

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
Z.C. ORDER NO. 23-15  
Z.C. Case No. 23-15  
BROOKLAND PLAZA OWNER, LLC  
(Voluntary Design Review @ Square 3822, Lots 22-27, 31, 33, 35, 37, 802, and 809)  
November 30, 2023

Pursuant to notice, at its public hearing held on October 23, 2023, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Brookland Plaza Owner, LLC (the “Applicant”) under Title 11 of the District of Columbia Municipal Regulations (“DCMR”), Zoning Regulations of 2016<sup>1</sup>, to which all references are made unless otherwise specified, for:

- Voluntary Design Review approval under Subtitle X, Chapter 6, with flexibility from the building height (Subtitle G § 203.2.), penthouse height (Subtitle G § 205.1.), lot occupancy (Subtitle G § 210.1.), and side yard (Subtitle G § 208.2.) standards; and
- Special exceptions from the penthouse setback (Subtitle C § 1504.1(b).) and minimum loading requirements (Subtitle C § 901.1.)

Said relief is requested for Lots 22-27, 31, 33, 35, 37, 802, and 809 in Square 3822 (the “Property”) to construct a mixed-use building containing residential and ground floor retail uses (the “Project”).

The Commission conducted the public hearing in accordance with Subtitle Z. For the reasons set forth below, the Commission hereby **APPROVES** the Application.

**FINDINGS OF FACT**

**I. BACKGROUND**

**PARTIES**

1. The following were automatically parties to this proceeding pursuant to Subtitle Z §403.5:
  - The Applicant; and
  - Advisory Neighborhood Commission (“ANC”) 5B, the ANC in which the Property is located and so an “affected ANC” pursuant to Subtitle Z § 101.8.
  - The Commission received no requests for party status.

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<sup>1</sup> On August 25, 2023, amendments to the Zoning Regulations became final and effective that reorganized the regulations. (See Z.C. Case Nos. 18-16, 19-27, 19-27A, 19-27B). The references herein are to the amended Zoning Regulations.

## NOTICE

2. Pursuant to Subtitle Z § 301.6, the Applicant mailed a Notice of Intent to file the Application (Exhibit [“Ex.”] 4F.) on April 3, 2023, to ANC 5B and the owners of all property within 200 feet of the Property.
3. Pursuant to Subtitle Z § 402, the Office of Zoning (“OZ”) provided notice of the October 23, 2023 public hearing on July 10, 2023 to the following: (Ex. 6, 7.)
  - The Applicant;
  - ANC 5B;
  - ANC Single Member District (“SMD”) 5B05;
  - The Ward 5 Councilmember;
  - Office of ANC;
  - Office of Planning (“OP”);
  - D.C. Department of Transportation (“DDOT”);
  - D.C. Department of Building (“DOB”);
  - Office of Zoning Legal Division (“OZLD”);
  - D.C. Department of Energy and Environment (“DOEE”);
  - At-Large Councilmembers and the Chair of the Council;
  - Owners of property within 200 feet of the Property; and
  - Published notice of the public hearing in the July 21, 2023, *District of Columbia Register* (70 DCR 010117 *et al.*) as well as on the calendar on OZ’s website.(Ex. 5.)
4. Pursuant to Subtitle Z § 402.3, the Applicant posted notice of the hearing on the Property on September 12, 2023, and maintained such notice in accordance with Subtitle Z § 402.10. (Ex. 9, 14.)

## THE PROPERTY

5. The Property is located at the northwest intersection of 10<sup>th</sup> Street, N.E. and Bunker Hill Road, N.E. The Property spans multiple lots and consists of approximately 85,788 square feet of land area, or approximately 1.97 acres. (Ex. 4.)
6. Collectively, the Property is bordered by 10<sup>th</sup> Street, N.E. to the east and Bunker Hill Road, N.E./Michigan Avenue, N.E. to the south. Single family row homes in the RA-1 zone are located to the north. The Property is bordered on the west by private property containing various commercial and industrial uses. A 20-foot-wide public alley abuts the Property along the north side and a portion of the west side. The Property is located less than 500 feet from the Brookland-CUA Metrorail station. (Ex. 4.)
7. The Property is currently improved with a strip shopping center, an electric supply retail/wholesale/showroom business, car rental establishment, automotive repair shop, and vehicle storage yard. The Property also includes an individual historic landmark: the Brookland Bowling Alley building, which will be the centerpiece of the proposed development. (Ex. 4.)

## ZONING

8. The Property is zoned MU-4. The MU-4 zone is intended to permit moderate-density mixed-use development, to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core, and include office employment centers, shopping centers, and moderate bulk mixed-use centers. (Subtitle G § 101.9.) The MU-4 zone provides for the following development standards as a matter-of right:
- A maximum floor area ratio (“FAR”) of 2.5 and 3.0 with Inclusionary Zoning (“IZ”); maximum 1.5 non-residential FAR (Subtitle G § 201.1.);
  - A maximum building height of 50 feet, no stories limit (Subtitle G § 203.2.);
  - a maximum penthouse height of 12 feet, except 15 feet for penthouse mechanical space; maximum 1 story, second story permitted for penthouse mechanical space (Subtitle G § 205.1.);
  - A minimum rear yard of 15 feet (Subtitle G § 207.6.);
  - A minimum side yard of 5 feet, if provided (Subtitle G § 208.2.); and
  - A maximum lot occupancy of 60% and 75% with IZ (Subtitle G §210.1.).

## COMPREHENSIVE PLAN (“TITLE 10-A” OF THE DCMR OR THE “CP”)

9. The Comprehensive Plan’s Future Land Use Map (“FLUM”) identifies the Property as Moderate Density Commercial and Production Distribution and Repair (on the north end of the site); and Medium Density Commercial and Medium Density Residential (on the south end of the site):
- Moderate Density Commercial: This designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Low-Density Commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in Low Density Commercial areas. Density typically ranges between a FAR of 2.5 and 4.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-5 and MU-7 Zone Districts are representative of zone districts consistent with the Moderate Density Commercial category, and other zones may also apply; (CP §227.11.)
  - Production, Distribution, and Repair (PDR): The Production, Distribution, and Repair (PDR) category is used to define areas characterized by manufacturing, warehousing, wholesale and distribution centers, transportation services, food services, printers and publishers, tourism support services, and commercial, municipal, and utility activities which may require substantial buffering from housing and other noise-, air pollution- and light-sensitive uses. This category is also used to denote railroad rights-of-way, switching and maintenance yards, bus garages, and uses related to the movement of freight, such as truck terminals. It is important to ensure that adequate, appropriate land is provided for these PDR uses that are critical to supporting the retail, transportation and service needs of the city. A variety of zone districts apply within PDR areas,

recognizing the different intensities of use and impacts generated by various PDR activities. The corresponding zone category is PDR, and the present density and height limits set in these districts are expected to remain for the foreseeable future. Other districts may also apply where the PDR map designation is stripped of other land uses. In an area striped to include PDR, development must include PDR space, and on sites containing existing PDR space the amount of PDR space on-site should be substantially preserved; (CP §227.14.)

- Medium Density Commercial: This designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Moderate Density Commercial areas. Retail, office, and service businesses are the predominant uses, although residential uses are common. Areas with this designation generally draw from a citywide market area. Buildings are larger and/or taller than those in Moderate Density Commercial areas. Density typically ranges between a FAR of 4.0 and 6.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-8 and MU-10 zones are consistent with the Medium Density category, and other zones may also apply; and (CP §227.12.)
- Medium Density Residential: This designation is used to define neighborhoods or areas generally, but not exclusively, suited for mid-rise apartment buildings. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. Pockets of low and moderate density housing may exist within these areas. Density typically ranges from 1.8 to 4.0 FAR, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The RA-3 Zone District is consistent with the Medium Density Residential category, and other zones may also apply. (CP §227.7.)

10. The Comprehensive Plan’s Generalized Policy Map (“GPM”) identifies the Property as a Neighborhood Commercial Center.

- Neighborhood Commercial Centers meet the day-to-day needs of residents and workers in the adjacent neighborhoods. The area served by a Neighborhood Commercial Center is usually less than one mile. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and childcare. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. Many buildings have upper-story residential uses. (CP §225.15.)

Unlike Main Street Retail Corridors, the Neighborhood Commercial Centers include both auto-oriented centers and pedestrian-oriented shopping areas. Examples include Penn Branch Shopping Center on Pennsylvania Avenue, S.E. and the Spring Valley Shopping Center on Massachusetts Avenue, N.W. New development and redevelopment within Neighborhood Commercial Centers must be managed to conserve the economic viability of these areas while

allowing additional development, including residential, that complements existing uses. (CP §225.16.)

11. The Property is within the Comprehensive Plan’s Upper Northeast Area Element. Though the area is principally known as residential, the mix of uses is particularly diverse including major academic, religious, and medical institutions, and the largest concentration of industrial land in the city. (CP §§ 2400.2, 2400.3, 2400.5.) The area has experienced significant growth along the Metrorail red line corridor, which is expected to continue as underused land is redeveloped, such as surface parking lots and underperforming strip malls near Metrorail. (CP §2400.7.) The area shares challenges facing other parts of the District; however, with poverty and unemployment rates above the District average, many parts lacking access to open space and retail services, an increasingly unaffordable housing market, and a large population of older adults with special transportation, and housing, and health care needs, the greatest future challenge for the area will be to respond to change in a way that keeps the area a socially, culturally, and economically diverse community. (CP § 2400.9.)
12. The Property is within the Brookland/CUA Metro Station Small Area Plan (“BSAP”). The goals of the BSAP are to provide neighborhood character, neighborhood shopping, development and land use changes, connectivity, transportation, buffering, open space, and planning context. (BSAP, p. 11.)
13. Pursuant to the Comprehensive Plan Implementation Element §§ 2501.4-2501.6, 2501.8, in evaluating the Application, the CP requires the Commission to do so through a racial equity lens. 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. (CP § 213.6.) Further, “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development, and employment opportunities.” (CP § 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. (CP § 213.9.)
14. In addition, the CP Implementation Element suggests to prepare and implement tools to use as a part of the Commission’s evaluation process. Consistent with Comprehensive Plan guidance, the Commission utilizes a Racial Equity Tool in evaluating zoning actions through a racial equity lens; the Commission released a revised Tool on February 3, 2023. The Tool requires submissions from applicants and the Office of Planning analyzing the zoning action’s consistency with the Citywide and Area Elements of the Comprehensive Plan, and Small Area Plans, if applicable; a submission from applicants including information about their community outreach and engagement efforts regarding the zoning action; and a submission from the Office of Planning including disaggregated race and ethnicity data for the Planning Area affected by the zoning action.

## II. THE APPLICATION

### THE PROJECT

15. The Applicant is proposing to redevelop the Property with a six story mixed-use residential and retail building (the “Project”). Overall, the Applicant proposes the Project, as amended, to include the following:
- Approximately 257,364 square feet of gross floor area (“GFA”), with habitable penthouse space, for a total FAR of 3.0;
  - Approximately 215,380 square feet of residential GFA, approximately 30,165 square feet of retail, and approximately 11,999 square feet of amenities (approximately 2.65 residential FAR and 0.35 non-residential FAR);
  - A maximum building height of 59 feet (not including penthouse);
  - Approximately 337 residential units, of which approximately 32 units will be IZ affordable housing units devoted to households earning no more than 60% of median family income (“MFI”) (50% MFI for penthouse generated affordable housing units);
  - A maximum lot occupancy of 76%;
  - Approximately 99 below-grade vehicle parking spaces;
  - Approximately 17 short term and 112 long term bicycle parking spaces for the residential portion of the Project;
  - Approximately seven short term and three long term bicycle parking spaces for the retail portion of the Project; and
  - 2 loading berths.
- (Ex. 4, 10A1-10A12.)
16. The Project is composed of three primary volumes, with two newly constructed blocks that are separated by and flanking the preserved historic Brookland Bowling Alley building. The central block of the Project will preserve the bowling alley building except for a non-contributing portion at the rear of the building; the Project received Historic Preservation Review Board (“HPRB”) concept approval on March 30, 2023. The central block will contain the main residential lobby entrance and residential amenity space; the southern block will contain all of the Project’s ground-floor retail and services uses and approximately 199 residential units; and the northern block will contain approximately 138 residential units. The Project’s three blocks have been shaped in response to the surrounding context. On the south, the Project is taller and contains ground-floor commercial uses. On the north, the building is lower in height and is solely devoted to residential use. These purposeful design features are further advanced through the use of balconies, bay windows, and a variety of materials that respond to the different contexts that exist at the north and south ends of the Project. (Ex. 4.)
17. The southeastern corner of the Project is punctuated by a tower architectural element that establishes a presence along Michigan Avenue, and across from the Metrorail station, that draws attention to the active ground floor at this end of the development. The tower element is complemented by a highly transparent ground level and regular vertical façade pattern containing bay projections extending upward from the second floor. The southern block utilizes darker materials of brick, fiber cement panel, and dark framed windows that overall

provide a degree of aesthetic reference to the light industrial past of the area along the east side of the Metrorail tracks. (Ex. 4.)

18. The northern block of the Project has a more moderate-scale residential character. The primary red brick material used on the northern block is a clear reference to the residential area to the north. Brick detailing at the base of the northern block differentiates the base from the floors above to further elevate the residential character at this end of the Project. Finally, the scale of the northern block is further reduced with a staggered arrangement of two-story bay projections, some of which are topped with a patio terrace. (Ex. 4.)

#### **APPLICANT'S SUBMISSIONS**

19. In addition to the testimony at the public hearing, the Applicant made the following submissions to the record in support of the Application:
  - The initial application and related materials filed on June 27, 2023, requesting voluntary design review approval, related zoning flexibility, and special exception approval; (Ex. 3-4H.)
  - A Comprehensive Transportation Review (“CTR”) filed on September 11, 2023, concluding that the Project will have a manageable impact on the surrounding transportation network assuming the proposed site design elements and Transportation Demand Measures (“TDM”) are implemented; (Ex. 8A1-8A2.)
  - A supplemental statement, filed on October 3, 2023, including updated architectural plans reflecting both a compliant rear yard and a compliant penthouse setback at the southeast corner of the tower element<sup>2</sup>, and additional information on community engagement and government agency outreach; (Ex. 10-10A12.)
  - An updated CTR, filed on October 13, 2023, to reflect an updated number of bicycle parking spaces in response to DDOT’s request (filed following the 20-day deadline of Subtitle Z § 401.5.);<sup>3</sup> (Ex. 11.)
  - A hearing presentation filed on October 21, 2023; (Ex. 15A1-15A4.)
  - A post-hearing submission filed on November 6, 2023, to respond to the Commission’s requests for additional information, including information on sustainability and landscaping features, shadow studies for all four seasons, an overview of community engagement efforts with various organizations including Brookland Neighborhood Civic Association, Edgewood Civic Association, and Michigan Park Civic Association, and a written response to John Feeley’s comments in opposition to the Project; and (Ex. 20.)
  - Proposed findings of fact and conclusions of law filed on November 13, 2023. (Ex. 21.)

#### **RELIEF REQUESTED**

20. The Applicant requested:

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<sup>2</sup> Initially the Applicant was requesting zoning flexibility for rear yard and a special exception from penthouse setback requirements.

<sup>3</sup> The supplement was accompanied by a Motion to Late File (Ex. 11A.), which the Commission granted.

- a. Voluntary Design Review approval under Subtitle X, Chapter 6, with flexibility from the building height (Subtitle G § 203.2.), penthouse height (Subtitle G § 205.1.), lot occupancy (Subtitle G § 210.1.), and side yard (Subtitle G § 208.2.) standards; and
  - b. Special exceptions from the penthouse setback (Subtitle C § 1504.1(b).) and minimum loading requirements (Subtitle C § 901.1.)
- (Ex. 4, 10.)

21. The Applicant also requested the following design flexibility for the Project:

- a. Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the final plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
- b. Exterior Materials – Color: To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the final plans;
- c. Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the final plans;
- d. Number of Units: To provide a range in the approved number of residential dwelling units of plus or minus six percent (+/- 6%);
- e. Affordable Units: To vary the number and mix of inclusionary units if the total number of dwelling units changes within the range of flexibility granted, provided that the Project complies with all applicable Inclusionary Zoning requirements under Subtitle C, Chapter 10;
- f. Ground Floor Retail/Commercial Space: To vary the amount of ground floor retail/commercial space provided within the range of 25,000 – 31,000 square feet. Retail storefronts, signage, and associated features and fixtures in public space are subject to change upon individual retailer modifications.
- g. Roof Elements: To vary the roof plan as it relates to the green roof areas, solar panels, planters, terraces, pool, equipment, and outdoor amenity areas, provided that no relief is required;
- h. Retail Frontages: To vary the final design of retail frontages of the building, including the location and design of entrances, show windows, signage, and size of retail units, in accordance with the needs of the retail tenants;
- i. Signage: To vary the font, message, logo, and color of signage, provided that the maximum overall dimensions and signage materials are consistent with the signage shown on the Final Plans and are compliant with the DC signage regulations;
- j. Parking Layout: To make refinements to the approved parking configuration, including layout and to vary the number of parking spaces plus or minus six percent (+/- 6%), so long as the number of parking spaces is at least the minimum required by the Zoning Regulations;
- k. Streetscape / Site Design: To vary the location, attributes, and general design of the approved streetscape and site design elements to comply with the requirements of,

and the approval by, the DDOT Public Space Division or the Public Space Committee;

- l. Sustainable Features: To vary the approved sustainable features of the Project, provided the Project maintains compliance with all applicable D.C. Green Building Act and Green Building Code requirements; and
  - m. Landscape Materials: To vary the final selection of landscaping materials utilized based on availability at the time of construction.
- (Ex. 4.)

## **APPLICANT'S JUSTIFICATION FOR DESIGN REVIEW APPROVAL**

### **General Design Review (Subtitle X § 604.)**

22. Consistency with Comprehensive Plan and Other Public Policies (Subtitle X § 604.5.) The Project is not inconsistent with the Comprehensive Plan and other public policies related to the Property as follows:
  - *FLUM*: The FLUM designates the majority of the Property as Medium Density Residential and Medium Density Commercial, with a north portion designated Moderate Density Commercial and Production Distribution and Repair. The proposed Project is not inconsistent with the FLUM with respect to density or use.
23. The proposed Project's density of 3.0 FAR is within the maximum 3.0 FAR permitted under the Property's MU-4 zoning; this is within the typical density contemplated in the Framework Element for areas that are designated for moderate- and medium-density mixed-use development which can range between 1.8-4.0 FAR and 4.0-6.0 FAR, respectively. (Ex. 4E.) The Project's proposed maximum height of 59 feet is at the low end of the typical heights permitted in the zones referenced in the Framework Element for the land use categories that make up the Property's FLUM designations, which range between 60-100 feet (not including penthouse). (*Id.*)
24. The proposed Project's uses, a mix of residential and retail, are generally consistent with the uses envisioned for the Property on the FLUM. In response to the surrounding context, the ground-level commercial uses are located at the southern end of the Property, closer to Metrorail to the south and away from the moderate-scale residential uses to the north. (*Id.*)
25. The Framework Element description of the PDR land use category states that "[i]n an area striped to include PDR, development must include PDR space, and on sites containing existing PDR space the amount of PDR space on-site should be substantially preserved." CP § 227.14. As proposed, the Project does not contain any PDR uses, and of the existing uses within the Property, only the wholesale electrical supply use may constitute a PDR use. The Applicant notes that lack of PDR uses within the proposed Project is potentially inconsistent with CP policies that support retaining PDR uses for cottage industries and makers. However, the inclusion of PDR uses in the northern portion of the Project, where the Property is striped PDR, is contrary to direct input the Applicant received from residents on Perry Place, N.E. during its community outreach. Further, the Applicant believes the ground floor in the southern portion of the Project is not conducive to traditional PDR uses given the proximity to Metrorail, the Property's Neighborhood

Commercial Center GPM designation, the Project's proposed residential uses, and the moderate density residential uses in the surrounding areas. Finally, the Applicant believes the overall commercial space in the proposed Project is not enough to sustain a viable amount of PDR uses while also meeting the neighborhood's demand for other neighborhood-serving uses, including the existing veterinary clinic that the Applicant has committed to retain in the Project. (*Id.*)

26. *GPM*: The proposed Project is not inconsistent with the Property's GPM designation as a Neighborhood Commercial Center because the Property is significantly underutilized and the proposal will provide approximately the same amount of neighborhood-serving retail and service use as currently on the Property while allowing for additional development including housing, which will support the economic viability of new and existing businesses. (Ex. 4E.)
27. *Citywide Elements*: The proposed Project is not inconsistent with several Citywide Elements. The proposed Project will redevelop a underutilized site near Metrorail; will provide housing units where none currently exist, including affordable housing; will yield new landscaping and sustainable enhancements to the abutting streetscape; will provide retail and service uses of an amount commensurate with the amount of retail currently within the Property for patronage by residents within the area; will include design features that have been thoughtfully conceived to relate to the surrounding context and integrate preserving the historic Brookland Bowling Alley building as the main residential lobby and amenity space. (*Id.*) Accordingly, the proposed Project will advance Citywide Element policies of the Land Use, Transportation, Housing, Environmental Protection, Economic Development, Urban Design, and Historic Preservation Elements. (*Id.*)
28. *Upper Northeast Area Element*: The proposed Project is not inconsistent with the Area Element and will advance identified planning and development priorities including increasing access to affordable housing, maximizing land utilization, improving environmental quality, preserving and restoring a historic landmark, and promoting growth near an arterial corridor, Metrorail, and other mixed-use development. (*Id.*)
29. *Racial Equity*: The proposed Project is not inconsistent with the Comprehensive Plan when viewed through a racial equity lens and will advance CP racial equity goals primarily because it will create additional housing, including affordable housing, within close proximity to Metrorail; and it will include approximately 30,000 square feet of neighborhood retail and service uses commensurate with the amount of existing retail use within the Property. (Ex. 4.)
30. *Displacement*: The proposed Project will not displace any residents as there is no existing residential use on the Property. (Ex. 4.) However, the Applicant acknowledges that the proposal will displace existing commercial uses in the Property, which is potentially inconsistent with CP Economic Development policies related to avoiding displacement of small businesses. The Applicant notes that while this displacement is unfortunate, it will result in better utilization of the Property to address housing needs. In addition, the Applicant states that it is open to the potential return of any existing businesses to the

Property and is in active discussions with the existing daycare and pizzeria. (Ex. 4E.)

31. *Community Outreach and Engagement:* The Applicant states that its outreach and engagement with the affected community has included the HPRB review process as well as multiple meetings with ANC 5B, the Brookland Neighborhood Civic Association, the Michigan Park Civic Association, and residents of Perry Place, NE. (Ex. 4.) The Applicant also reached out to the Edgewood Civic Association to schedule a meeting. (Ex. 10, 20.) The community, particularly residents along Perry Street, N.E., expressed concerns about increased traffic and congestion, parking and loading access via the public alley to the north as opposed to Bunker Hill Road, and the overall size of the Project as potential negative outcomes. (Ex. 4.)
32. No Adverse Effects to Neighboring Properties and Harmonious with Purpose and Intent of Zoning Regulations and Maps (Subtitle X § 604.6.) The Project satisfies both prongs of the general special exception standard, as follows:
- *Will Not Tend to Adversely Affect the Use of Neighboring Property:* The Project's requested zoning flexibility from building and penthouse height, lot occupancy, and side yard standards, and requested special exceptions from penthouse setback and loading requirements will result in a building of moderate density with a height and massing that is appropriate for the surrounding context. The mixed-use Project concentrates non-residential uses and additional height at the southern end of the Property closer to Michigan Avenue and Metrorail; and at the northern end of the Property the height of the Project is reduced and provides substantial upper-level setbacks in response to moderately scaled residential uses north along Perry Place, N.E. The Project also considers safe pedestrian experience providing loading and parking access via the public alley on the north side of the Property. Accordingly, the Project's design responds to concerns from neighbors and will not tend to adversely affect the use of the neighboring property; and
  - *In Harmony with the Zoning Regulations and Maps:* The Project's uses, providing ground floor retail and service uses with mixed-income residential above, and its overall moderate-density are fully consistent with the Property's MU-4 zoning. Accordingly, the Project is in harmony with the general purpose and intent of the Zoning Regulations and Maps.  
(Ex. 4.)

The Commission's Standards for Urban Design (Subtitle X § 604.7.) The Project is consistent with the Commission's standards for urban design, as follows:

33. *Street frontages are designed to be safe, comfortable, and encourage pedestrian activity:* The Project will greatly enhance the pedestrian environment in and around the Property and will ensure these areas are safe and comfortable for all pedestrians. As part of the Project, the adjacent streetscape will be reconstructed to DDOT standards, including the removal of approximately 200 feet of existing curb cuts and construction of new trees boxes. The Project will also include multiple ground-floor entrances and active ground-floor retail / commercial use and incorporate the landmark Brookland Bowling Alley building. The Project will have no blank façades. Instead, the building's exterior has definition at the base, middle, and top, and contains multiple bay projections that add

façade depth. In addition, the Project employs a varied materials palette that further articulates the building facades. The Project's differentiated base of pedestrian scale and intricate brick patterning will embrace the ample pedestrian and public space area surrounding the Property. With respect to pedestrian safety and circulation, the Project's parking and loading access via the existing alley will allow for the primary pedestrian routes along 10<sup>th</sup> Street and Bunker Hill Road to have an uninterrupted sidewalk along the entire length of the Project frontage. This will allow for significantly greater pedestrian safety than the Property's current condition and an overall safe condition for pedestrians going to and from the Project.

34. *Public gathering spaces and open spaces are encouraged:* The Project provides public gathering space along 10<sup>th</sup> Street, N.E. At the ground-floor, generous recesses on the north and south sides of the historic Brookland Bowling Alley building create urban plazas that highlight the historic landmark and activate a midblock urban space near the end of Perry Street, N.E. The plaza on the south side of the landmark building will give pedestrians a buffer from the street while also providing a space for gatherings, retail display, and outdoor dining. To complement this public gathering space, the Project also includes terraces, balconies, and rooftop amenity areas to provide open space for residents.
35. *New development respects the historic character of Washington's neighborhoods:* The Project respects the character of the 10<sup>th</sup> Street corridor. While taller than the existing surrounding buildings, the Property's larger size and location at a major intersection along the 10<sup>th</sup> Street corridor make it an appropriate place for the additional height at its southern end that transitions down to the lower-density architecture north of the Property along 10<sup>th</sup> Street. The Project is respectful of, and purposely seeks to complement, the design aesthetic of the surrounding neighborhood, but also endeavors not to imitate such character. Furthermore, the design of the Project specifically responds to and respects the historic Brookland Bowling Alley building, which is an important historic structure for the neighborhood.
36. *Buildings strive for attractive and inspired façade design:* As shown in the Plans, the Project includes a pedestrian scale base, differentiated from the upper levels, to provide an attractive, activated ground-floor façade. The base of the southern block of the Project includes ground floor retail with multiple pedestrian entrances on both 10<sup>th</sup> Street, N.E. and Bunker Hill Road, N.E. to create an interactive streetscape. Additionally, the upper levels of the Project include high-quality materials that further break down the Project's massing by allowing it to visually read as three separate buildings. Further articulation is accomplished through incorporated bay window projections and balconies that are complementary to the building architecture and appropriate for this neighborhood.
37. *Sites are designed with sustainable landscaping:* The Project's landscaping will be designed to comply with all applicable green building codes and stormwater management regulations so that it is sustainable.
38. *Sites are developed to promote connectivity both internally and with surrounding neighborhoods:* The Project includes improvements to the pedestrian space along 10<sup>th</sup>

Street, N.E. and Bunker Hill Road, N.E. to ensure highly designed public spaces that are safe and accessible for pedestrians. The Project is likely to have the effect of stimulating pedestrian use of public space areas surrounding the Property, including the publicly accessible plazas adjacent to the historic Brookland Bowling Alley building. Notably, the Project will significantly improve the quality of the pedestrian realm through the elimination of over 200 feet of existing curb cuts, which will provide an uninterrupted sidewalk along the Project's entire 10<sup>th</sup> Street, N.E. frontage, and an uninterrupted sidewalk along the majority of the Project's Bunker Hill Road, N.E. frontage. As a result, the Project will assist in increasing mobility between the Property and Metrorail, and to the surrounding neighborhood. Further, the Project provides short- and long-term bicycle parking. (Ex. 4.)

### **Design Review Flexibility (Subtitle X § 603.1.)**

39. Building Height. The Applicant requested flexibility from the building height requirement in the MU-4 zone, which is 50 feet under Subtitle G § 203.2, to allow the Project to have a maximum height of 59 feet. Under Subtitle X § 603.3, the Commission "may grant no greater height than that permitted if the application were for a PUD." Under Subtitle X § 303.7, a PUD in the MU-4 zone may have a building height of 65 feet. The flexibility for a maximum Project height of 59 feet is requested to allow additional building height on the southern portion of the Property shifted away from existing moderate scale uses to the north, and will allow for greater floor-to-ceiling heights in the Project, particularly to accommodate the first-floor retail spaces, along with the provision of massing reductions and ground-level open spaces in response to the historic Brookland Bowling Alley building (Ex. 4.)
40. Penthouse Height. The Applicant requested flexibility from the penthouse height requirement in the MU-4 zone to have a mechanical space penthouse height of 18 feet 6 inches. Under Subtitle G §205.1, the penthouse height requirement for mechanical space is 15 feet. The requested flexibility is to accommodate the elevator overrun so that the habitable penthouse can be accessed. (Ex. 4.)
41. Lot Occupancy. The Applicant requested flexibility from the lot occupancy requirement in the MU-4 zone to have a maximum residential lot occupancy of 76%. Under Subtitle G § 210.1, the maximum lot occupancy is 75% for IZ developments. The requested flexibility is minor and will accommodate the Project's sculpting to preserve the historic Bowling Alley landmark and the step down toward the residential neighborhood to the north. (Ex. 4.)
42. Side Yard. The Applicant requested flexibility from the side yard requirement in the MU-4 zone. The Project will not provide side yards that conform to the required depth of five feet under Subtitle G § 208.2 because of the Project's sculpting described immediately above<sup>4</sup>. (Ex. 4.)

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<sup>4</sup> The Applicant submissions note that the portions of the Project on its east and west sides that are separated from the side lot line, including the plazas on either side of the historic Brookland Bowling building, are considered side

**Special Exception from Penthouse Setback requirements (Subtitle C § 1504.1(b).)**

43. The Applicant requested special exception relief from the penthouse setback requirements. Under Subtitle C § 1504.1, a penthouse shall be setback a distance equal to its height from the edge of the roof upon which it is located. Special exception relief is needed because the Project proposes a stair tower and associated corridor for the northern block of the Project which is not set back from the edge of the roof, as well as a penthouse habitable space within the tower element at the southeast corner which is not setback. (Ex. 4.)
44. The Project satisfies the general special exception standard under Subtitle X § 901.2 as well as the special conditions under Subtitle C § 1506.1 to warrant penthouse setback relief, as follows:
45. *The Relief is in Harmony with the Purpose and Intent of the Zoning Regulations and Maps:* The proposed stair tower and associated corridor are on the northern block of the Property and are already set back considerably from the north property line. The penthouse habitable space is concentrated at the southeast corner of the building, which abuts two streets, and is confined to the location of the proposed tower element. Accordingly, the requested penthouse setback relief is in harmony with the general purpose and intent of the Zoning Regulations and Maps.
46. *The Relief Will Not Adversely Affect the Use of Neighboring Properties:* The proposed penthouse setback relief will not visually intrude on neighboring properties and will not tend to adversely affect the use of neighboring property because the stair tower and associated corridor on the northern block are under the maximum building height allowed by this Voluntary Design Review (65 feet), and the penthouse habitable space on the southeast corner is confined in location.
47. *The Project Satisfies the Special Conditions Under Subtitle C § 1506.1:* The Project satisfies the applicable special conditions under Subtitle C § 1506.1 as follows:
  - a. *The Applicant's demonstration that reasonable effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks.* With the exception of the northern stair tower and associated corridor, all mechanical equipment, stairway, and elevator penthouses meet the setback requirements. To comply with the setback requirement, the northern stair tower and associated corridor would have to be setback further which would cause significant disruption to building circulation, result in the loss of dwelling units, and create significant building and fire code compliance issues; and

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yards that do not meet the minimum requirements, primarily due to the shape of the lot and the historic Brookland Bowling building. While technically considered side yards, these areas are more akin to open courts and would exceed the minimum open court requirements. (See Ex. 4, 20.)

- b. *The Applicant's demonstration of at least one (1) of the circumstances set forth in Subtitle C § 1506.1(c) is met.* In accordance with the circumstances described in Subtitle C § 1506.1(c)(1), setting back the northern stair tower and associated corridor further would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or inconsistent with building codes. Compliance would require relocation of the staircase entirely and considerable interior reconfigurations, or an inefficient design in which the staircase is split on the fourth floor and moved inward at the penthouse level. In accordance with the circumstances described in Subtitle C § 1506.1(c)(2), the penthouse habitable space relief within the southeastern tower element would result in a better design without appearing to be an extension of the building wall. Because of the building's oblique angle at the southeast corner, the footprint of the penthouse level corner unit has been extended to align with the edges of the proposed tower element and avoids the potential for the penthouse habitable space to be perceived as an extension of the building wall. (Ex. 4.)

**Special Exception Relief from Loading Requirements (Subtitle C § 901.1.)**

48. The Applicant requested special exception relief to provide 2 loading berths and no service delivery space, where Subtitle C §§ 901.1 and 902.2 requires 2 loading berths and 1 service delivery space because of the proposed retail, service, and eating and drinking establishment use in the Project. (Ex. 4.)
49. The Project satisfies the general special exception standard under Subtitle X § 901.2 as well as the special conditions under Subtitle C § 909.2 to warrant loading relief, as follows:
50. *The Relief is in Harmony with the Purpose and Intent of the Zoning Regulations:* The Project will still provide 2 loading berths that will adequately serve the expected demands of the Project.
51. *The Relief Will Not Adversely Affect the Use of Neighboring Property:* The absence of a service delivery space will not impact neighboring properties or cause congestion on neighboring streets.
52. *The Project Satisfies the Special Conditions Under Subtitle C § 909.2:* The Applicant satisfies at least one of the circumstances set forth in Subtitle C § 909.2; namely, the Project will generate a lower loading demand than the minimum loading standards require. The Project provides approximately 30,000 GFA of ground-floor commercial space, which is at the low end of the range (20,000 GFA to 100,000 GFA) that generates the requirement for 2 berths and 1 service delivery space. Furthermore, the Applicant has coordinated with DDOT on a CTR that will include the necessary transportation demand mitigation measures and will be submitted to the Commission.  
(Ex. 4.)

### III. RESPONSES TO THE APPLICATION

#### OFFICE OF PLANNING REPORT

53. On October 13, 2023, OP filed a report (the “OP Report”) concluding that the Application met the requirements of Subtitle X §§ 603 and 604 for a Voluntary Design Review, flexibility from building height, mechanical penthouse height, lot occupancy, and side yard requirements, and special exception relief from penthouse setback and loading requirements; and recommended approval of the Project. (Ex. 12.)
54. The OP Report stated that the Application, on balance, would not be inconsistent with the Comprehensive Plan, including the Maps and written elements; would further several policies of the Citywide Elements, including Land Use, Transportation, Housing, Environmental Protection, Economic Development, Urban Design, and Historic Preservation; would further policies of the Upper Northeast Area Element; and would further racial equity goals when viewed through a racial equity lens. Namely, the Application would facilitate infill, transit-oriented development that achieves the development potential of the MU-4 zone while providing housing and respecting the historic bowling alley. OP further stated that CP policies related to preventing small business displacement that the Application would not further would be generally offset by its positive outcomes. (Ex. 12.)
55. Disaggregated Race and Ethnicity Data - The OP Report provided disaggregated race and ethnicity data for the Upper Northeast Planning Area in which the Property is located. Data indicates that the Planning Area had a majority minority population between 2017 to 2021, with the Black population at 65% and the Hispanic population at 10%. However, in the aggregate between 2012 to 2021, the Black population decreased from 71.4% to 65% while the White population increased from 18.4% to 21%. For the same 2012-2021 period, the Planning Area had a higher percentage of vulnerable residents, and a significantly lower median income than the District as a whole. The median income data shows a disparity between Blacks and Whites, which corresponds to the significantly higher poverty rate of 18.8% for Blacks than 10.9% for Whites. Notably, the homeownership rate in the Planning Area remained virtually unchanged over the 2012-2021 period. Based on the data, OP’s Report states that the Project could alleviate some degree of inequity with regard to housing availability and housing cost burdens in the Planning Area; and the provision of affordable units in close proximity to several transportation modes could increase opportunities for lower income residents, who would be Black or other minority groups, to remain in the Planning Area. (Ex. 12.)
56. The OP Report recommended that the Applicant supplement the record with additional information about sustainability efforts and landscaping at the southern end of the building along 10<sup>th</sup> Street and provide an update on efforts to work with potentially displaced business owners, and responses to the comments of other District agencies or divisions. (Ex. 12). With its testimony at the public hearing, the Applicant described its efforts to work with potentially displaced business owners and responded to comments of other District agencies. (Tr. at 16, 34, 57-58.) On November 6, 2023, the Applicant supplemented

the record with additional information regarding sustainability features of the Project, and the Project's landscaping – including along the Project's streetscape. (Ex. 20.)

### **DDOT REPORT**

57. On October 16, 2023, DDOT filed a report (the “DDOT Report”) concluding that it had no objection to the Application on condition that the Applicant implement its proposed Transportation Demand Management (“TDM”) plan, as proposed in the October 6, 2023, CTR, for the life of the Project with minor refinements, which the Applicant agreed to. (Ex. 13, 13A<sup>5</sup>.) DDOT's Report notes that the Applicant proposes a robust TDM Plan that will encourage usage of non-auto modes; and that the Project meets zoning requirements for vehicle parking and the supply conforms with DDOT's preferred parking maximums for sites within ¼ mile of Metrorail. (*Id.*) In its testimony at the public hearing, DDOT explained that the rationale for parking and loading access via the public alley to the north instead of Bunker Hill Road was to limit curb cuts along Bunker Hill Road to allow for an unbroken pedestrian path, green space, and curbside parking. (Tr. at 80-81.)

### **ANC REPORT**

58. On October 23, 2023, ANC 5B filed a report (the “ANC Report”) noting that on September 20, 2023, at a duly-noticed, regularly-scheduled public meeting, with a quorum present, ANC 5B voted to support the Application by a vote of 5-0-0 and requested that the Applicant incorporate traffic safety features, including pedestrianization of the portion of Bunker Hill Road, N.E. adjacent to the Property using tactical elements (e.g., planters and flexiposts). (Ex. 17.) The Applicant agreed to work with the ANC to submit this request to the Public Space Committee at a later date. (*Id.*)

### **LETTERS IN SUPPORT OR OPPOSITION**

59. Two letters were filed in the record: one by the Dills via written testimony before the hearing and one by John Feeley via oral testimony presented during the hearing (which was also filed in the record). (Ex. 16, 19; Tr. 87-89.) The Dill's letter expressed general support of the Application, but they were concerned about the proposed alley parking entrance; the adequacy of the 99 proposed parking spaces; that the relief from height be limited; and that the relief from side yard and penthouse setback requirements would result in noise and other disturbance to neighboring properties. (Ex. 16.) Mr. Feeley testified in opposition to the Application and generally his testimony objected to the relief requested from height and side yard requirements; and cited concerns about the parking entrance via the alley instead of on Bunker Hill Road and the Project's potential to negatively impact the adjacent residential neighborhood. (Ex. 19.) The Applicant responded to the written testimony during the hearing by addressing the stated concerns and resting on the record (Tr. 9-31.) On November 6, 2023, the Applicant filed a Post-Hearing Statement that thoroughly responded to the issues and concerns raised in Mr. Feeley's testimony, as requested by the Commission. (Ex. 20; *see also* Finding of Fact [“FF”] No. 20.)
60. In response to the Commission's request at the public hearing that community organizations file comments to the record, the Brookland Neighborhood Civic Association

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<sup>5</sup> Ex. 13A includes attachments that were omitted from Ex. 13.

(“BNCA”) filed comments on November 29, 2023, expressing qualified support for the Application and requesting that the Commission consider the following:

- Placing the parking garage entrance on Bunker Hill Road;
- Requiring the proposed development to conform to side yard requirements to ensure sufficient buffers for existing residents; and
- Requiring that residents of the proposed development be ineligible for Residential Parking Permits to maintain parking availability on nearby residential streets, such as Perry Place. (Ex. 22.)

## CONCLUSIONS OF LAW

### AUTHORITY - DESIGN REVIEW

1. Pursuant to the authority granted by the Zoning Act, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Rep1.)), the Commission may approve a voluntary design review application consistent with the requirements of Subtitle X, Chapter 6 and Subtitle Z § 301.
2. Pursuant to Subtitle X § 600.1, the purpose of the design review process is to:
  - *Allow for special projects to be approved by the Zoning Commission after a public hearing and a finding of no adverse impact;*
  - *Recognize that some areas of the District of Columbia warrant special attention due to particular or unique characteristics of an area or project;*
  - *Permit some projects to voluntarily submit themselves for design review under this chapter in exchange for flexibility because the project is superior in design but does not need extra density, provided that FAR is measured as the aggregate of all buildings within a Voluntary Design Review boundary;*
  - *Promote high-quality, contextual design; and*
  - *Provide for flexibility in building bulk control, design, and site placement without an increase in density or FAR beyond that allowed within the overall Voluntary Design Review application boundary or a map amendment.*
3. Pursuant to Subtitle X §§ 601.3 and 601.4, a proposed Voluntary Design Review application shall include no more than one zone; shall have no minimum area for a development in any zone other than the R, RF, or RA zones, including the area of public streets or alleys proposed to be closed; and all of the property included in the design review, whether voluntary or mandatory, shall be contiguous, except that the property may be separated only by a public alley or public right-of-way other than a public street.
4. Subtitle X § 603.1 authorizes the Commission, as part of the design review process, to “grant relief from development standards for height, setbacks, yards, lot occupancy, courts, and building transitions; as well as any specific design standards of a specific zone ... [but] not ... other building development standards including FAR, Inclusionary Zoning, or Green Area Ratio.”
5. Subtitle X § 603.3 provides that “[e]xcept for height, the amount of relief from the standards authorized by Subtitle X § 603.1 is at the discretion of the Zoning Commission,

provided that the relief is required to enable the applicant to meet all of the standards of Subtitle X § 604. The Zoning Commission may grant no greater height than that permitted if the application were for a PUD.”

6. Subtitle X § 603.4 provides that “[a]n application for a special exception or variance that would otherwise require the approval of the Board of Zoning Adjustment may be heard simultaneously with a Design Review application, and shall be subject to all applicable special exception criteria and variance standards . . . .”

**DESIGN REVIEW CRITERIA (SUBTITLE X § 601.)**

7. Pursuant to Subtitle X § 601.3, there is no minimum area required for a Voluntary Design Review application in the MU-4 zone. Pursuant to Subtitle X § 601.4, all property included in a design review application is required to be contiguous.
8. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies the applicable design review requirement of Subtitle X § 601 because all of the lots comprising the Property are contiguous.

**GENERAL DESIGN REVIEW CRITERIA (SUBTITLE X § 604.)**

9. Subtitle X § 604 requires that in order for the Commission to approve a Design Review application it must:
  - Find that the proposed design review development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (Subtitle X § 604.5.)
  - Find that the proposed design review development will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of Subtitle X, Chapter 9; (Subtitle X § 604.6.)
  - Review the urban design of the site and the building according to certain enumerated criteria of Subtitle X § 604.7 (set forth below); and
  - Find that the criteria of Subtitle X § 604.7 are met in a way that is superior to any matter-of-right development possible on the site. (Subtitle X § 604.8.)
10. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies the applicable general design review requirements of Subtitle X § 604.
11. The Commission concludes that the Application satisfies the requirement of Subtitle X § 604.5 and is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Property for the following reasons:
  - Comprehensive Plan Maps: The Commission finds that the Project’s proposed density of 3.0 FAR and maximum height of 59 feet are within the typical density ranges contemplated by the Property’s FLUM designations and within the heights permitted in the zones referenced in the Property’s applicable FLUM categories. (FF Nos. 10, 11, 23). The Commission also finds that the Project’s proposed uses, including housing and neighborhood serving retail uses, support the Property’s GPM designation; (*Id.*)

- Citywide and Upper Northeast Area Element - The Commission finds that the Project will advance policies of the Citywide and Upper Northeast Area Elements (*See* FF Nos. 23 and 35.) However, the Commission acknowledges that the proposed Project's exclusion of PDR space and displacement of existing commercial uses is inconsistent with the portion of the Property that is striped PDR on the FLUM and with certain CP policies. Still, the Commission finds these inconsistencies to be outweighed by the Citywide and Upper Northeast Area Element policies that encourage infill development of underutilized property in proximity to transit with housing and affordable housing opportunities where none currently exists and neighborhood serving retail and commercial uses; (*Id.*)
- Racial Equity: The Commission finds that the Project is not inconsistent with the CP when evaluated through a racial equity lens and would advance racial equity goals. The Commission reaches this conclusion based on the racial equity analyses provided in both the Applicant's submissions and the OP Report, inclusive of community outreach and engagement information and disaggregated race and ethnicity data for the affected Planning Area, respectively, and discussed below. (*Id.*) The Commission further concludes that the racial equity analyses provided address the components of the Commission's Racial Equity Tool; (*Id.*)
- Community Outreach and Engagement: The Commission finds that the Applicant held multiple meetings in conjunction with the HPRB process and with ANC 5B and other community organizations. Based on those meetings and the community input received, the Applicant reduced the height and massing and increased the setback on the north side of the building adjacent to neighboring residential properties on Perry Place, N.E.; and made a commitment to reestablish the veterinary use on the Property<sup>6</sup>. While parking and loading access will not be via Bunker Hill Road, as requested by several community members, the Commission is persuaded that providing access via the public alley will limit curb cuts and allow for a much-improved pedestrian experience along 10<sup>th</sup> Street and Bunker Hill Road; (FF Nos. 23, 25, 37.)
- Disaggregated Race and Ethnicity Data: The Commission finds the disaggregated race and ethnicity data OP provided to show that the Planning Area has racial disparities regarding median income and poverty levels. Given these disparities and the Planning Area's majority minority population, the Commission is encouraged that the Project could help to reduce inequities in the Planning Area specific to housing availability and housing cost burdens and could allow lower income, largely minority residents to remain in the Planning Area; and (FF No. 35.)

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<sup>6</sup> The Commission believes that a Voluntary Design Review is appropriate for the Project primarily because the Project does not require density relief and is within the 3.0 FAR allowed as a matter-of-right under the Property's MU-4 zoning. By definition, a design review does not allow for an increase in density or FAR unlike a Planned Unit Development ("PUD"). (*See* Subtitle X §§ 600.1, 600.2.) The Commission believes that the community outreach and engagement process the Applicant undertook demonstrates that there were community concerns about the overall size of the Project and its potential impacts on the surrounding residents to the north, in particular. Given these factors, the Commission believes that the Project, facilitated through Voluntary Design Review, will result in an overall size that is more appropriate and in context with the surrounding area. In the Commission's view, if the Project had been filed as a PUD, the proposal would likely have been of a larger scale in both density and height than the proposed Project.

- *Displacement:* The Commission notes that the Project will not result in the direct displacement of any residents as there is no existing residential use on the Property. However, the Commission acknowledges that the Project will displace existing commercial tenants in the Property. The Commission notes the Applicant’s commitment to retain the existing veterinary use and its ongoing discussions about retention of other existing tenants, including the daycare center and pizzeria. The Commission strongly encourages the Applicant to work with existing tenants and provide assistance with retention and/or relocation options. (FF Nos. 25, 35.)
12. The Commission concludes that the Application satisfies the requirements of Subtitle X § 604.6 and will not tend to adversely affect the use of neighboring property and satisfies the general special exception criteria of Subtitle X, Chapter 9, for the following reasons:
- **Subtitle X § 901.2(a)** – The Project is in harmony with the general purpose and intent of the Zoning Regulations and Maps because the Project’s moderate density and proposed mix of residential and ground floor service uses is fully consistent with the Property’s MU-4 zoning; and
  - **Subtitle X § 901.2(b)** – The Project will not tend to adversely affect the use of neighboring property because the Project is of a height and density that is in context with the surrounding neighborhood. By concentrating height at the southern end of the building and reducing height and including setbacks at the northern end of the building, the Project appropriately responds to the moderately scaled residential uses to the north. (FF No. 24.)
13. The Commission concludes that the Application satisfies the requirements of Subtitle X §§ 604.7 and 604.8 that the Project be superior to matter-of-right construction with respect to the Project’s creative massing, detailing, materials selection, and other design features for the following reasons:
- **Subtitle X § 604.7(a)** – The Project provides street frontages that are designed to enhance the pedestrian environment and ensure safe and comfortable areas for pedestrians. The streetscape adjacent to the Project will be reconstructed to remove curb cuts and add tree boxes;
  - **Subtitle X § 604.7(b)** – The Project provides public gathering spaces along 10<sup>th</sup> Street, N.E. and incorporates design features that complement the public gathering space and activate open spaces. Specifically, the Project’s differentiated base of pedestrian scale and brick patterning embrace the ample pedestrian and public space surrounding the Project. The Project also includes terraces, balconies, and rooftop amenity areas to provide open space for residents;
  - **Subtitle X § 604.7(c)** – The Project respects the character of the 10<sup>th</sup> Street corridor. Though taller than the existing surrounding buildings, the Project’s location at an intersection along the corridor makes it appropriate for additional height at its southern end and it transitions downward toward the lower density development to the north. The Project’s design, which incorporates the historic Brookland Bowling Alley building, is respectful and complementary to the surrounding neighborhood.
  - **Subtitle X § 604.7(d)** – The Project provides an attractive, activated ground floor façade design with a varied material palette that further articulates the building

- facades. The Project has no blank facades and the building’s exterior has definition at the base, middle, and top, and contains multiple bay projections that add façade depth;
- **Subtitle X § 604.7(e)** – The Project provides sustainable landscape design that will comply with all applicable green building codes and stormwater management regulations; and
  - **Subtitle X § 604.7(f)** – The Project promotes connectivity by improving the pedestrian space. The Project will provide uninterrupted sidewalk along the majority of its frontage on both 10<sup>th</sup> Street and Bunker Hill Road, which will stimulate pedestrian use and increased mobility. (See FF Nos. 17-19, 25.)
14. The Commission concludes that the requested flexibility, pursuant to Subtitle X § 603, from building and penthouse heights, lot occupancy, and side yard requirements, meets the standards of Subtitle X § 604, including that the flexibility relief is required to meet the standards and will provide a development that is superior to a matter-of-right development in the MU-4 zone. (See FF Nos. 26-29.)

**AUTHORITY - SPECIAL EXCEPTION**

15. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl.); see also Subtitle X § 901.2) authorizes the Commission to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Commission, the special exception:
- Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map;
  - Will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map; and
  - Complies with applicable specific conditions set forth in the Zoning Regulations.
16. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Commission’s discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and “if the applicant meets its burden, the [Commission] ordinarily must grant the application.” (*First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981.) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).)

**SPECIAL EXCEPTION - PENTHOUSE SETBACK REQUIREMENTS (SUBTITLE C § 1504.1(B).)**

17. The Commission concludes that the Application’s request for special exception relief from the penthouse setback requirements satisfies the general special exception criteria and the special conditions of Subtitle C § 1506.1 as follows:
- *The Relief is in Harmony with the Purpose and Intent of the Zoning Regulations and Maps:* The penthouse setback relief is in harmony with the intent of the Zoning Regulations and Maps because the stair tower and associated corridor are on the northern block of the Property and are already set back considerably from the north

property line; the penthouse habitable space is concentrated at the southeast corner of the building.; (FF No. 30, 31.)

- *The Relief Will Not Adversely Affect the Use of Neighboring Properties:* The penthouse setback relief will not visually intrude on neighboring properties and will not tend to adversely affect the use of neighboring property because the stair tower and associated corridor on the northern block are under the maximum building height allowed by this Voluntary Design Review (65 feet), and the penthouse habitable space on the southeast corner is confined in location; and (*Id.*)
- *The Project satisfies the applicable special conditions under Subtitle C § 1506.1:* The penthouse setback relief for the north stair tower and associated corridor satisfies the special conditions of Subtitle C § 1506.1(c)(1). (*See* FF No. 31.) The penthouse setback relief for the penthouse habitable space satisfies the special conditions under Subtitle C § 1506.1(c)(2). (*Id.*)

#### **SPECIAL EXCEPTION - LOADING REQUIREMENTS (SUBTITLE C § 901.1.)**

18. The Commission concludes that the Application’s request for special exception relief to provide no service delivery space where 1 is required satisfies the general special exception criteria and the special conditions of Subtitle C § 909.2 as follows:

- *The Relief is in Harmony with the Purpose and Intent of the Zoning Regulations and Maps:* The Project will provide 2 loading berths and no service delivery space. However, 2 loading berths will adequately serve the Project’s loading demands; and the Applicant will provide a robust TDM, coordinated with DDOT, including the necessary mitigation measures; (*See* FF Nos. 20, 33, 37.)
- *The Relief Will Not Adversely Affect the Use of Neighboring Properties:* The Project’s lack of a service delivery space will not adversely affect the use of neighboring property; and (*Id.*)
- *The Project satisfies at least one of the applicable special conditions under Subtitle C § 909.2:* The Project satisfies Subtitle C § 909.2(a) because the Project will generate a lower loading demand than the minimum loading standards require. (*See* FF No. 33.)

#### **“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP**

19. The Commission must give “great weight” to the recommendation of OP, pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016).)

20. As required by law, the Commission gives “great weight” to the recommendations of OP that the Application satisfies the requirements for design review approval; building and penthouse height, lot occupancy, and side yard flexibility; and special exception relief from penthouse setback and loading requirements. The Commission concurs with the findings in OP’s Report and its recommendations.

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

21. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d).) (2012 Repl.) and Subtitle Z § 406.2. To satisfy this great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978.) (citation omitted).)
22. As also required by law, the Commission gives “great weight” to the support of the affected ANC 5B, which was provided in a written report that was approved by the full ANC at a properly noticed meeting that was open to the public with a quorum present. The Commission concurs with the ANC’s support. The ANC Report notes the Applicant’s agreement to incorporate traffic safety features at its facility, and to work with the ANC to submit a request to DDOT’s Public Space Committee for the pedestrianization of a portion of Bunker Hill Road adjacent to the Property. (FF No. 38.)
23. The Commission acknowledges the opposition to the Project raised by Mr. Feeley and the concerns raised by the Dills. (FF No. 39.) Generally, the issues and concerns they have deal with the parking and loading entrance via alley as opposed to Bunker Hill Road; the adequacy of the parking supply; and the potential for the requested relief to result in an oversized Project for the neighborhood with insufficient buffers to prevent noise and other disturbance to existing neighbors. Based on the case record and the Applicant’s Post-Hearing Statement, the Commission believes that these issues and concerns have been addressed adequately. (See FF Nos. 37, 39.)
24. The Commission also acknowledges the Brookland Neighborhood Civic Association’s (“BNCA”) comments on the Application, which reiterated some of the concerns noted immediately above in Conclusion of Law No. 23. (See FF No. 40.) In addition, BNCA suggested that the Commission impose a condition of approval to prevent residents of the Project from obtaining Residential Parking Permits. While the Commission did not impose this condition, the Commission strongly encourages the Applicant to continue to work and collaborate with the community to address its ongoing concerns as the Project progresses.

### DECISION

Based on the case record, the testimony at the public hearing, and the above Findings of Fact and Conclusions of Law, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for the following relief for the Property:

- Voluntary Design Review approval under Subtitle X, Chapter 6, with flexibility from the building height (Subtitle G § 203.2.), penthouse height (Subtitle G § 205.1.), lot occupancy (Subtitle G § 210.1.), and side yard (Subtitle G § 208.2.) standards; and
- Special exceptions from the penthouse setback (Subtitle C § 1504.1(b.)) and minimum loading requirements (Subtitle C § 901.1.)

Said approval is subject to the following conditions, standards, and flexibility:

**Project Development**

25. The Project shall be built in accordance with the plans and elevations in the record at Exhibit 10A1-10A12 (the “Plans”), subject to the following areas of flexibility:
- Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the final Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
  - Exterior Materials – Color: To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the final Plans;
  - Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the final Plans;
  - Number of Units: To provide a range in the approved number of residential dwelling units of plus or minus six percent (+/- 6%);
  - Affordable Units: To vary the number and mix of inclusionary units if the total number of dwelling units changes within the range of flexibility granted, provided that the Project complies with all applicable Inclusionary Zoning requirements under Subtitle C, Chapter 10;
  - Ground Floor Retail/Commercial Space. To vary the amount of ground floor retail/commercial space provided within the range of 25,000 – 31,000 square feet. Retail storefronts, signage, and associated features and fixtures in public space are subject to change upon individual retailer modifications;
  - Roof Elements: To vary the roof plan as it relates to the green roof areas, solar panels, planters, terraces, pool, equipment, and outdoor amenity areas, provided that no relief is required;
  - Retail Frontages: To vary the final design of retail frontages of the building, including the location and design of entrances, show windows, signage, and size of retail units, in accordance with the needs of the retail tenants;
  - Signage: To vary the font, message, logo, and color of signage, provided that the maximum overall dimensions and signage materials are consistent with the signage shown on the Final Plans and are compliant with the DC signage regulations;
  - Parking Layout: To make refinements to the approved parking configuration, including layout and to vary the number of parking spaces plus or minus six percent (+/- 6%), so long as the number of parking spaces is at least the minimum required by the Zoning Regulations;

- k. Streetscape/Site Design: To vary the location, attributes, and general design of the approved streetscape and site design elements to comply with the requirements of, and the approval by, the DDOT Public Space Division or the Public Space Committee;
- l. Sustainable Features: To vary the approved sustainable features of the Project, provided the Project maintains compliance with all applicable D.C. Green Building Act and Green Building Code requirements; and
- m. Landscape Materials: To vary the final selection of landscaping materials utilized based on availability at the time of construction.

## **Transportation Demand Management Measures**

### **Residential TDM Plan**

26. **For the life of the Project**, the Applicant shall adhere to the following TDM plan measures for the residential portion of the Project:
- a. Identify a Transportation Coordinator for the planning, construction, and operations phases of development;
  - b. The Transportation Coordinator will:
  - c. Act as the point of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;
  - d. 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;
  - e. Develop, distribute, and market various transportation alternatives and options to residents, including promoting transportation events (e.g., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications;
  - f. 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;
  - g. Provide welcome packets to all new residents that will, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing [info@godcgo.com](mailto:info@godcgo.com);
  - h. Provide residents who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or another comparable service if MWCOG does not offer this in the future;
  - i. Post all transportation and TDM commitments on building website, publicize availability, and allow the public to see what has been promised;
  - j. Offer a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident;
  - k. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile;

- l. Install a minimum of two electric vehicle (EV) charging stations across all vehicle parking spaces, per DDOT recommendations of a minimum of one out of every 50 vehicle parking spaces being served by an EV charging station;
- m. Provide at least 17 short- and 112 long-term bicycle parking spaces, meeting or exceeding ZR16 minimum requirements for at least 17 short- and 81 long-term bicycle parking spaces for the residential use; and
- n. Accommodate non-traditional sized bikes including cargo, tandem, and kids bikes in the residential long-term bicycle storage room, with a minimum six spaces that will be designed for longer cargo/tandem bikes (10 feet by 3 feet), a minimum of 12 spaces that will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum 58 spaces that will be placed horizontally on the floor. There will be no fee to building residents or employees for the usage of the bicycle storage room, and strollers will be permitted to be stored in the bicycle storage room.

### **Retail TDM Plan**

27. **For the life of the Project**, the Applicant shall adhere to the following TDM plan measures for the retail portion of the Project:
- a. Identify a Transportation Coordinator for the planning, construction, and operations phases of development, including one for each tenant and the entire site;
  - b. The Transportation Coordinator(s) will:
  - c. Act as the point(s) of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;
  - d. Conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year;
  - e. Develop, distribute, and market various transportation alternatives and options to employees and patrons, 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;
  - f. Receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan;
  - g. Post “getting here” information in a visible and prominent location on the website with a focus on non-automotive travel modes including links to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for patrons discouraging parking on-street in Residential Permit Parking (RPP) zones; and
  - h. Demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law to participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future such as the Parking Cash-Out Law;
  - i. Provide employees who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable services if MWCOG does not offer this in the future;

- j. Offer a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new employee;
- k. Unbundle the cost of vehicle parking from the cost to lease the building or unit and only hourly, daily, or weekly rates will be charged. Free parking, validation, or discounted rates will not be offered;
- l. Install a minimum of two electric vehicle (EV) charging stations across all vehicle parking spaces, per DDOT recommendations of a minimum of one out of every 50 vehicle parking spaces being served by an EV charging station;
- m. Provide at least nine short- and three long-term bicycle parking spaces, meeting ZR16 minimum requirements for at least nine short- and three long-term bicycle parking spaces for the retail use; and
- n. Provide at least two showers and two lockers for use by employees, meeting ZR16 minimum requirements for at least two showers and two lockers for the retail use.

**Pedestrian Improvements**

- 28. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall present evidence to the Zoning Administrator that it has removed five existing curb cuts on 10<sup>th</sup> Street, N.E and three existing curb cuts on Bunker Hill Road, subject to review and approval by DDOT; and that no additional curb cuts have been added.

**General**

- 29. This Application approval shall be valid for a period of two years from the effective date of this Order. Within such time, an application for building permit must be filed as specified in Subtitle Z §702.2. Construction must begin within three years after the effective date of this Order. (Subtitle Z §702.3.)
- 30. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

**VOTE (November 30, 2023): 4-0-1**

(Joseph S. Imamura, Tammy Stidham, Anthony J. Hood, and Robert E. Miller, 3<sup>rd</sup> Mayoral Appointment seat vacant).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 23-15 shall become final and effective upon publication in the *District of Columbia Register*; that is, on March 15, 2024.

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

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

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

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

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