

EXHIBIT B

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 22-09
Z.C. Case No. 22-09
MCF Heritage 1700, LLC
(Consolidated Planned Unit Development and Related
Zoning Map Amendment @ Square 419, Lot 34[1707 8th Street N.W.]
February 9, 2023**

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on October 20, 2022¹ to consider an application (the “Application”) from MCF Heritage 1700, LLC (the “Applicant”), for review and approval of a consolidated planned unit development (“PUD”) for Lot 34 in Square 419, with an address of 1707 8th Street, N.W. (the “Property”) and related amendment to the Zoning Map from the RA-4 zone to the MU-8A zone. The Applicant also requested special exception relief from the minimum rear yard requirements of Subtitle G, §405.6, pursuant to Subtitle G, § 1201; and such other design flexibility as are set forth in the Conditions hereof. The Commission considered the Application pursuant to Subtitles X and Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations,” or “ZR16,” and to which all citations to regulations herein are made unless otherwise specified). For the reasons stated below, the Commission hereby APPROVES the Application.

FINDINGS OF FACT

PROCEDURAL BACKGROUND

1. On February 25, 2022, the Applicant filed the Application for review and approval of a consolidated PUD and related zoning map amendment and requested that the Commission set down the Application for a public hearing. (Exhibit [“Ex.”] 2, 3.)
2. At a public meeting of the Commission on May 12, 2022, the Commission unanimously voted to set down the Application for a public hearing. (Transcript of Commission Public Meeting [“Tr.”] at 14-15 [May 12, 2022].)

NOTICE

3. On July 5, 2022, the Office of Zoning (“OZ”) sent notice of the October 20, 2022 public hearing, to the Applicant; the affected Advisory Neighborhood Commissions (“ANCs”) 6E and 1B; the affected ANC Single Member District 6E01; the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Department of Consumer and

¹ The Commission took proposed action on the Application at its December 15, 2022, public meeting.

Regulatory Affairs (“DCRA”); the Office of Zoning Legal Division (“OZLD”); the District Department of the Environment (“DOEE”); Councilmembers Allen, Nadeau, Mendelson, Henderson, Bonds, White, Jr.; the Office of the ANC; and property owners owning property within 200 feet of the Property. (Ex. 16-18.)

4. OZ also published notice of the October 20, 2022 public hearing, in the *District of Columbia Register* on July 15, 2022 at 69 DCR 8491 as well as through the calendar on OZ’s website. (Ex. 17.) The Applicant posted notice of the public hearing on the Property and maintained the posting, pursuant to the Zoning Regulations. (Ex. 20, 29.)

PARTIES

5. The automatic parties to the case were the Applicant and ANC 6E, the ANC in which the Property is located, and ANC 1B, which is considered an affected ANC because of its proximity to the Property. ONEDC was granted party status in opposition.² (Ex. 3, 19, 31 (31A-31D).)

THE PROPERTY AND SURROUNDING AREA

6. The Property is located in the Northwest quadrant of the District within Ward 2 in the Shaw neighborhood. The Property is located in ANC 6E01 and to the north of ANC 1B01. The Property fronts on 8th Street, N.W. to the west, and occupies the half of the block bounded by S Street, N.W. to the north, R Street, N.W. to the south, and an alley to the east. Immediately to the south of the Property is the Shaw-Howard University Metrorail station stop, which is served by WMATA’s Green and Yellow lines. (Ex. 3.)
7. The Property consists of approximately 36,312 square feet of land area, all of which is contiguous and located on a single lot of record. The Property currently contains four, vacant three-story, garden-style apartment buildings: 1707 8th Street, N.W., 1709 8th Street, N.W., 1711 8th Street, N.W., and 1715 8th Street, N.W. These buildings, constructed in 1980, comprised 50 units. A Section 8 contract for these buildings expired in 2013. The buildings on the Property no longer contain any tenants as leasing units at the Property stopped several years ago. Since that time, the Property became vacant through natural attrition (particularly in light of the significant impact of the pandemic) as well as some residents relocating to renovated units on the west side of 8th Street, N.W., in the Heritage at Shaw Station buildings that the Applicant owns and continues to operate. (Ex. 3, 45.)
8. Within the same block as the Property, immediately to the east across the alley, there are two high-rise apartment buildings with ground-floor retail, as well as a liquor store. To the west of the Property, across 8th Street, N.W., lie six garden-style apartments and a church. The 7th Street Commercial Corridor extends to the east of the Property and features a range

² ONEDC filed its request for party status on October 19, 2022, the day before the scheduled public hearing. Pursuant to Subtitle Z § 101.9, the Commission waived the requirement of Subtitle Z § 404.4 that requests for Party Status be filed at least 14 days in advance of the public hearing.

of retail and dining uses. The Shaw Neighborhood Library sits just south of the Property, and Cleveland Elementary School is located in the block north of the Property. (Ex. 3.)

9. The southern entrance to the Shaw-Howard University Metrorail station is immediately to the south of the Property. There is also a Capital Bikeshare station adjacent to the Metrorail station. Transit options in the vicinity of the Property include Metrobus routes 70, 79, and G8 with stops on 7th and R Street, N.W. immediately to the south of the Property. The Rhode Island Avenue, N.W. transit corridor is one block to the south. The neighborhood otherwise enjoys convenient vehicular access to the District's downtown core via 9th Street, N.W. and 6th Street, N.W. (Ex. 3.)
10. The Property is within walking distance of Shaw Dog Park, Shaw Skate Park, French Street Park, and Westminster Park to the west. The Kennedy Recreation Center (which has basketball and tennis courts, a baseball field, and a playground) is also close to the Property. (Ex. 3.)
11. The area immediately surrounding the Property is presently a mix of four zones, matching the predominant land uses: ARTS-2 to the east of the Property adjacent to the 7th Street Commercial Corridor; RF-1 to the north of the Property for the majority of the surrounding neighborhood that largely consists of attached rowhomes; RA-2 to the west and south of the Property for the garden-style apartments; and MU-5A to the southeast of the Property for the library. (Ex. 3.)

EXISTING ZONING

12. The Property is zoned RA-4. The RA zones are designed as moderate- or high-density residential areas suitable for multiple dwelling unit development and supporting uses. (11-F DCMR § 100.2.) The RA zones are intended to, among other things:
 - Provide for the orderly development and use of land and structures in areas characterized by predominately moderate-to high-density residential uses;
 - Promote stable residential areas while permitting a variety of types of urban residential neighborhoods;
 - Allow limited non-residential uses that are compatible with adjoining residential uses; and
 - Ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces.(11-F DCMR § 100.3.)
13. The maximum permitted density in the RA-4 zone is 3.5 floor area ratio ("FAR"), with up to 4.2 FAR for Inclusionary Zoning ("IZ") developments. (11-F DCMR §§ 302.1, 302.2.) The maximum permitted building height in the RA-4 zone is 90 feet. (11-F DCMR § 303.1.)

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

14. The Property is designated as Mixed-Use Medium Density Commercial/Medium Density Residential on the CP Future Land Use Map (“FLUM”). (Ex. 3.)
15. The Property is designated as a Neighborhood Enhancement Area on the CP Generalized Policy Map (“GPM”). (Ex. 3.)
16. The Property is within the Near Northwest Area Element. (Ex. 3.)
17. The Property is located within the boundaries of the Duke Plan and the Convention Center Area Strategic Development Plan. (Ex. 3.)

THE PROJECT

18. The Applicant stated that the Project transforms an existing underutilized property into a new residential community with approximately 317 apartments adjacent to the Shaw-Howard University Metro Station and a block away from the 7th Street, N.W. commercial corridor. The Applicant noted that the Project creates a strong, appropriately scaled and articulated architectural treatment along all four sides of the building, including the alley elevation. The Applicant stated that the net increase in units and the addition of permanently affordable units—where none exist today—are significant improvements over the existing conditions. (Ex. 3.)
19. The Applicant highlighted that the Project balances the provision of off-street parking within the Project to mitigate undue increased demand for on-street parking while avoiding unnecessarily inducing vehicle trips to the Property. The Project provides nearly double the amount of parking than it is required to provide (93 spaces provided; only 52 spaces are required). It also provides alley access to parking and loading, so as not to impact pedestrian circulation on 8th Street, N.W. (Ex. 3.)
20. The Applicant noted that 15% of the residential square footage, including cellar space and penthouse space, will be reserved as IZ units. Almost half (48%) of the units (153) will have direct access to outdoor spaces; 106 of the 317 residential units will have balconies, 31 will have terraces, and 16 will have an areaway in order to provide private open space for the tenants of the Project. (Ex. 3, 24.)
21. The Project includes up to approximately 261,558 square feet of gross floor area (“GFA”) for an overall floor area ratio (“FAR”) of approximately 7.2. All of the Project’s GFA is devoted to residential uses. The Project will have a maximum measured building height of 90 feet. The Project also includes approximately 93 below grade vehicle parking spaces, satisfies the loading requirements of the Zoning Regulations, and exceeds the bicycle parking requirements of the Zoning Regulations. (Ex. 3, 24.)
22. The Applicant stated that the Project’s site plan, massing, and circulation respond to the Property’s context on all four sides. The design intent of the Project is to be fully integrated

into the surrounding urban fabric. The Project implements this design intent through differential treatment of each of its façades in response to the adjacent context. (Ex. 3.)

- (a) *East (Alley)*: The Project's ground level is built to the property line, but the second story recedes. The southern half of the Project on the south side has angled windows, while the northern half features balconies. The balconies extend into the required rear yard and the Applicant requested special exception relief for this condition. This layout provides the impression of two separate buildings on the block. Larger windows were added to the fitness center space to allow for more daylighting of that space; (Ex. 3, 24A1, 45.)
 - (b) *West (8th Street, N.W.)*: The Project's primary entrances are along 8th Street, N.W., and the Project is constructed to the lot line to help maintain and enhance the vitality of 8th Street. The receding balconies and angled, saw tooth windows provide visual diversity to the street; (Ex. 3, 24A1.)
 - (c) *North (S Street, N.W.)*: The Project is generally constructed to the lot line to the north as well. Below-grade terraces are provided on the lower level of this portion of the building; and (Ex. 3, 24A1.)
 - (d) *South (R Street, N.W.)*: The ground floor of the southern façade is recessed by two feet to allow for the introduction of a series of 12" planters that will include a mix of bulbs and low plantings. This recessed area will break down the direct sunlight that enters the ground floor of the southern façade and helps soften the transition from the building's southern entrance to the adjacent Metro plaza. The Applicant's design team believes that a two-foot setback is an appropriate distance to allow for a visual break from the upper-level façade, while discouraging potential loitering in this area; (Ex. 3, 24A1, 45.)
23. In response to the built environment surrounding the Property, the Project varies in height. The northern wing of the Project is only six stories at the property line and then reaches nine stories after setting back 30 feet. This height harmonizes more closely with the two-to-three-story residences north of the Property across S Street. The southern portion of the Project is nine stories, as that portion of the structure faces the Metro Station plaza, R Street, N.W. and the Shaw Public Library on the south side of R Street, N.W. (Ex. 3.)
24. The proposed site circulation also responds to the surrounding context. The Project's vehicular access point for the below-grade garage is from the existing alley. Access to all loading facilities is also provided from the alley. No new curb cuts are proposed. One central pedestrian entrance is provided on 8th Street, N.W. which provides a prominent building entrance and lobby area, consistent with the design guidelines of the Convention Center Area Strategic Development Plan. (Ex. 3.)
25. The Project's site plan, massing, and circulation inform the Project's interior organization and layout. The Project includes double-loaded corridors, which allows for highly efficient overall floorplates and efficient, daylit individual unit floorplans. The layout also accommodates a mix of unit sizes, ranging from studios to three-bedrooms. The ground

floor, which includes co-working and fitness spaces, as well as a transit lounge with bicycle parking spaces, integrates the building with the adjacent public realm. The roof level includes habitable penthouse space, common amenity spaces for residents of the Project, and mechanical/sustainable design elements. The roof level will include solar photovoltaics and green roof elements. (Ex. 3.)

26. Encouraging non-automotive modes of transportation are a priority for the Project, and the Project includes a focus on creating spaces for bicycle parking and repair spaces that are accessible and inviting. The Project contains one level of below-grade parking. Recognizing the Property's proximity to the Metrorail station, the neighborhood's pedestrian- and bicycle-friendliness and the diverse mobility options available, the Project provides approximately 93 vehicle parking spaces. The proposed amount of parking seeks to balance DDOT's goal of providing reduced parking near transit with the surrounding community's goal of ensuring that the Project contains adequate parking for residents. As a result, the Project's parking is at a ratio of 0.29 spaces per unit, in line with DDOT's generally accepted standards. The Project also features ample secure bicycle storage, located conveniently for residents to store and access their bikes on the ground floor near the Metro station entrance. Short-term bicycle spaces will be added to public space around the perimeter of the Property in coordination with DDOT. (Ex. 3.)
27. The Project's residential program contains a mix of studio, junior 1-bedroom, 1-bedroom, 1-bedroom + den, 2-bedroom, and 3-bedroom units. Significantly, approximately 5% of the Project's units will have three bedrooms and approximately 15% of the units will have two bedrooms. (Ex. 3, 24A1.)
28. The Project exceeds the IZ requirements applicable to a building using Type I construction in the MU-8A Zone, as it reserves an area equal to 15% of the total of GFA devoted to residential use (plus the residential portions of the cellars and the habitable penthouse space), as IZ units. This translates to approximately 41,587 gross square feet for affordable units, of which, approximately 1,298 square feet will be provided for households earning no more than 50% of the Median Family Income ("MFI") with the remainder set aside for households earning no more than 60% MFI for the life of the Project.³ (Ex. 3, 45.)
29. The Project's architectural design and detailing are intended to be contemporary yet contextual, and in particular, sympathetic of the surrounding residential context to the north, south and east of the Project. The Project includes balconies, setbacks, and other facades articulations to help activate the streetscape and reduce the sense of massing. The recessed balconies on the North and North-West facades help to achieve consistency with the scale of the rowhouses across the street. To the south, facing the Metro station and along 8th Street, the ground floor will feature larger windows at street level to create an open and active street front that is visually appealing and engaging. The facades on every side, including the alley side, have masonry materials (bricks and cast stones) to harmonize

³ Please note that these numbers are gross square footage numbers and the final square footage numbers included in the Certificate of Inclusionary Zoning Compliance ("CIZC") form may be slightly different.

the building with the architectural character of the surrounding structures. (Ex. 3, 24A2, 45.)

30. The Project features landscaping improvements at street level. The predominant intent of the street-level landscape improvements is to enhance the pedestrian experience and preserve existing street trees. The Project's roofs are landscaped in order to help satisfy the Green Area Ratio ("GAR") and stormwater regulatory requirements and in order to improve energy efficiency within the building and to reduce albedo effects. (Ex. 3, 45A.)
31. The Project is designed to achieve LEED Gold certification and the Project will seek certification as such from the U.S. Green Building Council ("USGBC"). Specific sustainable design features include: energy modeling for the Project in order to optimize energy use and implement a number of efficiency strategies; selection of materials—both interior and exterior—that are environmentally preferred; inclusion of green roof and rooftop bio-retention; and ongoing identification and investigation of areas that could accommodate photovoltaic solar panels on the roof level. Furthermore, the Project will involve a minimum of 700 square feet of PV systems on the roof level of the building. (Ex. 3, 13.)

Revisions to Project in Response to Setdown Comments

32. In its May 2, 2022 report (the "OP Setdown Report") OP recommended that the application be set down for a public hearing, as the Project would not be inconsistent with the Comprehensive Plan and the Convention Center Area Strategic Development Plan (the "Small Area Plan"). In addition, the OP Setdown Report requested that:
 - The Applicant provide more units with balconies or terraces, especially on the southern portion of the building;
 - The Applicant continue to study the massing and design of the southern portion of the building;
 - The Applicant provide more detail about the material selections for the building;
 - The Applicant commit to a minimum level or area for solar power generation; and
 - The Applicant refine the benefits and amenities package. (Ex. 11.)
33. At the May 12, 2022 public meeting, during which the Commission considered whether to set the Applicant down for a hearing, the Commission concurred with the OP Setdown Report and requested the Applicant address the following issues:
 - The Commission requested that the balconies be better integrated into the rest of the building's design; and
 - The Commission encouraged the Applicant to establish more contiguity between the northern and southern portions of the building. (Tr. at 11-14.)
34. In its June 21, 2022 and September 30, 2022 pre-hearing filings, the Applicant responded to the requests from OP and the Commission for additional information. (Ex. 13, 24.) These filings included the following information:

- The Applicant provided updated plans, renderings, and images that detail the balconies that will be provided in the Project. The initial application included 99 units that had balconies. The Project was revised to now include 106 units with balconies, as detailed below. In total, 153 units in the Project (48%) have access to outdoor space via a balcony, terrace, or below-grade areaway:
 - 106 units with a balcony (33% of the units);
 - 31 units with a terrace (10% of the units); and
 - 16 units with an areaway (5% of the units); (Ex. 13, 24.)
- The new balconies were added on the alley façade at: (i) the intersection of the northern and southern portions of the building, similar to the balconies at the same articulation on the west side of the building above the main entrance; and (ii) on the northern portion of the building, which are consistent in size and rhythm with the balconies that are provided along 8th Street, N.W.; (Ex. 13.)
- The Applicant noted that a significant portion of the balconies provided in the Project are quite large (9 feet x 10 feet) and have been integrally designed with each residential unit so that they create an “outdoor living room” for those units. These balconies project four feet from the property line and are set back five feet into private space; (Ex. 13.)
- The Applicant also made changes to the massing and architectural treatment of the Project in order to strengthen the overall cohesiveness of the northern and southern portions of the building. Those changes included:
 - Balconies have been introduced at the intersection of the building’s northern and southern masses, on both the alley and 8th Street facades;
 - The size and rhythm of the balconies are now consistent on both the alley and 8th Street facades; and
 - The color palette of the building has been refined so that the color of the masonry on the southern portion of the building more closely resembles the color of the precast masonry on the northern portion of the building; (Ex. 13.)
- The Applicant committed to providing a minimum of 700 square feet of PV systems on the roof level of the building; (Ex. 13, 24.)
- The Applicant revised the ground floor façade of the southern portion of the building to provide a more dynamic and active appearance at the ground floor adjacent to Metro plaza; revised the interior uses on the first floor to include uses that will foster greater activity and ground floor use; and provided the proposed location of the IZ units; and (Ex. 24-24A2.)
- The Applicant provided a detailed description of the benefits and amenities package, which consists of the following financial contributions:
 - **Friends of the Shaw/Watha T. Daniels Public Library (\$20,000)** – The Friends of the Shaw/Watha T. Daniels Library support the library by raising funds for programs, services, and equipment; by advocating on behalf of the branch and the entire DC Public Library system to the library administration, the Mayor, City Council, and Congress; and supporting the freedom to read as expressed in the American Library Association Library Bill of Rights. The Friends of the Shaw/Watha T. Daniel Library will use this financial donation for:
 - Materials and equipment purchases to support programming for children and youth (ages 0-18).

Library staff regularly propose programs and activities that require materials and equipment that the library does not have, and for which funding is not available for the DC Public Library. The Friends of the Shaw/Watha T. Daniel Library pay for such materials and equipment in order to allow these programs to be conducted at no cost to the children and youth that participate. Most of the materials and equipment are for one-time use. Examples of materials and equipment requested include decorations, signage, musical instruments, costumes, paints, modeling clay, play equipment, toys, books, computer software, games, and giveaways.

- Speaker, performer and instructor honoraria and travel expenses for programs (all ages).

Classes are presented at the Shaw Library on topics chosen based on informal surveys of library users conducted by library staff. Instructors are required for such classes, for which the DC Public Library does not provide funding. Past classes have included single sessions and series of classes on chess, dance, painting, nutrition, and anger management. Author talks are another popular type of library program offered at the Watha T. Daniel Library. Non-local authors are offered transportation expenses in addition to an honorarium for their appearance. Musical and theatrical performers are also offered honoraria for performances presented at the branch library. Past performances have included Spanish/English guitar and vocal performances for children and scenes from classical and classic plays. Honoraria for instructors have ranged from \$250 to \$500 per class, talk or performance. Honoraria are paid by the Friends of the Shaw/Watha T. Daniel Library directly to the instructors, speakers and performers.
- Printing of Shaw heritage coloring book.

Shaw Main Streets published a 28-page coloring book that helps children and youth learn about the many historic figures that have lived, worked, shopped, played, prayed and taught in the neighborhood and building associated with these heroes and sheroes. This includes nationally known figures such as Mary McLeod Bethune and local ones, like library namesake Watha T. Daniel. The library has distributed these coloring books in the past during Black History Month and other events, and they proved very popular. But the publication is currently out of print. Funding would be used to obtain 1,000 copies of the coloring book for distribution at the Shaw library. The cost of printing the coloring books would be \$5,000. A neighborhood printer would be used to print the coloring books.
- Purchase of audio/visual equipment for outdoor events.

The library currently does not have adequate audio/visual equipment for outdoor events. The Friends of the Shaw/Watha T. Daniel Library will purchase a battery powered, Bluetooth P/A system that can be used for outdoor events.
- **Judah Project (\$20,000)** - The Judah Project is located at 1001 R Street, N.W. (approximately two blocks from the PUD site). Its mission is to tutor and mentor students in and around the Shaw neighborhood so that they will be focused and prepared for the next stage of their academic careers. It will use this financial

donation for the purchase of musical instruments/equipment for its music program. The goals of the music program are music theory, sound engineering, music appreciation, and performance readiness. The Judah Project will provide an innovative music provider to teach middle and high school students how to read music, play an instrument, and operate multi-tracking equipment. The Judah Project music program will operate after school and on weekends and The Judah Project will present live performances and creativity workshops throughout the District of Columbia;

- **Shaw Community Center (\$20,000)** – The Shaw Community Center is located at 1701 11th Street, N.W. (approximately three blocks from the PUD site). The Shaw Community Center is a 501(c)(3) non-profit corporation whose mission is to expand the opportunities and enhance the lives of Shaw residents of all ages. The Shaw Community Center will use this financial contribution to support two emerging programs for teens and young adults -- one focusing on media production and one focusing on technical skills development. Specifically, these funds will be used as follows:
 - Media Production program:
 - Videography and audio equipment; and
 - Editing equipment and software;
 - Technical Skills development:
 - Specialized tools and certificates or licensure; and
 - POS hardware and software for commercial storefront;
- **Kennedy Recreation Center (\$15,000)** – The Kennedy Recreation Center is located at 1401 7th Street, N.W. (approximately three blocks from the PUD site). The funds will be split equally amongst three divisions (Seniors, Roving Leaders, and Community Recreation divisions) for Kennedy Recreation Center participants;
- **Citizens Organized Patrol Efforts (C.O.P.E.) (\$20,000)** – This organization is a red hat patrol that works with the Metropolitan Police Department (MPD) in the Shaw community seeking to reclaim criminals through jobs, education, and drug treatment. Attached is a link to the MPD’s Twitter account from June 22, 2022 ([https://twitter.com/DCPoliceDept/status/1539650672215240708/ photo/1](https://twitter.com/DCPoliceDept/status/1539650672215240708/photo/1)) noting C.O.P.E.’s annual block party and the donation of bicycles to members of the community. C.O.P.E. will use this financial donation for neighborhood patrol supplies including uniforms, scooters, technology, and community event materials. In addition, C.O.P.E. intends to purchase a brass plaque recognizing the renaming of the Shaw 6th Street Park to Margaret B. Cooper & Lillian Gordon;
- **Westminster Street Playground (\$5,000)** – The Westminster Street Playground is located at 901 Westminster Street, N.W. (approximately two-three blocks from the PUD site). This financial contribution will be made to the Westminster Neighborhood Association, a 501(c)(3) non-profit corporation formed in 1994 to enhance the quality of life in the Westminster area of the Shaw neighborhood and will be used for the installation of playground ground-covering materials;
- **Shaw Dog Park (\$5,000)** – The Shaw Dog Park is located at 1673 11th Street, N.W. (approximately three blocks from the PUD site). This financial contribution will

be made to the Shaw Dog Park Association, a non-profit organization, and will be used to repair and enhance the tree boxes in the dog park; and

- **Shaw Main Streets (\$20,000)** - Shaw Main Streets is a designated DC Main Streets program and is funded in part by the Department of Small and Local Business Development. The organization was founded in 2003 and its mission is “to preserve and restore the diverse, historic environment of Shaw’s 7th and 9th Street commercial corridors, offering residents and visitors a better place to live, work, shop, play, and pray.” Shaw Main Streets will use the financial contribution to fund its Clean and Safe Team, which removes trash and graffiti, cleans sidewalks and street gutters, maintains street trees and public landscaping, and reports public space defects within the Shaw service district. (Ex. 24B.)

Relief Requested

35. The Project is consistent with the Zoning Regulations with respect to all development standards applicable to the MU-8A zone except with respect to rear yard. The Applicant sought special exception relief from the rear yard requirements for the northern portion of the building. (Ex. 3.)
36. The Applicant seeks to decrease the Project’s rear yard setback to 15 feet, 7 inches, rather than the required 19 feet, 1 inch. The primary design rationale for this relief request is to allow for balconies on the northern end of the building. Subtitle G, §1201 authorizes special exception relief from the rear yard requirements in the MU zone provided that no apartment window shall be located within 40 feet directly in front of another building, that adequate provision is made for service functions (including parking and loading access), and the relief is consistent with the general special exception relief requirements of Subtitle X. The Applicant stated that the Project satisfies these special exception standards. The proposed windows along this face of the building meet the rear yard setback requirement and are located a distance of approximately 53-60 feet from the building on the other side of the alley. Access to the parking and loading areas of the building satisfy the rear yard requirements. (Ex. 3.)
37. In addition, approval of this special exception relief is in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. The only portion of the building that does not satisfy the rear yard requirements are the proposed balconies on the northern portion of the building. The provision of balconies and outdoor space for as many units as possible in this building has been a focus of the Applicant and allowing these balconies along a portion of the alley face of the building will not adversely impact the use of the property on the other side of the alley. (Ex. 3.)
38. The Application requests a PUD-related Map amendment to rezone the Property from the RA-4 to the MU-8A zone, which is considered a form of flexibility against which the Commission shall weigh the benefits of the PUD. (11-X DCMR § 303.12.) The Project’s proposed height of 90 feet, is the same as the height permitted in a matter-of-right development under the existing RA-4 zoning. The Project’s proposed density of

approximately 7.2 FAR, is a gain of 3.7 FAR when compared to matter-of-right density permitted under existing RA-4 zoning (maximum 3.5 FAR), and gain of 3.0 FAR when compared to the density permitted under existing RA-4 zoning for an IZ development (maximum 4.2 FAR with IZ). (Ex. 3, 11.)

Applicant's Justification for Relief

39. The purpose of the PUD process is to provide for higher quality development through flexibility in building controls, provided that the project that is the subject of the PUD (i) results in a project superior to what would result from the matter-of-right standards; (ii) offers a commendable number or quality of meaningful public benefits; and (iii) protects and advances the public health, safety, welfare, and convenience, does not circumvent the intent and purposes of the Zoning Regulations, is not inconsistent with the Comprehensive Plan, and does not result in action inconsistent therewith. (11-X DCMR §§ 300.1, 300.2, 300.5, 307.1.) The Applicant provided evidence that the Project satisfies each of the above PUD requirements.

The Project Is Superior to the Development of the Property under the Matter-of-Right Standards.

The Project's contribution of housing and affordable housing, other Public Benefits, and the community engagement process that accompany this PUD process all exceed what would be provided under matter-of-right standards. Specific aspects of the Project superior to a matter-of-right development include:

- **Housing/Affordable Housing** – The Project provides more housing than what could be constructed on the Property without a PUD by virtue of the 20 percent PUD density bonus. In addition, the amount of affordable housing provided in the Project (15%) of the residential GFA, penthouse and cellar area in the Project exceeds the amount that would be required in a matter-of-right development pursuant to the IZ requirements. Moreover, there are currently zero permanently affordable units provided on the Property, so the delivery of this Project adds needed housing to the City's permanently affordable housing stock;
- **Public Benefits** – The Project's contribution of Public Benefits exceeds what would be provided in a matter-of-right development;
- **Community Engagement** – The Applicant conducted a comprehensive public outreach and engagement process with multiple opportunities for neighbor, community group, and public agency participation. Those opportunities, and future ones, would not exist for a matter-of-right development of the Property;

The Public Benefits Are Commendable in Number and Quality.

The Project delivers Public Benefits and other project amenities. These Public Benefits fulfill goals set forth in the Comprehensive Plan and the Small Area Plan, the priorities of District agencies and stakeholders, and the preferences, needs, and concerns of the ANC and community residents identified during the Applicant's community engagement

process. Accordingly, the Public Benefits package is a meaningful series of commitments that satisfy the intent and purposes of the PUD process.

The Project Protects and Advances Public Health, Safety, Welfare, and Convenience and Does Not Circumvent the Purposes of the Zoning Regulations.

The Project advances and protects the intent and purposes of the Zoning Regulations, which are set forth in Subtitle A § 101 of the Zoning Regulations:

- Through the development of an underutilized parcel proximate to a Metrorail station, the Project affirmatively improves major public interests and priorities such as housing and affordable housing, additional ground level activating design and high-quality, environmentally sustainable design. The Project does not adversely affect public safety and public infrastructure or otherwise impose adverse impacts on the surrounding community. The Project satisfies the goals and objectives for the District as set forth in the Comprehensive Plan, the Duke Plan, and the Convention Center Plan;
- The development of the underutilized Property with increased housing and affordable housing advances the public health, safety, welfare, and convenience goals of the District by converting underutilized lots to more productive use. Accordingly, the Project advances these purposes of the Zoning Regulations; and
- The Project does not seek to circumvent the Zoning Regulations. The Zoning Map Amendment seeks to amend the Zoning Map to rezone the Property from the RA-4 zone to the MU-8A zone, which is consistent with the Property’s FLUM designation and other elements and policies of the Comprehensive Plan. The MU-8A zone is intended for medium-density mixed-use development with a focus on employment and residential use. The Project conforms to the requirements for the MU-8A zone (except for the rear yard special exception relief described above), is compatible with the existing neighborhood, is oriented to support active use of transit and public spaces and promotes stability of the surrounding residential area.

40. The Project includes five categories of substantive Public Benefits as defined according to the public benefits categories set forth in Subtitle X § 305 of the Zoning Regulations:

- Superior urban design, architecture, and landscaping (11-X DCMR § 305.5(a) and (b)). The Project’s urban design, architecture, landscaping, and provision of open space are superior public benefits. Urban design, architecture and landscaping are categories of public benefits and project amenities for a project proceeding under a PUD:
 - *Urban Design:* The Project incorporates numerous design precepts that guide superior urban design in the District and that represent significant improvements over the existing aesthetic and functional conditions of the Property. For instance, the Project’s urban design prominently addresses the surrounding streets to create strong street walls and to “enclose” the pedestrian space. The various building articulations and setbacks help reduce the overall massing of the proposed building and achieve consistency with the scale of the surrounding buildings;
 - *Architecture:* The Project similarly includes elements of superior architectural design. For example, the Project presents a thoughtful ground floor design that

integrates into the surrounding context. The Project's exterior design elements knit the indoor and outdoor spaces together. The Project also utilizes high quality façade materials and finishes. The Project's differentiated articulations and design elements respond to its context on all sides, while its materials palette creates a cohesive design; and

- *Landscaping*: The Project's landscape and site improvements create a range of vegetation and outdoor spaces that "green" the Property while also providing functional services to building residents;
- Site planning, and efficient and economical land utilization (*id.* § 305.5(c)). The proposed site plan is another superior benefit of the Project. Site planning and efficient and economical land utilization are public benefits. The benefits of the Project's site plan and efficient land utilization are reflected in the Project's overall density, introduction of new residential uses on an underutilized lot located near transit, the total number of new residential units provided, and introduction of income-restricted housing. The Project's greater heights and density near a transit node exemplifies economical land utilization. The Project also improves land that has been underdeveloped relative to the surrounding transportation and other infrastructure. The proposed development's density (7.2 FAR) is appropriate for the Property and the Shaw neighborhood as a whole given the proximity to transit options. Further, the Applicant proposes an efficient, economical land utilization strategy with respect to parking by locating parking below-grade. The Project achieves the principles of transit-oriented development, as it strikes a careful balance between increasing density and sensitive placement of massing and use;
- Housing and affordable housing (*id.* § 305.5(f), (g)). The Project includes a greater number of housing units than could be developed on the site as a matter-of-right plus permanently affordable housing and three-bedroom units. Pursuant to Subtitle X §§ 305.5(f) and (g), the production of housing that exceeds the amount that would have been required through matter-of-right development under existing zoning and affordable housing above what is required under the IZ provisions is a public benefit.

The District faces a shortage of virtually every kind of housing product, but the District has prioritized construction of new units near transit, affordable units, and three-bedroom units. The Project produces a significant amount of new residential units on a site that is transit-accessible and part of a mixed-income development. The Project includes three specific types of housing-related public benefits:

- The housing proposed as part of the Project exceeds the amount possible through a matter-of-right redevelopment pursuant to the applicable limits in the underlying zone (inclusive of the IZ bonus) (*Id.* § 305.5(f)(1).);
- The Project also proposes to reserve 15% of its gross residential square footage (i.e., GFA, residential cellar space, and the habitable penthouse space) for permanently affordable housing units (i.e., IZ units). A matter-of-right development in the RA-4 or MU-8-A zones that utilizes Type I construction would only be required to provide 8% of these residential square footages as IZ units. Accordingly, the additional permanently affordable housing of the Project is a public benefit as well; and (*Id.* § 305.5(g).)
- Finally, approximately 5% of the Project's units (i.e., 16 total) are anticipated to be three-bedroom units. All such three-bedroom units constitute public benefits; (*Id.* § 305.5(f)(3).)

- Environmental and sustainable benefits (*id.* § 305.5(k)). The Project includes innovative sustainable design elements and achieves appropriate levels of environmental certification. The Project has been designed to exceed environmental design standards at the LEED Gold level. Specific sustainable benefits in the Project include energy modeling use of environmentally preferred materials; inclusion of green roof and rooftop bio-retention; and ongoing identification and investigation of photovoltaic solar panels. The Project will provide a minimum of 700 square feet of PV systems on the roof level of the building;
 - Other Public Benefits Which Substantially Advance the Comprehensive Plan (*Id.* § 305.5(r)). The proposed Project is consistent with many of the District’s policy goals and objectives. The Zoning Regulations provide that elements of a project that advance the Comprehensive Plan and related policies are public benefits; and
 - In addition, the Applicant proposed to make financial contributions to several community organizations in close proximity to the Property as a further public benefit of the Project. The contributions and the uses of the contributions are described above in connection with the Applicant’s pre-hearing filings.
41. The Applicant also provided evidence that the Public Benefits proposed in the application satisfy the public benefits criteria of Subtitle X §§ 304.4(c), 305.2 and 305.4. These provisions require that the public benefits proposed as part of a PUD application (a) be not inconsistent with the Comprehensive Plan and other adopted public policies, (b) benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from a matter-of-right development of the Property, (c) be tangible, quantifiable, measurable, and able to be completed prior to issuance of a certificate of occupancy, and (d) relate to the geographic area of the ANC(s) in which the Project is located. The community benefits package noted in Finding of Fact (“FF”) 34, 39, and 40, satisfies all of these requirements.

PUD Evaluation Standards

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

42. The Applicant provided a detailed analysis of the Project’s consistency with applicable objectives of the Comprehensive Plan and other adopted public policies, or active programs related to the subject site (including the Duke Plan, the Convention Center Area Strategic Development Plan, and the Mayor’s Housing Order) (*see* Ex. 3, 3E). Specifically, the Applicant noted the following:
- Future Land Use Map: The Comprehensive Plan’s recently adopted “Future Land Use Map” re-designates the Property as Mixed-Use Medium Density Commercial/Medium Density Residential, which allows for mixed-use buildings with a FAR between 1.8 and 6.0 or more subject to a PUD. The mixed-use Project with a FAR of approximately 7.2 is not inconsistent with this designation, especially given its level of affordable housing and its proceeding as a PUD. The definition of the Medium Density Commercial designation specifically states that “[t]he MU-8 and MU-10 Zone Districts are consistent with the Medium Density category.” (*See* 10-A DCMR §§ 225.5,

225.10, 227.12, 227.20.) The MU-8 zones are meant to “(a) permit medium-density mixed-use development with a focus on employment and residential use; (b) be located in uptown locations, where a large component of development will be office-retail and other non-residential uses; and (c) be located in or near the Central Employment Area, on arterial streets, in uptown and regional centers, and at rapid transit stops.”; (11-G DCMR § 400.7.)

- Generalized Policy Map: The “Generalized Policy Map” designates the Property as a “Neighborhood Enhancement Area” which “are neighborhoods with substantial amounts of vacant and underutilized land.” (*Id.* § 223.7.) The Comprehensive Plan notes the following with regard to Neighborhood Enhancement Areas: “New development in these areas should improve the real estate market, reduce crime and blight, and attract complementary new uses and services that better serve the needs of existing and future residents.” (*Id.* § 223.8.) The Project is not inconsistent with the objectives for a Neighborhood Enhancement Area. A multifamily apartment building will “fit-in” with the immediate area. Moreover, the Project will allow for a broader mix of market-rate and affordable units on the Property, which will improve the real estate market and help reduce crime that has been a problem in the past in the area. In addition, the Project’s infusion of residents who will become patrons of other nearby businesses helps conserve and enhance the nearby 7th Street Commercial Corridor. Finally, the Project’s housing program is consistent with this definition;
- District Wide Elements and Near Northwest Area Element: The Project advances numerous individual objectives of the District Wide Elements and the Area Element. (Ex. 3, 3E.) The Project is not inconsistent with the Comprehensive Plan as a whole. Numerous objectives of the District Wide Elements and Area Element encourage the development of additional housing and affordable housing, especially near transit. Included in these policies were:
 - Land Use Element, including the following. Policy LU-1.4.3: Housing Around Metrorail Stations-- Build housing adjacent to Metrorail stations that serves a mix of incomes and household types, including families, older adults, and persons with disabilities, and prioritize affordable and deeply affordable housing production. Leverage the lowered transportation costs offered by proximity to transit to increase affordability for moderate and low-income households; and
 - Policies of the Housing Element, including the following. The Housing Element seeks to encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives (Policy H-1.1.1), and it encourages higher density near transit (Policy H-1.1.2). The Housing Element also recommends new development on underutilized land, in order for the District to meet its long term housing demand (Policy H-1.1.3). The Comprehensive Plan also emphasizes the need for family-sized units (Policy H-1.1.9) and recommends zoning incentives for providing a quantity of affordable housing in excess of the normal requirements (Policy H-1.2.7);
- Duke Plan: The Comprehensive Plan requires zoning to be “interpreted in conjunction with... approved Small Area Plans.” The Duke Plan was approved by the D.C. Council on June 21, 2005. The Property is located within the boundaries of the Duke Plan and

the Rhode Island Avenue Sub-District of that Plan. The Duke Plan notes that the “Rhode Island Avenue Sub-district will be an architecturally distinct gateway to the Shaw community and this neighborhood destination district. The primary use within this section of the overall plan will be high density residential above neighborhood retail uses.” In addition, the Duke Plan recommends that “Parcels near the south entrance of the Shaw Howard University Metro station should be developed as active retail uses such as a restaurant or café. As possible, consider transit-oriented development and densities with affordable housing.” The Project will feature community space on the ground floor along 8th Street and a transit lounge and bicycle parking spaces adjacent to the Metro Plaza rather than retail use. These spaces will help foster an environment of vibrancy that will contribute to the retail along the 7th Street Commercial Corridor. The Applicant posited that as retail continues to struggle in the wake of the pandemic, its use should be concentrated in commercial corridors such as 7th Street, N.W. rather than disbursed across several blocks to include 8th Street, N.W. This building’s frontage along the Metro Plaza will encourage activity to the commercial corridor one block away. Moreover, its density will provide additional affordable housing needed to achieve the District’s goals;

- Convention Center Area Strategic Development Plan: The Convention Center Area Strategic Development Plan was approved by the D.C. Council on June 20, 2006. The Property is located within the “Transit Oriented Housing” sub-area of the Convention Center Plan, the Convention Center Plan encourages: (1) “mixed-income residential development with underground parking on surface parking lots adjacent to Metro stations”; (2) “renewal of Project-based Section 8 contracts; alternatively, redevelop with equivalent/increased number of affordable residential units”; and (3) infill developments built to property line on street frontage with open space oriented to the interior of the block”. The Project is a mixed-income residential development with approximately 41,648 square feet of affordable residential units. There is no Section 8 contract in effect for the Property, and there has not been since 2013;
- Mayor’s Housing Order: The Mayor’s Housing Order outlines her administration’s aggressive and commendable goals for increasing housing production, and particularly affordable housing production, in the District. The Housing Order notes that “Increased housing production and preservation is required to address growth and ensure the District lives up to its values of being diverse and inclusive. To do this, ***the District must create 36,000 new residential units by 2025.***” The Project is exactly the type of new development necessary to achieve the housing goals of the Housing Order. The Project helps address the District’s compelling need for new family-sized housing at a site such as the Property. The Project is more than just consistent with the Mayor’s Housing Order; the Project is precisely the type of transit-oriented, contextually designed, mixed-income new development with permanent affordable housing units that will be essential to achieving the Mayor’s housing objectives; and (Ex. 3, 3E, 45.)
- Racial Equity Analysis: The Comprehensive Plan calls for any action by the Commission to be analyzed “through a racial equity lens.” (§ 2501.8.) The Comprehensive Plan defines racial equity as “the moment when ‘race can no longer be used to predict life outcomes and outcomes for all groups are improved.’” (§ 213.8.) The call to evaluate decisions through a racial equity lens is achieved by addressing

structural racism, “target[ing] support to communities of color,” and “taking into account historical trauma and racism.” (§ 213.9.) The Comprehensive Plan gives specific examples of ways zoning decisions can work toward eliminating racial inequity, including “transportation, housing, employment, income, asset building, geographical change, and socioeconomic outcomes.” (§ 213.10.) The Applicant stated that the Application will further the goals around racial equity. Specifically, the change in zoning will facilitate the creation of a new development that will bring (1) market-rate and affordable housing; (2) help foster employment and business opportunities; and (3) sustainability features, all of which will serve the goal of creating healthy communities. First, the Project will create significant market rate and affordable housing, above what would be required as a matter-of-right. Second, the increased activity adjacent to the Metro station and the nearby 7th Street Commercial Corridor will foster opportunities for businesses and employment. Third, any development will trigger enhanced sustainability requirements, promoting a pedestrian-oriented streetscape and walkable environment, and contributing to healthy communities. (Ex. 3.)

43. The Applicant concluded that the Project is not inconsistent with the Comprehensive Plan when reviewed as a whole and is not inconsistent with any other adopted public policies or active programs related to the subject site, including Duke Plan, the Convention Center Plan, and Mayor’s Housing Order. (Ex. 3.)

The Project Has No Unacceptable Impacts on the Surrounding Area or on the Operation of District Services or Facilities (Subtitle X § 304.4 (b))

44. The Applicant prepared and submitted a Comprehensive Transportation Review (“CTR”). The CTR concluded that the Project will not have a detrimental impact on the surrounding transportation network assuming the proposed site design elements and Transportation Demand Management measures are implemented. The CTR noted that the Project has several positive design elements that minimize potential transportation impacts, including:

- The Site’s proximity to bicycle facilities and transit access;
- The enhancement of pedestrian facilities along the site frontage and along pedestrian routes to high-frequency bus stops;
- The addition of both short-term and secure long-term bicycle parking at the site;
- The expansion of an existing Capital Bikeshare station and the provision of a public bicycle maintenance station; and
- A Transportation Demand Management Plan (“TDM”) that reduces the demand of single-occupancy, private vehicles and promotes non-vehicular modes of travel. (Ex. 22A.)

45. In addition, the CTR included a TDM, which included the following elements:

- Unbundling of residential parking costs;
- Identifying Transportation Coordinators (who will receive TDM training from goDCgo) to act as a points of contact with DDOT, goDCgo, and Zoning Enforcement;

- Transportation Coordinators will provide information to goDCgo annually and will conduct an annual commuter survey of employees and residents on site;
- Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications;
- Provide 66 long-term and 16 short-term bicycle parking spaces, with a minimum of 44 long-term spaces provided horizontally on the floor of the storage room;
- Install a minimum of two electric vehicle (EV) charging stations;
- Provide a bicycle repair station in each long-term bicycle parking storage room;
- Provide six collapsible shopping carts (utility carts) to encourage walking to grocery stores and other errands;
- Fund and construct two floating curb extensions subject to DDOT approval;
- Hold a transportation event for residents, employees, and community members once per year for three years;
- The Applicant will post all TDM commitments on the Project's website and will publicize the commitments; and
- The Applicant will provide welcome packets to all new residents with information on transportation options, including the Metrorail pocket guide, brochures of local bus lines, carpool and vanpool information, Guaranteed Ride Home brochure and the most recent DC Bike Map. (Ex. 22A.)

46. The Applicant carefully studied the Project's potential impacts and provided evidence into the record that the Project has no unacceptable adverse impacts on the surrounding area or on the operation of District services or facilities that cannot be mitigated or that are not acceptable in light of the Public Benefits.

- Zoning and Land Use Impacts. The Project has no unacceptable zoning or land use impacts on the surrounding area and any impacts are instead either favorable, capable of being mitigated, or acceptable given the quality of Public Benefits in the Project. This Application proposes a Zoning Map Amendment to rezone the Property from the existing RA-4 zone to the MU-8A zone, which is consistent with the designation for the Property in the Comprehensive Plan and compatible with the zoning and actual land uses for surrounding blocks and the Shaw neighborhood. From a land use perspective, the Project creates no unacceptable impacts on the surrounding area. Any impacts from the Project's proposed land use are either favorable, capable of being mitigated, or acceptable given the quality of the significant Public Benefits included as part of the Project. The Project's multifamily residential uses are entirely appropriate given the Property's proximity to transit and other surrounding multifamily residential uses. Moreover, the Project's creation of a thoughtfully designed relationship to public pedestrian space and the surrounding public streets also has favorable land use impacts. To the extent there are any ancillary unfavorable impacts arising out of the Project's land uses, such impacts are either mitigated by the Project's design or offset by the quality of the Public Benefits, and in particular the quantity of new mixed-income housing proposed;

- Housing Market Impacts. The Project’s addition of new housing and affordable housing is a favorable impact. The Project creates new, high-quality, transit-accessible housing units on an underutilized parcel. Such units are in high demand across the District. The addition of new housing also has favorable impacts by adding residents to support the nearby commercial uses and recreational areas. The Project’s inclusion of permanently affordable units has favorable impacts because it helps address the District’s ongoing affordable housing shortage in an inclusive, mixed-income community and not one that overly concentrates affordable housing in one location. The Project’s addition of new housing units helps buffer increasing housing costs, insofar as increasing the supply of housing is widely understood to dampen rent increases. In addition, the Court of Appeals has concluded that the presence of the IZ program itself mitigates potential negative housing market impacts;⁴
- Construction-Period Impacts. During the construction period for the Project, impacts on the surrounding area are capable of being mitigated. The Applicant has experience successfully completing construction projects in infill locations while ensuring minimal disturbance to any neighboring properties. The Applicant will work with the ANC on the creation of a Construction Management Plan that will address potential construction impacts and will be submitted to the Commission prior to the public hearing in this case;
- Open Space, Urban Design and Massing Impacts. The Project favorably improves upon the existing conditions with respect to the relationship between the proposed buildings, proposed open spaces, and the urban design of the Project. The Project creates a strong presence along R, 8th and S Streets, N.W., largely avoiding blank walls, relocating all parking below grade, providing high quality landscaping and streetscaping, and creating a pedestrian-first condition;
- Design and Aesthetic Impacts. The Applicant anticipates the Project’s design and architecture having a significantly favorable outcome and no unacceptable impacts. The Project incorporates the highest-quality architecture and design. The contemporary and timeless building design replaces tired and dated garden apartments and is emblematic of new investment in the Property. This is accomplished without appearing out-of-place among the mix of historical, mid-century, and faith-oriented buildings surrounding the Property. The Project continues the contemporary, yet historically compatible, architectural vocabulary that is emerging in the Shaw neighborhood. The emerging vernacular establishes a high baseline of quality of design and finishes expected for projects in the vicinity. The Project’s landscaping and public realm detailing have a strongly favorable impact on surrounding areas, further contributing to the sense of place in the neighborhood. The Project’s overall design and its details strongly reinforce and strengthen the character of the surrounding residential areas and are favorable for the neighborhood;

⁴ *Cole v. District of Columbia Zoning Comm’n.*, No. 17-AA-360 (D.C. Jun. 27, 2019) (“In short, mitigation of the potential displacement of low-income residents through gentrification and market pressures is taken into account in the Zoning Commission’s IZ regulations” and “the proposed PUD’s compatibility with the [Area Element] development policy and with the [Small Area Plan] enable us to discern the agency’s path: a recognition that the pressures of gentrification are inevitable, but can be mitigated through inclusionary zoning and through the types of programs discussed in [the Small Area Plan], rather than avoided by having underutilized property remain as it is.”).

- Transportation and Mobility Impacts. The proposed Project does not have any unacceptable impacts on the public transportation facilities or roadways that it relies on for service. Instead, the Project’s transportation impacts are either capable of being mitigated or acceptable given the quality of Public Benefits arising from the Project. The Project’s vehicular traffic impacts are strongly mitigated by its transit options. The Project is well-served by pedestrian, bicycle, transit and vehicular infrastructure, and the Project does not introduce adverse impacts on any system. As noted, the Metrorail station, a Metrobus stops, and a Capital Bikeshare station are all immediately adjacent to the Property, and it is expected that many of the Project’s residents will use public transit. The Property has a WalkScore of 99, and a BikeScore of 98 (which indicates “excellent bike lanes”).⁵ The Project’s favorable pedestrian, bicycle, and transit access help mitigate any expected traffic concerns. The Project also contains 93 below-grade vehicle parking spaces to accommodate the parking demand of residents. Bicycle usage is also thoughtfully integrated into the design of the Project, with long-term spaces in a dedicated and easily accessible ground floor storage room and short-term spaces provided in public space. The Project makes reasonable accommodations for those who choose to or must drive and ensures that parking demand does not adversely interfere with the on-street parking supply. The Project provides sufficient new off-street parking to serve residents, but not so much parking as to induce unnecessary driving;
- Economic Impacts. The Project likely has favorable economic impacts on the neighborhood and the District more generally. The Project will have a stabilizing and positive effect on the economy of Ward 2 and the District as a whole. The introduction of new residential uses contributes patrons for the existing businesses along the 7th Street Commercial Corridor. The Project will have positive tax revenue effects for the District. To the extent there are any adverse effects from the Project, such effects are more than offset by the Project’s Public Benefits;
- Cultural and Public Safety Impacts. The Project has favorable impacts on the culture of the surrounding area and on public safety. The Project adds many new residents who will contribute to the immediate neighborhood and the District in diverse and meaningful ways. The infilling of the Property helps complete the neighborhood and signifies investment and stewardship of the neighborhood. The design of the Project adds street activity, promotes “eyes on the street”, adds quality lighting, and makes other improvements all of which have positive effects on crime deterrence;
- Water Demand. The average daily water demand for the Project will be able to be met by the existing District water system or through upgrades undertaken in conjunction with this Project. The proposed connection for the fire and residential water supply is from within the existing distribution system and will be coordinated with DC Water;
- Sanitary Sewer Demand. The proposed sanitary sewer discharge for the Project will be made from the existing distribution system and will be coordinated with DC Water during the permitting process;
- Stormwater Management. The Project has been designed to achieve high levels of on-site stormwater retention. The proposed bio-retention and green roofs are designed to

⁵ The WalkScore and BikeScore are based on an algorithm using geographic data to rank a neighborhood’s non-vehicular mobility. See WALKSCORE, *1707 8th Street Northwest* <https://www.walkscore.com/score/1707-8th-st-nw-washington-dc-20001> (last visited February 14, 2022).

meet or exceed DOEE stormwater management retention and detention requirements. The requisite inlets and closed pipe system are designed and will be constructed to meet the standards set by DOEE, DC Water, and DDOT;

- Solid Waste Services. Solid waste and recycling materials generated by the Project will be collected regularly by a private trash collection contractor;
- Electrical Services. Electricity for the new Buildings will be provided by the Potomac Electric Power Company (“Pepco”) in accordance with its usual terms and conditions of service. All electrical systems are designed to comply with the D.C. Energy Code;
- Energy Conservation. The Project is designed in compliance with the Energy Conservation requirements of the District of Columbia Building Code. Conformance to code standards minimizes the amounts of energy needed for the heat, ventilation, hot water, electrical distribution, and lighting systems contained in the building;
- Erosion Control. During excavation and construction, erosion on the Property will be controlled in accordance with District of Columbia law and will be managed so as to not adversely affect neighboring properties, the environment or District services and facilities;
- Environmental Impacts. The Project does not have any unacceptable impacts on the environment, and instead has favorable impacts. The Project is designed to achieve high levels of environmental performance as evidenced by its satisfaction of the LEED Gold design standards. The Project’s delivery of high-quality environmental design as well as usable outdoor spaces is a net improvement and superior to what would be achievable via a matter of right development;
- Public Schools. The Project is highly unlikely to have an unacceptable impact on schools in the District given the size of the Project, its mix and type of units, and the capacity for the District’s nearby schools to take on additional students. The Project is within the boundaries of Cleveland Elementary School at 1825 8th Street, N.W. and the Cardozo Education Campus at 1200 Clifton Street, N.W.⁶ In addition, several private and charter schools are near the Project, offering educational options to residents who may seek alternatives to the neighborhood public schools. The Applicant expects that the school network will be able to accommodate, without any unfavorable impacts, the school-age children that may reside at the Project; and
- Parks/Recreation Centers/Library Services/Emergency and Health Services. The Project has no adverse impacts on District services, such as parks, recreation centers, public libraries, and emergency and health services. To the extent the Project’s future residents are new to the District, they will be contributing new tax dollars, both in the form of income taxes and through the indirect payment of property taxes associated with the Project, that facilitate the provision of District-run services. To the extent the Project’s future residents are existing District residents, they have no net new impact. With its active roof deck with swimming pool, contemplative library terrace, and numerous outdoor areas, the Project has sufficient outdoor and recreation spaces to mitigate any potential adverse effects on nearby public outdoor spaces. More broadly, the National Mall and Rock Creek Park are an easy bike ride or jog from the Project. On balance, the Project is unlikely to have any adverse impacts on the District’s park

⁶ Enrollment Boundary Information System, D.C. PUBLIC SCHOOLS, <http://dcatlas.dcgis.dc.gov/schools>

services, and is instead likely to be a net positive contributor of park services. The surrounding neighborhood has a balanced mix of state of the art and new recreation facilities and libraries. Shaw Dog Park, Shaw Skate Park, French Street Park, Westminster Park, and the Kennedy Street Recreation Center are all within walking distance of the Project. The Project will include resident amenity areas, so it is unlikely that the Project's residents will have any adverse impacts on District-run recreation centers. Likewise, the nearby Shaw Neighborhood Library recently has been extensively renovated. There are approximately thirty public library branches or other public facilities in the District.⁷ That works out to approximately one library branch per 23,500 residents.⁸ An additional 317 residential units will not result in any adverse over-use or other adverse impacts on the District's library resources. The calculus for recreation centers is similar. There are approximately sixty-five public recreation centers in the District, for a ratio of approximately one center per 11,000 residents.⁹ It is not likely that the Project's addition of 317 residential units will result in any adverse over-use or other adverse impacts on the District's recreation centers, especially when the Project includes private recreation amenities. Finally, it is highly unlikely that the Project will adversely affect emergency services in the District. The District has approximately thirty engine companies spread around the District.¹⁰ As stated above, the Project alone does not require any increase in the number of stations or Fire and Emergency Services ("FEMS") personnel. The Applicant intends to engage in outreach with FEMS and the Metro Police Department during the PUD process to obtain any relevant feedback from those agencies and to confirm that those agencies do not anticipate any adverse impacts arising from the Project. (Ex. 3.)

The Project's Requested Zoning Flexibility (To Be Balanced Against Public Benefits (Subtitle X §§ 304.3 and 304.4(c))

47. The Applicant stated that the Project complies with Subtitle X §§ 304.3 and 304.4(c) and satisfies the PUD balancing test because the Project's public benefits described above in FF 40, primarily its contribution of additional affordable housing/family sized, three-bedroom units, and sustainable design justify the additional density under a PUD and the related Map Amendment from the RA-4 to the MU-8A zone. Additionally, the Applicant is not requesting any technical zoning flexibility, only special exception relief from rear yard requirements. (Ex. 3.)

⁷ See DC Public Library, *Hours and Locations*, <https://www.dclibrary.org/hours-locations> (last visited May 27, 2019).

⁸ According to a December 2018 report from the Office of the Chief Financial Officer, there were 702,455 District residents as of July 2018. See Office of the Chief Financial Officer, DISTRICT OF COLUMBIA ECONOMIC AND REVENUE TRENDS: DECEMBER 2018 at https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/Economic%20and%20Revenue%20Trends%20Report_December%202018.pdf

⁹ See Dep't. of Parks and Recreation, *Recreation Centers* <https://dpr.dc.gov/page/recreation-centers-00> (last visited May 27, 2019).

¹⁰ See Fire and EMS Department, *Fire and EMS Locations* <http://geospatial.dcgis.dc.gov/FEMSLocator/> (last visited May 27, 2019).

RESPONSES TO THE APPLICATION

Government Reports

OP Reports

48. As noted in FF 32, OP submitted a Setdown Report (Ex. 11). The OP Setdown Report;
- Recommended that the application be set down for a public hearing, as the Project would not be inconsistent with the Comprehensive Plan, the Duke Plan, or the Convention Center Area Strategic Development Plan;
 - Noted that the proposed development would not be inconsistent with the Comprehensive Plan’s Future Land Use Map designation of Mixed-Use Medium Density Commercial / Medium Density Residential and the Generalized Policy Map’s designation of the Property in a Neighborhood Enhancement Area;
 - Noted that the proposed development is not inconsistent with various policies of the following Citywide Elements of the Comprehensive Plan, including the: Land Use Element; Transportation Element; Housing Element; Environmental Protection; and Urban Design Element. The OP Setdown Report also concluded that the Project would further numerous policies of the Near Northwest Area Element; and
 - Concluded, “[w]hen evaluated through a racial equity lens, the proposed project would not be inconsistent with the Comprehensive Plan. The PUD would redevelop an underutilized and unoccupied site immediately next to metro, providing housing options – including a significant amount of affordable housing and family-sized units – with transit access and the ability to reach major employment areas either on transit or by biking or walking. Creating affordable housing has the potential to benefit populations of color who on average have lower income than white residents. The new building could enhance the streetscape and the metro plaza and provide additional residents to support nearby businesses.”
49. In its report to the Commission in advance of the public hearing dated October 11, 2022 (“OP Hearing Report”), (Ex. 27.), OP:
- Recommended approval of the application;
 - Detailed the Applicant’s responses to comments from OP as well as the Commission. The OP Hearing Report also noted the changes that were made to the Project in response to the set down comments from OP and the Commission, including a slight increase in ground floor lot occupancy, an increase in long-term bicycle parking spaces from 78 to 88, the addition of balconies on some elevations, and clarification on the location and amount (700 square feet) of solar panels on the roof;
 - Stated the following with respect to racial equity and displacement:
“When evaluated through a racial equity lens, the proposed project would not be inconsistent with the Comprehensive Plan. The PUD would include the redevelopment of an underutilized and unoccupied site, providing housing options – including a significant amount of affordable housing and family-sized units. Creating affordable housing has the potential to particularly benefit populations of color who on average

have lower incomes than white residents. Data indicates that the site is within a planning area that has a higher-than-average number of job opportunities which would be available to residents of the building via transit, or by biking or walking. The new building could enhance the streetscape and the metro plaza and provide additional residents to support nearby businesses.

According to the application, leasing of the existing apartments ceased a number of years ago and they are now vacant, so the new construction would not result in the displacement of any existing residents. The additional residents would also support local businesses, many of which were hard hit by the Covid shut downs, so this project would help support opportunities for employment and amenities in the neighborhood;”

- Stated that the requested PUD-related map amendment from the RA-4 zone to the MU-8A zone is not inconsistent with the Comprehensive Plan, including the FLUM designation of Medium Density Commercial/Medium Density Residential;
- Further stated that the requested special exception relief from rear yard requirements to allow balconies on the alley side of the building is a slight deviation in rear yard depth and should not impact nearby properties. The balconies would have a rear yard setback of 15 ft. 7 in, instead of the required 19 ft. 1 in. and the balconies would be 7 ft. 7 in. from the property line;
- Concluded, “[i]n total, the benefits and amenities would be commensurate with the amount of flexibility sought through the PUD process, and the proffers are acceptable in all of the proffered categories;” and
- Finally, the OP Hearing Report noted the following comments from the Department of Energy and Environment (DOEE), the Department of Housing and Community Development (DHCD), and the Department of Public Works (DPW), included as an attachment to the OP Hearing Report. DOEE suggested a number of ways to make the Project more sustainable. DHCD asked that the Applicant commit that the percentage of IZ units and market rate units with balconies/terraces be similar. DPW indicated that the proposal should not impact its collections.

50. On November 17, 2022, OP filed a report (“OP Post-Hearing Report”) (Ex. 47.) providing additional planning context and policy background in response to OAG’s testimony at the public hearing:

- The OP Post-Hearing Report detailed how the Project complies with and furthers the goals of the Convention Center Area Strategic Development Plan, as (i) vouchers were provided to tenants when their Section 8 contracts expired and (ii) the site provides significant affordable, transit-oriented housing. The OP Post-Hearing Report quoted portions of the Convention Center Area Strategic Development Plan (SDP) that emphasized that a property owner’s continued participation in the Section 8 program is voluntary, the property owner can elect not to continue with the program when the contracts expire, and tenants are eligible for vouchers for new housing when they do expire, as follows:
 - “Page 16 of the SDP includes a discussion about at-risk Section 8 housing in the planning area. The testimony emphasized a portion of a sentence from that page of the plan that states “The District is committed to helping residents protect the current units[...]”. (Ex. 37A, slide 3.) But the second half of that sentence

acknowledges the limited ability of government to solve affordable housing problems on its own by stating “but it is ultimately the property owner[‘s] decision to extend the [Section 8] contract.”; and (OP Post-Hearing Report at 1.)

- “Earlier in that same paragraph the SDP also recognizes the District’s limited role in maintaining Section 8 housing: “Section 8 contracts are between a private property owner and the Federal government, limiting the influence of the District government in preserving affordable housing through this program.” The SDP notes, however, that when Section 8 contracts expire, tenants are eligible for vouchers for new housing, and testimony at the hearing indicated that vouchers were provided to tenants.” (OP Post-Hearing Report at 2.);
- The OP Post-Hearing Report reiterated that the Project is not inconsistent with the Comprehensive Plan Housing Element policies of § 510.4a, as the Project would have more 3-bedroom units than the existing buildings on the Property, and about the same total number of affordable units which would now be permanently set aside as affordable; (OP Post-Hearing Report at 2-3.)
- The OP Post-Hearing Report also noted that the Project falls within the Rhode Island Avenue sub-area of the Duke Plan. In addition, the OP Post-Hearing Report reiterated that the Project is consistent with the Comprehensive Plan, as the Applicant took measures to prevent resident displacement and now has committed to providing additional 3-bedroom units in the Project beyond what existed prior;
- The OP Post-Hearing Report also stated that the Project furthers policies of the Housing Element, including encouraging private sector provision of housing, higher density near transit, development of underutilized land, and zoning incentives to promote additional affordable housing.
Specifically, the Housing Element seeks to encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives (Policy H-1.1.1), and it encourages higher density near transit (Policy H-1.1.2). The Housing Element also recommends new development on underutilized land, in order for the District to meet its long term housing demand (Policy H-1.1.3). The Comprehensive Plan also emphasizes the need for family-sized units (Policy H-1.1.9) and recommends zoning incentives for providing a quantity of affordable housing in excess of the normal requirements (Policy H-1.2.7); (OP Post-Hearing Report at 3.)
- The OP Post-Hearing Report notes that the OAG testimony referenced the PUD evaluation standards, with Exhibit 37A referring to sections of Subtitle X, Chapter 3, which indicate that PUDs must be superior to matter-of-right development to substantiate OAG’s argument that the quantity of IZ provided with a PUD must exceed the amount provided with IZ Plus. The OP Post-Hearing Report explains that in fact, IZ Plus does not apply to PUDs and PUDs were specifically excluded from the IZ Plus program in recognition of the fact that PUDs provide a range of benefits, in addition to affordable housing; and (OP Post-Hearing Report at 4.)
- Finally, the OP Post-Hearing Report concluded that the Project’s large supply of affordable housing, along with its architectural design, and environmental benefits, render the Project not inconsistent with the Convention Center Area Strategic Development Plan, the Duke Plan, and the maps and text of the Comprehensive Plan.

Further, the Application meets the PUD evaluation standards as outlined in Subtitle X, Chapter 3, including the total package of benefits, inclusive of the IZ proffer, and is commensurate with the degree of flexibility sought by the PUD process. (OP Post-Hearing Report at 5.)

DDOT Report

51. On October 11, 2022, DDOT filed a report regarding the Project. DDOT's report analyzed the Project's site design, the travel assumptions made in the Applicant's CTR, the sufficiency of the parking and loading provided in the Project and the mitigations proposed by the Applicant. The DDOT report noted:

- Access to both vehicle parking and loading will occur from the rear public alley, consistent with DDOT standards and best practices;
- The Project meets or exceeds all zoning requirements and DDOT standards for vehicle parking, short-term bicycle parking, and loading facilities. However, the long-term bicycle parking does not meet the 18 DCMR 1214 requirement of 1 space for every 3 units and should be updated in both the TDM and on the plan set;
- The Project is providing an excellent (low) vehicle parking ratio of 0.29 spaces per unit, which is appropriate given the site is immediately adjacent to the Shaw/Howard U Metrorail Station;
- The CTR study with Traffic Impact Analysis was not required; and
- The Applicant's TDM Plan, in conjunction with curb extensions on 8th Street at R and S Streets, is sufficiently sufficient to encourage non-auto travel, so long as the TDM plan is updated to correct the long-term bike parking total to 106 spaces.

DDOT's report stated no objection to the Application with the following condition:

The Applicant will implement the TDM Plan as proposed in the September 20, 2022 CTR (Ex. 22A.), for the life of the project, unless otherwise noted, with the following revisions:

- Increase the long-term bicycle parking total from 88 to 106 spaces to meet the 18 DCMR 1214 requirements and update the number of horizontal spaces, cargo spaces, and electrical outlets accordingly. (Ex. 26.)

52. In response to the items in DDOT's report, the Applicant committed to increasing the number of long-term bicycle parking spaces from 88 to 106. (Ex. 32.)

ANC 6E Reports

53. On May 5, 2022, ANC 6E submitted the Office of Zoning's ANC setdown form which indicated that the ANC voted in favor of the Commission setting the case down for a public hearing at a duly noticed public meeting on March 5, 2022, with a quorum present, by a vote of 7-0-0. (Ex. 12.)

54. On July 11, 2022, ANC 6E filed a resolution in support of the Project into the record of the case. The ANC resolution stated that at a duly noticed public meeting on July 5, 2022, with a quorum present, ANC 6E voted 4-1-0 to support the PUD application. The ANC resolution noted that the application included the following community benefit package:
- Superior urban design: balconies and outdoor spaces, high-quality materials, architectural details;
 - Housing in addition to what would be permissible through matter-of-right development;
 - 7% additional residential gross floor area will be reserved as Inclusionary Zoning units, in addition to the required 8% for a total of 15% IZ units;
 - 16 three-bedroom units;
 - LEED Gold certification;
 - 700 square feet of Photovoltaic systems on the roof;
 - Bump-out curbs are added to the southeast corner of 8th and S Street N.W. and northeast corner of 8th and R Street N.W.;
 - Three additional plates for the Capital Bikeshare Station at 8th and Q Street N.W.; and
 - Donations to the following organizations:
 - \$20,000 to the Friends of Shaw Library;
 - \$20,000 to Shaw Community Center;
 - \$20,000 to Judah Project;
 - \$15,000 to the Kennedy Recreation Center;
 - \$15,000 to Citizens Organized Patrol Efforts (COPE);
 - \$5,000 to Westminster Street Playground; and
 - \$5,000 to the Shaw Dog Park.

The ANC thanked the Commission for giving great weight to its recommendations. (Ex. 19.)

ANC 1B Reports

55. ANC 1B did not submit a written report to the case record.

OAG Report

56. On October 19, 2022, the Office of the Attorney General (OAG) filed a report and presentation detailing its concerns regarding the Project. Specifically, OAG argued that the Project provided insufficient affordable housing and insufficient anti-displacement measures. OAG argued that the Application does not include the strategies the Comprehensive Plan states should be used address the District's affordable housing crises and displacement concerns. OAG also argued that the IZ affordable housing proffer should be increased to at least the equivalent of the IZ Plus formula to require increased affordable housing for the increased density the upzone to MU-8A will allow. In support of its arguments that the Project does not include Comprehensive Plan strategies to address displacement, OAG cited several policies related to expiring Section 8 Housing contracts: a Comprehensive Plan Housing Element policy, 10A DCMR § 510.4a, a Near Northwest

Area Element policy, 10A DCMR § 2111.15, and a policy from the Convention Center Area Strategic Development Plan (2006). In support of its arguments that the affordable housing proffer is insufficient, OAG cited two policies from the Framework Element 10A DCMR §§ 224.7 and 224.9, and two Zoning Regulations, namely 11-Z DCMR §§ 300.1 and 305.2. In conclusion, OAG recommended an increased IZ set aside as well as additional measures such as one-for-one replacement of affordable units, a right of return for displaced tenants, and relocations plans for future zoning applications. (Ex. 37A.)

Party in Opposition

57. The Party in Opposition, ONEDC, made the following submissions to the record.

- (a) On October 19, 2022, ONEDC submitted a party status application. (Ex. 31, Ex. 31A.)

ONEDC stated that its members and volunteers are former tenants of the Property or current residents of the nearby property, Heritage at Shaw, which is owned by the Applicant. ONEDC asserted that its members were displaced by the Applicant when the Section 8 contract ended at the Property, that former tenants of the Property should be eligible for a right of return, and that the Commission's approval of the Application lays the groundwork for future coercive displacement of residents of the Heritage at Shaw. ONEDC described the adverse impacts of approval of the Application as follows:

- i. Social costs of seeing former longtime residences demolished with no right of return or other compensation;
 - ii. Environmental and health costs of air quality, construction-related noise, and other construction-related hazards with no compensation;
 - iii. Social costs (also noted by OP) associated with the lack of community usable space along the metro side of the building;
 - iv. Costs associated with application fees to move back onto the new property that would not have been levied had right of return been included as required by the Comp Plan;
 - v. Social costs related to an increased fear of displacement among residents of Heritage at Shaw;
 - vi. Economic costs including moving-related costs should residents of Heritage at Shaw be subject to the same coercive tactics previously deployed by Applicant at the site of this request; and
 - vii. All potential future costs to party and the historic Shaw community associated with displacement of residents of the existing low-rise Heritage at Shaw buildings (801–811 R St N.W.); (Ex. 31, Ex. 31A.)
- (b) In addition, ONEDC stated that its witness testimony at the public hearing would reflect the following from former tenants of the Property: the desire for a right to return to the newly built Property consistent with the Comprehensive Plan; evidence of displacement from the Property through deceptive tactics and power

differentials by the Applicant to coerce tenants to vacate the Property in violation of the Comprehensive Plan; and evidence that the proposed Application will result in racial equity harms and further displacement because it will replace affordable family sized units with unaffordable market rate studio and one bedroom apartments that will not accommodate Black working class families; (Ex. 31, Ex. 31A.)

- (c) On November 17, 2022, ONEDC submitted a letter describing its post-hearing meeting with the Applicant and the Applicant's failure to address several of its requests and concerns. Namely, the Applicant's refusal to secure a right of return to former tenants of the Property to a comparable unit set aside for them, over and above the proposed IZ units (without redoing the application process). And ONEDC's disagreement, with both the Applicant's characterization of the Property's vacancy as the result of "natural attrition," and overall communication with Heritage at Shaw tenants regarding the Application; (Ex. 46.)
- (d) On December 8, 2022, ONEDC submitted proposed findings of fact and conclusions of law asserting the following arguments:
 - i. The Application is inconsistent with the Comprehensive Plan goals and strategies set forth in Housing Element § 510.4a regarding redeveloping income-restricted affordable housing and minimizing displacement, and in Near Northwest Element § 2111.15 regarding expiring public housing contracts because the former tenants of the Property were not guaranteed a full right of return to the redeveloped Property and the proposed Project would not include an equivalent number of replacement affordable units; and
 - ii. The Application's proposed mitigations and public benefits and amenities do not meet the PUD balancing test of Subtitle X § 304.4 because they do not address the adverse impacts and harm already caused by displacing at least 50 tenants from the Property through deceptive tactics and approval of the Project would create more displacement risk for Heritage at Shaw tenants and other tenants nearby; (Ex. 50.)
- (e) Several individual members of ONEDC, listed below, submitted written testimony in opposition of the Application. The opposition testimony describes struggles with displacement and concern regarding potential future displacement, the need to maximize a right of return for tenants to their community, and the need for larger family-sized units:
 - i. Janice Underwood (Ex. 33.)
 - ii. Dominique Dubain (Ex. 35.)
 - iii. Lauren Kaleta (Ex. 36.)
 - iv. Keren Carter. (Ex. 38.)¹¹

¹¹ Ms. Carter's testimony was submitted as Ex. 38. Subsequently, another document was erroneously substituted in the official case file.

Persons in Support

58. Five letters in support were submitted into the record of the case, including one from Ward 2 Councilmember Brooke Pinto. In general, these letters noted support for the Project due to the provision of high-quality multifamily housing, including affordable units; the replacement of vacant buildings and surface parking with sustainable, attractive architecture; and the Applicant's actions seeking and responding to community input. (Ex. 21, 23, 25, 28, 34.)
59. Shaw Main Streets, Inc. and Friends of Watha T. Daniel/Shaw Neighborhood Library submitted comments in support of the Project. Ward 6 Councilmember Charles Allen submitted a letter of support into the record. The Shaw Main Streets, Inc. letter noted that its support is based on the Project's contribution to economic diversity in the area, its respectful height, its quantity of parking, as well as increased safety due to more foot traffic. Friends of Watha T. Daniel/Shaw Neighborhood Library noted in its letter that the Project would increase library patronage, and that the massing and design were sensitive to the surrounding neighborhood. (Ex. 40, 41.)
60. Theodosia Robinson, a nearby long-term resident and former President of the Lincoln Westmoreland II Tenant Association, testified in support of the Project at the October 20, 2022 hearing. In addition, following the hearing, Ms. Robinson, submitted testimony into the record in support of the Project. Ms. Robinson noted in her testimony that she supports the Project because it will deliver both market rate and affordable housing with a range of unit's sizes to accommodate many types of renters. (Ex. 43.)

Persons in Opposition

61. One individual testified in opposition to the Project at the public hearing.
62. Alex Lopez (an ANC 6E Commissioner, testifying on his own behalf and not on behalf of the ANC) testified that he believes the community benefits proffered are inconsistent with the Comprehensive Plan in regard to affordable housing and anti-displacement measures, noting that he is concerned the PUD process is being used by developers to avoid IZ Plus requirements. Mr. Lopez also noted that the parking spaces provided in the Project exceeds the minimum amount required, which fails to discourage car ownership in a transit-oriented space. Mr. Lopez also submitted a letter in opposition that expanded upon these concerns. (Ex. 30.)

PUBLIC HEARING OF OCTOBER 20, 2022

63. On October 20, 2022, the Commission held a duly-noticed public hearing in accordance with its rules and regulations. The Applicant presented one witness on behalf of the Applicant (Mr. Jamie Weinbaum, Executive Vice President of Mid-City Financial Corporation) and three experts: Mr. J.B. Lallement as an expert in architecture, Mr. Daniel Solomon as an expert in transportation analysis and engineering, and Mr. Shane Dettman as an expert in land use and zoning. The Commission accepted Mr. Lallement, Mr.

Solomon, and Mr. Dettman as experts in their respective fields. Thereafter, the Applicant's representatives and the experts presented testimony about the Project.

64. Mr. Weinbaum testified that the Project transforms an existing vacant property into a thriving and exciting new residential community adjacent to the southern entrance to the Shaw/Howard University Metro Station and a half block away from the 7th Street Commercial Corridor. Mr. Weinbaum reviewed highlights of the Project, including that 48% of units have access to a balcony, terrace or areaway, that 15% of the residential floor area will be reserved as IZ units, and that the Project's 317 units include 16 three-bedroom units and 47 two-bedroom units. Mr. Weinbaum also noted that the net increase in the overall number of residential units on the property, and the creation of permanently affordable units – where none exist today – are significant improvements over the existing conditions. Mr. Weinbaum highlighted other project benefits, including LEED Gold, rooftop solar panels, three Capital Bikeshare expansion plates for the existing station located adjacent to the property, and the installation of a public bicycle maintenance station adjacent to the short-term bike parking provided along 8th Street, N.W. Mr. Weinbaum also noted the support of ANC 6E and the Westminster Neighborhood Association.
65. Mr. Lallement provided an overview of the Project's design, massing, façade, architectural features, floor plans, materials, and unit mix. He noted that the building's massing, which includes a 30-foot setback on the north side and a 10-foot setback on the west side, aims to respond to the geometry of the site as well as adjacent buildings. Furthermore, recessed balconies cut the façade into smaller elements to reflect surrounding buildings. Mr. Lallement testified how, in response to OP comments, the design team modified the perceived length of the building on 8th Street N.W. The Applicant also adjusted the balconies to provide more visual consistency. Mr. Lallement noted how the design team also refined the materials, including similar colors, to establish continuity between the northern and southern portions of the building.
66. Mr. Solomon testified to the Applicant's coordination with DDOT through the PUD process. Mr. Solomon noted that the Applicant agreed to DDOT's proposed modifications to the TDM Plan to increase the long-term bicycle parking total from 88 to 106 spaces.
67. At the public hearing, the Commission asked the Applicant about racial equity. The Applicant responded that the Project will not have any negative impacts on racial equity, and the production of permanent affordable housing with a 15% IZ set aside will further the District's racial equity goals.
68. The Commission also asked about the natural attrition of the vacant buildings on the Property. In response, Mr. Weinbaum explained how the Property's Housing Assistance Payment ("HAP") contract¹² expired in 2013, and all residents were given enhanced vouchers. The Property continued as a market-rate residential building, which included some residents who used the vouchers. Mr. Weinbaum stated that natural attrition occurred when the building stopped leasing, and it accelerated during the pandemic. The Applicant

¹² A HAP contract is also known as a Section 8 contract.

also offered residents the opportunity to move across the street to newly renovated units at the Heritage at Shaw Station site, as well as other locations in the District. Mr. Weinbaum emphasized that, throughout this time, the Applicant continued to maintain the building and meet its property management obligations.

69. In addition, the Commission asked the design team for clarification on the Project's window design. Mr. Lallement responded that the saw tooth windows highlight the jewel box feature of the south portion of the building. Mr. Lallement highlighted how the angled saw tooth windows provide for a different type of reflection and incorporate ventilation in a manner not visible to the public.
70. The Commission also asked about the color of the brick material. Mr. Lallement responded that the design team aimed to tie the northern and southern portions of the building with consistent colors. Additionally, the shadows of the lighter-toned brick emphasize the building's unique façade.
71. On behalf of OAG, Ms. Lily Bullitt testified in opposition to the Application. Ms. Bullitt argued that if IZ Plus was applied to the project, 55,999 SF of affordable housing would be required. This analysis utilized the bonus density (7.2 FAR) that is only achievable through the PUD Process. Ms. Bullitt also argued that the Application was not consistent with the Comprehensive Plan as there is an insufficient preservation of existing dedicated affordable housing and insufficient anti-displacement measures. Ms. Bullitt's testimony referred to the Comprehensive Plan's Housing Element and provisions in the Housing Element related to the redevelopment of expiring Section 8 Housing.
72. On behalf of the Party Opponent, ONEDC, four former residents of the units on the Property (Keren Carter, Janice Underwood, Nadia Johnson, and a resident who wished to remain anonymous whose testimony was read by Haley Clasen of ONEDC), described their experiences relocating to units across the street from the Property.
73. In the Applicant's rebuttal testimony, Mr. Dettman testified that the requirements of the IZ Plus program do not apply to this application, as IZ Plus only applies to Zoning Map Amendments that are pursued as standalone map amendments under Subtitle X § 502 (See 11-C DCMR § 1001.2(a)(3)). Mr. Dettman further noted that the Map Amendment regulations specifically state that the "IZ Plus shall not apply to a map amendment that is related to a PUD application." (See 11-X DCMR § 502.2(a).) Mr. Dettman also noted that during the development of IZ Plus, the Office of Planning explained that IZ Plus does not apply to a PUD because the affordable housing public benefit is part of the overall negotiation of a PUD's public benefits and project amenities proffer. (Ex. 44.)
74. Mr. Dettman also addressed the inaccuracies of OAG's calculations of the amount of affordable housing that would be required in the Project if IZ Plus were to be applied. Mr. Dettman noted that OAG's analysis included the bonus density (7.2 FAR) that can only be achieved through the PUD process. Mr. Dettman provided an accurate analysis of IZ Plus for the proposed map amendment application and concluded that the IZ Plus set-aside requirement would be 26,145 square feet of gross floor area. Mr. Dettman noted that that

the IZ square footage in this Project is 39,820 sf (not including the penthouse and cellar). Therefore, the Project far exceeds the amount of affordable housing that would otherwise be required even under a standalone IZ Plus map amendment. (Ex. 44.)

75. Mr. Dettman emphasized that, under the Zoning Regulations, the PUD standard of review involves a comparison of the affordable housing proffer (39,820 square feet (not including the penthouse space) GFA at 60% MFI) to what would have been required under existing zoning (12,709 square feet GFA at 60% MFI). Mr. Dettman noted that the Project provides an additional 13,675 square feet of GFA of affordable housing above what would otherwise be required under IZ Plus. In addition, Mr. Dettman stated that the Project devotes a large portion of its PUD-related bonus density (31.4%) for affordable housing. (Ex. 44.)
76. At the public hearing, OP noted its support for the Project and rested on the record.
77. At the public hearing, DDOT testified it had no objection to the approval of the application and the TDM plan that was proposed by the Applicant at the Public Hearing, pending the revision to the number of bicycle spaces from 88 to 106.
78. At the conclusion of the public hearing, the Commission requested that the Applicant and ONEDC provide additional information in post-hearing submissions.

Post Hearing Submissions

79. On November 17, 2022, the Applicant filed a post-hearing submission, which addressed the Commission's requests for additional information. The Applicant's post-hearing statement addressed the following issues:
 - (a) Modifications to the ground floor of the southern façade to address southern exposure heat issues and activation of the adjacent Metro Plaza – The ground floor of the southern façade has been recessed by two feet to allow for the introduction of a series of 12” planters that will include a mix of bulbs and low plantings. This recessed area will break down the direct sunlight that enters the ground floor of the southern façade and helps soften the transition from the building's southern entrance to the adjacent Metro Plaza. The Applicant's design team believes that a two-foot setback is an appropriate distance to allow for a visual break from the upper-level façade, while discouraging potential loitering in this area; (Ex. 45 and 45A.)
 - (b) Refinements to the locations of the ground floor uses and “day-lighting” of fitness space – The Applicant's design team has refined the transit lounge and the configuration of the fitness center on the ground floor. The internal layout of the transit lounge has been modified to show the locations of the horizontal and vertical bike parking, as well as the cargo bike parking spaces and the bike repair stations. In addition, larger windows that have been added to the fitness center space along the alley. These larger windows will allow for significantly more daylighting of the fitness center space; (Ex. 45, 45A.)

- (c) Enhanced details and refinements to the overall landscaping plan – The Applicant provided more information regarding the hardscape and landscape details along 8th Street, N.W., including proposed entry paving patterns, proposed plantings, proposed groundcover, and integration of these elements with the bike parking and bike repair facilities. In addition, the Applicant provided details of the proposed landscape plantings in the recessed ground floor area of the south façade; (Ex. 45, 45A.)
- (d) Evaluation of the success of the repetition of the building facades and plinth design – The plinth is a consistent design element throughout the whole project with significant design variations. The design variations are responses to the different programs on the ground floor. These variations include large windows split between the residential first floor and cellar level at the northern façade along 8th Street, N.W., wide windows punctuated with a canopy at the main entrance of the building, tall windows at the amenity space to maximize daylight and to activate the southern façade along 8th Street, N.W., and recessed windows and built-in planters that help to breakdown the direct southern exposure of the façade facing the Metro plaza. These different design elements bring variety to the plinth façade design, but the use of a consistent color palette helps to maintain the plinth as a coherent design element that unifies the different articulations of the building; (Ex. 45, 45A.)
- (e) Evaluation of the light-colored brick used in the building – To demonstrate that the tan colored brick proposed for the building will wear well over time and is not as light as shown in some of the renderings, the Applicant submitted a materials board to provide a more accurate depiction of the tan colored brick (brick sample M-04); (Ex. 45, 45A.)
- (f) Analysis of the adequacy of the resident storage and trash chute capacity – The Applicant’s design team reviewed the appropriateness of the size of the resident storage facilities and the trash chute capacity and determined that no changes or modifications were necessary to the plans that were previously presented to the Commission. The Applicant provided a list of existing buildings of similar sizes and unit counts that have similarly sized storage spaces and trash chute capacity. The Applicant’s design team is not aware of any significant complaints from residents of those buildings related to these issues; (Ex. 45, 45B.)
- (g) Overall design of the southern end of the building – The Applicant and its design team reiterated their belief that the saw tooth windows are a distinctive architectural feature of the building, providing a truly “jewel box” corner element. The Applicant and its design team believe that the introduction of more balconies in the southern portion of the building detracts from the overall composition of this element of the building. The Applicant noted that 48% of the units in the building will have access to a balcony, terrace, or areaway. The Applicant’s design team also undertook further analysis of any energy efficiency benefits of the saw tooth window design compared to a design that includes more balconies. The Applicant’s

ultimate determination on this issue was that each approach had some energy efficiency benefits, but neither approach was significantly more energy efficient than the other. The Applicant and its design team also reviewed the possibility of providing balconies on the southern end of the building by pulling the building back on the upper floors. In order to provide an open and inviting balcony experience if the Metro Plaza site were to be developed, it would be necessary to set the upper floors of the southern end of the building back a distance of 20 feet. Such a setback would result in a significant loss of residential gross floor area, approximately 11,488 square feet (approximately 16 units), including a loss of approximately 1,717 square feet of IZ gross floor area (approximately three IZ units). As such, to retain the distinctive “jewel box” design of the southern end of the building and the avoid the loss of market-rate and IZ units, the Applicant did not propose to add additional balconies to the southern end of the building; (Ex. 45, 45A.)

- (h) Relocation of Former Residents – The Applicant provided insight into the process that was followed in making the former tenants of the 50 residential units that were located on the Property aware of their housing options and the steps that were taken to help those former tenants find new or renovated housing units within the same neighborhood. As noted at the public hearing, the HAP contract at the Property expired in 2013, and in 2016 the Applicant stopped leasing vacant units on the Property. Over the ensuing six years, all 50 units in the four buildings on the Property became vacant. During this time, the Applicant’s property management agent followed industry best practices in building maintenance, including providing property management services and maintenance to all occupied units, common areas, building systems, and building exteriors. The Applicant noted that as in the ordinary course of any multifamily apartment complex in the city, between 2013 and 2021 some tenants decided not to renew their leases and moved away. Some residents were offered renovated units as they became available in the buildings across the street from the Property, in the 800 block of R Street, N.W. The Applicant began the process of ending the leasing of the 50 units on the Property well after the expiration of the HAP contract that existed for over 30 years, and well in advance of filing the subject application.

Those tenants that moved from the Property to the buildings in the 800 block of R Street, N.W. did so voluntarily, on their own time frame as units were available, and without any promise of returning to the 1700 block of 8th Street, N.W. Tenants that moved from the Property to the 800 block of R Street, N.W. were relocated into newly renovated units, which included new cabinets, flooring, and appliances. Many of those tenants were provided relocation assistance to move from the Property to the 800 block of R Street, N.W. The Applicant noted that, given the 6-year period in which moves occurred, it did not have complete data on whether everyone received relocation assistance. At a minimum, the Applicant believes that moving costs were covered for most, if not all, tenants; (Ex. 45.)

- (i) Rent Levels of Previous Apartments on the Property – The Applicant provided information on the rent levels that existed for the previous apartments on the

Property. While the HAP contract was in effect, eligible leaseholders’ annual household income was restricted to the “low,” “very low,” and “extremely low-income” Section 8 categories. These income bands corresponded to the following area median income (“AMI”) categories: “low” - 80% of area median income; “very low” - 50% of AMI, and “extremely low” - 30% of AMI. After maintaining the Property as project-based affordable housing for 33 years, the HAP contract was released, and the Property converted to market rate housing in 2013. All tenants were given a one-year notice of the HAP contract expiration. The Applicant then facilitated all leaseholders in the Property in obtaining a tenant-based portable housing choice voucher from HUD/DCHA. This portable housing choice voucher allowed tenants to choose where they wanted to live, rather than the subsidy being tied to the Property. Even after the HAP contract expired, if a tenant wanted to remain on the Property, they could use their new portable housing choice voucher; (Ex. 45.)

- (j) Comparison of the Square Footage of the Previous Residential Units on the Property and the IZ Units Proposed in the Project – The Applicant provided a table comparing the unit sizes in the four garden style buildings previously located on the Property with the units in the Project:

	Previous Unit Size Site	Proposed IZ Unit Sizes
1 BR sf (avg)	590	634
2 BR sf (avg)	705	953
3 BR sf (avg)	795	1108

- (k) Location of the IZ Units - The Applicant relocated one of the proposed IZ units from the 7th floor to the 9th floor; (Ex. 45, 45A.)
- (l) Report on November 8, 2022 meeting between the Applicant and ONEDC – The Applicant stated that it met with ONEDC representatives on November 8, 2022. In that meeting, ONEDC representatives questioned representatives of the Applicant regarding the timing of when the ownership of the Property was changed. The only resident representative of the ONEDC party in attendance at the November 8, 2022 meeting, raised some concerns about property management issues in the buildings in the 800 block of R Street, N.W. That resident representative also noted that she was not a former tenant of the Property; (Ex. 45.)
- (m) Analysis of the Application’s Consistency with the Comprehensive Plan Strategies for Preserving Affordable Housing and Avoiding Displacement – The Applicant analyzed OAG’s assertions that the proposed PUD is inconsistent with specific policies of the Comprehensive Plan’s Near Northwest and Housing Elements that relate to the preservation of existing dedicated affordable housing and displacement of residents:

Preservation of Existing Dedicated Affordable Housing

OAG claimed the Project is inconsistent with § 2111.15 of the Near Northwest Element. This section of the Comprehensive Plan contains a recommended action related to the expiring public housing contracts, and specifically states:

“Action NN.W.-2.1.D: Expiring Public Housing Contracts: Implement the DC Housing Preservation Strike Force recommendations for expiring project-based public housing contracts within the Shaw area and beyond, recognizing the vulnerability of these units to conversion to market rate housing. Consider the redevelopment of these sites with mixed-income projects that include, at a minimum, an equivalent number of affordable units, additional market rate units, and measures to avoid displacement of on-site residents.”

The Applicant stated that the application is not inconsistent with Action NN.W.-2.1.D. The Applicant posited that this section of the Comprehensive Plan, or at least the first part of it, is not even applicable to the project, nor the Applicant. The first part of the action relates to “expiring” public housing contracts, not contracts that have long expired. The Applicant noted that the HAP contract for the 50 dwelling units located on the Property expired in 2013, and the Property converted to market-rate housing at that time. The Property continued to be leased as market-rate housing until it became fully vacant in 2021. To the extent the second part of the action is applicable, the Applicant noted that it is proposing a mixed-income development containing generally the same number of affordable units and additional market-rate units. The Applicant further noted that there will be no displacement of on-site residents since the Property has been vacant since 2021.

The Applicant also noted that Action NN.W.-2.1.D calls for implementation of the DC Housing Preservation Strike Force recommendations, which were prepared in November 2016. The six recommendations of the DC Housing Preservation Strike Force all involve actions to be taken by the District government. Generally, they include: (i) establishment of a “preservation unit” within the a District government agency, (ii) provision of seed funding to a public-private preservation fund, (iii) development of a small properties preservation and affordability program within DHCD, (iv) implementation of the District Opportunity to Purchase Act (DOPA), (v) advancement of preservation under the Tenant Opportunity to Purchase Act (TOPA), and (vi) creation of programs to allow low income senior renters to age in place. The Applicant noted that these actions are not intended to be taken by private developers. Finally, the Implementation Element action plan further demonstrates that Action NN.W.-2.1.D is not applicable to the proposed PUD or the Applicant. Rather, according to the action plan, DMPED, HFA, and DCH are the District agencies responsible for implementing the six recommendations of the DC Housing Preservation Strike Force. The D.C. Office of Zoning is not identified as being a responsible agency, nor is the Commission

identified as having a role in implementing Action NN.W.-2.1.D as part of its review of projects under the Zoning Regulations, including PUDs.

Strategies to Avoid Displacement

OAG asserted that the proposed PUD is inconsistent with § 510.4a of the Housing Element because the project lacks sufficient anti-displacement measures. Section 510.4a of the Housing Element includes a general discussion related to strategies for the redevelopment of existing income-restricted affordable housing and goes on to state that redevelopment or rehabilitation of income-restricted affordable housing should use certain enumerated strategies to minimize displacement, maximize the return of tenants to their community, and retain affordable housing. The anti-displacement strategies listed in § 510.4a generally include: tenant right of return under the same tenancy qualifications, one for one replacement of income-restricted affordable units, construction of replacement units before any off-site relocation of tenants, and acceptance of tenant-based vouchers following redevelopment.

The Applicant highlighted how the anti-displacement strategies discussed in the Housing Element relate to the redevelopment of existing income-restricted affordable housing, which has not existed on the Property since the HAP contract expired in 2013. Similarly, the Housing Element policies relating to preservation of income-restricted housing and anti-displacement are not applicable since the units on the site converted to all market-rate in 2013, and the Property has been fully vacant since 2021.

The Applicant pointed to precedent where the Commission concluded that a project would not have adverse impacts on housing and displacement because the affordable housing contract had long expired, leasing ended well in advance of the PUD application, and the site was vacant. (*See* Z.C. Order No. 19-16.)¹³ As in the Application, the precedent case involved the redevelopment of an existing garden-style apartment complex that had previously been operated under a HAP contract that had long expired. In response to opposition concerns over housing and displacement, the Commission concluded that the project would not result in unacceptable impacts because leasing of the existing market-rate units ended well in advance of the Application, and the applicant covered the moving costs of the former tenants that relocated to a nearby building also owned by the applicant. Similar circumstances exist in the Application. The existing (vacant) dwelling units on the Property converted to market-rate in 2013, leasing of vacant market-rate units ceased in 2016, the Property has been fully vacant since 2021, and the Applicant provided relocation assistance to tenants that moved from the Property to (newly renovated) units in buildings in the 800 block of R Street, N.W.

¹³ An entity associated with Mid-City Financial Corporation was the applicant in ZC Case No. 19-16, similar to the Applicant in this case.

Upon judicial review, the D.C. Court of Appeals upheld the Commission’s decision in Z.C. Order No. 19-16. (*Beloved Community Alliance v. D.C. Zoning Commission*, decided November 3, 2022). In its decision, the Court agreed with the Commission’s conclusion that “the project would not displace anyone...because the site was no longer occupied by anyone. Nor would the project reduce the supply of affordable housing in the area;” because all of the units to be demolished were market-rate. Further, the Court dismissed the petitioner’s argument that the Commission ignored the recommendation in the Convention Center Area Strategic Development Plan that residential redevelopment in the area include an equal or greater number of affordable units. The Court stated that since “none of the 63 units to be demolished were affordable units, this recommendation is inapplicable here, and it certainly would not call for the Commission to require the PUD to have 63 inclusionary units as petitioner has contended.” The Court also noted the Commission’s reference to *Cole v. District of Columbia Zoning Comm’n.*, 210 A.3d 753, 762-63 (D.C. 2019) which upheld the Commission’s determination that “mitigation of the potential displacement of low-income residents through gentrification and market pressures is taken into account in the Zoning Commission’s IZ regulations,” and that the “pressures of gentrification . . . can be mitigated through inclusionary zoning . . . rather than avoided by having underutilized property remain as it is.” (Ex. 45.)

- (n) Benefits of Solar Panels – The Applicant has analyzed where the benefits of the solar panels will be recouped. The Applicant engaged a third-party consultant to determine the best use for the energy that will be generated by the current solar panel design. The consultant’s recommendation was that the best use of the solar panel’s energy would be to offset the building’s common area energy costs. The Applicant intends to follow the consultant’s recommendation; and (Ex. 45.)
- (o) Construction Management Plan – The Applicant submitted a Construction Management Plan. (Ex 45D.)

- 80. On November 17, 2022, OP submitted a report to provide additional planning context and policy background in light of OAG’s testimony about affordable housing. OP concluded that the PUD application is not inconsistent with the Comprehensive Plan, the Duke Plan, or the Convention Center Area Strategic Development Plan. (Ex. 47.)
- 81. ONEDC submitted a letter on November 17, 2022, signed by Shanita Brown, Geraldine Fields, Marquita Jones, Rosemary Ndubuizu, and Haley Clasen, which addressed ONEDC’s views of the meeting that was held with the Applicant’s representatives on November 8, 2022. Per the letter, the Applicant agreed to schedule a meeting, to occur before December 15, 2022, with the Heritage at Shaw tenants' association. ONEDC agreed to provide the Applicant with a count of former tenants who wish to be eligible for right to return. ONEDC also noted its disagreement with the Applicant’s perspective on natural attrition and outreach to surrounding community members regarding the Project. (See FF 57(b); Ex. 46.)

82. The Application was referred to the National Capital Planning Commission on December 20, 2020. (Ex. 51.)
83. The Applicant submitted its draft and final list of proffers and proposed conditions pursuant to 11-X DCMR § 308 on December 22, 2022 and January 5, 2023, respectively. (Ex. 52, 53.)
84. On February 2, 2023, the Applicant submitted a response at the request of the Commission describing its continued dialogue with ONEDC regarding the issues ONEDC raised in the case. The letter describes the meetings and dialogue between the parties related to opportunities for former tenants to move into the new building once constructed, and maintenance concerns. The letter states that the Applicant would be willing to include the following additional condition of approval:
- Prior to the issuance of the First Certificate of Occupancy for the Project**, the Applicant shall provide written evidence to the Zoning Administrator that it has offered, or used its good faith efforts to offer, former residents of the 1707 8th Street, N.W. buildings who are residents of Heritage at Shaw Station on the effective date of this Order, a pre-leasing opportunity to rent market rate units in the newly delivered building before the units are made available to the public.
(Ex. 54.)
85. On February 2, 2023, the National Capital Planning Commission’s Executive Director submitted a delegated action stating that he concluded that the Application was not inconsistent with the federal elements of the Comprehensive Plan and would not adversely impact any other identified federal interests. (Ex. 55.)

Contested Issues

Comprehensive Plan consistency

86. OAG, ONEDC, and Commissioner Lopez argued the Application is inconsistent with the Comprehensive Plan because of the Applicant’s actions when it transitioned the existing buildings on the Property to market rate housing in 2013 when the HAP contract expired. (Ex. 30, 31A, 37A, 50.)
87. ONEDC argued that the Project was inconsistent with Comprehensive Plan Housing Element policy § 510.4(a)¹⁴ because of what it characterized as the Applicant’s actions that

¹⁴ The complete text of that provision is as follows:

Strategies for the Redevelopment of Existing Dedicated Affordable Housing

Many of Washington, DC’s affordable housing developments are aging past their functional lives. This means that, in addition to the affordability controls expiring, the structures and systems are sometimes in a state of disrepair, inefficient, and without modern amenities. Redevelopment or substantial rehabilitation to provide decent, safe housing and prevent displacement from lack of habitability is essential. Redevelopment, however, creates short- and long-term displacement risks. As the cost of housing rises, the need for income-restricted affordable units becomes even greater. Affordable housing properties may contain a layering of project- and tenant-based subsidies

“actively displaced” the tenants on the Property “prior to the PUD application.” (Ex. 50 at 3.) ONEDC further claimed that the actions it characterized as active displacement also violated Comprehensive Plan Near Northwest Policy-2.1.D: Expiring Public Housing Contracts § 2111.15.¹⁵ ONEDC claims in its post-hearing submission that the tenants were displaced because the Applicant “incentivized them to leave by making their existing living conditions untenable.” (Ex. 50.)

88. OAG also claimed that the Project was inconsistent with the same two Comprehensive Plan policies cited by ONEDC. In addition, OAG cited a policy of the Convention Center Area Strategic Development Plan (2006) related to at-risk Section 8 housing.¹⁶ (Ex. 37A.) OAG claimed that the Project was inconsistent with these Comprehensive Plan policies because of “insufficient preservation of existing dedicated affordable housing” and “insufficient anti-displacement measures.” (Ex. 37A.)
89. Commissioner Lopez also cited a provision of the Comprehensive Plan’s Northwest Element, which states that “[e]conomic diversity should be protected, and programs to retain and add affordable housing are urgently needed.” (10A DCMR § 2107.3.)

at the federal and local levels, as well as naturally occurring affordability. In many cases, many different types of subsidies may exist in one building, which presents a challenge in prescribing singular strategies to prevent displacement of low-income residents. Redevelopment or rehabilitation of income-restricted affordable housing should use the following strategies, ordered by priority, to minimize displacement, maximize the return of tenants to their community, and retain affordable housing:

- Include tenants’ right of return to a replacement unit under the same tenancy qualifications. Provide a comprehensive relocation plan for tenants prior to redevelopment;
- Implement one for one replacement of income-restricted affordable units at the same affordability levels, and for the unit sizes needed by existing residents. Replace family sized housing in a manner that meets tenants’ housing needs and the needs of households on the waiting list that are the hardest to house in the private market, including the preferences of multi-generational families;
- When redeveloping the property, build replacement affordable units first prior to any off-site physical relocation from existing affordable units, or provide appropriate offsite affordable units as new permanent housing within the project neighborhood, if necessary due to site constraints; and
- Projects accepting tenant-based vouchers must accept tenant-based vouchers following redevelopment. In addition to the strategies listed above, redevelopment of affordable housing should increase the capacity of housing overall, including new dedicated affordable and market-rate units in mixed-income communities.

¹⁵ The complete text of that provision reads as follows:

Action NN.W.-2.1.D: Expiring Public Housing Contracts

Implement the DC Housing Preservation Strike Force recommendations for expiring project-based public housing contracts within the Shaw area and beyond, recognizing the vulnerability of these units to conversion to market rate housing. Consider the redevelopment of these sites with mixed-income projects that include, at a minimum, an equivalent number of affordable units, additional market rate units, and measures to avoid displacement of on-site residents.

¹⁶ The relevant text of the provision reads as follows:

“Much of the affordable housing in the Study Area today is at risk. Eight of the eleven contracts with private property owners that have Section 8 contract [...] are scheduled to expire in 2004-05. ... If a Section 8 contract is terminated, residents have the legal right to a voucher that they can use someplace else that [accepts] Section 8 vouchers, and are given one year to move. The options that residents have in this situation will vary – i.e. finding a new home that accepts Section 8 vouchers, enhanced vouchers that allow residents to stay in their home, residents buying their building, etc. – depending on the specific situation. It is critical that residents be organized, understand [their] rights, and take the necessary steps to protect their self interests. The District is committed to helping residents protect their current units, but it is ultimately the property owner[‘] decision to extend the contract.”

Unacceptable project impacts

90. ONEDC argued that the “active displacement” described above was an unacceptable adverse impact of the Project that was not adequately mitigated. ONEDC claimed that the only acceptable mitigation was a “full right of return.” ONEDC further claimed that the Project’s proposed benefits were actually mitigations of this alleged adverse impact and should therefore be given no weight in the PUD balancing test. (Ex. 50.) In its party status application, ONEDC offered a more expansive list of these impacts, including:
- i. Social costs of seeing former longtime residences demolished with no right of return or other compensation;
 - ii. Environmental and health costs of air quality, construction-related noise, and other construction-related hazards with no compensation;
 - iii. Social costs (also noted by OP) associated with the lack of community usable space along the metro side of the building;
 - iv. Costs associated with application fees to move back onto the new property that would not have been levied had right of return been included as required by the Comp Plan;
 - v. Social costs related to an increased fear of displacement among residents of Heritage at Shaw;
 - vi. Economic costs including moving-related costs should residents of Heritage at Shaw be subject to the same coercive tactics previously deployed by Applicant at the site of this request; and
 - vii. All potential future costs to party and the historic Shaw community associated with displacement of residents of the existing low-rise Heritage at Shaw buildings (801–811 R St N.W.).
- (Ex. 31A.)
91. Commissioner Lopez argued that the Project included too much on-site parking, and that this would increase the impacts of vehicles on the environment and traffic congestion. (Ex. 30.)

PUD balancing

92. OAG and Commissioner Lopez also argued that the Application did not meet the PUD balancing test because the Project’s affordable housing proffer should at least be equivalent to the IZ Plus formula and require increased affordable housing for the increased density the upzone to MU-8A will allow. OAG claimed that the following additional measures were necessary to mitigate adverse impacts:
- One-for-one replacement of affordable units at the same affordability levels and for the same unit sizes;
 - Right of return for displace tenants;
 - Any future zoning application to redevelop the remaining Heritage apartment shall include a relocation plan negotiated with tenants.
- (Ex. 30, 37A.)

CONCLUSIONS OF LAW

Authority

1. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a consolidated PUD consistent with the requirements of Subtitle X, Chapter 3 and Subtitle Z § 300, and a PUD-related Zoning Map amendment pursuant to Subtitle X § 303.12.

PUD and PUD-Related Zoning Map Amendment

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 § 300.11:
"The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission."
4. Pursuant to Subtitle X § 300.12:
"A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weight the benefits of the PUD."
5. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application the Commission must:
"Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case;"
and must find that the proposed development:
 - (a) *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - (b) *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
 - (c) *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
6. Pursuant to Subtitle X §§ 305.2, 305.3, 305.4, and 305.12, the PUD's benefits and amenities must *"benefit the surrounding neighborhood or the public in general to a*

significantly greater extent than would likely result from development of the site under the matter-of-right provisions”, in majority part “relate to the geographic area of the Advisory Neighborhood Commission in which the application is proposed” and “meet the following criteria: (a) Benefits shall be tangible and quantifiable items; (b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) Benefits may primarily benefit a particular neighborhood or area of the city or service a critical city-wide need; and (d) Monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.” Moreover, a PUD “may qualify for approval by being particularly strong in only one (1) or a few categories [of public benefits], but must be acceptable in all proffered categories and superior in many.”

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

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

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

1168 (internal quotation marks omitted). Thus ‘the Commission may balance competing priorities’ in determining whether a PUD is consistent with the Comprehensive Plan as a whole.’ (*D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013).) ‘[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.’” (*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016).)

9. Small Area Plans supplement the Comp Plan by providing detailed direction for areas ranging in size from a few city blocks to entire neighborhoods or corridors. (10A DCMR § 104.8.) Small Area Plans are prepared with community input, to provide more detailed planning guidance, and typically are approved by resolution of the Council. Unless a Small Area Plan has been made binding on the Zoning Commission through its enactment as part of a Comp Plan amendment, a Small Area Plan provides only supplemental guidance to the Zoning Commission, and it does so only to the extent it does not conflict with the Comp Plan. (10A DCMR § 224.5.)

Consistency with the PUD Eligibility Standards (Subtitle X §301.1)

10. The Commission concludes that the Application meets the minimum land area requirement of Subtitle X § 301.1 because the Property consists of 36,312 square feet of land area, all of which is contiguous. Thus, the Application satisfies the minimum area and contiguity requirements. (FF 7.)

Consistency with the Comp Plan and Other Public Policies (Subtitle X § 304.4(a))

11. Based on the case record and the Findings of Fact above, the Commission concludes that the Project, including the PUD and related Zoning Map amendment, is not inconsistent with the Comprehensive Plan and with other public policies and active programs related to the Property, when the Comprehensive Plan is considered in its entirety:
 - (a) The Commission concludes the Application is consistent with the Comprehensive Plan policies cited by the Applicant and recited in this Order at FF 42. The Commission believes the most compelling reason to reach this conclusion is the many ways in which the Project advances policies related to increasing housing and density around Metrorail Stations, zoning incentives for providing additional affordable housing, and new development of underutilized land in order to meet its long-term housing demand listed at FF 42. (FF 18, 20, 27-28, 42-43.) The Commission also found the comments of OP related to racial equity compelling, namely, that the “PUD would redevelop an underutilized and unoccupied site immediately next to metro, providing housing options – including a significant amount of affordable housing and family-sized units – with transit access and the ability to reach major employment areas either on transit or by biking or walking. Creating affordable housing has the potential to benefit populations of color who on average have lower income than white residents. The new building could

enhance the streetscape and the metro plaza and provide additional residents to support nearby businesses;” (FF 48.)

- (b) Both OAG¹⁷ and ONEDC¹⁸ argued the Application is inconsistent with the Comprehensive Plan and other policies, because of the Applicant’s actions when it transitioned the existing buildings on the Property from the HAP contract¹⁹ to market rate housing. (FF 56, 57, 71, 72, 86-88.)

In response, the Applicant stated that when the Applicant chose not to renew the HAP contract, the existing tenants were given vouchers they could use to move, and that some residents moved to the Heritage at Shaw property across the street (also owned by the Applicant). The Applicant stopped new leasing in 2016, and over time the building became vacant, and has been vacant since 2021. (FF 68, 79(h), (i), and (m).)

The Commission finds that the record is clear that the Applicant ended its HAP contract in 2013, and the Property is no longer subject to that contract. (FF 68, 79(h), (i), and (m).) At that time, the building on the Property became a market-rate building, with some of the former residents using portable housing choice vouchers. (*Id.*) There is no existing income-restricted housing on the Property, and no such housing has existed on the Property since 2013. (*Id.*) The Commission also agrees that no displacement of on-site residents is currently occurring as the Property has been vacant since 2021. (*Id.*)

The Commission also recognizes that the District has a limited role in maintaining Section 8 housing, and that a property owner’s continued participation in the HAP/Section 8 program is voluntary. (FF 50.)

The Commission concludes its evaluation of a PUD should be based entirely on the proposed PUD development, and not the events that occurred at the Property after the HAP contract ended and the Property became vacant in 2021.

The Commission reaches this conclusion because the Zoning Regulations state that when deciding a PUD, the Commission should consider the Comprehensive Plan

¹⁷ OAG also claimed that the Application is inconsistent with a Convention Center Area Strategic Development Plan (2006) policy stating (in relevant part): “If a Section 8 contract is terminated residents have the legal right to a voucher that they can use someplace else that [accepts] Section 8 vouchers, and are given one year to move. . . The District is committed to helping residents protect the current units, but it is ultimately the property owner[’]s decision to extend the contract.” (FF 56.)

¹⁸ ONEDC further claimed that the tenants were displaced because the Applicant “incentivized them to leave by making their existing living conditions untenable.” (FF 57, 81, 86, 87.)

¹⁹ HAP stands for Housing Assistance Payment, also commonly referred to as “Section 8.”

consistency and the potential adverse effects of the “**proposed development.**” (11-X DCMR § 304.4.)²⁰

The Commission interprets the use of the phrase “proposed development” in the regulation to mean that it should assess the consistency of the proposed development itself when it is completed, or as it is described in this Order as the “Project,” with the Comprehensive Plan, and the potential impacts of the proposed Project on the surrounding area. The Commission further interprets this to mean that the actions and events that occurred on the Property before the proposed Project is fully developed are not the subject of the Commission’s review of the PUD.

The issues raised by ONEDC and OAG are not the result of the proposed development, but instead are events that occurred before the Application was even filed. The Commission therefore does not believe the actions described by ONEDC and OAG are relevant in the Commission’s evaluation of the Application, under the Zoning Regulations;

- (c) Notwithstanding this conclusion, out of an abundance of caution, the Commission further considered whether the Application is inconsistent with the text of the Comprehensive Plan and other policies cited by ONEDC and OAG.

ONEDC and OAG cited two Comprehensive Plan policies. The first policy states that it applies to “[e]xisting Dedicated Affordable Housing” and the “[r]edevelopment or rehabilitation of income-restricted affordable housing.” (10A DCMR § 510.4(a).) The second policy states that it applies to “expiring project-based public housing contracts” (10A DCMR § 2111.15.) OAG also claimed that the Application is inconsistent with a Convention Center Area Strategic Development Plan (2006) policy stating (in relevant part): “If a Section 8 contract is terminated residents have the legal right to a voucher that they can use some place else that [accepts] Section 8 vouchers, and are given one year to move. . . The District is committed to helping residents protect the current units, but it is

²⁰ The Zoning Commission shall find that the **proposed development**:

- (a) Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject sit 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.

(11-X DCMR § 304.4 (emphasis added).)

ultimately the property owner[']s decision to extend the contract.” (FF 56-57, 71-72, 86-88.)

In this case, the Property has not been subject to the HAP contract since 2013. (FF 68, 79(h) and (i).) The Property ceased to be dedicated affordable housing, income restricted housing, or existing project-based public housing when the HAP contract expired in 2013. (*Id.*)

Therefore, the Commission concludes the Property is not “existing dedicated affordable housing”, nor is it the “redevelopment or rehabilitation of income-restricted affordable housing,” or “existing project-based public housing” as those terms are used in the Comprehensive Plan policies cited and discussed above. Thus, these policies do not apply to the Property. (FF 68, 79 (h), (i), and (m).) The Commission believes that the Convention Center Area Strategic Development Plan policy only underscores that the owner of the Property had the right to allow the HAP contract to expire and recites what obligations the property owner has under the HAP/Section 8 contract and regulatory regime when it did expire, and states the District’s intent to protect *current* HAP units. There is no question that the Property is not currently subject to the HAP contract. So, there is no inconsistency with the Convention Center Area Strategic Development Plan policy;

- (d) Assuming *arguendo* that the Application was inconsistent with the Comprehensive Plan and other policies cited by ONEDC and OAG and discussed above, the Commission further concludes that any inconsistency is outweighed by the many ways in which the Project advances Comprehensive Plan and other public policies related to increasing housing and density around Metrorail Stations, zoning incentives for providing additional affordable housing, and new development of underutilized land in order to meet its long-term housing demand. (FF 18, 20, 27-28, 42-43.)

The Commission was particularly persuaded to reach this conclusion by ways in which the Project advances the Housing Element policies cited in the OP Post Hearing Report, namely:

The Housing Element seeks to encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives (Policy H-1.1.1), and it encourages higher density near transit (Policy H-1.1.2). The Housing Element also recommends new development on underutilized land, in order for the District to meet its long term housing demand (Policy H-1.1.3). The Plan also emphasizes the need for family-sized units (Policy H-1.1.9), and recommends zoning incentives for providing a quantity of affordable housing in excess of the normal requirements (Policy H-1.2.7); (OP Post-Hearing Report at 3.)

(FF 50.)

- (e) Commissioner Lopez alleged that the Application was inconsistent with § 2111.15 of the Comprehensive Plan’s Northwest Element, which states that “[e]conomic diversity should be protected, and programs to retain and add affordable housing are urgently needed.” (10A DCMR § 2107.3; FF 62, 89.)

The Commission concludes the Project is consistent with this provision because the Commission concludes that the Project will contribute to economic diversity, as it contains both market rate and affordable housing; (FF 42, 48-50, 79(m).)

- (f) Pursuant to 10A DCMR §§ 2501.4-2501.6, 2501.8, the Commission is tasked with evaluating the Application’s consistency with the Comprehensive Plan through a racial equity lens²¹. Consideration of equity is intended to be based on the policies of the Comprehensive Plan and is a part of the Commission’s consideration of whether the Application is “not inconsistent” with the Comprehensive Plan, rather than a separate determination about the Project’s equitable impact. The Comprehensive Plan Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (10A DCMR § 213.6.) Further, “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, health care, technology, workforce development, and employment opportunities.” (10A DCMR § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (10A DCMR § 213.9.) The CP Implementation Element provides guidance to help the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states that “[a]long with consideration of the defining language on equity and racial equity in the Framework Element, guidance in the Citywide Elements on District-wide equity objectives, and the Area Elements should be used as a tool to help guide equity interests and needs of different areas in the District.” (10A DCMR § 2501.6.)

The Commission concludes that the Project is not inconsistent with the Comprehensive Plan overall when evaluated through a racial equity lens. The Commission reached its conclusion based on the racial equity analyses provided by the Applicant and the OP Reports, which found that the Project would redevelop an underutilized and unoccupied site with housing units that include a significant amount of affordable housing as well as family-sized units. The Commission concurs with the statement of OP that creating affordable housing has the potential to particularly benefit populations of color, as those populations on average have

²¹ The Commission released a revised Racial Equity Analysis Tool on February 3, 2023. The new requirements of the revised tool were not applied in the Commission’s evaluation of this Application given that substantive proceedings in this case, specifically setdown, the public hearing, and proposed action, preceded the release date of the revised tool; and the Commission took final action on this Application shortly after the release of the revised tool on February 9, 2023.

lower incomes than white residents. As noted above, the Commission has determined that the Project will not displace any existing residents and the former residents of the Property vacated following expiration of the HAP contract in 2013 and leasing of the units on the Property stopped in 2016, well in advance of the filing of the Application. In addition, the Commission agrees that the Project will help foster business and employment opportunities; and (FF 42, 48-50, 68, 79 (h), (i), (m).)

- (g) Finally, the Commission notes that the Project is not inconsistent with the Property's designation on the FLUM. The Property is zoned for Mixed-Use Medium Density Commercial/Medium Density Residential. (FF 14, 42.) The Project's proposed MU-8A zoning designation is consistent with the Medium Density Commercial portion of the designation, which explicitly states that MU-8 is consistent with the category. (10A DCMR § 227.12.) The Commission acknowledges the Project's 7.2 FAR is higher than the range of "4.0 to 6.0" called for in the Medium Density Commercial Designation, and the "1.8 to 4.0" called for in the Medium Density Residential Designation. (10A DCMR §§ 227.12, 227.7.) However, both designations explicitly state that "greater density may be possible when complying with Inclusionary Zoning, or when approved through a PUD." This Project not only complies with Inclusionary Zoning, but provides affordable housing that exceeds Inclusionary Zoning requirements, and is a PUD. In addition, the Project would further several Comprehensive Plan policies related to the construction of additional housing and affordable housing that the Commission considers to be high priorities. (FF 42, 48-50.) The Commission therefore concludes that the greater density of the Project is therefore consistent with the FLUM designation.

Potential adverse impacts are acceptable, adequately mitigated and/or outweighed by the public benefits (Subtitle X § 304.4(b))

12. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts, and that any potential adverse impacts will be either mitigated or outweighed by the Project's proffered public benefits.
- (a) ONEDC alleged that the "active displacement" was an unacceptable adverse impact of the Project that was not adequately mitigated. ONEDC claimed that the only acceptable mitigation was a "full right of return" to former residents of the Property. ONEDC further claimed that the Project's proposed benefits were actually mitigations of this alleged adverse impact and should therefore be given no weight in the PUD balancing test. (FF 57, 90.) ONEDC also listed several impacts related to the alleged displacement in its original party status request.²² (FF 57.)

²² These included:

- Social costs of seeing former longtime residences demolished with no right of return or other compensation;

The Commission disagrees with ONEDC for the following reasons:

- i. For the same reasons discussed above in connection with similar arguments made with respect to the Application’s Comprehensive Plan consistency, the Commission concludes its evaluation of a PUD is based entirely on the proposed development, and not on events that occurred on the Property before development of the proposed Project.

As noted above, the Commission reaches this conclusion because the Zoning Regulations state that when deciding a PUD, the Commission should consider the Comprehensive Plan consistency and the potential adverse effects of the “proposed development.” (11-X DCMR § 304.4.)

The Commission interprets the “proposed development” language of the regulation to mean the potential impacts of the completed Project, not impacts of events that occurred before the Application was filed. At the time the Application was filed, the Property was vacant, and the HAP contract had ended. (FF 18, 68, 79.)

The Commission concludes that there will be no direct adverse impacts related to the displacement that will occur as a result of the Project. Instead, these impacts are the result of the owner’s decision to end the HAP contract, transition the Property to market rate, and allow the leases to expire in the 2013 to 2021 timeframe. (FF 68, 79.) The link between these events, and any impacts they may have, are too attenuated for the Commission to conclude that they are adverse impacts of the proposed development;

- ii. Notwithstanding its conclusion that the alleged displacement that occurred on the Property is outside of the scope of its review of the Application, and that it is too attenuated from the Project itself to be considered an adverse impact, out of an abundance of caution, the Commission further considered whether the alleged displacement and related impacts are adequately mitigated by the affordable housing and market rate housing provided by the Project, and concludes that they are.

The Commission begins its analysis by stating again that the Property is currently vacant, and therefore no residents will be displaced by the proposed

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- ...Costs associated with application fees to move back onto the new property that would not have been levied had right of return been included as required by the Comp Plan;
 - Social costs related to an increased fear of displacement among residents of Heritage at Shaw;
 - Economic costs including moving-related costs should residents of Heritage at Shaw be subject to the same coercive tactics previously deployed by Applicant at the site of this request; and
 - All potential future costs to party and the historic Shaw community associated with displacement of residents of the existing low-rise Heritage at Shaw buildings (801–811 R St N.W.) (Ex. 31A.)

development, and the Property is no longer subject to the HAP contract. (FF 18, 68, 79.)

The Commission concludes that as a result there will be no direct adverse impacts related to the displacement that will occur as a result of the Project. Instead, the alleged impacts are the result of the owner's decision to end the HAP contract, transition the Property to market rate, and allow the leases to expire, in the 2013 to 2021 timeframe. (FF 68, 79.) The link between these events, and any impacts they may have, are too attenuated for the Commission to conclude that they are adverse impacts of the proposed development.

Nevertheless, the Commission considered whether these adverse impacts will be adequately mitigated by the Project and concludes that they will be because of the housing and affordable housing that is included in the Project. The Property is currently vacant and not subject to the HAP contract, so the proper comparison is what would be provided on the Property if it was developed as a matter of right under the existing RA-4 zoning. The Project greatly exceeds the IZ requirements, as it reserves an area equal to 15% of the total of GFA devoted to residential use (plus the residential portions of the cellars and the habitable penthouse space), as IZ units. This translates to approximately 41,587 gross square feet for affordable units, of which, approximately 1,298 square feet will be provided for households earning no more than 50% MFI with the remainder set aside for households earning no more than 60% MFI for the life of the Project.²³ (FF 28.) The housing proposed as part of the Project exceeds the amount possible through a matter-of-right redevelopment pursuant to the applicable limits in the underlying RA-4 zone (inclusive of the IZ bonus). (FF 40.) In addition, approximately 5% of the Project's units (i.e., 16 total) are anticipated to be three-bedroom units. All such three-bedroom units constitute public benefits. (FF 40.)

The District faces a shortage of virtually every kind of housing product, but the District has prioritized construction of new units near transit, affordable units, and three-bedroom units. The Project would produce a significant amount of new residential units on a site that is transit-accessible and part of a mixed-income development. Therefore, the Project is valuable in terms of mitigating the impact of gentrification.

The Commission therefore concludes that the alleged adverse effect are adequately mitigated.

Nevertheless, the Commission further notes that the Applicant committed to a condition in this Order to provide former tenants of the Property who reside at Heritage at Shaw a pre-leasing opportunity to rent market rate units in the

²³ Please note that these numbers are gross square footage numbers and the final square footage numbers included in the Certificate of Inclusionary Zoning Compliance ("CIZC") form may be slightly different.

Project before the public, which further mitigates the impact of the alleged adverse effect; and

- iii. Finally, to the extent that the adverse effect of the alleged displacement is not mitigated, the Commission concludes it is outweighed by public benefits of the Project, particularly the affordable housing and market rate housing provided by the Project for the same reasons discussed above; (FF 34, 39, 40.)

- (b) Commissioner Lopez argued that the Project included too much on-site parking, and that this would increase the impacts of vehicles on the environment and traffic congestion: (FF 62, 91.)

- i. The Commission begins by noting that it is unusual to hear the argument that a Project contains too much parking, when so often the opposite argument is made, namely that a Project does not contain enough parking resulting in adverse effects related to increased demand for on street parking spaces;
- ii. The Commission was convinced by the evidence presented by the Applicant and from DDOT that the Project will not cause unacceptable adverse impacts related to increased vehicular traffic. (FF 19, 26, 46, 51.)

First, the Applicant prepared and submitted a Comprehensive Transportation Review (“CTR”) which concluded that the Project will not have a detrimental impact on the surrounding transportation network assuming the proposed site design elements and Transportation Demand Management measures are implemented. The CTR noted that the Project has several positive design elements that minimize potential transportation impacts, including:

- The Site’s proximity to bicycle facilities and transit access;
- The enhancement of pedestrian facilities along the site frontage and along pedestrian routes to high-frequency bus stops;
- The addition of both short-term and secure long-term bicycle parking at the site;
- The expansion of an existing Capital Bikeshare station and the provision of a public bicycle maintenance station; and
- A Transportation Demand Management Plan (“TDM”) that reduces the demand of single-occupancy, private vehicles and promotes non-vehicular modes of travel; (FF 44.)

Second, DDOT’s report analyzed the Project’s site design, the travel assumptions made in the Applicant’s CTR, the sufficiency of the parking and loading provided in the Project and the mitigations proposed by the Applicant. In regard to the sufficiency of parking provided in the Project, the DDOT report noted in relevant part:

- The Project meets or exceeds all zoning requirements and DDOT standards for vehicle parking, short-term bicycle parking, and loading facilities. However, the long-term bicycle parking does not meet the 18 DCMR 1214 requirement of 1 space for every 3 units and should be updated in both the TDM and on the plan set;

- The Project is providing an excellent (low) vehicle parking ratio of 0.29 spaces per unit, which is appropriate given the site is immediately adjacent to the Shaw/Howard U Metrorail Station;
- The Applicant’s TDM Plan, in conjunction with curb extensions on 8th Street at R and S Streets, is sufficient to encourage non-auto travel, so long as the TDM plan is updated as follows:
 - Increase the long-term bicycle parking total from 88 to 106 spaces to meet the 18 DCMR 1214 requirements and update the number of horizontal spaces, cargo spaces, and electrical outlets accordingly;

In response to the items in DDOT’s report, the Applicant committed to increasing the number of long-term bicycle parking spaces from 88 to 106. (FF 51, 52.)

The Commission is convinced these measures are adequate to mitigate the vehicular impacts of the Project by promoting transportation alternatives to automobiles and taking full advantage of the transit-oriented space; and

- iii. The Commission nonetheless recognizes that the additional vehicular trips generated by the Project will have adverse impacts on the transportation network, and the availability of on-street parking, and create pedestrian vehicular conflicts. The Commission considers these to be adverse impacts of the Project.

- (c) In addition to the impacts related to displacement discussed above, ONEDC also included two other alleged impacts of the Project in its party status application, namely “[e]nvironmental and health costs of air quality, construction-related noise, and other construction-related hazards” and “[s]ocial costs ... associated with the lack of community usable space along the metro side of the building.” (FF 57, 90.)

- i. With respect to the alleged construction related environmental impacts:
 - The Commission disagrees that this will be an adverse effect of the Project, because as discussed above, the Commission considers the potential adverse effects of the “proposed development.” (11-X DCMR § 304.4.) The Commission interprets the “proposed development” language of the regulation to mean that it should assess the potential impacts of the proposed Project on the surrounding area, not impacts that of events that occurred prior to its completion (e.g., construction);
 - Nonetheless the Commission recognizes that construction of the Project will have adverse environmental impacts. The Commission therefore considered these to be adverse impacts of the Project for purposes of the PUD balancing test out of an abundance of caution;
 - The Commission notes that these impacts will be partially mitigated by the Applicant’s Construction Management Plan; and (FF 79(o).)
 - The Commission concludes this impact is acceptable given the public benefits of the Project; and
- ii. With respect to the alleged impacts associated with the lack of community accessible space adjacent to the Metro station, the Commission concludes that

this is not an adverse impact of the Project, as the Applicant does not have an obligation to provide community accessible space on its Property. The Commission believes the landscaping that the Applicant will provide adjacent to the Metro plaza is attractive and the plaza is enhanced by the fact that the Applicant has recessed the façade two feet. (FF 79(a).)

Evaluating the Public Benefits (Subtitle X §§ 304.4(c) and 305)

13. The Commission concludes that the Project includes specific public benefits and amenities that are not inconsistent with the Comprehensive Plan or other policies relevant to the PUD Site pursuant to Subtitle X §§ 304.4(c), and 305. The Commission evaluated the benefits proffered by the Applicant and concludes as follows:
- (a) The Commission concludes that the Applicant’s proffered public benefits and amenities resulting from the Project, including considerable additional housing and affordable housing, are commendable. The Commission concludes all those listed in FF No. 34 and 39-40 are public benefits and amenities;
 - (b) The Commission considered the arguments made by OAG at the hearing and in its hearing submission that the Project’s affordable housing proffer should not count as a public benefit because it is less than the amount required if the Application was brought as a map amendment subject to the IZ Plus requirements of the Zoning Regulations, and not as a PUD with related map amendment. (FF 56, 71.)

The Commission explicitly rejects this argument and instead concludes that the affordable housing provided in the Project is a public benefit.

The Zoning Regulations are very clear that IZ Plus is not the relevant standard for a PUD. The IZ Plus regulations specifically state that IZ Plus, “shall not apply to a map amendment that is related to a PUD application”. (11-X DCMR § 502.2(a).) The Commission made this intentional policy choice when it wrote the IZ Plus regulations because it recognizes that PUDs are different from map amendments. The Commission wants to encourage the wider range of benefits that flow from PUDs, which can be more closely tailored to the needs of the particular site, and receive a higher level of community input. Accordingly, the Commission concludes that OAG incorrectly applied the IZ Plus standard in determining whether the proffered affordable housing should be considered a public benefit under the PUD.

The correct analysis for determining whether affordable housing can be considered a public benefit under a PUD is whether the affordable housing exceeds the amount that would be required under existing zoning. (11-X DCMR § 305.5(g)(1).) The Commission concludes that the affordable housing proffer proposed for the Project exceeds the amount that would have been required through matter-of-right development under the existing R4-A zone.

The Commission also agrees with the analysis provided by the Applicant's expert that applying IZ Plus to a map amendment application for the rezoning of this property from the RA-4 Zone to the MU-8A Zone would result in a 12% IZ requirement (or 26,145 sf of gross floor area, not including the penthouse space), rather than the 55,999 square feet of IZ square footage OAG argued. Finally, the Commission agrees with the Applicant's analysis that the amount of IZ square footage proposed in this Project (39,820 sf of GFA, not including the penthouse and cellar space) far exceeds the amount of affordable housing that would otherwise be required even under a standalone map amendment to the MU-8A Zone where IZ Plus applied; and (FF 73-75.)

- (c) The Zoning Regulations define public benefits as "superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title." (11-X DCMR § 305.2.) Such public benefits must satisfy the public benefit criteria: (a) benefits must be tangible and quantifiable items; (b) benefits must be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) benefits must primarily benefit the geographic boundaries of the ANC; and (d) monetary contributions shall be permitted only if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. (*Id.* §§ 305.3, 305.4.)

Based on this Commission's findings regarding the public benefits (FF 34, 39, 40) as well as the Conditions of this Order, the Commission concludes that the Project Public Benefits benefit the surrounding neighborhood or the District as a whole to a significantly greater extent than would a matter-of-right development and otherwise satisfy the public benefit criteria.

Judging, balancing, and reconciling the benefits, development incentives and potential adverse effects (Subtitle X, § 304.3)

- 14. Based on the case record and the Findings of Fact and Conclusions of Law above, the Commission concludes that the Application satisfies the balancing test under Subtitle X § 304.3. The Commission has judged, balanced, and reconciled (a) the public benefits, (b) the development incentives requested, and (c) the potential adverse effects. The Commission concludes that the relative value of the public benefits and amenities of the Project, outweigh the requested development incentives requested as well as the potential adverse effects of the Project for the reasons discussed below:

- (a) Benefits

The Project contains many valuable benefits, the most critical being the housing and affordable housing provided by the Project.

The District faces a shortage of virtually every kind of housing product, but the District has prioritized construction of new units near transit, affordable units, and three-bedroom units. The Project produces a significant amount of new residential units on a site that is transit-accessible and part of a mixed-income development. The Project includes three specific types of housing-related public benefits:

- The housing proposed as part of the Project exceeds the amount possible through a matter-of-right redevelopment pursuant to the applicable limits in the underlying RA-4 zone (inclusive of the IZ bonus); (11-X DCMR § 305.5(f)(1).)
- The Project also proposes to reserve 15% of its gross residential square footage (i.e., GFA, residential cellar space, and the habitable penthouse space) for permanently affordable housing units (i.e., IZ units). A matter-of-right development in the RA-4 or MU-8A zones that utilizes Type I construction would only be required to provide 8% of these residential square footages as IZ units. Accordingly, the additional permanently affordable housing of the Project is a public benefit as well; and (11-X DCMR § 305.5(g).)
- Finally, approximately 5% of the Project's units (i.e., 16 total) are anticipated to be three-bedroom units. All such three-bedroom units constitute public benefits. (11-X DCMR § 305.5(f)(3).)

The Project also includes innovative sustainable design elements and achieves appropriate levels of environmental certification. The Project has been designed to exceed environmental design standards at the LEED Gold level. Specific sustainable benefits in the Project include energy modeling use of environmentally-preferred materials; inclusion of green roof and rooftop bio-retention; and ongoing identification and investigation of photovoltaic solar panels. 11-X DCMR § 305.5(k).

The Project also includes a community benefits package tailored to the needs of the neighborhood and negotiated with community stakeholders; (FF 18, 20, 27-28, 34, 39-40, 42-43; Conclusions of Law [“COL”] 13.)

(b) Development incentives

The Commission concludes that the Applicant's proposed PUD-related Zoning Map amendment to rezone the Property from the RA-4 zone to the MU-8A zone is appropriate because:

- The proposed MU-8A zone is not inconsistent with the Comp Plan, including the GPM and FLUM designations for the PUD Site, or with the Comp Plan when taken as a whole; (COL 11.)
- The PUD Site is currently underutilized given that it is improved with four vacant three-story garden-style apartments buildings and can be better utilized

given its close-proximity to transit and neighborhood-serving retail, services, and recreational opportunities; (FF 7.)

- The greater permitted density of the MU-8A zone allows for the development of additional housing and affordable housing; (FF 28, 40, 42, 46, 48-50, 58, 60.)
- The PUD allows the District to realize all of the other PUD benefits of the Project; and (FF 40.)
- The proposed PUD related Zoning Map Amendment to the MU-8A zone will allow increased density on the PUD Site. The Project’s proposed height of 90 feet, is the same as the height permitted in a matter-of-right IZ development under the existing RA-4 zoning. The Project’s proposed density of approximately 7.2 FAR, is a gain of 3.7 FAR when compared to matter-of-right density permitted under existing RA-4 zoning (maximum 3.5 FAR), and gain of 3.0 FAR when compared to the density permitted under existing RA-4 zoning for an IZ development (maximum 4.2 FAR with IZ). (FF 38.)

The Commission concludes that the Project’s proposed gain in density is appropriate for this location and compatible with the scale and context of the surrounding area. The Commission is persuaded that the PUD-related Zoning Map Amendment to the MU-8A zone will allow the PUD Site to be developed as a residential building at a density that has more potential for substantial new housing, including affordable housing units.

The Commission also concludes that the Applicant’s requested special exception relief from the minimum rear yard requirements is modest in scale and meets the requirements for special exception approval, and that the requested design flexibility is appropriate for the Project; and (FF 35-37, 39.)

(c) Potential adverse effects

The Project will create several potential adverse effects. These will include increased traffic and related pedestrian conflicts, and increased demand for on-street parking spaces among other things. Out of an abundance of caution, the Commission also included the alleged displacement related effects alleged by ONEDC and OAG in the PUD balancing, even though it does not believe the alleged effects are properly included in the PUD test.

The Commission concludes these potential adverse effects are outweighed by the proffered benefits and amenities resulting from the Project. (FF 46, 49, 51, 56, 57, 62, 79, 90-91; COL 12.)

Great Weight to the Recommendations of OP

15. The Commission is required to give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8.

(*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

The Commission finds OP's analysis of the Application, its conclusion that the Application satisfies the PUD evaluation requirements, and its recommendation to approve the Application persuasive and concurs with this judgment. OP made several requests for information, clarification, and/or further consideration by the Applicant in its Setdown Report. When deciding whether to set this case down for a hearing, the Commission made several additional requests of the Applicant. In its hearing report, OP stated that the Applicant had addressed all but one of the requests before the hearing. The one exception was a request for additional balconies on the southern portion of the building. The Applicant explained at the hearing that the Applicant did not do so because it believed the additional balconies would diminish the design and appearance of the Project. While the Commission is disappointed, it nonetheless believes that the Project met the standards of approval, and notes that OP stated in its Hearing Report that it was recommending approval notwithstanding this fact. Finally, at the hearing, the Commission requested that OP submit a Post-Hearing Report to address some issues raised by OAG's participation in this case. The Commission concurs with OP's opinions expressed in that report, as is discussed above in connection with the consistency of the Application with the Comprehensive Plan and other public policies and sufficiency of the Application's public benefits. (FF 32, 33, 48-50, 79(g).)

The Commission found the following OP observations particularly compelling:

- The Project is not inconsistent with the Comprehensive Plan Housing Element policies of § 510.4a, as the Project would have more three-bedroom units than the existing buildings on the Property, and about the same total number of affordable units which would now be permanently set aside as affordable;
- The Project furthers policies of the Housing Elements, including encouraging private sector provision of housing, higher density near transit, development of underutilized land, and zoning incentives to promote additional affordable housing; and
- The Project's large supply of affordable housing, along with its architectural design, and environmental benefits, render the Project not inconsistent with the Convention Center Area Strategic Development Plan, the Duke Plan, and the maps and text of the Comprehensive Plan. Further, the Application meets the PUD evaluation standards as outlined in Subtitle X, Chapter 3, including the total package of benefits, inclusive of the IZ proffer, and is commensurate with the degree of flexibility sought by the PUD process.
(FF 48-50.)

Great Weight to the Written Report of the ANC

16. The Commission must give "great weight" to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight

requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

The Commission notes that ANC 6E submitted two reports, the first recommending that the Commission hold a public hearing on the Application, and the second recommended approval of the Application. Neither expressed any issues or concerns with the Project. The Commission concludes that the Applicant appropriately engaged in dialogue with the ANC 6E, and ANC 6E supports the Project. The Commission affords the requisite great weight to the ANC’s written submission. (FF 53, 54.)

As noted above, ANC 1B did not participate in this case. (FF 55.)

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and, therefore, **APPROVES** the Application for a consolidated PUD, subject to the following guidelines, conditions, and standards:

A. PROJECT DEVELOPMENT

1. The Project shall be constructed in accordance with the plans prepared by Eric Colber & Associates, dated September 28, 2022, as modified in the post-hearing submission dated November 17, 2022, and included in the record as Exhibits 24A1-24A2, as modified by the revised Building Setback Analysis, Transit Lounge Plan, Metro Plaza, Design Variations, IZ Unit Location Plan, and Streetscape/Landscape Design Details at Exhibit 45A (the “Final Plans”). The Applicant shall have design flexibility from the Final Plans in the following areas:
 - (a) To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the Project as shown on the Final Plans;
 - (b) To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction, without reducing the quality of the materials, provided such colors are within the color ranges shown on the Final Plans; and to make minor refinements to exterior details, dimensions and locations, including curtainwall mullions and spandrels, window frames and mullions, glass types, belt courses, sills, bases, cornices, balconies, railings and trim, or any other changes to comply with the District of Columbia Building Code or

that are otherwise necessary to obtain a final building permit or to address the structural, mechanical, design, or operational needs of the building uses or systems;

- (c) To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the Project as shown on the Final Plans; examples of exterior details include, without limitation, doorways, canopies, railings, and skylights;
- (d) To provide a range in the number of residential units in the Project of plus or minus five percent relative to the number depicted on the Final Plans, subject to the housing requirements of Condition No. B.1;
- (e) To make refinements to the approved parking configuration, including layout and number of parking spaces of plus or minus 10%, provided the number of parking spaces maintains a ratio of no more than 0.3 spaces per residential unit;
- (f) To vary the design of the public space surrounding the Property and/or the selection of plantings in the landscape plan depending on seasonal availability within the range and quality as proposed in the Final Plans or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, DCRA, or other applicable regulatory bodies and/or service to the Property from utilities;
- (g) 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 a minimum GAR required by the Zoning Regulations and provides a minimum of approximately 700 square feet of PV systems on the roof level of the building;
- (h) To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the Project does not decrease below the minimum required for the LEED standard specified by this Order;
- (i) To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Final Plans and remain compliant with all applicable penthouse dimensional requirements of the Zoning Regulations; and
- (j) To vary the final design and layout of the indoor and outdoor amenity and plaza spaces to reflect their final design and programming and to accommodate special events and programming needs of those areas from time to time.

2. The Property shall be subject to the requirements of the MU-8A zone except as set forth or modified herein and as shown on the Final Plans. The Project shall have special exception relief to decrease the rear yard setback to 15'7".

B. PUBLIC BENEFITS

1. **For the life of the Project**, the Project shall provide housing in excess of a matter-of-right development of the Property, including affordable housing as set forth in the following chart and in accordance with the location and proportional mix of units (by bedroom count) as shown on Sheets A07-A08 of Ex. 45A of the Final Plans:

Residential Unit Type	Total Residential Gross Floor Area ("GFA")	Units
Total	277,244 sf of GFA (and Cellar Level)	317
Penthouse	11,808 sf of GFA total (8,656 sf non-communal penthouse habitable space)	10
Market Rate	235,657 sf of GFA	269
IZ	1,298 sf of GFA (15% of non-communal penthouse habitable space, at 50% MFI)	2
	41,587 sf of GFA (15% of Residential GFA, at 60% MFI)	46

2. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall demonstrate that it has registered the Project with the USGBC to commence the LEED Gold certification process by furnishing a copy of its LEED Gold certification application to the Zoning Administrator. The building permit application shall indicate that the Project has been designed to achieve at least the minimum number of points necessary to achieve Gold certification under the USGBC's LEED v.4 standards.
3. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with the updated status of its LEED Gold Certification, including all credits obtained, and demonstrating that it is reasonable likely to achieve certification within two years.
4. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with information showing that:
 - (a) The Project involves a minimum of 700 square feet of PV systems on the roof level of the building;
 - (b) The Applicant has installed two electric vehicle charging stations within the garage that can accommodate a minimum of six vehicles at any given time; and
 - (c) The Applicant has installed at least eight electrical outlets in the long-term bicycle storage to supply power to electric bicycles.

5. **For the life of the Project**, the Applicant shall maintain the solar panels and electric vehicle accommodations.
6. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall provide written evidence to the Zoning Administrator that it has made the following contributions, and that the items or services funded have been or are being provided.
 - (a) **\$20,000.00 to Friends of the Shaw/Watha T. Daniels Public Library** – The Friends of the Shaw/Watha T. Daniel Library will use this financial donation for:
 - i. Materials and equipment purchases to support programming for children and youth (ages 0-18) - Examples of materials and equipment requested include decorations, signage, musical instruments, costumes, paints, modeling clay, play equipment, toys, books, computer software, games, and giveaways;
 - ii. Speaker, performer and instructor honoraria and travel expenses for programs;
 - iii. Printing of Shaw heritage coloring book - The cost of printing the coloring books would be \$5,000. A neighborhood printer would be used to print the coloring books; and
 - iv. Purchase of audio/visual equipment for outdoor events;
 - (b) **\$20,000.00 to The Judah Project** – The Judah Project music program will operate after school and on weekends and will present live performances and creativity workshops throughout the District of Columbia. Programs funded shall be in operation at the time of the issuance of the Certificate of Occupancy for the Project;
 - (c) **\$20,000.00 to Shaw Community Center** –Programs funded shall be in operation at the time of the issuance of the Certificate of Occupancy for the Project. Specifically, these funds will be used as follows:
 - i. Media Production program:
 - (A) Videography and audio equipment; and
 - (B) Editing equipment and software;
 - ii. Technical Skills development:
 - (A) Specialized tools and certificates or licensure;
 - (B) POS hardware and software for commercial storefront;
 - (d) **\$15,000.00 to the Kennedy Recreation Center** – The funds will be split equally amongst three divisions (Seniors, Roving Leaders, and Community Recreation divisions) for Kennedy Recreation Center participants. Programs funded shall be in operation at the time of the issuance of the Certificate of Occupancy for the Project;

- (e) \$20,000.00 to Citizens Organized Patrol Efforts (C.O.P.E.) - C.O.P.E. will use this financial donation for neighborhood patrol supplies including uniforms, scooters, technology, and community event materials. In addition, C.O.P.E. intends to purchase a brass plaque recognizing the renaming of the Shaw 6th Street Park to Margaret B. Cooper & Lillian Gordon. Programs funded shall be in operation at the time of the issuance of the Certificate of Occupancy for the Project;
 - (f) \$5,000.00 to Westminster Street Playground - This financial contribution will be made will be used for the installation of playground ground-covering materials. Programs funded shall be in operation at the time of Certificate of Occupancy for the Project;
 - (g) \$5,000.00 to Shaw Dog Park - This financial contribution will be used to repair and enhance the tree boxes in the dog park. Programs funded shall be in operation at the time of Certificate of Occupancy for the Project; and
 - (h) \$20,000.00 to Shaw Main Streets - Shaw Main Streets will use the financial contribution to fund its Clean and Safe Team, which removes trash and graffiti, cleans sidewalks and street gutters, maintains street trees and public landscaping, and reports public space defects within the Shaw service district. Programs funded shall be in operation at the time of Certificate of Occupancy for the Project.
7. **Prior to the issuance of the First Certificate of Occupancy for the Project**, the Applicant shall provide written evidence to the Zoning Administrator that it has offered, or used its good faith efforts to offer, former residents of the 1707 8th Street N.W. buildings who are residents of Heritage at Shaw Station on the effective date of this order, a pre-leasing opportunity to rent market rate units in the newly delivered building before the units are made available to the public.

C. MITIGATION

1. **For the life of the Project**, the Applicant shall implement the following Transportation Demand Management program:
 - (a) The Applicant will unbundle the cost of residential parking from the cost of lease of each unit and charge a minimum rate based on the average market rate within a quarter mile of the Property;
 - (b) The Applicant will identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;

- (c) The Transportation Coordinators will conduct an annual commuter survey of employees and residents on site, and report TDM activities and data collection efforts to goDCgo once per year;
- (d) The Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to the residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the Project's website and in any internal building newsletters or communications;
- (e) The Transportation Coordinators will subscribe to goDCgo's residential newsletter. The Transportation Coordinator(s) will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM plan;
- (f) The Applicant will provide welcome packets to all new 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;
- (g) The Applicant will provide residents who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Council of Governments (MWCOC) or other comparable service if MWCOC does not offer this in the future;
- (h) The Applicant will post all TDM commitments on the project's website, publicize availability, and allow the public to see what commitments have been promised;
- (i) The Applicant will offer a SmarTrip Card and one complimentary Capital Bikeshare coupon with the initial lease up of each unit;
- (j) The Applicant will satisfy the Zoning Regulations by providing 106 long-term and 16 short-term bicycle parking spaces, with a minimum of 44 long-term spaces provided horizontally on the floor of the Project storage room;
- (k) Long-term bicycle storage rooms will accommodate non-traditional sized bikes, with a minimum of four spaces designed for longer cargo/tandem bikes and a minimum of eight spaces designed with electrical outlets for charging electric bikes and scooters. There will be no fees to employees for usage of the bicycle storage room. There will be no fee to residents for usage of the bicycles storage room, and strollers will be permitted to be stored in the bicycle storage room;

- (l) The Applicant will install a minimum of two electric vehicle charging stations;
 - (m) The Applicant will provide a bicycle repair station in each long-term bicycle parking storage room;
 - (n) The Applicant will provide one collapsible shopping cart (utility cart) for every 50 residential units, for a total of six to encourage residents to walk to the grocery store and run errands;
 - (o) The Applicant will fund and construct two floating curb extensions (at the northeast corner of R Street, N.W. and 8th Street, N.W. (8th Street only), and the southeast corner of S Street, N.W. and 8th Street, N.W. (Both S Street and 8th Street wrapping the corner)), subject to DDOT approval during the public space permitting process; and
 - (p) The Applicant will hold a transportation event for residents, employees, and members of the community once per year for a total of three years.
2. **Following the issuance of a Certificate of Occupancy for the Project**, The Applicant shall submit to the Office of Zoning for inclusion in the record for this proceeding, documentation summarizing compliance with the TDM commitments of this Order, as applicable and shall, every five years thereafter, submit to the Zoning Administrator, DDOT, and goDCgo, a letter summarizing compliance with the transportation and TDM Conditions of this Order, as applicable.
3. **Prior to the issuance of the Certificate of Occupancy for the Project**, the Applicant shall construct the Project in accordance with the provisions of the Construction Management Plan included as Exhibit 45D.

D. MISCELLANEOUS

- 1. No building permit shall be issued for the Project 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 the Office of Zoning Legal Division and the Zoning Administrator (the “PUD Covenant”). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of OZ.
- 2. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.

VOTE FINAL ACTION: 4-0-1

(Chairman Anthony J. Hood, Vice Chairman Robert E. Miller, Joseph S. Imamura, and Peter G. May to **APPROVE**, 3rd Mayoral Appointee seat vacant).

In accordance with the provisions of 11-Z DCMR § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *District of Columbia Register*; that is, on October 27, 2023.

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.