6, which shall require compliance with this Condition. (For the avoidance of doubt, the Affordable Housing Covenant required pursuant to the Land Disposition Agreement for the Project shall satisfy this

⁵ Habitable penthouse space.

requirement.) Should the Zoning Administrator conclude that the Project is not exempt from IZ, the Applicant shall also record the covenant required by the Inclusionary Zoning Act; and

- (4) The G1 Building shall include a minimum of nine three-bedroom units, of which three \ such three-bedroom units shall be affordable units;

G2 Building

b. **Prior to issuance of a Certificate of Occupancy for the residential portion of the G2 Building**, the Applicant shall demonstrate to the Zoning Administrator the following:

- (1) **For the life of the G2 Building**, the Applicant shall set aside no less than 30% of the residential units as affordable housing, with 15% of the units reserved for households earning no more than 30% of MFI and 15% of the units reserved for households earning no more than 60% of MFI, as set forth in the following chart:

Residential Unit Type	Gross Residential Square Feet (Percent of Total)	Units	MFI	Affordability Control Period	Tenure
Total	280,535 sf + <u>12,841 sf⁶</u> 293,376 sf (100%)	248		Varies	Rental
Market Rate	205,363 sf (70%)	174	N/A	N/A	Rental
IZ Required	0 sf	0	60% MFI	N/A	Rental
Affordable Units	44,006 sf (15%)	37/15%	30% MFI	Life of Project	Rental
Affordable Units	44,006 sf (15%)	37/15%	60% MFI	Life of Project	Rental

- (2) The affordable housing described in Condition B.5.g above assumes that the Zoning Administrator will approve an exemption from the requirements of the IZ program of Subtitle C, Chapter 10, pursuant to Subtitle C § 1001.6 (“IZ Exemption”), although the Commission takes no position as to whether the IZ Exemption should be approved:

- (i) Should the Zoning Administrator approve the IZ Exemption, the affordable housing requirements of such Condition shall be memorialized in the covenant required by Subtitle C

⁶ Habitable penthouse space.

- § 1001.6(a)(4), such covenant shall be recorded **prior to the issuance of a Certificate of Occupancy for the Project's residential use**, and any units required pursuant to Subtitle C § 1507 may be satisfied by such affordable housing; and
- (ii) Should the Zoning Administrator deny the IZ Exemption, the Applicant shall **prior to the issuance of a Certificate of Occupancy for the Project's residential use** execute the monitoring and enforcement documents required by Subtitle X § 311.6, which documents shall memorialize the affordable housing requirements of such Condition(s);
 - (3) **Prior to the issuance of a Certificate of Occupancy for the G2 Building**, the Applicant shall record the monitoring and enforcement documents required by 11-X DCMR § 311.6, which shall require compliance with this Condition. (For the avoidance of doubt, the Affordable Housing Covenant required pursuant to the Land Disposition Agreement for the Project shall satisfy this requirement.) Should the Zoning Administrator conclude that the Project is not exempt from IZ, the Applicant shall also record the covenant required by the Inclusionary Zoning Act; and
 - (4) The G2 Building shall include a minimum of nine three-bedroom units, of which three such three-bedroom units shall be affordable units.

C. **Transportation Management**

1. **For the life of the Project**, the Applicant shall adhere to the following Transportation Demand Management plan measures:

Site-Wide TDM

- a. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and retail space and charge a minimum rate based on the average market rate within a quarter mile. Free parking, validation, or discounted rates will not be offered for retail customers;
- b. Identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators shall act as points of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;
- c. Transportation Coordinator shall conduct an annual commuter survey of building employees and residents on-site, and report TDM activities and data collection efforts to goDCgo once per year;
- d. Transportation Coordinator shall develop, distribute, and market various transportation alternatives and options to residents and employees, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications;

- e. Transportation Coordinator shall subscribe to goDCgo's residential newsletter and receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan;
- f. Provide residents and employees who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future;
- g. Post all transportation and TDM commitments on building website, publicize availability, and allow the public to see what has been promised.
- h. Provide a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident and employee;
- i. Provide, at no charge to and for use by any tenant of the building or employee thereof, at least 231 long- and 54 short-term bicycle parking spaces, as follows:
 - G1 Building: 146 long- and 29 short-term spaces;
 - G2 Building: 85 long- and 19 short-term spaces; and
 - G3 Parcel: 6 short-term spaces;
- j. Long-term bicycle storage rooms shall accommodate non-traditional sized bikes including cargo, tandem, and kids' bikes as follows:
 - G1 Building: a minimum of 73 spaces allowing bikes to be placed horizontally on the floor, including a minimum of seven spaces designed for longer cargo/tandem bikes (10 feet by 3 feet) and a minimum of 15 spaces designed with electrical outlets for the charging of electric bikes and scooters;
 - G2 Building: a minimum of 43 spaces allowing bikes to be placed horizontally on the floor, including a minimum of 4 spaces designed for longer cargo/tandem bikes (10 feet by 3 feet) and a minimum of nine spaces designed with electrical outlets for the charging of electric bikes and scooters; and
 - There shall be no fee to the residents or employees for usage of the bicycle storage room and strollers shall be permitted to be stored in the bicycle storage room;
- k. Install a minimum of 20 spaces for electric vehicle (EV) charging as follows:
 - G1 Building: a minimum of 10 spaces; and
 - G2 Building: a minimum of 10 spaces;
- l. **Following the issuance of a Certificate of Occupancy for the Project,** the Transportation Coordinator shall submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case;

- m. **Five years after the issuance of the final certificate of occupancy for the Project**, if the Transportation Coordinator has not established a relationship with DDOT or goDCgo, the Transportation Coordinator shall submit a letter to the Zoning Administrator, DDOT, and goDCgo summarizing continued substantial compliance with the transportation and following TDM conditions in the Order, unless no longer applicable as confirmed by DDOT; provided, that if such letter is not submitted on a timely basis, the Applicant shall have 60 days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter;

Residential TDM Plan

- n. Provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map;
- o. Install a Transportation Information Center Display (electronic screen) in each of the G1 and G2 Buildings or provide comparable information by other digital or electronic means (such as an app, subject to DDOT approval) containing information related to local transportation alternatives. At a minimum, the display shall include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
- p. Shall not lease unused residential parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home residents, or sporting events) except that the Applicant may lease parking spaces within the Project to users of other buildings (1) for which no parking is provided at the other buildings and/or (2) within The Yards;
- q. Designate two parking spaces in either the G1 Building or G2 Building's vehicle parking garage, or on the public or private streets within and surrounding the Project, for car-sharing to use with right of first refusal, or provide at least two micro-mobility vehicles for use by residents of the Project. The Applicant shall not be required to demonstrate compliance with this condition until the certificate of occupancy for the latter of the two Buildings. If an agreement has not been reached prior to the issuance of a certificate of occupancy for the latter of the two buildings for one of these services to occupy both of the dedicated spaces, the Applicant shall provide one additional year of membership to Capital Bikeshare for each resident, 16 years of age or older, after the latter Building has opened;
- r. Offer a one-year Capital Bikeshare membership or SmarTrip card pre-loaded with \$85 to new residents of the G1 Building, 16 years of age or older, for the three years after the G1 Building receives its Certificate of Occupancy, and offer a one-year Capital Bikeshare membership or SmarTrip card pre-loaded with \$85 to new residents of the G2 Building, 16

- years of age or older, for the first three years after the G2 Building receives its Certificate of Occupancy;
- s. Provide a bicycle repair station in each long-term bicycle parking storage room in the G1 and G2 Buildings;
 - t. Provide one collapsible shopping cart (utility cart) for every 50 residential units to encourage residents to walk to the grocery shopping and run errands, as follows:
 - G1 Building: nine (9) carts; and
 - G2 Building: nine (5) carts;

Retail TDM Plan

- u. Post “getting here” information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for customers discouraging parking on-street in Residential Permit Parking (RPP) zones;
- v. Transportation Coordinator shall demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law to participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future such as the Parking Cash-Out Law;
- w. Work with the Capital Riverfront BID’s marketing efforts and those of ANC 6D and WMATA targeting the S.E. and S.W. quadrants of the District, which marketing efforts shall include installing posters in bus shelter map cases, transit-oriented promotional materials, and special transit maps in Navy Yard area;

Additional TDM Measures

- x. Shall hold a transportation event for residents, employees, and members of the community once per year for a total of five years. Examples include resident social, walking tour of local transportation options, goDCgo lobby event, transportation fair, WABA Everyday Bicycling seminar, bicycle safety/information class, bicycle repair event, etc.);
- y. Fund and install one micro-mobility corral with appropriate racks and vertical wayfinding element. It will be installed in an easily accessible location near other bicycle facilities in adjacent public space, in an on-street parking space, or on the property, subject to DDOT approval; and
- z. Provide Yards Place (1-1/2 Street) as a curbless 70’ wide ROW, raised to form a continuous pedestrian promenade from M to First Streets. The design of the carriage way is augmented on each side by a flush granite curb and an 8’ wide permeable flex zones furnished with either planting or hardscape. The segregation of zones will be minimized to promote unrestricted pedestrian movements. The road surface will be stripped of markings and safely delineated with a combination of bollards, benches, and planters with raised curbs. The two-way carriage lane is narrower in width (i.e., 20’ and

24' wide) to slow traffic speeds and safer for pedestrians to cross. Yards Place will act as a major neighborhood street and urban connector as it links the District Navy Yard-Ballpark Metro station to the Anacostia riverfront.

D. **Miscellaneous**

1. **No building permit shall be issued for Parcel G1, Parcel G3, and the Street Parcels** until the Applicant has recorded a covenant binding such parcels in the land records of the District of Columbia by the Applicant for the benefit of the District of Columbia that is satisfactory to the Office of Zoning Legal Division and to the Zoning Administrator (the "Parcel G1 PUD Covenant"). The Parcel G1 PUD Covenant shall bind the Applicant and all successors in title to construct and use Parcel G1, Parcel G3, and the Street Parcels in accordance with this Order, as may be amended by the Commission. The Applicant shall file a certified copy of the Parcel G1 Covenant with the Office of Zoning.
2. **No building permit shall be issued for Parcel G2** until the Applicant has recorded a covenant binding Parcel G2 in the land records of the District of Columbia by the Applicant for the benefit of the District of Columbia that is satisfactory to the Office of Zoning Legal Division and to the Zoning Administrator (the "Parcel G2 PUD Covenant"). The Parcel G2 PUD Covenant shall bind the Applicant and all successors in title to construct and use Parcel G2 in accordance with this Order, as may be amended by the Commission. The Applicant shall file a certified copy of the Parcel G2 Covenant with the Office of Zoning.
3. The respective map amendments to the CG-4 zone for Parcel G1, Parcel G2, and the Street Parcels, and to the CG-6 zone for Parcel G3, shall be effective upon recordation of each respective PUD Covenant.
4. The consolidated PUD for the G1, G2, and G3 Parcels shall be valid as follows:
 - a. The Applicant shall file an application for building permit for the G1 Parcel within two years of the effective date of this Order, and construction must begin within three years from the effective date of this Order;
 - b. The Applicant shall file an application for building permits for the G3 Parcel and the Street Parcels within one year of the issuance of the building permit for the G1 Parcel, and construction must begin within one year from the commencement of construction for the G1 Parcel;
 - c. The Applicant shall file an application for building permit for the G2 Parcel within two years of the issuance of the building permit for the G1 Parcel, and construction must begin within three years from the issuance of the building permit for the G1 Parcel. Notwithstanding the foregoing, the Applicant shall be permitted to proceed with the G2 Parcel as early as concurrently with the G1 Parcel; and

- d. Notwithstanding the foregoing, the Applicant shall file applications for building permits for the G2 and G3 Parcels within 10 years of the effective date of this Order, and construction must begin within 11 years from the effective date of this Order.
- 5. The PUD approval for the F1 Parcel shall remain valid for a period of 10 years from the effective date of this Order:
 - a. Within two years after the issuance of a Certificate of Occupancy for the G2 Parcel, the Applicant shall file an application for first-stage PUD modification and second-stage PUD approval of the F1 Parcel (“F1 Parcel Application”); and
 - b. Notwithstanding the foregoing, the Applicant shall file the F1 Parcel Application within 10 years of the effective date of this Order.

VOTE (December 8, 2022): 3-0-2

(Anthony J. Hood, Robert E. Miller, and Joseph S. Imamura to **APPROVE**; Peter G. May, not present not voting, 3rd Mayoral Appointee vacant).

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, Z.C. Order No. 13-05E shall become final and effective upon publication in the D.C. Register; that is, on March 31, 2023.

BY 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.