

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 96-13A**

**Z.C. Case No. 96-13A**

**Street Retail, LLC**

**(Modification of Significance to an Approved Planned Unit Development and Related  
Zoning Map Amendment @ Square 1661, Lot 855)  
February 23, 2023**

Pursuant to notice, at its February 23, 2023<sup>1</sup> public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Street Retail, LLC (the “Applicant”) requesting review and approval of the following:

- (i) A Modification of Significance to the consolidated Planned Unit Development (“PUD”), approved most recently in Z.C. Order No. 824 for Case No. 96-13M, to construct a mixed-use building including approximately 310 residential units and approximately 10,500 to 14,000 square feet of ground-floor retail space (the “Project”) on Lot 855 in Square 1661 (the “Property”) pursuant to Subtitle Z § 704 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”) (Zoning Regulations of 2016, the “Zoning Regulations,” or “ZR16,” and to which all subsequent citations refer unless otherwise specified);
- (ii) A related Zoning Map Amendment from the C-3-B<sup>2</sup> (now MU-8) zone to the MU-9A zone for the Property;
- (iii) Zoning flexibility from the side yard requirements of Subtitle G § 406.1; and
- (iv) Such other design flexibility as are set forth in the Conditions hereof.

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

**FINDINGS OF FACT**

**I. BACKGROUND**

**PRIOR APPROVALS**

1. The Property originally received approval for a first-stage PUD in 1986 in Z.C. Order No. 493 for Case No. 85-9P and approval for a second-stage PUD in 1987 in Z.C. Order

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<sup>1</sup> On December 5, 2022, the Commission held a Public Hearing on the Application. At its January 12, 2023 public meeting, the Commission took proposed action to approve the Application.

<sup>2</sup> Under Z.C. Order No. 493 for Case No. 85-9P, the Commission originally approved a PUD-related Zoning Map Amendment from the C-2-B zone (now MU-5A) to the C-3-B zone (now MU-8) and the portion of the PUD on the Property was constructed in accordance with the approved MU-8 zoning. However, the underlying zoning of the Property remains MU-5A.

No. 528 for Case No. 86-21F/85-9P. The original PUD approval included the entire Record Lot 30 in Square 1661, of which the Property constitutes the western portion, also known as Assessment and Taxation Lot 855. The original approval included a PUD-related Zoning Map Amendment to rezone the Property from the C-2-B zone to the C-3-B zone and to rezone the eastern portion of Record Lot 30 for residential development along 43<sup>rd</sup> Street from the R-5-B zone to the R-5-C zone. The R-5-C zone was subsequently reclassified as the R-5-D zone in 1992 pursuant to Z.C. Order No. 721 for Case No. 91-10.

2. The original PUD approval was approved in conjunction with separate PUD applications for the Chevy Chase Pavilion development immediately north of the Property in Square 1661 (Z.C. Order No. 517 for Case No. 85-16F/84-20P) and the Chevy Chase Plaza development immediately south in the Square (Z.C. Order No. 519 for Case No. 85-20C).
3. The original PUD was modified in 1997 in Z.C. Order No. 824 for Case No. 96-13M (together with the prior PUD approvals, as amended, the “Existing PUD”), which approved the existing development consisting of a low-rise retail development on the Property and 29 condominium townhomes on the remaining eastern portion of Record Lot 30 along 43<sup>rd</sup> Street, N.W.

#### **PARTIES**

4. Pursuant to Subtitle Z § 403.5(a), the Applicant is automatically a party to the Application.
5. Pursuant to Subtitle Z §§ 101.8 and 403.5(b), Advisory Neighborhood Commission (“ANC”) 3E is automatically a party to the Application as the ANC in which the Property is located.
6. Pursuant to Subtitle Z §§ 404.1-404.3, on November 21, 2022, Gary Klacik, a resident and owner of the property located at 5331 43<sup>rd</sup> Street, N.W., filed a request for party status in opposition to the Application. (Exhibit [“Ex.”] 18.) At the December 5, 2022, public hearing, the Commission considered Mr. Klacik’s request and determined that, although he lives proximately to the Property, Mr. Klacik’s request for party status did not demonstrate, as required under Subtitle Z § 404.14, how his interests would be more significantly, distinctively, or uniquely affected by the proposal and instead raised issues of general concern to the surrounding neighborhood. Accordingly, the Commission denied Mr. Klacik’s request for party status. (Transcript of December 5, 2022 Public Hearing [“Public Hearing Tr.”] at pp. 8-11, 15-18.)
7. Aside from Mr. Klacik’s request, the Commission received no other requests for party status.

#### **NOTICE AND SETDOWN**

8. Pursuant to Subtitle Z §§ 300.7 and 300.8, on March 4, 2022, the Applicant mailed to all property owners within 200 feet of the Property and to ANC 3E, a Notice of Intent to file the Application. (Ex. 3B.)

9. Pursuant to Subtitle Z § 300.9, subsequent to the mailing of such notice but prior to filing the Application with the Commission, the Applicant presented the Application to ANC 3E at its March 9, 2022, April 21, 2022, and May 12, 2022 public meetings. (Ex. 3.)
10. Pursuant to Subtitle Z §§ 400.9-400.12, on September 8, 2022, at its duly noticed public meeting, the Commission considered the Application and voted to set the case down for a public hearing.
11. Pursuant to Subtitle Z §§ 402.1-402.2 and 402.6, on October 5, 2022, the Office of Zoning (“OZ”) sent notice of the December 5, 2022 public hearing concerning the Application to:
  - (a) The Applicant;
  - (b) ANC 3E;
  - (c) The ANC 3E04 Single Member District Commissioner, whose district includes the Property;
  - (d) The Office of the ANC;
  - (e) The Ward 3 Councilmember, in whose district the Property is located;
  - (f) The Office of Planning (“OP”);
  - (g) The District Department of Transportation (“DDOT”);
  - (h) The Department of Consumer and Regulatory Affairs (“DCRA”);<sup>3</sup>
  - (i) The Office of Zoning Legal Division;
  - (j) The District Department of Energy & Environment (“DOEE”);
  - (k) The Chair and At-Large Members of the D.C. Council; and
  - (l) The owners of property within 200 feet of the Property.(Ex. 11, 12.)
12. Pursuant to Subtitle Z § 402.1(a), OZ published notice of the December 5, 2022 public hearing concerning the Application in the October 14, 2022 issue of the *D.C. Register* (69 DCR 012440 *et seq.*), as well as on the calendar on OZ’s website. (Ex. 10, 11.)
13. Pursuant to Subtitle Z §§ 402.3-402.4, 402.8-402.10, on October 25, 2022, the Applicant submitted evidence that it had posted notices of the public hearing on the Property and on November 29, 2022, submitted evidence that it had thereafter maintained such notices. (Ex. 15, 22.)

#### **THE PROPERTY**

14. The Property is located in the Northwest quadrant of the District in the Friendship Heights neighborhood within Ward 3 near the D.C.-Maryland border. (Ex. 3.)

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<sup>3</sup> As of October 1, 2022, pursuant to the Department of Buildings Establishment Act of 2020, D.C. Law 23-269 (effective April 5, 2021), the building permit and development review duties previously vested with DCRA were transferred to the newly-created Department of Buildings (“DOB”).

15. The Property consists of approximately 50,946 square feet of contiguous land area located midblock on the east side of Wisconsin Avenue, N.W. between Western Avenue, N.W. and Jenifer Street, N.W. (Ex. 3.)
16. The Property constitutes the western portion of Record Lot 30 in Square 1661, with the balance of the record lot comprised of the townhome development approved as part of the Existing PUD, known as the Courts of Chevy Chase Condominiums (the “Courts of Chevy Chase”). The Application concerns only the Property and does not affect the portion of Record Lot 30 improved with the Courts of Chevy Chase. (Ex. 3.)
17. The remainder of Square 1661 is occupied by the Chevy Chase Pavilion development immediately north of the Property and the Chevy Chase Plaza development immediately south of the Property. (Ex. 3.)
18. The Property is currently improved with a 2-3 story retail development with approximately 94,000 square feet of retail space, as approved in the Existing PUD. The existing improvements comprise part of the retail shopping and office corridor that runs along Wisconsin Avenue at this location centered around the Friendship Heights Metrorail Station located less than 500 feet away from the Property. The surrounding area was previously considered a premier local and regional retail shopping destination but in recent years has lost many retail establishments and currently suffers from a high retail vacancy rate. The vicinity also includes mid- and high-rise commercial office buildings clustered around Wisconsin Avenue with single-family residential developments to the east of 43<sup>rd</sup> Street, N.W. and in surrounding areas. (Ex. 3; Public Hearing Tr. at pp. 28-29.)
19. Square 1661 is bounded by Wisconsin Avenue, N.W. to the west, Western Avenue, N.W. and Military Road, N.W. to the north, 43<sup>rd</sup> Street, N.W. to the east, and Jenifer Street, N.W. to the south. (Ex. 3.)
20. The surrounding area is zoned primarily with MU-zone designations including MU-4, MU-5A, and MU-7A along the Wisconsin Avenue commercial corridor, with areas to the west and east of Wisconsin Avenue mapped with R-zone designations, in addition to pockets zoned RA-2, RF-1, and subject to various PUD-related zoning designations. (Ex. 3.)

#### **CURRENT ZONING**

21. The underlying zoning for the Property is MU-5A (formerly C-2-B). A matter-of-right IZ development in the MU-5A zone allows a maximum FAR of 4.2 and a maximum height of 70 feet. Pursuant to the Existing PUD, the Property was rezoned from the C-2-B zone to the C-3-B zone under the 1958 Zoning Regulations in effect at the time of the original PUD approval. The C-3-B zone is now designated as the MU-8 zone under the current (2016) Zoning Regulations. Subtitle G § 400.7 establishes that the purposes of the MU-8 zones are 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. A matter-of-right IZ development in the MU-8 zone allows a maximum FAR of 6.0 and a maximum height of 70 feet. (Ex. 3.)

**COMPREHENSIVE PLAN (TITLE 10-A DCMR)**

22. The Comprehensive Plan’s Future Land Use Map (“FLUM”) designates the majority of the Property as mixed-use High Density Commercial and High Density Residential on the western portion of the Property fronting on Wisconsin Avenue, with the remainder of the Property on the east designated as Moderate Density Residential.<sup>4</sup> (Ex. 3, 38.)
- (a) The Comprehensive Plan’s Framework Element states that the High Density Residential designation “is used to define neighborhoods and corridors generally, but not exclusively, suited for high-rise apartment buildings. . . Density is typically greater than a FAR of 4.0, and greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development.” (10-A DCMR § 227.8.);
  - (b) The High Density Commercial designation “is used to define the central employment district, other major office centers, and other commercial areas with the greatest scale and intensity of use in the District. Office and mixed office/retail buildings with densities greater than a FAR of 6.0 are the predominant use, although high-rise residential and many lower scale buildings (including historic buildings) are interspersed. The MU-9, D-3, and D-6 Zones are consistent with the High Density Commercial category, and other zones may also apply.” (*Id.* § 227.13.); and
  - (c) The Moderate Density Residential designation “is used to define neighborhoods generally, but not exclusively, suited for row houses as well as low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings.” (*Id.* § 227.6.) While “[d]ensity in Moderate Density Residential areas is typically calculated either as the number of dwelling units per minimum lot area, or as a FAR up to 1.8 . . . greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The R-3, RF, and RA-2 Zones are consistent with the Moderate Density Residential category, and other zones may also apply.” (*Id.*)
23. The Comprehensive Plan’s Generalized Policy Map (“GPM”) designates the majority of the Property as a Regional Center on the western portion of the Property fronting on Wisconsin Avenue, with the remainder of the Property on the east designated as a

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<sup>4</sup> Prior to 2021, the majority of the Property on the west was designated for mixed-use Medium Density Commercial and Medium Density Residential development on the FLUM; pursuant to the Comprehensive Plan Amendment Act of 2020, D.C. Law 24-0020 (effective August 21, 2021), the D.C. Council amended the FLUM designation for the western portion of the Property to be mixed-use High Density Commercial and High Density Residential.

Neighborhood Conservation Area. The GPM also locates the Property within a Future Planning Analysis Area: (Ex. 3, 38.)

- (a) The Regional Center designation calls for infill development to “provide new retail, entertainment, service uses, additional housing, and employment opportunities.” (*Id.* § 225.19.) Regional Centers “are generally located along major arterials and are served by transit,” but may also see demand for parking. (*Id.* § 225.20.) Regional centers are higher in density and intensity of use than other commercial areas, except downtown. *Id.* Building height, massing, and density should support the role of regional centers while scaling appropriately to development in adjoining communities and should be further guided by policies in the Land Use Element and the Area Elements. Examples of regional centers include Friendship Heights. . .” (*Id.*);
- (b) Neighborhood Conservation Areas “have little vacant or underutilized land” and “are generally residential in character.” (*Id.* § 225.4.) While “major changes in density over current . . . conditions are not expected . . . some new development and reuse opportunities are anticipated, and these can support conservation of neighborhood character where guided by Comprehensive Plan policies and the Future Land Use Map.” (*Id.*) “The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs. Limited development and redevelopment opportunities do exist within these areas. The diversity of land uses and building types in these areas should be maintained and new development, redevelopment, and alterations should be compatible with the existing scale, natural features, and character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map and Comprehensive Plan policies. Approaches to managing context-sensitive growth in Neighborhood Conservation Areas may vary based on neighborhood socio-economic and development characteristics. In areas with access to opportunities, services, and amenities, more levels of housing affordability should be accommodated.” (*Id.* § 225.5.);
- (c) With respect to Future Planning Analysis Areas, the Comprehensive Plan’s Implementation Element provides that, generally, any zoning change within such areas be preceded by a planning analysis to evaluate current infrastructure and utility capacity. (*Id.* § 2503.2.) However, “[n]otwithstanding 2503.2, re-zoning proposals received prior to planning studies in these Future Planning Analysis Areas may be considered” in certain instances, including in the context of a Planned Unit Development. (*Id.* § 2503.3.) “The intent is that both steps of the two-step process must occur: planning analyses and then appropriate rezoning, although in the case of a Planned Unit Development the planning analyses and rezoning may be combined.” (*Id.*); and
- (d) OP is currently undertaking the Wisconsin Avenue Development Framework to develop planning guidance for the Friendship Heights and Tenleytown neighborhoods, including the portion of Friendship Heights in which the Property

is located, in order to implement the amended FLUM designations adopted as part of the Comprehensive Plan Amendment Act of 2020.<sup>5</sup> (Ex. 38, 40.)

24. The Comprehensive Plan's Framework Element provides guidance as to how the FLUM and GPM are to be interpreted, generally and in conjunction with other provisions of the Comprehensive Plan. The FLUM and GPM "are intended to provide generalized guidance for development and conservation decisions, and are considered in concert with other Comprehensive Plan policies." (10-A DCMR § 228.1.) "The Future Land Use Map is not a zoning map. Whereas zoning maps are parcel-specific, and establish detailed requirements and development standards for setbacks, height, use, parking, and other attributes, the Future Land Use Map is intended to be 'soft-edged' and does not follow parcel boundaries, and its categories do not specify allowable uses or development standards. By definition, the Future Land Use Map is to be interpreted broadly and the land use categories identify desired objectives." (*Id.* § 228.1(a).) "While the densities within any given area on the Future Land Use Map reflect all contiguous properties on a block, there may be individual buildings that are larger or smaller than these ranges within each area. Similarly, the land-use category definitions describe the general character of development in each area, citing typical Floor Area Ratios as appropriate. The granting of density bonuses (for example, through Planned Unit Developments or Inclusionary Zoning) may result in density that exceed the typical ranges cited here." (*Id.* § 228.1(c).) "The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the Citywide Elements and the Area Elements." (*Id.* § 228.1(d).)
25. The Comprehensive Plan also includes the Property within the Rock Creek West Area Element, which includes the following development priorities:
  - (a) Support and sustain local retail uses and small businesses in the area's neighborhood commercial centers as outlined in the Generalized Policy Map. Compatible new uses such as multi-family housing or neighborhood-serving office space (above local-serving ground-floor retail uses) should be considered within the area's commercial centers to meet affordable and moderate-income housing needs, provide transit-oriented development, and sustain existing and new neighborhood-serving retail and small businesses. (*Id.* § 2308.4.);
  - (b) Recognize the importance of the area's five Metro stations to the land use pattern and transportation network of Northwest Washington and Washington, DC as a whole. Each station should be treated as a unique place and an integral part of the neighborhood around it. Mixed-use redevelopment at the area's Metro stations should prioritize the production of affordable and moderate-income housing and retail uses in a manner consistent with the Future Land Use Map, the Generalized Policy Map, and the policies of the Comprehensive Plan. Design context-specific transitions to be more aesthetically pleasing from development along the avenues to nearby low-scale neighborhoods. (*Id.* § 2308.7.);

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<sup>5</sup> See <https://publicinput.com/RCW-Wisconsin>.

- (c) Focus urban design efforts in the Rock Creek West Planning Area on its commercial centers and major avenues, historic landmarks, historic districts, and areas with significant environmental and topographical features. (*Id.* § 2309.1.);
- (d) Encourage urban design and façade improvements in the established commercial districts along Wisconsin Avenue and Connecticut Avenue, N.W. (*Id.* § 2309.15.);
- (e) Pursue the opportunity for additional housing, including affordable and moderate-income housing, with some retail and limited office space on Wisconsin Avenue and underdeveloped sites west of the Friendship Heights Metro station. (*Id.* § 2312.7.);
- (f) Support coordinated planning for Wisconsin Avenue’s Tenleytown and Friendship Heights Metro station areas, extending north from Van Ness to the Maryland state line at Western Avenue. Planning considerations for the corridor should:
  - Use the public transit infrastructure and maximize Metro and bus access;
  - Enable merchants to upgrade existing businesses, attract new customers and new business establishments, and provide neighborhood services;
  - Provide for the development of new housing for a mix of incomes;
  - Conserve existing low-density residences in the vicinity, and the surrounding institutions and local public facilities, by mitigating the adverse effects of development;
  - Ensure that planning and building design is sensitive to the area’s topography, existing architectural assets, street layout, and pedestrian circulation patterns;
  - Promote safe and comfortable pedestrian and bicycle circulation to parks, schools, transit, and shopping, as outlined in the Rock Creek West II Livability Study;
  - Enhance a robust public life on the corridor, with key public spaces that function as places where neighbors and visitors want to stay, linger, and enjoy; and
  - Partner and collaborate with public and private institutional and educational facilities along the corridor. (*Id.* § 2312.8.); and
- (g) Future development along Wisconsin Avenue, N.W. should be architecturally sensitive to adjoining residential neighborhoods. Use a variety of means to improve the interface between mixed-use districts and lower-scale residential uses, such as architectural design, the stepping down of building heights away from the avenue, landscaping and screening, and additional green space improvements. (*Id.* § 2312.11.)

## II. THE APPLICATION

### THE PROJECT

26. The Application, as amended, proposes to construct the mixed-use Project with:

- (a) A maximum height of 130 feet, plus a penthouse with a maximum height of 20 feet;
- (b) Up to approximately 385,000 square feet of gross floor area (“GFA”), or an overall FAR of approximately 7.56, including approximately 371,000 square feet of



residential space and between 10,500 and 14,000 square feet of ground-floor retail space;

- (c) Approximately 310 residential units;
  - (d) A lot occupancy of approximately 85%;
  - (e) A minimum of 57,250 square feet or 15.43% of the base residential GFA, whichever is greater, reserved as affordable housing under the Inclusionary Zoning (“IZ”) program, including: no fewer than two units of no less than 800 square feet each in size reserved for households earning no more than 30% of Median Family Income (“MFI”); the greater of 29,425 square feet or 7.93% of the residential GFA reserved as IZ units for households earning no more than 60% MFI; and the remaining balance of the IZ set-aside reserved as IZ units for households earning no more than 50% MFI;
  - (f) Approximately 180 below-grade vehicle parking spaces in the Project’s garage;
  - (g) Approximately 106 long-term and 20 short-term bicycle parking spaces, with a minimum of 10 long-term spaces provided on the ground floor for building residents; and
  - (h) One 30-foot loading berth, one service/delivery space, and one loading platform. (Ex. 3, 8, 17, 17A1-17A3, 38, 38C, 39, 44.)
27. The Project’s site plan will maintain the current use of the existing private service lane shared with the Chevy Chase Pavilion and Chevy Chase Plaza developments, providing vehicular through connection running one-way south from Military Road, N.W. to Jenifer Street, N.W., with loading and service operations continuing to be conducted via this through alley. Parking access will continue to be provided via the existing mid-block curb cut and garage entry provided on the Chevy Chase Pavilion development immediately abutting the Property to the north, with a below-grade connection providing access to the existing below-grade garage that will be retained as part of the Project. Both of these existing site plan features minimize curb cuts on the Wisconsin Avenue main thoroughfare and concentrate loading and service activity from lower-traffic Military Road and Jenifer Street. (Ex. 3, 17A1-17A3.)
28. The Project has been designed to focus the building’s mass and height on the west side of the Property along Wisconsin Avenue, with the building form and scale stepping down progressively toward the lower-density development located to the east of the Property. The Applicant also requested relief from the minimum side yard requirements under Subtitle G § 406.1 in order to provide a side yard setback of eight feet from the south property line beginning at the third floor, not otherwise required, to accommodate the neighboring Chevy Chase Plaza property to the south. (Ex. 3, 17, 17A1-17A3.)
29. The Project will retain the existing below-grade parking structure and the majority of the ground-floor slab, which is expected to save approximately 1,150 tons of embodied carbon (tCO<sub>2</sub>e) for the Project’s development. (Ex. 3.)
30. Aside from the requested side yard relief, the Project is consistent with all development standards for a PUD in the MU-9A zone. The proposed 7.56 FAR is within the maximum

7.8 FAR permitted as a matter of right in the MU-9A zone, not including the additional bonus density (maximum 9.36 FAR) granted for PUDs in the MU-9A zone. The requested Zoning Map Amendment provides for additional height, which allows the Project to focus the bulk of the proposed matter-of-right density on the western portion of the Property along the Wisconsin Avenue commercial corridor and to scale the building down on the east toward the abutting lower density residential development. (Ex. 3, 8, 17.)

31. The Project's façade is highly articulated in order to break down the mass of the building and create interest along the pedestrian streetscape. The Project utilizes a modular design that includes a tiered garden effect to step down the mass of the building on the east side, with each stepped roof level providing an opportunity for landscape plantings and significant greening. The façade along Wisconsin Avenue consists of a pattern of bay projections with recessed balconies, providing depth to the overall building design. The Applicant requests design flexibility to select between tile rainscreen and brick to serve as the primary facade material for the final building design. The corners of the building are carved to allow visual relief and transition between neighboring buildings. (Ex. 3, 8, 17, 17A1-17A3, 38, 38A.)
32. The Project includes planting areas throughout the site. The proposed streetscape includes new sidewalks, new street trees and plantings, and public amenities such as bicycle racks and benches. The roof terraces incorporate a combination of public and private terraces for residents, raised planters that support tree and plant growth, and a green roof system that covers the majority of the remaining roof surfaces. The eastern façade also includes embedded plantings. The Project is designed to achieve LEED v.4 Gold standards, with specific sustainable design features including green roof and heavy tree and other native plantings. The Project will include a high efficiency VRF system for the majority of space heating and cooling, and the new structure will include large areas of bioretention and green roof to retain and store rainfall, compared to the existing building which has minimal stormwater management measures. The Project includes an efficient irrigation system that will minimize outdoor potable water use. The proposed green roofs and high albedo rooftop pavers will mitigate the local urban heat island effect, in contrast with the existing building which has a dark, ballasted roof that contributes to this effect. (Ex. 3, 17, 17A1-17A3.)
33. As part of the Project, the Applicant has proffered public benefits and amenities and development commitments, as agreed upon with the surrounding community and as set forth in more detail in the Applicant's Memorandum of Understanding with ANC 3E (Ex. 32A) and in the Conditions of this Order. In addition to the affordable housing and sustainability commitments noted above, such commitments include:
  - (a) Providing a minimum of 10,500 square feet of retail space on the Project's ground floor;
  - (b) Providing 10 electrical vehicle charging stations, two of which will be available to the public for charging in a publicly accessible portion of the parking garage;
  - (c) Providing 10 long-term bicycle parking spaces for residents on the ground floor;

- (d) Providing two residential units built-out to the ANSI A standard prior to the lease-up of the building, with one such unit being market-rate and one being an IZ unit for households earning no more than 60% MFI;
- (e) Prohibiting certain commercial uses, otherwise permitted within the MU-9A zone, in the Project unless otherwise supported by a formal resolution of the ANC, specifically: sexually oriented business establishment; a check-cashing establishment; a bail-bond establishment; a pawnbroker; a marijuana dispensary; a mattress store; or a head/smoke/vape shop. The Applicant further agrees to lease space in the Project to no more than one bank or financial institution, with such tenant limited to no more than 33 feet of frontage on Wisconsin Avenue;
- (f) Making commercially reasonable efforts during the initial lease-up of the retail space to market to local-, minority-, and/or women-owned businesses as retail tenants in the Project and shall reach out to the Greater Washington DC Black Chamber of Commerce, the DC Small Business Development Center, the Washington DC Women's Business Center, and the DC Developmental Disabilities Council, and offering to such qualified tenants at least \$40 per square foot of gross leasable area in tenant improvement allowance, which may be in the form of direct payment, buildout cost, or some combination of the two;
- (g) Designing and constructing improvements to the intersection at 43<sup>rd</sup> Street and Military Road, subject to DDOT approval and, specifically, installation of a crosswalk on the west leg of Military Road where none currently exists; improvement of all crosswalks at the intersection to be raised pedestrian crossings; and installation of curb extensions on the south side of both Military Road approaches;
- (h) Installing new landscaping at the public space abutting Chevy Chase Recreation Center, including removal of invasive plants and dead and undesirable trees and bushes, in the area between the existing fence and the sidewalk along Western Avenue, N.W. from Livingston Street to 41<sup>st</sup> Street and along 41<sup>st</sup> Street from Western Avenue to Livingston Street, subject to approval by the Department of Parks and Recreation ("DPR") and DDOT, with the total expenditures for combined design, permitting, consultant, and installation costs for these improvements to be a minimum of \$100,000 but not to exceed \$150,000. The Applicant also agreed to consult with and, if requested, present to ANCs 3E and 3/4G regarding the proposed landscaping plans and to maintain landscaping for three years after installation;
- (i) Enlarging the existing tree pits on the east side of Wisconsin Avenue between Jenifer Street and Military Road as required to meet current DDOT standards and planting nine new street trees with a three-inch caliper DBH, which trees are in addition to the Project's proposed public space frontage improvements;
- (j) Designing, permitting, and installing, at the Applicant's cost, a photovoltaic array at the Iona Senior Center ("Iona") at 4125 Albemarle Street, N.W., including a new roof membrane on the upper flat roof, photovoltaic panels, a racking system, and an inverter, subject to approval from relevant authorities, with the improvements to be conveyed to Iona upon completion, with Iona being the sole beneficiary of the resulting reduced energy bills and SREC income and the total cost to the Applicant

for such improvements not to exceed \$240,000 for all design, permitting, and installation work for these improvements; and

- (k) Construction-related commitments as follows:
- (i) Offering preconstruction surveys to property owners on the east side of 43<sup>rd</sup> Street between Jenifer Street and Military Road and the south side of Military Road between 42<sup>nd</sup> Place and 43<sup>rd</sup> Street;
  - (ii) Consulting with ANC 3E regarding parking and truck routing prior to commencing construction and including a provision in the construction contract with its general contractor prohibiting the construction workforce from parking on local residential streets during construction;
  - (iii) Sharing annual parking demand and trip generation survey results, if required by DDOT, with the ANC for the first three years after the Project is complete; and
  - (iv) Designating a representative of the Applicant to serve as the point of contact for all construction-related matters while the Project is under construction, with relevant contact information provided to the ANC.

(Ex. 32A, 44.)

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

34. Initial Application. On May 18, 2022, the Applicant filed its initial application materials that included:

- (a) A Statement of Support of the Application that provided an overview of the Project and justifications relating to the PUD evaluation criteria of Subtitle X § 304;
- (b) An initial list of public benefits and amenities proffered in connection with the Project;
- (c) An initial set of architectural drawings and elevations; and
- (d) A discussion of the Project's consistency with the Comprehensive Plan, including the Citywide and Rock Creek West Area Elements.

(Ex. 1-3, 3A1-3I3.)

35. Pre-Setdown Supplemental Submissions.

- (a) On July 12, 2022, the Applicant submitted a supplemental memorandum analyzing the Project and Application through a racial equity lens as set forth in the Comprehensive Plan. The Applicant's analysis found that the Project would have the following anticipated impacts and outcomes: (Ex. 5.)
  - (i) With regard to housing, the Project will provide approximately 310 new residential units and an affordable housing set-aside that is consistent with the District's housing goals and the objectives identified for the Rock Creek West Planning Area;
  - (ii) With regard to direct displacement, the Project will not result in any direct displacement given that the Property is currently improved for commercial uses only. The Applicant intends for the ground-floor retail space to be used for neighborhood-serving retail which will better support

- the surrounding community given significant contractions in business and customer traffic in recent years;
- (iii) With regard to physical impacts, the Project will provide streetscape improvements along Wisconsin Avenue that will improve the pedestrian experience. In addition, the Project is designed to achieve LEED Gold standards and will retain the existing below-grade structure which will minimize the Project's carbon footprint; and
- (iv) With regard to access to opportunity, the Project will generate retail employment opportunities and provide more support for neighborhood retail and economic growth in the Friendship Heights neighborhood; and
- (b) On August 29, 2022, the Applicant submitted a supplemental statement outlining its updated proposed benefits and amenities, which included: increasing the affordable housing proffer to reserve 50% of the GFA devoted to IZ for households earning a maximum of 50% MFI; reserving approximately 2,000 square feet of ground floor space for a community center, as requested by the ANC at that time, which benefit was subsequently removed in agreement with the ANC and community; making non-mitigation transportation improvements at the intersection of 43<sup>rd</sup> Street, N.W. and Military Road, N.W., as discussed in Finding of Fact ("FF") ¶ 33(g) above; and reserving ground floor space for residential bicycle storage for at least 10 bicycles. (Ex. 6, 17.)

36. Prehearing Submission. On September 27, 2022, the Applicant filed a prehearing submission and supporting materials responding to the issues and comments raised by the Commission at set down of the Application at the September 8, 2022 public meeting, and by OP in its August 29, 2022 set down report. (Ex. 7; 8-8J.) Such issues, comments, and responses are summarized as follows:

- (a) Shadow Study. In response to OP's request, the Applicant provided a shadow study for the Project in each season at 9:00 am, 12:00 pm, and 3:00 pm, showing the Project will not have a substantial undue negative impact on light for the immediately surrounding properties, and particularly the lower-density residential neighborhood located east of the Property;
- (b) Façade Design. The Applicant provided additional information regarding the proposed primary façade material options and requested approval for the tile rainscreen façade material, with the option of brick, only if the Applicant determines that the increased deadload can be supported economically;
- (c) Outdoor and Roof Areas. The Applicant provided additional information in response to OP's request regarding the Project's superior landscaping public benefit and, specifically, the proposed roof landscaping and terraces;
- (d) Community Center. The Applicant noted the status of the proposed community center space requested by the ANC at that time;
- (e) Transportation Improvements. In response to OP's request, the Applicant provided additional information regarding the proposed intersection improvements at 43<sup>rd</sup> Street and Military Road and the Applicant's coordination with the ANC and DDOT staff regarding the proposal;

- (f) Sustainability Measures. The Applicant confirmed its outreach and meeting with DOEE staff on September 22, 2022;
  - (g) Bicycle Parking. In response to OP's feedback to provide e-bicycle charging stations, the Applicant committed to providing e-bicycle charging stations for 10% of the proposed long-term bicycle parking spaces. The Applicant noted that the Project will reserve at-grade space for 10 long-term bicycle parking spaces and responded to OP's request to locate all of the proposed long-term bicycle parking within the first-floor amenity space and, specifically, that doing so would result in a loss of ground-floor resident amenity space, which serves as an important resource for residents that will benefit significantly from the availability of natural light available on the first floor whereas bicycle storage would not be the highest and best use for such space;
  - (h) Retail Tenants. The Applicant responded to OP's request that the Applicant consider leasing the proposed retail space to small and local businesses based in the District and, specifically, that the Applicant regularly works with such retailers, including one of the current tenants of the existing building at the Property, but that the Applicant could not at that time commit or reserve ground-floor space for such a tenant given the current fluctuating nature of the retail market;
  - (i) Roof Lighting Plan. In response to OP's request, the Applicant submitted a conceptual lighting plan for the Project's outdoor roof areas;
  - (j) Signage Plan. In response to OP's request, the Applicant submitted an overall signage plan for the Project;
  - (k) IZ Unit Locations. In response to OP's comments on the proposed IZ unit locations, the Applicant noted that the preliminary IZ unit locations were included in the initial submission, that the final locations would comply with all requirements in the IZ regulations in Subtitle C Chapter 10, and that the Applicant agreed to OP's request that the requested flexibility to adjust the total number of units not permit reduction of the total square feet devoted to IZ as 15% of the residential floor area shown in the final plans approved by the Commission;
  - (l) Electric Vehicle ("EV") Charging Station Locations. As requested by OP, the preliminary location of EV charging stations was incorporated into the Project plans; and
  - (m) Additional Prehearing Materials. The Applicant also submitted an outline of witness testimony for the scheduled public hearing and resumes for its proffered expert witnesses pursuant to Subtitle Z § 401.1(c). The Applicant also confirmed payment of the hearing fee pursuant to Subtitle Z § 1601.1.
- (Ex. 8-8J.)

37. Applicant's Transportation Reports. On October 24, 2022, the Applicant filed a Comprehensive Transportation Review ("CTR"), prepared by Gorove Slade regarding the Project 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. (Ex. 14, 14A.)

38. Applicant's Supplemental Pre-Hearing Submission. On November 15, 2022, the Applicant filed a supplemental submission (Ex. 17-17D) that included:

- (a) Side Yard Flexibility. The Applicant requested flexibility from minimum side yard requirements to adjust the building design to set a portion of the south building wall back eight feet from the south property line beginning at the third floor. The additional flexibility was requested in response to the owner of the adjacent Chevy Chase Plaza property to the south at 5300 Wisconsin Avenue, N.W., in order to provide an additional side setback, not otherwise required, to address concerns from that owner. Specifically, under Subtitle G § 406.1, while a side yard is not required, if one is provided it must be a minimum of two inches per foot, but no less than five feet. Here, the proposed south setback results in a minimum side yard requirement of 16 feet, four inches, and the Applicant requested zoning flexibility to provide an eight-foot setback to accommodate the adjacent property owner;
- (b) Updated and Enhanced Benefits and Amenities and Additional Community Commitments. The Applicant summarized the proffered package of benefits and amenities, including the following updated and additional benefits not previously proposed:
  - (i) Increased Affordable Housing Proffer. The Applicant proffered to set aside two of the Project's IZ units to be reserved for households earning no more than 30% MFI;
  - (ii) Transportation Improvements. The Applicant shared that the proposed transportation improvements would consist of a new crosswalk on the west leg of Military Road where there is currently no crosswalk; improving all crosswalks at the intersection to be raised pedestrian crossings; and installing curb extensions on the south side of both Military Road approaches;
  - (iii) Accessible Units. The Applicant committed to providing two residential units to be built-out to the ANSI A standard prior to the lease-up of the building, with one such unit being an IZ unit;
  - (iv) Restrictions on Retail Use. In response to the ANC's request, the Applicant committed to refraining from leasing the ground-floor retail space to certain uses, otherwise permitted in the MU-9A zone, unless ANC 3E adopts a resolution in support of such a tenant and, specifically: sexually oriented business establishment; a check-cashing establishment; a bail-bond establishment; a pawnbroker; a marijuana dispensary; or a head/smoke/vape shop;
  - (v) Chevy Chase Recreation Center Landscaping Improvements: The Applicant committed to installing new landscaping at the public space abutting the Chevy Chase Recreation Center as discussed above in FF ¶ 33(h);
  - (vi) Street Trees: The Applicant committed to replacing nine street trees on the east side of Wisconsin Avenue between Jenifer Street and Military Road, subject to DDOT approval, which will be in addition to the Project's proposed public space frontage improvements abutting the Property; and

- (vii) Construction-Related Commitments: As requested by the ANC, the Applicant committed to offering preconstruction surveys to specified nearby residential property owners, consulting with the ANC regarding parking and truck routing, and designating a point of contact for all construction-related matters;
  - (c) Updated Plans. The Applicant submitted updated plans for the Project reflecting further development and refinement of the building design;
  - (d) GPM Analysis. The Applicant submitted an analysis of the Project's consistency with the Property's Regional Center designation on the GPM in response to comments received during the Applicant's community outreach. Specifically, the Applicant's analysis stated that the Project's proposal to develop new, high-density infill housing with ground-floor retail is consistent with the Regional Center designation which, per the Framework Element, is to be read in conjunction with the Property's FLUM designation and the Comprehensive Plan text, including the Rock Creek West Area Element, which specifically recommends the development of additional housing along Wisconsin Avenue and in the Friendship Heights Regional Center. The Applicant's analysis also acknowledges that the rear of the Project's scale may be slightly greater than what is anticipated for the small area on the Property's east designated Moderate Density Residential on the FLUM. However, the Project transitions down to the east of the site, with only a small portion of the building within the Moderate Density Residential area, and any minor inconsistency with the FLUM designation for this part of the building is heavily outweighed by the addition of new and affordable housing achieved from the Project's additional density;
  - (e) Proposed Conditions of Approval. The Applicant submitted proposed conditions of approval for the Application;
  - (f) Expert Resume. The Applicant submitted an additional resume for its proffered expert witness land use planner; and
  - (g) Community Outreach Update. The Applicant summarized its extensive outreach with the ANC, immediate neighbors, and the surrounding community beginning in June 2021 and continuing throughout the processing of the Application.
- (Ex. 17-17D.)

39. Applicant's Direct Presentation. In advance of the December 5, 2022 public hearing for the Application, the Applicant filed a presentation and an updated Transportation Demand Management plan revised in coordination with DDOT staff. (Ex. 29A1, 29A2, 30.) At the public hearing, the Applicant presented the Application and proposed Project and addressed questions raised by the Commission:

- (a) The Applicant provided testimony from five witnesses:
  - (i) Geoff Sharpe of Federal Realty Investment Trust, as a representative of the Applicant;
  - (ii) Robert Sponseller of Shalom Baranes Associates, as the Project's architect, admitted as an expert;



- (iii) Shane Dettman of Goulston and Storrs, as the Applicant's land use planner, admitted as an expert;
  - (iv) William Zeid of Gorove Slade, as the Project's transportation engineer, admitted as an expert; and
  - (v) Fred Jala of GGN, the Project landscape architect, and Sara Link of Bohler, the Project civil engineer, also appeared on behalf the Applicant and were accepted as experts but were not called upon to testify;
- (b) The Applicant's presentation included a summary of the Project background; the Applicant's outreach with OP, DDOT, and other District agency staff, and with the immediate neighbors, ANC 3E, and the surrounding community; the building design, site planning, and landscaping features; the land use planning concepts underlying the Project, including the Property's designation on the Comprehensive Plan Maps; and the Project's transportation-related components. In response to questioning by the Commission as to why the Applicant was reducing the amount of retail space in the building compared to the amount that currently exists as approved under the Existing PUD, the Applicant explained that there has been a declining interest in the type of large-format, "big box" retail tenants that have historically occupied the Property, which has resulted in a 50% vacancy in the submarket. The Applicant explained that the alternative "shop retail" being proposed with the Project requires only a 60-80 feet deep floor plan, which after taking into account the building's frontage on Wisconsin Avenue, results in a preferred ground-floor retail area of approximately 10,500 to 15,000 square feet. (Public Hearing Tr. at pp. 60-62.);
- (c) The Applicant's presentation also included an overview of the proffered public benefits and amenities, including the following new and enhanced benefits agreed upon with the ANC and not previously discussed:
- (i) Increased Affordable Housing Proffer. The Applicant increased its proposed IZ commitment to reserve 15.43% of the total residential GFA for IZ units, with two of the units reserved for households earning no more than 30% MFI; 7.93% of the total residential GFA set aside for households earning no more than 60% MFI; and the remaining balance of the IZ commitment reserved for households earning no more than 50% MFI. The Applicant testified that this proffer was "the largest set aside for Inclusionary Zoning units of any market rate PUD to date." (Public Hearing Tr. at p. 27.);
  - (ii) Photovoltaic Array at Iona Senior Center. The Applicant committed to designing, permitting, and installing a new photovoltaic array at Iona, as discussed in detail in FF ¶ 33(j); and
  - (iii) Commitment to Local-, Minority- and / or Women-Owned Retail Tenants. The Applicant committed to marketing the proposed ground-floor retail space to local-, minority- and / or women-owned retail during the initial lease-up of the retail space with a \$40-per-square-foot tenant improvement allowance granted to such qualifying tenants, as discussed in detail in FF ¶ 33(f); and

- (d) The Applicant's presentation also included a summary of the Applicant's responses to OP's comments in its November 28, 2022, hearing report, including:
- (i) The Applicant agreed to commit that no more than 10% of the Project's dwelling units may be used as co-living units;
  - (ii) The Applicant agreed to prohibit lodging use for the Project;
  - (iii) The Applicant agreed to commit to OP's recommended modifications to its proposed design flexibility language requiring that the Project's total IZ square footage must be 55,650 square feet or 15% of the final residential GFA, whichever is greater;
  - (iv) The Applicant committed to providing the two proposed 30% MFI IZ units at a minimum of 800 square feet and confirming that the accessible IZ units would be set aside at 60% MFI;
  - (v) The Applicant confirmed that DDOT's report to the Commission (Ex. 19) confirms its support for the proposed transportation improvements at 43<sup>rd</sup> Street and Military Road;
  - (vi) The Applicant indicated that DPR intends to file a letter into the record confirming its agreement with the proffered landscaping improvements to the public space abutting the Chevy Chase Recreation Center;
  - (vii) The Applicant clarified that the proposed replacement of nine trees along Wisconsin Avenue will be in addition to the seven trees to be provided in front of the Property; and
  - (viii) The Applicant stated that, while OP indicated that the proposed ground-floor use restrictions and construction-related commitments cannot be considered PUD benefits, the Applicant nonetheless proposes these commitments as agreed upon with the ANC and proposes to include such restrictions in the final order.

(Ex. 29A1, 29A2; Public Hearing Tr. at pp. 26-82.)

40. Applicant's Post-Hearing Submission. On December 19, 2022, the Applicant filed a post-hearing submission (Ex. 38-38C, 39) with responses to requests at the public hearing from the Commission:

- (a) Façade Materials. The Applicant submitted a façade materials palette for the rainscreen and brick options proposed for Project's primary façade;
- (b) Supplemental Comprehensive Plan Maps Analysis. The Applicant provided additional information and analysis of the Property's designations on the FLUM and GPM and relevant provisions of the Comprehensive Plan providing interpretive guidance for using the maps. The Applicant explained that the proposed MU-9A zoning is not inconsistent with the Property's split designations on both the FLUM and the GPM because the FLUM's partial "Moderate Density Residential" category provides that zones other than those expressly stated in the category may apply; the GPM's partial "Neighborhood Conservation" designation does not preclude development to address housing needs; and the goal of the PUD is to permit development flexibility greater than matter of right zoning, provided the Project offers commendable quality public benefits, which it does. Further, the height of

the proposed Project steps down toward the east in the rear in the portion of the site designated both Moderate Density Residential and Neighborhood Conservation Area, where lower densities are contemplated;

- (c) Courtyard IZ Units. The Applicant provided additional information regarding the impact of restricting the number of IZ units that may be located on the Project's center courtyard in response to OP's request, which was withdrawn at the hearing, to limit IZ units facing the courtyard. The Applicant noted that the courtyard units will provide maximum light and air and a calm setting with ample greenery and are not undesirable units;
- (d) Rebuttal of Office of Attorney General's ("OAG") Submission and Testimony. The Applicant provided rebuttal in response to OAG's arguments in its letter and testimony to the Commission in opposition to the Application. Specifically, OAG argued that the Project should be required to either: (1) set aside 33% of the proposed housing for very low- and extremely low-income households based on its designation within a Future Planning Analysis Area on the GPM; or (2) undergo a future planning analysis review coupled with setting aside at least 18% of the Project's housing for IZ, based on IZ Plus requirements, as further discussed below (see FF ¶ 59). The Applicant stated that the Comprehensive Plan Implementation Element (10-A DCMR § 2503.2) clearly states that PUD projects may precede the area-wide planning process for a Future Planning Analysis Area designated on the GPM because "the PUD process combines the planning analysis and rezoning and thus accomplishes the same purpose underlying the [Implementation] Element's guidance to ensure that rezoning proposals in a Future Planning Analysis Area are appropriately informed by planning considerations." Thus, the 33% IZ requirement to which OAG cited is not applicable because the planning study and review called for in the Property's Future Planning Analysis Area designation on the GPM was fully accomplished in the context of the PUD through OP's coordinated review of the Application and referrals for review by DDOT and other District agencies to provide feedback regarding potential impacts to infrastructure or other issues related to the Comprehensive Plan's policies and guidance. The Applicant further stated that, under the clear language of the Zoning Regulations, Subtitle X § 502.2(a), IZ Plus does not apply to a Map Amendment that is part of a PUD application and that, further, IZ Plus is not, and never has been, intended to dictate or set a baseline for the affordable housing requirements for PUD applications, which inherently offer a broader range of public benefits and amenities in addition to affordable housing, including additional public outreach and participation in the development review process and the ability for the Project design to benefit from greater input from the community and District agencies;
- (e) IZ Proffer. In response to the Commission's request, the Applicant provided information regarding the impact of providing 28 residential units at 50% MFI, 26 units at 30% MFI, and two units at 20% MFI and why such a proposal would be financially infeasible due to the Project's high, fixed construction costs; the increasingly high cost of financing; and substantially increased operational costs. (Ex. 39.);

- (f) DPR Letter. The Applicant submitted a letter dated December 6, 2022, from DPR stating its support for the proffered public benefit to make landscaping improvements to the public space abutting the Chevy Chase Recreation Center, contingent on DPR and DDOT having the opportunity to review and provide feedback on the proposed landscape design. DPR also noted that it will also request a maintenance plan/schedule with annual reporting; and
  - (g) Corrected Zoning Tabulations. The Applicant submitted a revised zoning tabulations sheet correcting the stated required and provided rear yard as being 20 feet, four inches.  
(Ex. 38-38C, 39.)
- 41. Draft Conditions. Pursuant to Subtitle X §§ 308.8-308.10, on January 19, 2023, the Applicant submitted its draft proffers and conditions. (Ex. 41.)
  - 42. Final Conditions. Pursuant to Subtitle X § 308.12, on February 2, 2023, the Applicant submitted its final proffers and conditions reflecting revisions made in response to comments received from OZLD. (Ex. 44, 44A.)
  - 43. Draft Findings of Fact and Conclusions of Law. Pursuant to Subtitle Z § 601.1, on March 24, 2023, the Applicant submitted its proposed findings of fact and conclusions of law. (Ex. 45, 45A.)

#### **APPLICANT'S JUSTIFICATION FOR RELIEF**

##### **Relief Requested**

- 44. The Application requested the Commission approve a Modification of Significance and a PUD-related Zoning Map Amendment to the MU-9A zone. The non-PUD underlying zoning of the Property is MU-5A; a matter-of-right IZ development in the MU-5A zone allows a maximum FAR of 4.2 and a maximum height of 70 feet. For comparison purposes, the Existing PUD zoning is the MU-8 zone; a matter-of right IZ development in the MU-8 zone allows a maximum FAR of 6.0 and a maximum height of 70 feet. Under the requested MU-9A zone, the additional PUD density and height allows the Project to be built to a maximum height of 130 feet and proposed FAR of 7.56, which complies with the matter-of-right FAR of 7.8 for an IZ development in the MU-9A zone and does not utilize the maximum 9.36 FAR permitted for a PUD in the MU-9A zone. (Ex. 3, 38, 38C.)
- 45. The Application further requested additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1 from the minimum side yard requirements of Subtitle G § 406.1 to provide an eight-foot side yard setback on the south side of the building beginning at the third floor where a minimum side yard of 16 feet, four inches is required based on the proposed side yard height. (Ex. 3, 17, 17A1-17A3.)

**Consistency with the Comprehensive Plan and Other Adopted Public Policies Related to the Property (Subtitle X § 304.4(a))**

46. Comprehensive Plan. The Applicant provided evidence that the Application complies with Subtitle X § 304.4(a) and is not inconsistent with (i) the Comprehensive Plan as a whole, including its maps, Citywide Element policies, and Area Element policies, or (ii) other public policies related to the Property:
- (a) FLUM. The Project is not inconsistent with the FLUM's split designation of mixed-use High Density Commercial and High Density Residential for the majority of the Property on the west fronting on Wisconsin Avenue and the Moderate Density Residential designation on the smaller eastern portion of the Property. The Comprehensive Plan's Framework Element expressly lists the MU-9 zone among the appropriate zones for the High Density Commercial designation, and the Project is a "high-rise residential" building as anticipated by both the High Density Commercial and High Density Residential categories. (10-A DCMR §§ 227.8, 227.13.) The Comprehensive Plan calls for density greater than 4.0 FAR in the High Density Residential category and greater than 6.0 FAR in the High Density Commercial category and anticipates greater levels of density for Projects approved through the PUD process. (*Id.* §§ 227.8, 227.13.) The Project is carefully designed to focus the bulk and mass of the building along Wisconsin Avenue and scale down further east moving into the portion of the site within the Moderate Density Residential designation, which also allows for greater levels of density and flexibility when complying with IZ or proposed as part of a PUD. The Comprehensive Plan provides that the FLUM is a soft-edged map that is to be interpreted broadly, and the Applicant argued that the intent of the FLUM in this case is for high-density, mixed-use development on a majority of the PUD site that transitions to a moderate scale along the east in response to adjacent residential development, as proposed by this Project. At the northeast corner of the Project, the building maintains a height and scale that relates to the adjacent Chevy Chase Pavilion and Chevy Chase Plaza developments, which also extend into the Moderate Density Residential area to the east and were developed pursuant to a PUD. The Project also advances numerous Comprehensive Plan policies promoting increased intensity of development on corridors like Wisconsin Avenue. (Ex. 3H, 39.);
  - (b) GPM. The Project is not inconsistent with the GPM's split designation of Regional Center for the majority of the Property fronting along Wisconsin Avenue on the west and Neighborhood Conservation Area on the smaller eastern portion of the Property. The Project achieves the goal of the Regional Center designation to provide high density infill development to create new retail and housing along major arterials on sites that are served by transit. Further consistent with this designation, the Project provides height, massing, and density to support the role of Regional Centers while scaling appropriately to the adjacent residential development. The Project's infill role is supported by the Neighborhood Conservation Area designation, which the Comprehensive Plan specifically states

is intended to preserve and enhance established neighborhoods but not to preclude development, particularly to address city-wide housing needs, as the Project will help to do. The Project carefully balances the Comprehensive Plan policy goals for the Friendship Heights Regional Center encouraging greater density and height, greater levels of housing and affordable housing, and strengthening commercial vitality, along with the goals of conserving and enhancing the existing Friendship Heights neighborhood and scaling down toward the residential development to the east of the Property. The Property is also within a Future Planning Analysis Area on the GPM, which requires that any zoning change be preceded by a planning analysis process, except in certain cases including Zoning Map Amendments requested as part of a PUD application, as is proposed here. (10-A DCMR §§ 2503.2, 2503.3; Ex. 3H, 39.);

(c) Racial Equity Lens.<sup>6</sup> The Application asserted that the Project is not inconsistent with the Comprehensive Plan when evaluated through a racial equity lens for the following reasons:

- (i) The Project will provide approximately 310 new residential units, where no housing currently exists, and will set aside a minimum of 15.43% of the Project's residential floor area for IZ units, including two units reserved at 30% of MFI; 7.93% of the residential floor area reserved at 60% of MFI; and the balance of the IZ set-aside reserved at the 50% MFI level. The Project represents a critical addition of housing and affordable housing to the Friendship Heights neighborhood in Ward 3, consistent with the District's overall housing goals and specific housing objectives identified for the Rock Creek West Planning Area;
- (ii) The Project will not result in any direct displacement of residents given that the Property is currently improved exclusively with commercial uses. The newly revitalized retail will better support the surrounding community and create a more active and engaging pedestrian environment for residents and visitors;
- (iii) The Project will provide a significantly improved pedestrian experience along this portion of Wisconsin Avenue as a result of the Project's compelling architecture and direct improvements to the streetscape, the revitalized ground-floor retail, and the addition of new residents that will create more pedestrian activity and better support for area businesses. The Project retains the existing below-grade structure on the Property, which will help minimize the Project's overall carbon footprint. The Project will be designed to achieve LEED Gold standards, with sustainable features including green roof and heavy tree and other native plantings throughout the Project;
- (iv) The Project will create employment opportunities through the businesses that will occupy the newly revitalized retail space, in addition to the many

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<sup>6</sup> 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 and the public hearing, 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 23, 2023.

- short-term employment opportunities that will be created for the Project's construction. Adding 310 high-quality residential units to the neighborhood will provide a much greater level of support to the retail on-site and for businesses and economic growth within the Friendship Heights neighborhood more broadly, which will benefit area residents; and
- (v) The Project has gone through a robust public process with multiple, intensive rounds of meetings with the ANC and extensive outreach with adjacent property owners and the surrounding community. (Ex. 5);
  - (d) Land Use Element. The Application stated that the Project balances the numerous and sometimes competing objectives of the Land Use Element of the Plan, which is the Element that should be given the greatest weight.<sup>7</sup> The Project furthers the goals and policy objectives set forth in the Land Use Element by increasing housing, including a high level of affordable housing, less than one block from a Metrorail station and strengthening one of the District's key longstanding Regional Centers by revitalizing the Property with street activating and neighborhood serving retail and significant new housing opportunities to support the businesses in the area. The Project provides an appropriate level of density given the Property's location along a major commercial corridor and proximity to transit, while also stepping down the massing and scale of the building adjacent to the lower-scale residential uses to the east of the Property. The Project's architectural design and pedestrian-sensitive street presence will contribute to the visual quality of the Wisconsin Avenue commercial corridor and serve to further activate the area. (*See* 10-A DCMR §§ 307.9-307.12, 307.14, 307.21, 310.10, 310.20, 311.5, 313.11-313.14.);
  - (e) Transportation Element. The Application stated that the Project is not inconsistent with the Transportation Element. The Project provides approximately 310 units of housing, including affordable housing, less than one block from a Metrorail station and includes improvements to the pedestrian streetscape adjacent to the Property, as well as the installation of additional street trees along Wisconsin Avenue beyond the Property's frontage and much-needed safety improvements to the nearby intersection of 43<sup>rd</sup> Street and Military Road. In addition, the Project will continue to utilize the existing private through-alley running from Military Road to Jenifer Street to provide access for loading and service, which minimizes impacts on the Wisconsin Avenue commercial corridor and the pedestrian experience. (*See id.* §§ 403.10, 403.13, 404.6, 411.5, 417.15.);
  - (f) Housing Element. The Application stated that the Project creates high-quality new housing within one block of Metrorail, including affordable units in excess of what is required under IZ. The Project represents one of the first major new housing developments in Ward 3 in many years, and the Project will help further the establishment of the Friendship Heights neighborhood as a mixed-income community. (*See id.* §§ 503.5, 503.6, 503.7, 504.10.);
  - (g) Environmental Protection Element. The Application stated that the Project is designed to achieve LEED Gold standards, with specific sustainable design features

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<sup>7</sup> *See* 10-A DCMR §§ 300.3, 2504.6 ("the Land Use Element . . . should be given greater weight than the other elements.").

including green roof, heavy tree, and other native plantings throughout the Project, and ten EV charging stations in the Project's garage. The Project has been designed to adaptively reuse the below-grade levels and most of the ground-floor slab of the existing building, which the Applicant stated will save approximately 1,150 tons of embodied carbon (tCO<sub>2</sub>e) in the existing concrete and steel. The Project will include a high efficiency VRF system for the majority of space heating and cooling, and the new structure will include large areas of bioretention and green roof to retain and store rainfall, which will be an improvement over the existing structure that includes minimal stormwater management measures. The Project will also include an efficient irrigation system that will minimize outdoor potable water use. The proposed green roofs and high albedo rooftop pavers will mitigate the local urban heat island effect, in contrast with the existing building which has a dark, ballasted roof that contributes to this effect. (*See id.* §§ 603.6, 605.6, 605.7, 605.9, 609.14, 612.9, 612.19, 615.4, 615.5, 616.6, 618.3, 620.14, 620.16, 622.8.);

- (h) Economic Development Element. The Application stated that the Project will revitalize the site's existing ground-floor retail with new neighborhood serving retail and will strengthen the Friendship Heights commercial corridor by bringing an influx of new residents to support area businesses. As stated above, the Project is one of the first significant housing developments in Ward 3 in many years and will serve an important street activating role to revive pedestrian activity and vibrancy on this block of Wisconsin Avenue. The Project furthers the District's policy objectives to cluster development and retail uses near mass transit. (*See id.* §§ 708.6, 708.8, 708.14, 713.5.);
- (i) Urban Design Element. The Application stated that the Project provides a compelling architectural design that utilizes façade projections and recesses to break up the mass of the building facing Wisconsin Avenue. The design steps the mass and scale of the building down towards the adjacent lower-scale residential uses to the east. The corners of the building are designed to allow visual relief and transition between neighboring buildings. The Project will represent an improvement to the Wisconsin Avenue view corridor. The proposed streetscape will include new sidewalks that meet ADA standards, new street trees and planting, as well as public amenities such as bicycle racks and benches. The Project's design, the proposed new neighborhood-serving retail, the proposed streetscape improvements, and the addition of new residents to this area will together help activate the pedestrian realm along Wisconsin Avenue. (*See id.* §§ 906.3, 906.9, 906.10, 908.3, 908.4, 909.5, 909.9, 909.10, 914.7, 918.3, 918.4, 918.6, 918.9, 919.6.); and
- (j) Rock Creek West Area Element. The Application stated that the Project advances the housing, commercial, livability, transportation, and sustainability objectives of the Rock Creek West Area Element. Consistent with the Area Element, the Project will provide new housing, including a significant commitment for IZ units, less than one block from Metrorail. The Project's design will represent an improvement to the Wisconsin Avenue view corridor and will further the revitalization of this commercial district by adding residents and reviving the Property's ground-floor retail offerings. The Project steps down in mass and scale adjacent to the lower-



scale residential uses to the east, while still achieving a level of density appropriate for a site located on a major commercial corridor with immediate Metrorail access. (See *id.* §§ 2308.4, 2308.7, 2309.1, 2309.15, 2312.7, 2312.8, 2312.11.)

(Ex. 3H, 5, 39.)

47. Mayor's Housing Order. The Project advances the Mayor's Order 2019-036 on housing which sets a goal of creating 36,000 new housing units by 2025, including 12,000 affordable housing units. The Project alone represents nearly 1% of the Order's housing goal, a significant contribution from a single site, including approximately 48 affordable units, with two units reserved at the 30% MFI level. (Ex. 3H, 39.)

**No Unacceptable Project Impacts on the Surrounding Area or the Operation of City Services (Subtitle X § 304.4(b))**

48. The Applicant also provided evidence that the Application complies with Subtitle X § 304.4(b); that is, the Project does not create unacceptable impacts on the surrounding area because:

- (a) 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. The proposed PUD-related Zoning Map Amendment to the MU-9A zone is consistent with the Property's split mixed-use High Density Residential / High Density Commercial and Moderate Density Residential designation on the FLUM, as discussed above, and is compatible with the zoning and actual land uses for the surrounding blocks in the Friendship Heights neighborhood. The Project is designed to focus the greater bulk and height of the building along the west side of the Property facing Wisconsin Avenue, with the height stepping down to provide an appropriate transition in scale towards the lower-density residential development to the east of the Property. The Project's mix of retail/service and multifamily residential uses is appropriate given the site's proximity to transit and location along the Wisconsin Avenue commercial corridor. The Project's mix of uses, height, and mass are appropriate given the planning objectives under the Property's split High Density and Moderate Density designations on the FLUM and the split Regional Center and Neighborhood Conservation Area designations on the GPM, as discussed in detail above;
- (b) Housing Market Impacts. The Project's addition of new housing has a favorable impact by creating new, high-quality, transit-accessible housing units, which are in high demand across the District. Further, the Project will be one of the few new multifamily developments in Ward 3 in many years. The addition of new multifamily housing will also help to support and revitalize the neighborhood retail uses and foster a diverse mixture of people living in the neighborhood. The Project's inclusion of IZ units that exceed the minimum required under the IZ program helps further the objective that the Friendship Heights neighborhood exist as an inclusive, mixed-income community. The Project does not directly displace any existing residents and is unlikely to create any adverse impacts on the surrounding housing market. To the

- contrary, the addition of the Project's new housing units helps buffer increasing housing costs, as increases in supply are widely understood to dampen rent increases;
- (c) Construction-Period Impacts. During the development period for the Project, impacts on the surrounding area are capable of being mitigated. The Applicant has agreed to work closely with abutting property owners and ANC 3E to manage and mitigate any construction impacts associated with the Project's development;
  - (d) Open Space, Urban Design, and Massing Impacts. The Project has favorable impacts on the public realm through the construction of a new, high-quality building with a positive street presence, improved streetscaping, and the provision of ground level uses and new residents to activate the public realm. The Project includes the construction of improved streetscaping along Wisconsin Avenue and the incorporation of significant greenery and vegetation into the building design. The Project will also revitalize the ground-level retail uses on the Property and will add new residents to help further activate the public realm and support a vibrant urban environment along this prominent commercial corridor. The Project provides an appealing architectural design to enhance the design character of this portion of Wisconsin Avenue, with a carefully articulated and attractive façade. The Project's bulk and mass step down on the east side of the Property to provide an appropriate transition to the adjacent lower scale residential development to the east;
  - (e) Transportation and Mobility Impacts. The Project will not have any unacceptable impacts on the public transportation facilities or roadways that it relies on for service. The Project's transportation impacts are either capable of being mitigated or acceptable given the quality of public benefits arising from the Project. Notably, the reduction of commercial uses and replacement with residential use proposed by the Project is anticipated to result in a net reduction in vehicular trips to and from the Property. The Project's location immediately adjacent to the Friendship Heights Metrorail station and nearby retail amenities will help support a higher non-auto mode share for residents. The Project includes a robust TDM plan to further promote a reduced reliance on vehicles, which the Applicant developed in coordination with DDOT and ANC 3E. The Project contains approximately 180 below-grade parking spaces to accommodate the parking demand of residents and retail patrons. Bicycle usage is integrated into the design, with long-term spaces in a dedicated storage room, including 10 long-term spaces provided for residents on the ground floor and short-term spaces provided in public space;
  - (f) Economic Impacts. The Project will have favorable economic impacts on the neighborhood and the District more generally. The Project will provide a significant reinvestment in the longstanding Friendship Heights commercial corridor, which has struggled in recent years. The introduction of new residential uses will provide more patrons for new and existing neighborhood-serving businesses. The Project's intensification of land use on the Property has positive tax revenue effects for the District and the support of retail establishments. To the extent there are any adverse effects from the Project, such effects will be more than offset by the Project's public benefits;
  - (g) Cultural and Public Safety Impacts. The Project will have favorable impacts on the surrounding area by adding new residents who will contribute to the immediate

neighborhood and the District in diverse and meaningful ways. The Project's improvements to the public realm and adjacent pedestrian streetscape along Wisconsin Avenue will implement a beneficial renewal of the Property and the commercial corridor along which it is located. The addition of residents to the neighborhood and the Project's urban design adds street activity, "eyes on the street", quality lighting, and other improvements all of which have positive effects on crime deterrence;

- (h) Public Facilities and/or District Services Impacts. The Applicant submitted evidence that the Project will not result in any unacceptable impacts to public facilities and infrastructure or District services. Furthermore, in addition to being reviewed by OP and DDOT, the Application was circulated by OP to numerous other District agencies and authorities for review, including the Metropolitan Police Department, the Department of Housing and Community Development ("DHCD"), the Washington Metropolitan Area Transit Authority, the Fire and EMS Department, DOEE, DC Water, DPR, the Department of Public Works, DC Public Library, and DC Public Schools, all of which were also invited to participate in an interagency meeting and submit written comments on the Project. OP confirmed that agency comments that were received did not indicate adverse impacts on public infrastructure or services. The average daily water demand for the Project can be met by the existing District water system. The proposed connection for the fire and residential water supply is from within the existing distribution system and will be coordinated with DC Water. The proposed sanitary sewer connections for the Project are from within the existing distribution system and will be coordinated with DC Water during the permitting process. The Project has been designed to achieve high levels of on-site stormwater retention. The requisite inlets and closed pipe system are designed and constructed to be in compliance with the standards set by DOEE, DC Water, and DDOT, and it will be an existing improvement over the stormwater runoff that occurs at the existing building. Solid waste and recycling materials generated by the Project will be collected regularly by a private trash collection contractor. Electricity for the Project 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. Transformers will be installed on the Property or covered in the adjacent public space in accordance with Pepco's and DDOT's design guidelines. The Applicant further provided evidence that the Project will not have an unacceptable impact on area schools or public parks, recreation centers, or library services. Indeed, as part of this Application the Applicant has committed to make major landscaping improvements to the public space abutting the Chevy Chase Recreation Center, a direct positive impact on the District's available public facilities in the area; and
- (i) Environmental Impacts. The Project will not have any unacceptable impacts on the environment, and instead will have favorable impacts over the existing building. The Project is designed to achieve high levels of environmental performance and, specifically, LEED Gold design standards. The Project will include green roof, bioretention, and tree plantings. The Project will incorporate the existing below-

grade structure which will reduce the amount of carbon that would otherwise be generated by constructing a new foundation. The Project's delivery of high-quality environmental design as well as usable outdoor spaces is a net improvement to the existing, largely impervious condition and superior to what would be achievable via a matter-of-right development or with the retention of the existing building. The Project will include a high efficiency irrigation system that supports plantings while also minimizing the usage of potable water resources. The Project includes native plantings appropriate to the region that will provide habitat for local bird and pollinator populations.

(Ex. 3, 3H, 5, 39.)

**Includes Public Benefits and Project Amenities that Are Not Inconsistent with the Comprehensive Plan, Small Area Plan, or Other Adopted Public Policies Related to the Property (Subtitle X § 304.4(c))**

49. The Applicant provided evidence that the Application complies with Subtitle X § 304.4(c). The Applicant also provided evidence that the Project's public benefits and project amenities are not inconsistent with the Comprehensive Plan or other public policies and such benefits and amenities satisfy the criteria of Subtitle X § 305. As discussed in detail below, the proffered benefits exceed what could result from a matter-of-right development, are tangible, measurable, and able to be delivered prior to issuance of the certificate of occupancy, and benefit either the immediate neighborhood or address District-wide priorities. (*Id.* §§ 305.2, 305.3.) The majority of the benefits accrue to the benefit of the area of ANC 3E, the ANC in which the Project is located. (*Id.* § 305.4; Ex. 3, 6, 17, 29A1, 29A2, 44.)
50. The Application enumerated the following benefits and amenities, superior to a matter-of-right project, organized under the categories defined by Subtitle X § 305.5:
  - (a) Superior Urban Design and Architecture (Subtitle X § 305.5(a)). The Project's design reflects superior architectural and urban design characteristics relative to any matter-of-right development, including a highly articulated building façade and stepping the massing down on the east side to achieve a transition to the adjacent lower-scale residential development;
  - (b) Superior Landscaping (*Id.* § 305.5(b)). The Project's landscaping and hardscaping are superior to any matter-of-right development. The cascading garden design concept for the tiered roof terraces "green" the Project while also providing functional services to the Project's residents;
  - (c) Site Planning and Efficient Land Utilization (*Id.* § 305.5(c)). The proposed site plan and efficient use of the Property are superior benefits of the Project. The Project introduces an appropriate overall density and new residential use, including affordable housing, immediately adjacent to transit. The Project maintains the existing highly efficient site circulation and access that minimizes curb cuts and concentrates loading and service activity via the existing shared private service lane;

- (d) Housing in Excess of Matter-of-Right Development, Affordable Housing, and Deeply Affordable Housing (*Id.* § 305.5(f)(1), (g)(1), and (g)(2)). The Project reserves 15.43% of the residential GFA for affordable housing units. Two of the IZ units will be reserved for households earning a maximum of 30% of the MFI, 7.93% of the residential GFA will be reserved for households earning a maximum of 60% of MFI, and the balance of the IZ units will be reserved for households earning a maximum of 50% of MFI. This greatly exceeds the amount of housing that could be developed on the site under the current zone and exceeds the amount of affordable housing otherwise required under the IZ program;
- (e) Environmental and Sustainability Benefits (*Id.* § 305.5(k)). The Project includes important sustainable design elements and achieves appropriate levels of environmental certification. The Project has been designed to meet environmental design standards at the LEED v.4 Gold level and includes ten EV charging stations in the Project's garage, green roof, bioretention and tree plantings. The irrigation system will be designed to reduce outdoor water use. Native plants will provide visual interest and habitat for wildlife. Significant tree plantings and non-absorptive paving materials will minimize the Project's heat island effect;
- (f) Transportation Infrastructure Beyond Mitigation (*Id.* § 305.5(o)). The Applicant will design and construct improvements to the intersection at 43<sup>rd</sup> Street and Military Road, subject to DDOT approval consisting of a new crosswalk on the west leg of Military Road where no crosswalk currently exists; improving all crosswalks at the intersection to be raised pedestrian crossings; and installing curb extensions on the south side of both Military Road approaches; and
- (g) Other Public Benefits (*Id.* § 305.5(r)). The Applicant will provide the below additional public benefits:
  - (i) Minimum retail space. The Project will include a minimum of 10,500 square feet of retail space on the ground floor;
  - (ii) Ground-floor Bicycle Parking. The Project will include ten long-term bicycle parking spaces for residents on the ground floor of the building;
  - (iii) Accessible Units. Two residential units will be built out to the ANSI A standard prior to the lease-up of the building, one of which will be an IZ unit reserved at 60% MFI;
  - (iv) Local-, Minority-, Women-Owned, and Inclusive Retailers. During the initial retail lease-up and until all of the retail space is leased, the Applicant will make commercially reasonable efforts to market to local-, minority- and / or women-owned businesses as retail tenants in the Project and will reach out to the Greater Washington DC Black Chamber of Commerce, the DC Small Business Development Center, the Washington DC Women's Business Center, and the DC Developmental Disabilities Council to accomplish this. The Applicant will offer at least \$40 per square foot of gross leasable area in tenant improvement allowance for any such businesses with whom the Developer enters into a market-rate retail lease, which may be in the form of direct payment, buildout cost, or some combination of the two;

- (v) Chevy Chase Recreation Center Landscaping Improvements. The Applicant will install new landscaping at the public space abutting the Chevy Chase Recreation Center, including removal of invasive plants and dead and undesirable trees and bushes, in the area between the existing fence and the sidewalk along Western Avenue, N.W. from Livingston Street, N.W. to 41<sup>st</sup> Street, N.W. and along 41<sup>st</sup> Street, N.W. from Western Avenue, N.W. to Livingston Street, N.W., subject to approval by DPR and DDOT. The Applicant will spend a minimum of \$100,000 on these improvements, with the total combined design, permitting, consultant, and installation costs not to exceed \$150,000;
- (vi) Street Trees. The Applicant will replace nine street trees on the east side of Wisconsin Avenue between Jenifer Street and Military Road, subject to DDOT approval. This is in addition to replacing seven trees in front of the Property and the Project's proposed public space frontage improvements abutting the Property; and
- (vii) Photovoltaic Array at Iona Senior Center. The Applicant will design, permit, and install a photovoltaic array at the Iona Senior Center at 4125 Albemarle Street, N.W., up to a total cost of \$240,000. The installation will include a new roof membrane on the upper flat roof, photovoltaic panels, a racking system, and an inverter, subject to approval by relevant authorities. The completed improvements will be conveyed to Iona such that Iona will be the sole beneficiary of reduced energy bills and SREC income.

(Ex. 3, 6, 17, 29A1, 29A2, 38, 44.)

**Satisfaction of the PUD Eligibility Standards**

51. The Applicant provided evidence that the Application complies with the purposes of a PUD set forth in Subtitle X § 300.1:

- (a) Superior to matter-of-right development. The Project is superior to a matter-of-right development because it provides more housing and affordable housing than what could be constructed on the Property without a PUD. Further, the amount of housing included in the Project and the amount of affordable housing in the Project exceeds the amount and depth of affordability that would be required in a matter-of-right development pursuant to the Zoning Regulations' IZ requirements. The Project's construction supports a significant package of benefits and amenities as outlined above, which exceed what would be provided in any matter-of-right development. Finally, the Project is undergoing a public review process with opportunities for neighbor, community group, and public agency participation. Those opportunities would not exist for a matter-of-right development of the Property. (Ex. 3, 6, 17, 29A1, 29A2, 44.);
- (b) Protects and advances the public health, safety, welfare, and convenience. The Project improves major public interests and priorities such as housing and affordable housing, new ground level activating retail use, and streetscape and urban design improvements relative to existing conditions on and around the Property. The Project's creation of approximately 310 new residential units,

including affordable units far exceeding what is otherwise required under IZ, in a significant mixed-use, transit-oriented corridor in Ward 3 advances public health, safety, and welfare goals of the District. The Project does not directly displace or convert any existing housing and provides housing opportunities for residents of limited income. The Project also improves pedestrian and transit opportunities. (Ex. 3, 6, 17, 29A1, 29A2, 44.); and

- (c) Does not circumvent the intent and purposes of the Zoning Regulations. The Project also advances the MU zones' purposes which encourage "mixed-use developments that permit a broad range of commercial, institutional, and multiple dwelling unit residential development at varying densities." Subtitle G § 100.1. The Project is a "high-density mixed-use development including . . . retail[] and housing" and is located in a regional center and within 500 feet of a transit stop, consistent with the purpose and intent of the MU-9 zones. *Id.* § 400.8. The Project is an orderly development with a mix of uses at an appropriate scale and density for its location, both facing the Wisconsin Avenue commercial corridor on the west and the lower scale residential development to the east of the site. (Ex. 3.)

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

#### **OP**

52. On August 29, 2022, OP filed a setdown report recommending that the Commission set the Application down for a public hearing (the "OP Setdown Report"). (Ex. 7.) The OP Setdown Report included the following comments on the Application:

- (a) OP stated that the requested design flexibility to vary the number of units by  $\pm 10\%$  should not impact the total square feet of IZ units provided by the Project;
- (b) OP requested a shadow study for each season at 9:00 am, 12:00 pm, and 3:00 pm and the impact on surrounding properties, particularly those east of the Property;
- (c) OP requested additional information and provided comments regarding the proposed benefits and amenities, as follows:
  - (i) Clarify the proposed building façade materials;
  - (ii) Label proposed private and communal open spaces on the plans;
  - (iii) Consider locating all proposed bicycle parking in the first-floor amenity space rather than the garage;
  - (iv) Show the location of EV charging stations on the plans;
  - (v) Provide additional information regarding who will be allowed to use the then-proposed community center and how the center will be programmed;
  - (vi) Provide additional information regarding the proposed transportation improvements;
  - (vii) Provide information regarding the additional public benefits being proffered; and
  - (viii) Consider leasing the proposed retail space to small and local businesses based in the District of Columbia;
- (d) OP requested additional information regarding the Project plans, as follows:

- (i) Types of plantings and pavement materials proposed for the Project's outdoor spaces and roof areas;
- (ii) Types of building materials proposed, including metal trim for windows and doors;
- (iii) Roof lighting plan;
- (iv) Proposed retail and building signage plan; and
- (v) Proposed IZ unit locations on floor plans;
- (e) The Applicant responded to all of the comments and requests for information in the OP Setdown Report in its prehearing submission. (*See* FF ¶ 36; Ex. 8-8J.);
- (f) The OP Setdown Report observed that the proposed Project height of 130 feet represents an increase of 76 feet of height over the Existing PUD height of 54 feet; and the proposed Project FAR of 7.8<sup>8</sup> represents an additional 5.96 FAR increase over the Existing PUD FAR of 1.84. OP furthered observed that the Existing PUD approval permits approximately 94,000 square feet of retail GFA for the site under the MU-8 zone with no residential GFA on the site; however, the Project would provide approximately 383,379 square feet of residential GFA under the proposed MU-9A zone, which would create significantly more residential housing units than if the PUD modification was not proposed;
- (g) The OP Setdown Report analyzed the Project's consistency with the Comprehensive Plan, including evaluating it through a racial equity lens, and concluded that the Application is not inconsistent with the Comprehensive Plan's maps or Citywide Elements and that it would further the Area Element's and Citywide Element statements and policy objectives, citing provisions of the Land Use Element (10-A DCMR §§ 307.9-307.12, 307.14, 307.21, 310.10, 310.20, 311.5, 313.11, 313.12, 313.13); the Transportation Element (*Id.* §§ 403.10, 403.13, 404.6, 411.5); the Housing Element (*Id.* §§ 503.3, 503.5, 503.6, 503.7, 503.10, 504.7, 504.8, 504.10, 504.17, 504.18); the Environmental Protection Element (*Id.* §§ 603.6, 605.6, 605.7, 605.9, 612.9, 615.4, 618.3); the Urban Design Element (*Id.* §§ 906.3, 906.9, 906.10, 909.5, 909.9, 909.10, 918.3, 918.4, 918.6, 919.6); and Rock Creek West Area Element. (*Id.* §§ 2308.7, 2309.1, 2309.15, 2312.7, 2312.8, 2312.11); and
- (h) The OP Setdown Report also included a racial equity lens analysis which concluded that the Project would generate affordable housing, including IZ units at deeper affordability levels than required, which has the potential to benefit non-white populations. The OP Setdown Report noted that the Rock Creek West Planning Area in which the Property is located only absorbed about 3% of the total housing units added between 2006 and 2015, which was the lowest of all the planning areas across the District. In addition, OP's 2019 Housing Equity Report (the "Housing Equity Report") found that the Rock Creek West Planning Area had only 80 units in the affordable housing pipeline and was short 1,910 affordable housing units at the time of the report. OP's racial equity analysis also concluded that the Project would not result in any physical displacement of residents; would have access to

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<sup>8</sup> Subsequent to OP's Setdown Report, the Applicant reduced the Project FAR from 7.8 to 7.56 at Ex. 17; therefore, the Project represents an additional 5.72 FAR increase over the existing PUD FAR of 1.84.



multiple transit options including the nearby Friendship Heights Metro Station; would include employment-generating retail and residential uses; would bring environmental improvements to the site; and would include approximately 14,000 square feet of neighborhood-serving retail and residential amenities.

(Ex. 7.)

53. On November 28, 2022, OP filed a hearing report recommending that the Commission approve the Application. (the “OP Hearing Report”): (Ex. 21.)

- (a) The OP Hearing Report recommended the following additional conditions:
  - (i) No more than 10% of the dwelling units shall be used as co-living units;
  - (ii) There shall be no lodging use; and
  - (iii) No more than three IZ units shall be designated in apartment tiers located along the interior courtyard per floor;<sup>9</sup>
- (b) The OP Hearing Report summarized the Commission’s and OP’s previous comments on the Application and the Applicant’s responses;
- (c) The OP Hearing Report stated that OP is generally supportive of the Applicant’s requested zoning flexibility for minimum side yard requirements for the setback on the south side of the building, but recommended that any living room or bedroom along the south side yard have at least one window fronting along Wisconsin Avenue to ensure adequate provision of light and air to those rooms;
- (d) The OP Hearing Report included additional comments on and revisions to the Applicant’s proposed PUD conditions and requested design flexibility, as follows:
  - (i) OP recommended that the requested design flexibility item titled “Parking Number and Layout” only be granted on the condition that the PUD provide at least 10 EV charging stations;
  - (ii) OP recommended that the requested design flexibility item titled “Residential Units” be further amended to include a direct reference to the amount of IZ proffered and included OP’s proposed amendment language;
  - (iii) OP recommended that the requested design flexibility item titled “Sustainability” only be granted on the condition that the PUD complies with the Green Area Ratio (“GAR”) requirement of 0.20 for the MU-9A zone and that the PUD achieve at least LEED Gold certification; and
  - (iv) OP recommended that the requested design flexibility item titled “Mechanical Penthouse” be amended to remove the word “setback” to ensure that the flexibility may only be granted so long as the penthouse complies with all penthouse requirements of Subtitle C, Chapter 15;As noted during the Applicant’s testimony at the public hearing (FF ¶ 39(d)), the Applicant agreed to OP’s recommended changes to its design flexibility language as reflected in the Applicant’s final proffers and conditions (Ex. 44, 44A.), which are incorporated into the Conditions of this Order;
- (e) The OP Hearing Report summarized the proposed benefits and amenities, which OP stated are generally commensurate with the amount of flexibility the Applicant

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<sup>9</sup> At the December 5, 2022, public hearing, OP withdrew this recommendation after hearing the Applicant’s testimony about the desirability of interior units because of their courtyard views and relative quietness. (Public Hearing Tr. at p. 106.)

requested, and provided additional comments regarding the proffered benefits, as follows:

- (i) OP recommended that the Applicant affirmatively commit to providing the two proposed 30% MFI IZ units at a minimum of 800 square feet each and identify the MFI target for the ANSI A IZ unit;
- (ii) OP recommended that the Applicant strongly consider DOEE's recommendation that the PUD be designed to be fully electric;
- (iii) OP stated that the Applicant should provide additional information about what mitigation measures will be taken to assure the livelihood and continued maintenance of the green roofs;
- (iv) OP stated that a written agreement with DDOT approving the proposed non-mitigation transportation improvements should be provided for these improvements to be considered a public benefit;
- (v) OP stated that the ground-floor bicycle parking room should be moved to either the residential lobby or adjacent to it in order to be a project amenity;
- (vi) OP stated that it could not evaluate the proposed landscape improvements to the public space abutting the Chevy Chase Recreation Center as a public benefit proffer without a maintenance plan and agreement with DPR and DDOT;
- (vii) OP stated that the Applicant should demonstrate why the installation of nine street trees along Wisconsin Avenue qualifies as a public benefit; and
- (viii) OP stated that it has no objections to the proposed restrictions on specific uses for the Project's ground-floor retail space and the construction-related commitments agreed upon between the Applicant and ANC 3E but recommended that such commitments not be considered a PUD benefit.

The Applicant responded to OP's comments and requests for information in the OP Hearing Report in its presentation and testimony at the December 5, 2022, public hearing. (Public Hearing Tr. at pp. 26-82; FF ¶ 39(d).); and

- (f) The OP Hearing Report again concluded that the Application is not inconsistent with the Comprehensive Plan's maps, Citywide Elements, or Rock Creek West Area Element, including when evaluating the Project through a racial equity lens. OP stated that the Project would result in a superior project than what could be built under the Existing PUD approval and underlying MU-5A matter-of-right zoning. OP also stated that though there would be some increase in shadows at 3:00 pm during the spring, summer, and winter months on the properties to the east, morning and afternoon light would generally remain the same, and the impacts would not be unacceptable, given the quality of public benefits provided, particularly significant housing and affordable housing at deeper affordability levels in an area with a severe shortage of affordable housing.

(Ex. 21.)

- 54. At the December 5, 2022 public hearing, OP testified in support of the Application and summarized its comments in its prior reports. OP reviewed the FLUM and GPM designations for the Property and the Project's consistency with these designations. OP also stated, in response to comments regarding the Project's location within a Future

Planning Analysis Area on the GPM, that the Comprehensive Plan's Implementation Element is clear that a rezoning related to a PUD may proceed ahead of a planning analysis and that the 33% affordable housing requirement for zoning changes preceding a planning analysis does not apply to a PUD where a planning analysis and rezoning are combined. OP further testified, in response to comments that the Project should increase the proposed affordable housing proffer to meet or exceed what would be required for a standalone Zoning Map Amendment under IZ Plus, that IZ Plus does not serve as a "floor" for PUDs and was never meant to be part of the PUD analysis. (Public Hearing Tr. at pp. 105-130.)

55. On January 9, 2023, OP submitted a supplemental report in response to the Commission's requests and questions at the public hearing (Ex. 40, the "OP Supplemental Report" and together with the OP Setdown Report and OP Hearing Report, the "OP Reports"). The OP Supplemental Report provided the following:

- (a) OP addressed the Project's consistency with the Comprehensive Plan's FLUM and GPM designations for the Property and stated that the Project is consistent with the Property's map designations. OP reiterated that the proposed density and MU-9A zoning are consistent with the FLUM designations for High Density Residential and High Density Commercial that cover most of the site, as well as the Moderate Density Residential designation that covers a portion of the eastern side of the Property. OP stated that, under the Comprehensive Plan, the designations on the FLUM are generalized and intended to be "soft-edged" and do not follow parcel boundaries, with the intent being that the FLUM be interpreted broadly. (*See* 10-A DCMR §§ 228(a), 227.6.) OP further stated that the FLUM is intended to be used in conjunction with the Comprehensive Plan's policies and actions, with determinations for a selected Zone made by considering and balancing the competing and sometimes conflicting aspects of the Comprehensive Plan. (*See id.* § 227.2.) OP stated that the design of the building to step down in mass and height on the eastern side of the site respects the Moderate Density Residential designation and enables the creation of new housing and affordable housing, while avoiding displacement, that will encourage growth and development along a commercial corridor close to a Metro station. Accordingly, OP concluded that the proposal, on balance, is not inconsistent with the FLUM given both the interpretive guidance set forth for the FLUM and Comprehensive Plan policies stating the need for new housing in high opportunity areas proximate to transit. With respect to the Property's designation on the GPM, the OP Supplemental Report stated that the Project is consistent with both the Regional Center designation that applies to a majority of the site and the Neighborhood Conservation Area designation that applies to the eastern side of the Property. OP again underscored the major public benefit the Project will provide in the form of significant housing and affordable housing on a site with no existing housing and in the Rock Creek West Planning Area which has been identified in the Housing Equity Report as having the lowest supply of, and the highest need for, permanent affordable housing. OP noted that the Framework Element states that densities in Neighborhood Conservation Areas are guided by the FLUM and Comprehensive Plan policies (*id.* § 225.5) and

reiterated that the Project, on balance, is not inconsistent with the FLUM designation for the Property and the many policies that support the creation of new housing and affordable housing;

- (b) OP addressed the Property's location within a Future Planning Analysis Area on the GPM and reiterated the Comprehensive Plan Implementation Element provisions confirming that, while generally zoning changes to sites within such areas are to be preceded by the planning process for the relevant area, this does not apply in certain cases, including for projects proceeding as a PUD, such is in this case. (*See* 10-A DCMR §§ 2503.2, 2503.3.) Accordingly, OP rejected testimony at the December 5, 2022, public hearing stating that the Application's affordable housing proffer was insufficient because of the statement in 10-A DCMR § 2503.3 that projects reserving 33% of the units as affordable housing may proceed in advance of planning analyses. Specifically, OP stated that the relevant provision of the Implementation Element is clear that the greater 33% affordable housing requirement is intended to apply only when a standalone Zoning Map Amendment is proposed and is not relevant for a Zoning Map Amendment associated with a PUD. (*See id.* § 2503.3.) ("Notwithstanding 2503.2, *re-zoning proposals received prior to planning studies in these Future Planning Analysis Areas may be considered if the following occur or have occurred*: a Small Area Plan, development framework, technical study, design guidelines, *Planned Unit Development*, master plan already approved by the National Capital Planning Commission, or the re-zoning proposal would have been consistent with the 2012 Future Land Use Map. *The intent is that both steps of the two- step process must occur: planning analyses and then appropriate rezoning, although in the case of a Planned Unit Development the planning analyses and rezoning may be combined.* To advance deeply affordable housing production, proposals that reserve at least one third (33 percent) of housing units as affordable to very-low- and extremely-low-income households for the life of the building in Future Planning Analysis Areas with high housing costs and few affordable housing options may proceed in advance of planning analyses.") (emphasis added). (*Id.*) OP further stated that the Application had been reviewed through a racial equity lens and against the policies of the Comprehensive Plan to ensure equitable development, as well as being reviewed by various District agencies for project impacts on neighborhood and city services and facilities, with the comments received from such agencies indicating no adverse impacts on public infrastructure or services. OP stated that the planning analysis and rezoning request have been combined and the planning analysis supports that consideration of the Application would not be inconsistent with the Comprehensive Plan;
- (c) OP addressed testimony provided at the public hearing that the proposed affordable housing proffer to reserve 15.43% of the residential GFA for IZ was not sufficient because it would be less than what would be required under IZ Plus for a standalone Zoning Map Amendment. OP stated that PUDs were specifically excluded from IZ Plus requirements because PUDs provide many important additional benefits and project amenities, including but not limited to affordable housing. Thus, IZ Plus was always intended to be a tool that would "sit between" matter-of-right Regular

- IZ development and PUDs in the absence of a public benefits package and a discretionary project review. OP stated that IZ Plus was not intended to be used as either a floor or as a general tool to evaluate an affordable housing proffer in isolation of other PUD benefits. OP reiterated its conclusion that the affordable housing proffer provided by the Application is sufficient given that substantially more IZ units would be provided than under Regular IZ and more units would be provided at deeper affordability levels, and that the IZ proffer is also sufficient given the other public benefits and project amenities that would also be provided;
- (d) OP addressed the Commission’s request to evaluate the impact of providing more deeply affordable units than are proffered by the Application and, specifically, providing 28 units at 50% MFI, 26 units at 30% MFI, and two units at 20% MFI. OP stated that the IZ program does not require units lower than 50% MFI because market rate rents are generally not enough to cross-subsidize the operating costs of providing lower MFI IZ units, as evidenced by January 2023 CoStar data. OP stated that, as discussed in the Comprehensive Plan, 30% MFI units are considered extremely low-income and are provided through substantial federal and local subsidies and that, without public subsidies, it would generally not be possible to provide more deeply affordable units, beyond what has already been proffered, which is acknowledged in the Comprehensive Plan. (*Id.* § 504.7 (stating that “[s]tatutory and regulatory measures, including zoning, are necessary but not sufficient to produce very-low- and extremely-low-income rental housing and ownership opportunities for a range of households. Budgetary decisions at the federal and District levels are also essential to enable the continued operation of quality housing for these income levels.”).) OP further stated that, due to the increased degree of income instability and inability for a household to consistently pay rent that is correlated with lower MFI levels, providing a 30% MFI IZ unit provides increased uncertainty and risk for the property owner because there is no guaranteed rental subsidy paid by the government; and
- (e) OP reiterated that it commends the Application for providing two dedicated 30% MFI units, but that OP’s preference is for applicants to continue providing as many 50% and 60% MFI units as possible, which guarantees the most IZ units that can be provided and cross-subsidized by the additional market rate units in relation to the bonus density provided through the PUD.
- (Ex. 40.)

## **DDOT**

56. On November 23 2022, DDOT filed a report (Ex. 19, the “DDOT Report”) expressing no objection to the Application subject to the condition that the Applicant implement the Transportation Demand Management (“TDM”) plan proposed in its October 21, 2022 CTR (Ex. 14A.), with the revisions outlined in the DDOT Report including funding the expansion of the Capital Bikeshare station at Wisconsin Avenue and Ingomar Street, N.W. and ensuring the total number of short- and long-term bicycle parking spaces are specified in the Order, all of which the Applicant agreed to in its hearing presentation and updated TDM plan. (Public Hearing Tr. at p. 47; Ex. 29A1, 30.) DDOT stated that the proposed

TDM plan, with the requested revisions, is sufficiently robust to offset the impact of the Project's proposed parking, which exceeds zoning minimums. DDOT also stated that it supports the proposed improvements to the intersection of 43<sup>rd</sup> Street and Military Road. The DDOT Report reviewed the various transportation-related aspects of the Project, including site access, vehicular and bicycle parking, loading, the streetscape and public realm, and trip generation. (Ex. 19.)

57. At the December 5, 2022 public hearing, DDOT testified in support of the Application and confirmed the Applicant's coordination with DDOT on the Project's transportation impacts and agreement on the proposed TDM plan, as revised in response to DDOT's requests. (Public Hearing Tr. at pp. 103-104.)

#### **OTHER DISTRICT AGENCIES**

58. DHCD, DOEE, and the Department of Public Works ("DPW") submitted the following comments on the Application which were included in the OP Hearing Report:
- (a) DHCD stated that it does not oppose the Application and appreciates the affordable housing proffer. DHCD noted that all of the affordable units will be administered as IZ units subject to the lottery and income verification process, and that the IZ program does not allow landlords to collect rent above the maximum allowable amount, even if paid as rental subsidy, such that if the 30% MFI units have tenants receiving a voucher or other subsidy, the amount collected by the landlord may not exceed the IZ maximum;
  - (b) DOEE stated it recognizes the Applicant's commitment to certify the Project at the LEED v. 4 Gold level and appreciates the Applicant's use of the LEED Homes: Multifamily Midrise rating system, which DOEE stated is best suited for the Project. DOEE noted that it had met with the Applicant's team on September 22, 2022, and again as part of the interagency meeting convened on October 28, 2022. DOEE encouraged the Applicant to design the Project to be fully electric for the residential portion of the building and noted that the Applicant cited concerns with the performance and size of some of the electrical building systems currently available and that it was too early in the design process to commit to all-electric building systems. DOEE encouraged the Applicant to continue evaluating the available options as the building system design continues. DOEE also encouraged the Applicant to exceed the minimum required GAR and stormwater requirements. DOEE noted that the Applicant had cited constraints on the Project's weight due to the reuse of the existing below-grade structure. DOEE acknowledged the constraint but encouraged the design team to continue exploring additional stormwater management features. DOEE commended the Applicant's policy to conduct life cycle assessments on all of their buildings and noted that the reuse of the below-grade structure reduces the amount of new material needed for the building, which will reduce the building's embodied carbon. DOEE further encouraged the Applicant to explore options for deconstruction and reuse or salvage of materials from the existing above-grade structure; and

- (c) DPW stated that its Solid Waste Collections Division had conducted a site visit and concluded that the Project will have no impact on DPW's ability to provide trash collection services.

(Ex. 21.)

59. Office of Attorney General ("OAG").

- (a) On December 2, 2022, OAG submitted a letter ( "OAG Letter") in opposition to the Application arguing that the Project's proposed affordable housing proffer is insufficient based on the arguments below: (Ex. 31.)
  - (i) The Project does not set aside at least 33% of the units as affordable for very low- and extremely low-income households, which OAG argued is required by the Comprehensive Plan for sites within a Future Planning Analysis Area on the GPM. (10-A DCMR §§ 2503.2, 2503.3.) The OAG Letter stressed that the Comprehensive Plan describes Future Planning Analysis Areas as "[permitting] a PUD in a [Future Planning Analysis Area] to take advantage of an increased FLUM designation by seeking a zoning change without the prior completion of the equitable development planning analyses – but only if the PUD incorporates that equitable development planning into the PUD." The OAG Letter claimed that OP had not yet completed the adequate equitable development planning analyses for the area, which must include an analysis of the Project's impacts on infrastructure, with a focus on impacts to affordable housing infrastructure, and the needs expressed by the community as part of that planning process. Further, the analyses must determine where the Future Planning Analysis Area's anticipated affordable housing will be built, in what quantity, and the means for creating these units. Therefore, in order to comply with 10-A DCMR §§ 2503.2, 2503.3, OAG argued that (A) the Applicant or OP must complete the required equitable development planning analyses or (B) the Project must reserve at least 33% of its units as affordable to very-low- and extremely-low-income households;
  - (ii) Separately from the Future Planning Analysis Area requirement, the Project does not meet or exceed an 18% IZ set-aside, which OAG argued would be required under IZ Plus for the same increase in density for a matter-of-right project developed pursuant to a standalone Zoning Map Amendment to the MU-9A zone. The OAG Letter noted that the Comprehensive Plan identifies affordable housing in excess of what is required as "high priority" public benefits. Therefore, OAG recommended that the Applicant increase the PUD's IZ set-aside to (A) at least 18% or (B) a lesser percentage than 18%, but only if the PUD provides deeper levels of affordability to ensure it is "superior" to an equivalent matter-of-right project. OAG accounted for the fact that the Applicant already revised the Project to include 30% and 50% MFI units, but concluded that the Applicant still needed to either increase its revised 15% IZ set-aside to at least 16.55%, including the 30% and 50% MFI units as revised, or provide even more 30% and/or 50% MFI

- units to reach an equivalent of the 18% set-aside that would be required for the same density increase of a matter-of-right project under a standalone map amendment that would trigger IZ Plus; and
- (iii) The Project should be denied unless it: (A) Devotes 33% of affordable housing units to very low-income and extremely low-income households or completes the required Future Planning Analysis Area equitable development planning analyses; and (B) Proffers at least 18% of the residential GFA or its equivalent for IZ units; and
  - (b) At the December 5, 2022 public hearing, OAG testified in opposition to the Project and summarized the arguments outlined in the OAG Letter. (Ex.34; Public Hearing Tr. at pp. 82-103.)
60. Interagency Meeting. The OP Supplemental Report (discussed in FF ¶ 55 above) noted that prior to the public hearing, OP convened an interagency meeting on October 28, 2022, inviting review of, and participation in a discussion about, the potential Project impacts, from DDOT, DOEE, DHCD, DC Water, the Fire and EMS Department (“FEMS”), DPR, DC Public Library, DC Public Schools, DPW, Department on Aging and Community Living, Department of General Services, Department of Buildings, Department of Employment Services, Metropolitan Police Department, Department of Small and Local Business Development, and the Washington Metropolitan Area Transit Authority (“WMATA”). OP explained that in the interagency invite and at the meeting, OP requested that agencies provide written comments about the Project by November 1, 2022. OP stated that agency comments that were received did not indicate adverse impacts on public infrastructure or services. OP further stated that the required infrastructure analysis in a Future Planning Analysis Area is not intended to require PUD applications to provide an infrastructure analysis based on the full build out of the Future Planning Analysis Area because 10-A DCMR § 2503.3 provides allowance for PUDs to proceed prior to the completion of a planning study. Therefore, it would be contrary to the intent of 10-A DCMR § 2503.3 to apply such an analysis on a single PUD application. (Ex. 40.)

### **ANC 3E**

61. On December 2, 2022, ANC 3E submitted a resolution stating that at its properly noticed public meeting on December 1, 2022, at which a quorum was present, the ANC voted 3-1-0 in support of the Application: (Ex. 32, “ANC Report.”)
- (a) The ANC stated that, while it had reservations regarding the Project, it features numerous benefits and amenities beyond what would be provided for a matter-of-right project and that will advance policies of the Comprehensive Plan, including: the affordable housing proffer; two fully accessible units built to ANSI (ADA) standards; the ground-floor use restrictions agreed upon with the Applicant; the Applicant’s commitment to market the ground-floor retail space to local-, minority-, and women-owned businesses and to offer a \$40-per-square foot tenant improvement allowance for such tenants; the proposed streetscape improvements; the Project’s sustainability features, specifically LEED Gold certification,



providing ten EV charging stations, and ten bicycle parking spaces on the ground floor; the Applicant's commitment to fund and install the solar array on the Iona Senior Center; the Applicant's construction-related commitments; the proposed safety improvements to the intersection of 43<sup>rd</sup> Street and Military Road; and the Applicant's memorializing its commitments with the ANC in a Memorandum of Understanding, which the ANC also submitted with its resolution and requested the Commission incorporate into this Order. (Ex. 32A.) The ANC acknowledged the Property's location on the same block as a Metrorail Station and in High-Density designations on the FLUM and stated that the amenities proffered by the Applicant are commensurate with the Project's scope; and

- (b) The ANC Report stated several respects in which the Project "has room to be better" and specifically: (i) the ANC urged the Zoning Commission to always press applicants for maximum IZ; (ii) the ANC stated that it was disappointed with the amount of retail space being proposed and expressed a preference for more retail to be provided by the Project; (iii) the ANC stated that the Project's proposed parking will unnecessarily incentivize driving and car ownership given the Property's location close to a Metro station and the excess parking available in the same complex; and (iv) the ANC stated that, while it accepted the Applicant's decision to proceed with the Project now, the ANC had concerns that some of its concerns may have been addressed had the Application been preceded by the Wisconsin Avenue Development Framework, though the ANC expressly stated that it took no position on the legality of whether the Project was permitted to move forward prior to the planning analysis, as it stated OAG might argue. Despite the foregoing concerns, ANC 3E stated that it believes the provision of market-rate and affordable housing and other amenities enumerated in the ANC Report outweigh its concerns and, therefore, the Project merits support.

(Ex. 32.)

- 62. At the December 5, 2022, public hearing, ANC Commissioner Tom Quinn, the Single Member District representative for ANC 3E04, in which the Property is located, testified on behalf of ANC 3E regarding the Project and summarized the ANC's statements in its written resolution. Commissioner Quinn's testimony emphasized the value of the public benefits and other commitments developed in coordination with the ANC, including the proposed solar installation on the Iona Senior Center, the proposed additional street trees along Wisconsin Avenue, the proposed landscape improvements to the public space abutting the Chevy Chase Recreation Center, the safety improvements to the intersection of 43<sup>rd</sup> Street and Military Road, and the use restrictions for the Project's ground-floor retail. Commissioner Quinn reiterated the reservations stated in the ANC Report and that, despite these concerns, the ANC concluded that the height and density being requested are appropriate with the provision of the proposed public benefits and amenities, which the ANC believes are commensurate with the Project's scope. (Public Hearing Tr. at pp. 130-140.)

## **ORGANIZATIONS AND INDIVIDUALS IN SUPPORT**

63. Charlotte Jackson, a resident of the Courts of Chevy Chase and Ward 3 representative to the D.C. Pedestrian Advisory Council, testified in support of the Application and, specifically, the proffered safety improvements to the intersection of 43<sup>rd</sup> Street and Military Road and the significant need for the proposed improvements to improve safety, particularly given the regular use by children attending the adjacent Friendship Children's Center. (*Id.* at pp. 142-146.)
64. Cheryl Cort, on behalf of the Coalition for Smarter Growth, testified in support of the Project given its creation of 310 units and affordable housing set-aside in a high amenity area. Ms. Cort stated that the Project advances racial equity in preventing displacement. Ms. Cort also stated appreciation for the proffered 30% MFI units, stating that units at such MFI levels are rare and are typically only done through deep subsidy programs because they do not come close to covering the units' ongoing operating costs. (*Id.* at pp. 147-150.)
65. Ellen McCarthy, on behalf of Ward 3 Vision, testified in support of the Application. Ms. McCarthy expressed Ward 3 Vision's support for the proffered package of public benefits and that the proposed zoning is consistent with the Comprehensive Plan and FLUM. Ms. McCarthy stated that the value of the proposed PUD-related rezoning is to allow increased height for the portion of the building closest to Wisconsin Avenue so that it can step down toward the rear facing the adjacent townhouses and single-family homes. Ms. McCarthy stated that while IZ Plus is not meant to apply to PUDs, the Project's affordable housing set-aside nevertheless goes beyond what is required and includes 30% MFI units, which are "very rare." Ms. McCarthy noted that when the D.C. Council amended the Framework Element and Implementation Element of the Comprehensive Plan, the Council specifically changed the language to state that PUDs were not required to wait for an area planning analysis to be completed. (*Id.* at pp. 151-156.)
66. Mary Jobe, on behalf of the Friendship Children's Center, testified in support of the Application and, specifically, emphasized the need for the proposed safety improvements to the intersection of 43<sup>rd</sup> Street and Military Road, and the impact of the current danger posed by the existing condition to the Friendship Children's Center, which provides daycare and early learning for infants, toddlers, and preschool-aged children. (*Id.* at pp. 158-161.)
67. Keith Watters, president of the Courts of Chevy Chase Homeowners Association ("CCCHA"), which abuts the Property to the east, submitted a letter on behalf of the CCCHA in support of the Application. (Ex. 27, "CCCHA Letter.") The CCCHA Letter stated that the Applicant approached and met with the CCCHA board of directors and homeowners over an extended period and was very receptive to their concerns, allowing the CCCHA to reach a consensus and unanimously support the Project. The CCCHA Letter stated that the building is very well-designed, is in context with the area, and will be a wonderful contribution to the corridor. The CCCHA stated that it supports the proposed height and greatly appreciates the Applicant's careful sculpting of the building, which is enabled by the additional height appropriately focused on Wisconsin Avenue. (*Id.*)

68. Susan Spaulding, a resident of the CCCHA, submitted a letter in support of the Project. Ms. Spaulding stated that the Applicant had made a special point to reach out to the CCCHA homeowners and the surrounding neighborhoods to outline their plans and get homeowner feedback. Ms. Spaulding further stated that the Project will bring an economic boost to the area and enhance the aesthetic appeal of Friendship Heights. Ms. Spaulding testified that the Applicant has been responsive to concerns about construction and has “offered ways to mitigate these with respect to noise abatement, construction contacts, parking by constructions workers and dust issues to name a few.” (Ex. 36.)

#### **ORGANIZATIONS AND INDIVIDUALS IN OPPOSITION**

69. Margaret Dwyer, on behalf of Ward 3 Housing Justice (“W3HJ”), testified in opposition to the Project. Ms. Dwyer stated that W3HJ opposes the Application for three reasons: (i) the Project does not comply with the Regional Center designation on the GPM and would need to provide the “largest range of commercial functions outside of the central employment area” to comply; (ii) the Applicant should provide additional affordable housing to ensure it is superior to what would be required for a matter-of-right project and, specifically, the IZ proffer should be more than 18%; and (iii) the Project does not address racial equity meaningfully and the “core issue” in Ward 3 is exclusion of residents of color due to unattainable housing prices. Ms. Dwyer stated that, while W3HJ was not opposed to the higher density “per se,” it believes that more affordable housing should be provided and thus urges that the Application be denied unless the affordable housing proffer is increased. (Public Hearing Tr. at pp. 163-166; Ex. 28.)
70. Shelly Repp, on behalf of the Committee of 100 on the Federal City (the “Committee of 100”), testified in opposition to the Project (Public Hearing Tr. at pp. 167-170), and the Committee of 100 also submitted a letter in opposition. (Ex. 24.) Mr. Repp testified, and the letter stated, that the Committee of 100 opposes the Project because it is out of scale with surrounding development and that the Applicant is “attempting to leapfrog the planning process” being conducted by OP for the area. Mr. Repp and the letter stated that only projects that reserve at least one-third of the housing units as affordable to very low- and extremely low-income households are permitted to proceed ahead of such planning process under the Comprehensive Plan’s Implementation Element. Mr. Repp further stated that the Project does not provide sufficient retail space, which he argued is the justification for the Regional Center designation supporting additional height, and that the Project was, instead, reducing the amount of retail on-site and would not provide many jobs. Mr. Repp stated that the Project should meet or exceed an 18% IZ set-aside, which would be the IZ Plus requirement, and stated that the Project does not address the concerns of some of the neighbors to the east of the Property because it is out of scale in height. (Public Hearing Tr. at pp. 167-170; Ex. 24.)
71. Marilyn Simon, a nearby resident and property owner, testified in opposition to the Project and also submitted a letter in opposition. (Public Hearing Tr. at pp. 170-173; Ex. 26.) Ms. Simon testified that the Project’s affordable housing proffer is less than what would have been required under IZ Plus. Ms. Simon stated that the Project’s height and density are out

of scale with the existing development in the area. Ms. Simon noted that the Applicant did not provide zoning tabulations comparing the Project with the zoning envelope of the underlying zoning, but instead provided a comparison of the Project against the zoning approved under the Existing PUD, and that only OP had provided a tabulation comparing the Project against the underlying non-PUD zoning. Ms. Simon argued that the area planning analysis must be completed before any Zoning Map Amendment may occur.

72. Gary Klacik, a resident and owner of the property at 5331 43<sup>rd</sup> Street, N.W., testified in opposition to the Project (Public Hearing Tr. at pp. 174-181) and also submitted a request for party status, comments in opposition, and a presentation for the hearing (Ex. 18, 20, 33). As described above, the Commission denied Mr. Klacik's request for party status. (*See* FF ¶ 6.) In his testimony, Mr. Klacik raised objections to the Project based on the following: that the Project is not consistent with policies in the Land Use, Urban Design, and Rock Creek West Area Elements of the Comprehensive Plan that encourage appropriate transitions between large- and small-scale developments; that the Project's size and massing are out of scale with the character of the neighborhood to the east of the Property; that the Applicant had not sufficiently documented the "vertical gardens" landscaping features proposed for the Project's east façade in the record; that the Applicant's lighting plan does not address some potential impacts from the building's proposed exterior lighting; that there will be potential noise impacts from the building's HVAC and emergency generator; and that residents of the Project should be prohibited from obtaining residential parking permits to prevent parking impacts. Mr. Klacik's submission into the record also included comments that trucks should be prohibited from using the 5300 block of 43<sup>rd</sup> Street to prevent traffic impacts and that the flexibility provisions in the Order should specifically prohibit the Project's mechanical penthouse from being shifted eastward. (Public Hearing Tr. at pp. 174-181; Ex. 18, 20, 33.)
73. Gina Mirigliano, a resident living three blocks from the Property, submitted a letter in opposition to the Project which stated that the area planning analysis should be conducted prior to any Zoning Map Amendment for the site and that the Project's density and height are out of scale with other buildings in the area. (Ex. 23.)
74. David Frankel, an area resident, submitted a letter in opposition to the Project which stated that the Commission should not review the Application until after the area planning analysis is completed and that the Project's height and density are out of scale with the other development in the area. (Ex. 25.)
75. Susan MacKnight, a resident living three blocks from the Property, submitted a letter in opposition to the Project which stated the area planning analysis should be completed before the Project is considered, that a housing-centered plan would likely require a major infrastructure upgrade, and that the Project will not help revitalize the Wisconsin Avenue commercial corridor. Ms. MacKnight stated that the Project's height and density are too great for its location and that the Project will eliminate much of the existing retail on the Property. (Ex. 35.)

#### **OTHER AGENCIES/PERSONS/GROUPS**

76. Elizabeth Vaden, a nearby resident appearing on behalf of the Washington Interfaith Network's ("WIN") Ward 3 affordable housing working group ("WIN Ward 3"), testified at the hearing as an undeclared individual. Ms. Vaden stated that WIN Ward 3 believes the Project is a "step in the right direction" to achieve the District's affordable housing goals and that the Property's location on Wisconsin Avenue was the appropriate setting for a mixed-use building with greater density and locating the proposed housing in close proximity to other uses and public transit. Ms. Vaden stated that WIN Ward 3 appreciates the Applicant's affordable housing proffer but urges the Commission to increase the IZ requirements in Friendship Heights and pursue substantial changes to zoning rules as part of the broader effort to invest in affordable housing in Upper Northwest. (Public Hearing Tr. at pp. 184-187.)
77. No other persons, agencies or organizations filed written comments in the record or testified at the public hearing.

#### **NATIONAL CAPITAL PLANNING COMMISSION ("NCPC")**

78. The Commission referred the Application to NCPC on January 18, 2023, for review and comment pursuant to the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Section 1-201 *et seq.* (Ex. 42.) NCPC staff filed a letter dated January 25, 2023, stating that NCPC staff determined that the Project falls under an exception listed in Chapter 8 of NCPC's guidelines and is exempt from NCPC review. (Ex. 43.)

### **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) a PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 300; (b) a modification of significance to an approved PUD pursuant to Subtitle X, Chapter 3, and Subtitle Z, Chapter 7; (c) a PUD-related amendment to the Zoning Map pursuant to Subtitle X § 303.12; and (d) related zoning relief pursuant to Subtitle X §§ 303.1 and 303.13.

#### **STANDARD OF REVIEW FOR A PUD AND RELATED ZONING MAP AMENDMENT**

2. Public Review. Pursuant to Subtitle X § 300.5, "A comprehensive public review by the Zoning Commission of a PUD is required in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits."
3. Land Area and Contiguity. Pursuant to Subtitle X §§ 301.1 and 301.5, the minimum area for a PUD in the applicable MU zones is 15,000 square feet, all of which must "be contiguous, except that the property may be separated only by public streets, alleys, or rights-of-way."

4. PUD Purpose. Pursuant to Subtitle X §§ 300.1 and 300.2, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) results in a building superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits and project amenities; (c) protects and advances the public health, safety, welfare, and convenience; and (d) does not circumvent the intent and purposes of the Zoning Regulations.<sup>10</sup>
5. Comprehensive Plan. Pursuant to Subtitle X §§ 300.1, 300.2, and 304.4(a), the Commission must find that the PUD “is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.” The Commission is directed to review the Application against the Comprehensive Plan “as a whole.”<sup>11</sup> The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the Comprehensive Plan’s purposes are:
  - (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.
6. Impacts. Pursuant to Subtitle X § 304.4(b), the Commission must find the Application “does not result in unacceptable project impacts on the surrounding area or on the operation

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<sup>10</sup> The MU zones provide for mixed-use developments that permit a broad range of commercial, institutional, and multiple dwelling unit residential development at varying densities. The MU zones are designed to provide facilities for housing, shopping, and business needs, including residential, office, service, and employment centers. In the MU zones, buildings may be entirely residential, or may be a mixture of non-residential and residential uses. (Subtitle G §§ 100.1-100.2, 100.4.) In addition to the purpose statements of individual chapters, the purposes of the MU zones are to provide for (a) “orderly development;” (b) “a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale;” (c) “shop-front buildings which may include a vertical mixture of residential and non-residential uses;” (d) “safe and efficient conditions for pedestrian and motor vehicle movement;” (e) “infill development [that] is compatible with the prevailing development pattern within the zone and surrounding areas;” (f) “preserv[ing] and enhance[ing] existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities;” and (g) “buildings and developments around . . . transit hubs . . . to support active use of public transportation and safety of public spaces.” (*Id.* § 100.3.)

<sup>11</sup> *Friends of McMillan Park v. D.C. Zoning Comm’n*, 149 A.3d 1027, 1033-35 (D.C. 2016) (“The Comprehensive Plan is a broad framework intended to guide the future land use planning decisions for the District. Even 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*. The Comprehensive Plan reflects numerous occasionally competing policies and goals and except where specifically provided, the Plan is not binding. Thus, the Commission may balance competing priorities in determining whether a PUD is consistent with the Comprehensive Plan as a whole. If 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.”) (internal citations and quotations omitted.)

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.”

7. Benefits and Amenities. Pursuant to Subtitle X § 304.4(c), the Commission must find the PUD “[i]ncludes 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.” 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.”
8. PUD Balancing Test. Pursuant to Subtitle X § 304.3, 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.” Pursuant to Subtitle X §§ 303.11 and 303.12: “The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission”, and “[a] PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD.”
9. Evidentiary and Evaluative Standards. Pursuant to Subtitle X § 308.6, “the applicant shall carry the burden of justifying” the proposal according to the applicable standards. Moreover, “the Commission must address each material contested issue of fact.”<sup>12</sup>

#### **SATISFACTION OF PUD ELIGIBILITY STANDARDS**

10. Land Area and Contiguity. The Commission concludes that the Application satisfies the minimum land area and contiguity requirements of Subtitle X §§ 301.1 and 301.5 for a PUD because the Property consists of approximately 50,946 square feet of contiguous land area. (FF ¶ 15.)

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<sup>12</sup> *Barry Farm Tenants and Allies Ass’n. v. D.C. Zoning Comm’n.*, 182 A.3d 1214, 1224 (D.C. 2018) (citations omitted).

11. Public Review. Based on the December 5, 2022 public hearing (*see* Public Hearing Tr.) and the Commission’s review of the record, the Commission concludes it undertook “[a] comprehensive public review . . . of [the Application] . . . to evaluate the flexibility or incentives requested in proportion to the proposed public benefits” in accordance with Subtitle X § 300.5.
12. PUD Purpose. The Commission concludes that the Project satisfies the purposes of a PUD:
  - (a) The Project is superior to a project that could be built under matter-of-right standards for the following reasons. The Project provides significantly more affordable housing than would be required under the matter-of-right IZ requirements. The Project’s architecture and urban design, site plan and efficient use of the Property, and environmental and sustainability features are all superior to what would be required without the design review requirement of a PUD. The Project includes a commitment to a minimum of 10,500 square feet of ground-floor retail where there is no retail requirement under the matter-of-right zoning and provides ground-floor bicycle parking and two units built out to the ANSI A standard, neither of which are otherwise required by the Zoning Regulations. (FF ¶ 50.);
  - (b) The Project offers a commendable number or quality of meaningful public benefits and project amenities. In addition to the superior building design features discussed above in Conclusion of Law (“COL”) ¶ 12(a), the Applicant has proffered: to design and construct transportation safety improvements, beyond what is needed to mitigate the Project’s impacts, to the intersection of 43<sup>rd</sup> Street and Military Road; to market the Project’s ground-floor retail space to local-, minority- and/or women-owned businesses and provide a tenant improvement allowance of \$40 per square feet of leasable space for such qualifying tenants; to install new landscaping at the public space abutting the Chevy Chase Recreation Center up to a maximum total cost of \$150,000; to replace nine street trees on the east side of Wisconsin Avenue between Jenifer Street and Military Road, which are in addition to replacing seven trees in front of the Property and the public space improvements proposed for the Property’s frontage on Wisconsin Avenue; and to design, permit, and install photovoltaic array at the Iona Senior Center up to a total cost of \$240,000. Further, the Project has undergone a public review process with opportunities for neighbor, community group, and public agency participation which would not be required for a matter-of-right development of the Property. (FF ¶ 50.);
  - (c) The Project protects and advances the public health, safety, welfare, and convenience. The Project improves major public interests and priorities such as housing and affordable housing, ground-level activating retail use, and streetscape and urban design improvements. The creation of 310 new residential units, including affordable units exceeding what is otherwise required under IZ, in a significant mixed-use, transit-oriented corridor in Ward 3 advances the public health, safety, and welfare goals of the District. The Project does not displace or convert any existing housing and provides housing opportunities for residents of



limited income. The Project also improves pedestrian and transit opportunities. (FF ¶ 51(b).); and

- (d) The Project does not circumvent the intent or purposes of the Zoning Regulations. The Project advances the MU zones' purposes which encourage "mixed-use developments that permit a broad range of commercial, institutional, and multiple dwelling unit residential development at varying densities." (Subtitle G § 100.1.) The Project is a "high-density mixed-use development including . . . retail[] and housing" and is located in a regional center and within 500 feet of a transit stop, consistent with the purpose and intent of the MU-9 zones. (*Id.* § 400.8.) The Project is an orderly development with a mix of uses at an appropriate scale and density for its location, both facing the Wisconsin Avenue commercial corridor on the west and the lower scale residential development to the east of the site. (FF ¶ 51(c).)

**CONSISTENCY WITH THE COMPREHENSIVE PLAN AND OTHER ADOPTED PUBLIC POLICIES RELATED TO THE PROPERTY (SUBTITLE X § 304.4(a))**

- 13. The Commission concludes that pursuant to Subtitle X §§ 300.1, 300.2, and 304.4(a), the Application—including the PUD-related amendment to the Zoning Map and the modified project benefits and amenities—is not inconsistent with the Comprehensive Plan and with other public policies and active programs, when the Comprehensive Plan is considered as a whole, for the following reasons:

- (a) FLUM. The Commission concludes that the Project is not inconsistent with the FLUM's split designation of mixed-use High Density Commercial and High Density Residential for the majority of the Property on the west fronting on Wisconsin Avenue and the Moderate Density Residential designation on the smaller eastern portion of the Property. The Framework Element expressly lists the MU-9 zone among the appropriate zones for the High Density Commercial designation, and the Project fits the description of a "high-rise" residential building as referenced in the High Density Commercial and High Density Residential categories of the Framework Element. (10-A DCMR §§ 227.8, 227.13.) The Project's proposed density and height are consistent with the MU-9 zoning envelope and are also consistent with the Comprehensive Plan's directives for density greater than 4.0 FAR in the High Density Residential category and greater than 6.0 FAR in the High Density Commercial category. (*Id.*) The Project's design focuses the bulk and mass of the building along Wisconsin Avenue and scales down further east into the portion of the site within the Moderate Density Residential designation, which also allows for greater levels of density when proposed as part of a PUD. The Comprehensive Plan provides that the FLUM is a soft-edged map that is interpreted broadly, and the Commission concludes that the intent of the FLUM in this case is for high-density, mixed-use development on a majority of the PUD site that transitions to a moderate scale along the east in response to adjacent residential development, as proposed by this Project. The Project also advances numerous Comprehensive Plan policies promoting increased intensity of development on corridors like Wisconsin Avenue. The Commission has

considered, but is not persuaded by, opponents' claims at the public hearing and in written submissions that the Project's proposed height and density are out of scale or inappropriate for the Property's location. Rather, the Commission concludes that the Project is the type of high-density development that is called for by the Property's High Density Commercial and High Density Residential designations and that the Project's design appropriately and thoughtfully steps down in mass and bulk on the east side of the Property moving into the area covered by the Moderate Density Residential designation. To the extent that the Project is potentially inconsistent with the FLUM's Moderate Density Residential designation on the eastern portion of the Property, the Commission believes that this potential inconsistency is outweighed because the additional height permitted by the PUD process will allow the Project to advance critical Comprehensive Plan policies encouraging housing and affordable housing near transit in the Planning Area. (FF ¶¶ 46, 52-55.) The Commission finds it particularly notable that residents of the abutting Courts of Chevy Chase and its association, CCCHA, whom will be most immediately affected by the Project's eastern portion, support the Project and provided testimony and written statements that the Applicant worked closely with the community throughout the review process and incorporated feedback into the Project, which is further supported by ANC 3E's support for the Project. (FF ¶¶ 22, 40, 46, 52-55, 60-63, 67, 68.);

- (b) GPM. The Commission concludes that the Project is not inconsistent with the GPM's split designation of Regional Center for the majority of the Property fronting along Wisconsin Avenue on the west and Neighborhood Conservation Area on the smaller eastern portion of the Property. The Project achieves the goal of the Regional Center designation to provide high density infill development to create new retail and housing along major arterials on sites that are served by transit. The Project provides height, massing, and density to support the role of Regional Centers while scaling appropriately to the adjacent residential development to the east. Further, the Project's infill role is supported by the Neighborhood Conservation Area designation, which the Comprehensive Plan specifically states is intended to preserve and enhance established neighborhoods but not to preclude development, particularly to address city-wide housing needs. The Project also balances the Comprehensive Plan policy goals for the Friendship Heights Regional Center of encouraging greater density and height, greater levels of housing and affordable housing, and strengthening commercial vitality. (10-A DCMR §§ 225.19, 225.20.) The Commission has considered, but does not agree with, opponents' comments and testimony that the Project's emphasis on residential use is inconsistent with the Regional Center designation because it decreases the amount of commercial use compared to what currently exists on the Property. The Commission is persuaded by the arguments made by the Applicant and OP that the Regional Center designation does not require a minimum amount of commercial use, to the exclusion of other uses such as housing. On the contrary, the Framework Element notes that infill development on Regional Center sites should encourage additional housing with density guided by the Land Use and Area Elements. (*Id.* § 225.20.) The Commission agrees with OP's findings that the Project is consistent

with this guidance since it will help generate more housing and affordable housing on Wisconsin Avenue, as recommended by the Rock Creek West Area Element, and in a Planning Area (Rock Creek West) identified as having the lowest supply of, and highest need for, affordable housing compared to all other planning areas. With respect to the Property's location within a Future Planning Analysis Area on the GPM, the Commission concludes that, while the overall intent of such designation is for zoning changes to be preceded by a planning analysis process, the relevant provisions of the Implementation Element are clear that a zoning change may be approved in the case of a PUD, specifically, a zoning change requested as part of a PUD application, as is the case here. (10-A DCMR §§ 2503.2, 2503.3.) The Commission is persuaded by OP's statements that the planning analyses have been combined with the PUD related rezoning request and that the Application was thoroughly reviewed by various District agencies to evaluate its adverse impacts on public infrastructure and services, as well as through a racial equity lens, and against Comprehensive Plan policies. (FF ¶¶ 54, 57, 60.) Accordingly, the Commission has considered, but does not find persuasive, arguments advanced by OAG and other opponents that the Project may not or should not be approved because a planning analysis for the area has not been completed yet. For the same reasons, and as further discussed below (*see* COL ¶¶ 22, 23.), the Commission does not find persuasive arguments that the Project must or should reserve 33% of the proposed units for affordable housing pursuant to 10-A DCMR § 2503.3 of the Implementation Element. The relevant provisions of the Implementation Element are clear that a 33% affordable set-aside is intended to apply to standalone rezoning proposals proceeding in advance of planning analyses and is not applicable to a PUD application where the planning analyses has been combined with a rezoning request as is the case with the present Application. (*Id.* § 2503.3; FF ¶¶ 23, 38, 40, 46, 52-55, 60.);

- (c) Land Use Element. The Commission concludes that the Project is not inconsistent with the Land Use Element. The Project will increase housing, including a high level of affordable housing, less than one block from a Metrorail station and will help strengthen one of the District's key longstanding Regional Centers by revitalizing the Property with street-activating and neighborhood-serving retail and significant new housing to support the businesses in the area. The Commission notes testimony from the Applicant that the surrounding area in recent years has lost many retail establishments and suffers from a high retail vacancy rate, mainly due to a declining interest in large-format retail stores. The Commission believes the Project will introduce new retail opportunities and, equally important, add more residents to the community who will patronize area businesses to help restore vitality to the neighborhood's commercial activity. The Project provides an appropriate level of density given the Property's location along a major commercial corridor and proximity to transit, while also stepping down the massing and scale of the building adjacent to the lower-scale residential uses to the east of the Property. The Commission has considered, but disagrees with, opponents' comments at the public hearing and in written submissions that the Project is out of scale with the surrounding development and thus inconsistent with the Land Use

Element. The Commission believes that the Project promotes the objectives of the Land Use Element, as outlined above, and is the type of development the Land Use Element encourages at the Property's location along a major commercial corridor. While the Commission recognizes that the Project may result in modest inconsistencies with individual policy objectives, overall the Project advances and is not inconsistent with the objectives of the Land Use Element. (FF ¶ 46(d), 52-55.);

- (d) Other District-Wide Elements. The Commission concludes that the Application is also not inconsistent with other District-wide Elements, including the Transportation, Housing, Environmental Protection, Economic Development, and Urban Design Elements, a conclusion in which OP concurs and to which the Commission gives great weight. The Commission has considered, but rejects, arguments advanced by opponents at the public hearing and in written testimony that the Project is inconsistent with the Urban Design Element, specifically citing certain policies encouraging appropriate transitions in building height and intensity in the context of smaller scale surrounding development. On the contrary, the Commission believes the Project's use of step downs and vertical garden landscaping features results in a thoughtful overall massing and design that appropriately responds to the Property's frontage on Wisconsin Avenue and proximity to lower density residential neighborhoods to the east. The Commission has also considered DOEE's comments, which were attached to the OP Hearing Report. (Ex. 21.) The Commission acknowledges DOEE's preference for the Project to be fully electric and for the Applicant to exceed the minimum GAR and stormwater requirements. However, the Commission is persuaded by the Applicant's arguments that it cannot commit to such measures at this stage of the design process. The Commission nevertheless believes that the Project includes commendable sustainability features including extensive green roofs and retention of the below-grade parking structure and therefore concludes the Application is not inconsistent with the Environmental Protection Element. (FF ¶¶ 46, 52-55, 58.);
- (e) Area Element. The Commission concludes that the Application is also consistent with the Area Element. The Project advances the housing, commercial, livability, transportation, and sustainability objectives of the Rock Creek West Area Element by providing new housing, including a significant commitment for affordable housing, in a sustainability designed development less than one block from Metrorail. The Project's design will represent a major improvement to the Wisconsin Avenue commercial corridor and will further the revitalization of the commercial district by adding residents and new ground-floor retail offerings. The Commission is not persuaded by opponents' claims at the public hearing and in written testimony that the Project is inconsistent with the Area Element's policies, particularly those encouraging designs that respect surrounding context and avoid overwhelming scale. The Commission believes the Project incorporates appropriate steps down in mass and scale adjacent to the lower-scale residential uses to the east, while still achieving a level of density appropriate for a site located on a commercial corridor with immediate Metrorail access. (FF ¶¶ 46(j), 52-55.);

- (f) Mayor's Housing Order. The Commission concludes that the Application advances the Mayor's Housing Order to add units and affordable units by delivering approximately 48 new affordable units in Ward 3, including two units reserved at the 30% MFI level. (FF ¶ 47.);
- (g) Benefits and Amenities. As discussed above, the Commission concludes that the Project's benefits and amenities are also not inconsistent with the Comprehensive Plan and the Mayor's Housing Order. The Comprehensive Plan and the Mayor's Housing Order identify new housing and affordable housing as priorities, and the Project delivers those items as benefits. The Project's architecture and site planning benefits are also generally consistent with the relevant planning guidance. The proposed nearby improvements to transportation infrastructure (the intersection of 43<sup>rd</sup> Street and Military Road), local public and private facilities (the Chevy Chase Recreation Center and the Iona Senior Center), and support for local-, minority-, and women-owned businesses are also all consistent with the applicable planning and policy documents. (FF ¶¶ 49, 50.); and
- (h) Overall. The Commission concludes that the Application is not inconsistent with the Comprehensive Plan, including the GPM and FLUM designations for the Property, as discussed above.

#### *Racial Equity Lens Analysis*

14. Pursuant to 10-A DCMR §§ 2501.4-2501.6 and 2501.8, the Commission is tasked with evaluating the Application's consistency with the Comprehensive Plan through a racial equity lens. 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. (10-A DCMR § 213.6.) Further, "[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, health care, technology, workforce development, and employment opportunities." (10-A DCMR § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (10-A DCMR § 213.9.) The Comprehensive Plan 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." (10-A DCMR § 2501.6.)
15. The Commission concludes that the Application is not inconsistent with the Comprehensive Plan when viewed through the lens of racial equity based on the case

record and the racial equity analyses provided by the Applicant and in the OP Reports. The Commission believes that the Project represents a critical addition of housing and affordable housing to the Friendship Heights neighborhood in Ward 3, consistent with the District's overall housing goals and specific housing objectives identified for the Rock Creek West Planning Area. The Project will not result in any direct displacement of residents given that the Property is currently improved exclusively with commercial uses. The Commission believes the additional housing and newly revitalized retail will better support the diversity of the surrounding community and create a more active and engaging pedestrian environment for residents and visitors. The Project's design and public realm improvements will also provide a significantly improved pedestrian experience along this portion of Wisconsin Avenue. The Project retains the existing below-grade structure on the Property, which will help minimize the Project's overall carbon footprint, and is designed to achieve LEED v.4 Gold standards. The Project will create employment opportunities through the businesses that will occupy the newly revitalized retail space, in addition to the many short-term employment opportunities that will be created for the Project's construction. The proposed addition of residential units to the neighborhood will provide a much greater level of support to the retail on-site and for businesses and economic growth within the Friendship Heights neighborhood more broadly. In addition, the Project has gone through a robust public review process with multiple meetings with the ANC and extensive outreach with adjacent property owners and the surrounding community. The Commission notes that the immediately affected residents of the Courts of Chevy Chase abutting the Property to the east and ANC 3E both support the Application. Based on the foregoing, the Commission concurs with the analyses of the Applicant and OP and finds that the Project advances the racial equity objectives of the Comprehensive Plan. Further, the Commission is not persuaded by opponents' claims that the Project does not address racial equity meaningfully.

**PROJECT IMPACTS – FAVORABLE, MITIGATED, OR ACCEPTABLE (SUBTITLE X § 304.4(b))**

16. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts on the surrounding area or District services or facilities that cannot be mitigated or that are not acceptable given the Project's benefits and amenities:

(a) Height/Density-Related Impacts.

- (i) The Commission concludes that, while the Project will result in some impacts as a result of the increase in height and density proposed by the Project compared to the existing condition, no such impacts are unacceptable and are instead either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the Project. The Commission anticipates that the Project will result in some adverse impacts on the surrounding area, including with respect to a moderate increase in shadows, a change in views and light, disruptions during construction of the Project, and future noises and lights. However, the Commission finds that these impacts are mitigated by the Project's design and the overall sculpting

of the proposed building mass to focus height and density on the western portion of the Property facing Wisconsin Avenue with a stepdown in height towards the east facing the lower density residential developments. The Commission believes that any remaining impacts are otherwise acceptable in light of the Project's robust package of public benefits and amenities, discussed in detail herein, and the Project's consistency with, and furtherance of, the land use planning guidance and goals established for the Property under the Comprehensive Plan Maps and Citywide and Area Elements, discussed in detail above. The Commission notes that the homeowner's association and residents of the Courts of Chevy Chase, who will be more immediately affected by the height and density of the eastern portion of the Property, have submitted letters and testimony in support of the Application. (FF ¶¶ 48, 63, 67, 68.) The Commission further notes OP's conclusion that despite the increase in shadows on properties to the east, morning and afternoon light would generally remain the same. (FF ¶ 52.); and

- (ii) Specifically, with respect to the issues raised by Mr. Klacik regarding potential impacts from light and noise (FF ¶ 72), the Commission has considered, but is not persuaded by, these objections. With respect to lighting impacts, the Commission reviewed the conceptual lighting plan submitted by the Applicant (Ex. 8E.) and believes that the Project will not result in undue impacts or excessive lighting features that exceed what is typical for a mixed-use building of the type that the Comprehensive Plan calls for at the Property's location along a major commercial corridor. Likewise, the Commission does not see any basis in the case record for imposing additional restrictions or enclosure requirements for the Project's HVAC units and emergency generator to mitigate noise impacts. All rooftop mechanical equipment will be strictly governed by the enclosure and setback requirements set forth in the Penthouse Regulations in Subtitle C, Chapter 15 and the District's Noise Control regulations, 20 DCMR § 2700 *et seq.*, with which the Applicant will be required to comply at all times. The Commission is also not persuaded by Mr. Klacik's claims that the "vertical gardens" landscaping features proposed for the Project's east façade were not sufficiently documented in the case record and that the flexibility provisions in the Order should specifically prohibit the Project's mechanical penthouse from being shifted eastward. The Project's landscaping features and plantings and the proposed penthouse and roof terrace layout are all detailed in the submitted plans (Ex. 17A), which the Commission reviewed and incorporated into the Conditions of this Order. The design flexibility the Applicant requested for both the landscaping and rooftop is consistent with the standard design flexibility that the Commission has approved for similar projects, and the Commission does not see any need to impose additional restrictions or limit flexibility further in this case;

- (b) Housing Market Impacts. The Commission concludes that the Project will have a favorable housing impact by creating new, high-quality, transit-accessible housing units, including affordable housing that significantly exceeds what is otherwise required under IZ, particularly for the Property's location in Ward 3. The addition of new multifamily housing will also help to support and revitalize the neighborhood retail uses and foster a diverse mixture of people living in the neighborhood. The Project's significant affordable housing commitment helps further the objective that the Friendship Heights neighborhood exists as an inclusive, mixed-income community. The Project does not displace any existing residents and is unlikely to create any adverse impacts on the surrounding housing market. To the contrary, the addition of the Project's new housing units is most likely to help offset increasing housing costs, as increases in supply are widely understood to dampen rent increases. (FF ¶ 48(b).);
- (c) Transportation.
- (i) The Commission concludes that the Project will not have any unacceptable impacts on the public transportation facilities or local roadways. The Project's transportation impacts are either capable of being mitigated or acceptable given the quality of public benefits being provided. The reduction of commercial uses and replacement with residential use proposed by the Project is anticipated to result in a net reduction in vehicular trips to and from the Property. The Project's location immediately adjacent to the Friendship Heights Metrorail station, nearby grocery options, and other retail amenities will help support a higher non-auto mode share for residents. Further, the Project includes a robust TDM plan to further promote a reduced reliance on vehicles, which the Applicant developed in coordination with DDOT and ANC 3E. The Project's approximately 180 below-grade parking spaces, long-term and short-term bicycle parking spaces, and proposed loading facilities are all sufficient to meet the Project's transportation-related needs and pedestrian and vehicular activity that will be generated by the new housing and ground-floor retail. (FF ¶ 48(f).); and
- (ii) With respect to Mr. Klacik's statements that residents of the Project should be prohibited from obtaining residential parking permits to prevent parking impacts and the comments in Mr. Klacik's presentation slides that trucks should be prohibited from using 43<sup>rd</sup> Street to prevent traffic impacts, the Commission is not persuaded by Mr. Klacik's arguments for these additional measures. The Commission believes that the Project's parking and traffic impacts have been thoroughly analyzed in the Applicant's CTR prepared by its expert transportation consultant (Ex. 14A) and fully reviewed and evaluated by DDOT, which did not have any objections to the Project, as discussed in detail its report (Ex. 19). With respect to truck traffic, the Project will continue to provide loading and service access to the rear of the Project via the existing private through alley, which the Commission concludes will sufficiently accommodate trucks accessing the Property without the need to impose additional restrictions on truck routing on 43<sup>rd</sup> Street. As it pertains to the routing of trucks during the Project's



construction, the Commission believes any potential adverse effects will be addressed by the traffic control plan developed with the ANC and DDOT (see FF ¶ 33(k)(ii));

- (d) Public Facilities and/or District Services Impacts. The Commission concludes that the Project will not result in any unacceptable adverse impacts to public facilities and infrastructure or District services. The Commission has considered, but does not find persuasive, written submissions and testimony stating that the Project will have excessive impacts to infrastructure or that potential impacts have not been sufficiently evaluated. In addition to being reviewed by OP and DDOT, the Application was circulated by OP to numerous other District agencies and authorities for review, including the DOEE, DHCD, DC Water, FEMS, DPR, DC Public Library, DC Public Schools, DPW, Department on Aging and Community Living, Department of General Services, Department of Buildings, Department of Employment Services, Metropolitan Police Department, Department of Small and Local Business Development, and WMATA, all of which were also invited to participate in an interagency meeting and submit written comments on the Project. OP confirmed that the agency comments that were received did not indicate adverse impacts on public infrastructure or services. (FF ¶¶ 48(h), 55(b), 58, 60; Ex. 40.) This conclusion further confirms the evidence the Applicant submitted that the Project will not result in any unacceptable impacts to public facilities and infrastructure or District services. On this point, the Commission also notes that OAG's testimony and letter included reference to affordable housing infrastructure. (FF ¶ 59(a)(i).) However, the Commission notes that the Comprehensive Plan Infrastructure Element does not contain any policies regarding affordable housing, which is instead addressed in detail in the Housing Element. Rather, "[t]he Infrastructure Element provides policies and actions on the District's water, sanitary sewer, stormwater, solid waste management, energy, information and communications technology, and enhanced coordination among these sectors." (10-A DCMR 1300.1.) Thus, the Commission believes that the term "infrastructure" as referred to in 10-A DCMR §§ 2503.2 does not encompass the supply of affordable housing or any other issues beyond the typical meaning of that term as noted in the Infrastructure Element, i.e., transportation networks, utilities, and educational and other public facilities;
- (e) Construction-Period Impacts. The Commission concludes that the Project will have some construction-period impacts, including impacts on noise, parking, and dust, which are capable of being mitigated since the Applicant has collaborated with ANC 3E and neighboring property owners to develop a robust set of commitments to mitigate construction-period impacts, including offering preconstruction surveys to property owners on 43<sup>rd</sup> Street and Military Road and agreeing to restrictions on parking and truck routing and parking prior to and during construction. (FF ¶¶ 33, 48.); and
- (f) Overall. In summary, taken as a whole, the Project does result in impacts, as noted above. However, none of those impacts, whether individually, collectively, or cumulatively with impacts from other developments are unacceptable in light of the proposed mitigations and the benefits and amenities proffered by the Project.

**BENEFITS AND AMENITIES (SUBTITLE X § 304.4(c))**

17. The Commission concludes that for the reasons given below, the Project's benefits and amenities satisfy the relevant criteria of Subtitle X §§ 304.4(c) and 305:

- (a) Specific Benefits and Amenities. Each of the Project's benefits and amenities is specifically described. (FF ¶ 50.);
- (b) Not Inconsistent with the Comprehensive Plan. As described above, the Application is not inconsistent with the Comprehensive Plan nor are the benefits and amenities inconsistent with the Comprehensive Plan or other public policies applicable to the Property. (FF ¶ 46.);
- (c) Relative to Matter-of-Right Development. The Project's benefits are superior to a matter-of-right development of the Property. The Project provides more affordable units, at deeper levels of affordability, than would be possible as a matter of right under the non-PUD underlying MU-5A Zone or the Existing PUD MU-8 zone. Likewise, the Project's sustainability features are superior to a matter-of-right development, and the Project's other benefits would not be possible or required as part of a matter-of-right development. (FF ¶ 50.);
- (d) Relate to Geographic Area of ANC. A majority of the Project's benefits relate primarily to the area of ANC 3E. (*Id.*);
- (e) Tangible and Quantifiable. Each of the Project's benefits is tangible and/or quantifiable. (*Id.*);
- (f) Measurable and Satisfied Prior to Certificate of Occupancy. Each of the Project's benefits is capable of being delivered or arranged prior to the issuance of a certificate of occupancy for the Project. (*Id.*);
- (g) Primarily Benefiting Neighborhood or Serving a Critical City-Wide Need. The Project's benefits primarily benefit the neighborhood around the Property (e.g., by mitigating housing prices, by providing a sustainable building and by making direct improvements to private and public facilities within the nearby area), but some benefits serve a critical city-wide need (e.g., by supporting local-, minority-, and women-owned businesses, affordable housing open to all residents of the District). (*Id.*);
- (h) Acceptable in All and Superior in Many. The Project's design, landscaping, site planning, affordable housing, sustainability, and other benefits are superior. All of the Project's benefits are acceptable. (*Id.*);
- (i) Agreement with District Agencies. With respect to the Applicant's proffered transportation improvements at 43<sup>rd</sup> Street and Military Road and landscaping improvements at the public space abutting the Chevy Chase Recreation Center, the Commission notes DDOT's general support for the transportation improvements, subject to further coordination on design during permitting; and DPR's conditional support for the landscaping improvements, subject to the opportunity to review and provide feedback on the design and requesting a maintenance plan with annual reporting. (Ex. 19; FF ¶ 56; Ex. 38B; FF ¶ 40(f)). Based on the DDOT Report and public hearing testimony, and ANC 3E's support for the improvements, the Commission finds that the proffered transportation improvements can be

considered non-mitigation public benefits without a formal written agreement between the Applicant and DDOT. Because the Applicant's proffered landscaping improvements are limited to the public space abutting Chevy Chase Recreation Center that is subject to review and approval by DDOT's Public Space Committee, the Commission finds that a formal written agreement between the Applicant and DPR to specify these requirements is not necessary for the proffered landscape improvements to be considered a public benefit; nevertheless, the Commission notes the Applicant's commitments to serve DPR with its public space application for the landscape improvements for its review and to provide the requested maintenance plan and annual reporting for three years, are Conditions of this Order. The Commission also notes ANC 3E's support for the landscape improvements and the Applicant's agreement to maintain the landscaping for three years after installation. Out of an abundance of caution, however, the Commission concludes that the Applicant's proffered benefits and amenities for the Project are sufficient to justify the relief granted in this Application even if the transportation and landscaping improvements, noted immediately above, were not deemed to be public benefits by the Commission; and

- (j) Overall. In sum, the Project's benefits and amenities satisfy the applicable criteria.

**PUD BALANCING (SUBTITLE X §§ 304.3)**

18. The Commission finds the requested Zoning Map Amendment to the MU-9A zone appropriate. The non-PUD underlying MU-5A zoning would allow a matter-of-right IZ development with a maximum FAR of 4.2 and a maximum height of 70 feet; and the Existing PUD MU-8 zoning would allow a matter-of-right IZ development with a maximum FAR of 6.0 and a maximum height of 70 feet. For a PUD, the proposed MU-9A zone allows a maximum FAR of 9.36 and a maximum height of 130 feet; the proposed Project is 7.56 FAR and 130 feet high. The additional density and height gained under the MU-9A zone will allow for substantial new housing and affordable housing in a transit-rich area of Ward 3 where there is a critical need. In addition, the Project's design, concentrating density to the west toward Wisconsin Avenue and stepping down to the east toward lower density residential development, is compatible with the scale and context of the surrounding area. The Commission also finds the requested relief for flexibility from minimum side yard requirements, on the south property line beginning at the Project's third floor, appropriate to accommodate the concerns of the Chevy Chase Plaza property immediately to the south. (FF ¶¶ 44, 45, 52, 53.)
19. The Commission concludes that the requested Zoning Map Amendment to the MU-9A zone, zoning flexibility from minimum side yard requirements for the south building upper story setback, and design flexibility, as well as any potential adverse impacts that are not capable of being mitigated, are balanced by the proffered benefits and amenities resulting from the Project, including superior urban design, architecture, and landscaping, site planning and efficient land utilization, housing, affordable housing, deeply affordable housing, environmental and sustainable benefits, non-mitigation transportation

improvements, and other design features and commitments not required for a matter-of-right development. (FF ¶¶ 48-51.)

20. The Commission concludes that the benefits outweigh the requested flexibility and other development incentives and the potential adverse effects of the Project that are not otherwise favorable or adequately mitigated. In particular, the Commission concludes that the Project's affordable housing benefits justify any potential impacts on the residential development to the east (including shadow, view, privacy, design, parking, noise, light, air, and construction period impacts) especially given the Project's mitigation of such impacts through thoughtful design and careful sculpting of the building mass and stepping down of the scale and bulk on the east side of the Property. (FF ¶ 51.)
21. The Commission concludes that the Applicant has carried its burden of justifying the request set forth in the Application by providing substantial evidence, reasonably acceptable, as to each element of the Commission's review of the Application as set forth above. The Commission also evaluated the testimony and written evidence of the Applicant's transportation expert and finds him credible and that his testimony was supported by DDOT's report. (FF ¶¶ 37, 39, 56.)
22. The Commission has considered OAG's arguments in its written submissions and testimony at the public hearing that the Project's affordable housing proffer is insufficient and recommending that: (i) the Applicant increase its IZ set-aside to at least 33% for very low- and extremely low-income households based on the Property's location within a Future Planning Analysis Area or else conduct (or wait for OP to complete) the required equitable development planning analyses and (ii) the Applicant increase its IZ set-aside (or offer more units at deeper levels of affordability) to reach an equivalent of an 18% set-aside, representing what would be required if IZ Plus were applied to a matter-of-right project achieving the same increase in density developed pursuant to a standalone Zoning Map Amendment to the MU-9A zone. (FF ¶ 59.)
23. The Commission rejects OAG's assertions and concludes that the Project's affordable housing proffer is sufficient when balanced, together with the Project's overall proffered benefits and amenities, against the requested development incentives and potential adverse effects. With respect to OAG's first recommendation, the Commission has considered, but does not find persuasive, the argument advanced by OAG and several of those in opposition that the Project is required under the Comprehensive Plan Implementation Element to set aside 33% of the proposed housing for very low- and extremely-low income households based on the Property's designation within a Future Planning Analysis Area on the GPM. The language of the relevant provision of the Implementation Element, 10-A DCMR § 2503.3, is clear that rezoning proposals received prior to planning studies in a Future Planning Analysis Area may be considered if being reviewed through a PUD. As both the Applicant and OP have explained, PUDs may be considered prior to planning studies because in the case of a PUD, the planning analyses and the rezoning may be combined. Here, the planning analyses has been performed by OP and other District agencies and included review of the Project by various District agencies to evaluate its adverse impacts

on public infrastructure and services. (FF ¶ 60.) The Commission notes OAG’s particular emphasis on an equitable development planning analyses with affordable housing infrastructure impacts as a key component of any planning analysis in a Future Planning Analysis Area. While the Commission is not persuaded that the term “infrastructure” as used in 10-A DCMR § 2503.3 encompasses affordable housing (*see* COL ¶ 16(d)), the Commission nevertheless acknowledges that affordable housing impacts should be considered when planning for an area’s “equitable development.” On this point, the Commission believes that the planning analyses completed by OP and District agencies, in particular the racial equity lens analysis provided in the OP Reports, did examine the Project’s potential impacts on the area’s affordable housing impacts. The Commission agrees with OP’s conclusion that the Project’s affordable housing will constitute a major benefit to a Planning Area, which has the highest need for affordable housing yet has generated the lowest number of affordable housing units thus far. Accordingly, the Commission concludes that the planning analyses referenced in 10-A DCMR § 2503.2, 2503.3 has been combined with the PUD related rezoning in this case, and the 33% set-aside recommended by OAG and others is not applicable to the Commission’s evaluation of this PUD application. With respect to OAG’s second recommendation, the Commission disagrees with OAG’s assertion that IZ Plus is a relevant standard in evaluating a PUD affordable housing proffer. The Zoning Regulations clearly state that IZ Plus “shall not apply to a map amendment that is related to a PUD application.” (Subtitle X § 502.2(a).) Accordingly, the Commission agrees with OP’s conclusion that IZ Plus is not intended to be used as either a floor or a general tool to evaluate an affordable housing proffer set forth in a PUD application. Instead, the standard for measuring a project’s affordable housing proffer is what would be required through matter-of-right development under existing zoning (Subtitle X § 305.5(g)(1)). In this case, the Project’s affordable housing proffer exceeds, both in terms of quantity and levels of affordability, what would have been required through matter-of-right development under the non-PUD underlying MU-5A zone or the Existing PUD MU-8 zone. The Commission notes that the Project includes two units reserved at the 30% MFI and a considerable number of units reserved at 50% MFI levels, which further lends to the superiority of the Project’s affordable housing proffer. In short, the Commission concludes that the Applicant’s IZ set-aside constitutes a superior public benefit.

#### **GREAT WEIGHT TO RECOMMENDATIONS OF OP**

24. The Commission is required to give “great weight” to the recommendation of OP pursuant to Section 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).)
25. The Commission finds OP’s detailed analysis of the Application, its overall conclusion that the Application satisfied the PUD requirements and is not inconsistent with the Comprehensive Plan Maps and Citywide and Area Elements, and its ultimate

recommendation to approve the Application persuasive and concurs with OP's recommendation. (FF ¶¶ 52-55, 60.)

**GREAT WEIGHT TO THE WRITTEN REPORT OF ANC 3E**

26. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC pursuant to Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (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*, 141 A.3d at 1087.) 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).)
27. The Commission carefully considered ANC 3E’s report, which stated its reasons for supporting the Application and noted several aspects in which the Project “has room to be better.” The ANC concluded that the Project merits approval because it features numerous benefits and amenities beyond what would be provided for a matter-of-right project and that will advance policies of the Comprehensive Plan, including the robust set of public benefits the Applicant developed in close coordination with ANC 3E and memorialized in the Applicant’s Memorandum of Understanding with the ANC submitted into the Case Record. (FF ¶¶ 61, 62; Ex. 32, 32A.) The Commission notes that the building-specific and neighborhood public benefits, and the construction-related benefits listed in the Memorandum of Understanding are Conditions of this Order.
28. As stated above, the ANC stated the following concerns regarding the Project: (FF ¶¶ 61, 62; Ex. 32.)
  - (a) The ANC Report urged the Commission to always press applicants to provide a maximum number of IZ units.

**Commission’s Response:** The Commission agrees with the ANC regarding the need to encourage and advocate for additional affordable housing where appropriate. However, here, the Commission finds that the Applicant has put forth a significant affordable housing proffer that exceeds what would otherwise be required under the IZ regulations and includes two 30% MFI affordable units. Given the Planning Area’s lack of, and need for, affordable housing, the Commission believes the Project will constitute a major benefit to ANC 3E and the Friendship Heights neighborhood;
  - (b) The ANC Report was disappointed with the amount of retail space being proposed and expressed a preference for more retail to be provided.

**Commission’s Response:** While the Commission acknowledges the ANC’s expressed preference for more retail space, the Commission is persuaded by the Applicant’s testimony that the surrounding retail corridor has suffered in recent years, which justifies moderating the total amount and type of retail provided.

Notably, despite there being no requirement to provide retail in this location, the Project continues to maximize the amount of street-facing retail along the Property's frontage on Wisconsin Avenue, which will help promote a vibrant mixed-use pedestrian environment. Further, the Commission commends the Applicant's commitment to market a minimum amount of ground-floor space to local-, minority-, and women-owned businesses as recommended by the ANC;

- (c) The ANC Report stated that the Project's proposed amount of parking will unnecessarily incentivize driving and car ownership given the Property's location close to a Metro station and the excess parking available in the same complex.

**Commission's Response:** While the Commission recognizes the ANC's concern that the proposed parking may unnecessarily incentivize driving and car ownership, the Commission is persuaded by DDOT's conclusion in its report that the Applicant's proposed TDM plan, developed in close coordination with DDOT, adequately addresses and mitigates any potential excess vehicle use resulting from the Project's below-grade parking; and

- (d) The ANC Report expressed concerns that some of the ANC's issues may have been addressed had the Application been preceded by the Wisconsin Avenue Development Framework.

**Commission's Response:** As discussed above, the Commission concludes that the Project has undergone a sufficient planning and impact analysis through this PUD Application and reiterates that the Comprehensive Plan Implementation Element specifically provides that, in a PUD, planning analyses and rezoning may be combined.

- 29. For all these reasons stated above, while the Commission greatly appreciates the ANC's extensive and careful review of the Project and Application, the Commission concludes that the ANC's stated concerns do not justify denial of the Application and instead agrees with the ANC's ultimate conclusion that the Project, as proposed, merits approval. (FF ¶¶ 37-40, 61, 62.)

## **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and, therefore, **APPROVES** the Application, subject to the following guidelines, conditions, and standards for:

- (a) A Modification of Significance to the consolidated PUD, approved most recently in Z.C. Order No. 824 for Case No. 96-13M, pursuant to Subtitle Z § 704;
- (b) A PUD-related Zoning Map Amendment to the MU-9A zone;
- (c) Zoning flexibility from the side yard requirements of Subtitle G § 406.1; and
- (d) Such other design flexibility as are set forth in the Conditions hereof.

### **A. Project Development**

1. The Project shall be built in accordance with the plans and elevations dated November 15, 2022 (Ex. 17A1-17A3), and the plans submitted as Ex. 38A and 38C (collectively, the “Final Plans”), and as modified by the guidelines, conditions, and standards herein.
2. The Property shall be developed with a mixed-use building with approximately 310 multifamily residential units and approximately 10,500-14,000 square feet of ground-floor commercial use and having a height of 130 feet and FAR of 7.56.
3. The Project shall be developed pursuant to the MU-9A Zone, except as set forth herein or modified hereby as shown in the Final Plans, and with flexibility from the minimum side yard requirements for the south building wall.
4. No more than 10% of the residential units shall be co-living units.
5. The Project shall not include any lodging use.
6. The Project shall have design flexibility as follows:
  - a. Parking Number and Layout. To modify the total number of parking spaces by  $\pm 10\%$  and to modify the garage layout to increase efficiency;
  - b. Streetscape Design. To vary the location, attributes, and general design of the public streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
  - c. Interior Components. To vary the interior partitions and configurations upon final construction drawings so long as the exterior configuration or appearance of the building is not changed. Residential unit number, types and sizes may vary within the range proposed;
  - d. Exterior Materials. To vary the final selection of the exterior materials within the color ranges and material types (maintaining the same general level of quality) proposed based on availability at the time of construction provided such colors and materials are within the color ranges and material types shown on the plans approved by the order;
  - e. Exterior Details. To make minor refinements to exterior details, dimensions, and locations or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building or its systems;
  - f. Primary Façade Material. To finalize the proposed primary façade material between the tile rainscreen and brick as depicted on pages 1 and 2 of Ex. 38A;
  - g. Signage. To vary the final design of the signage for the Project, subject to full compliance with applicable signage restrictions under the D.C. Building Code and consistent with the indicated dimensions;



- h. Retail Spaces. Retail storefronts, signage, and associated features and fixtures in public space are subject to change upon individual retailer modifications;
- i. Residential Units. To vary the number of residential units in the building by plus or minus 10% and to shift the distribution and location of the Inclusionary Zoning units as the floor plans are refined so long as their location and distribution continues to meet the requirements of Subtitle C, Chapter 10 of the Zoning Regulations; and provided so long as the total square footage reserved for Inclusionary Zoning units is no less than the greater of 57,250 square feet or 15.43% of the total residential gross floor area as set forth in Condition No. B.1.b; and provided that of this amount, set aside no fewer than two (2) of the IZ units for households earning no more than 30% MFI each at least 800 square feet in size; set aside the greater of 29,425 square feet or 7.93% of the residential GFA as IZ units for households earning no more than 60% MFI; and set aside the remaining balance of the IZ set-aside as IZ units for households earning no more than 50% MFI;
- j. Sustainability. To vary the features, means and methods of achieving the required GAR and LEED standards, including modification to location/orientation and type of green roof and paver areas as required to meet stormwater requirements and sustainability goals;
- k. Landscape. To modify species in the plant palette during subsequent design phases and availability upon final completion;
- l. Balconies. To make refinements to the location, number, and dimensions of exterior balconies, so long as the final design remains consistent with the design intent of the Commission's approval, as depicted in the Final Plans, and the final number of balconies varies by no more than  $\pm 10\%$  from the number of balconies shown in the Final Plans;
- m. Lighting. The final lighting plan may vary from the Final Plans, but it shall be consistent with the intent of the plans;
- n. Exterior Courtyards and Rooftop. To vary the configuration and layout of the exterior courtyards and rooftops so long as the courtyards and rooftops continue to function in the manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained;
- o. Interior Courtyard. To vary the final configuration of the interior courtyard based on final unit design and layout;
- p. Mechanical penthouse. To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Final Plans and remain compliant with all applicable penthouse requirements; and
- q. Ground-floor Design. To vary the final design of the ground floor frontage, including the number, size, design, and location of windows and entrances,

signage, awnings, canopies, marquees, and similar storefront design features, to accommodate the needs of the specific tenants and users within the parameters set forth in the Final Plans.

**B. Public Benefits**

1. Affordable Housing: Prior to issuance of a Certificate of Occupancy for the residential portion of the Project, the Applicant shall demonstrate to the Zoning Administrator:

- a. **For the life of the Project**, the Applicant shall set aside no less than the greater of 57,250 square feet or 15.43% of the base residential GFA to affordable housing as IZ units:
- i. Set aside no fewer than two of the IZ units for households earning no more than 30% MFI each at least 800 square feet in size;
  - ii. Set aside the greater of 29,425 square feet or 7.93% of the residential GFA as IZ units for households earning no more than 60% MFI; and
  - iii. Set aside the remaining balance of the IZ set-aside as IZ units for households earning no more than 50% MFI;
- b. The set-aside requirements are set forth in the following chart:

Residential Unit Type	Residential GFA/% of Total	Income Type	Affordable Control Period	Affordable Unit Type	Notes
<b>Total</b>	371,000 sf		Life of Project	Rental	NA
<b>Market Rate</b>	313,750 sf	Market	Life of Project	Rental	NA
<b>IZ</b>	2 units @ 800 sf = 1,600 sf	30% AMI	Life of Project	Rental	NA
<b>IZ</b>	29,425 sf / 7.93%	60% AMI	Life of Project	Rental	NA
<b>IZ</b>	Remaining balance: 57,250 sf (15.43%) – 1,600 sf (2 units @ 800 sf) – 29,425 sf (7.93%) <hr/> 26,225 sf	50% AMI	Life of Project	Rental	*Remaining balance of IZ set-aside provided at 50% MFI depends on GFA attributable to two 30% MFI units.

- c. The Inclusionary Zoning Covenant required by D.C. Official Code § 6-1041.05(a)(2) (2012 Repl.) shall include a provision or provisions requiring compliance with all the terms of this Condition.
2. **LEED**. The Project shall be designed to achieve LEED Gold v.4 certification, provided that the Applicant shall have the flexibility to vary the approved sustainable features of the Project as long as the total number of LEED points achievable for the Project does not decrease below the minimum required for the

foregoing LEED standard. Prior to the issuance of a building permit, the Applicant shall submit evidence from its architect certifying compliance with this condition.

3. Electrical Vehicle (“EV”) Charging. The Project shall provide a minimum of 10 EV charging stations, two of which will be available to the public for charging in a publicly accessible portion of the parking garage.
4. Transportation Improvements. **Prior to the issuance of a final Certificate of Occupancy for the Project,** the Applicant shall design and construct the following improvements to the intersection at 43<sup>rd</sup> Street and Military Road, subject to DDOT approval:
  - a. Install a new crosswalk on the west leg of Military Road where no crosswalk currently exists;
  - b. Improve all crosswalks at the intersection to be raised pedestrian crossings; and
  - c. Install curb extensions on the south side of both Military Road approaches.
5. Ground-Floor Retail. The Project shall provide a minimum of 10,500 square feet of retail space on the ground floor.
6. Ground-floor Bicycle Parking. The Project shall provide a minimum of 10 long-term bicycle parking spaces for building residents on the ground floor.
7. Accessible Units. The Project shall include a minimum of two residential units built out to the ANSI A standard prior to lease-up of the building. One such ANSI A unit shall be an IZ unit for households earning no more than 60% MFI.
8. Restricted Uses. The following commercial uses, even though permitted within the MU-9A zone as a matter-of-right or with special exception approval, shall not be permitted in the Project: sexually-oriented business establishment; a check-cashing establishment; a bail-bond establishment; a pawnbroker; a marijuana dispensary; a mattress store; or a head/smoke/vape shop. The Applicant shall not enter into a lease with more than one bank or financial institution at the Project. If a bank or financial institution leases space at the Project, then its leased frontage on Wisconsin Avenue, N.W. shall be limited to 33 feet. Notwithstanding the foregoing, a tenant otherwise prohibited in this paragraph shall be permitted in the Project if the ANC supports it, as demonstrated by the adoption of a formal resolution.
9. Local-, Minority-, Women-Owned, and Inclusive Retailers. **During the initial retail lease-up and until all of the retail space is leased,** the Applicant shall make commercially reasonable efforts to market to local-, minority- and / or women-owned businesses as retail tenants in the Project and shall reach out to the Greater Washington DC Black Chamber of Commerce, the DC Small Business Development Center, the Washington DC Women’s Business Center, and the DC

Developmental Disabilities Council. The Applicant shall offer at least \$40 per square foot of gross leasable area in tenant improvement allowance for any local-, minority-, women-owned and/or inclusive businesses with whom the Applicant enters into a market-rate retail lease. Such tenant improvement allowance may be in the form of a direct payment, buildout cost, or some combination of the two.

10. Chevy Chase Recreation Center Landscaping. Prior to the issuance of a final Certificate of Occupancy for the Project, the Applicant shall install new landscaping at the public space abutting Chevy Chase Recreation Center, including removal of invasive plants and dead and undesirable trees and bushes, in the area between the existing fence and the sidewalk along Western Avenue, N.W. from Livingston Street, N.W. to 41<sup>st</sup> Street, N.W. and along 41<sup>st</sup> Street, N.W. from Western Avenue, N.W. to Livingston Street, N.W., subject to approval by the District Department of Parks and Recreation (“DPR”) and DDOT. The Applicant shall serve the public space application for the landscape improvements on DPR for their review when such application is filed and shall provide evidence of such service to the Zoning Administrator. The Applicant shall spend a minimum of \$100,000 on such improvements, but the total combined design, permitting, consultant, and installation costs shall not exceed \$150,000. The Applicant shall consult with and, if requested, present to ANCs 3E and 3/4G on the proposed landscaping plans. The Applicant shall maintain such landscaping for three years after installation and shall provide the maintenance plan to DPR, including annual reporting for the three year period.
11. Additional Street Trees. Prior to the issuance of a final Certificate of Occupancy for the Project, the Applicant shall, subject to DDOT approval, enlarge the existing tree pits on the east side of Wisconsin Avenue, N.W. between Jenifer Street, N.W. and Military Road, N.W. as required to meet current DDOT standards and plant nine new street trees with a three-inch caliper DBH. Such trees shall be in addition to the Project’s proposed public space frontage improvements.
12. Photovoltaic Array at Iona Senior Center. Prior to the issuance of a final Certificate of Occupancy for the Project, the Applicant shall, at its cost, design, permit, and install a photovoltaic array at the Iona Senior Center at 4125 Albemarle Street, NW. Such work shall include a new roof membrane on the upper flat roof, photovoltaic panels, a racking system, and an inverter. Such improvements shall be subject to approval by the authorities having jurisdiction, including PEPCO. Upon completion of such work and final commissioning, the improvements shall be conveyed to Iona, and Iona shall be the sole beneficiary of both reduced energy bills and SREC income. The intent of such benefit is that the photovoltaic array be designed to produce as much solar power as reasonably possible, notwithstanding building code, engineering, and other technical limitations. In any event, the Applicant’s total cost shall not exceed \$240,000 for all design, permitting, and installation work for these improvements, but the Applicant shall install as

productive a photovoltaic array as is permissible and structurally supportable up to the cost of \$240,000.

C. **Construction-Related Commitments**

1. **Preconstruction Surveys.** The Applicant shall offer, at its cost, pre-construction surveys to the residential property owners on the following blocks:
  - a. East side of 43<sup>rd</sup> Street, N.W. between Jenifer Street, N.W. and Military Road, N.W.; and
  - b. South side of Military Road, N.W. between 42<sup>nd</sup> Place NW and 43<sup>rd</sup> Street, N.W.
2. **Parking and Truck Routing. Prior to the commencement of construction on the Project,** the Applicant shall consult with ANC 3E on issues related to parking arrangements for construction workers and construction truck routing. The Applicant shall also include the following provision in its construction contract with the general contractor: “Contractor acknowledges that the job site is surrounded by a residential neighborhood, and that on-street parking by its and its subcontractors’ workforces would impose an impact on local residents. Contactor agrees to prohibit its workforces and the workforces of all subcontractors from parking on local residential streets, even if permitted by local parking regulations.”
3. **Transportation Demand Management Plan.** The Applicant or future property manager shall share with ANC 3E results of annual parking demand and trip generation surveys required by DDOT for the first three years after building opens.
4. **Point of Contact. Prior to the commencement of construction on the Project,** the Applicant shall designate a representative of Federal Realty as the point of contact for all construction-related matters while the Project is under construction. The Applicant shall provide the email address and mobile phone number of this designated representative to the ANC.

D. **Transportation Management**

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

*Site-Wide TDM*

- a. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and retail space and charge a minimum rate based on the average market rate within a quarter mile;
- b. Identify Transportation Coordinators for the planning, construction, and operations phases of development. There will be a Transportation Coordinator for each retail tenant and the entire site. The Transportation

- Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;
- c. Transportation Coordinator will conduct an annual commuter survey of building employees and residents on-site, and report TDM activities and data collection efforts to goDCgo once per year;
  - d. Transportation Coordinator will develop, distribute, and market various transportation alternatives and options to employees, customers, and residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications;
  - e. Transportation Coordinator will subscribe to goDCgo's residential newsletter and receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan;
  - f. Provide residents and site employees who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOC) or other comparable service if MWCOC does not offer this in the future;
  - g. Post all transportation and TDM commitments on building website, publicize availability, and allow the public to see what has been promised.
  - h. Offer a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident and employee;
  - i. Provide at least 106 long- and 20 short-term bicycle parking spaces;
  - j. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kid's bikes, with a minimum of four designed for longer cargo/tandem bikes (10 feet by 3 feet), a minimum of nine designed with electrical outlets for the charging of electric bikes and scooters, and a minimum of 53 allowing bicycles to be placed horizontally on the floor. There will be no fee to the residents or employees for usage of the bicycle storage room and strollers will be permitted to be stored in the bicycle storage room;
  - k. If the Applicant provides more than 310 residential units, the required bicycle parking will increase in accordance with Subtitle C, Chapter 8 and DCMR Title 18, Section 1214;
  - l. Install a minimum of 10 electric vehicle (EV) charging stations to satisfy DDOT's recommendation of one station per 50 spaces;
  - m. Following the issuance of a Certificate of Occupancy for the Project, the Transportation Coordinator will submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case; and
  - n. Following the issuance of a Certificate of Occupancy for the Project, the Transportation Coordinator will submit a letter to the Zoning Administrator,

DDOT, and goDCgo every five years (as measured from the final Certificate of Occupancy for the Project) summarizing continued substantial compliance with the transportation and TDM conditions in the Order, unless no longer applicable as confirmed by DDOT. If such letter is not submitted on a timely basis, the building shall have 60 days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter.

*Residential Specific Base TDM Plan*

- o. Provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing [info@godcgo.com](mailto:info@godcgo.com);

*Retail Specific Base TDM Plan*

- p. Post "getting here" information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to [godcgo.com](http://godcgo.com), [CommuterConnections.com](http://CommuterConnections.com), transit agencies around the metropolitan area, and instructions for customers discouraging parking on-street in Residential Permit Parking (RPP) zones;
- q. Transportation Coordinator will demonstrate to goDCgo that retail tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law to participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future such as the Parking Cash-Out Law;

*Enhanced TDM Plan Components*

- r. Install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
- s. Provide a bicycle repair station in each long-term bicycle parking storage room;
- t. Provide one collapsible shopping cart (utility cart) for every 50 residential units, for a total of seven, to encourage residents to walk to the grocery store and run errands;

*Enhanced Plus TDM Plan Components*

- u. Hold a transportation event for residents, employees, and members of the community once per year for a total of two years. Examples include resident social, walking tour of local transportation options, goDCgo lobby event, transportation fair, WABA Everyday Bicycling seminar, bicycle safety/information class, bicycle repair event, etc.);
- v. Collect parking demand and trip generation data annually for three years after building opening and report this information to DDOT's Planning and Sustainability Division (PSD);
- w. To encourage teleworking, provide a business center on-site and available for free to residents 24 hours per day, 7 days per week. Access to a printer and internet services will be included; and
- x. Fund the expansion of the Capital Bikeshare Station at Wisconsin Avenue and Ingomar St NW by eight docks, subject to DDOT approval.

**E. Miscellaneous**

1. No building permit shall be issued for the Project until the Applicant has recorded a covenant binding the Property in the land records of the District of Columbia by the Applicant for the benefit of the District of Columbia that is satisfactory to the Office of Zoning Legal Division and to the Zoning Administrator (the "PUD Covenant"). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, as may be amended by the Commission. The Applicant shall file a certified copy of the PUD Covenant with the Office of Zoning.
2. The map amendment to the MU-9A zone shall be effective upon recordation of the PUD Covenant.
3. The Applicant shall file an application for building permit for the Project within two years of the effective date of this Order, and construction must begin with three years from the effective date of this Order.
4. In accordance with the DC Human Rights Act of 1977, as amended, DC Official Code § 2-1401.01 et al (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 identify or expression, familial status, familial 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.

**PROPOSED ACTION**



**Vote (January 12, 2023): 4-0-1** (Joseph S. Imamura, Peter G. May, Anthony J. Hood, and Robert E. Miller to **APPROVE**; third Mayoral appointee seat vacant, not voting)

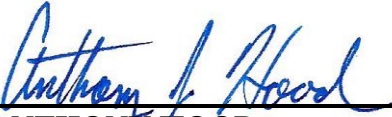
**FINAL ACTION**


**Vote (February 23, 2023): 4-0-1** (Joseph S. Imamura, Peter G. May, Anthony J. Hood, and Robert E. Miller to **APPROVE**; third Mayoral appointee seat vacant, not voting)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 96-13A shall become final and effective upon publication in the *D.C. Register*; that is, on July 14, 2023.

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

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

  
\_\_\_\_\_  
**ANTHONY HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

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