

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-03**

Z.C. Case No. 09-03

Skyland Holdings, LLC

(Consolidated Approval for a Planned Unit Development and Related Zoning Map

Amendment for Property Located @

**Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187, 214/189, 214/190,
& 214/196; Square 5632, Lots 1, 3-5, & 802; Square 5633, Lots 800 & 801; Square 5641,
Lots 10-13 & 819; Square 5641-N, Lots 12-31 & 33)**

July 12, 2010

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held public hearings on December 10, 2009; February 4, 2010; February 17, 2010; and April 21, 2010 to consider an application from Skyland Holdings, LLC (the “Applicant”) for consolidated review and approval of a planned unit development (“PUD”) and related Zoning Map amendment. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, Hearing, and Post-Hearing Documents

1. The project site consists of Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187, 214/189, 214/190, and 214/196; Square 5632, Lots 1, 3-5, and 802; Square 5633, Lots 800 and 801; Square 5641, Lots 10-13 and 819; and Square 5641-N, Lots 12-31 and 33 (“Subject Property” or “Property”). The Subject Property is known as the Skyland Shopping Center and is generally bounded by Naylor Road and Good Hope Road on the west; Alabama Avenue to the south, a small residential area to the east, a large wooded ravine to the east and northeast, and a residential area to the north. The Subject Property is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 7B and abuts the boundaries of ANC 8B. The Subject Property consists of the existing shopping center and some vacant lots. (Exhibit (“Ex.”) 4, p. 1.)
2. The Applicant initially filed its application on February 17, 2009. The Commission set the application down for a public hearing at its May 11, 2009 public meeting. (Exs. 4-6; May 11 Transcript, p. 49.)

3. The Applicant filed a pre-hearing statement on September 21, 2009, and a public hearing was timely scheduled for December 10, 2009. Prior to the public hearing, the Applicant supplemented its application with additional information on November 20, 2009. (Exs. 19, 20, 25.)
4. A public hearing was held on December 10, 2009. Testimony was presented by the Applicant's project team, including the architect, landscape architect, and transportation consultant. The Applicant also submitted its proposed community amenities, a parking space assessment matrix, and conditions of approval. Pursuant to a written request submitted on November 25, 2009, a group of four homeowners residing at 2933 Fort ("Ft.") Baker Drive, 2929 Ft. Baker Drive, 2937 Ft. Baker Drive, and the 2900 block of Ft. Baker Drive, called the Ft. Baker Drive Party ("FBDP"), were granted party status. No other individuals or entities requested, or were granted, party status. At the close of the hearing, the Commission asked the Applicant to reconsider the visual impact of the project on FBDP properties and to submit a wetlands study for the nearby wooded ravine. The Commission scheduled an additional hearing for February 4, 2010. (Exs. 50-52; Dec. 10 Transcript, pp. 9-10, 12-78, 187-191.)
5. On January 21, 2010, the Applicant supplemented its application with additional information as requested by the Commission at the December 10, 2009 hearing. (Ex. 62.)
6. The Commission held an additional public hearing on February 4, 2010. Testimony was presented by the Applicant's architect and tree and wetlands consultant. In addition, the Office of Planning ("OP") and the District Department of Transportation ("DDOT") presented testimony. The Commission scheduled an additional hearing for February 17, 2010.
7. The Commission held an additional public hearing on February 17, 2010. Testimony was presented by a representative of the Deputy Mayor for Planning and Economic Development, ANC 7B, organizations and persons in support, and organizations and persons in opposition. FBDP presented testimony from a traffic expert and from the representative homeowners. At the conclusion of the hearing, the Commission requested additional information from the Applicant concerning the following: construction techniques/soil stabilization/erosion control measures that will be used; a construction mitigation and management plan; a matter-of-right analysis for the possible development of the existing R-5-B zoned portion of the Property; additional information on the visual impact of the project; additional consultation between the Applicant and ANC 7B; additional consultation between the Applicant and DDOT; additional information as to when residential uses were first proposed for the project; and refinement of the calculation of the public benefits and project amenities provided in the project. The Commission scheduled an additional public hearing for April 21, 2010.

8. On March 29, 2010, the Applicant submitted additional information in response to the Commission's requests at the February 17, 2010 public hearing. (Ex. 103.)
9. On March 29, 2010, FBDP submitted a report assessing the adequacy of the Applicant's traffic report. (Ex. 102.)
10. On April 12, 2010, the Applicant submitted a response to FBDP's traffic report assessment. (Ex. 104.)
11. On April 12, 2010, FBDP submitted a response to the Applicant's March 29th submission. (Ex. 105.)
12. The Commission held an additional public hearing on April 21, 2010. At the hearing, the Applicant presented rebuttal testimony. After the close of the hearing, the Commission requested more specific information from the Applicant concerning mitigation measures that will be undertaken during the period of construction activity on the Property. The Applicant submitted that information on May 5, 2010. (Ex. 112.)
13. At its public meeting held on May 24, 2010, the Commission took proposed action to approve the application. The Commission ordered the Applicant to submit by June 4, 2010 its final list of proffered benefits for the consolidated PUD, and for each public benefit, propose a draft condition that is both specific and enforceable, and serve the submission on the District of Columbia Office of Zoning ("OZ"), OP, Office of the Attorney General ("OAG"), and the parties. The Commission further ordered that OP and OAG communicate with the Applicant regarding any perceived deficiencies in the Applicant's proposed conditions by June 11, 2010; that the Applicant submit any revisions to the conditions made as a result of this communications to OZ, OP, OAG, and the parties by June 18, 2010; and that OAG, OP, and the parties file any responses to the Applicant's submission by June 25, 2010, with the OAG response treated as a confidential attorney-client communication. The Applicant submitted a final list of proffered benefits and draft conditions on June 4, 2010. OAG and OP discussed the proffer and draft conditions with the Applicant on June 11, 2010. The Applicant submitted a revised list of conditions on June 18, 2010.
14. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to the District of Columbia Home Rule Act. NCPC, by action dated May 27, 2010, found the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.
15. At its June 28, 2010 public meeting, the Commission considered the Applicant's list of proffered benefits and draft conditions. The Commission expressed concern over the

lengthy time table proposed for the development, which could extend over 15 years and did not include a certain expiration date, and the same lengthy and uncertain time period established for the delivery of benefits. The Commission directed the Applicant to submit a revised proffer and draft conditions and engage in the same process described in Finding of Fact No. 13, with the Applicant submitting its revised proffer and draft conditions by June 30, 2010; OAG and OP delivering their comments by July 2, 2010; the Applicant submitting its revised proposal by July 6, 2010; and with OAG, OP, and the parties providing final comments by July 9, 2010. The Applicant provided a revised set of conditions on June 30, 2010. OP, OAG, and the Applicant conferred by telephone on July 2, 2010, and the Applicant filed a revised proffer of benefits and conditions on July 6, 2010. Condition No. 2, which required the provision of the public benefits, now included firm deadlines for their delivery. A new Condition No. 3 added enforcement mechanism for any non-delivery. Lastly, the phasing condition, Condition No. 17, was revised to require that all applications for building permits had to be filed within 10 years after the effective date of this Order.

16. FBDP provided its comments on July 9, 2010. FDBP objected to the draft conditions because the Applicant would be permitted to develop the project and provide the public benefits over a 10-year period, but not required to construct the retail uses included in the project.
17. The Commission considered the revised proffers and conditions submitted by the Applicant, and the comments provided by FBDP, at its July 12, 2010 public meeting. The Commission considered the revised conditions to be an improvement, but did not want to delay the delivery of the public benefits, other than the build-out subsidies, for 10 years if all building permits were applied for before then, and requested OAG to Condition No. 2 accordingly. The Commission then took final action to approve the application.

The Subject Property and Surrounding Area

18. The Subject Property consists of two major parcels of land, comprising a total of approximately 18.7 acres. The largest parcel contains the Skyland Shopping Center, which was developed in the 1940s as an early automobile-oriented shopping center. This center contains many retailers and some vacant retail spaces spread among several buildings. A large surface parking lot for patrons of the shopping center is also on the site. The second smaller parcel, located to the east of the shopping center and largely in the ravine, is unimproved and contains construction debris and fill. The District of Columbia acquired the Property through eminent domain and maintains ownership of it. The District of Columbia signed the application form, self-certification form, and agent authorization letter to file and process this application. On April 21, 2010, the Applicant submitted a chart listing the ownership of every property included in the Subject Property. (Ex. 19, p. 1; Ex. 109.)

19. The Subject Property is located among residential and commercial properties. The residential neighborhood of Hillcrest is located to the east. The Fairlawn residential neighborhood is located to the north of the Property. The Good Hope Marketplace is located across Alabama Avenue. (Ex.19, p. 6.)
20. The Hillcrest neighborhood to the east of the Subject Property is low density and includes single-family detached homes. This area is generally zoned R-1-B. (Ex. 20, p. 17.)
21. The Fairlawn neighborhood is located to the north of the Subject Property. The neighborhood generally consists of row-houses and semi-detached residential structures. The area is generally zoned R-5-A. (Ex. 20, p. 17.)
22. The Good Hope Marketplace, located across Alabama Avenue to the south, includes approximately 97,000 square feet of retail space and is anchored by a supermarket. This area is zoned C-3-A. (Ex 20, p. 17.)

Existing and Proposed Zoning

23. The parcel containing the existing Skyland Shopping Center is located in the C-3-A Zone District, and the second parcel to the east is located in the R-5-B Zone District. Under the proposal, the second parcel will be rezoned to C-3-A. (Ex. 20, p. 17.)
24. The Property is included in commercial areas on the District of Columbia Generalized Land Use Map. The Future Land Use Map indicates that moderate-density commercial uses are appropriate for the Subject Property. The Generalized Policy Map designates the Property as a multi-neighborhood center.

Description of the PUD Project

25. The PUD is a mixed-use project in five distinct and self-sufficient development parcels (“Blocks”). The project will include a diverse mix of retail and residential uses in a Town Center setting with a “Main Street” shopping experience that will meet the needs of Ward 7 and 8 residents, as well as District residents at large. The project will incorporate a large format retailer and smaller community-serving retail and services, providing approximately 305,000 square feet of retail space. The residential component will include 450-500 residential units in four buildings, and 20 townhouses will be located along the eastern side of the Property. (Ex. 19, p. 6.)
26. The project will include a private street system that will assist in creating the look and feel of a Town Center. A new Main Street will run in the middle of the project from

Alabama Avenue north to the large format retailer and then west to Naylor Road. A new Residential Street will run from Main Street east and then south to Alabama Avenue. A lively mix of retail establishments will line the new Main Street, Naylor Road, Good Hope Road, and Alabama Avenue in order to create a pedestrian-friendly and inviting retail experience. A large plaza will be located where Main Street intersects the large format retail building. The project will include a pedestrian-only paseo extending from Good Hope Road to Main Street. The project will also include a private system of alleys. (Ex.19, pp. 6-7; Ex. 20.)

27. The project will include many features to enhance the streetscape. Planting strips, street trees, sidewalks, and café zones will all contribute to the pleasurable pedestrian experience. In addition, retailers will be provided the opportunity to create their own distinctive signage and façades at the ground level, rather than having to satisfy a uniform signage requirement. Awnings, canopies, and individual retailer signs will all augment the vibrant streetscape. (Ex. 19, pp. 6-7.)
28. The project will contribute transportation infrastructure improvements to the Subject Property and the area around it. A new signalized intersection will be created at Naylor Road and Main Street. The intersection of Alabama Avenue and Good Hope Road will be modified to include a new street entrance into the project. High visibility crosswalks will be added at all adjacent intersections. In addition, the Applicant has engaged DDOT to include Main Street as part of two existing Metrobus routes that already pass by the Property. To accommodate the buses, Main Street will have a designated bus stop and shelter, and the adjacent roadways will also have bus shelters. The Applicant has also committed to providing space for a bus station/commuter store if DDOT decides to operate such a facility in this location. (Ex. 19, pp. 6-7; Ex. 20, p. 27.)
29. The residential portion of the project will attain a Certified rating in the LEED-for-homes rating system. The large format retail store will be designed to meet the Silver requirements of the LEED NC 2.2 or LEED CS 2.0 rating system. (Ex. 19, p. 3.)
30. The five Blocks will be developed as follows:
 - (a) Block 1. Located at the northwest corner of the Property, Block 1 will front on Naylor Road and Main Street and will consist of one building. A large format retail store, with separate in-line retail spaces provided at the ground floor level, will occupy this site. The building will provide approximately 135,000 square feet of space for the large format retail store and approximately 10,000 square feet for other retailers. In response to concerns from FBDP and the Commission, the Applicant shifted the location of the building 37 feet toward the west and away from the residential area and property line. The building will be separated from the property line by 72 feet. The building will be 28 feet tall as measured from the mid-point of the Main Street frontage, with a distinctive

taller architectural embellishment at the large format retail store's entry. The entry will be two stories, but the remainder of the store will be one story, with parking on the roof. Approximately 630 parking spaces will be provided on the roof and on a half level below grade. The parking areas will be accessed via an internal ramp at the eastern side of the building. Roof lighting will be directed downward, and vegetated screening will be provided on the roof to minimize the impacts of the parking. Loading berths and trash collection areas will be accessed from Naylor Road. (Ex. 19, pp. 9-10; Ex. 62, pp. 1-2.)

(b) Block 2. Consisting of two buildings (Block 2A and Block 2B), Block 2 will be located along the western edge of the Property. Block 2 will front on Naylor Road, Good Hope Road, and Alabama Avenue, and the internal Main Street will run along its eastern and northern sides. The pedestrian-only paseo will separate the two buildings at ground level, but an elevated pedestrian bridge will connect the two buildings. These two buildings will include approximately 92,000 square feet of ground floor retail with approximately 256 residential units above. Residential units will be available in one-bedroom, one-bedroom plus den, and two-bedroom configurations. Block 2A will be three and four stories tall and rise to a measured height of 56 feet. Block 2B will be three stories tall and rise to a measured height of 56 feet. A pool and open/amenity space will be located on the roof of Block 2A adjacent to the paseo, and it will be available to residents of both buildings. Loading berths for both buildings will be accessed via a dedicated loading drive just north of the paseo. A five-level above-grade parking structure will provide 573 spaces (317 for retail/visitors and 256 for residential) for both buildings. The parking structure will be surrounded by Block 2A, and access will be from Main Street. Block 2A will have a single-loaded corridor along the interior of the building to buffer the parking garage, and no residential units in this building will have windows facing the parking structure. The façades of Block 2 will incorporate several identities to create the notion of a neighborhood rather than one building. Block 2B is a single building with one identity, but the significantly larger Block 2A will be conceptually composed of several buildings. The Good Hope Road/Naylor Road façade of Block 2A will incorporate variegated massing, while the Main Street façade will be on one plane but broken into different identities. Street frontages of the residential units will include balconies, and large courtyards along Naylor Road, Good Hope Road, and the paseo will provide additional light and air for the residential units. Retail spaces will face Naylor Road, Good Hope Road, the paseo, Main Street, and a retail plaza at the northeast corner of Block 2A. This plaza will also serve as the primary lobby for Block 2A. Sidewalks along Main Street will be ten feet wide with eight-foot-wide planting strips. Main Street will have a dedicated parking space for a car-sharing program. (Ex. 19, pp. 10-12; Ex. 62, p. 1.)

- (c) Block 3. Located at the southeast section of the site, this building will front on Main Street and Alabama Avenue. This building will provide approximately 39,000 square feet of ground-floor retail space with approximately 111 residential units above. The building will be four stories and will have a measured height of 51 feet. The ground-floor retail uses may also include small-scale offices. The residential units above the retail will be available in one-bedroom, one-bedroom plus den, and two-bedroom configurations. This building will wrap around a three-story parking garage that will include approximately 245 parking spaces (134 for retail/visitors and 111 for residential). Access to the parking garage will be on the building's east side from the new Residential Street, which runs along the east side of the building. Access to the shared retail/residential loading berths will be from the building's north side, just off Main Street. The roof of the parking garage will be green with vegetation and will have a pool, providing residents with an outdoor amenity. The building will include a double-loaded corridor for the residential portion, so some units will have views of the green roof and pool. Units on the lowest residential level facing the green roof will have outdoor patios. The façade of the building will be primarily masonry but will also be articulated with differing identities to enhance the character of the street. The character of the outdoor space will be further enriched by the outdoor sidewalk space at the northwest corner of the building, which will be ideal for outdoor café seating. (Ex. 19, pp. 14-15.)
- (d) Block 4. This building fronts only on Main Street. The building will provide 29,000 square feet of ground floor retail with 81 residential units above. Like the other buildings in the project, residential units will be offered in one-bedroom, one-bedroom plus den, and two-bedroom configurations. The building will have a measured height of approximately 53.3 feet and will be four stories. A three level parking garage providing approximately 192 spaces (111 for retail/visitors and 81 for residential) will be located at the rear (eastern) side of the building. Access to the parking garage and loading berths will be from an alley off Residential Street, with an additional entrance from the drive next to Block 1. The parking garage will have a vegetated green roof, and a significant landscape buffer will shield the parking garage from the adjacent residential properties. The building façade will consist primarily of masonry with precast elements. The building will be notable for its tower element at the intersection of Main and Residential streets. (Ex. 19, pp. 15-16.)
- (e) Townhouses. The project will include 20 townhouses that will provide a transition from the higher density Blocks 3 and 4 to the lower scale residences to the east of the Property. Access to the townhouses will be via the private residential street, which connects with Alabama Avenue. The townhouses will offer three bedroom units and will be three stories in height, though they will

have the appearance of being two stories. The townhouses will be offered in 18-foot- and 38-foot-wide models and will include front porches and optional decks; some houses will also have front yards. Garage and/or surface parking spaces will be dedicated to each unit, totaling 36 spaces for all of the townhouses. The façades will be in either Tudor or Federal styles and will be composed of colored brick and cast stone. (Ex. 19, pp. 16-17.)

(f) **RCN Building**. The Subject Property includes a switching facility for the RCN cable company. The Applicant is required to incorporate this facility into the project as part of the land disposition agreement with the District. The RCN facility will be relocated to a new structure located along the private residential street near its intersection with Alabama Avenue. The appearance of the building will reflect the lower scale townhouse and residential uses to the east of the Subject Property. (Ex. 19, p. 17.)

Applicant's Testimony

31. At the public hearing, Gary Rappaport of the Rappaport Companies testified on behalf of the Applicant. Mr. Rappaport provided a background of the Rappaport Companies and an overview of the proposed project's history and development team. (Dec. 10 Transcript, pp. 17-21.)
32. Brad Fennell, Senior Vice President for William C. Smith and Company, testified about the company's background and experience in Wards 7 and 8. Mr. Fennell also discussed the company's experience with other redevelopment projects. Mr. Fennell emphasized the company's involvement in the community and its responsiveness to community concerns. (Dec. 10 Transcript, pp. 21-25.)
33. Cheryl O'Neill of Torti Gallas testified as the Applicant's expert in architecture. Ms. O'Neill testified about the design and architecture of the proposed project. Ms. O'Neill stated that the project's design will create a vibrant mixed-use environment. Ms. O'Neill also noted the importance of the private street system, especially the new Main and Residential Streets, and many plazas within the project in creating open spaces and a pedestrian-friendly environment. She noted that the townhouses will provide a buffer from the higher-density elements of the project to the lower density residential area to the east. Ms. O'Neill then described how the architecture of the project contributes to a lively pedestrian experience. She stated that the variety of architectural styles, though compatible with the style and scale of the surrounding neighborhood, will enhance the public realm. Ms. O'Neill also highlighted the fact that the design incorporates a number of environmentally-sustainable features, including green roofs. Ms. O'Neill testified to the many features of the project that will decrease its impacts on the neighboring properties. Such features include a green screen and a masonry/metal screen for the parking area of Block 1. (Dec. 10 Transcript, pp. 25-50.)

34. Doug Hays, of Michael Vergason Landscape Architects, testified as an expert in landscape architecture on behalf of the Applicant. Mr. Hays testified about the present vegetation and conditions on the eastern side of the Subject Property. He testified that the understory of the stand was poor and that the stand contained piles of fill and trash. He testified that no noteworthy vegetative community is present that would restrict removal of vegetation subject to the requirements of District of Columbia codes and regulations. He also stated that the Applicant would make every reasonable effort to retain existing trees on the Property. Mr. Hays then testified about the types of trees and other plantings that would be planted along both the internal streets and the public streets adjacent to the project. Mr. Hays also noted the types of furnishings, features, and pavers that would be included in the pedestrian areas of the project. (Dec. 10 Transcript, pp. 50-58.)
35. Erwin Andres of Gorove/Slade Associates testified as an expert in traffic and parking engineering. Mr. Andres stated that the project would not significantly affect traffic conditions at most studied intersections during peak hours because much of the traffic that travels through those intersections is not related to the project. Mr. Andres stated that many of the project's features, including an existing shopping center and a new mixed-use development, would reduce the impacts of incremental trips generated by the project. Mr. Andres also stated that the potential traffic impacts of the project would be further reduced by the existing and planned public transportation services. Mr. Andres noted that the pedestrian experience in the project will be better and safer than the existing conditions. Mr. Andres testified that the Applicant would provide bicycle parking equivalent to the DDOT standard of five percent of the required auto parking. Mr. Andres identified six intersections in and near the project that will be improved to reduce congestion and improve pedestrian safety. (Ex. 19, Tab D; Dec. 10 Transcript, pp. 58-63.)
36. Carrie Thornhill of the Washington East Foundation testified on behalf of the Applicant. Ms. Thornhill testified that the Applicant has engaged in extensive dialogue with the community and that the proposed project has broad community support. She also described the Washington East Foundation's role in development and its role in engaging the community on matters related to the proposed project. She noted that the Applicant has attended many community meetings over the past seven years and that it has actively engaged the community to listen to its concerns about the project. She noted that the Applicant has been a good community partner and that the project has included many modifications in response to community concerns. (Dec. 10 Transcript, pp. 63-68.)
37. Stephen Green of William C. Smith and Company testified on behalf of the Applicant. Mr. Green testified to the proposed community benefits. Included in these benefits are public space improvements to increase pedestrian safety, environmentally-sustainable

design features, neighborhood financial contributions, sponsorships of local community events, job preparedness and training, a small contractor loan fund, a retail build-out subsidy for small and local retailers, home ownership/buying counseling, and space dedicated to a commuter store. Mr. Green stated that it is not viable to build the entire project in one phase. Mr. Green also noted that the proposed number of parking spaces is essential to attract a large format retailer, but the Applicant is willing to assess the number of required spaces in later phases of development. The Applicant is committed to the fewest number of spaces for a feasible project and submitted an assessment matrix for determining the number of parking spaces that will be constructed in later phases of the development of the project. Finally, Mr. Green testified that the Applicant is concerned about the possible impact of construction activity on the nearby properties. He stated that the Applicant is committed to a series of construction mitigation measures. (Exs. 50, 51; Dec. 10 Transcript, pp. 68-78.)

Density Proposed and Flexibility Requested

38. The total gross floor area included in the proposed PUD project is approximately 1.3 million square feet for a total floor area ratio (“FAR”) of approximately 1.61. The commercial density is approximately 0.95 FAR. Building heights range from 53 to 60 feet. The proposed density and building heights are significantly less than those permitted as a matter-of-right in the C-3-A zone (4.0 [2.5 commercial] FAR and 65 feet, respectively) and significantly less than the PUD guidelines (4.5 [3.0 commercial] FAR and 90 feet, respectively). (Ex. 19, p. 17; Ex. 20, pp. 18-19.)
39. The Applicant requested permission to construct more than one building on a single record lot pursuant to § 2516. The Applicant requested flexibility from the following requirements of the Zoning Regulations: (i) the rear yard requirements for 11 of the townhouse lots and for Block 3; (ii) the side yard requirements for Blocks 2 and 4, and the townhouse lot adjacent to Block 4 and the private alley; and (iii) the lot occupancy requirement for one of the townhouse lots. The Commission has the authority to grant this flexibility pursuant to §§ 2405.4, 2405.5, and 2405.7 of the Zoning Regulations. (Ex. 19, p. 18.)
40. The Applicant requested flexibility from the strict application of the roof structure requirements of the Zoning Regulations in order to allow roof structures on the buildings in Blocks 1-4 that do not satisfy the requirements that roof structures be enclosed in a single structure of equal height and set back from all exterior walls at a ratio of 1:1. The Commission has the authority to grant this flexibility pursuant to § 2405.7. (Ex. 19, pp. 18-19.)
41. The Applicant requested flexibility from the strict application of closed court width requirements of the Zoning Regulations for Blocks 2A and 2B. The proposed design and layout of these buildings will provide sufficient light and air to the residential units,

and this flexibility will not adversely affect residents of these buildings or nearby property owners. The Commission has the authority to grant this flexibility pursuant to § 2405.5. (Ex. 19, p. 19.)

42. The Applicant requested flexibility from the loading requirements of the Zoning Regulations for Blocks 3 and 4. The project will provide shared loading for the retail and residential facilities in these Blocks. These loading facilities will adequately serve the needs of the buildings. The Commission has the authority to grant this flexibility pursuant to § 2405.5. (Ex. 19, p. 19.)
43. The PUD will be constructed in phases. The Applicant expects that the first stage will consist of Blocks 1 and 4 and the relocation of the RCN building, along with the construction of Main Street. Grading of the Residential Street will also be completed in the first phase. Since the additional phases will be determined by market demand, the Applicant has requested flexibility to develop the additional Blocks as it deems appropriate. The Applicant requested that the Order be valid for three years after which time a building permit must be applied for at least one building, with construction to begin a year afterward, and requested 10 years to develop the project. (Ex. 19, p. 20.)
44. The Applicant provided significant testimony on its need to construct all 1,698 parking spaces for the project based on the requirements of potential large format retailers. The Applicant proposed an assessment matrix to review demand for parking spaces in later phases of the project. The Commission grants the Applicant flexibility to construct all proposed 1,698 parking spaces or less if later phases reveal that not all of these spaces are necessary. (Ex. 19, p. 20; Ex. 51.)

Public Benefits and Project Amenities of the PUD Project

45. The Applicant, in its written submissions and testimony before the Commission, noted that the following benefits and amenities will be created as a result of the project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403:
 - (a) Housing and Affordable Housing: Pursuant to § 2403.9(f) of the Zoning Regulations, the PUD guidelines state that the production of housing and affordable housing is a public benefit that the PUD process is designed to encourage. This project will create approximately 450-500 residential units, with 20% of the units (90-100) reserved for households earning up to 80% of Area Median Income (“AMI”) and an additional 10% of the units (45-50) reserved for households earning up to 120% of AMI. The affordable units will be located in all of the multi-family buildings and will be distributed throughout these buildings (except for the upper stories). The amount of affordable housing provided is more than double what is required under the Inclusionary Zoning Regulations. These affordable units will be reserved for a term that is consistent

with the affordability covenant that will be recorded in the DC Land Records against the Skyland Property, as required by the land disposition agreement signed by the Applicant and the District of Columbia. (Ex. 19, p. 23.) Because the Applicant did not request flexibility from the Inclusionary Zoning Regulations, it must still comply with the set-aside, control period, and other requirements of Chapter 26 unless the project falls into one of the exempted categories.

- (b) Urban Design, Architecture, Landscaping, or Creation of Open Spaces: Section 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. The project exhibits all of the characteristics of exemplary urban design and architecture. The project will create the first pedestrian-oriented mixed-use project for residents of Wards 7 and 8. The architecture of the buildings is thoughtful and timeless and includes only high-quality materials, and is consistent with the surrounding neighborhood. The façades and buildings along Main Street and the frontages along Alabama Avenue, Good Hope Road, and Naylor Road will provide significant opportunities for sidewalk cafes and varied retail uses to animate the neighborhood. Defined public spaces, such as the paseo, Retail Plaza, and Main Street Plaza will provide ample gathering spaces. In addition, the project will incorporate low-impact development and landscaped buffers for the low-scale residential uses along the eastern boundary of the site. (Ex. 19, p. 24.)
- (c) Site Planning, and Efficient and Economical Land Uses: Pursuant to § 2403.9(b) of the Zoning Regulations, “site planning, and efficient and economical land utilization” are public benefits and project amenities to be evaluated by the Commission. The creation of this significant mixed-use project on the Subject Property, with housing and varied retail and service uses, is an example of appropriate site planning and efficient and economical land use as a project amenity. Currently, the Property feels very suburban and uninviting due to the large expanse of surface parking lots located in front of the existing buildings. The Applicant will utilize a soil improvement method to make the fill and debris portion of the site suitable for development. In addition, the introduction of the internal streets will create more distinct and identifiable development parcels on a human scale. The creation of a mixed-use environment allows people to live and shop in the same location, while the availability of Metrobus service also demonstrates efficient and economical use of land. (Ex. 19, p. 25.)
- (d) Effective and Safe Vehicular and Pedestrian Access: The Zoning Regulations, pursuant to § 2403.9(c), state that “effective and safe vehicular and pedestrian access” can be considered public benefits and project amenities. The Subject Property currently has 11 site access points which create far too many

vehicular/pedestrian conflicts. Vehicular access to the site will be reduced to six access points, thereby reducing the potential for vehicular/pedestrian conflicts. In addition, the Applicant will fund the following transportation infrastructure improvements to remedy existing and potential traffic problems in the area:

- Installation of a new signalized intersection at Naylor Road and the project's Main Street;
- Pavement restriping on Naylor Road to increase capacity;
- Improvements to the existing intersection at Good Hope Road and Naylor Road/25th Street;
- Modification of the signalized intersection at Alabama Avenue/Good Hope Road and Main Street;
- Installation of a new signalized intersection at Alabama Avenue and the New Residential Street; and
- The creation of high visibility pedestrian crosswalks at intersections adjacent to the Subject Property and throughout the project's internal street system.

The Applicant submitted a Transportation Impact Study and a Transportation Management Plan (“TMP”). The TMP includes the following components:

- Dedicated parking spaces for car-sharing vehicles;
- The enhancement of Metrobus service in and around the site which will help encourage residents of the project and the surrounding areas to utilize public transportation;
- The Applicant will request that all retailers and employers provide all employees with a Metrocheck or SmarTrip Card with a value of \$20.00 to encourage the use of public transit; and
- The Applicant will establish the position of a Transportation Services Coordinator in the property management office who will be responsible for administering and advancing TMP strategies and also monitoring loading and parking practices in the project.

The Traffic Impact Study concluded that with the implementation of the transportation infrastructure improvements and TMP programs noted above, “the proposed development would not have any appreciable objectionable impacts on the surrounding roadway network and adjacent communities, from the perspectives of traffic and parking.” (Ex. 19, pp. 25-26.)

(e) **Uses of Special Value:** According to § 2403.9(i), “uses of special value to the neighborhood or the District of Columbia as a whole” are deemed to be public

benefits and project amenities. The Applicant has agreed to provide the following project amenities as a result of this project:

- Transportation Infrastructure Improvements - the transportation infrastructure improvements noted above will cost the Applicant approximately \$1 million - \$1.2 million dollars; and
- Community Benefits and Amenities - The Applicant has committed to a community amenities package with a value totaling \$5,249,325. (Ex. 19, p. 26; Ex. 103.) The specifics of these benefits and amenities are set forth in Condition No. 2 of this Order.

(f) Revenue for the District: Section 2403.9(i) states that “uses of special value to the neighborhood or the District of Columbia as a whole” are deemed to be public benefits and project amenities. The creation of approximately 450-500 new households and approximately 305,000 square feet of retail space will result in the generation of significant additional tax revenues for the District. (Ex. 19, p. 27.)

(g) Employment and Training Opportunities: According to § 2403.9(e), “employment and training opportunities” are representative public benefits and project amenities. The proposed retail and service-oriented uses will result in the creation of a significant number of new jobs. The Applicant will enter into an agreement to participate in the Department of Employment Services First Source Employment Program to promote and encourage the hiring of District of Columbia residents. The Applicant will also enter into a Certified Business Enterprise Utilization Agreement with the Department of Small and Local Business Development (“DSLBD”) to utilize Certified Business Enterprises in the design, development, and construction of the Project. (Ex. 19, p. 27.)

(h) Comprehensive Plan: According to Section 2403.9(j), public benefits and project amenities include “other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.” The proposed PUD is consistent with and furthers many elements and goals of the Comprehensive Plan. (Ex. 19, p. 27.)

(i) Public Benefits of the Project: Sections 2403.12 and 2403.13 require the Applicant to show how the public benefits offered are superior in quality and quantity to typical development of the type proposed. This PUD project will include many, if not all, of the attributes of PUD projects that have been recently approved by the Commission, including:

- Exemplary/superior architecture;
- Affordable housing;
- Transit-oriented development;
- Destination retail and service establishments;
- Traffic calming measures and transportation infrastructure improvements;
- Significant job creation;
- Public space improvements (\$169,250);
- Pocket park improvements (\$50,000);
- Low impact design features;
- Financial support for local schools to make capital improvements (\$200,000);
- Sponsorship of local community events and programs (\$35,000);
- Job preparedness training (\$75,000);
- Contractor loan fund (\$300,000);
- Homeownership/Home buying counseling (\$75,000);
- Enhancements to Anacostia and Francis Gregory Libraries (\$50,000); and
- Retailer build-out subsidy (\$500,000). (Ex. 19, pp. 28-33; Ex. 50.)

Comprehensive Plan

46. The proposed PUD is consistent with, and fosters numerous policies and action items enumerated in, the Comprehensive Plan. The Subject Property is located in the Far Northeast and Southeast Planning Area delineated in the Comprehensive Plan. The Comprehensive Plan's Far Northeast and Southeast Elements include the following pertinent provisions:

Reinvestment in Skyland is an important part of the District's efforts to provide better shopping options for neighborhoods east of the Anacostia River, reduce the loss of retail dollars to the suburbs, and make the East of the River area more attractive to existing and future retailers. To be most effective, planned improvements should be part of a broader strategy to enhance the Alabama/Good Hope area as a focal point for surrounding neighborhoods such as Hillcrest and Fairlawn, and to upgrade the Naylor Road corridor as a gateway to Far Northeast and Southeast and Historic Anacostia.

Policy FNS-2.7.1: Skyland Revitalization

Revitalize Skyland Shopping Center as an essential, dynamic community-scale retail center. Together with the Good Hope Marketplace, these two centers should function as the primary business district for adjacent neighborhoods, providing a diverse array of quality goods and services for area residents.

Action FNS-2.7.B: Fort Baker Drive Buffering

Work with property owners to develop and maintain a suitable visual, sound and security buffer between Skyland Shopping Center and the adjacent residential areas along Fort Baker Drive.

Policy FNS-1.1.2: Development of New Housing

Encourage new housing for area residents on vacant lots and around Metro Stations within the community, and on underutilized commercial sites along the area's major avenues. Strongly encourage the rehabilitation and renovation of existing housing in Far Northeast and Southeast, taking steps to ensure that the housing remains affordable for current and future residents.

Policy FNS-1.1.3: Directing Growth

Concentrate employment growth in Far Northeast and Southeast, including office and retail development, around the Deanwood, Minnesota Avenue and Benning Road Metrorail station areas, at the Skyland Shopping Center, and ...

Provide improved pedestrian, bus, and automobile access to these areas, and improve their visual and urban design qualities. These areas should be safe, inviting, pedestrian-oriented places.

Policy FNS-1.1.4: Retail Development

Support the revitalization of the neighborhood commercial areas listed in Policy FNS-1.1.3 with new businesses and activities that provide needed retail services to the adjacent neighborhoods and that are compatible with surrounding land uses.

Policy FNS-1.1.9: Congestion Management

Re-examine traffic control and management programs along major far Northeast and Southeast arterials streets, particularly along Pennsylvania and Minnesota Avenues, East Capitol Street, Benning Road, Branch Avenue, and Naylor Road, and develop measures to improve pedestrian safety and mitigate the effects of increased local and regional traffic on residential streets.

Policy FNS-1.1.10: Transit Improvements

Improve bus service to the Metrorail stations from neighborhoods throughout Far Northeast and Southeast, particularly in the southern part of the Planning Area.

The proposed project furthers all of the Policies noted above. The project will create a vibrant and exciting pedestrian-oriented mixed-use project on the site of the existing Skyland Shopping Center that will serve residents of the adjacent neighborhoods, as well as residents of Wards 7 and 8. The proposed landscaping of the project and the treatment of the retaining wall along the northeast corner of the Subject Property will create a suitable buffer between the project and the residential uses east of the site. The project proposes a robust TMP that will mitigate any adverse transportation impacts that may result from

this project. The project also proposes significant improvements to the Metrobus service in the area surrounding the Subject Property.

47. The Comprehensive Plan identifies the Property as a Multi-Neighborhood Center. The Comprehensive Plan's Generalized Policy Map defines a Multi-Neighborhood Center as follows:

Multi-neighborhood centers contain some of the same activities as neighborhood centers but in greater depth and variety. Their service area is typically one to three miles. These centers are generally found at major intersections and along key transit routes. These centers might include supermarkets, general merchandise stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers also may include office space for small businesses, although their primary function remains retail trade. Mixed-use infill development at these centers should be encouraged to provide new retail and service uses, and additional housing and job opportunities. Transit improvements to these centers are also desirable.

The proposed Project is entirely consistent with this land use designation. The Project will include a variety of retail and service-oriented uses. The inclusion of a large format retail store establishes the site as a true multi-neighborhood center. The introduction of the residential units on the Subject Property is also entirely consistent with this land use designation. In addition, the Project will result in significant transit improvements that will benefit the surrounding neighborhoods and communities.

48. The Comprehensive Plan's Land Use Element addresses Neighborhood Commercial Districts and Centers and notes:

LU-2.4 Neighborhood Commercial Districts and Centers

Many District neighborhoods, particularly those on the east side of the City, lack well-defined centers or have centers that struggle with vacancies and a limited range of neighborhood-serving businesses. Greater efforts must be made to attract new retail uses to these areas by improving business conditions, upgrading storefronts and the street environment, and improving parking and pedestrian safety and comfort. The location of new public facilities in such locations, and the development of mixed use projects that include upper story housing can encourage their revival.

Policy LU-2.4.1: Promotion of Commercial Centers

Promote the vitality of the District's commercial centers and provide for the continued growth of commercial land uses to meet the needs of District residents, expand employment opportunities for District residents, and sustain the city's role as the center of the metropolitan area. Commercial centers should be

inviting and attractive places, and should support social interaction and ease of access for nearby residents.

The proposed project is the type of development that is sought in the above-mentioned Land Use policies. The proposed retail and service-oriented uses will enliven the surrounding area and provide opportunities for District residents to purchase goods and services in the District. The project will also create significant job opportunities for District residents. The high quality of design and finishes in both the retail and housing components of the project will create an inviting and attractive experience that will help ensure the project's long term success.

49. The Comprehensive Plan's Housing Element includes the following policies that are supported by this project:

Policy H-1.1.4: Mixed Use Development

Promote mixed-use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations.

The project's provision of approximately 450-500 residential units, including 20% of the units reserved for households earning up to 80% of AMI and an additional 10% of the units reserved for households earning up to 120% of AMI, in a neighborhood commercial center is consistent with this Policy.

50. The Comprehensive Plan's Transportation Element includes the following policies that are supported by this project:

Policy T-3.1.1: Transportation Demand Management (TDM) Programs

Provide, support, and promote programs and strategies aimed at reducing the number of car trips and miles driven (for work and non-work purposes) to increase the efficiency of the transportation system.

Policy T-3.1.3: Car-Sharing

Encourage the expansion of car-sharing services as an alternative to private vehicle ownership.

The Applicant's TMP is consistent with these policies of the Transportation Element of the Comprehensive Plan.

Government Agency Reports and District Government

51. By report dated November 30, 2009, OP recommended that the proposed PUD and related Zoning Map amendment should be approved. In its report, OP stated, "The

proposal is not inconsistent with the 2006 Comprehensive Plan, Future Land Use Map that recommends moderate density commercial for the majority of the property and Generalized Policy Map recommendation for a multi-neighborhood center for the property. The development is also consistent with many of the policies for the Far Northeast ... Area.” (Ex. 31, p. 1.)

52. In testimony at the public hearing and as noted in its November 30, 2009 report, OP expressed concerns about the number of parking spaces in the project. OP stated its belief that the number of spaces is excessive and that they have met with the Applicant to discuss the possibility of reducing the number of spaces in the project. (Ex. 31, pp. 6-7.)
53. OP recommended that the Commission approve the number of parking spaces associated with the first phase of development (Blocks 1 and 4). OP also recommended that the Applicant be required to return to the Commission for later phases of development to determine whether the proposed number of parking spaces is necessary. This would be based on a collaborative analysis between OP and the Applicant. (Feb. 4 Transcript, p. 14.)
54. OP also recommended that the Applicant provide space in the project for a commuter store. The store would provide information on transit services, as well as offering SmarTrip cards, student/senior passes, bus schedules, SmartBike information, and car-sharing information. OP also requested that the Applicant provide security and cleaning services for the space. OP noted that the Applicant agreed to this and noted that staffing and operation of the commuter store would be the District’s responsibility. (Feb. 4 Transcript, p. 69.)
55. OP stated that the Applicant requested “only a minimum amount of flexibility which does not affect the FAR, density, or height allowed by-right in the C-3-A district.” At the same time, OP noted that the Applicant will provide a suitable number of amenities based on the flexibility requested. (Ex. 31, p. 8; Feb. 4 Transcript, p. 71.)
56. OP stated in its report and at the hearing that the Fire and Emergency Medical Services Department (“FEMSD”) submitted comments that noted concerns about emergency access to all of the buildings in the project and truck-turning radii. FEMSD also noted concerns about the layout of fire hydrants. Both concerns were based on the project’s compliance with the D.C. Fire Code. (Ex. 31, p. 16; Feb. 4 Transcript, pp. 69-70.)
57. By its report dated December 7, 2009, DDOT recommended conditional support of the PUD and related Zoning Map amendment. DDOT agreed with the Applicant that the Project would not have significant transportation impacts. It stated that the Applicant is following DDOT’s policy for a TDM program. (Ex. 36, p. 2.)

58. In its testimony at the public hearing and in its report, DDOT noted its concerns with pedestrian safety around the project and its desire for additional pedestrian safety measures. DDOT stated that it is concerned about the increased number of pedestrians crossing the street because of this development and that many of the intersections are unsafe for pedestrians. It also noted that curb radii create pedestrian safety hazards. It identified certain locations near the Property that should be improved for safety. DDOT noted that the Applicant agreed to install three traffic signals to improve pedestrian safety. (Ex. 36, pp. 3-4; Feb. 4 Transcript, p. 135.)
59. In its testimony at the public hearing and in its report, DDOT noted its concerns with the proposed curb cuts. DDOT stated that two of the proposed curb cuts are problematic for DDOT's pedestrian safety standards. (Ex. 36, p. 4; Feb. 4 Transcript, p. 135.)
60. In its report, DDOT noted its concern with the excessive number of parking spaces. DDOT also expressed concern with the unloading of freight to the retail fronting on Main Street. DDOT also noted its desire for a commuter store in space provided by the Applicant. (Ex. 36, pp. 3-5.)
61. By a report dated January 21, 2010, the Urban Forestry Administration ("UFA") recommended approval of the PUD and related map amendment with conditions. UFA recommended that the Applicant undertake several mitigation techniques to address the loss of some of the urban forest and to minimize erosion and stormwater runoff in the ravine to the east of the Property. (Ex. 63.)
62. The District Department of the Environment ("DDOE") submitted a report on the proposed PUD and related Zoning Map amendment. DDOE recommended that the Commission require the proposed environmental design elements as proposed by the Applicant. The report also noted that further detailed review regarding green building and stormwater management would be conducted at the building permit stage. (Ex. 31, p. 16.)

ANC 7B Report

63. ANC 7B submitted a letter in support of the application on December 3, 2009. The letter stated that, on November 19, 2009, the ANC unanimously voted to approve a motion in support of the PUD and related Zoning Map amendment application, provided that the Applicant first meets four conditions. The first condition states a request that the Applicant executes a "construction management agreement, bond, or equal instrument" and reasonably meets the concerns of the residents of the four homes on Ft. Baker Drive located on land adjacent to the Property. The concerns of the residents relate to the impact of rezoning the transitional R-5-A Zone District located closest to their homes to the more intensive C-3-A Zone District proposed by the

Applicant, and the higher intensity uses and development on land that is contiguous with the four properties and just a few feet from the homes. The second condition is a request that the Applicant enter into an agreement that addresses the concerns of the Ft. Baker Drive residents and ANC 7B related to adequate buffering of the residents from the PUD project as expressed in paragraph FS-2-7-B of the Comprehensive Plan. The third is a request that the Applicant review the project to determine a design, location, and/or operation that minimizes the visibility of the Block 1 roof top parking area ramp to adjacent residential property to the north, minimizes the noise impact of vehicular and loading activity on the ramp, and prohibits truck traffic serving the PUD from using 30th Street between Park Drive and Alabama Avenue. Also included in the third condition is a request that the Applicant take measures to restrict residents and employees of the project from obtaining residential parking permits allowing them to park on neighborhood streets. The fourth condition is a request that the Applicant enter into an agreement to provide the community with a list of 21 proposed community benefits. (Ex. 33.)

64. At the public hearing, ANC 7B Commissioner Robert Richards and Kenneth Davis represented ANC 7B and testified on its behalf. Mr. Davis testified to the ANC's conditions of support for the Applicant's proposed project. (Feb. 17 Transcript, pp. 25-32.)
65. The Commission noted that the list of benefits requested by the ANC differs from that proposed by the Applicant. The Commission asked the ANC to revisit its requested 21-item community benefits package and to engage the Applicant in additional discussions about the benefits package. (Feb. 17 Transcript, pp. 33-34.)
66. In response to the Commission's requests, on March 29, 2010, the ANC submitted a revised list of community benefits. The ANC stated that it had engaged in further discussion with the Applicant. The ANC removed four items from its previous list and added an item for a total of 18 requested benefits. However, the list did not match that proposed by the Applicant. The report did not state any additional issues or concerns of the ANC regarding the PUD project. The letter did not indicate whether it was approved by the ANC at a properly noticed public meeting through a majority vote of the ANC representatives with a quorum present. (Ex. 100.)

Parties in Support

67. There were no parties in support of the application.

Persons in Support

68. Eric Jenkins, Development Manager in the Office of the Deputy Mayor for Planning and Economic Development, testified on behalf of the Deputy Mayor in support of the

Applicant's proposed PUD and related Zoning Map amendment. Mr. Jenkins noted how the project will generate over 1,740 construction jobs and 690 permanent jobs. In addition, Mr. Jenkins stated that the project is estimated to generate more than \$303 million in tax revenue over a 20-year period. He emphasized the positive social and economic impact of the project on the residents of Ward 7 and the considerable public benefits package offered by the Applicant. (Feb. 17 Transcript, pp. 7-12.)

69. Karen Lee Williams, of the Hillcrest Community Association ("HCCA"), testified in support of the Applicant's proposed PUD and related Zoning Map amendment. Ms. Williams stated that HCCA supports the application and that the Applicant's team has been open, forthright, and accessible. She also noted that the Applicant has upheld its commitments and has been responsive to community concerns. She concluded by stating that HCCA's board of directors passed a resolution in support of the proposed PUD and related map amendment. (Feb. 17 Transcript, pp. 48-54.)
70. Villareal Johnson of the Washington East Foundation and Eugene Dewitt Kinlow, resident of 3952 2nd Street S.W., testified in support of the Applicant's proposed PUD and related Zoning Map amendment. They noted how the proposed mixed-use project will enhance the neighborhood and will bring a much needed and important mix of retail and services to Wards 7 and 8. They also noted how the proposed project will improve the quality of life for residents nearby. (Feb. 17 Transcript, pp. 56-62.)
71. Julius Ware of the Ward 7 Business and Professional Association testified in support of the proposed PUD and related Zoning Map amendment. He noted that the project will create jobs and opportunities for businesses and residents in Ward 7. He also expressed his confidence in the Applicant's proposed community benefits package and the Applicant's ability to work with the community on the community benefits package. (Feb. 17 Transcript, pp. 62-65.)
72. Ten people submitted letters and/or written testimony in support of the proposed PUD and related Zoning Map amendment. Among others, Councilmembers Marion Barry and Kwame Brown submitted letters in support of the project. (Exs. 27, 32, 42, 43, 48, 61, 66, 69, 91, 92.)

Party Status Requests

73. HCCA filed a request for party status on November 24, 2009. They subsequently withdrew their request for party status on November 30, 2009. (Exs. 28, 35.)
74. On November 25, 2009, a group of four residents living on nearby Ft. Baker Drive requested party status in opposition. The Commission granted party status to the Ft. Baker Drive Party. (Ex. 29.)

Parties in Opposition

75. At the February 17, 2010 public hearing, FBDP presented testimony in opposition to the proposed PUD and related Zoning Map amendment. FBDP noted three major problems with the PUD application: traffic-related impacts; inconsistency with the Comprehensive Plan; and the insufficiency of the project's benefits and amenities package. FBDP's traffic and parking consultant, Joe Mehra (admitted as an expert), testified that, in his opinion, the Applicant's traffic study had five shortcomings. On March 29, 2010, FBDP submitted a written report from Mr. Mehra assessing the Applicant's traffic study. (Ex. 102; Feb. 17 Transcript, pp. 128- 131.)
76. Ronald Cole, owner of 2933 Ft. Baker Drive; Gary Puckerin, owner of 2929 Ft. Baker Drive; Karen Siebert, owner of 2937 Ft. Baker Drive; and Cynthia Brock-Smith, resident of the 2900 block of Ft. Baker Drive (all members of FBDP), testified in opposition to the proposed PUD and related Zoning Map amendment. These individuals stated concerns with the rezoning of the R-5-A zoned area on the eastern edge of the Subject Property, with the close proximity of Blocks 1 and 4, with the height and scale of Block 1, with the loss of forest views and privacy in the ravine between their properties and the project, and with the large scale of the project. They also testified that they believe that the project will adversely affect traffic, light and air, security, environmental quality, and property values. (Feb. 17 Transcript, pp. 133-143.)
77. FBDP individuals testifying in opposition to the application expressed concerns about the project being incompatible with the neighborhood. They objected to the access to the parking in Block 1 and the related consequences of frequent traffic in the Block 1 parking garage. The testifying individuals also noted their concerns that the loss of the R-5-A zoned area will allow for high density development close to their homes that is incompatible with their low density neighborhood; they expressed a strong desire to maintain a natural buffer between their properties and the project. FBDP testified in objection to the residential component of the project and expressed a desire for only a commercial project. (Feb. 17 Transcript, pp. 143-160.)
78. FBDP individuals expressed concerns with possible soil erosion in the ravine between the Subject Property and the Ft. Baker Drive properties. FBDP noted that, in their opinion, the soil quality in the ravine is poor and unstable because it was once a dumping site. FBDP also expressed concern with the possibly harmful effects of construction on their properties because of the unstable ground in the ravine and the possibility that construction will exacerbate problems they already have with their homes. (Feb. 17 Transcript, pp. 143-160.)
79. FBDP testified that they believe a natural spring runs in the ravine. These individuals stated their concerns that the steep slope of the ravine adjacent to Block 1 will be unable to support such a large development and will damage their homes. FBDP

requested the Commission to require an environmental assessment and impact study by the Applicant to verify that FBDP's homes will not be damaged. (Feb. 17 Transcript, pp. 160-166.)

Persons in Opposition

80. Ronald Mitchell, Mary Rose Green, ANC 7B Commissioner Robin Hammond-Marlin, Kimberly Jones, and Yvonne Bing all testified in opposition to the proposed PUD and related Zoning Map amendment. These people testified to their concerns about density, traffic, parking, pedestrian safety, noise, environmental impacts, inadequate community benefits, ownership of land included in the Subject Property, and a construction management plan. (Feb. 17 Transcript, pp. 82-95.)
81. Approximately 26 people or organizations submitted letters in opposition to the proposed PUD and related Zoning Map amendment. (Exs. 34, 37-41, 44, 47, 57-60, 64, 65, 67, 68, 70-74, 83, 84, 95, 97, 98.)
82. Elaine Mittleman, attorney for several previous owners of the Subject Property, submitted letters into the record noting concerns about the status of the title to the properties included in the Subject Property and questioning whether the District of Columbia held proper title to all of the properties that make up the Subject Property. Ms. Mittleman also raised questions regarding the satisfaction of the PUD filing requirements, requested information about the contractual relationship between the Applicant and the District of Columbia Government, requested information about the identity of the potential anchor tenant, raised concerns about the project's impact on the existing tenants, and raised concerns about the previous legal representation of some of the previous property owners. (Exs. 14, 83).

Applicant's Responses

83. In response to questions from the Commission, the Applicant submitted additional information and modifications to the project on January 21, 2010. The Applicant moved the Block 1 building away from the property line adjacent to Ft. Baker Drive an additional 37 feet, for a total distance of 72 feet. This change removed approximately 10,000 square feet of retail space along Naylor Road. The change also eliminated the need for a retaining wall system along the ravine and maintains a larger portion of the slope into the ravine. The Applicant also added more landscaping buffer to diminish the appearance of Block 1 from Ft. Baker Drive. The Applicant relocated the ramp to the roof parking area in Block 1 to be completely within the building, thereby minimizing noise from cars. (Ex. 62.)
84. In response to UFA's concerns and requests from the Commission, on February 4, 2010, the Applicant submitted a report and provided testimony from Lynn Straughan, an

expert in arboriculture and wetland delineation. Ms. Straughan testified about the vegetation in the ravine to the east of the Subject Property. She testified that the site contains no noteworthy vegetative community and consists of many invasive species; she stated that nothing would restrict the removal of vegetation on the site under the requirements of the D.C. Code. She testified that the area includes only 17 Special Trees (as defined in the Urban Forest Preservation Act of 2002), and one of those will be preserved. In addition, many of the trees are in poor condition, and many will be replaced. The Applicant submitted a chart to the Commission which explains the proposed tree removal and replacement on the Property. This chart showed that the total caliper amount of trees to be planted on the Property is greater than the total caliper amount of the Special Trees proposed to be removed. Ms. Straughan explained that the ravine was once cleared of vegetation. Ms. Straughan also explained that the area in question is not wetlands or waters of the U.S. because it does not meet the criteria set forth by the Army Corps of Engineers. (Exs. 62, 76, 77; Feb. 4 Transcript, pp. 20-24.)

85. The Applicant addressed FEMSD's concerns in its January 11, 2010 filing by submitting a copy of the letter it sent to FEMSD stating that the Applicant will take all necessary measures to ensure the project's compliance with the D.C. Fire Code. FEMSD submitted a follow-up report (via OP) stating that their issues had been resolved. (Exs. 62, 101.)
86. In response to the assessment submitted by FBDP concerning the Applicant's traffic study, the Applicant submitted additional information on its traffic study. The Applicant's traffic engineering expert noted that the data and methods in his reports were appropriate and provided an accurate assessment of the project's impact on traffic. (Ex. 104.)
87. In response to questions and requests from the Commission at the February 17, 2010 public hearing, the Applicant submitted additional information on March 29, 2010:
 - The Applicant stated that it will use construction techniques that will have no or few impacts on neighboring properties. Such techniques will include dynamic compaction and/or stabilizing the existing soil. In lieu of dynamic compaction, the Applicant may use soil surcharging, compaction grouting, mat foundations, and drilled micro piles. The Applicant noted that all of the proposed construction techniques could be utilized on the Property in a manner that will effectively mitigate construction impacts on FBDP properties;
 - The Applicant stated that it will provide on-site seismic/vibration monitoring for the Ft. Baker Drive properties during construction;
 - The Applicant noted that the proposed construction measures will also reduce stormwater flow toward Ft. Baker Drive through an on-site stormwater management system;

- The Applicant reiterated that the proposed Tree Preservation Area will reduce any further erosion and a newly planted vegetation area will further stabilize the slope area of the ravine;
- The Applicant noted that it had presented FBDP with a draft Construction Mitigation Agreement in December 2009 but had not received a written response to that Agreement;
- The Applicant prepared a matter-of-right analysis for the existing R-5-B area of the Property. This analysis demonstrated that a matter-of-right multi-family residential building in this area could be 30.5 feet taller than the proposed Block 1 and 22.5 feet taller than the proposed Block 4, and would have a greater impact on the neighboring properties. The Applicant also provided shadow studies which depicted the impact that the proposed project, and a possible matter-of-right residential building, would have on FBDP properties;
- The Applicant also provided information on a “balloon test” that it conducted on March 16, 2010 to depict the visual impact of the proposed project. The test revealed that the visual impact would be negligible;
- The Applicant stated that it has engaged ANC 7B in a dialogue about the ANC’s conditions of support, and they have come to agreement on many of these. The Applicant reassessed its public benefits and amenities and submitted a revised chart describing these benefits and amenities;
- After meeting with DDOT, the Applicant agreed to modify the ingress/egress point for Block 2; and
- The Applicant stated that the proposed residential use for the project was first presented to the community by representatives of the National Capital Revitalization Corporation on August 19, 2006. (Ex. 103.)

88. In response to concerns about ownership of the lots comprising the Subject Property, the Applicant submitted a chart illustrating the ownership of all of the lots. The chart demonstrates to the satisfaction of the Commission that the District has title to all of the properties that are included in this project. The Commission further finds that the District of Columbia government submitted the appropriate agent authorization letter into the record. All of the properties included in the PUD project are contiguous and the required notice was provided to all current lessees on the property. These lessees were given the opportunity to participate in this process and make their concerns known. The other issues raised in the letter of Ms. Mittleman concerning a request for more information of the agreement between the District and Applicant, the identity of a possible anchor tenant, and the legal representation of previous property owners are outside the scope and review authority of the Commission. (Ex. 109.)

89. In response to concerns from the Commission at the April 21, 2010 public hearing, on May 5, 2010, the Applicant submitted a list of the construction mitigation measures that it will follow during construction of the project. Such measures include monitoring of construction activity impacts on Ft. Baker Drive properties; a commitment to repair, at

its own expense, any damage that may occur during construction; site management, including fencing, erosion control, frequent trash removal, and direction of construction traffic; and designation of an on-site construction representative to answer questions and respond to concerns. (Ex. 112.)

Satisfaction of the PUD and Zoning Map Amendment Approval Standards

90. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” (11 DCMR § 2403.8.) The Applicant’s March 29, 2010 submission noted that it believes the total value of the project and community amenities provided in this project is \$5,249,325. Given the significant amount and quality of the project amenities and public benefits included in this PUD and related Zoning Map amendment application, the Commission finds that the development incentives to be granted for the project and the related rezoning are appropriate. The Commission also finds that the requested areas of flexibility from the requirements are consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations and are fully justified by the superior benefits and amenities offered by this project. The Commission notes that the amount of development proposed in this PUD project (approximately 350,000 square feet) is significantly less than the amount of development that could occur on the Property as a matter-of-right (approximately 1.6 million – 2.1 million square feet).
91. The Commission finds that the project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to affordable housing, urban design, landscaping and open space, site planning, job training and employment opportunities, transportation measures, environmental benefits, and uses of special value to the neighborhood and District as a whole.
92. The Commission credits the written submissions and testimony of the Applicant and OP that the proposed PUD and rezoning to the C-3-A Zone District is appropriate and that the proffered amenities and benefits are acceptable. The Commission also credits the testimony of the Applicant and OP that the proposed PUD project and rezoning of the Property are not inconsistent with the Comprehensive Plan. The Commission finds the written statements, reports, and testimony of the Applicant and OP persuasive that the creation of a town center (residential and commercial mixed-use) project is entirely consistent with the designation of the majority of the Property as a Multi-Neighborhood Center. In addition, the Commission notes the changes the Applicant made to Block 1 of the project, and how those changes address Action Item FNS 2.7.B of Chapter 17 of the Comprehensive Plan which requires that the Applicant work with property owners to develop and maintain a suitable visual, sound, and security buffer between the Skyland Shopping Center and the adjacent residential areas along Ft. Baker Drive. In response to issues raised by the property owners on Ft. Baker Drive, the building on

Block 1 was pulled back from the property line an additional 37 feet (for a total distance of 72 feet), a 58,000-square-foot Tree Preservation Area was created, and the ramp to the roof parking was internalized into the building. As shown in the materials submitted into the record on March 29, 2010, a matter-of-right multi-family residential project could be developed on the R-5-B zoned portion of the Skyland Property, adjacent to the Ft. Baker Drive properties, which would have a much more significant impact on the Ft. Baker Drive properties than the proposed PUD project. The Commission also notes that in response to security issues raised by the property owners on Akron Place, a site plan was created which did not allow direct pedestrian or vehicular access from Akron Place into this project, but instead allowed for the establishment of a significant landscaped buffer area between the project and those properties.

93. The Commission also concludes that the proposed Tree Preservation Area located near the adjacent Ft. Baker Drive and Akron Place properties responds to Policy FNS-1.2.4 of Chapter 17 of the Comprehensive Plan, which seeks to reduce soil erosion and stabilize slopes at Far Northeast and Southeast erosion “hot spots,” particularly the Skyland/Alabama Avenue area.
94. The requested rezoning to the C-3-A Zone District is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public spaces and amenities against the requested zoning relief. In Z.C. Order No. 921, a PUD and Zoning Map amendment case, the Commission clearly articulated the legal standard for reviewing PUD-related Zoning Map amendments:

A PUD map amendment is thus a temporary change to existing zoning, that does not begin until a PUD Covenant is recorded, ceases if the PUD is not built and ends once the PUD use terminates. This being the case, the Commission may grant PUD related map amendments in circumstances where it might reject permanent rezoning.

Z.C. Order No. 921 at 15 (COL 5). The Commission added:

A map amendment granted as part of a PUD establishes no precedent for zoning cases involving permanent zoning map amendments. A PUD map amendment is tied to the PUD use. The PUD use is constrained by covenant. Therefore, the merits of such amendments are usually analyzed in the narrow context of the PUD use requested.

Id. at 17(COL 13). Finally, the Commission observed:

A PUD applicant seeking a related map amendment must still demonstrate that public health, safety, and general welfare goals of the zoning regulations would be served by the amendment.

Id. at 16 (COL 6).

95. In this case, the Commission finds that the proposed PUD and related map amendment of the Property to the C-3-A Zone District is appropriate given the superior features of the project, the significant landscaped buffer that has been created in the area adjacent to FBDP properties, the design and architectural treatment of the buildings in Block 1 and Block 4, and the Property's inclusion in an area deemed to be a Multi-Neighborhood Center in the Comprehensive Plan's Generalized Policy Map. The Commission's conclusion is consistent with OP's recommendations to approve the project and the PUD-related Zoning Map amendment.
96. The Commission finds that the Applicant's January 11, 2010 and March 29, 2010 submissions adequately addressed the issues raised by OP, FEMSD, DDOT, DDOE, and UFA in their written submissions and in testimony at the public hearing. The Commission agrees with the Applicant's position that the amount of parking proposed in the project is appropriate and that the Applicant's proposed assessment matrix is appropriate for determining parking amounts in later phases of development. The Commission finds that the proposed street and intersection enhancements adequately address DDOT's concerns about pedestrian safety. In addition, the Commission finds that the proposed number and location of curb cuts are appropriate for the project. The Commission concludes that the Applicant's vegetation study and wetlands assessment adequately addresses the concerns noted by DDOE and UFA. The proposed plan for the Tree Preservation Area and plan for the replanting of trees will serve as a significant soil erosion control measure.
97. The Commission finds that the Applicant's March 29, 2010 and May 5, 2010 post-hearing submissions adequately address the issues raised by the Commission at the February 17, 2010 public hearing. The Commission concludes that the Applicant has adequately addressed all issues regarding the impact that construction of the project may have on the adjacent FBDP properties. The Commission finds that the construction mitigation measures and techniques and soil erosion control measures proposed by the Applicant will mitigate any adverse impacts on FBDP properties.
98. The Commission has accorded ANC 7B the "great weight" to which it is entitled. In so doing, the Commission fully credited the unique vantage point that ANC 7B holds with respect to the impact of the proposed PUD on the ANC's constituents. The Commission recognizes that the Applicant met with the community on numerous

occasions to address residents' concerns with the application. The Commission also finds that the Applicant worked with the ANC to resolve differences as to what each group felt were appropriate items to include in the public benefits and project amenities package. The Applicant's March 29, 2010 proposed public benefits and project amenities package is entirely appropriate for the development incentives and flexibility that it is requesting. The Commission has no authority to require that the Applicant provide more public benefits than it chooses to offer, but can only approve a PUD where the benefits suffice or deny a PUD when the proffer is deficient. The Commission can add conditions needed to mitigate potential adverse impacts of a PUD, but it has already found that the Applicant's conditions suffice. The Commission finds that the Applicant has proffered a series of conditions which: mitigate traffic impacts; provide significant distance between the buildings located on Blocks 1 and 4 and FBDP properties, as well as substantial landscaping and visual buffering of these buildings; include a number of construction mitigation measures that will be undertaken while construction activity occurs on the Property; and will provide significant amenities and benefits to the surrounding community. Therefore, the Commission cannot include all of the ANC's proposed conditions in this Order.

99. The Commission acknowledges the testimony provided by neighboring property owners and by FBDP. The Commission notes the three major issues that FBDP raised in opposition to this application: (i) the project is inconsistent with the Comprehensive Plan; (ii) the Applicant failed to prove the sufficiency of the project's benefits and amenities; and (iii) the Applicant's Traffic Impact Study was flawed. The Commission finds that the Applicant's responses to these concerns have been thoughtful and thorough. The Commission finds that the movement of the building on Block 1 away from the property line, the internalization of the ramp to the parking area in the building on Block 1, and additional greenery adequately address the concerns of FBDP about visual impacts of Blocks 1 and 4 on their properties. The Commission finds that the distance between the project and FBDP properties is adequate to minimize the visual impacts of the project. In addition, the Commission relies on the shadow studies provided by the Applicant which show that the PUD project will not adversely impact the amount of light and air afforded to FBDP properties. The Commission finds that the scale of the project is considerably smaller than what would be allowed as a matter-of-right in the existing R-5-B zoning. In addition, the Commission finds that the proposed town center mixed-use project, as proposed by the Applicant, is compatible with the surrounding neighborhood and is not inconsistent with the Comprehensive Plan. The Commission concludes that the Applicant's plans for the Tree Preservation Area, additional trees and plantings, and green screens on various buildings will adequately preserve FBDP's views. The Commission finds that the Applicant's traffic study provides a sufficiently accurate assessment of the traffic impacts of the project and that the project will not have a significant adverse impact on traffic in the surrounding area. Finally, in response to the objections raised by FBDP in its filing dated July 9, 2010, the Commission finds that the 10-year development timetable

proposed by the Applicant is justified by the size and complexity of the project, and the market forces it is likely to encounter. The Commission further finds that the design of the ground-floor retail spaces shown in the plans is sufficient to ensure that the spaces are filled with retail uses, and that no further conditions are required to ensure that these spaces are put to retail use.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a “well-planned development.” The objectives of the PUD process are to promote “sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces-and other amenities.” (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the 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. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (11 DCMR § 2405.)
3. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.
4. The application meets the minimum area requirements of 11 DCMR § 2401.1.
5. The application meets the contiguity requirements of 11 DCMR § 2401.3.
6. The proposed height and density of the buildings in the project will not cause a significant adverse effect on any nearby properties and does, in fact, comport with District goals for development of this important Multi-Neighborhood Center. Any impact of the project on the surrounding area and adjacent properties is deemed to be not unacceptable. As demonstrated in the Traffic Study submitted by the Applicant and supported by DDOT, the project will not cause adverse traffic impacts.
7. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the project will be properly mitigated. The

Commission finds that the conditions of approval proposed by the Applicant are sufficient given the potential impacts of the project on the surrounding and adjacent properties and the development incentives and flexibility requested in this application. The benefits and amenities provided by the project are truly significant. The Commission has judged, balanced, and reconciled the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse affects, pursuant to 11 DCMR § 2408.3, and concludes that granting the application is appropriate.

8. The Commission concludes the project is acceptable in all proffered categories of public benefits and project amenities and therefore satisfies the requirement of 11 DCMR § 2403.9.
9. The application seeks a PUD-related Zoning Map amendment to the C-3-A Zone District. The application also seeks limited flexibility from the Zoning Regulations regarding rear yard, side yard, and lot occupancy requirements for some of the proposed theoretical lots; roof structure relief; relief from the closed court width requirements for the buildings on Blocks 2A and 2B; and relief for the proposed shared loading facilities for the buildings on Blocks 3 and 4.
10. Approval of the PUD and change in zoning is not inconsistent with the Comprehensive Plan. The Commission finds that rezoning the site is consistent with the Comprehensive Plan, specifically the designation of the majority of the Property as a Multi-Neighborhood Center on the Generalized Policy Map.
11. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The Project is consistent with the major themes and city-wide elements of the Comprehensive Plan, including the Land Use, Housing, and Transportation Elements. The PUD is also consistent with the more specific goals and policies of the Far Northeast and Southeast Area.
12. The Commission is required under § 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)), to give “great weight” to the issues and concerns of the affected ANC as expressed in its written report. “Great weight” requires that the Commission state with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances. As is reflected in the Findings of Fact, ANC 7B voted to support the application subject to four proposed conditions that also contained references to its issues and concerns about the PUD. The Commission finds that the conditions of approval proposed by the Applicant adequately address the relevant and appropriate conditions proposed by the ANC. The Applicant agreed to undertake construction mitigation measures that are adequate to address the concerns about adverse construction affects on neighboring residences. The Applicant modified

the project to adequately buffer the residents of Ft. Baker Drive in a manner that adequately addresses the buffering concerns expressed by the ANC in its first and second proposed conditions. The Applicant revised the design of the project to adequately address the concerns regarding the ramp to the rooftop parking area of Block 1. The Applicant has provided a community benefits package that, while it does not match the requests contained in the ANC's report, is more than adequate to justify the granting of the PUD, especially in light of the other benefits and amenities of the PUD project.

13. The Commission is also required by § 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 the recommendations of OP. The Commission gives OP's recommendation to approve the PUD great weight and concurs with its conclusions, except with regard to the proposed number of parking spaces. The Commission notes that the overall parking ratio for the project is appropriate for this Property. The Commission approves the number of parking spaces proposed for the project and the Applicant's proposal regarding the number of parking spaces to be provided in later stages of development, as identified in the Applicant's parking space assessment matrix.
14. The Commission notes that the concerns of each public agency, including, but not limited to OP, DDOT, DDOE, UFA, and FEMSD, have been addressed satisfactorily by the Applicant.
15. The Commission acknowledges those individuals and FBDP who testified in opposition to the Application. The Commission finds that the density, height, and scale of the development are appropriate. The Commission notes that the Applicant made changes to the design and location of the building on Block 1 over the course of the public hearing process to address the concerns of FBDP. The Commission finds that the proposed town-center, mixed-use development is entirely consistent with the majority of the Property's designation as a Multi-Neighborhood Center. The Commission finds that the soil erosion control and construction mitigation measures proposed by the Applicant adequately address the concerns raised by FBDP regarding possible construction impacts on their homes. The Commission also finds that the Applicant's Traffic Impact Study was conducted and prepared in an appropriate manner. The Commission agrees with the conclusions of the Applicant's Traffic Engineering expert that this project will not create adverse traffic impacts. The Commission finds that the design of this project is consistent with good urban planning principles and will not have a detrimental effect on neighboring properties.
16. The PUD project and the rezoning of the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

17. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map amendment differently from other types of rezoning. PUD-related Zoning Map amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations and the conditions of this Order, the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is thus a temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. Here, the Commission finds that the proposed PUD-related map amendment of the Property to the C-3-A Zone District is appropriate given the superior features of the PUD project and is subject to the limitations stated herein.
18. 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 this application for consolidated review of a planned unit development and related Zoning Map amendment for the Subject Property (Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187, 214/189, 214/190, and 214/196; Square 5632, Lots 1, 3-5, and 802; Square 5633, Lots 800 and 801; Square 5641, Lots 10-13 and 819; and Square 5641-N, Lots 12-31 and 33). The approval of this PUD is subject to the following conditions. Except where otherwise noted, compliance with the following conditions shall be the sole responsibility of the Owner, although the Owner may authorize others to perform on its behalf. For the purposes of these conditions, the term "Owner" shall mean the person or entity then holding title to the Subject Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Subject Property, that party shall have no further obligations under this Order, however that party remains liable for any violation of these conditions that occurred while an Owner. Reference to the Applicant shall refer to Skyland Holdings, LLC and any successor in interest.

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit 121 of the record, as modified by the guidelines, conditions, and standards of this Order.
2. The Applicant shall make the following financial, or in-kind service, contributions:
 - (a) Financial Support to Schools: The Applicant shall make in-kind service or financial contributions, with a value of \$200,000, to support schools located

within the geographic boundaries of ANCs 7B, 8B, and 8A for aesthetic improvements and to participate in initiatives such as “Buff and Scrub.” The Applicant expects that these in-kind service or financial contributions will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator (“ZA”) and the Office of Zoning (“OZ”) as to whether any in-kind service or financial contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 75% of the total amount of this contribution (\$150,000) (whether in the form of in-kind services, monetary contributions, or a combination of the two) shall be made by the Applicant within five years of the effective date of this Order. Notwithstanding Condition No. 17, this Order will expire as of that date if these payments/services have not been provided. The full amount of this contribution (whether in the form of in-kind services, monetary contributions, or a combination of the two) shall be made by the Applicant no later than 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner;

- (b) Sponsorship of local community events and programs: The Applicant shall establish and administer a \$35,000 fund to sponsor community events such as holiday food drives, community festivals, and other community-promoting activities for the area surrounding the project. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 50% of the total amount of this contribution (\$17,500) shall be made by the Applicant within five years of the effective date of this Order. Notwithstanding Condition No. 17, this Order will expire as of that date if these payments have not been provided. The full amount of this contribution must be made by the Applicant no later than 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner;
- (c) Contractor loan fund: The Applicant shall establish and administer a \$300,000 fund that will ensure timely payment for small Certified Business Enterprise and local contractors during construction who cannot otherwise wait for typical draw cycles to be paid. The contractor loan fund will be made available for the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this

Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund. The annual amount of this contribution will be proportionate to the amount of construction activity which occurred in that year. If no construction activity occurred in any given year, the Applicant is not obligated to provide any financial contributions in that year. If any money remains in this fund 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner, that money will be added to the retailer build-out subsidy fund;

- (d) Local retailer build-out subsidy: The Applicant shall establish and administer a \$500,000 fund to subsidize a portion of the build-out costs for Certified Business Enterprise and local retailers opening a store at the Skyland Town Center. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund. The annual amount of this contribution will be proportionate to the amount of construction activity which occurred in that year. If no construction activity occurred in any given year, the Applicant is not obligated to provide any financial contributions in that year. The full amount of this contribution must be made by the Applicant no later than 12 years after the effective date of this Order.
- (e) Anacostia and Francis Gregory Libraries: The Applicant shall provide up to \$50,000 to perform capital improvements, upgrade computers, and provide other services for the Anacostia and Francis Gregory Libraries. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 50% of the total amount of this contribution (\$25,000) shall be made by the Applicant within five years of the effective date of this Order. Notwithstanding Condition No. 17, this Order will expire as of that date if these payments have not been provided. The full amount of this contribution must be made by the Applicant no later than 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner;

- (f) Pocket Park at 25th Street & Naylor Road: The Applicant shall improve and maintain, at a value of \$50,000, the existing triangular pocket park at 25th Street and Naylor Road. The maintenance of the pocket park be will be provided over the entire time period of the development of the project, as discussed in Condition No. 17. The maintenance obligation will commence immediately after the improvements are made. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any improvements were made for this purpose. The Applicant will construct the improvements to the pocket park within five years of the effective date of this Order;
- (g) The Applicant shall provide job training programs, at a cost of \$75,000, for residents of Wards 7 and 8 so that they are prepared to apply and interview for jobs with the future retailers at the Skyland Town Center or elsewhere. The Applicant shall maintain a list of trained and qualified job candidates and shall provide that list to all new retailers. The Applicant expects that this program will be conducted over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to the job training programs that were conducted in the prior year, if any. The extent of the training provided will be proportionate to the amount of construction activity which occurred in that year. If no construction activity occurred in any given year, the Applicant is not obligated to provide job training programs in that year; however, the Applicant must expend \$75,000 for the purpose of providing job training programs prior to 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner; and
- (h) The Applicant shall provide home buying and homeownership classes, at a cost of \$75,000, to prepare community members and future residents for purchasing a home, repairing credit, and maintaining a home. The Applicant expects that these classes will be conducted over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to the home buyer training programs or homeownership classes that were conducted in the prior year, if any. The extent of the classes provided will be proportionate to the amount of construction activity which occurred in that year. If no construction activity occurred in any given year, the Applicant is not obligated to provide any home buying or homeownership classes in that year; however, the Applicant must expend \$75,000 for the purpose of providing such home buying or homeownership classes prior to 10 years after the effective date of this Order,

or the date the last application for a building permit is filed for the project, whichever is sooner.

3. The failure of the Applicant to make any contribution or provide any service by the time specified in Condition No. 2 shall result in the denial of any pending application for a building permit or certificate of occupancy and shall be grounds for the revocation of any building permit or non-residential certificate of occupancy then in effect.
4. In consultation with DDOT, and contingent upon its approval, the Applicant shall construct and provide space for an 800-1,000 square-foot commuter store adjacent to, or located in, the building on Block 2. The commuter store will offer transit riders SmarTrip cards and Metrobus/Metrorail fare cards, maps, real-time schedules, and transportation options in the Metro Washington area. DDOT will provide for the operation of the store. The Applicant will deliver the commuter store space to DDOT as a warm white shell, with a finished floor, ceiling, lights, etc. The Applicant will not be responsible for the purchase or installation of any equipment or specialty items needed for the operation of the commuter store. The Applicant shall provide the same security and maintenance for the commuter store as it will for the other retail tenants in the project. In the event that DDOT determines that the store is not necessary, the Applicant will not be required to provide or construct such space. DDOT must make this decision by the time of the issuance of a building permit for Block 2.
5. The Applicant shall make the transportation infrastructure and traffic improvements to the area around Skyland Town Center, as provided for in the approved plans and materials: modified traffic signals; reconfiguring existing traffic lanes; restriping; new signs; and the widening of 25th Street. These transportation infrastructure and traffic improvements will be completed prior to the issuance of a Certificate of Occupancy for the Building on Block 1, in accordance with DDOT standards and contingent on DDOT issuing a permit for such improvements.
6. The Applicant shall make the following public space improvements to Naylor Road and Alabama Avenue, as provided for in the approved plans and materials; new DC standard sidewalks, granite curbs, and gutters; paver crosswalks; street trees; irrigation; special pavers; benches; receptacles; bollards; and 16' Washington Globe lighting. The Applicant will provide a landscape buffer on the east side of the Property to screen the project from Hillcrest residents. These public space improvements must be made by the completion of the last phase of development of the project.
7. The project shall be designed to obtain a certified level in the LEED-for-Homes, or other equivalent standard, for mixed-use retail and residential projects (including, but not limited to Green Communities). The large format retail store in Block 1 shall be designed to achieve a LEED Silver rating in the LEED NC 2.2 or LEED-CS 2.0 rating system, or other equivalent standard. The Applicant will also provide two green roofs.

The Applicant shall provide evidence to the ZA, from a LEED-certified professional, of the satisfaction of this condition in the building permit application materials submitted for each building.

8. The Applicant shall establish a transportation management program (“TMP”) that includes the following:
 - (a) A transportation services coordinator, through the property management office, who will develop and administer the TMP strategies;
 - (b) Rerouting of Metrobuses, placement of bus stops at more convenient locations, and enhancement of passenger access and safety to encourage the use of public transit. This shall be done in collaboration with DDOT and WMATA;
 - (c) Request employers at Skyland Town Center to provide employees with Metrochecks or SmarTrip cards;
 - (d) Provide designated parking locations along the internal street system for shared vehicles (i.e., ZipCar). The number of cars and locations will be determined by the Applicant and the shared vehicle company;
 - (e) Provide landscaped and lit shared pedestrian and bicycle paths between key locations within the project and Metrobus stops;
 - (f) Provide traffic calming features, such as special pavers and sidewalk bump-outs, on internal streets;
 - (g) Provide bicycle parking in the amount of at least five percent of the required automobile off-street parking (the amount required by DDOT);
 - (h) Establish and maintain a ridesharing and ride-matching program for residents and employees of Skyland Town Center; and
 - (i) Monitor and regularly evaluate the TMP.
9. The Applicant shall enter into a First Source Employment Agreement with the D.C. Department of Employment Services (“DOES”) in conformance with the Agreement included as Exhibit F of the Applicant’s Pre-Hearing Statement submitted into the record. A fully-signed First Source Employment Agreement between the Applicant and DOES must be filed with the ZA prior to the issuance of the first above grade building permit for the project.
10. The Applicant shall enter into a Certified Business Enterprise Utilization Agreement with the D.C. Department of Small and Local Business Development (“DSLBD”) in

conformance with the Agreement included as Exhibit G of the Applicant's Pre-Hearing Statement submitted into the record. A fully-signed Certified Business Enterprise Utilization Agreement between the Applicant and DSLBD must be filed with the ZA prior to the issuance of the first above grade building permit for the project.

11. The Applicant shall reserve a total of 20% of the residential units as affordable for households having an income not exceeding 80% of the Area Median Income ("AMI") for the Washington, D.C. Metropolitan Statistical Area (adjusted for family size). The Applicant shall reserve an additional 10% of the residential units as affordable for households having an income not exceeding 120% of AMI. A proportionate amount of affordable housing will be distributed throughout Blocks 2-4 except for the two upper stories of each building and the townhouses. These affordable units will be reserved for a term that is consistent with the affordability covenant that will be recorded in the D.C. Land Records against the Skyland Property, as required by the land disposition agreement signed by the Applicant and the District of Columbia.
12. The Applicant shall undertake the construction mitigation measures as stated in Exhibits 112 and 120 of the record. These measures include monitoring construction activity impacts; monitoring of vibrations from construction activity; the Applicant agreeing to take responsibility for damage to adjacent properties and pay for damage caused by the Applicant's construction activities (note that neither the Commission, nor the ZA, will have any responsibility or duty to determine whether any damage has occurred); providing site management, including fencing and barricades, erosion control measures, continuous rubbish removal, and directing of construction traffic; and provision of a on-site construction representative to hear and respond to concerns from the Ft. Baker Drive residents during construction.
13. The number of parking spaces permitted in the PUD project shall be consistent with the Parking Space Assessment Matrix included as Exhibit 51 in the record.
14. The Applicant shall have flexibility with the PUD in the following areas:
 - (a) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
 - (b) 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 the materials;
 - (c) To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any

other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit; and

- (d) To vary the appearance of the façades of the building on Block 1 to meet the design requirements and architectural standards of the ultimate tenant.
- 15. The ZA shall not approve a permit application for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to OAG and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the Subject Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with OZ for the case record.
- 16. The change of zoning from the R-5-A, R-5-B, and R-1-B Zone Districts to the C-3-A Zone District shall be effective upon the recordation of the covenant discussed in Condition No. 15, pursuant to 11 DCMR § 3028.9.
- 17. The PUD shall be valid for a period of three years from the effective date of this Order. Within such time, an application must be filed for a building permit for the construction of a building on Block 1, 2, 3, or 4 as specified in 11 DCMR § 2409.1, and construction must start within four years of the effective date of this Order to remain valid. Applications for building permits for all remaining portions of the project must be filed no later than 10 years after the effective date of this Order and construction must start no later than 11 years after the effective date of this Order.
- 18. 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.

Z.C. ORDER NO. 09-03

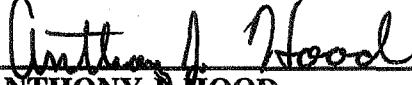
Z.C. CASE NO. 09-03

PAGE 43

On May 24, 2010, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** this application at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Konrad W. Schlater, not having participated, not voting; third Mayoral appointee position vacant, not voting).

On July 12, 2010, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to adopt; Konrad W. Schlater, not present, not voting; third Mayoral appointee position vacant, not voting).

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 September 10, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

**Z.C. ORDER No. 09-03
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 09-03

SEP - 7 2010

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 09-03 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Paul Tummnds, Esq.
Goulston & Storrs
2001 K Street, N.W., Suite 1100
Washington, D.C. 20006-1042
3. ANC 7B
3200 S Street, S.E.
Washington, DC 20020
4. ANC 8B
1809 Savannah Street, S.E. Suite A
Washington, D.C. 20020
5. Commissioner Zina D. Williams
ANC/SMD 7B02
2904 S Street, S.E.
Washington, DC 20020
6. Commissioner L. Yvonne Moore
ANC/SMD 7B03
2330 Good Hope Road, S.E. #1112
Washington, D.C. 20020
7. Commissioner Mary Buckley
ANC/SMD 8B01
1854 Woodmont Place, S.E.
Washington, D.C. 20020
8. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C.
9. Councilmember Marion Barry
10. Councilmember Yvonne Alexander
11. DDOT (Karina Ricks)
12. Melinda Bolling, Acting General Counsel
DCRA
1100 4th Street, S.W.
Washington, D.C. 20024
13. Office of the Attorney General (Alan Bergstein)
14. Ft. Baker Drive Party
c/o Martin Sullivan, Esq.
1726 I Street, N.W. Suite 300
Washington, D.C. 20006

ATTESTED BY:

Sharon S. Schellin

Secretary to the Zoning Commission

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-03A**

Z.C. Case No. 09-03A

Skyland Holdings, LLC

(PUD Modification @ Squares 5632, 5633, 5641, 5641N and Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187, 214/189, 214/190, and 214/196)

December 9, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on June 13, 2013 to consider an application from Skyland Holdings, LLC ("Applicant") on Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187, 214/189, 214/190, and 214/196; Square 5632, Lots 1, 3-5, and 802; Square 5633, Lots 800 and 801; Square 5641, Lots 10-13 and 819; and Square 5641-N, Lots 12-31 and 33 ("Property" or "Subject Property"), for approval of a modification to a planned unit development ("PUD") approved pursuant to Z.C. Order No. 09-03. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

1. On November 8, 2012, the Applicant submitted an application to the Commission for approval of a modification of a PUD originally approved pursuant to Z.C. Case No. 09-03. (Exhibit ["Ex."] 1-3.)
2. Pursuant to Z.C. Order No. 09-03, the Commission approved a PUD and related Zoning Map amendment for the Subject Property. The Subject Property contains 18.7 acres of land area.
3. The approved PUD will be a mixed-use town center with residential and retail buildings, accompanying parking, and townhouses (the "Project"). The Project will be comprised of five distinct and self-sufficient development parcels, known as Blocks. The Project will include 342,000 square feet of retail space, a Wal-Mart store, 450-500 residential units, and a total of 1,774 parking spaces.
4. The Applicant now seeks a modification to the approved PUD. The PUD and Zoning Map amendment approved in Z.C. Order No. 09-03 shall otherwise remain the same. (Ex. 2, 3, 15, 34, 49A, 49B, 52A.)

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ZONING COMMISSION

District of Columbia

CASE NO.09-03A

EXHIBIT NO.54

a. *Changes to Block 1*

1. Elimination of the underground parking garage, thereby reducing the number of parking spaces by approximately 220 spaces, and modifications to the roof level parking treatment;
2. Refinement to the architectural details of the building and reduction in the height of the previously approved architectural embellishment at the corner of Main Street and Naylor Road;
3. Refinement to the retaining walls on the northern and eastern edges of the building and the proposed green screen shading system; and
4. Refinement of parking ramps and walls.

b. *Changes to Block 2*

1. Reconfiguration of the buildings to create residential units to meet the expected market demand, while maintaining the ground floor retail uses;
2. Retention of an internal above-grade parking garage which will provide retail parking for Blocks 2, 3, and 4 as well as residential parking spaces for the residents of Block 2;
3. Reduction in the area of the first below-grade parking level and the addition of a second below-grade parking level;
4. Creation of a new covered private alley system which will provide through travel lanes from Naylor/Good Hope Roads to the internal Main Street;
5. Removal of the vehicular slip lane along Naylor/Good Hope Roads which provided vehicular access into the project;
6. Improvement of pedestrian access to the site;
7. Addition of a significant green roof, photovoltaic panels, and outdoor amenity space on the roof of the building;
8. Refinements to the loading and trash area; and
9. Elimination of a paseo.

c. *Changes to Block 3*

1. Increased depth of the retail space and residential building along Alabama Avenue;
2. Replacement of seven townhouse units with six carriage house units; and
3. Elimination of structured parking, with the relocation of the retail parking for Block 3 to the central parking garage in Block 2.

d. *Change to Block 4* - Elimination of the structured parking garage, with the relocation of the retail parking for Block 4 to the central parking garage in Block 2.

e. *Changes to Block 5*

1. Re-alignment of the intersection of the private residential street and Alabama Avenue;
2. Removal of the RCN switching equipment building; and
3. Removal of five townhouses, which results in an increased green buffer along the northern edge of Residential Street.

5. On November 30, 2012, the Office of Planning (“OP”) submitted a report recommending that the application be heard at a public hearing and requesting additional information from the Applicant on two distinct issues: (i) changes to screening on the rooftop garage of Block 1; and (ii) reduction of in-line retail along Naylor Road in Block 1. (Ex. 12.)
6. At its December 10, 2012 public meeting, the Commission set the case down for a public hearing as a contested case. (12/10 Transcript [“Tr.”] at pp. 61-62.)
7. On January 15, 2013, the Applicant submitted a prehearing statement with responses to questions and issues raised by the Commission at its December 10, 2012 public meeting. The Applicant’s submission provided more information regarding: (i) screening of vehicles on the roof of Block 1; and (ii) in-line retail along Naylor Road in Block 1. (Ex. 15.)
8. On May 24, 2013, the Applicant submitted a supplemental statement in anticipation of the public hearing. The supplement included refinements to the retaining wall system and parking ramp for Block 1. (Ex. 34.)
9. On June 13, 2013, the Commission held a public hearing on the application.

10. On July 9, 2013, the Applicant submitted a motion to reopen the record to submit new updated plans for Block 2. The Commission granted the motion since it will not prejudice or harm any party. (Ex. 43.)
11. On July 11, 2013, the Applicant submitted a motion requesting a postponement of the post-hearing submission deadlines and a decision in the case. The Applicant requested this postponement because of Wal-Mart's decision to put its plans on hold pending the outcome of the Large Retailer Accountability Act, which the D.C. Council passed but the Mayor had not acted on. The Commission granted this motion. (Ex. 44.)
12. On August 16, 2013, the Applicant submitted a motion requesting another postponement of the post-hearing submission deadlines and a decision in this case. The Applicant requested this postponement because of the continued unresolved outcome of the Large Retailer Accountability Act. The Commission granted this motion and agreed to accept a proposed timeline from the Applicant when the status of the legislation is resolved. (Ex. 46.)
13. On September 23, 2013, the Applicant submitted a proposed timeline for post-hearing submissions and a decision date. The Commission accepted this proposal. (Ex. 47.)
14. On October 2, 2013, the Applicant submitted its post-hearing information in response to questions and requests during the public hearing. (Ex. 49.)
15. On November 18, 2013, the Applicant submitted additional information and plans to address the comments made by the Commission at its October 21, 2013 public meeting. (Ex. 52, 52A.)
16. At the public hearing, the Commission considered the party status applications from Roland and Cherise Cole and from Joanne Harris and Gary Puckerin. The Commission denied both party status requests because the requests did not concern or address the proposed modifications; rather, they concerned matters in the approved PUD. The issues raised by both party status requests were thoroughly considered and addressed in the original PUD hearing and Z.C. Order No. 09-03. (Ex. 31, 33; 6/13 Tr. at pp. 8-14.)
17. OP provided a report and provided testimony at the hearing in support of the application and proposed modifications. OP testified that the proposed modifications will be improvements, such as the reduction in parking and the landscaping of the Block 1 retaining walls. The OP report indicated that the proposed modifications to the PUD should be approved subject to two conditions: (i) the Applicant address concerns regarding the design and landscape screening of the retaining walls for Block 1; and (ii) the Applicant make any changes recommended by the District Department of Transportation ("DDOT"). At the public hearing, the OP representative noted that the additional screening of the retaining walls for Block 1 proposed by the Applicant was a great improvement and addressed OP's condition regarding the design and landscape

screening of the Block 1 retaining wall. The OP report concluded and the OP representative testified that the modified PUD will continue to meet the policies and objectives of the Comprehensive Plan. (Ex. 35; 6/13 Tr. at pp. 78-80, 84.)

18. DDOT provided a report and testified at the hearing that it has no objection to the application. DDOT testified that the proposed modifications are not expected to increase trips to the site and that reduction in parking will not impact the site's ability to contain cars. DDOT found that the proposed modifications to the PUD would reduce the impact on the transportation network as long as three conditions regarding the driveway from Good Hope Road are met: (i) it is designated for truck use only; (ii) turning movements are restricted to right-in and right-out; and (iii) turning movements are restricted to off-peak travel hours and off-peak plaza hours. DDOT testified that these conditions could be resolved at the Public Space Committee. DDOT testified that site designs changes would be improvements to the transportation system. (Ex. 36; 6/13 Tr. at pp. 81-83.)
19. The Applicant provided testimony from Cheryl O'Neill and Gabriel Massa, both admitted as experts in architecture. (6/13 Tr. at pp. 17-18.)
20. At the public hearing, the Applicant testified that the proposed PUD modifications are not significant changes to the PUD previously approved. The Applicant testified that the proposed changes are primarily design oriented and do not affect the PUD's satisfaction of the PUD requirements, its fulfillment of Comprehensive Plan policies and objectives, or commitment of the proffered benefits and amenities. The Applicant further testified that DDOT's conditions regarding truck use only for the driveway from Good Hope Road and that the turning movements from the driveway off Good Hope Road be restricted to off-peak hours should be handled during the Public Space Committee process as those operational issues will not have any impact on the building layout or site plan approval; otherwise, the Applicant agreed to right-in and right-out turning movements. (Ex. 2; 6/13 Tr. at pp. 18-20.)
21. The Commission finds that DDOT's conditions regarding truck use only for the driveway from Good Hope Road and that the turning movements from the driveway off Good Hope Road be restricted to off-peak hours are most appropriately considered during the Public Space Committee process and not during this PUD modification as they are operational issues that do not impact the building layout for Block 2 or site plan, and because the PUD, as it is being modified through this application, does not give rise to any potential adverse transportation related impacts that need to be mitigated.
22. The Applicant testified and the Commission finds that the reduction of the underground parking garage for Block 1 significantly reduced the height of the building at its east elevation to approximately 26 feet. The modification relocated the landscaping closest to the building at the level of the building so it will much more effectively screen the building, and the modification incorporated supplemental landscaping that will screen the retaining walls as they come down the slope. The Applicant further testified that the

height reduction and additional landscaping for the retaining wall on the north elevation are also included in the modification. (6/13 Tr. at pp. 24-26.)

23. The Commission finds that the Applicant's proposal for landscape screening of the Block 1 retaining walls sufficiently addressed OP's concerns. The landscaping will provide an effective screen to obscure the appearance of the retaining walls.
24. In response to concerns expressed by the Commission, the Applicant further refined the Naylor Road elevation of Block 1 with landscaping. The revised plans included large planting beds separated by strips of hardscape and seating areas along Naylor Road. In addition, large screens will extend along the building's south façade. The Applicant modified the bay sizes behind the screens to minimize the building's appearance behind the screens. The Applicant stated that the landscaping approach was preferable to extending in-line retail along Naylor Road because it would limit commercial uses extending further into an established residential area and would focus the ground-floor retail experience along Naylor Road on Block 2 and on the project's internal Main Street. (Ex. 49, 49A, 52A.)
25. The Commission finds that the Applicant's proposed design for the south elevation of the Block 1 building along Naylor Road effectively addresses concerns about its appearance. The Commission finds that providing in-line retail along Naylor Road would extend commercial uses and impacts into an established residential area, so a landscape alternative is preferable.
26. The Applicant modified the screening and shading devices on the roof of the building to minimize appearance and the amount of up-lighting and light spill-over. The Applicant selected polycarbonate shading devices and a lighting system to ensure that lighting is distributed in precise directions and amounts and will minimize the light trespass from the building and site. The Applicant presented information that a minimal amount of light from the roof top parking level will be visible from Fort Baker Drive or from W Street. (Ex. 49A.)
27. The Commission finds that screening, polycarbonate shading system, and lighting system for the roof of the building will minimize appearance of cars, will minimize light-spill over, and the light from the roof will not adversely affect neighboring residential areas.
28. The Applicant altered the plans for Block 1 to include "Quik-Brik" instead of conventional brick as an exterior material. The Applicant testified that it selected this material because it will continue the high quality of materials on the Block 1 building façade and will provide benefits regarding constructability and sustainability. The Applicant demonstrated that the Quik-Brik will be nearly identical in appearance to that of standard brick when constructed, but the module size will allow for approximately half of the mortar joints than conventional brick. The module size will allow for a faster construction period. Also, Quik-Brik has a smaller carbon footprint than concrete brick,

and it is composed of a regional material that is 100% recyclable. (6/13 Tr. at pp. 34-35; Ex. 49, 49A.)

29. The Commission finds that the “Quik-Brik” material proposed for the exterior of Block 1 will provide the same overall appearance as conventional brick. Its advantages for constructability and sustainability over conventional brick make it an appropriate material selection for building without having to sacrifice the appearance approved in the original PUD.
30. The Applicant testified and the Commission finds that the modified development proposal for Block 2 maintains the height, scale, and general footprint of the buildings approved in the original PUD. The changes to Block 2, most notable of which is the addition of a central parking garage, allow for more efficient buildings on either side of the parking garage and provide residential uses almost completely lining the perimeter of the Block. Block 2 will include two mixed-use buildings functioning as one large building through connections on the upper levels. The Applicant refined the unit mixes and layouts of these buildings in order to be more responsive to the expected housing market for this area. The modified PUD incorporates a six-level parking garage located in the interior of Block 2, with approximately 241 undesignated parking spaces (as subsequently modified) reserved for the residential units in Block 2 and the remaining 551 parking spaces reserved for the retail uses located in Blocks 2, 3, and 4. No residential units have windows that look out onto the parking garage. Further, the modifications include a very large and expansive green roof on top of the parking garage that will create great new amenities for the residences, a pool, and a large amenity space. (Ex. 2; 6/13 Tr. at pp. 26-28.)
31. Pursuant to its motion to reopen the record, the Applicant made additional minor changes to the below-grade parking level, the proposed above-grade courts, the proposed façades, and the proposed roof structures for Block 2. The proposed number of residential parking spaces for Block 2 is 241 spaces. The proposed changes will reduce the area of the first level below grade that will be excavated for parking spaces; instead, it will create a second level of parking spaces below the footprint of the first parking level. This change will allow for a much more efficient excavation and construction process. Also, having a more compact footprint for the parking levels will significantly reduce the distance that residents of the building will have to walk from their parked car to the elevator. In addition, the proposed changes will result in a slight reduction of residential units to 260 units. This change will allow for enlarged courtyards that will provide better views and more natural light to the interior units. To accommodate this change for enlarged courtyards, the Applicant modified the façades of the building to adjust window patterns and to add balconies to many of the units. Further, the Applicant modified some of the roof structures to coordinate with code and mechanical requirements: several of the penthouse enclosures were reduced in size, one mechanical penthouse enclosure was added, and three roof stair enclosures were eliminated. The Applicant added rooftop pool

storage and a bath house to meet code requirements and to increase the usability of the rooftop pool. (Ex. 43, 48, 48A.)

32. The Commission finds that the additional changes to Block 2 submitted after the conclusion of the hearing will improve Block 2 and the PUD, and it will not prejudice any party. The reduction in parking spaces will allow for greater efficiency of construction, the reduction in units will allow for better light and features for the remaining residential units, the alterations to the façade will facilitate the larger courtyards, and the changed roof structures will allow for better compliance with code requirements.
33. The Applicant testified and the Commission finds that the proposed changes to Block 3 are minimal. The only change to the mixed-use building is an increase in the depth of some of the retail spaces along Alabama Avenue and in the residential building above. Also, the modified plan for Block 3 replaces the seven townhouses with six carriage house units. Each carriage house unit will include three parking spaces on the ground level with residential space above. Further, the residential units will be improved by modifying the Block to remove the above-grade parking structure and provide a surface parking lot with 77 spaces. In total, 150 parking spaces will be eliminated from Block 3. (Ex. 2; 6/13 Tr. at p. 29.)
34. The Applicant testified and the Commission finds that the only change to the proposed development of Block 4 is the removal of the above-grade parking structure and the construction of a surface parking lot with 87 parking spaces. In total, 105 parking spaces will be removed, and the parking lot will include significant landscaping and low-impact development measures, including substantial landscaping and bio-retention rain gardens. The Applicant further testified that the removal of the above-grade parking structure will significantly reduce the potential visual impact of the development of Block 4 on the Fort Baker Drive neighbors. The minimum distance from the property line to the Block 4 mixed-use building will now be approximately 175 feet. (Ex. 2; 6/13 Tr. at pp. 29-30.)
35. The Applicant testified and the Commission finds that the proposed internal street realignment near Block 5 will result in the reduction of five townhouses. The PUD modification will realign the residential street that bisects Blocks 3 and 5 in order to make the intersection more efficient. This realignment of the residential street necessitates the removal of these townhouses that were previously located to the east of the street and adjacent to single family homes along Akron Place. The removal of these townhouses will provide the Applicant with the opportunity to create an enhanced landscape buffer in their place between the PUD project and the neighboring properties. The seven remaining townhouses in Block 5 will have the same appearance, size, and layout as the previously approved townhouses in this Block. The Applicant testified that these modifications to the residential street and the open space provided in Block 5 are a

significant improvement, both operationally and aesthetically, compared to the approved PUD. (Ex. 2; 6/13 Tr. at p. 30.)

36. The Applicant testified and the Commission finds that the PUD modification will remove the RCN building. RCN no longer requires this building for its infrastructure, so the modified PUD will include a green landscape buffer in its place. (Ex. 2; 6/13 Tr. at pp. 30-31.)
37. The Applicant testified that Condition Nos. 3 and 17 in Z.C. Order No. 09-03 should be modified to allow the PUD to better accommodate potential and proposed retail tenants. Condition No. 3 permits the revocation of a non-residential certificate of occupancy if the Applicant does not make a required financial contribution pursuant to the public amenities. Condition No. 17 does not specify that the right to the approved new PUD-related Zoning Map amendment vests with the completion of a Block. The Applicant proposed modifying these two conditions to give assurance to a retail tenant in a completed Block that its right to use the Block is vested and it will not lose its certificate of occupancy. The Applicant proposed these changes to the conditions because a retail tenant could lose its right to operate through no fault of its own, i.e., if the Applicant fails to satisfy a condition of Z.C. Order No. 09-03. Therefore, potential retail tenants may be deterred from leasing space in the Project. (6/13 Tr. at pp. 36-38.)
38. The Commission finds that Condition Nos. 3 and 17 should be modified as proposed by the Applicant. The Commission still retains the authority to enforce the conditions in Z.C. Order No. 09-03, but finds that the potential to inadvertently penalize a retail tenant for no reason is an unnecessary tool of enforcement. The modified conditions still preserve the intent of having a mechanism to enforce compliance with providing amenities and time limits on development.
39. Advisory Neighborhood Commissions (“ANC”) 7B and 8B were automatically parties in this proceeding. Neither ANC 7B nor ANC 8B submitted reports on this application. Neither ANC appeared at the public hearing. (6/13 Tr. at p. 87.)
40. Joanne Harris, Ronald Mitchell, and Ronald Cole testified in opposition to the application. They raised concerns regarding structural damage to their houses from construction of the PUD, decreased values of their houses, impact on wildlife, and enforcement of the construction management plan. (6/13 Tr. at p. 89-94.)
41. The Commission credits the comments of the opponents but finds that the concerns raised by the opponents are not germane to the PUD modification application because their comments related to issues debated and resolved with the approved PUD. Therefore, the issues raised are not material to the Commission’s decision on this modification application.

42. At a public meeting held on October 21, 2013, the Commission took proposed action to approve the application. The Commission requested additional information from the Applicant regarding the treatment of the street wall of Block 1 along Naylor Road, and regarding its continuing dialogue with the Fort Baker Drive neighbors. The Commission waived the requirements of § 2403.15 -2403.20 that the Applicant submit a list of final proffers and draft conditions because the proffers of the PUD were largely unchanged from what the Commission already approved.
43. The application was referred to the National Capital Planning Commission (“NCPC”) for review of any impacts on the federal interest under the Comprehensive Plan. By delegated action December 5, 2013, the Executive Director of NCPC found that the application was not inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.
44. At a public meeting on December 9, 2013, the Commission took final action to approve the application in Z.C. Case No. 09-03A.

CONCLUSIONS OF LAW

Pursuant to the Zoning Regulations, the PUD process provides a means for creating a “well-planned development.” The objectives of the PUD process are to promote “sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces-and other amenities.” (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the 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.)

Development of the Subject Property included in this application 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. As was the case for the originally approved PUD, the Commission concludes that the proposed PUD modifications continue to promote the purposes of the PUD process.

The modified PUD, as approved by the Commission, continues to comply with the applicable height, bulk, and density standards of the Zoning Regulations. The designs and uses for this project are appropriate for the Subject Property. The impact of the Project on the surrounding area and the operation of city services continue to be acceptable given the quality of the public benefits in the Project.

The Commission credits the reports and testimony of OP and DDOT. The Commission concludes that the Applicant has adequately addressed OP’s condition regarding the design and landscape screening of the retaining walls for Block 1. The Commission also concludes that the Applicant’s satisfaction of DDOT’s conditions regarding the use of the Block 2 entrance drive

from Naylor Road for use by more than truck traffic, and the timing of permitted turning movements into that entrance drive are more appropriately addressed in the Public Space Committee process, since those conditions primarily relate to operational issues and do not impact the building or site plan layout of Block 2. The Commission notes that the Applicant agreed DDOT's third condition, that turning movements from Naylor Road into Block 2 be limited to right-in and right-out only.

Based on the character of the proposed changes, the Commission finds that the modified PUD is consistent with the intent of and achieves the same goals as the previously approved PUD in Z.C. Order No. 09-03. The Commission concludes that its decision to approve the modified PUD is in the best interests of the District of Columbia and is consistent with the intent, purpose, and integrity of the Zoning Regulations and Zoning Map. As was the case for the previously approved PUD, the Commission concludes that the approval of the PUD modification is not inconsistent with the Comprehensive Plan.

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 this application for modification of a PUD approved pursuant to Z.C. Order No. 09-03. The conditions in Z.C. Order No. 09-03 remain unchanged except as follows. The following conditions replace conditions 1, 3, 13, and 17 of Z.C. Order No. 09-03:

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 3A, 15A, 49A, and 52A of the record in Z.C. Case No. 09-03A, as modified by the guidelines, conditions, and standards of this Order.
3. The failure of the Applicant to make any contribution or provide any service by the time specified in Condition No. 2 shall result in the denial of any pending application for a building permit or certificate of occupancy and shall be grounds for the revocation of any building permit.
13. The number of parking spaces permitted in the PUD project shall be a total of 1,774.
17. The PUD shall be valid for a period of three years from the effective date of this Order. Within such time, an application must be filed for a building permit for the construction of a building on Block 1, 2, 3, or 4 as specified in 11 DCMR § 2409.1, and construction must start within four years of the effective date of this Order to remain valid. Applications for building permits for all remaining portions of the project must be filed no later than 10 years after the effective date of this Order and construction must start no later than 11 years after the effective date of this Order. Subject to compliance with Condition 16 the applicable map amendment for each block upon shall vest upon the start

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of construction on the block and shall not revert to the underlying zone district for so long as the PUD improvements on the block remain.

The following condition is added:

19. The Applicant shall provide a 10-feet wide clear sidewalk along the building face of Block 1 and Block 2 on the Naylor/Good Hope Road frontage on public space or through a combination of public and private space.

On October 21, 2013, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On December 9, 2013, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on January 17, 2014.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-03B

Z.C. Case No. 09-03B

Skyland Holdings, LLC

(Two-Year PUD and Zoning Map Amendment Time Extension @ Squares 5632, 5633, 5641, 5641N and Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187, 214/189, 214/190, and 214/196)

December 9, 2013

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on December 9, 2013. At that meeting, the Commission approved the request of Skyland Holdings, LLC (“Applicant”) for a two-year time extension of an approved consolidated planned unit development (“PUD”) and related Zoning Map amendment. At the same time, the Commission approved Z.C. Case No. 09-03A, in which the Applicant requested a modification to the approved PUD. The order granting the modification (Z.C. Order No. 09-03A) was issued concurrently with this Order, consistent with the Commission’s intent that this approved extension applies to the PUD as modified. The time extension request was made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations.

FINDINGS OF FACT

- 1 The Commission granted approval of the consolidated PUD and Zoning Map amendment on July 12, 2010 pursuant to Z.C. Order No. 09-03 that became effective on September 10, 2010. The approval was valid for a period of three years from the effective date of the order, within which time an application for a building permit for construction of a building on Blocks 1, 2, 3, or 4 was required to be filed (Z.C. Order No. 09-03.) Applications for building permits for all remaining portions of the project had to be filed no later than 10 years after the effective date of Z.C. Order No. 09-03 and construction had to start no later than 11 years after the effective date of Z.C. Order No. 09-03.
- 2 On November 8, 2012, the Applicant filed a request to modify the approved PUD in Case No. 09-03A.
- 3 On November 9, 2012, the Applicant filed a request to extend the time for filing the first building permit for two years until September 10, 2015. The Applicant also requested that the Commission consider this extension request along with the modification request in Z.C. Case No. 09-03A (Exhibits [“Ex.”] 1, 5.)

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ZONING COMMISSION
District of Columbia

CASE NO. 09-03B
ZONING COMMISSION
District of Columbia
CASE NO. 09-03B
EXHIBIT NO. 10
EXHIBIT NO. 10

4. The extension request was placed on the Commission's meeting agenda for December 10, 2012, at which time, the Commission voted to defer action on the extension request pending the outcome of the modification request in Z.C. Case No 09-03A. (12/10/12 Transcript [“Tr.”] at p 61)
5. Z C Order No 09-03 approved a town center with mixed-use retail and residential buildings, accompanying parking facilities, and townhouses The PUD includes approximately 311,000 square feet of retail and service-related uses and approximately 450-500 residential units. Z.C Order No. 09-03 also approved the rezoning of the Property to the C-3-A Zone District
6. As noted, the PUD approval was modified by Z C Case No 09-03A Z.C Order No. 09-03A approved changes to the number of parking spaces, improvements to the site circulation, reconfigurations to residential buildings, changes to architectural details of the free-standing large-format retail building (Block 1), and other modifications
7. Since approval of the original PUD, the Applicant has made a good faith effort to proceed with the PUD Since the Commission's approval of Z.C. Case No. 09-03, the Applicant has proceeded with construction drawings, held pre-development review meetings, and identified the anchor retail tenant In addition, the District has begun razing some vacant buildings on the Property (Ex 1)
8. At the time the Applicant filed this request, November 9, 2012, the District of Columbia (who owns the property) was still engaged in litigation with some of the previous owners of the property regarding the financial value of those properties. This continued litigation made it difficult for the Applicant to move forward with the acquisition of the property and to obtain the necessary financing for the significant pre-construction activities (Ex 1)
9. The Applicant demonstrated that there is no change to the material facts on which the original PUD was approved. (Ex 1)
10. The Applicant served its request for an extension on all parties to the PUD, including Advisory Neighborhood Commissions (“ANC”) 7B and 8B and the Ft. Baker Drive Party The parties were given 30 days to respond to the request (Ex 1.)
11. Neither ANC 7B nor ANC 8B submitted a letter into the record to indicate their support or opposition
12. The Ft. Baker Drive Party did not submit anything into the record

13 The Office of Planning (“OP”) submitted a report on December 6, 2013. OP evaluated the Applicant’s request and determined that the request fulfilled the standards promulgated in § 2408.10 of the Zoning Regulations. OP noted that there was not any change to the material facts on which the original PUD was approved and that there are not any projects anticipated in the immediate neighborhood that would affect the development plans for the property. OP also noted the pending litigation as an impediment to the Applicant’s ability to proceed with the PUD as the good cause justification under § 2408.11. (Ex. 8.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11 DCMR §§ 2408.10 and 2408.11 are satisfied. Section 2408.10 gives the Commission the authority to extend the validity of a PUD approval.

The Commission has analyzed such extension requests pursuant to the standard set forth for PUD time extensions in § 2408.10. Section 2408.10(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The Applicant served the parties to the original PUD application when it filed this time extension request on November 9, 2012. All parties were given 30 days to respond to the extension request, and none of them responded.

Section 2408.10(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the original PUD. Based on the Applicant’s and OP’s analysis, the Commission concludes that extending the time period of approval is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application.

Finally, § 2408.10(c) requires that the Applicant demonstrate with substantial evidence that there is a good cause for the proposed extension, as provided in § 2408.11. Pursuant to § 2408.11, an extension of validity of a PUD may be granted if the Applicant has demonstrated with substantial evidence one or more of the following criteria:

- (a) An inability to obtain sufficient project financing for the PUD, following an Applicant’s diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the Applicant’s reasonable control,

- (b) An inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the Applicant's reasonable control; or
- (c) The existence of pending litigation or such other condition, circumstance, or factor beyond the Applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order.

Based on the ongoing litigation regarding the value of the Property, the Commission finds that there is good cause shown to extend the period of time of the validity of the approved PUD and Zoning Map amendment. The Commission also finds that the Applicant has made good faith efforts to effectuate the PUD and has pursued a significant number of steps to proceed with the construction of the PUD while events beyond the Applicant's control persisted.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations (as discussed in Paragraph 13 above). OP's analysis demonstrates that the Applicant has satisfied the criteria for a time extension of the Order.

For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR § 2408.10 and 2408.11

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Z.C. Case No. 09-03B for a two-year time extension of Z.C. Order No. 09-03. The validity of the PUD as modified by Z.C. Order 09-03A is extended until September 10, 2015, by which time the Applicant must file for a building permit for the construction of a building on Block 1, 2, 3, or 4 as specified in 11 DCMR § 2409.1, and construction of that building must start by September 10, 2016 for the PUD to remain valid. Condition No. 17 of Z.C. Order No. 09-03, as modified by Z.C. Order No. 09-03A, sets forth the Applicant's remaining obligation to file building permit applications for and commence construction of the remaining portions of the PUD and the timeframe for doing so.

For the reasons stated above, the Commission concludes that the Applicant has met its burden, it is hereby **ORDERED** that the request be **GRANTED**.

On December 9, 2013, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote

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of 5-0-0 (Anthony J Hood, Marcie I Cohen, Robert E Miller, Peter G May, and Michael G Turnbull to adopt)

In accordance with the provisions of 11 DCMR 3028 8, this Order shall become final and effective upon publication in the *D C Register* on January 17, 2014



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-03C
Z.C. Case No. 09-03C
Skyland Holdings, LLC
(PUD Time Extension @ Square 5633)
October 17, 2016

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on October 17, 2016. At that meeting, the Commission approved the request of Skyland Holdings, LLC (“Applicant”) for a one-year time extension (“Request”), until September 10, 2017, in which to start construction of one of the buildings in the Skyland Town Center project planned unit development (“PUD”) approved by Z.C. Order No. 09-03, as amended and extended by ZC Order Nos. 09-03A and 09-03B. The property (Lot 22 in Square 5633) that is the subject of this application is bound by Good Hope Road, S.E., Naylor Road, S.E. and Alabama Avenue, S.E. (“Property”). The Request was made pursuant to § 705 of the Zoning Commission’s Rules of Practice and Procedure, which is contained in Subtitle Z of Title 11 DCMR.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. The Property was rezoned to the C-3-A Zone District pursuant to a PUD-related map amendment granted in Z.C. Order No. 09-03. The PUD approved in Z.C. Order No. 09-03 created a Town Center with mixed-use retail and residential buildings, accompanying parking facilities, and townhouses on five different Blocks. The original PUD project consisted of approximately 311,000 square feet of retail- and service-related uses and a large format retail store, as well as neighborhood-serving retailers. The residential component of the original PUD project created 450-500 residential units, including a number of affordable housing units, and 20 townhouses. The original PUD project also included transportation infrastructure improvements to foster safe pedestrian and vehicular interaction along the adjacent major streets (Good Hope Road, Naylor Road, and Alabama Avenue). Z.C. Order No. 09-03 became effective on September 10, 2010.
2. On November 8, 2012, the Applicant filed a request to modify the original PUD project. The PUD modification application, Z.C. Case No. 09-03A, did not propose significant changes to the original PUD project. The number of residential units in the modified PUD project remained in the approved range of 450-500 units and the amount of retail- and service-related uses is approximately 342,000 square feet. The modified PUD

project included modifications to all five Blocks. The majority of the Commission's attention to these modifications focused on the proposed Walmart shopping center to be located on Block 1 and the mixed-use residential building located along Block 2, which included frontage along Naylor Road, S.E. and Good Hope Road, S.E. Z.C. Order No. 09-03A became effective on January 17, 2014.

3. On November 9, 2012, the Applicant requested a time extension of the period of approval for the modified PUD project. Condition No. 17 of Z.C. Order No. 09-03 stated that the "PUD shall be valid for a period of three years from the effective date of this Order [September 10, 2010]. Within such time, an application must be filed for a building permit for the construction of a building on Block 1, 2, 3, or 4 as specified in 11 DCMR § 2409.1, and construction must start within four years of the effective date of this Order to remain valid." The Applicant requested that the Commission extend the time period in which it is required to file a building permit application for the construction of a building on Block 1, 2, 3, or 4 until September 10, 2015 and that construction of that building must start by September 10, 2016. The Commission approved this time extension request and Z.C. Order No. 09-03B became effective on January 17, 2014.
4. Consistent with Z.C. Order No. 09-03B, the Applicant filed a building permit application for the construction of the building on Block 2 of the approved Skyland Town Center with the Department of Consumer and Regulatory Affairs ("DCRA") on August 6, 2015. This building permit application was given a permit/tracking number of B1511201. On August 26, 2016, DCRA completed its review of the building permit application and issued an invoice noting the building permit fee. Once the fee is paid, the building permit for Block 2 will be issued.

CURRENT APPLICATION

5. The Applicant filed the current Request on August 31, 2016. The Applicant provided a certificate of service which noted that the time extension application was served on all parties to the original PUD, which were Advisory Neighborhood Commissions ("ANC") 7B and 8B, and the Ft. Baker Drive Party ("FBDP"). (Exhibit ["Ex."] 1.)
6. The Applicant indicated that there has been no substantial change of material facts that affect the Property since the Commission's approval of the PUD modification and time extension applications. The Applicant provided evidence that it had undertaken significant demolition, site preparation, and grading work in order to prepare the Property for the development of the Skyland Town Center project. To date, the Applicant has spent approximately \$17,410,946 in order to bring the Skyland Town Center project closer to reality. This amount was spent on the following scope of work:
 - Land cost;
 - PUD approvals;
 - Production of approved site plans;
 - Preparation and submission of building permit plans for Block 2;
 - Demolition of existing structures, except former CVS and Post Office buildings;

- Preliminary grading of site, installation of sediment traps;
- Preliminary excavation of Block 1; and
- Construction of two (2) retaining walls. (Ex. 1.)

7. The Applicant stated that it was unable to start construction of Block 2 by September 10, 2016 for two reasons. First, DCRA only completed its review and granted approval of the building permit application for the construction of Block 2 on August 26, 2016. While the Applicant has diligently pursued the processing of the building permit application and will be able to obtain the building permit upon the payment of the \$309,100 permit fee, there is not sufficient time for the Applicant to start construction activity on Block 2 prior to September 10, 2016. The second reason that the Applicant was unable to start construction of the building on Block 2 was related to Walmart's announcement (in January of 2016) that it was pulling out of the Skyland Town Center project. As a result of Walmart's decision, the Applicant was forced to revisit and rework the financing for the entire project. Since January 2016, the Applicant has worked diligently with the Office of the Deputy Mayor for Planning and Economic Development to update the Development Finance Agreement for the Skyland Town Center project in order to allow land development to continue and to begin construction on Block 2. The Applicant noted that the approval of the one-year time extension requested in this application will allow the Applicant to secure the necessary financing to allow for the continued development of the entire Skyland Town Center project. (Ex. 1, 1D.)

8. Neither ANC 7B nor ANC 8B submitted a written report into the record pertaining to this Request.

9. The Ft. Baker Drive Party did not submit anything into the record regarding this Request.

10. The Office of Planning ("OP") submitted a report on October 7, 2016. The OP report stated that OP had no objection to the PUD time extension request. OP concluded that the Applicant satisfied the relevant standards of Subtitle Z, Section 705.2. (Ex. 4.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11-Z DCMR § 705.2 are satisfied. Subsection 705.2(a) requires that the applicant serve the Request on all parties and that all parties are allowed 30 days to respond. ANCs 7B and 8B were served with this Request, as was FBDP. Neither ANC 7B, ANC 8B, nor FBDP responded to this Request.

Subsection Z § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD. Based on the information provided by the Applicant and OP, the Commission concludes that extending the time period of approval for the consolidated PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original consolidated PUD application.

Subsection 705.2(c) requires that the applicant demonstrate with substantial evidence one or more of the following criteria:

- (1) An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control;
- (2) An inability to secure all required governmental agency approvals for a development by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
- (3) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to start construction of the building on Block 2. The Commission takes notice that DCRA's review and approval of the building permit for construction of the building on Block 2 was completed on August 26, 2016, despite the Applicant's diligent efforts to move the building permit application forward, and to start construction before September 10, 2016 was therefore not feasible. In addition, the Commission agrees with the Applicant's statement that Walmart's unilateral decision to pull out of this project in January of 2016 resulted in the Applicant's inability to obtain sufficient project financing. Therefore, the Commission finds that approval of this time extension request is consistent with §§ 705.2(c)(1) and 705.2(c)(2). The Commission believes that granting the one-year time extension request, to allow the Applicant until September 10, 2017 to start construction of the building on Block 2, is an appropriate amount of time.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. OP had no objection to the time extension request.

The Commission is required under Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in an affected ANC's written report. As noted neither ANC 7B nor 8B submitted such a report.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Z.C. Case No. 09-03C for a one-year time extension of the consolidated PUD application approved in Z.C. Order Nos. 09-03 and 09-3A, and extended in Z.C. Order No. 09-03B. The validity of the consolidated PUD approved by the Zoning Commission is extended until September 10, 2017, by which time the Applicant must start construction of the building on Block 2 for the PUD to remain valid. Condition No. 17 of Z.C. Order No. 09-03, as modified by Z.C. Order No.

09-03A, sets forth the Applicant's obligation to file building permit applications for and commence construction of the remaining portions of the PUD and the timeframe for doing so.

On October 17, 2016, upon the motion of Chairman Hood, as seconded by Vice Chairperson Miller, the Zoning Commission **APPROVED** this Request at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May to approve; Michael G. Turnbull to approve by absentee ballot; Third Mayoral Appointee position vacant, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9 this Order shall become final and effective upon publication in the *D.C. Register* on December 16, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-03D
Z.C. Case No. 09-03D
Skyland Holdings, LLC
(Modification of Consequence of PUD @ Square 5633)
March 27, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on March 27, 2017. At that meeting, the Commission approved the application of Skyland Holdings, LLC (“Applicant”) for a Modification of Consequence of the Consolidated PUD application approved by Z.C. Order Nos. 09-03 and 09-03A. The property (Lot 22 in Square 5633) that is the subject of this application is Block 2 of the Skyland Town Center Project, which is bound by Naylor Road, S.E., Good Hope Road, S.E., and Alabama Avenue, S.E. (“Property”). The modification request was made pursuant to § 703 of the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

FINDINGS OF FACT

BACKGROUND INFORMATION

1. The Property was rezoned to the C-3-A Zone District pursuant to Z.C. Order No. 09-03. The PUD approved in Z.C. Order No. 09-03 created a Town Center with mixed-use retail and residential buildings, accompanying parking facilities, and townhouses on five different Blocks. The original PUD project consisted of approximately 311,000 square feet of retail- and service-related uses and a large format retail store, as well as neighborhood-serving retailers. The residential component of the original PUD project created 450-500 residential units, including a number of affordable housing units, and 20 townhouses. The original PUD project approved 1,698 off-street parking spaces and 76 parking spaces in the internal street system for a total of 1,774 parking spaces. The Applicant, in response to concerns raised by the Office of Planning (“OP”) and the District Department of Transportation (“DDOT”), proposed a Parking Assessment Matrix to potentially limit the amount of parking provided in later stages of the project if earlier projections for parking demand were not reached. Z.C. Order No. 09-03 became effective on September 10, 2010.
2. On November 8, 2012, the Applicant filed a request to modify the original PUD project. The PUD modification application, Z.C. Case No. 09-03A, did not propose significant changes to the original PUD project. The number of residential units in the modified

PUD project remained in the approved range of 450-500 units and the amount of retail- and service-related uses increased to approximately 342,000 square feet. The modified PUD project included modifications to all five Blocks. The majority of the Commission's attention to these modifications focused on the proposed Walmart shopping center to be located on Block 1 and the mixed-use residential building located along Block 2, which included frontage along Naylor Road, S.E. and Good Hope Road, S.E.

3. Z.C. Order No. 09-03A, which became effective on January 17, 2014, approved plans for Block 2 which consolidated the retail parking for Blocks 2, 3, and 4 into a central garage in Block 2 and deleted the above-grade structured parking garages in Blocks 3 and 4. The approved parking structure in Block 2 included a total of 792 parking spaces with 241 parking spaces reserved for the residential uses in Block 2, and 551 parking spaces were to be used for retail parking. Z.C. Order No. 09-03A also reduced the number of parking spaces in Block 1, by approximately 220 parking spaces.

CURRENT APPLICATION

4. The Applicant stated that the modifications proposed in this application are all related to the removal of three levels of above-grade parking in the center of Block 2. The parking garage will now include 447 parking spaces (248 for the residential uses and 199 for the retail uses, a reduction of 345 parking spaces from the approval in Z.C. Case No. 09-03A) which satisfy the matter-of-right requirements of the 2016 Zoning Regulations. The Applicant also noted that the removal of these three parking levels will result in no visual impact on the exterior elevations of the building on Block 2. The Applicant stated that the removal of the 345 parking spaces in Block 2 is entirely consistent with the goals of the Commission (and OP and DDOT) when the original PUD project was approved. The Applicant concluded that this reduction in the number of parking spaces will help assure that the amount of parking provided in Block 2 is appropriate to meet the needs of the retail and residential uses in Block 2 and will allow the Applicant to continue to plan for the development of the other Blocks in the Skyland Town Center with an appropriate amount of parking. (Exhibit [“Ex.”] 2, pp. 2-3.)
5. The Applicant noted that in Z.C. Case No. 09-03A, the roof level of the parking structure and the residential building was the same. This allowed for the pool to be located on the roof of the parking structure as well as the creation of a green area on the roof of the parking structure. Since the above-grade parking structure in the center of Block 2 will now be lower than the adjacent residential building, it is necessary to revise the treatment of the top level of the parking structure and to move the pool to the courtyard level of the residential building. The pool, which will be available to all residents and their guests, will now be located in the courtyard, which opens onto Good Hope Road. The Applicant provided shadow studies, which showed the pool will receive ample sunlight during the time of year in which the pool is expected to get the most use (June–September). The roof level of the parking garage has been modified to include photovoltaic panels inserted into a parking shading structure that covers a portion of the parking spaces. Significant

amounts of green roof area have been maintained on this level of the parking garage. The shadow studies also show that the photovoltaic panels will receive ample sunlight. The Applicant also reiterated that no residential units face the interior parking garage or the roof of the parking garage as those portions of the residential building include corridors, rather than units. (Ex. 2, p. 3)

6. The Applicant concluded that the proposed changes have no impact on the appearance of the building from the surrounding public streets and still provide for great amenity spaces for residents of the building and their guests. In addition, the proposed changes do not diminish the sustainable features of the previously approved plan and the building on Block 2 will continue to achieve a LEED-Silver certification. In fact, the Applicant believes that the introduction of the photovoltaic panels above some of the parking spaces are an enhancement to the previously approved plan. (Ex. 2, p. 3.)
7. In satisfaction of § 703.13 of Subtitle Z, the Applicant provided a Certificate of Service which noted that the modification application was served on all parties to the original PUD, which are Advisory Neighborhood Commissions (“ANC”) 7B and 8B, and the Ft. Baker Drive Party (“FBDP”). (Ex. 2, p. 3.)
8. The Commission, at its February 13, 2017 public meeting, determined that the application was properly a Modification of Consequence and that no public hearing was necessary. The Commission established a schedule that would have the parties (ANC 7B, ANC 8B, and FBDP) file their responses to the application with the Commission on February 21, 2017 and the Commission would then take action on the application on February 27, 2017.
9. On February 20, 2017, the ANC 7B02 Single Member District (“SMD”) Commissioner submitted an e-mail to the Office of Zoning which requested that ANC 7B be permitted until March 27, 2017 to submit its response to this application. ANC/SMD 7B02 Commissioner noted that by granting the extension, the Commission will allow her to solicit feedback from her constituents regarding the application. (Ex. 6.)
10. On February 24, 2017, the Applicant submitted a letter to the Commission which noted that it had discussions with the Chair of ANC 7B and ANC/SMD 7B02 Commissioner and that ANC 7B and the Applicant agreed to a time extension which would allow ANC 7B to submit its comments to the Commission by March 20, 2017 and the Commission would review the application at the March 27, 2017 public meeting. The Commission approved these dates for submission of ANC 7B’s comments and its review of the modification application. (Ex. 7.)
11. ANC 7B submitted a letter, dated March 20, 2017, into the record of this case. The letter noted that at a duly noticed public meeting on March 16, 2017, with a quorum present, ANC 7B voted 5-0 to support the application. However, this letter was signed by the ANC/SMD 7B02 Commissioner and not the ANC Chairperson or Vice-Chairperson. (Ex. 8.)

12. ANC 8B and FBDP did not participate in this application.
13. OP submitted a report dated February 3, 2017. OP's report stated that it believed that the proposal qualified as a Minor Modification to Z.C. Order Nos. 09-03 and 09-03A and recommended approval as such. The OP report also stated that it was supportive if the Commission believes the request is a Modification of Consequence. The OP report concluded that “[a]s part of the approval of ZC Case 09-03, both OP and DDOT believed that the parking was excessive and should be significantly reduced. As a compromise, the applicant agreed to reevaluate the parking at the time development of Block 2 was approved by the Zoning Commission.” (Ex. 5, p. 3.) Therefore, the proposed reduction in the parking does not change the facts on which the Commission made its decision. “The pool was not offered as a public benefit as it will only serve the residents of the building and the relocated pool will continue to serve the residents. The green roof area on the roof would be replaced with PV Panels and green roofs and would maintain LEED Silver certification. In addition, the elevation along Naylor Road would remain the same and would have no impact on the surrounding streets.” (*Id.*)

CONCLUSIONS OF LAW

Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to make “modifications of consequence” to final orders and plans without a public hearing. A modification of consequence means “a modification to a contested case or order or the approved plans that is neither a minor modification nor a modification of significance.” (11-Z DCMR § 703.3.) Examples of modifications of consequence “include, but are not limited to, a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission.” (11-Z DCMR § 703.4.)

The Commission concludes that the modifications depicted in the plans included in the record in this case, and as described in the above findings of fact, are modifications of consequence, and therefore can be granted without a public hearing.

The Commission finds that the proposed modifications are entirely consistent with the Commission’s previous approval of the building on Block 2. The building on Block 2 remains a mixed-use retail and residential building with no impact on the appearance of the building from surrounding public streets. The reduction in the amount of parking provided in Block 2 is consistent with the Commission’s original intent of potentially limiting the amount of parking provided in the project to help assure that it was not creating an excess amount of parking spaces. The building on Block 2 will continue to include pool and amenity space for residents and their guests, and the building will retain and enhance sustainable elements on the roof of the parking garage.

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A)(2012 Repl) to give “great weight” to the issues and concerns contained in the written report of an affected ANC. Both ANCs 7B and 8B meet the definition of “affected ANC” as set forth in 11-B DCMR § 100.1. As is reflected in the Findings of Fact, ANC 7B voted to support the application.

However, since the ANC 7B letter was not signed by the ANC 7B Chairperson or ANC 7B Vice-Chairperson, nor did the letter acknowledge that the ANC/SMD 7B02 Commissioner was authorized to act on behalf of ANC 7B, the Commission is not able to give the ANC 7B resolution in this case “great weight.” As noted in the Findings of Fact, ANC 8B did not participate in this case.

The Commission is required to give great weight to the recommendations of OP. (See D.C. Official Code § 6-623.04 (2012 Repl).) The Commission concurs with OP’s recommendation to approve this modification of consequence application. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a modification of consequence to the consolidated PUD project approved in Z.C. Case Nos. 09-03 and 09-03A. The conditions in Z.C. Order Nos. 09-03 and 09-03A remain unchanged except as follows. The following condition replaces Condition No. 1 of Z.C. Order No. 09-03A:

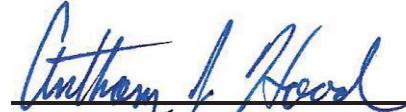
1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 3A, 15A, 49A, and 52A of the record in Z.C. Case No. 09-03A, as modified by the plans included in Exhibit 2C of Zoning Commission Case No. 09-03D, and as further modified by the guidelines, conditions, and standards herein.

On March 27, 2017, upon the motion of Vice-Chair Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on June 30, 2017.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-03E

Z.C. Case No. 09-03E
Skyland Holdings, LLC
(Time Extension – Consolidated PUD @ Square 5633)
September 25, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on September 25, 2017. At that meeting, the Commission approved the request of Skyland Holdings, LLC (“Applicant”) for a one-year time extension, until September 10, 2018, in which to start construction of the building on Block 2 of the Skyland Town Center project, and an extension of the time in which it was required to make certain financial contributions and construct and maintain a pocket park at 25th Street, S.E. and Naylor Road, S.E., as approved by Z.C. Order No. 09-03, as amended and extended by Z.C. Order Nos. 09-03A, 09-03B, 09-03C, and 09-03D. The property (Lot 22 in Square 5633) that is the subject of this application is bound by Good Hope Road, S.E., Naylor Road, S.E. and Alabama Avenue, S.E. (“Property”). The time extension request was made pursuant to 11-Z DCMR § 705.2 of the District of Columbia Zoning Regulations.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. The Property was rezoned to the C-3-A Zone District pursuant to Z.C. Order No. 09-03. The PUD approved in Z.C. Order No. 09-03 created a Town Center with mixed-use retail and residential buildings, accompanying parking facilities, and townhouses on five different Blocks. The original PUD project consisted of approximately 311,000 square feet of retail- and service-related uses and a large format retail store, as well as neighborhood serving retailers. The residential component of the original PUD project created 450-500 residential units, including a number of affordable housing units, and 20 townhouses. The original PUD project also included significant transportation infrastructure improvements to foster safe pedestrian and vehicular interaction along the adjacent major streets (Good Hope Road, Naylor Road, and Alabama Avenue). Z.C. Order No. 09-03 became effective on September 10, 2010.
2. On November 8, 2012, the Applicant filed a request to modify the original PUD project. The PUD modification application, Z.C. Case No. 09-03A, did not propose significant changes to the original PUD project. The number of residential units in the modified PUD project remained in the approved range of 450-500 units and the amount of retail- and service-related uses is approximately 342,000 square feet. The modified PUD project included modifications to all five Blocks. The majority of the Zoning

Commission's attention to these modifications focused on the proposed Walmart shopping center to be located on Block 1 and the mixed-use residential building located along Block 2, which included frontage along Naylor Road, S.E. and Good Hope Road, S.E. Z.C. Order No. 09-03A became effective on January 17, 2014.

3. On November 9, 2012, the Applicant requested a time extension of the period of approval for the modified PUD project. Condition No. 17 of Z.C. Order No. 09-03 stated that the "PUD shall be valid for a period of three years from the effective date of this Order [September 10, 2010]. Within such time, an application must be filed for a building permit for the construction of a building on Block 1, 2, 3, or 4 as specified in 11 DCMR § 2409.1, and construction must start within four years of the effective date of this Order to remain valid." The Applicant requested that the Commission extend the time period in which it is required to file a building permit application for the construction of a building on Block 1, 2, 3, or 4 until September 10, 2015 and that construction of that building must start by September 10, 2016. The Commission approved this time extension request and Z.C. Order No. 09-03B became effective on January 17, 2014.
4. On August 31, 2016, the Applicant requested a one-year time extension of the Consolidated PUD approved in Z.C. Order Nos. 09-03 and 09-03A, and extended in Z.C. Order No. 09-03B. The Applicant requested that the validity of the consolidated PUD be extended until September 10, 2017, by which time the Applicant must start construction of the building on Block 2 for the PUD to remain valid. The Commission approved this time extension request and Z.C. Order No. 09-03C became effective on December 16, 2016.
5. On January 27, 2017, the Applicant filed a modification of consequence related to the plans that were approved for Block 2. The Applicant sought a modification to: remove three levels of above-grade parking in the center of Block 2; re-design the treatment of the top level of the parking structure; and move the pool to the courtyard level of the residential building. The Commission approved the modification of consequence application and Z.C. Order No. 09-03D became effective on June 30, 2017.

CURRENT APPLICATION

6. The Applicant filed the current request on August 7, 2017. The Applicant requested that it be allowed until September 10, 2018 to start construction of the building located on Block 2 of the approved Skyland Town Center. The Applicant requested that the time period for the financial contributions, and construction and maintenance requirements outlined in Condition Nos. 2(a), 2(e), and 2(f) of Z.C. Order No. 09-03, which are required to be made by September 10, 2017, also be extended. In addition, the Applicant requested that the Commission waive the requirements of § 705.5 and approve this third time extension request. (Exhibit ["Ex."] 1 p. 3.)
7. In Z.C. Order No. 09-03B, the Commission extended the validity of the original order two years to September 10, 2015, by which time the Applicant was required to file an application for a building permit for Block 1, 2, 3, or 4. The effect of this time extension

was to extend all of the time periods in the original order, including any time periods in the conditions. (Ex. 1, pp. 3-4.)

8. Condition Nos. 2(a), 2(e), and 2(f) of Z.C. Order No. 09-03 required the following:

Financial Support for Schools (\$200,000) (Condition 2(a))

This condition requires that, starting one year after the effective date of the order (i.e., September 10, 2013 with the extension) and annually thereafter, the Applicant must provide evidence of any contributions. At least 75% of the total amount must be made within five years of the effective date of the order, which equates to September 10, 2017 with the extension. The Applicant stated it had contributed \$500 to schools pursuant to this condition. The Applicant requested that it be allowed until September 10, 2018 to reach the 75% threshold.

Anacostia and Francis Gregory Libraries (\$50,000) (Condition 2(e))

This condition requires that, starting one year after the effective date of the order (i.e., September 10, 2013) and annually thereafter, the Applicant must provide evidence of any contributions. At least 50% of the total amount must be made within five years of the effective date of the Order (i.e., by September 10, 2017). As of the date of the request, the Applicant has not contributed any funds pursuant to this condition. The Applicant noted that since the Commission's original approval of the project in 2010, both of these libraries have undergone significant renovations. The Applicant requested that it be allowed until September 10, 2018 to reach the 50% threshold.

Pocket Park at 25th Street and Naylor Road (\$50,000) (Condition 2(f))

This condition requires that the Applicant construct and maintain improvements to the pocket park within five years of the effective date of the Order (i.e., by September 10, 2017). The Applicant stated that land development, which includes all of the improvements to the pocket park, is currently underway. The pocket park improvements will be coordinated during the other public space work along Naylor and Good Hope Roads. The Applicant noted that the work related to the installation of the right-turn lane, new sidewalks, and utility improvements will be completed by September 10, 2018, and the installation of hardscape and landscape improvements will be completed by May 1, 2020 (the expected delivery of the Block 2 Building). (Ex. 1, p. 4.)

9. The Applicant provided a certificate of service which noted that the time extension application was served on all parties to the original PUD, Advisory Neighborhood Commissions ("ANC") 7B and 8B, and the Ft. Baker Drive Party ("FBDP"), and all parties were allowed 30 days to respond. (Ex. 1, p. 5.)
10. The Applicant indicated that there has been no substantial change of material facts that affect the Property since the Commission's approval of the PUD modification and time extension applications. In fact, since these approvals, the Applicant has undertaken

significant demolition, site preparation, and grading work in order to prepare the Property for the development of the Skyland Town Center project. In the Applicant's August 31, 2016 submission to the Commission in Z.C. Case No. 09-03C, the Applicant stated that it had spent approximately \$17,410,946 in order to bring the Skyland Town Center project closer to reality. In the past year alone, the Applicant has spent an additional \$9,783,309 on costs attributable to: continued land development activities (including demolition of the CVS structure, utility construction, excavation, and grading); professional services; permit fees; real estate taxes; and interest payments. (Ex. 1, p. 5.)

11. The Applicant stated that it was unable to start construction of the amended building on Block 2 due to its inability to obtain sufficient project financing despite its good faith efforts to obtain such financing. At the time of the Applicant's request for a one-year time extension to start construction of the building on Block 2 (August 31, 2016 - the subject of Z.C. Case No. 09-03C), the Applicant had approached several lenders about the opportunity to finance Block 2. Since that time, the Applicant found that lenders are becoming increasingly selective with their placement of construction debt and are offering much more conservative loan terms, especially due to the concern of oversupply in the rental market. The Applicant also noted that the Skyland Town Center project is considered to be a pioneering project in an emerging market, an area where a new market-rate multi-family rental building has not been constructed in a considerable amount of time. Conventional bank construction loans that the Applicant was pursuing resulted in construction loan terms that were not financially feasible. (Ex. 1, p. 5; 1C.)

As a result, the Applicant pursued other financing options such as the HUD 221(d)(4) mortgage insurance program. In December 2016, the Applicant engaged Walker & Dunlop to pursue the HUD insured financing. Walker & Dunlop and the Applicant submitted a concept package to HUD in January 2017 and subsequently attended a HUD concept meeting at the HUD office in Baltimore. In addition, in January of 2017, the Applicant closed on \$58.5 million in EB-5 financing to fund a portion of land development activities and retail portion of the building on Block 2. The Applicant stated that the HUD construction loan that will finance the residential portion of Block 2 is the final piece of the project's financing sources to be put in place in order to commence Block 2 construction. (Ex. 1, p. 5; 1C.)

12. The Applicant also requested a waiver of § 705.5 of the Zoning Regulations. While the Applicant seeks a time extension for the construction of the first building in the multi-building Skyland Town Center project, the Applicant has undertaken significant and costly site preparation work and has completed numerous construction milestones in order for the site to be ready to commence vertical construction on Block 2. As noted above, the Applicant has closed on the financing of the retail portion of the building on Block 2 and the Applicant has shown that it has diligently attempted to obtain construction financing for the residential portion of the building on Block 2. The Applicant expects that such financing will be in place by the end of 2017, which will allow construction of Block 2 to begin in 2018. (Ex. 1 p. 6.)

13. ANC 7B submitted a letter, dated September 21, 2017, into the record. The letter stated that at a regularly scheduled public meeting, with a quorum present, ANC 7B adopted a unanimous vote (6-0) to support the Applicant's request for a time extension for the start of construction on Block 2 and the construction and maintenance of the Pocket Park, but did not support the time extension for the financial contributions to the local schools and the Anacostia and Francis Gregory Libraries. (Ex. 6.)
14. ANC 8B did not submit a letter into the record to indicate their support or opposition to this application.
15. FBDP did not submit a letter into the record to indicate their support or opposition to this application.
16. The Office of Planning ("OP") submitted a report on September 15, 2017. The OP report stated that OP had no objection to the PUD time extension request. In regard to the time extension for the financial contributions, the OP report noted that the Applicant had made over \$657,000 in payments, goods and services to a very successful Skyland Workforce Center located at 2509 Good Hope Road, S.E. (Ex. 5.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11-Z DCMR § 705.2 are satisfied. Subsection 705.2(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. ANCs 7B and 8B were served with this time extension request, as was FBDP. Neither ANC 8B or FBDP responded to this request. ANC 7B submitted a letter which supported the time extension request for the start of construction on Block 2 and the construction and maintenance of the Pocket Park, but did not support the time extension for the financial contributions to the local schools and the Anacostia and Francis Gregory Libraries.

Subtitle Z § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD. Based on the information provided by the Applicant and OP, the Commission concludes that extending the time period of approval for the consolidated PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original consolidated PUD application.

Subtitle Z § 705.2(c) requires that the applicant demonstrate with substantial evidence one or more of the following criteria:

- (a) An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control;

- (b) An inability to secure all required governmental agency approvals for a development by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
- (c) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to start construction of the building on Block 2, make the financial contributions noted in Condition Nos. 2a and 2e of Z.C. Order No. 09-03, and construct and maintain the improvements of the pocket park noted in Condition No. 2f of Z.C. Order No 09-03. Despite the Applicant's good faith efforts to obtain sufficient project financing, such financing was not available to start construction of the building on Block 2 prior to September 10, 2017. The Commission notes the Applicant's statement that it is confident that with the closing of the HUD loan by the end of 2017, the Applicant will be able to start construction of the mixed-use building on Block 2 in 2018. The Commission also agrees that extending the time period to make the financial contributions and to construct and maintain the pocket park noted above is appropriate, as the development of Block 2 will be the first vertical construction activity for the Project. Therefore, the Commission finds that one year is an appropriate amount of time to grant the extension. In accordance with Subtitle Z § 705.2(c)(1), the Applicant has provided substantial evidence to show that it was unable to obtain sufficient project financing prior to the September 10, 2017 deadline.

In regard to the Applicant's request for a waiver of Subtitle Z § 705.5 of the Zoning Regulations, pursuant to Subtitle Z § 101.9, the Commission may waive any provision of Subtitle Z if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law. The Commission finds that the Applicant has undertaken significant and costly site preparation work and has completed numerous construction milestones in order for the site to be ready to commence vertical construction on Block 2. As noted above, the Applicant has closed on the financing of the retail portion of the building on Block 2 and the Applicant has shown that it has diligently attempted to obtain construction financing for the residential portion of the building on Block 2. In the Commission's judgment, granting a waiver to allow for approval of a third time extension will not prejudice the rights of any party and it is not otherwise prohibited by law. For these reasons, the Commission concludes that it is appropriate to grant the requested waiver.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. OP had no objection to the time extension request.

The Commission is required under § 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)) to give great weight to the issues and concerns raised in an affected ANC's written report. As noted, ANC 8B did not submit a written report. The Commission notes that ANC 7B did not support the time extension request for the financial contributions to the local schools and the Anacostia and

Francis Gregory Libraries. In its letter, ANC 7B was also concerned that the Applicant's request for more time to finance Block 2, a mixed-use residential building, was evidence of a lack of attention to Block 1, the Walmart anchor unit; and in the ANC's view, a delay in one aspect fundamentally changes the purpose of the overall development.

The Commission discussed ANC 7B's concerns regarding the Applicant's time extension request and gave great weight to each concern in its deliberations. The Commission noted the financial difficulties that this project has faced to date and the contribution of \$657,000 that has been made to the Skyland Workforce Center as a result of this application.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Z.C. Case No. 09-03E for a one-year time extension of the consolidated PUD application approved in Z.C. Order Nos. 09-03, 09-3A, and 09-03D and extended in Z.C. Order Nos. 09-03B and 09-03C. The validity of the consolidated PUD approved by the Commission is extended until September 10, 2018, by which time the Applicant must start construction of the building on Block 2 for the PUD to remain valid. Condition No. 17 of Z.C. Order No. 09-03, as modified by Z.C. Order No. 09-03A, sets forth the Applicant's obligation to file building permit applications for and commence construction of the remaining portions of the PUD and the timeframe for doing so. The Condition Nos. 2(a), 2(e), and 2(f) of Z.C. Order No. 09-03 are revised to read as follows;(deleted text is shown in ~~strikethrough~~ text and new text is shown in **bold** and underlined text.)¹

2. (a) Financial Support to Schools: The Applicant shall make in-kind service or financial contributions, with a value of \$200,000, to support schools located within the geographic boundaries of ANCs 7B, 8B, and 8A for aesthetic improvements and to participate in initiatives such as "Buff and Scrub". The Applicant expects that these in-kind service or financial contributions will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator ("ZA") and the Office of Zoning ("OZ") as to whether any in-kind service or financial contributions were made for this purpose, the recipient of those funds and the outstanding balance of this contribution. Not less than 75% of the total amount of this contribution (\$150,000) (whether in the form of in-kind services, monetary contributions, or a combination of the two) shall be made by the Applicant ~~within five years of the effective date of this Order by September 10, 2018~~. Notwithstanding Condition No. 17, this Order will expire as of that date if these payments/services have not

¹ The revisions to these conditions ordinarily would require the Applicant to seek a modification of consequence to Z.C. Order No. 09-03 pursuant to 11-Z DCMR § 703. In this instance, the Commission found a sufficient correlation between need to extend the validity of Z.C. Order No. 09-03 and the need to revise these conditions. However, in the future, the Commission expects applicants seeking any modification to a condition to do so through either Subtitle Z § 703 or §704, as applicable.

been provided. The full amount of this contribution (whether in the form of in-kind services, monetary contributions, or a combination of the two) shall be made by the Applicant no later than ~~10 years after the effective date of this Order September 10, 2022~~, or the date the last application for a building permit is filed for the project, whichever is sooner;

...

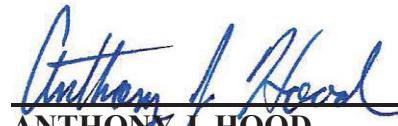
- (e) Anacostia and Francis Gregory Libraries: The Applicant shall provide up to \$50,000 to perform capital improvements, upgrade computers, and provide other services for the Anacostia and Francis Gregory Libraries. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and the OZ as to whether any contributions were made for this purpose, the recipient of those funds and the outstanding balance of this contribution. Not less than 50% of the total amount of this contribution (\$25,000) shall be made by the Applicant ~~within five years of the effective date of this Order by September 10, 2018~~. Notwithstanding Condition No. 17, this Order will expire as of that date if these payments/services have not been provided. The full amount of this contribution shall be made by the Applicant no later than ~~10 years after the effective date of this Order September 10, 2022~~, or the date the last application for a building permit is filed for the project, whichever is sooner;
- (f) Pocket Park at 25th Street & Naylor Road: The Applicant shall improve and maintain, at a value of \$50,000, the existing triangular pocket park at 25th Street and Naylor Road. The maintenance of the pocket park will be provided over the entire time period of the development of the project, as discussed in Condition No. 17. The maintenance obligation will commence immediately after the improvements are made. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and the OZ as to whether any improvements were made for this purpose. ~~The Applicant will construct the improvements to the pocket park within five years of the effective date of this Order. The work related to the installation of the right turn lane, new sidewalks, and utility improvements will be completed by September 10, 2018. The installation of hardscape and landscape improvements will be completed by May 1, 2020.~~

On September 25, 2017, upon motion by Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** this application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9 this Order shall become final and effective upon publication in the *D.C. Register* on February 2, 2018.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA ZONING COMMISSION ORDER NO. 09-03F

Z.C. Case No. 09-03F

Skyland Holdings LLC

(Modification of Significance to an Approved Planned Unit Development
@ Skyland Town Center [Square 5633, Lot 22])
September 14, 2020

Pursuant to notice, at its July 23, 2020, public hearing, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Skyland Holdings LLC (the “Applicant”) that requested approval of a Modification of Significance¹ pursuant to Subtitle Z § 704 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) to the Planned Unit Development (“PUD”) and related Map Amendment approved by the Commission in Z.C. Order No. 09-03 (the “Original Order”), as modified by Z.C. Order Nos. 09-03A and 09-03D, and as extended by Z.C. Order Nos. 09-03B, 09-03C, and 09-03E (collectively with the Original Order, the “Order”), for Lot 22 in Square 5633,² known as Skyland Town Center (the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z, Chapter 4. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT **I. BACKGROUND**

PRIOR APPROVALS

1. Pursuant to the Original Order, effective on September 10, 2010, the Commission approved a Consolidated PUD with a map amendment rezoning the Property’s 18.7 acres at the intersection of Naylor Road, Good Hope Road, and Alabama Avenue, S.E. from the R-1-B, R-5-A, and R-5-B zones to the C-3-A zone to construct a mixed-use town center anchored by a main street with:
 - Approximately 314,480 square feet (“sf”) of community-serving retail uses;
 - 20 townhomes and 450-500 residential units above the retail and service uses totaling approximately 538,110 square feet;
 - 1,698 parking spaces totaling approximately 400,038 square feet; and

¹ Pursuant to Subtitle A § 102.4, although the Original Order was vested under the 1958 Zoning Regulations under which it was evaluated and approved, the Application is subject to the current Zoning Regulations to the extent of the modifications.

² Lot 22 in Square 5633 consolidated all of the property subject to the PUD approved by Z.C. Order No. 09-03, as recorded by a plat recorded on November 17, 2014, in the Records of the District Surveyor at Subdivision Book 209, Page 39 (Z.C. Order No. 09-03 referred to Assessment and Taxation (“A&T”) Lots 800 and 801, which were created out of Lot 2 per the plat in A&T Book 3794, Page F, and A&T Lot 819, created out of A&T Lots 815 and 817, in turn created out of the remainder of Lots 8 and 9 per A&T Plats Book Page 2410).

- A total floor area ratio (“FAR”) of 1.54, of which 0.88 FAR is dedicated to commercial uses (Exhibit [“Ex.”] 51 and 121A1 in Z.C. Case No. 09-03 at p. 18).

2. The Original Order divided the PUD, 1,252,628 sf of gross floor area (“GFA”) into five development parcels (“Blocks”) as follows:
 - Block 1 – 242,600 sf;
 - Block 2 – 550,611 sf;
 - Block 3 – 256,230 sf;
 - Block 4 – 168,769 sf; and
 - Block 5 – 34,518 sf.
3. By Z.C. Order No. 09-03A, effective January 17, 2014, the Commission approved modifications of the Original Order in the following areas:
 - Architectural design and site layout reducing the total GFA to 1,249,438 sf with a FAR of 1.75, of which 0.97 FAR is dedicated to commercial uses, allocated as follows:
 - Block 1 – 179,395 sf;
 - Block 2 – 744,486 sf;
 - Block 3 – 189,818 sf;
 - Block 4 – 117,595 sf; and
 - Block 5 – 18,144 sf;
 - Residential uses – replacing 12 townhomes with six carriage houses on Blocks 3 and 5;
 - Parking – allowing 1,774 parking spaces in a modified distribution across the Property;
 - Transportation network; and
 - PUD Zoning Map vesting – clarifying that the rezoning to the C-3-A zone vested for each Block upon the start of construction of that Block.
4. By Z.C. Order No. 09-03D³, effective June 30, 2017, the Commission approved modifications of the Original Order as it applies to Block 2 to remove 345 parking spaces on three levels of above-grade parking and architectural design and site layout, with a reduction in the square footage of Block 2 to 534,880 sf.⁴

PARTIES

5. In addition to the Applicant, the parties to the Order were:
 - Advisory Neighborhood Commissions (“ANC”) 7B, which district includes the Property, and ANC 8B, which shares a boundary with the Property, the “affected ANCs” pursuant to Subtitle Z §§ 101.8 and 403.5(b); and
 - The Ft. Baker Drive Party (“FBDP”), granted party status in Z.C. Case No. 09-03.

³ Z.C. Order Nos. 09-03B and 09-03C extended the deadlines for filing a building permit application and for commencing construction.

⁴ Z.C. Order No. 09-03D, and its approved plans and filings did not specify the changed square footage for Block 2, which was instead provided by Ex. 22C, p. G7 of Z.C. Case No. 09-03F.

6. The Commission received no additional requests for party status.

NOTICE

7. On June 28, 2019, the Applicant mailed a Notice of Intent to file the Application to:
 - ANC 7B and 8B; and
 - All property owners within 200 feet of the Property, including Joanne Harris on behalf of FBDP (Ex. 3C).
8. On May 27, 2020, the Office of Zoning (“OZ”) sent the notice of the July 23, 2020 virtual public hearing to:
 - Applicant;
 - ANC 7B and 8B;
 - ANC Single Member District Commissioner 7B02, whose district includes the Property;
 - Office of the ANCs;
 - Office of Planning (“OP”);
 - District Department of Transportation (“DDOT”);
 - Department of Energy and the Environment (“DOEE”);
 - Department of Consumer and Regulatory Affairs (“DCRA”);
 - District of Columbia Housing Authority (“DCHA”);
 - Council of the District of Columbia (“DC Council”); and
 - Property owners within 200 feet of the Property (“200-Footers”). (Ex. 17.)
9. OZ also published notice of the July 23, 2020, virtual public hearing in the June 5, 2020, *D.C. Register* (67 DCR 006737) as well as on the calendar on OZ’s website. (Ex. 15.)
10. The Applicant provided evidence that it had posted and maintained notice of the public hearing on the Property in compliance with Subtitle Z § 402.⁵ (Ex. 18, 18A, 28.)

COMPREHENSIVE PLAN (Title 10A DCMR, the “CP”)

Generalized Policy Map (“GPM”)

11. The CP’s GPM designates the Property in two categories: (Ex. 35B)
 - The southwestern portion along Naylor and Good Hope Roads and Alabama Avenue, S.E., as a Multi-Neighborhood Center, which the CP defines⁶ as centers located at major intersections and along key transit routes that might include supermarkets, general merchandise, drug, specialty, and apparel stores, restaurants, and sometimes offices, with redevelopment to provide new retail and service uses as well as housing and job opportunities; and (CP § 225.17.)

⁵ The Applicant requested a waiver from having to notarize the affidavits of posting and maintenance required by Subtitle Z §§ 402.8 and 402.10 due to the ongoing COVID-19 pandemic, which the Commission granted.

⁶ The CP’s Framework Element, which defines the GPM and FLUM designations, was revised effective August 27, 2020 (D.C. Law 23-0217); prior to the Commission’s vote and so applies to its decision in this case.

- The northeastern portion as a Neighborhood Conservation Area, defined by the CP as areas with “little vacant or underutilized land … [that] are generally residential in character. … [N]ew development can support conservation of neighborhood character when guided by Comprehensive Plan policies and the Future Land Use Map. … The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs. … New development should be compatible with the existing scale, natural features, and character of each area …” (CP § 225.4-225.5.)

Future Land Use Map (“FLUM”)

12. The CP’s FLUM designates the Property into three categories:

- Most of the Property for Moderate Density Commercial uses, which the CP defines as predominantly for retail, office and service businesses with density typically ranging between a 2.5 and 4.0 FAR, with the MU-5 and MU-7 zones identified as zones consistent with this designation;
- The northeastern corner and the easternmost portion, approximately half of the GPM’s Neighborhood Conservation Area, for Low Density Residential uses, which the CP defines as for single family neighborhoods with detached and semi-detached buildings with front, side, and rear yards; and
- A tiny triangle between in the center of the northern edge, between the Low Density Residential and the Moderate Density Commercial areas, designated for Moderate Density Residential, which the CP defines as generally, but not exclusively for row houses and low-rise garden apartment complexes, with density ranging up to a 1.8 FAR. (Ex. 35B).

Far Northeast-Southeast Area Element

13. The CP’s applicable Area Element specifically identifies the Property as targeted for revitalization as a community scale retail center. (Policy FNS-2.7.)

14. In issuing the Order, the Commission concluded that the PUD it approved was not inconsistent with the Comprehensive Plan.

II. THE APPLICATION

MODIFIED PROJECT

15. The Application did not include or modify Block 2, which is under construction as approved by the Order with occupancy expected in late 2020. (Ex. 3, 11.)

16. The Application proposed to modify the PUD approved by the Order by reconfiguring Block 1, 3, 4, and 5 into new Blocks 1, 3, and 4 by:

- Dividing Block 1 into two, with the western portion remaining Block 1 and merging the eastern portion into Block 4; and
- Merging Block 5, along with the southern portion of Block 4 into Block 3, with modifications as described below (the “Modified Project”).

17. The Modified Project remains centered around Town Center Drive, providing a street-activated pedestrian experience and central thoroughfare through the Property with significant ground-floor retail and residential components within the following parameters (including Building 2):

- A reduced total GFA of 1,169,317 sf with a FAR of 1.63, of which 0.89 FAR is dedicated to commercial uses, allocated as follows:
 - Block 1 – 280,978 sf;
 - Block 2 – 534,880 sf;
 - Block 3 – 41,229 sf; and
 - Block 4 – 312,230 sf;
- The square footage shall be allocated to the following uses:
 - Retail – 533,170 sf;
 - Residential – 533,270 sf;
 - Office – 131,344 sf; and
 - Structured Parking – 351,354 sf;
- Building heights ranging from 30 to 62 feet; and
- 1,289 parking spaces. (Ex. 3, 13, 22, 22C, 29, 35.)

Block 1

18. Block 1 will include a Medical Office Building⁷ (“MOB”) and attached parking garage (“MOB Garage”).

19. The MOB, comprised of approximately 131,344 sf over four stories, reaching 60 feet in height, is the visual entrance to Skyland Town Center from Good Hope Road and Naylor Road, S.E. The building provides two main entrances on the first floor, with the main pedestrian entry located in the Naylor Road lobby, and the main vehicular entry located in the lobby on the opposite side of the MOB and accessible from the green, open courtyard on the interior Town Center Drive side. The two lobbies will be connected and will provide access to the upper levels. The façade includes a combination of brick and ground faced concrete masonry units at the base and composite aluminum panels, and glass on the façade. The façade design is simplified and consistent across all four sides so that it pairs with the adjacent parking garage. (Ex. 3, 22C, 35.)

20. The MOB Garage will provide approximately 465 spaces on six levels, reaching 52.5 feet in height, with the surface covered in solar panels to provide renewable energy and shading for the parking. The MOB Garage set back 24 feet from Naylor Road to accommodate a one-story Arts Walk consisting of shadow boxes housing rotating installations installed in partnership with Building Bridges Across the River and associated arts organizations. The

⁷ The Applicant noted that it anticipated that the medical office building may include any uses that are defined in the Zoning Regulations as “Medical Care”, including primary and emergency care facilities, doctor and dentist offices, and/or clinics.

shadow boxes will provide community art and showcases to activate the streetscape along Naylor Road, S.E. (Ex. 22, 22A, 22C, 35.)

Block 3

21. Block 3 will be developed with three single-story retail buildings, all 30 feet in height or less – a Lidl grocery store, a Starbucks coffee shop, and another in-line retail building – along with a surface parking lot with a drive-through lane for the coffee shop.
22. The Lidl grocery store, approximately 29,436 sf in size, has an open façade fronting on Town Center Drive and the parking lot constructed with brick, spandrel panels, and split-face concrete masonry units. (Ex. 3, 22C, 35.)
23. The Starbucks coffee shop, approximately 2,973 sf in size, and the third in-line retail building, approximately 9,981 sf in size, which uses architectural motifs and masonry materials that echo the architectural character and language of Block 2. (Ex. 22C, 35.)
24. A surface parking lot of approximately 214 parking spaces, with associated landscaping compliant with zoning requirements and consistent with a traditional town center lot separates the Lidl grocery store from Alabama Avenue, S.E. This traditional plan will provide ease of access to the Lidl and is consistent with the grocer's site layout requirements. A drive-through lane serving the Starbucks coffee shop winds across the edge of this parking area providing ample queuing area for the coffee shop. (Ex. 3, 22C.)
25. A green buffer with trees and landscape plantings on the perimeter of Block 3 connects to the significant landscaping around the Property forming a welcoming, green streetscape. (Ex. 3, 22, 22C.)

Block 4

26. Block 4 will be the site of a future mixed-use building with a maximum height of 60 feet and approximately 312,230 sf composed of:
 - Approximately 7,140 sf of ground-floor retail;
 - Approximately 252 multifamily residential units; and
 - Approximately 157 parking spaces in a partially below-grade garage. (Ex. 3, 3H, 13, 13D, 22, 22C, 35.)

RELIEF REQUESTED

27. The Applicant requested a Modification of Significance to the Order as follows:
 - No change to the Zoning Map amendment to the C-3-A zone or to the PUD for Block 2; and
 - Modifying the Consolidated PUD approval by:
 - Consolidating Blocks 1, 3, 4, and 5 into Blocks 1, 3, and 4;
 - Modifying the layout and uses of:
 - Block 1 for the MOB and MOB Garage;

- Block 3 for the Lidl grocery store, the Starbucks coffee shop, and the in-line retail store with a surface parking lot with 201 spaces; and
- Converting the Consolidated PUD for Block 4 from to a First-Stage PUD and modifying its layout and uses for the mixed-use building;
- Adding zoning flexibility to that approved by the Order:
 - From Subtitle C § 1502.1 – to exempt the solar panels on the MOB Garage roof from the penthouse setback requirements;⁸
 - From Subtitle C § 901 to substitute one 12-foot by 55-foot loading berth and one 200 sf loading platform in place of the required three 10-foot by 30-foot loading berths, one 10-foot by 20 foot delivery space, and two 100 sf loading platforms for Block 3’s grocery store, in-line retail store, and coffee shop; and
 - From Subtitle C § 710.2(b)(2) for Block 3’s surface parking lot if the Commission determined the lot was in the Lidl grocery store’s “front yard”;
- Modifying the allocation, but not the amount, of public benefits imposed by Condition Nos. 2(c), (g), and (h) of the Order to reallocate \$375,000 to the Skyland Workforce Center job training, including construction job training, by removing:
 - \$300,000 no longer needed for construction funding from the Contractor Loan Fund; and
 - \$75,000 from homebuying and homeownership classes no longer needed as the Project no longer included for-sale residential units; and
- Modifying Condition No. 17 to change the phasing and extend the validity of the Order.⁹ (Ex. 3,22.)

JUSTIFICATION FOR RELIEF

28. The Application asserted that the Modified Project complied with the PUD modification requirements because it is (i) not inconsistent with the CP, (ii) not creating unacceptable impacts that are not mitigated or outweighed by public benefits, and (iii) includes public benefits as discussed below.

Not Inconsistent with the CP

29. The Application asserted that the Modified Project remains not inconsistent with the CP as a whole since the Modified Project remains a town center configured around a central drive with approximately 500 residential units, significant neighborhood-serving retail, and a full-service grocery store, but adds a medical office building that will include medical care uses that will help achieve additional CP policies and goals. (Ex. 3, 22, 29, 35.)

⁸ The Applicant also requested flexibility from the drive through queuing lane setback requirement and the bicycle shower and locker requirements for the Lidl grocery store, but subsequently withdrew those requests. (Ex. 3, 13, 29, 35.)

⁹ The Commission would ordinarily require the Applicant to file a separate application to extend the time limit of the PUD, but given the extensive nature of the changes to the Modified Project’s phasing, including sending part of the Project back to a first-stage PUD approval, the Commission concluded it was appropriate to consider the extension as part of this modification case.

30. With regards to the potential inconsistencies of the Modified Project with the Property's GPM and FLUM designations, the Application:

- Noted that the CP's Framework Element states that the FLUM is "generalized guidance" that is "soft-edged" and not parcel specific and that these designations should be interpreted "broadly" and "in conjunction with the text of the CP, including the Citywide Elements and the Area Elements," and (CP § 228)
- Asserted that the Modified Project furthered other CP policies that outweighed any potential inconsistencies with the GPM and FLUM designations. (Ex. 35B.)

GPM

31. The Modified Project remains not inconsistent with the GPM's designation of the majority of the Property as a Multi-Neighborhood Center project because the Modified Project maintains significant retail and service uses in addition to housing, as the Commission had approved in the Order. (Ex. 35B.)

32. The Modified Project remains not inconsistent with the GPM's designation of the eastern portion of Block 3 and most of Block 4 as a Neighborhood Conservation Area, which "does not preclude development" but calls for new development to be "compatible with the existing scale, natural features, and character of each area." (CP § 225.5.) The Modified Project maintains the transitional elements that the Commission approved in the Order including the step downs in intensity and density from the Multi-Neighborhood Center toward the adjacent residential neighborhood to the northeast, and the separation by a significant buffer area with a ravine and tree preserve. (Ex. 35B.)

FLUM

33. The Modified Project remains not inconsistent with the Moderate Density Commercial designation of the majority of the Property because that designation is appropriate for "shopping and service areas" and specifically identifies the C-3-A zone (the current MU-7 zone), to which the Order rezoned the Property, as zone generally corresponding to this designation. (Ex. 35B.)

34. The Modified Project remains not inconsistent with the Low Density Residential designation for the small portion of the Property including the northern portion of Block 4 because the portions of the mixed-use building that extend into the areas designated for Low and Moderate Density Residential uses are exclusively residential, with the building's ground floor retails uses located only in the areas designated for Moderate Density Commercial uses.

Far Northeast-Southeast Area Element

35. The Modified Project furthers the explicit goals of the Far Northeast and Southeast Area Element by achieving the development of the Skyland Town Center with an appropriate mix of uses, including housing, retail, and health care facilities, and significant buffering of Ft. Baker Drive as further detailed in specific policies of this Element. (Ex. 35B.)

Land Use Element

36. The Modified Project furthers the policies of the Land Use Element by providing a Neighborhood Commercial District and Commercial Center project as a quintessential new town center focusing the higher-intensity uses along the external streets and providing housing in the area closest to adjacent residential uses as detailed in specific policies of this Element. (Ex. 35B.)

Housing Element

37. The Modified Project furthers the policies of the Housing Element by providing new housing and affordable housing in a mixed-use and mixed-income development where currently none exists as detailed in specific policies of this Element. (Ex. 35B.)

Economic Development Element

38. The Modified Project also furthers the Economic Development Element's focus on providing new grocery stores and medical office uses as detailed in specific policies of this Element. (Ex. 35B.)

Community Services and Facility Element

39. The Modified Project furthers the Community Services and Facility Element policies by providing new medical uses and facilities in an area where such use is desperately needed as detailed in specific policies of this Element. (Ex. 35B.)

Transportation Element

40. The Modified Project furthers the Transportation Element with its transportation infrastructure improvements and its transportation demand management plan as detailed in specific policies of this Element. (Ex. 35B.)

No Unacceptable Impacts

41. The Application asserted that the Modified Project would not create any unacceptable impacts because it maintained the town center concept approved by the Commission as not having unacceptable impacts and because the reduced parking would have a favorable impact in encouraging non-vehicular traffic that would reduce impacts on the surrounding transportation network.

Public Benefits

42. The Application asserted that the Modified Project maintained the same public benefits approved by the Order, with very minor changes to reallocate funds that were no longer needed for contractor funding and homeownership training to instead increase the funding for job training approved by the Order, and to which the Applicant had already paid over \$900,000 out of the total \$1,285,000 in financial contributions included in the Order's public benefits. The Applicant explained that it had contributed over \$600,000 to the job training at the Skyland Workforce Center, which has completed intake for more than 4,300 individuals, placing over 530 people in jobs, and providing services for over 1,000 individuals using the Center itself. (Ex. 22.)

APPLICANT'S SUBMISSIONS

43. The Application, as detailed above, was the result of a total of six (6) submissions to the record. In addition to the initial application, the Applicant provided the following submissions, as well as its testimony at the public hearing: (Ex. 1-3H.)

- A May 20, 2020, prehearing submission (the “Prehearing Submission”) that responded to OP and the Commission’s requests from setdown; (Ex. 13, 13A-D.)
- A June 19, 2020, Comprehensive Traffic Review (the “CTR”); (Ex. 20, 20A.)
- A July 2, 2020, supplemental submission (the “Supplemental Submission”) addressing comments from OP, DDOT, DOEE, and the ANC; (Ex. 22, 22A-C.)
- A July 22, 2020, submission (the “Hearing Submission”) addressing comments raised in the OP and DDOT Reports, as defined below; and (Ex. 29.)
- A September 1, 2020, post-hearing submission (the “Post-Hearing Submission”) responding to issues raised at the public hearing. (Ex. 35.)

Responses to OP

44. The Applicant responded to OP’s Setdown Report, as defined below, in the Prehearing Submission and in the Supplemental Submission by:

- Providing additional site-sections showing the Modified Project’s relationship to the surrounding properties;
- Providing additional details regarding the entry plaza materials;
- Updating the MOB’s facades;
- Improving the public space treatment along Naylor Road, S.E.;
- Incorporating the shadow boxes, and detailing their operation, in the Arts Walk along Naylor Road, S.E.;
- Relocating the loading and trash facilities in Block 3 from the parking lot to the in-line retail building;
- Relocating Block 3’s drive-through queuing lane so that it no longer required relief from the 20-foot setback requirement; and
- Enhancing the landscaping and screening around the Block 3 parking lot. (Ex. 13, 22.)

45. The Applicant responded to OP’s Hearing Report, as defined below, in its Hearing Submission by:

- Providing plant size information for the landscaping along Alabama Avenue, S.E.; and
- Providing the signage standard materials used for Block 2 that will also be used for the Modified Project. (Ex. 29, 29A.)

Responses to DDOT

46. The Applicant responded to DDOT’s comments in the CTR, the Hearing Submission, the Post-Hearing Submission, and its public hearing testimony by:

- Providing the Transportation Demand Management Plan (“TDMP”) and the Loading Demand Management Plan (“LDMP”), including reducing the number of parking spaces;

- Increasing the TDMP based on the DDOT Report, including increasing the Capital Bikeshare station and offering Capital Bikeshare memberships for residents and employees;
- Addressed DDOT’s concern that the Modified Project might require mitigations for overparked sites by asserting that these requirements did not apply to the Modified Project because it reduced the number of parking spaces previously approved by the Order as compliant with the Zoning Regulations;
- Including a comprehensive set of conditions detailing all of the TDMP and LDMP commitments for the Modified Project; and
- Confirming in its public hearing testimony that it had accepted all of the enhanced conditions requested in the DDOT Report. (Ex. 20A, 29, 32, 33, 35; July 23, 2020 Transcript [“Tr.”] at 35-36.)

Responses to DOEE

47. The Applicant responded to DOEE’s comments in the Prehearing Submission and in the Post-Hearing Submission by committing to:

- Comply with the Green Area Ratio (“GAR”) requirements and providing a GAR scorecard;
- Provide 125,000 square feet of landscaped area, preserve 235 existing trees, and plant 387 new trees;
- Include a 25,000 square foot solar array in the MOB Garage, which is designed to achieve the Green Business Certification Inc.’s “Parksmart” certification;
- Design the MOB, Lidl grocery store building, and Block 4 mixed-use building to the LEED Silver standard; and
- Install 18 electric vehicle charging stations across the Modified Project. (Ex. 13A, 35.)

Public Hearing Testimony

48. At the July 23, 2020, public hearing, the Applicant presented testimony of:

- Two witnesses on behalf of the Applicant; and
- Three experts: Cheryl O’Neill as an expert in architecture, Dwight Fincher as an expert in architecture, and Erwin Andres as an expert in transportation analysis and engineering, all of whom had been previously accepted by the Commission as experts in their respective fields. (Ex. 31; Tr. at 7-40.)

Post-Hearing Submission

49. The Applicant responded to the questions and clarifications requested by the Commission, OP, and DDOT at the public hearing by:

- Clarifying which portions of the Property would remain subject to the Consolidated PUD and which would instead be reverted to a First-Stage PUD approval (Block 4);
- Responding to the Commission’s request to consider increasing the additional affordable housing for Block 4 by asserting that:
 - Providing additional affordable housing would require additional financial support from the District; and

- The Order vested the approved 500 residential units prior to the adoption of the Inclusionary Zoning (“IZ”) program, which would therefore only apply if the Modified Project and Block 2 combined provide more than these 500 residential units;
- Noting that the original affordable housing proffer continues to apply, as long as the total number of residential units remains within the range (450-500 units) that was originally approved;
- Simplifying the MOB’s tower element;
- Revising the design and exterior appearance of the MOB Garage to minimize light emission, including underlighting of the solar array;
- Confirming the Arts Walk shadow boxes in Block 1 will be ventilated;
- Withdrawing its request for flexibility from bike parking shower and locker facilities in the Lidl building in Block 3;
- Responding to DOEE’s comments by reiterating the Modified Project’s sustainability features, including a commitment to 18 electric vehicle charging stations;
- Providing additional details regarding the loading and trash area for the Block 3 in-line retail building;
- Showing alternative materials for the fire access road around Block 4;
- Providing additional details regarding parking and loading in Block 4;
- Providing additional details of the retaining wall between Block 4 and Ft. Baker Drive;
- Reiterating its view that the Modified Project’s satisfied the PUD balancing required as part the Commission’s review of the Modified Project;
- Providing a comprehensive analysis of the Modified Project’s consistency with the CP; and
- Noting the continued dialogue regarding the Modified Project with the community. (Ex. 35.)

III. RESPONSES TO THE APPLICATION

OP

50. OP submitted two reports to the record in addition to testimony at the public setdown meeting and at the public hearing:

- A February 28, 2020, setdown report (the “OP Setdown Report”) recommending that the Commission set down the Application for a public hearing and requesting additional information and changes to the Application; and (Ex. 11.)
- A July 13, 2020, hearing report (the “OP Hearing Report”) that recommended approval of the Modified Project and requested some clarification from the Applicant. (Ex. 25.)

51. The OP Setdown Report concluded that the Modified Project remained not inconsistent with CP as a whole, generally supported the Application’s requested zoning flexibility and recommended the Commission set down the Application for a public hearing. However, the OP Setdown Report did raise several concerns and requested additional information regarding the Modified Project as follows:

- Objected to the location of the retail waste and loading area within the Block 3 parking lot and requesting it be moved;
- Requested additional screening for the Block 3 parking lot; and
- Requested additional information about the:
 - Operational details for the Arts Walk; and
 - Materials for Block 3. (Ex. 11.)

52. The OP Hearing Report:

- Reiterated that the Modified Project remained not inconsistent with CP as a whole;
- Supported the final flexibility requested for the Modified Project;
- Agreed that the Applicant had adequately addressed the concerns raised in the OP Setdown Report, including:
 - Relocating the retail loading and waste collection area out of the Block 3 parking lot;
 - Providing additional landscaping along Alabama Avenue; and
 - Provided additional information about hardscaping and material;
- Requested:
 - Additional information on the signage standards for the Modified Project;
 - Responses to DOEE and DDOT's comments; and
 - An explanation for the reduced number of total residential units; and
- Recommended the Commission approve the Modification Application without any additional conditions. (Ex. 25.)

53. At the July 23, 2020, public hearing, OP testified that it continued to recommend approval of the Modified Project and noting that the Applicant had addressed the issues raised in the OP Hearing Report, specifically by:

- Submitting signage information per OP's request;
- Responding adequately to the issues raised; and
- Clarifying that the Modified Project did not propose to decrease the residential units, as had been mistakenly stated in the OP Hearing Report. (Tr. 80-83.)

DDOT

54. DDOT filed a July 13, 2020, report (Ex. 26, the "DDOT Report") stating that DDOT:

- Supported the Modified Project's reduction of parking spaces, although it noted that the Property remained overparked and therefore might need additional mitigations, subject to a determination from the Zoning Administrator;
- Determined that the Modified Project would have mixed-impacts on the transportation network that should be addressed by improving the TDMP;
- Concluded that DDOT had no objections to the Application, subject to the following conditions design to mitigate the potential adverse impacts of the Modified Project:
 - Strengthening the TDMP by:
 - Installing eight (8) additional docks for the Capital Bikeshare station;
 - Providing Capital Bikeshare memberships to residents and employees of the Modified Project; and

- Providing the required bicycle parking and shower and locker facilities for each Block; and
- Implementing the CTR's proposed LDMP for Block 3 for the life of the Modified Project; and
- Expected that the Applicant would coordinate during the public space permitting process.

55. DDOT testified at the July 23, 2020, public hearing that:

- The Applicant had:
 - Addressed the DDOT Report's concern about overparking by reducing the parking in the Modified Project by 117 spaces;
 - Reduced the number of anticipated vehicle trips due to the Modified Project's changed uses;
 - Constructed substantial roadway improvements;
 - Adequately addressed the concerns raised in the DDOT Report and accepted all of DDOT's condition, including updating the TDMP; and
- DDOT therefore had no objection to the Modified Project. (Tr. 82-84.)

DOEE

56. DOEE submitted a report (the "DOEE Report") suggesting that the Application consider improving the Modified Project with additional sustainability efforts in: (Ex. 21.)

- Energy efficiency;
- Solar panels;
- Electric vehicle charging stations; and
- Compliance with the GAR and Stormwater Management requirements.

ANCs

57. ANC 7B filed a June 18, 2020, report (the "ANC 7B Report") in support of the Application, noting that at a regularly scheduled, properly noticed meeting, the ANC voted unanimously to support the Modified Project and had no issues or concerns. (Ex. 23.)

58. ANC 8B did not submit a report.

FBDP

59. FBDP did not submit any response to the Application.

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 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 CP'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;*

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- (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 CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)):

“The 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).)
- MODIFICATION OF SIGNIFICANCE - SCOPE OF REVIEW**
8. Pursuant to Subtitle Z §§ 704.3 and 704.4, the Commission shall evaluate an application to modify a second-stage PUD (including a Consolidated PUD that is a combined first- and second-stage PUD) based on the requirements for a new second-stage PUD, provided that the hearing “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.”
9. 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 Zoning Regulations.
10. Since the Application does not propose to change the PUD-related map amendment approved by the Order, it is vested and not subject to additional review by the Commission in this case.

11. 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 7B and 8B and FBDP. (Finding of Fact (“FF”) 7.)
12. The Commission concludes that the Application is consistent with the PUD approved by the Order because the Modified Project maintains the redevelopment of Skyland Town Center into a pedestrian-oriented mixed-use town center concept with housing, neighborhood serving retail, and employment opportunities of the PUD approved by the Order while accommodating changes due to changing tenants and real estate market conditions.
13. The Commission concludes that the Application meets the requirements of Subtitle X §§ 304 and Subtitle Z § 704 because Modified Project – to the extent it modifies the PUD approved by the Order – is not inconsistent with the Comprehensive Plan, will not cause any new unacceptable impacts that are not mitigated or outweighed by the proffered public benefits, which balance out any additional requested zoning flexibility, as discussed below.

CONSISTENCY WITH THE CP AND PUBLIC POLICIES (Subtitle X § 304.4(a))

14. The Commission concludes that the Modified Project is not inconsistent with the CP, when considered in its entirety, based on the analyses of the Applicant and OP, and as further discussed below. (FF 29-40, 51-53.)
15. The Commission acknowledges the following portions of the Property are potentially inconsistent with parts of the CP’s GPM and FLUM designations: (Ex. 35B at 8-9.)
 - **GPM’s Neighborhood Conservation Area:**
Block 3 - northeastern portion, including approximately 50% of the Lidl grocery store; and
Block 4 - approximately 90% of the mixed-use building;
 - **FLUM**
 - **Low Density Residential:**
Block 3 - eastern portion, which has no building; and
Block 4 - northeastern portion, including approximately 12% of the mixed-use building; and
 - **Moderate Density Residential:**
Block 4 - a tiny triangle in the northern portion, including approximately 4% of the mixed-use building.
16. In considering these potential GPM and FLUM inconsistencies, the Commission notes that:
 - The CP’s Framework Element directs the Commission to use these CP maps, particularly the FLUM, for “generalized guidance” that should be “interpreted broadly,” with the FLUM density ranges describing general character of the overall area within which individual buildings may be larger or smaller than these density ranges; and (CP § 228.1.)

- The GPM and FLUM boundaries between designations are “fuzzy,” tend to follow the contours of adjacent streets at a uniform depth, rather than follow the shape and size of the terrain or lot boundaries, and extend into the PUD Site in irregular patterns that do not correspond to the natural terrain or lot boundaries so that the GPM and FLUM shading lacks the granularity to track these areas precisely.

17. Based on the record, and the CP’s Framework Element’s guidelines for using the GPM and FLUM, and considering the irregular shapes of the GPM and FLUM shading and fuzzy edges, the Commission concludes that the Modified Project is not inconsistent with the GPM and FLUM in these areas for the reasons articulated by the Applicant and OP and specifically because:

- **GPM’s Neighborhood Conservation Area (NCA):**
 - Block 3**
 - The majority of the NCA-designated portion of Block 3 is undeveloped, most of which is a landscape buffer that screens and protects the neighboring residential areas to the east, with the portion that is a parking lot furthest away from the residential area along Fort Baker Drive, S.E.;
 - The part of the Lidl grocery store that extends into the NCA portion is the furthest removed from these adjacent residential areas and is shielded from the residential areas to the east by the transitional landscape buffer; and
 - The Lidl grocery store is only one story and 25 feet 8 inches tall and so will be easily screened by the intervening trees and so will not visually intrude into the adjacent residential neighborhoods; (Ex. 22C3.)
 - Block 4**
 - The entire eastern edge of Block 4 is a landscaped buffer along the ravine that screens the mixed-use building from the adjacent residential areas;
 - The eastern façade of the mixed-use building is broken up into four smaller wings separated by landscaped terraces that substantially reduces the visual impact to the adjacent residential neighborhood to the east; (Ex. 22C2.)
 - The eastern façade does not have any loading or exposed parking facilities facing the adjacent residential neighborhood;
 - All of the portions of the mixed-use building in the NCA area are exclusively dedicated to residential uses and so enhances the existing residential character; and
 - The definition of NCA in the CP’s Framework Element explicitly acknowledges that development is not precluded in an NCA “particularly to address city-wide housing needs” which this mostly-residential mixed-use building does;
- **FLUM**
 - **Low Density Residential:**
 - Block 3** – eastern portion
 - All of the portion in this FLUM designation is used exclusively as a landscape buffer and so has no density;

Block 4 - northeastern portion (approximately 12% of the mixed-use building)

- Most of the portion of Block 4 in this FLUM designation (approximately 80%) is open and undeveloped so that the overall density of this FLUM designation is less than 1.0 FAR, albeit in a multi-story building; and
- The part of the building in this FLUM designation is used exclusively for residential uses (the retail portions of the mixed-use building are located in the Moderate Density Commercial area); and

- ***Moderate Density Residential:***

Block 4 - the tiny triangle in the center of northern portion (approximately four percent of the mixed-used building)

- Most of the portion of Block 4 in this FLUM designation (approximately 75%) is open and undeveloped so that the overall density of this FLUM designation is less than 1.0 FAR, below the maximum 1.8 FAR anticipated for this FLUM designation;
- Although this portion of the building is four stories, more than is typical for this FLUM designation, that designation allows for increased density for PUDs and IZ developments, and the Modified Project is a PUD with a significant affordable housing contribution; and
- The part of the building in this FLUM designation is used exclusively for residential uses (the retail portions of the mixed-use building are located in the Moderate Density Commercial area).

18. The Commission concludes that these potential inconsistencies, which are minor in relation to the Modified Project, are insufficient to make the Modified Project inconsistent with the GPM and FLUM as a whole, given the CP's directive that these maps are to be interpreted broadly as general guidance.
19. The Commission concludes that even if these potential inconsistencies were to be deemed to make the Modified Project inconsistent with the GPM and FLUM, these inconsistencies are outweighed by other CP policies, as detailed by the Applicant and OP in the case record, which the CP specifically identifies are to be viewed in conjunction with the FLUM, including the following: (CP § 228.1.)
 - ***Far Northeast and Southeast Area Element***
 - *FNS-1.1.2: Development of New Housing:* Encourage new housing for area residents on vacant lots and around Metro stations within the community, and on underutilized commercial sites along the area's major avenues. Strongly encourage the rehabilitation and renovation of existing housing in Far Northeast and Southeast, taking steps to ensure that the housing remains affordable for current and future residents; (CP § 1708.3.)
 - *FNS-2.7.1: Skyland Revitalization:* Revitalize Skyland Shopping Center as an essential, dynamic community-scale retail center. Together with the Good Hope Marketplace, these two centers should function as the primary business district for adjacent neighborhoods, providing a diverse array of quality goods and services for area residents; and (CP § 1717.3.)

- *FNS-2.7.B – Fort Baker Drive Buffering: Work with property owners to develop and maintain a suitable visual, sound and security buffer between Skyland Shopping Center and the adjacent residential areas along Fort Baker Drive; (CP § 6.)*
- **Land Use Element**
 - *LU-2.4: Neighborhood Commercial Districts and Centers: Many District neighborhoods, particularly those on the east side of the city, lack well-defined centers or have centers that struggle with high vacancies and a limited range of neighborhood-serving businesses. Greater efforts must be made to attract new retail uses to these areas by improving business conditions, upgrading storefronts and the street environment, and improving parking and pedestrian safety and comfort. The location of new public facilities in such locations, and the development of mixed use projects that include upper story housing, can encourage their revival; and (CP § 312.2.)*
 - *LU-2.4.1: Promotion of Commercial Centers: Promote the vitality of the District's commercial centers and provide for the continued growth of commercial land uses to meet the needs of District residents, expand employment opportunities for District residents, and sustain the city's role as the center of the metropolitan area. Commercial centers should be inviting and attractive places, and should support social interaction and ease of access for nearby residents; and (CP § 312.5.)*
- **Housing Element**
 - *H-1.1.3: Balanced Growth: Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing; and (CP § 503.4.)*
 - *H-1.1.4: Mixed Use Development: Promote mixed use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations. (CP § 503.5.)*

20. The Commission concludes that the CP, considered in its entirety including the GPM and FLUM as well as the Area and Citywide Elements, outweighs the potential inconsistency with the GPM and FLUM because the CP calls for the site to be developed as a commercial town center, including a significant housing component, with a suitable buffer to protect the adjacent residential neighborhoods to the north. The Commission approved the original PUD in the Order based on its conclusion that it had complied with these CP principles and concludes that the Modified Project also meets these same principles and provides adequate buffering.

POTENTIAL ADVERSE IMPACTS – HOW MITIGATED OR OUTWEIGHED (Subtitle X § 304.4(b))

21. The Commission concludes that while the Modified Project may create the following potentially adverse impacts separate from those analyzed and determined to be acceptable by the Order (including the impacts on the Fort Baker and Akron Drives, S.E.), the

Modified Project mitigates these new potential impacts and renders them acceptable, as asserted by the Applicant and OP, based on the following measures, which have been incorporated in a comprehensive set of conditions in this Order: (FF 41, 46, 51-53.)

- The potential adverse impacts on traffic, loading and parking are mitigated by the Modified Project's TDMP and LDMP as well as the Applicant's reduction of parking by 117 spaces per DDOT's request, which DDOT agreed would address these potential adverse impacts; (FF 54-55.)
- The potential adverse impact of the large surface parking lot along Alabama Avenue, S.E., in Block 3 is mitigated with significant landscaping and screening; and (Ex. 3, 13.)
- The potential adverse impact of the MOB Garage's long blank wall along Naylor Road, S.E. in Block 1 is mitigated by the Arts Walk, which will break up and enliven this space. (Ex. 20.)

PUBLIC BENEFITS AND PROJECT AMENITIES BALANCED AGAINST DEVELOPMENT INCENTIVES AND POTENTIAL ADVERSE EFFECTS (Subtitle X §§ 304.4(c) and 304.3)

22. The Commission concludes that the Modified Project does not reduce the public benefits approved by the Order, as asserted by the Applicant and OP, because the Application only proposes to reallocate, without reducing the financial contribution, funds no longer needed to for the Contractor Loan Fund and the Homebuying and Homeownership classes to increase the original public benefit funding for Skyland Workforce Center's job training. (FF 42, 51-53.)

23. As stated above, the Commission concludes that the Modified Project's mitigations adequately address the potential adverse impacts to make them acceptable without requiring any public benefits to outweigh these potential adverse impacts.

24. The Commission concludes that the limited additional zoning flexibility/development incentives requested are sufficiently minor and improve the Modified Project that they are properly outweighed by the overall public benefits approved by the Order, as follows: (FF 27.)

- **Setback Requirements for the Block 1 MOB Garage's solar panels (Subtitle C § 1502.1);**
 - This relief allows the maximization of solar panels to further the sustainability of the Modified Project by shading the upper parking level in addition to generating renewable energy.
- **Loading requirements for Block 3's in-line retail building (Subtitle C § 901);**
 - This relief, which was supported OP and approved by DDOT as not causing adverse impacts in coordination with the LDMP, reflects the Modified Project's providing a larger than required berth for the Lidl grocery store and the limited loading needs of the in-line retail building and Starbucks coffee shop, as well as the ample space in the adjacent surface parking lot.

- **Parking location limits for Block 3's surface lot (Subtitle C § 710.2(b)(2))**
 - This relief, supported by OP, allows the Lidl grocery store to face onto Town Center Drive, and as discussed above, the potential adverse visual effects of this surface parking lot are mitigated by the substantial landscaping that screens the parking from Alabama Avenue, S.E.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

25. The Commission must give “great weight” to the recommendations of OP 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. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
26. The Commission finds persuasive OP’s recommendation that the Commission approve the Application based on OP’s determination that the Modified Project is not inconsistent with the CP in its entirety, and concurs in that judgement.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

27. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.); see 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).)
28. Although the ANC 7B Report did not identify any issues or concerns raised by the Application, the Commission notes ANC 7B Report’s support for the Application and concurs in that judgment.
29. Since ANC 8B did not file a written report in response to the Application, the Commission has nothing to which it can accord “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 for a Modification of Significance pursuant to Subtitle Z § 704 to revise Z.C. Order No. 09-03, as modified by Z.C. Orders No. 09-03A and 09-03D and as extended by Z.C. Order Nos. 09-03B, 09-03C, and 09-03E, as follows:

- The Consolidated PUD shall remain in effect for Blocks 1-3, as defined in this Order No. 09-03F;
- The Consolidated PUD shall revert to only a First-Stage PUD approval for Block 4, as defined in this Order No. 09-03F; and
- The conditions in Z.C. Order No. 09-03, as amended by Z.C. Order Nos. 09-03A, and 09-03B, are replaced (former Condition Nos. 3-6, 9, 10, 12, 15, 16, 18, and 19 remain unchanged but renumbered; former Condition Nos. 1, 2, 7, 8, 11, 13, 14, and 17 are updated; and a new Condition No. 16 is added) to read as follows:
 1. The PUD project shall be developed as modified by the guidelines, conditions, and standards of this Order as follows:
 - For Block 2 - in accordance with the plans and materials submitted by the Applicant, marked as Exhibits 3A, 15A, 49A, and 52A of the record in Z.C. Case No. 09-03A, as modified by Exhibit 2C of the record in Z.C. Case No. 09-03D, (the “Block 2 Approved Plans”); and
 - For Blocks 1, 3, and 4, as defined in this Order No. 09-03F (the “Modified Project”) - in accordance with the plans and materials submitted by the Applicant, marked as Exhibit 22C and 35A of the record in Z.C. Case No. 09-03F, (the “Blocks 1, 3, and 4 Approved Plans,” and collectively with the Block 2 Approved Plans, the “Approved Plans”);
 2. (Former Condition No. 14) The Applicant shall have design flexibility from Condition No. 1’s requirement to develop the PUD project with the Approved Plans in the following areas:
 - For all Blocks –
 - 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 of the structures and that the shadow boxes along the Naylor Road façade in Block 1 are maintained;
 - b. To vary the final selection of the exterior materials within the color ranges of material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and
 - c. To make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, balconies, canopies and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, such that the refinements do not substantially change the external configuration or appearance of the building;

- Blocks 1, 3, and 4 (the Modified Project) shall have the following additional design flexibility –
 - d. To reduce the overall size of the building in Block 1 based on the market demand for Medical Office use at the time of construction, provided the revised massing does not require additional zoning relief;
 - e. To vary the number of residential units and the residential unit types by plus or minus 10%, to be finalized at the second-stage review for Block 4;
 - f. To reduce the number of parking spaces, provided that no additional relief is required;
 - g. To vary the streetscaping and landscaping materials on private property within the Project based on availability and suitability at the time of construction or otherwise in order to satisfy any permitting requirements of applicable regulatory bodies;
 - h. To vary the amount, location, and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the Project achieves the minimum GAR requirement and does not reduce the total solar coverage area;
 - i. To vary the final design and layout of the mechanical penthouses 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 Approved Plans and remain compliant with all applicable penthouse setback requirements;
 - j. To vary the final design of the outdoor amenity spaces to reflect their final programming, provided that the use of space, character, and quality of the features and plantings remain in substantial conformance with the concept design shown on the Plans;
 - k. To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the Approved Plans and are compliant with the DC signage regulations, and consistent with Exhibit 29A; and;
 - l. To modify the streetscape design and areas in public space in response to DDOT and the public space permitting process.
- 3. (Former Condition No. 2) The Applicant shall make the following financial, or in-kind service, contributions:
 - a. Financial Support to Schools (former Condition No. 2(a)): The Applicant shall make in-kind service or financial contributions, with a value of \$200,000, to support schools

located within the geographic boundaries of ANCs 7B, 8B, and 8A for aesthetic improvements and to participate in initiatives such as “Buff and Scrub.” The Applicant expects that these in-kind service or financial contributions will be made over the entire time period of the development of the project, as discussed in Condition No. 19. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator (“ZA”) and the Office of Zoning (“OZ”) as to whether any in-kind service or financial contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 75% of the total amount of this contribution (\$150,000) (whether in the form of in-kind services, monetary contributions, or a combination of the two) shall be made by the Applicant by September 10, 2018. Notwithstanding Condition No. 19, this Order will expire as of that date if these payments/services have not been provided. The full amount of this contribution (whether in the form of in-kind services, monetary contributions, or a combination of the two) shall be made by the Applicant no later than September 10, 2022, or the date the last application for a building permit is filed for the project, whichever is sooner;

- b. Sponsorship of local community events and programs (former Condition No. 2(b)): The Applicant shall establish and administer a \$35,000 fund to sponsor community events such as holiday food drives, community festivals, and other community-promoting activities for the area surrounding the project. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 19. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 50% of the total amount of this contribution (\$17,500) shall be made by the Applicant within five years of the effective date of this Order. Notwithstanding Condition No. 19, this Order will expire as of that date if these payments have not been provided. The full amount of this contribution must be made by the Applicant no later than 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner;
- c. Local retailer build-out subsidy (former Condition No. 2(d)): The Applicant shall establish and administer a \$500,000 fund to subsidize a portion of the build-out costs for Certified Business Enterprise and local retailers opening a store at the Skyland Town Center. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 19. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund. The annual amount of this contribution will be proportionate to the amount of construction activity which occurred in that year. If no

construction activity occurred in any given year, the Applicant is not obligated to provide any financial contributions in that year. The full amount of this contribution must be made by the Applicant by December 31, 2030;

- d. Anacostia and Francis Gregory Libraries (former Condition No. 2(e)): The Applicant shall provide up to \$50,000 to perform capital improvements, upgrade computers, and provide other services for the Anacostia and Francis Gregory Libraries. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 19. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 50% of the total amount of this contribution (\$25,000) shall be made by the Applicant by September 10, 2018. Notwithstanding Condition No. 19, this Order will expire as of that date if these payments have not been provided. The full amount of this contribution must be made by the Applicant no later than September 10, 2022, or the date the last application for a building permit is filed for the project, whichever is sooner;
- e. Pocket Park at 25th Street & Naylor Road (former Condition No. 2(f)): The Applicant shall improve and maintain, at a value of \$50,000, the existing triangular pocket park at 25th Street and Naylor Road. The maintenance of the pocket park be will be provided over the entire time period of the development of the project, as discussed in Condition No. 19. The maintenance obligation will commence immediately after the improvements are made. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any improvements were made for this purpose. The work related to the installation of the right turn lane, new sidewalks, and utility improvements will be complete by September 10, 2018. The installation of hardscape and landscape improvements will be completed by May 1, 2020;
- f. Job Training (former Condition No. 2(g)): The Applicant shall provide job training programs, at a cost of \$450,000, for residents of Wards 7 and 8 so that they are prepared to apply and interview for jobs with the future retailers at the Skyland Town Center or elsewhere. The Applicant shall maintain a list of trained and qualified job candidates and shall provide that list to all new retailers. The Applicant expects that this program will be conducted over the entire time period of the development of the project, as discussed in Condition No. 19. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to the job training programs that were conducted in the prior year, if any. The extent of the training provided will be proportionate to the amount of construction activity which occurred in that year. If no construction activity occurred in any given year, the Applicant is not obligated to provide job training programs in that year; however, the Applicant must expend \$450,000 for the purpose

of providing job training programs prior to 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner.

4. (Former Condition No. 3) The failure of the Applicant to make any contribution or provide any service by the time specified in Condition No. 3 shall result in the denial of any pending application for a building permit or certificate of occupancy and shall be grounds for the revocation of any building permit.
5. (Former Condition No. 4) In consultation with DDOT, and contingent upon its approval, the Applicant shall construct and provide space for an 800-1,000 square-foot commuter store adjacent to, or located in, the building on Block 2. The commuter store will offer transit riders SmarTrip cards and Metrobus/Metrorail fare cards, maps, real-time schedules, and transportation options in the Metro Washington area. DDOT will provide for the operation of the store. The Applicant will deliver the commuter store space to DDOT as a warm white shell, with a finished floor, ceiling, lights, etc. The Applicant will not be responsible for the purchase or installation of any equipment or specialty items needed for the operation of the commuter store. The Applicant shall provide the same security and maintenance for the commuter store as it will for the other retail tenants in the project. In the event that DDOT determines that the store is not necessary, the Applicant will not be required to provide or construct such space. DDOT must make this decision by the time of the issuance of a building permit for Block 2.
6. (Former Condition No. 5) The Applicant shall make the transportation infrastructure and traffic improvements to the area around Skyland Town Center, as provided for in the approved plans and materials: modified traffic signals; reconfiguring existing traffic lanes; restriping; new signs; and the widening of 25th Street. These transportation infrastructure and traffic improvements will be completed prior to the issuance of a Certificate of Occupancy for the Building on Block 1, in accordance with DDOT standards and contingent on DDOT issuing a permit for such improvements.
7. The Applicant shall make the following public space improvements to Naylor Road and Alabama Avenue, as provided for in the approved plans and materials; new DC standard sidewalks, granite curbs, and gutters; paver crosswalks; street trees; irrigation; special pavers; benches; receptacles; bollards; and 16' Washington Globe lighting. The Applicant will provide a landscape buffer on the east side of the Property to screen the project from Hillcrest residents. These public space improvements must be made by the completion of the last phase of development of the project.
8. LEED Requirements (former Condition No. 7):
 - a. For Block 2, the project shall be designed to obtain a certified level in the LEED-for-Homes, or other equivalent standard, for mixed-use retail and residential projects (including, but not limited to Green Communities). The Applicant shall provide

evidence to the ZA, from a LEED-certified professional, of the satisfaction of this condition in the building permit application materials submitted for each building;

- b. The Applicant will provide two green roofs in the Project on the Property; and
- c. For Blocks 1, 3, and 4:
 - i. **Prior to the issuance of a certificate of occupancy for the Medical Office Building in Block 1**, the Applicant shall provide the ZA with evidence that the building has or will achieve the requisite number of prerequisites and points necessary to achieve LEED Silver v4 level for the office building and evidence that the garage has or will achieve the Green Business Certification Inc.'s "Parksmart" certification;
 - ii. **Prior to the issuance of a certificate of occupancy for the Lidl grocery store in Block 3**, the Applicant shall provide with evidence that the building has or will achieve the requisite number of prerequisites and points necessary to achieve LEED Silver v4 level; and
 - iii. The building to be constructed on Block 4 shall be designed to achieve a LEED Silver v4 level of certification.
9. **Transportation Management** (Former Condition No. 8):
 - a. For Block 2, The Applicant shall establish a transportation management program ("TMP") that includes the following:
 - i. A transportation services coordinator, through the property management office, who will develop and administer the TMP strategies;
 - ii. Rerouting of Metrobuses, placement of bus stops at more convenient locations, and enhancement of passenger access and safety to encourage the use of public transit. This shall be done in collaboration with DDOT and WMATA;
 - iii. Request employers at Skyland Town Center to provide employees with Metro checks or SmarTrip cards;
 - iv. Provide designated parking locations along the internal street system for shared vehicles (i.e., ZipCar). The number of cars and locations will be determined by the Applicant and the shared vehicle company;
 - v. Provide landscaped and lit shared pedestrian and bicycle paths between key locations within the project and Metrobus stops;
 - vi. Provide traffic calming features, such as special pavers and sidewalk bump-outs, on internal streets;
 - vii. Provide bicycle parking in the amount of at least five percent of the required automobile off-street parking (the amount required by DDOT);
 - viii. Establish and maintain a ridesharing and ride-matching program for residents and employees of Skyland Town Center; and
 - ix. Monitor and regularly evaluate the TMP;

b. For Blocks 1, 3, and 4, **for the life of Modified Project**, the Applicant shall establish a transportation management program (“TMP”) and a Loading Management Plan (“LMP”) that includes the following:

Transportation Demand Management Plan

a. *Overall Site*

- i. The Applicant will install eight (8) additional docks (two expansion plates) to the existing 11-dock Capital Bikeshare station at the corner of Alabama Avenue and Good Hope Road and ensure it is designed to remain in place;
- ii. The Applicant will provide reserved parking locations for carshare and carpool vehicles;
- iii. The Applicant will establish a ride-matching program;
- iv. The Applicant will implement strategies to evaluate the effectiveness of the transportation management program (TMP);
- v. The Applicant will provide dedicated parking spaces for car-sharing vehicles;
- vi. The enhancement of Metrobus service in and around the site which will help encourage residents of the project and the surrounding areas to utilize public transportation; and
- vii. The Applicant will establish the position of a Transportation Services Coordinator in the property management office who will be responsible for administering and advancing TMP strategies and also monitoring loading and parking practices in the project;

b. *Block 1*

- i. The Applicant will unbundle the cost of parking from the cost to lease an office unit;
- ii. The Applicant will provide a free parking space for all vehicles that employees use to vanpool to work;
- iii. The Applicant will not lease unused parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home residents);
- iv. At the initial opening of the building, the Applicant will offer each new employee of a tenant in Block 1 a Capital Bikeshare Bronze Level membership upon their initial employment;
- v. At the initial opening of the building, the Applicant will offer each new employee a Metrocheck or SmartTrip Card with the value of \$20.00;
- vi. The Applicant will provide a bicycle repair station in each long-term bicycle parking storage room;
- vii. The Applicant will install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation alternatives. At a minimum the display should 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;

- viii. Following the issuance of a certificate of occupancy for the Block, 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;
- ix. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order;
- x. The Applicant will meet ZR16 short- and long-term bicycle parking requirements. Long-term bicycle parking will be provided free of charge to all employees; and
- xi. The Applicant will meet ZR16 requirements for shower and locker facilities;

c. *Block 3*

- i. The Applicant will unbundle the cost of parking from the cost to lease the building or unit;
- ii. The Applicant will provide a free parking space for all vehicles that employees use to vanpool to work;
- iii. The Applicant will not lease unused parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home residents);
- iv. At the initial opening of the buildings, the Applicant will offer each new employee of a tenant in Block 3 a Capital Bikeshare Bronze Level membership upon their initial employment;
- v. At the initial opening of the building, the Applicant will offer each new employee a Metrocheck or SmartTrip Card with the value of \$20.00;
- vi. The Applicant will provide a bicycle repair station in each long-term bicycle parking storage room;
- vii. Following the issuance of a certificate of occupancy for the Block, 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;
- viii. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order; and

- ix. The Applicant will meet ZR16 short- and long-term bicycle parking requirements. Long-term bicycle parking will be provided free of charge to all employees.

- d. *Block 4*

- i. The Applicant will unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile;
- ii. The Applicant will designate two parking spaces for vans to be used by District residents who vanpool to work;
- iii. The Applicant will 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);
- iv. At the initial opening of the building, the Applicant will provide each new residential tenant, upon their move-in, a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride;
- v. At the initial opening of the building, the Applicant will offer each new employee a Metrocheck or SmartTrip Card with the value of \$20.00; (DDOT Report 09-03A.)
- vi. The Applicant will provide a bicycle repair station in each long-term bicycle parking storage room;
- vii. Following the issuance of a certificate of occupancy for the Block, 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;
- viii. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order;
- ix. The Applicant will meet the short- and long-term bicycle parking requirements of the Zoning Regulation in effect as of the effective date of this Order No. 09-03F;
- x. Long-term bicycle parking will be provided free of charge to all employees; and
- xi. The Applicant will meet the shower and locker facilities required by the Zoning Regulations as of the effective date of this Order No. 09-03F, if applicable;

Loading Management Plan

- e. *Block 3 – Grocery Store*

- i. A loading manager will be designated by the grocery store who will be on duty during delivery hours. The dock manager will be responsible for coordinating

- with vendors to schedule deliveries and will work with the community and neighbors to resolve any conflicts should they arise;
- ii. The loading 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 internal driveways except during those times when a truck is actively entering or exiting loading berth;
- iii. The loading manager will schedule deliveries using the berths 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 at a later time when the berth will be available so as to not compromise safety or impede circulation through the Site;
- iv. Trucks using the loading dock 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, § 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight); and
- v. The loading 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 flyer materials, such as the Metropolitan Washington Council of Governments (MWCOG) Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws. The dock manager will also post these materials and other relevant notices in a prominent location within the loading area; and

f. *Block 3 – In-Line Retail*

- i. A loading manager will be designated by property management who will be reachable during delivery hours. The loading manager will be responsible for coordinating with retail tenants to ensure scheduled deliveries do not exceed loading area capacity and will work with the community and neighbors to resolve any conflicts should they arise;
- ii. The loading manager will ensure truck maneuvers are monitored and vehicular, bike, or pedestrian traffic within the surface lot is not blocked except during those times when a truck is actively entering or exiting the loading area;
- iii. All retail tenants will be required to coordinate and schedule deliveries that utilize the loading area (any loading operation conducted using a truck 20-feet in length or larger);
- iv. In the event that an unscheduled delivery vehicle arrives while the loading space is occupied, that driver will be directed to return at a later time when the space will be available so as to not compromise safety or impede circulation;
- v. Trucks using the loading area 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, § 900 (Engine Idling), the goDCgo Motorcoach

Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight); and

vi. The loading manager will be responsible for disseminating suggested truck routing maps to the retail tenants as well as notifying all retail tenants of any access or egress restrictions. The loading manager will also post MWCOG's Turn Your Engine Off information and other relevant notices in a prominent location available to retail tenants overseeing deliveries.

10. (Former Condition No. 9) The Applicant shall enter into a First Source Employment Agreement with the D.C. Department of Employment Services ("DOES") in conformance with the Agreement included as Exhibit F of the Applicant's Pre-Hearing Statement submitted into the record. A fully-signed First Source Employment Agreement between the Applicant and DOES must be filed with the ZA prior to the issuance of the first above grade building permit for the project.

11. (Former Condition No. 10) The Applicant shall enter into a Certified Business Enterprise Utilization Agreement with the D.C. Department of Small and Local Business Development ("DSLBD") in conformance with the Agreement included as Exhibit G of the Applicant's Pre-Hearing Statement submitted into the record. A fully-signed Certified Business Enterprise Utilization Agreement between the Applicant and DSLBD must be filed with the ZA prior to the issuance of the first above grade building permit for the project.

12. (Former Condition No. 11) **For the life of the Project**, the Applicant shall reserve a total of 20% of the residential units as affordable for households having an income not exceeding 80% of the Area Median Income ("AMI") for the Washington, D.C. Metropolitan Statistical Area (adjusted for family size). The Applicant shall reserve an additional 10% of the residential units as affordable for households having an income not exceeding 120% of AMI. A proportionate amount of affordable housing will be distributed throughout Blocks 2 and 4 except for the two upper stories of each building. These affordable units will be reserved for a term that is consistent with the affordability covenant that will be recorded in the D.C. Land Records against the Skyland Property, as required by the land disposition agreement signed by the Applicant and the District of Columbia. Any residential units provided on the Property in excess of the 500 residential units approved by Z.C. Order No. 09-03F shall be subject to the Inclusionary Zoning requirements in effect at the time of building permit issuance for those residential units in excess of 500.

13. (Former Condition No. 12) The Applicant shall undertake the construction mitigation measures as stated in Exhibits 112 and 120 of the record in Z.C. Case No. 09-03. These measures include monitoring construction activity impacts; monitoring of vibrations from construction activity; the Applicant agreeing to take responsibility for damage to adjacent properties and pay for damage caused by the Applicant's construction activities (note that neither the Commission, nor the ZA, will have any responsibility

or duty to determine whether any damage has occurred); providing site management, including fencing and barricades, erosion control measures, continuous rubbish removal, and directing of construction traffic; and provision of an on-site construction representative to hear and respond to concerns from the Ft. Baker Drive residents during construction.

14. (Former Condition No. 13) **For the life of the Modified Project**, the number of parking spaces permitted in the PUD project shall be a total of 1,289.
15. (Former Condition No. 19) The Applicant shall provide a 10-feet wide clear sidewalk along the building face of Block 1 and Block 2 on the Naylor/Good Hope Road frontage on public space or through a combination of public and private space.
16. **Prior to the issuance of a Certificate of Occupancy for parking structure in Block 1**, the Applicant shall construct the Arts Walk with shadow boxes. **For the life of the Project**, the Applicant shall maintain the Arts Walk with community art and showcases.

Phasing and Expiration

17. (Former Condition No. 15) The ZA shall not approve a permit application for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to OAG and the Zoning Administrator. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with the Order No. 09-03, or amendment thereof approved by the Commission. The Applicant shall file a certified copy of the covenant with OZ for the case record.
18. (Former Condition No. 16 and 17) The change of zoning from the R-5-A, R-5-B, and R-1-B Zone to the C-3-A Zone District shall be effective upon the recordation of the covenant discussed in Condition No. 17, pursuant to § 3028.9 of the 1958 Zoning Regulations, after which the applicable map amendment for each block shall vest upon the start of construction of the block and shall not revert to the underlying zone district for so long as the PUD improvements on the block remain.
19. **Validity of Order** (former Condition No. 17):
 - a. A building permit for the construction of the buildings on Block 3 shall be filed within one year of the effective date of this Order No. 09-03F and construction will start within two years of the effective date of this Order No. 09-03F.
 - b. A building permit for the construction of the building on Block 1 shall be filed within two years of the effective date of this Order No. 09-03F and construction will start within three years of the effective date of this Order No. 09-03F.

c. A second-stage PUD application for the development of the mixed-use building on Block 4 shall be filed with the Zoning Commission by December 31, 2025, and a building permit application for Block 4 shall be filed within one year of the Zoning Commission's approval of the second-stage PUD application and construction will start within two years of the Zoning Commission's approval of the second stage PUD. The first-stage PUD for Block 4 will expire if the second-stage PUD application has not received Commission approval by December 31, 2027.

VOTE (September 14, 2020): 5-0-0 (Peter A. Shapiro, Michael G. Turnbull, Robert E. Miller, Anthony J. Hood, and Peter G. May to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 09-03F shall become final and effective upon publication in the *DC Register*; that is, on January 8, 2021.



ANTHONY J. HOOD

CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN

DIRECTOR
OFFICE OF ZONING

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., (THE "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 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. 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-03G
Z.C. Case No. 09-03G
Skyland Holdings, LLC
(Two-Year Time Extension for PUD
& Related Map Amendment @ Square 5633, Lot 22)
December 14, 2023

Pursuant to notice, at its December 14, 2023 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Skyland Holdings, LLC (the “Applicant”) for a two-year Time Extension of Zoning Commission Order No. 09-03 (the “Original Order” or “PUD”), as modified by Z.C. Order Nos. 09-03A, 09-03D, and 09-03F, and as extended by Z.C. Order Nos. 09-03B, 09-03C, and 09-03E (collectively with the Original Order, the “Order”), for Lot 22 in Square 5633,¹ known as Skyland Town Center (the “Property”). 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.

I. FINDINGS OF FACT

BACKGROUND

1. Pursuant to the Original Order, effective on September 10, 2010, the Commission approved a PUD with a related map amendment to construct a mixed-use town center anchored by a main street with:
 - Approximately 314,480 square feet (“sf”) of community-serving retail uses;
 - 20 townhomes and 450-500 residential units above the retail and service uses totaling approximately 538,110 square feet;
 - 1,698 parking spaces totaling approximately 400,038 square feet; and
 - A total floor area ratio (“FAR”) of 1.54, of which 0.88 FAR is dedicated to commercial uses.

¹ Lot 22 in Square 5633 consolidated all of the property subject to the PUD approved by Z.C. Order No. 09-03, as recorded by a plat recorded on November 17, 2014, in the Records of the District Surveyor at Subdivision Book 209, Page 39 (Z.C. Order No. 09-03 referred to Assessment and Taxation (“A&T”) Lots 800 and 801, which were created out of Lot 2 per the plat in A&T Book 3794, Page F, and A&T Lot 819, created out of A&T Lots 815 and 817, in turn created out of the remainder of Lots 8 and 9 per A&T Plats Book Page 2410).

2. The Original Order divided the PUD, 1,252,628 sf of gross floor area (“GFA”) into five development parcels (“Blocks”) as follows:
 - Block 1 – 242,600 sf;
 - Block 2 – 550,611 sf;
 - Block 3 – 256,230 sf;
 - Block 4 – 168,769 sf; and
 - Block 5 – 34,518 sf.
3. By Z.C. Order No. 09-03A, effective January 17, 2014, the Commission approved modifications of the Original Order in the following areas:
 - Architectural design and site layout reducing the total GFA to 1,249,438 sf with a FAR of 1.75, of which 0.97 FAR is dedicated to commercial uses, allocated as follows:
 - Block 1 – 179,395 sf;
 - Block 2 – 744,486 sf;
 - Block 3 – 189,818 sf;
 - Block 4 – 117,595 sf; and
 - Block 5 – 18,144 sf;
 - Residential uses – replacing 12 townhomes with six carriage houses on Blocks 3 and 5;
 - Parking – allowing 1,774 parking spaces in a modified distribution across the Property;
 - Transportation network; and
 - PUD Zoning Map vesting – clarifying that the related PUD map amendment vested for each Block upon the start of construction of that Block.
4. By Z.C. Order No. 09-03D,² effective June 30, 2017, the Commission approved modifications of the Original Order as it applies to Block 2 to remove 345 parking spaces on three levels of above-grade parking and architectural design and site layout, with a reduction in the square footage of Block 2 to 534,880 sf.³
5. By Z.C. Order No. 09-03F, effective January 8, 2021, the Commission approved modifications of the Original Order in the following areas:
 - Reconfiguring Block 1, 3, 4, and 5 into new Blocks 1, 3, and 4;
 - Reducing the total GFA, as follows:

² In Z.C. Order No. 09-03B, the Commission approved a two-year extension, and in Z.C. Order No. 09-03C, the Commission approved a one-year extension. Both Orders extended the deadlines for filing a building permit application and for commencing construction. In Z.C. Order No. 09-03E, the Commission approved a one-year extension that extended the deadlines for filing a building permit application and for commencing construction as well as deadlines for the financial contributions and construction and maintenance requirements outlined in Condition Nos. 2(a), 2(e), and 2(f) of the Original Order.

³ Z.C. Order No. 09-03D, and its approved plans and filings did not specify the changed square footage for Block 2, which was instead provided by Ex. 22C, p. G7 of Z.C. Case No. 09-03F.

- Block 1 – 280,978 sf;
- Block 2 – 534,880 sf;
- Block 3 – 41,229 sf; and
- Block 4 – 312,230 sf; and
- Changing the programs, as follows:
 - Block 1 to be developed with medical office use with an attached parking garage;
 - Block 3 to be developed with three single-story retail buildings, including the Lidl grocery store, and a surface parking lot containing approximately 214 parking spaces; and
 - Block 4 to be developed with a future mixed-use building with approximately 252 multifamily residential units, approximately 7,140 sf of ground-floor retail, and approximately 157 parking spaces.

6. Z.C. Order No. 09-03F required the Applicant to meet the following deadlines regarding Blocks 1, 3, and 4:

- Block 1- The Applicant was required to file a building permit application for the construction of the building on Block 1 by January 8, 2023, and to start construction of the building by January 8, 2024;
- Block 3-The Applicant was required to file a building permit application for the construction of the buildings on Block 3 by January 8, 2022, and to start construction of those buildings by January 8, 2023; and
- Block 4- The Applicant was required to file a second-stage PUD application with the Commission for development of Block 4 by December 31, 2025. In addition, the Applicant would be required to file a building permit application for Block 4 within one year and to start construction within two years of the Commission’s approval of the second-stage PUD application. Finally, the first-stage PUD for Block 4 would expire if the second-stage PUD application has not received Commission approval by December 31, 2027.

7. The Block 2 building, which consists of approximately 263 residential units, opened in April 2021 and is 90% occupied.

8. With respect to Block 3, the Applicant satisfied the time deadlines in Z.C. Order No. 09-03F to file building permits and start construction of the buildings. The Block 3 buildings, which include a Lidl grocery store and a drive-thru Starbucks, opened beginning in February 2022.

PARTIES

9. In addition to the Applicant, the parties to the Original Order were:

- Advisory Neighborhood Commission (“ANC”) 7B, which district includes the Property and ANC 8B, which shares a boundary with the Property, the “affected ANCs” pursuant to Subtitle Z §§ 101.8 and 403.5(b); and
- The Ft. Baker Drive Party (“FBDP”), granted party status in Z.C. Case No. 09-03.

10. Effective January 1, 2023, there was an ANC boundary change and ANC 8A is now an affected ANC, pursuant to Subtitle Z § 101.8.

II. THE APPLICATION

11. On January 4, 2023, prior to the expiration of the time extension for Block 1 granted in Z.C. Order No. 09-03F, the Applicant filed this application for a two-year time extension of the January 8, 2023 deadline to file a building permit application for Block 1. The Application stated that the extension on the time to file a building permit application for Block 1 is necessary to allow more time to process a new modification of significance application for Blocks 1 and 4.⁴ The Application stated that there is not sufficient demand for lessees in the medical office building approved for Block 1; therefore, the Applicant had to revisit the potential uses for Block 1 due to changes in economic and market conditions. The Application also requested a waiver from Subtitle Z § 705.5⁵ to allow a fourth time extension and an approval for more than one year. (Exhibit [“Ex.”] 2.)

12. The Application stated that it satisfied the requirements of Subtitle Z § 705.2 for a time extension. (Ex. 2.)

13. The Applicant provided evidence that on January 4, 2023, it served the Application on ANCs 7B, 8B, and 8A; FBDP; and the Office of Planning (“OP”) as attested by the Certificate of Service submitted with the Application. (Ex. 2 at 7.)

14. The Application stated that the PUD has progressed significantly in recent years, with Blocks 2 and 3 fully completed, and Blocks 1 and 4 the last remaining parcels to be developed. The Applicant stated its intention to file a Modification of Significance application for Blocks 1 and 4 offering a significant amount of affordable housing, including affordable senior living units, home ownership opportunities and additional retail space. (Ex. 2.)

⁴ On March 23, 2023, the Applicant filed a Modification of Significance application, Z.C. Case No. 09-03H, to change the building programming on Blocks 1 and 4 from retail, residential, and medical office use to a combination of townhomes and an all-affordable multifamily senior building with ground floor retail. The Modification of Significance application requested that it be processed concurrently with this time extension application. The public hearing for Z.C. Case No. 09-03H took place on November 27, 2023; and the Commission took final action on the application in conjunction with this time extension application, at its December 14, 2023 public meeting.

⁵ Subtitle Z §705.5 limits applicants with an approved PUD to no more than two requests for a time extension and limits the second time extension approval to no more than one year.

15. The Applicant asserted that there has been no substantial change of material facts upon which the Commission based its approval of the PUD that would undermine the Commission's approval of the Original Order or approval of this Application. (Ex. 2.)
16. The Application asserted that good cause justifies the Commission's granting the time extension because the Applicant has diligently moved forward with the construction and opening of the buildings on Blocks 2 and 3. The Applicant searched for potential tenants to occupy the medical office building approved for Block 1, but ultimately determined there was insufficient demand. Accordingly, the Applicant had to revisit its development program for both Blocks 1 and 4 due to market and economic conditions beyond its reasonable control; changes to the development program for Blocks 1 and 4 necessitate approval of a Modification of Significance. (Ex. 2.)
17. The Applicant stated that good cause was shown to grant a waiver from the requirements of Subtitle Z § 705.5 because the Applicant needs more time to process a Modification of Significance application before filing a building permit application for Block 1. The extension will allow the Applicant to complete the PUD and include a mix of residential and retail uses for the neighborhood to create the Town Center that was envisioned for the site. The Applicant noted that the Commission is able to grant a waiver from Subtitle Z § 705.5, pursuant to Subtitle Z § 101.9⁶, as granting the waiver will not prejudice the rights of any party (because ANCs 7B, 8B, and 8A, and FBDP were served with the Application and allowed an opportunity to respond), and the Commission is not otherwise prohibited from granting a fourth time extension and an approval for more than one year. (Ex. 2.)

III. Responses to the Application

Office of Planning

18. OP submitted a report dated June 16, 2023 ("OP Report"). (Ex. 6.) The OP Report recommended that the Commission approve the requested two-year extension to file a building permit application for Block 1 and a waiver from the requirements of Subtitle Z § 705.5 to allow a fourth extension and an approval for more than one year. OP's Report explained that the extension request met the requirements of Subtitle Z § 705.2 because there has been no substantial change of material facts upon which the Commission based its original approval; and the Applicant has demonstrated good cause because its search for medical office lessees for Block 1 proved futile due to economic and market conditions beyond its reasonable control. OP noted that the extension will allow the Applicant the necessary time to process a Modification of Significance application for residential use on Blocks 1 and 4, the final portions of the PUD development. OP further noted that the Applicant filed the Modification of Significance application for Blocks 1 and 4 on March 23, 2023, Z.C. Case No. 09-03H. (Ex. 7.)

⁶ Subtitle Z § 101.9 states: "*The Commission may, for good cause shown, waive any of the provisions of this subtitle if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law*".

ANCs 7B, 8B, AND 8A

19. None of the affected ANCs, 7B, 8B, or 8A, submitted a response to the Application.

FBDP

20. FBDP did not submit a response to the Application.

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the period of an order approving a PUD upon determining that the time extension request demonstrated satisfaction of the requirements of Subtitle Z §§ 705.3, 705.5, and 705.6.
2. The Commission concludes that the Applicant timely filed the Application on January 4, 2023, prior to the January 8, 2023 deadline granted in Z.C. Order No. 09-03F to file a building permit application for Block 1. The Applicant now seeks to extend the deadline by two years to allow additional time to both complete the processing of a Modification of Consequence application to change the development program for Blocks 1 and 4, and to file a building permit application for Block 1.
3. Subtitle Z § 705.2 requires that an Applicant serve the extension request on all parties and that all parties are allowed 30 days to respond.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 705.2(a) by demonstrating that it served all parties to the Original Order –ANCs 7B, 8B and FBDP- and that all were given 30 days to respond from the January 4, 2023 date of service. In addition, the Applicant also served ANC 8A, now an affected ANC, and it was given 30 days to respond.
5. Subtitle Z § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission' justification for approving the PUD.
6. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the Application and the OP Report, which stated that no substantial change has occurred to the material facts upon which the Commission had relied in approving the Original Order.
7. Subtitle Z §705.2(c) requires that an application demonstrate with substantial evidence one or more of the following criteria:
 - (1) *An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;*
 - (2) *An inability to secure all required governmental agency approvals for a development by the expiration date of the PUD order because of delays*

in the governmental agency approval process that are beyond the applicant's reasonable control; or

(3) *The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.*

8. The Commission concludes that the Application met the standard of Subtitle Z § 705.2(c)(3) because the Applicant was unable to continue with the medical office development program for Block 1, due to lack of demand for medical office space resulting from economic and market conditions beyond its reasonable control. Therefore, the Applicant was unable to file a building permit application for Block 1 by the January 8, 2023 deadline established in Z.C. Order No. 09-03F. The Commission believes that the Applicant made diligent efforts to search for prospective medical office lessees and that its efforts were rendered futile due to a downturn in demand. The Commission notes the Applicant's significant progress in delivering Blocks 2 and 3 of the PUD. Further, the Commission agrees that additional time is necessary to process a Modification of Significance application to change the development program for Blocks 1 and 4 prior to filing a building permit application for Block 1.

9. The Commission concludes that the Application demonstrated good cause to waive Subtitle Z § 705.5's requirements that no more than two extension requests be allowed and that a second extension request may be approved for no more than one year. The Commission determined that, pursuant to Subtitle Z § 101.9, granting a waiver of Subtitle Z § 705.5's requirements will not prejudice the rights of any party nor is it otherwise prohibited by law. The Commission makes this conclusion because the parties to the Original Order- ANCs 7B and 8B, and FBDP- and ANC 8A were served with the Application and allowed the opportunity to respond. Moreover, the Commission believes that a two-year time extension will give the Applicant adequate time to both complete the processing of a Modification of Significance application and file a building permit application for Block 1.

“Great Weight” to the Recommendations of OP

10. 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).)

11. The Commission finds OP's recommendation to approve the Application persuasive and therefore concurs in that judgment.

“Great Weight” to the Recommendations of the ANC

12. 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).)

13. None of the affected ANCs, 7B, 8B, or 8A, submitted responses to the case record; therefore, the Commission has nothing to which it can give “great weight”.

DECISION

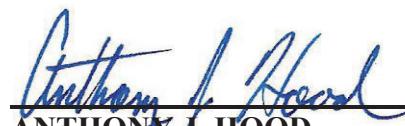
In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a two-year Time Extension of Z.C. Order No.09-03, as modified by Z.C. Order Nos. 09-03A, 09-03D, and 09-03F, and as extended by Z.C. Order Nos. 09-03B, 09-03C, and 09-03E, to extend the deadline to **January 8, 2025**, to file a building permit application for Block 1 of the PUD.

On December 14, 2023, upon the motion of Tammy Stidham, as seconded by Robert Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Joseph S. Imamura, and Tammy Stidham; 3rd Mayoral Appointee seat vacant).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 09-03G shall become final and effective upon publication in the *District of Columbia Register*; that is on April 19, 2024.

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-03H**

**Z.C. Case No. 09-03H
Skyland Holdings, LLC**

**Modification of Significance to an Approved Planned Unit Development
@ Skyland Town Center (Square 5633, Lot 22)
December 14, 2023**

Pursuant to notice, at its December 14, 2023, public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Skyland Holdings, LLC (the “Applicant”) that requested approval of a Modification of Significance¹ pursuant to Subtitle Z § 704 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) to the Planned Unit Development (“PUD”) and related Map Amendment approved by the Commission in Z.C. Order No. 09-03 (the “Original Order”), as modified by Z.C. Order Nos. 09-03A, 09-03D, and 09-03F, and as extended by Z.C. Order Nos. 09-02B, 09-03C, 09-03E, and 09-03G (collectively with the Original Order, the “Order”), for Lot 22 in Square 5633,² known as Skyland Town Center (the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z, Chapter 4. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PRIOR APPROVALS

1. Pursuant to the Original Order, effective on September 10, 2010, the Commission approved a Consolidated PUD and a PUD related map amendment of the Property’s 18.7 acres at the intersection of Naylor Road, Good Hope Road, and Alabama Avenue, S.E. from the R-1-B,

¹ Pursuant to Subtitle A § 102.4, although the Original Order was vested under the 1958 Zoning Regulations under which it was evaluated and approved, the Application is subject to the current Zoning Regulations to the extent of the modifications.

² Lot 22 in Square 5633 consolidated all of the property subject to the PUD approved by Z.C. Order No. 09-03, as recorded by a plat recorded on November 17, 2014, in the Records of the District Surveyor at Subdivision Book 209, Page 39 (Z.C. Order No. 09-03 referred to Assessment and Taxation (“A&T”) Lots 800 and 801, which were created out of Lot 2 per the plat in A&T Book 3794, Page F, and A&T Lot 819, created out of A&T Lots 815 and 817, in turn created out of the remainder of Lots 8 and 9 per A&T Plats Book Page 2410).

R-5-A, and R-5-B zones to the C-3-A zone (now MU-7B zone) to construct a mixed-use town center anchored by a main street with:

- Approximately 314,480 square feet (“sf”) of community-serving retail uses;
- 20 townhomes and 450-500 residential units above the retail and service uses totaling approximately 538,110 square feet;
- 1,698 parking spaces totaling approximately 400,038 square feet; and
- A total floor area ratio (“FAR”) of 1.54, of which 0.88 FAR is dedicated to commercial uses (Exhibit [“Ex.”] 51 and 121A1 in Z.C. Case No. 09-03 at p. 18).

2. The Original Order divided the PUD, 1,252,628 sf of gross floor area (“GFA”) into five development parcels (“Blocks”) as follows:

- Block 1 – 242,600 sf;
- Block 2 – 550,611 sf;
- Block 3 – 256,230 sf;
- Block 4 – 168,769 sf; and
- Block 5 – 34,518 sf.

3. By Z.C. Order No. 09-03A, effective January 17, 2014, the Commission approved modifications of the Original Order in the following areas:

- Architectural design and site layout reducing the total GFA to 1,249,438 sf with a FAR of 1.75, of which 0.97 FAR is dedicated to commercial uses, allocated as follows:
 - Block 1 – 179,395 sf;
 - Block 2 – 744,486 sf;
 - Block 3 – 189,818 sf;
 - Block 4 – 117,595 sf; and
 - Block 5 – 18,144 sf;
- Residential uses – replacing 12 townhomes with six carriage houses on Blocks 3 and 5;
- Parking – allowing 1,774 parking spaces in a modified distribution across the Property;
- Transportation network; and
- PUD Zoning Map vesting – clarifying that the rezoning to the C-3-A zone vested for each Block upon the start of construction of that Block.

4. By Z.C. Order No. 09-03D,³ effective June 30, 2017, the Commission approved modifications of the Original Order as it applies to Block 2 to remove 345 parking spaces

³ Z.C. Order Nos. 09-03B and 09-03C extended the deadlines for filing a building permit application and for commencing construction. Z.C. Order No. 09-03E extended the deadlines for filing a building permit application and for commencing construction as well as deadlines for the financial contributions and construction and maintenance requirements outlined in Condition Nos. 2(a), 2(e), and 2(f) of the Original Order.

on three levels of above-grade parking and architectural design and site layout, with a reduction in the square footage of Block 2 to 534,880 sf.⁴

5. By Z.C. Order No. 09-03F, effective January 8, 2021, the Commission approved modifications of the Original Order in the following areas:
 - Reconfiguring Block 1, 3, 4, and 5 into new Blocks 1, 3, and 4 and maintaining the Consolidated PUD for Blocks 1-3 while converting Block 4 to a First-Stage PUD;
 - Reducing the total GFA, as follows:
 - Block 1 – 280,978 sf;
 - Block 2 – 534,880 sf;
 - Block 3 – 41,229 sf; and
 - Block 4 – 312,230 sf; and
 - Changing the programs, as follows:
 - Block 1 to be developed with medical office use with an attached parking garage;
 - Block 3 to be developed with three single-story retail buildings, including the Lidl grocery store, and a surface parking lot containing approximately 214 parking spaces; and
 - Block 4 to be developed with a future mixed-use building with approximately 252 multifamily residential units, approximately 7,140 sf of ground-floor retail, and approximately 157 parking spaces.
6. The Block 2 building, the Crest Apartments, consists of approximately 263 residential units, opened in April 2021, and is 90% occupied. The Block 3 buildings consists of a Lidl grocery store and a drive-thru Starbucks and opened beginning in February 2022. This Application only pertains to Blocks 1 and 4,⁵ the remaining Blocks to be developed.

PARTIES

7. The only parties to the case were the Applicant and Advisory Neighborhood Commission (“ANC”) 7B, which District includes the Property, and ANCs 8B and 8A, which share a boundary with the Property, the “affected ANCS” pursuant to Subtitle Z § 101.8.
8. Effective January 1, 2023, there was an ANC boundary change and ANC 8A became an affected ANC, pursuant to Subtitle Z § 101.8.
9. The Commission received no additional requests for party status.

⁴ Z.C. Order No. 09-03D, and its approved plans and filings did not specify the changed square footage for Block 2, which was instead provided by Ex. 22C, p. G7 of Z.C. Case No. 09-03F.

⁵ Z.C. Order No. 09-03G extended the deadline to file a building permit application for Block 1; the deadline to file a second-stage PUD application for Block 4 that was established in Z.C. Order No. 09-03F was not expired at the time of the Commission’s approval of Z.C. Order No. 09-03G.

NOTICE

10. On December 21, 2022, the Applicant mailed a Notice of Intent to file the Application to:
 - ANCs 7B, 8A, and 8B; and
 - All property owners within 200 feet of the Property. (Ex. 3G.)
11. On October 23, 2023, the Office of Zoning (“OZ”) sent the notice of the November 27, 2023 virtual public hearing to:
 - The Applicant;
 - ANC 7B;
 - ANC Single Member District (“SMD”) Commissioner 7B02, whose district includes the Property;
 - ANC SMD Commissioner 7B05;
 - The Office of ANC;
 - Councilmember Vincent C. Gray, the Ward 7 Councilmember, in whose Ward the Property is located;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Buildings (“DOB”);
 - The Department of Energy and the Environment (“DOEE”);
 - The Chair and At-Large Members of the DC Council; and
 - The owners of all lots within 200 feet of the Property.(Ex. 14, 16.)
12. OZ also published notice of the November 27, 2023, virtual public hearing in the September 8, 2023, issue of the *District of Columbia Register* (70 DCR 011985, *et seq.*) as well as on the calendar on OZ’s website. (Ex. 13.)
13. The Applicant provided evidence that it had posted and maintained notice of the public hearing on the Property in compliance with Subtitle Z § 402. (Ex. 15, 24.)

COMPREHENSIVE PLAN (TITLE 10A DCMR, THE “CP”)

14. In its approval of the Original Order, the Commission concluded that the PUD was not inconsistent with the Comprehensive Plan. (See Z.C. Order No. 09-03 Conclusion of Law No. 11.) Since the Commission’s approval of the Original Order in 2010, the Comprehensive Plan has been updated, most recently in 2021.

Racial Equity

15. The CP updates require the Commission to evaluate consistency with the CP through a racial equity lens and suggests preparing and implementing tools to use in the Commission’s evaluation process. (CP §§ 2501.4-2501.6, 2501.8) The CP Framework Element states that “[e]quity is achieved by targeted actions and investments to meet

residents where they are” and “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development, and employment opportunities.” (CP §§ 213.6, 213.7.) Consistent with CP guidance, the Commission utilizes a Racial Equity Analysis Tool that requires submissions from applicants and the Office of Planning analyzing the zoning action’s consistency with the Citywide and Area Elements of the Comprehensive Plan, and Small Area Plans, if applicable; a submission from applicants including information about their community outreach and engagement efforts regarding the zoning action; and a submission from the Office of Planning including disaggregated race and ethnicity data for the Planning Area affected by the zoning action.

Generalized Policy Map (“GPM”)

16. The CP’s GPM designates the Property in two categories: (Ex. 3A, 11.)

- Multi-Neighborhood Center: The Majority of the Property is designated as a Multi-Neighborhood Center. Multi-Neighborhood Centers are found at major intersections. New retail and additional housing and job opportunities are encouraged in these areas. Skyland is listed as an example of a Multi-Neighborhood Center; and (CP §§ 225.17, 225.18.)
- Neighborhood Conservation Area: Approximately one-third of the Property on the eastern side is designated as a Neighborhood Conservation Area. Neighborhood Conservation Areas are “generally residential in character” with a philosophy to “conserve and enhance established neighborhoods, but not preclude development.” (CP §§ 225.4-225.5.)

Future Land Use Map (“FLUM”)

17. The CP’s FLUM designates the Property into three categories:

- Moderate Density Commercial: Most of the Property encompasses the Moderate Density Commercial category, which the CP defines as predominantly retail, office, and service uses with densities ranging between 2.5 and 4.0 floor area ratio (“FAR”) and with the MU-5 and MU-7 Zone Districts as representatives districts; (CP § 227.11.)
- Low Density Residential: The northeastern corner of the Property is designated as Low Density Residential, which the CP defines as neighborhoods generally, but not exclusively, suited for single family houses; and (CP § 227.5.)
- Moderate Density Residential: A small triangle towards the middle of the northern border of the Property is designated as Moderate Density Residential, which the CP defines as neighborhoods generally suited for row houses and low-rise garden apartment complexes. (CP § 227.6.)

Far Northeast-Southeast Area Element

18. The Property is located in the Far Northeast-Southeast Area Element, within which the CP calls for revitalization and specifically identifies Skyland. (CP §§ 1717.1-1717.5.)

II. THE APPLICATION

MODIFIED PROJECT

19. The Application proposed to modify Blocks 1 and 4.

20. Z.C. Order No. 09-03F, approved the following program for Blocks 1 and 4:

- Block 1: Approximately 131,334 square feet of medical office use; and
- Block 4: Approximately 243,090 square feet of residential use and approximately 7,140 square feet of retail use. (Ex. 3A.)

21. The Application proposed to modify the approved Consolidated PUD on Block 1 and to modify the approved First-Stage PUD on Block 4 to a Consolidated PUD to include:

- 126 townhomes (the “Townhomes”), with approximately 67 units on Block 1 and 59 units on Block 4;
- A fully affordable senior multifamily building with 75 units (the “Senior Multifamily Building”) on Block 4;
- Approximately 10,000 square feet of ground-floor retail in the Senior Multifamily Building;
- A central Town Center Park;
- Building heights ranging from approximately 44 to 47 feet for the Townhomes and approximately 55 feet for the Senior Multifamily Building;
- A total FAR of 1.37 for the PUD as a whole;
- A lot occupancy of approximately 83% for the Senior Multifamily Building and ranging from 65-81% for the Townhomes;
- Approximately 82 units (approximately 41% of the total number of units) reserved as affordable, including seven affordable Townhomes and 100% of the 75-unit Senior Multifamily Building;
- Landscaped areas totaling a green area ratio (“GAR”) of 0.37;
- 26 long-term and seven short-term bicycle spaces;
- One loading berth and one service space; and
- 192 vehicle parking spaces. (the “Modified Project” or “Project”) (Ex. 3A, 3B, 11E.)

22. Site Plan: The site plan is centered around a large central park to the north of the Senior Multifamily Building (“Town Center Park”) for the purpose of active and passive recreation space. The Town Center Park features a flexible use plaza and natural playground with safety surface. Town Center Drive has the capability of being closed off

to connect the Town Center Park with the adjacent plaza on Block 2 for block parties and other community events. The Senior Multifamily Building includes a second-floor courtyard with approximately 3,600 square feet for residents. This courtyard visually connects to Town Center Park, expanding the open space at the center of the Property. The Townhomes will each include a private roof deck as well as second-floor rear decks. (Ex. 3A, 3B, 11E.)

23. Massing: The Senior Multifamily Building will have a height of approximately 55 feet, similar to the 62-foot height of the residential building on Block 2. The Townhomes are approximately 44 to 47 feet tall. (Ex. 3A, 3B, 11E.)

24. Residential Unit Mix: The townhomes are of two different sizes, 20' x 40' and 16' x 40' and feature up to four bedrooms; seven of the 126 Townhomes will be affordable with three units reserved for households earning no more than 50% MFI and four units reserved for households earning no more than 80% MFI. The Senior Multifamily Building will include approximately 69 one-bedroom units and 6 two-bedroom units; all of the units will be affordable with 63 units reserved for households earning no more than 50% MFI and 12 units reserved for households earning no more than 30% MFI.

25. Materials: The Townhomes will feature a mix of brick and colorful cementitious projections. The rear facades of the Townhomes include fiber cement siding, aluminum panel garage doors, and asphalt shingles covering the rear porches. The Senior Multifamily Building is designed in an Art Deco fashion with a brick base, fiber cement panels, and aluminum storefronts. (Ex. 3A, 3B, 11E.)

26. Landscape: The Modified Project's design incorporates open space throughout the site plan and utilizes landscaping to effectuate privacy. The Town Center Park includes a large central lawn with a natural playground with a safety surface on the eastern side and a flexible use plaza with concrete pavers on the western side. Private mews intersperse the strings of townhomes, serving as a shared entry path that connects the homes to the larger pedestrian circulation network. There are various pocket parks throughout the Modified Project, including the "Overlook Garden" situated along the northern border above a modular retaining wall and planted with native trees, shrubs, and ornamental grasses. The "Entry Garden" at the corner of Naylor Road, S.E. and Town Center Drive, S.E. will feature a monument sign and serve as a primary entrance to Skyland Town Center. (Ex. 3A, 3B, 11E.)

27. Sustainable Design: The Townhomes will be designed to obtain LEED Gold certification and the Senior Multifamily Building will be designed to meet the 2020 Enterprise Green Communities Criteria (EGC) at the EGC Certification Plus level. The Senior Multifamily Building will feature solar panels and the Modified Project will achieve a GAR of 0.373, exceeding the minimum 0.25 GAR required in the MU-7B zone. (Ex. 3A, 3B, 11E.)

28. Parking and Loading: The Modified Project will provide approximately 192 vehicular parking spaces, a reduction of 436 spaces as approved in Z.C. Order No. 09-03F. The Senior Multifamily Building will provide 26 long-term and seven short-term bicycle parking spaces and one loading berth and one service space. (Ex. 3A, 3B, 11E.)

ZONING DEVELOPMENT STANDARDS

29. Subtitle C, Section 302 of the Zoning Regulations notes that multiple buildings and structures erected in conformance with an approved PUD can be built on a single record lot. The 126 Townhomes will be located on separate A&T lots that will be established through a division of lots application submitted to the DC Office of Tax and Revenue. In addition to these tax lots for the townhomes, additional A&T lots will be created for the Senior Multifamily Building, the landscaped park areas described above, and the streets and alleys. (Ex. 3A.)

30. The Applicant is proposing the creation of 25 building sites that include a block of row dwellings and the Senior Multifamily Building that will be used at the time of building permit issuance to review zoning compliance. The individual A&T lots for each row dwelling are not used to determine zoning compliance or the need for flexibility. The Applicant provided zoning calculations for each of these building sites. To the extent that some of these building sites need flexibility from the requirements of the Zoning Regulations, those areas of flexibility are noted below. (Ex. 3A.)

RELIEF REQUESTED FROM ZONING DEVELOPMENT STANDARDS

31. The Applicant requested a Modification of Significance to the Order as follows:

- Modifying the Consolidated PUD on Block 1 and the First-Stage PUD on Block 4 to a Consolidated PUD;
- Modifying the uses, design, and layout of Blocks 1 and 4 from medical office and residential use to 126 townhomes, a fully affordable senior multifamily building with approximately 10,000 square feet of ground-floor retail, and 192 vehicle parking spaces; and
- Zoning flexibility from the following development standards:
 - Subtitle G § 207.7⁶ to exempt the Townhomes from the rear yard requirements because none of the Townhomes meet the minimum rear yard requirement of 12 feet.
 - Subtitle G § 208.2 to exempt the Townhomes from the side yard requirements because none of the Townhomes meet the minimum side yard requirement of five feet.

⁶ Subsequent to the filing of the Application, the zoning regulations were reorganized pursuant to Z.C. Order No. 19-27A. This Order cites to the current references, as modified.

- Subtitle G § 210.1 from the lot occupancy requirements for the Townhomes to provide 65-81% and the Senior Multifamily Building to provide 83% when the maximum lot occupancy allowed is 75% (80% with Inclusionary Zoning); and
- Subtitle C § 701.5 from the vehicle parking requirements for the retail uses in the Senior Multifamily Building to provide zero spaces when five spaces are required.

(Ex. 3A.)

JUSTIFICATION FOR APPROVAL OF THE MODIFIED PROJECT

32. The Applicant asserted that the Modified Project complied with the PUD modification requirements because it is (i) not inconsistent with the CP and when viewed through a racial equity lens; (ii) does not create unacceptable impacts that are not mitigated or acceptable given the quality of the public benefits; and (iii) includes public benefits as discussed below. (Ex. 3A.)

Not Inconsistent with the CP

33. The Application asserted that the Modified Project remains not inconsistent with the CP as a whole because the Modified Project offers a meaningful supply of housing (including affordable housing, large units, and homeownership opportunities), new retail uses, and a substantial amount of both public and private open spaces. (Ex. 3, 11.)

Racial Equity

34. The Modified Project furthers the racial equity goals of the CP by creating 201 new residential units with approximately 82 units reserved as affordable, job opportunities that accompany the retail, and a quality design and site plan with significant open space. The Modified Project offers home ownership opportunities in Ward 7 where home purchases by Black households and other minority households is less when compared to home purchases by White households. More specifically, only 35% of Black households and 30% of Latino households are owner-occupied compared to 49% of White households; therefore, the 126 homeownership opportunities the Townhomes will provide directly address this disparity. Moreover, the Modified Project will help to support the Mayor's 2019 Housing Order by providing 201 new residential units in the Far Northeast and Southeast Planning Area. Finally, the Modified Project would develop currently vacant land, and therefore, results in no direct residential or commercial displacement. (Ex. 3A, 11C.)

Community Outreach and Engagement – The Application provided evidence that the Applicant conducted community outreach and engagement concerning the Modified Project. Specifically, the Applicant presented the Modified Project to ANC 7B, ANC 8A, and Hillcrest Community Civic Association, offered to present to ANC 8B but received no response, and met with the Office of Planning on multiple occasions. (Ex. 3A, 19, 23.) The Application states that, based on the Applicant's outreach, community input was supportive of the Application's offer of homeownership opportunities as well as the pedestrian network that will permeate throughout the Project. (Ex. 3A.)

GPM

35. The Modified Project remains not inconsistent with the GPM's designation of the majority of the Property as a Multi-Neighborhood Center because it offers infill development with new housing, retail, and job opportunities. The GPM specifically references Skyland as an example of a Multi-Neighborhood Center and encourages its mixed-use infill development. (Ex. 3, 11.)
36. The Modified Project remains not inconsistent with the GPM's designation of the eastern portion of the Property as a Neighborhood Conservation Area because this portion of the Property is a "Tree Preservation Area." In the First-Stage PUD, development was pulled back to create this approximately 58,000 square foot "Tree Preservation Area" to provide a transition to single-family homes east of the Property. Further, the guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods but not preclude development, particularly to address city-wide housing needs. The Project offers infill housing, including affordable housing, and the portion of the Property designated Neighborhood Conservation Area is in a Tree Preservation Area; therefore, the Project is consistent with this designation. (Ex. 3, 11.)

FLUM

37. The Modified Project remains not inconsistent with the Moderate Density Commercial designation of the majority of the Property. The CP Framework Element specifically references the Property's PUD related MU-7 zoning as appropriate for this category and encourages shopping and service areas. The Modified Project provides approximately 10,000 square feet of retail uses that will supplement the existing retail uses on Blocks 2 and 3. (Ex. 3, 11.)
38. The Modified Project remains not inconsistent with the Moderate Density Residential designation, which is intended for row houses and low-rise garden apartments. The Townhomes and Multifamily Senior Building are consistent with this designation. (Ex. 3, 11.)
39. The Modified Project remains not inconsistent with the Low-Density Residential designation, which covers two small areas on the northeastern side of the Property. As noted above," a Tree Preservation Area was established in the First-Stage PUD to provide a transition to the lower-density single family homes to the east of the Property. A portion of the Property designated Low Density Residential is part of the Tree Preservation Area and the remainder will consist of the single-family Townhomes. The proposed Townhomes are compatible with the size and scale of the neighboring single-family homes. For these reasons, the Modified Project is not inconsistent with the Low-Density Residential designation. (Ex. 3, 11.)

Far Northeast-Southeast Area Element

40. The CP encourages new mixed-use, mixed-income development on vacant lots in the Far Northeast and Southeast Area Element. The Modified Project furthers the goals of the Far Northeast and Southeast Area Element because it supplies new mixed-income housing and accompanying retail that will revitalize the currently vacant land. (Ex. 3, 11.)

Framework Element

41. The Modified Project furthers the policies of the Framework Element by providing new infill development at a major intersection with a mix of affordable and market rate housing. (Ex. 11C.)

Land Use Element

42. The Modified Project furthers the policies of the Land Use Element by revitalizing this area of Ward 7 with new housing and retail with a thoughtfully designed pedestrian and vehicular network. The Modified Project features significant open space to create an active and engaging town center. (Ex. 11C.)

Transportation Element

43. The Modified Project furthers the policies of the Transportation Element by reducing the number of vehicular parking spaces for the PUD, as a whole, by 436 spaces, creating an internal network that will separate traffic within the Property from external commuter traffic, and providing a TDM plan supported by DDOT. (Ex. 11C.)

Housing Element

44. The Modified Project furthers the policies of the Housing Element by providing 201 new residential units, approximately 82 of which will be affordable with a range from 30% MFI to 80% MFI. The new housing offered includes a diverse range of sizes as well as home ownership opportunities. (Ex. 11C.)

Environmental Protection Element

45. The Modified Project furthers the policies of the Environmental Protection Element by providing a landscape plan with extensive tree planting and green space, including a significant amount of native plant species. (Ex. 11C.) The Modified Project furthers sustainability by including a LEED Gold commitment for the Townhomes and a 2020 Enterprise Green Communities Criteria (EGC) at the EGC Certification Plus level commitment for the Multifamily Senior Building as well as solar panels on approximately 50% of the roof. (Ex. 3A.)

Economic Development Element

46. The Modified Project furthers the policies of the Economic Development Element by providing new retail and new residential units to support the existing retail. The close proximity of the housing will increase access to job opportunities. (Ex. 11C.)

Parks, Recreation and Open Space Element

47. The Modified Project furthers the policies of the Parks, Recreation and Open Spaces Element by providing extensive open spaces, including a central Town Center Park intended for community gatherings. (Ex. 11C.)

Urban Design Element

48. The Modified Project furthers the policies of the Urban Design Element by using retaining walls to prevent soil erosion and incorporating a variety of trees to articulate the different character of the various open spaces. The Modified Project consists of high-quality architectural design and materials and a pedestrian network connecting the various open spaces. (Ex. 11C.)

No Unacceptable Impacts

49. The Application asserted that the Modified Project would not create any unacceptable impacts because the proposed moderate-density mixed uses further the purposes of the MU-7B zone, the new housing (including a substantial amount of affordable housing and home ownership opportunities) benefits Ward 7, the ground floor retail will create additional neighborhood amenities, the planned pedestrian network encourages pedestrian activity and the TDM Plan will address any traffic impacts, and the sustainable design will have favorable impacts on the environment. The Modified Project will have minimal impact on nearby public facilities, which have capacity for the increase of residents. (Ex. 3A.)

Public Benefits

50. The Application asserted that the Modified Project maintained the same public benefits approved by the Order, many of which had already been satisfied, including almost \$1.5 million in financial contributions, with over \$650,000 of those contributions going toward funding for job training and helping to improve access to opportunity in Southeast DC, which has historically suffered from disinvestment. The Modified Project includes a significant amount of affordable housing at 82 units, extensive open space for residents and visitors, and home ownership opportunities. (Ex. 3A, 11.)

APPLICANT'S SUBMISSIONS

51. The Applicant filed an initial application on March 23, 2023. In addition to the initial application, the Applicant provided the following submissions, as well as its testimony at the public hearing:

- A prehearing submission, filed on August 25, 2023, that responded to OP and the Commission's requests from setdown (the "Prehearing Submission"), which included an overview of the PUD history and satisfaction of public benefits, an updated Comprehensive Plan analysis, information/history on the lack of medical office demand at Skyland, and updated site exhibit sheets; (Ex. 11, 11A-11F.)

- A Comprehensive Transportation Review (the “CTR”), filed on October 27, 2023, which concluded that the Project will not have a detrimental impact on the surrounding transportation network; (Ex. 17, 18, 18A.)
- A supplemental statement, filed on November 7, 2023 (the “Supplemental Submission”), including updates on the Project’s environmental sustainability measures and the Applicant’s community outreach and engagement; (Ex. 19, 19A-19B.)
- A direct presentation, filed on November 22, 2023 (the “Applicant’s Presentation”); (Ex. 25A1-25A2.);
- A response to the ANC 7B02 SMD Commissioner’s post-hearing submission noting the Applicant’s appreciation of the Commissioner’s letter of support and its understanding that the full ANC 7B’s schedule of meetings did not allow it to prepare and submit a report to the case record; and (Ex. 31.)
- A cover letter and Draft Order. (Ex. 32, 32A.)

Applicant’s Responses to OP

52. The Applicant responded to OP’s Setdown report, as defined below, in the Prehearing Submission by:

- Providing a table showing satisfaction of the public benefits of the PUD;
- Providing an exhibit showing examples of the physical modifications that may be necessary due to security measures;
- Providing an explanation of the matter-of-right IZ requirement in the MU-7B zone and how the Modified Project exceeded that requirement, as well as the terms of affordability proposed for the Project;
- Providing an explanation for the elimination of the medical office use and necessity of the change in use to residential;
- Providing a timeline of the PUD history and how the PUD has evolved since its initial approval; and
- Providing an updated CP analysis, particularly expanding on how the Modified Project is not inconsistent with the portions of the Property designated as Low-Density Residential and a Neighborhood Conservation Area. (Ex. 11.)

Applicant’s Responses to DDOT

53. The Applicant responded to DDOT’s comments in the CTR and its public hearing testimony by:

- Providing the Transportation Demand Management (“TDM”) Plan, including the revisions proposed by DDOT to remove the reference to a Metrocheck and offer a complimentary one-year annual Capital Bikeshare membership to all residents at the initial opening of the Senior Multifamily Building; and
- Confirming in its public hearing testimony that it had accepted the modifications proposed by DDOT to the TDM plan as well as DDOT’s request to construct a

crosswalk at the intersection of Naylor Road and Town Center Drive at the existing grades. (Ex. 18; November 27th Hearing Transcript (“Tr.”) at 16-17.)

Public Hearing Testimony

54. At the November 27, 2023 public hearing, the Applicant presented testimony of:

- Brad Fennell and Brian Strott, on behalf of the Applicant;
- Two experts: Lawrence Antoine as an expert in architecture and William Zeid as an expert in transportation analysis and engineering; and
- Travis Frank, landscape architect. (Ex. 19; Tr. at 8-55.)

Post-Hearing Submission

55. The Applicant submitted a response acknowledging the support of the ANC 7B02 SMD Commissioner. (Ex. 31.)

III. RESPONSES TO THE APPLICATION

OP

56. OP submitted two reports to the record in addition to testimony at the public hearing:

- A June 16, 2023 setdown report (the “OP Setdown Report”), recommending that the Commission set down the Application for a public hearing and requesting additional information from the Applicant; and (Ex. 10.)
- A November 17, 2023 hearing report (the “OP Hearing Report”), recommending approval of the Modified Project. (Ex. 22.)

57. The OP Setdown Report concluded that the Modified Project remained not inconsistent with the Comprehensive Plan, including the Future Land Use Map, the Generalized Policy Map, policies of the Citywide Elements and many policies of the Far Northeast and Southeast Area Element, and would advance Comprehensive Plan racial equity policies. The OP Setdown Report recommended that the Commission set down the Application for a public hearing and requested the following additional information:

- A table showing how the public benefits approved in Z.C. Case Nos. 09-03, 09-03A to 09-03F had been met;
- Examples and the extent of physical modifications that may be necessary due to security measures;
- Information demonstrating how many Inclusionary Zoning units would be required in the MU-7B zone and if the Modified Project would exceed that requirement; and
- The term of affordability proposed for the affordable units.

Racial Equity

58. The OP Setdown Report concluded that, when viewed through a racial equity lens, the Project would advance CP racial equity policies for the following reasons:

- **Displacement:** OP stated that the Project would not result in direct displacement of any residents because the Property is currently vacant. Any indirect displacement should

be mitigated by the provision of homeownership Townhouses and Senior Multifamily housing, which should help to both retain existing minority households and attract new ones; and

- ***Disaggregated Race and Ethnicity Data:*** OP provided disaggregated race and ethnicity data for the Far Northeast and Southeast Planning Area in which the Property is located. Data shows that for the periods of 2012-2016 and 2017-2021, the median household incomes in Far Northeast and Southeast Planning Area lagged behind the District as a whole. From 2017-2021, the Planning Area median household income was \$50,267 while it was \$93,547 District wide. For the same two time periods, low incomes are reflected in the Planning Area unemployment rate, housing cost burden, and poverty rate; and overall, the Planning Area is behind the District as a whole. When broken down by race for the period of 2017-2021, Whites have significantly higher median income (\$130,524) when compared to all other races, but most notably American Indian/Alaska Natives (\$12,545) and Blacks (\$48,742.) The same is true for unemployment (Whites at 5.8%, American Indian/Alaska Natives at 64%, and Native Hawaiian/ Pacific Islander at 29.6%); and poverty (Whites at 12.3%, American Indian/Alaska Natives at 42.9%, and Native Hawaiian/ Pacific Islander at 29.6%). The OP Setdown Report concluded that the Project's proposed homeownership opportunities and affordable senior housing along with the apartments currently operational at the PUD would help in providing a variety of housing types in a Planning Area with lower incomes, and higher poverty and housing cost burden than District wide; the Project would include a significant amount of public open spaces for passive and active recreation and a new street layout including sidewalks emanating from Town Center Drive; and the Project would provide new retail and job opportunities for area residents. (Ex. 10.)

59. The OP Hearing Report:

- Reiterated that the Modified Project remained not inconsistent with the CP as a whole, including when viewed through a racial equity lens;
- Supported the flexibility requested for the Modified Project, including flexibility from the rear yard, side yard, lot occupancy, and parking requirements, as well as design flexibility;
- Agreed that the Applicant had adequately addressed the concerns raised in the OP Setdown Report and concerns raised by the Commission by:
 - Providing a history of amendments to the PUD; (Ex. 11, 11B.)
 - Providing further explanation as to the proposed change in use from medical office and parking to residential; (Ex. 11, 11D.)
 - Providing additional information regarding the Modified Project's consistency with the Comprehensive Plan, particularly with respect to the Townhomes located in the portion of the Property designated as low- and moderate-density residential. OP's Hearing Report concluded that the Project would not be inconsistent with the FLUM because the majority of the area designated as Low Density Residential on

the FLUM has been dedicated as a Tree Preservation Area and would be maintained as such; and a few Townhouses would be located in the area on the northern portion of the site designated Moderate Density Residential but the proposed rowhouse form of development is not inconsistent with this designation and the Townhouses would be significantly set back from adjacent lower density development; (Ex. 11, 11C.)

- Explaining how the proffered community public benefits had been met; (Ex. 11, 11A.)
- Explaining that the Modified Project would provide a significantly higher square footage of IZ units above what would be required matter-of-right in the MU-7B zone; and (Ex. 11.)
- Providing examples of the security fencing that may be used. (Ex. 11, 11E.)
- Included the following comments from the Department of Energy and the Environment (“DOEE”):
 - DOEE urged the Applicant to design the Modified Project to be all-electric and to avoid installing new gas infrastructure; and
 - DOEE encouraged the Applicant to install solar panels on the Townhomes.
- Noted that the Modified Project would further the goals of the Mayor’s Housing Order; and
- Recommended the Commission approve the Application. (Ex. 22.)

60. At the November 27, 2023 public hearing, OP testified that it continued to recommend approval of the Modified Project and noted that:

- The Townhomes would provide family units and offer home ownership opportunities;
- The seven Townhomes that would be affordable at 50% and 80% MFI and the 75 senior multifamily units available at 30% and 50% MFI;
- The extensive passive and active open space incorporated into the site plan; and
- The Modified Project would not be inconsistent with the CP and would further the racial equity goals of the CP by creating a positive impact on housing, particularly homeownership and senior housing needs, as well as access to job opportunities. (Tr. at 61-64.)

DDOT

61. DDOT filed a November 17, 2023 report (the “DDOT Report.”) stating that DDOT: (Ex. 21.)

- Supported the Modified Project since it will result in a reduction of vehicle parking and projected vehicle trips on the transportation network; and
- Concluded that DDOT had not objection to the approval of the Modified Project, subject to the following conditions:
 - The Applicant revise its Transportation Demand Management (“TDM”) Plan (Ex. 18.) as follows:

- Remove the reference to a Metro check as those are no longer accepted or provided by WMATA; and
- Offer a complimentary one-year annual Capital Bikeshare membership to all residents at the initial opening of the Senior Multifamily Building; and
- The Applicant fund and construct the missing crosswalk and curb ramps on the southern leg of the intersection of Naylor Road and Town Center Drive, S.E., subject to DDOT approval.

62. DDOT testified at the November 27, 2023 public hearing that the Applicant had agreed to DDOT's proposed conditions and that DDOT therefore had no objection to the Modified Project. (Tr. at 59-60.)

ANCs

63. SMD 7B02 Commissioner Jamaal Maurice McCants-Pearsall testified at the November 27, 2023 public hearing in support of the Modified Project and filed a letter in support of the Application ("SMD Letter"), noting that residents of SMD 7B02 were excited for the final phase of the Skyland PUD and looked forward to the 126 new townhomes and new senior building. (Ex. 30, and Tr. at 66-67.)

64. ANC 7B, 8A, and 8B did not submit reports to the case record regarding the Application. However, the Applicant presented the Modified Project to ANC 7B and 8A at monthly meetings. (Ex. 3A, 19; see also Finding of Fact ("FF") No. 33.)

Organizations and Individuals in Support

65. The Skyland Task Force filed a letter in support of the Application, noting the homeownership opportunities of the Townhomes, including their larger unit sizes, the fully affordable senior living building creating a mixed-income, multigenerational community, and the Town Center Park providing recreational space. (Ex. 20.)

66. Pennsylvania Avenue East Main Street filed a letter in support of the Application. (Ex. 23.)

Organizations and Individuals in Opposition

67. No organizations or individuals filed letters or testified at the public hearing in opposition to the Application.

Undeclared Organizations and Individuals

68. Mr. Villareal Johnson, president of the Hillcrest Community Civic Association, testified at the public hearing, noting there was generally full support of the Application. Mr. Johnson requested an opportunity to file a letter to the case record, but ultimately did not file a letter. (Tr. at 70-75.)

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 a modification of significance to an approved PUD consistent with the requirements set forth in 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 CP'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 CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)):

“The 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).)

MODIFICATION OF SIGNIFICANCE – SCOPE OF REVIEW

8. Pursuant to Subtitle Z § 704.4, the scope of the Commission’s hearing to evaluate modifications of significance “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.”

9. In this case, the Applicant requested a Modification of Significance to the approved PUD to:

- Modify the Consolidated PUD on Block 1 and the First-Stage PUD on Block 4 to a Consolidated PUD; and
- Modify the program for Blocks 1 and 4 from medical office use and residential with ground floor retail use to 67 Townhomes on Block 1 and 59 Townhomes and a fully affordable senior multifamily building with approximately 10,000 square feet of ground floor retail on Block 4.

10. Pursuant to Subtitle A § 102, the PUD and PUD related map amendment 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 Zoning Regulations.

11. The Commission concludes that the Application is consistent with the PUD approved by the Order because the Modified Project maintains the redevelopment of Skyland Town Center into a pedestrian-oriented mixed-use town center concept with housing (including a significant amount of affordable housing and home ownership opportunities), neighborhood serving retail, and employment opportunities.

12. The Commission concludes that the Application meets the requirements of Subtitle X § 304 and Subtitle Z § 704 because the Modified Project – to the extent it modifies the PUD approved by the Order – is not inconsistent with the Comprehensive Plan and will not cause any new unacceptable impacts that are not mitigated or acceptable given the quality of the proffered public benefits, which balance out any additional requested zoning flexibility, as discussed below.

CONSISTENCY WITH THE COMPREHENSIVE PLAN AND PUBLIC POLICIES (SUBTITLE X § 304.4(A).)

13. In the Original Order, the Commission concluded that the PUD was not inconsistent with the CP. (See FF No. 14, see also Z.C. Order No. 09-03 Conclusion of Law No. 11.) The Commission concludes that the Modified Project remains not inconsistent with the CP, when considered as a whole, based on the analysis of the Applicant and OP, for the following reasons:

- **Racial Equity:** As previously noted, racial equity was not part of the CP consistency analysis when the Commission evaluated the Original Order in 2010. (FF Nos. 14, 15.) The Commission concludes that the Application is not inconsistent with the CP when viewed through a racial equity lens. The Commission reaches this conclusion based on the case record and the racial equity analyses provided by the Applicant, inclusive of community outreach and engagement information, and the OP Reports, inclusive of disaggregated race and ethnicity data for the Far Northeast and Southeast Planning Area. (FF Nos. 33, 39-47, 56-58.) The Commission finds that the Modified Project will advance CP racial equity goals because it provides for infill mixed-use development of new housing, including home ownership opportunities and senior

housing, with a substantial amount of affordable housing; and retail uses to serve the surrounding neighborhood and provide job opportunities in a transit-accessible location. Further, the racial equity analyses provided address the components of the Commission's Racial Equity Tool, as discussed in more detail immediately below:

- **Displacement:** The Commission finds that the Modified Project would result in no direct displacement of residents as the Property is currently vacant. The Commission acknowledges that the Modified Project may result in indirect displacement within the immediate surrounding area but is encouraged that the provision of varied housing types and retail will facilitate opportunities for existing residents to remain in the area; (FF No. 33, 56, 58.)
- **Community Outreach and Engagement:** The Commission finds that the Applicant provided evidence of its outreach and engagement efforts with ANCs 7B, 8A, 8B, and Hillcrest Community Civic Association regarding the Modified Project; and notes that community input was positive overall; and (FF Nos. 33, 61, 63, 64.)
- **Disaggregated Race and Ethnicity Data:** The Commission notes that for the period of 2017-2021, the data OP provided for the Far Northeast and Southeast Planning Area shows a substantially lower median household income (\$50,267) than District wide (\$93,547); a substantially higher unemployment rate (15.8%) than District wide (7.1%); and a substantially higher poverty rate (25.4%) than District wide (15.4%). And the disparities widen when broken down by race, with Whites having significantly higher median incomes, and significantly lower unemployment and poverty rates than any other races. (FF Nos. 33, 56, 58.) The Commission is hopeful that the Modified Project will help to address these inequities, primarily through the creation of new varied housing opportunities and job opportunities. The Commission notes that job training funding to help improve access to opportunities in the area was a condition of the Order that has been satisfied; (FF No. 49.)
- The FLUM designates the majority of the Property as Moderate Density Commercial and Low Density Residential and Moderate Density Residential for smaller portions of the Property. (FF No. 17.) The Modified Project is not inconsistent with these FLUM designations. The approved PUD related MU-7B zoning of the Property is cited in the Framework Element as consistent with the Moderate Density Commercial FLUM category. The majority of the portion of the Property designated Low Density Residential will be retained as a Tree Preservation Area; the remaining portion of the Property designated Low Density Residential, and the portion designated Moderate Density Residential will be developed with Townhomes, which are compatible with the size and scale of the surrounding neighborhood and will be set back from the adjacent low density residential homes; (FF Nos. 36-38, 57.)
- The GPM designates the majority of the Property as a Multi-Neighborhood Center and a portion of the Property as a Neighborhood Conservation Area. (FF No. 16.) The Modified Project is not inconsistent with these GPM designations. The CP cites

Skyland as an example of a Multi-Neighborhood Center and the Modified Project provides mixed-use infill development at a major intersection that is encouraged for these areas. The portion of the Property designated Neighborhood Conservation Area is located in a Tree Preservation Area that provides a natural buffer to the adjacent single-family homes. Moreover, the guiding philosophy of Neighborhood Conservation Areas is to conserve established neighborhoods, which is the purpose of the buffer; and to not preclude development to address city wide housing needs, which the new Townhomes and Senior Multifamily Building will provide, including a substantial amount of affordable housing; (FF Nos. 34, 35.)

- The Commission agrees with OP's conclusions that the Application advances the policies of the CP's Citywide Elements and the Far Northeast and Southeast Area Element, including:
 - Far Northeast & Southeast Area Element policies that encourage infill housing and retail to revitalize vacant land; (FF No. 39.)
 - Framework Element policies promoting new infill development at a major intersection; (FF No. 40.)
 - Land Use Element policies promoting new housing and retail; (FF No. 41.)
 - Transportation Element policies promoting transit-oriented development and reduced vehicular parking spaces; (FF No. 42.)
 - Housing Element policies promoting new housing of a diverse range of sizes and types and affordable housing; (FF No. 43.)
 - Environmental Protection Element policies promoting high quality landscaping, planting of native species, and environmental sustainability; (FF No. 44.)
 - Economic Development Element policies to increase retail uses and provide new employment opportunities; (FF No. 45.)
 - Parks, Recreation and Open Space Element policies promoting open spaces; and (FF No. 46.)
 - Urban Design Element policies promoting high quality architectural design and open spaces; and (FF No. 47.)
- Mayor's Housing Order. The Commission concludes that the Application advances the Mayor's Housing Order to add 36,000 new residential units, including 12,000 affordable units by 2025. The Modified Project provides 201 new units, 82 of which are affordable. (FF 20, 33, 43.)

POTENTIAL ADVERSE IMPACTS – HOW MITIGATED OR OUTWEIGHED (SUBTITLE X § 304.4(B).)

14. The Commission concludes that while the Modified Project may create the following adverse impacts separate from those analyzed and determined to be acceptable by the Order, the Modified Project mitigates these new potential impacts and renders them acceptable, as asserted by the Applicant, OP, and DDOT, based on the following measures, which have been incorporated in a comprehensive set of conditions in this Order: (FF 48, 50, 59.)

- The potential adverse impacts on traffic are mitigated by the Modified Project's TDM Plan as well as by the Modified Project's reduction of parking by 436 spaces; and
- The potential adverse construction impacts are mitigated by site management supervision and a construction representative on-site as provided for in condition 13 below.

PUBLIC BENEFITS AND PROJECT AMENITIES BALANCED AGAINST DEVELOPMENT INCENTIVES AND POTENTIAL ADVERSE EFFECTS (SUBTITLE X §§ 304.4(C) AND 304.3.)

15. The Commission concludes that the Modified Project's specific benefits and amenities satisfy the relevant criteria of Subtitle X §§ 304.4(c) and 305 because they are not inconsistent with the CP or with other adopted public policies and the benefits are superior to a matter-of-right development of the Property. In particular, the significant amount of affordable housing with 82 units reserved at affordability levels ranging from 30% to 80% MFI, the homeownership opportunities provided by the Townhomes, and the significant passive and active recreation spaces. (FF Nos. 20, 21, 23, 43, 46, 49, 58.) Furthermore, the Modified Project features thoughtfully designed landscaping and furthers sustainability goals by exceeding the minimum required Green Area Ratio, providing solar panels on the Senior Multifamily Building, and committing to LEED Gold for the Townhomes and 2020 Enterprise Green Communities Criteria (EGC) at the EGC Certification Plus level for the Multifamily Senior Building. (FF 26, 44.)

16. The Commission concludes that the requested zoning flexibility from the rear yard, side yard, lot occupancy, and parking requirements are minor in scope, improve the Modified Project, and are properly outweighed by the overall public benefits approved by the Order as follows: (FF Nos. 30, 57.)

- **Rear Yard Requirements; (Subtitle G § 207.7.)**
 - This relief, supported by OP, allows for larger Townhomes up to four bedrooms in size and is mitigated by the supply of open space throughout the Modified Project and particularly by the private mews throughout the Townhomes;
- **Side Yard Requirements; (Subtitle G § 208.2.)**
 - This relief, supported by OP, is mitigated by the landscape plan creating a vegetative buffer between the Townhomes;
- **Lot Occupancy Requirements; and (Subtitle G § 210.1.)**
 - This relief, supported by OP, only exceeds the maximum permitted lot occupancy by a minimal degree. The other open space throughout the Modified Project mitigates this relief; and
- **Parking Requirements (Subtitle C §701.5.)**
 - This relief, supported by OP, is minimal and mitigated by the 192 vehicle parking spaces provided by the Modified Project and the significant amount of parking spaces available on Blocks 2 and 3.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

17. The Commission must give “great weight” to the recommendations 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 (2001)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
18. The Commission finds persuasive OP’s recommendation that the Commission approve the Application based on OP’s determination that the Modified Project is not inconsistent with the CP as a whole, and when viewed through a racial equity lens, and concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE AFFECTED ANC

19. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)); see 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).)
20. None of the affected ANCs, 7B, 8A, or 8B, submitted reports to the case record regarding the Application; therefore, there is nothing to which the Commission can afford “great weight.”
21. The Commission notes the letter of support from SMD 7B02 as stated in the SMD Letter. Commissioner Jamaal Pearsall also testified at the public hearing that his constituents in SMD 7B02 were in full support of the Application and were excited about the addition of townhomes, greenspace, and affordable living for seniors. He noted that due to procedural issues, the full ANC 7B was not able to issue a report prior to the public hearing. (FF No. 61.)

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 for a Modification of Significance to modify Z.C. Order No. 09-03, as previously modified by Z.C. Order Nos. 09-03A, 09-03D, and 09-03F and as extended by Z.C. Order Nos. 09-03B, 09-03C, 09-03E, and 09-03G, as follows:

- The Consolidated PUD on Block 1 shall be modified pursuant to the conditions set forth below;
- The First-Stage PUD approval for Block 4 shall convert to a Consolidated PUD pursuant to the conditions set forth below; and
- The conditions in Z.C. Order No. 09-03, as amended by Z.C. Order Nos. 09-0A, 09-03B, and 09-03F, are amended as follows:
 1. The PUD project shall be developed as modified by the guidelines, conditions, and standards of this Order as follows:
 - For Block 2 – in accordance with the plans and materials marked as Ex. 3A, 15A, 49A, and 52A of the record in Z.C. Case No. 09-03A, as modified by Ex. 2C of the record in Z.C. Case No. 09-03D (the “Block 2 Approved Plans”);
 - For Block 3 – in accordance with the plans and materials marked as Ex. 22C and 35A of the record in Z.C. Case No. 09-03F (the “Block 3 Approved Plans”); and
 - For Blocks 1 and 4, as defined in Order No. 09-03H (the “Modified Project”) – in accordance with the plans and materials submitted by the Applicant marked as Ex. 3B and 11E of the record in Z.C. Case No. 09-03H (the “Blocks 1 and 4 Approved Plans,” and collectively with the Block 2 Approved Plans and the Block 3 Approved Plans, the “Approved Plans”).
 2. (Former Condition No. 14) The Applicant shall have design flexibility from Condition No. 1’s requirement to develop the PUD project with the Approved Plans in the following areas:
 - Interior Components. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the plans approved by the order;
 - Exterior Materials – Color. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the order;
 - Exterior Details – Location and Dimension. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the plans approved by the order. Examples of exterior details include, but are not limited to, doorways, canopies, railings, and skylights;
 - Parking Layout. To make modifications to the parking configuration, including layout and number of parking spaces and the size and number of garage levels constructed, so long as the number of automobile and bicycle parking spaces is at least the minimum number of spaces required by the Zoning Regulations;
 - Streetscape Design. To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division or the Public Space Committee or other permitting process;
 - Signage. To vary the number, font, message, logo, and color of the project signage, provided that the maximum overall dimensions and signage materials are consistent

with the signage on the plans approved by the order and are compliant with the DC signage regulations;

- Residential Units. To modify the number of residential units by plus or minus 10%, provided that (1) the total square footage of the Project's residential dwelling units shall not be reduced, and (2) the percentage of gross floor area square footage reserved for affordable housing shall not be reduced. The Applicant requests flexibility to shift the distribution and location of IZ units as the floor plans are refined so long as their location and distribution continues to meet the requirements of Subtitle C of the Zoning Regulations;
- Town Center Park Security Measures. To take steps necessary to ensure the safety and security of those utilizing the Town Center Park through operational or physical modifications to the approved plans; and
- Sustainable Features. To vary the approved sustainable features of the project and the features, means and methods of achieving the required GAR and LEED Gold and Enterprise Green Communities certifications.

3. (Former Condition No. 2) The Applicant shall make the following financial, or in-kind service, contributions:

- (a) Financial Support to Schools (former Condition No. 2(a)): The Applicant shall identify the final recipient(s) of the remaining \$54,597 in escrow to support schools located within the geographic boundaries of ANCs 7B, 8B, and 8A for aesthetic improvements and to participate in initiatives such as "Buff and Scrub." This final recipient(s) shall be identified by the Applicant prior to the issuance of the first building permit for the Modified Project and the Applicant shall provide proof to the Zoning Administrator that the \$54,597 payment has been provided to the identified recipient prior to the issuance of a Certificate of Occupancy for the Modified Project;
- (b) Sponsorship of local community events and program (former Condition No. 2(b)): Condition previously satisfied;
- (c) Local retailer build-out subsidy (former Condition No. 2(d)): Condition previously satisfied;
- (d) Anacostia and Francis Gregory Libraries (former Condition No. 2(e)): Condition previously satisfied;
- (e) Pocket Park at 25th Street & Naylor Road (former Condition No. 2(f)): Condition previously satisfied; and
- (f) Job Training (former Condition No. 2(g)): Condition previously satisfied.

4. (Former Condition No. 3) The failure of the Applicant to make any contribution or provide any service by the time specified in Condition No. 3 shall result in the denial of any pending application for a building permit or certificate of occupancy and shall be grounds for the revocation of any building permit.
5. DDOT Commuter Store (former Condition No. 4): In consultation with DDOT, this condition no longer applies.
6. Infrastructure and Traffic Improvements (former Condition No. 5): Condition previously satisfied.
7. Public Space Improvements to Naylor Road and Alabama Avenue (former Condition No. 7): Condition previously satisfied.
8. LEED Requirements (former Condition No. 7): The Project shall be designed to obtain LEED Gold certification for the Townhomes and 2020 Enterprise Green Communities Criteria (EGC) at the EGC Certification Plus level for the Senior Multifamily Building. The Applicant shall provide evidence to the Zoning Administrator, from a LEED-certified professional, of the satisfaction of this condition in the building permit application materials submitted for each building.
9. Transportation Management (Former Condition No. 8): The Applicant shall establish a transportation management program (“TMP”) that includes the following:

For the life of Modified Project, the Applicant shall establish a transportation management program (“TMP”) that includes the following:

 - (a) *Overall Site*
 - i. The Applicant will implement strategies to evaluate the effectiveness of the Transportation Management Program (“TMP”); and
 - ii. The Applicant will establish the position of a Transportation Services Coordinator in the property management office who will be responsible for administering and advancing TDM strategies and also monitoring loading and parking practices in the project;
 - (b) *Block 4 (Senior Multifamily Building and Retail)*
 - i. The Applicant will unbundle the cost of vehicle parking from the lease or purchase agreement for each senior building residential unit and retail tenant charge a minimum rate based on the average market rate within a quarter mile;
 - ii. The Applicant will not lease unused residential parking spaces to anyone aside from residential and retail tenants of the senior residential building (e.g.,

- will not lease to other nearby office employees, single-family home residents, or sporting events);
- iii. At the initial opening of the building, the Applicant will offer each new senior residential tenant, upon their move-in, a SmarTrip card, one complimentary Capital Bikeshare coupon good for a free ride, and a complimentary one-year annual Capital Bikeshare membership;
- iv. At the initial opening of the building, the Applicant will offer each new retail employee a SmartTrip card with the value of \$20.00;
- v. The Applicant will provide a bicycle repair station in the long-term bicycle parking storage room;
- vi. The Applicant will identify a Transportation Coordinator for the planning, construction, and operations phases of development;
 - 1. The Transportation Coordinator will act as the point of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo; and
 - 2. Transportation Coordinator will conduct an annual commuter survey of retail employees on-site, and report TDM activities and data collection efforts to goDCgo once per year;
- vii. The Applicant will develop, distribute, and market various transportation alternatives and options to senior building residents and retail employees, including promoting transportation events (e.g., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications;
- viii. The Applicant will direct the Transportation Coordinator to 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;
- ix. The Applicant will provide welcome packets to all new senior building residents that will, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map (Brochures can be ordered from DDOT's goDCgo program by emailing info@godcgo.com).
- x. The Applicant will provide senior building residents and retail 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;
- xi. The Applicant will demonstrate to goDCgo that retail 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 the DC Transportation Benefits Equity Amendment Act of 2020 (i.e., the parking cashout law), which is now in effect.
- xii. The Applicant will 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 patrons discouraging parking on-street in Residential Permit Parking (RPP) zones;

- xiii. The Applicant will post all transportation and TDM commitments on the building website, publicize availability, and allow the public to see what has been promised;
- xiv. The Applicant will provide at least seven short- and 26 long-term bicycle parking spaces, meeting ZR16 minimum requirements;
 1. At least 50% of the long-term spaces will be provided horizontally at ground level (13 spaces);
 2. Accommodate non-traditional sized bicycles including cargo, tandem, and kids bicycles in the long-term bicycle storage room, with two spaces that will be designed for longer cargo/tandem bicycles, and three that will be designed with electrical outlets for the charging of electric bicycles and scooters, meeting DDOT guidance; and
 3. There will be no fee to building employees or senior building residents for the usage of the bicycle storage room, and strollers will also be permitted to be stored in the bicycle storage room;
- xv. The Applicant will install a minimum of two electric vehicle (EV) charging stations;
- xvi. Following the issuance of a Certificate of Occupancy for the Project, the Transportation Coordinator will submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case; and
- xvii. Following the issuance of a Certificate of Occupancy for the Project, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five years (as measured from the final Certificate of Occupancy for the Project) summarizing continued substantial compliance with the transportation and TDM conditions in the Order, unless no longer applicable as confirmed by DDOT. If such letter is not submitted on a timely basis, the building shall have 60 days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter.

10. (Former Condition No. 9) The Applicant has entered into a First Source Employment Agreement with the D.C. Department of Employment Services (“DOES”) in conformance with the Agreement included as Exhibit F of the Applicant’s Pre-Hearing Statement submitted into the record of Z.C. Case No. 09-03. The fully-signed First Source Employment Agreement between the Applicant and DOES must be filed with the Office of Zoning prior to the issuance of the first above grade building permit for the Modified Project.

11. (Former Condition No. 10) The Applicant has entered into a Certified Business Enterprise Utilization Agreement with the D.C. Department of Small and Local Business Development (“DSLBD”) in conformance with the Agreement included as Ex. G of the

Applicant's Pre-Hearing Statement submitted into the record of Z.C. Case No. 09-03. The fully-signed Certified Business Enterprise Utilization Agreement between the Applicant and DSLBD must be filed with the Office of Zoning prior to the issuance of the first above grade building permit for the Modified Project.

12. (Former Condition No. 11) For the life of the Modified Project, the Applicant shall reserve a total of 82 of the residential units of the Modified Project as affordable for households having an income ranging from 30% - 80% of the Median Family Income ("MFI") for the Washington, D.C. Metropolitan Statistical Area (adjusted for family size), as follows:
 - a. Townhomes. Seven townhomes will be reserved as affordable, including three townhomes reserved at 50% MFI and four townhomes reserved at 80% MFI; and
 - b. Multifamily Senior Building. 100% of the 75 Senior Multifamily Building units will be reserved as affordable, including 12 units at 30% MFI, 63 units at 50% MFI,

The above conditions assume the Modified Project will be exempt from Inclusionary Zoning ("IZ") requirements pursuant to Subtitle C § 1001.6(a). However, the Commission takes no position as to whether an exemption from the IZ Regulations should be granted. The initial affordability period for the Senior Multi-Family Building units is 30 years, after the expiration of the initial affordability period, or any extension of the affordability period, the Senior Multi-Family Building will revert to IZ requirements. The seven affordable townhome units are reserved in perpetuity and will be subject to all IZ requirements. Should the exemption from the IZ Regulations be granted, the affordable housing requirements of this condition shall be stated in the covenant required under 11 DCMR Subtitle C § 1001.6(a)(4). Should the exemption from the IZ Regulations be denied, the Applicant shall provide affordable housing in accordance with this condition, unless the IZ Regulations impose more restrictive standards. Following the expiration of the initial control period and any extensions thereof, the Applicant shall record the covenant required by the Inclusionary Zoning Act as to 10% of the residential gross floor area of the Project, unless the IZ regulations impose more restrictive standards, and shall execute the monitoring and enforcement documents required by 11 DCMR Subtitle X § 311.6 as to the remaining residential gross floor area.

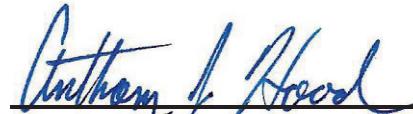
13. (Former Condition No. 12) The Applicant shall provide site management supervision, including the erection of appropriate fencing and barricades, erosion control measures, continuous rubbish removal, and directing of construction traffic; and provision of an on-site construction representative to hear and respond to concerns from the Ft. Baker Drive residents or ANC representatives during construction.
14. (Former Condition No. 13) **For the life of the Modified Project**, the number of parking spaces in the Modified Project shall be a minimum of 192 spaces and a minimum of 853 spaces in the PUD as a whole.

15. Subject to approval by the Public Space Committee, the Applicant shall install a crosswalk with associated curb ramps along the southern leg of the intersection of Naylor Road and Town Center Drive, SE within the existing grades and relocate the Naylor Road bus stop approximately 100 feet to the south closer to the crosswalk at Town Center Drive, S.E.
16. (Former Condition No. 19) Arts Walk with Shadow Boxes: *Omitted*
17. (Former Condition No. 15) The Zoning Administrator shall not approve a permit application for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to OZLD and the Zoning Administrator. Such covenant shall bind the Applicant and all successors in title to construct and use the Subject Property in accordance with Order No. 09-03, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the Office of Zoning for the case record.
18. (Former Condition No. 16) The PUD related change of zoning from the R-5-A, R-5-B, and R-1-B Zone Districts to the C-3-A zone (now the MU-7B zone) shall be effective upon the recordation of the covenant discussed in Condition No. 17, pursuant to § 3028.9 of the 1958 Zoning Regulations, after which the PUD related change of zoning for each block shall vest upon the start of construction of the block and shall not revert to the underlying zone district for so long as the PUD improvements on the block remain.
19. (Former Condition 17) The Applicant shall file the first application(s) for building permits for the construction of the Townhomes within two years of the effective date of this Order and construction shall commence within three years of the effective date of this Order. An application for the final building permit for the final building to be constructed, most likely the Senior Multifamily Building, shall be filed within five years of the effective date of this Order and construction shall commence within six years of the effective date of this Order.
20. 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.

VOTE (December 14, 2023): 4-0-1

(Tammy Stidham, Robert E. Miller, Anthony J. Hood and Joseph S. Imamura to **approve**; 3rd Mayoral Appointee seat vacant).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 09-03H shall become final and effective upon publication in the *District of Columbia Register*; that is, on April 12, 2024.



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.