

ground floor. The project also includes improvements to the Takoma Metrorail station's Kiss and Ride and bus stop area.

With respect to the Comprehensive Plan's Generalized Policy Map, the OP Hearing Report concluded that:

- The project would not be inconsistent with the Generalized Policy Map's Neighborhood Enhancement Area designation. It would respond to the opportunity for compatible infill development and comply with the policy's guidance by improving an underutilized site with a building that would have both market rate and affordable units. This would invite more households to the area and help to make the area more inclusive. The project also includes a public park with space for the community to gather.

The OP Hearing Report also included OP's Racial Equity Analysis, which included the following:

- Disaggregated Data Regarding Race and Ethnicity – OP compared the Rock Creek East planning area with District-wide data. In reviewing the Project through a racial equity lens for the planning area, the OP Hearing Report noted that:
 - The project would provide new housing units to the area with a minimum of 15% of the residential square footage being affordable at 60% MFI and some at the 30% MFI level under the Inclusionary zoning program. For the period of 2017-2021, over 75% of Rock Creek East Area residents were Black and Hispanic, but the Black population declined over the approximately 10-year period of 2012-2021. Both groups, Black (\$51,562) and Hispanic (\$89,480) had a lower median income than the District's median income of \$93,547 for the period from 2017-2021 so the proposed new affordable units could be helpful in retaining and attracting new Black and Hispanic residents to the area. The project would also bring new employment opportunities to the metro area with its retail, service and site/building maintenance jobs. These jobs would be close to a metro station so they could be accessible to more people than jobs that require car ownership. They could potentially go to minority residents in the area or attract minority residents from other areas; (Ex. 59.)
- Affordable Housing Goal: Mayor's January 2023 DC Comeback Plan – According to the Mayor's January 2023 DC Comeback Plan, the Rock Creek East planning area was over halfway to the Mayor's goal in January of 2023 but is expected to reach 84.4% of the goal by 2025. The proposed building would provide approximately 70 more affordable units to Rock Creek East, which would help the area move closer to the Mayor's 2025 goal; (Ex. 59.)
- Commission Evaluation Factors – The OP Hearing Report also addressed the factors of: Direct Displacement, Indirect Displacement, Housing, Physical, Access to Opportunity and Community and determined that the Project would not have any negative impacts related to racial equity; and (Ex. 59.)

- Evaluation of Comprehensive Plan Policies Through a Racial Equity Lens – The OP Hearing Report contained analysis of many elements of the Comprehensive Plan through a racial equity lens, including policies in the Housing, Transportation, Rock Creek East and Environmental Protection Elements:
 - In doing so, the OP Hearing Report noted the Project was potentially inconsistent with one policy, stating the Project “does not further the tree canopy protection goals of the Environmental Protection Element, Section E-2.1 Conserving and Expanding Washinton D.C.’s Urban Forests.” The OP Hearing Report then went on to conclude that “when viewed as a whole, and in consideration of the other environmental policies furthered by the Project and the priority given affordable housing as a PUD benefit, that results from the development of the site, OP finds the project to not be inconsistent with the environmental protection elements on balance.” The OP Hearing Report stated that the Project would further the following Environmental Protection Element policies:
 - Policy E-3.2.3: Renewable Energy;
 - Policy E-3.2.6: Alternative Sustainable and Innovative Energy Sources;
 - Policy 3.2.7: Energy-Efficient Building and Site Planning;
 - Policy E-4.1.2: Using Landscaping and Green Roofs to Reduce Runoff;
 - Policy E-4.2.1: Support for Green Building; and
 - Policy E-4.4.1: Mitigating Development Impacts.

d. PUD balancing

The OP Hearing Report included a zoning comparison table, and a table containing a summary of the additional entitlements gained through the PUD. Both showed that the primary benefit gained through the PUD was additional height as a result of the PUD-related map amendment to the MU-5A zone.

The OP Hearing Report stated that the Project would have the following potential adverse effects:

- The project would have a significant negative impact on the tree canopy in the area. Though there are clear tree preservation plans (p. L301.) (policy) submitted to the record, the information on the number of trees being removed is not clearly shown. (Ex. 38A12.) HPRB has requested detailed mapping and treatment of the heritage trees and the design and programming of the public park and DOEE has requested plans showing the net loss of trees resulting from the project. The Sediment and Control Plan appears to show that approximately 120 trees would be removed, 15 would be retained, and 41 new trees would be planted. (Ex. 14A12.) The existing trees on the site provide stormwater retention and heat island mitigation benefits so losing them without retaining and planting more new ones outweighs the other sustainable efforts on the site. OP encourages the applicant to work with DOEE on minimizing the removal of trees and on maximizing the number of new trees planted on-site or in the surrounding community.

The OP Hearing Report stated that the following were public benefits of the Project:

- Environmental and Sustainable Benefits – The project is designed for LEED Gold certification under the LEED for Homes: Multifamily Midrise rating system and includes installation of solar panels on the rooftop;
- Superior Urban Design and Architecture – The plans show that the building's design uses different massing, scale, and design features to mimic the surroundings faced on each side. Along the side facing the Metrorail the building is designed with alternating vertical and horizontal articulation to play off the movement of the Metrorail trains. On the other side, facing the Takoma Park residential community the building's design uses elements such as balconies and small punch windows to express a residential façade vocabulary along the Eastern Avenue side. Along its retail plaza side, the building's ground floor would have attractive signage and storefront windows to help activate the pedestrian plaza. The project is in the Takoma Park Historic District and the design is being reviewed by HPRB. On June 1, 2023, the Board commented that the site plan and general conceptual approach to the project were well thought out. However, the members thought that the architecture of the building facing Carroll Street needed to be edited and commented that further evaluation of color, materials, detailing and composition were needed for the building to be found compatible with the Takoma Park Historic District. The Board also asked that more detailed mapping and treatment of the heritage trees and the design and programming of the public park be provided. The project should return to the Board for further review when ready;
- Superior Landscaping or Creation or Preservation of Open Spaces – The Project would provide 1.8 acres of open space as a universally accessible park for public use. This would be more open space than exists on the site today. The open space would be designed around maintaining the existing mature tree canopy on the site. It would include public art, various site amenities, and required infrastructure such as bio-retention areas. The open space would help to create a retail plaza, community park, and buffer area between the site and the surrounding residential community;
- Site Planning and Efficient and Economical Land Utilization – The Project would redevelop an underutilized transit-oriented site with a community-oriented mixed-use development that includes public open space. The project would create a safe, efficient development that would integrate transit facilities, large open space, and provide new transit-oriented housing and retail to the area. The development should be better utilized than the almost empty parking lot that is on the site today;
- Housing & Affordable Housing – Though the Project proposes less residential development than is achievable by right, it is replacing a longstanding underutilized property with 430-440 housing units. The new building would have a mix of unit types: studios, one-bedroom, two-bedroom, and three-bedroom units. The new building would also have at least 70 affordable units with 10 being reserved for households earning no more than 30% of the MFI and 60 units for households making up to 60% of the MFI. All would be transit-oriented because of the building's adjacency to the Takoma Metrorail station;

- Streetscape Plans – The Project includes streetscape improvements along Carroll St., Cedar St., and Eastern Ave. These improvements retain some existing trees and construct a shared use path. The Project’s retail plaza and community would activate the pedestrian experience along the street and the décor and park furniture would enhance the street’s attractiveness; and
- Other Public Benefits and Project Amenities – The Applicant has agreed to work with the Takoma community and ANC 4B to incorporate art projects from artists who are local women or women of color. The Applicant has also incorporated participatory or playable artwork in Conclusions the plans for the park.

The report concluded that OP considers the 15% IZ set-aside, the public open space with park and retail plaza, the site’s transit-oriented location, and the streetscape plans to be proffers commensurate with the flexibility requested through the PUD and related map amendment.

e. Comments From Other Agencies Included in the OP Hearing Report

The OP Hearing Report noted the following comments from other agencies regarding the Application:

- Department of Energy and the Environment (“DOEE”) – DOEE is disappointed by the Applicant’s representation of the Project’s environmental impacts, especially the impact to the site’s tree canopy. While it is notable that the Applicant intends to preserve a few of the largest trees on the site, DOEE believes that the Applicant should provide the same level of transparency for their tree removal plans. The Sediment and Erosion Control Plan seems to show that 15 trees would be retained, 41 new trees would be planted, and 120 trees would be removed. (Ex. 14A12.) DOEE continues to request clearer plans showing the net tree loss. DOEE wants the applicant to minimize and compensate for the tree canopy loss by preserving more of the existing trees and planting more trees on site or in the nearby community. DOEE’s full comments were attached to the OP Report. They include a number of suggestions for ways in which the Project could improve its environmental impacts in the areas of stormwater management, climate resilience and embodied carbon reduction, but also identified that those improvements were not required, and that DOEE was encouraging them as additional improvements of the Project rather than identifying them as potential adverse effects;
- Department of Housing & Community Development (DHCD) – In an email to OP, DHCD staff stated they have no objection to the proposed PUD;
- District Department of Transportation (DDOT) – DDOT will submit a separate report to the record;
- Department of Parks and Recreation (DPR) – In an email and through conversations with OP, DPR staff expressed support for the proposed public park. They especially appreciate its adjacency to a Metrorail station. DPR noted that the park appears to be mostly for passive recreation, so they encourage the applicant to include opportunities for active recreation as well. DPR provided their comments to the Applicant over the phone. The Applicant summarized their response in their Supplemental Statement concerning agency comments. (Ex. 38.) They state that the

planned sculptural play space and the nature walking path provide opportunities for physical activity;

- Department of Public Works (DPW) – In an email to OP, DPW staff stated they performed a site visit on April 7, 2023, and inspected the site. They did not see any impact on DPW collections operation; and
- Washington Metropolitan Area Transit Authority (WMATA) – WMATA is a co-applicant on the project. In an email to OP, they confirmed their desire to replace the parking lot with the proposed development, as shown in the plans. They also provided OP with their own project report on the case which includes a summary of the public comments they received about the project. Out of the 736 respondents 40% supported the project, 31% opposed it, and 29% had no opinion.

f. Design flexibility

The OP Hearing Report also stated that OP had “concerns” about two of the forms of design flexibility the Applicant requested to be included in any order that approved the Application, and suggested alternative language to include in the conditions that addressed its concerns:

- Sustainable Features – OP recommends that the LEED standard be specified to reflect the proffered public benefit in the Project and avoid confusion during permitting; thus, OP recommends the bullet be amended to read:
 - To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the Project does not decrease below the minimum required for the LEED Gold certification under the LEED for Homes: Multifamily Midrise rating system;
- Parking Configuration – OP objects to any increase in the number of parking spaces and recommends that the number of parking spaces approved in the Final Plans be the maximum permitted on the site; thus, OP recommends the bullet be amended to read:
 - To make refinements to the approved parking configuration, including layout and number of parking spaces of ~~plus or~~ minus ten percent (10%) provided the number of parking spaces maintains a ratio of no more than 0.37 spaces per residential unit.

The OP Hearing Report further stated that it had no objection to the remaining forms of design flexibility the Applicant requested to be included in the final order.

DDOT Report

37. On June 5, 2023, DDOT filed a report regarding the Project. DDOT’s report noted that “after an extensive review of the case materials submitted by the Applicant, DDOT finds:
- The project includes the multi-family building on one portion of the site and a reconfigured bus loop, bus bays, and kiss & ride for the Takoma Metrorail station on the other portion;

- A new driveway from Carroll Street to Eastern Avenue will be constructed serving the Metrorail station. WMATA is proposing a traffic signal, which will be reviewed by DDOT during permitting;
- Vehicular access to the multi-family building is via a parking garage entrance from the shared WMATA driveway and another entrance from the internal motor court from Cedar Street. All existing curb cuts to the site will be closed, consistent with DDOT standards;
- The project meets the DCMR 11 and DCMR 18 minimums for long- and short-term bicycle parking, which DDOT supports. Applicant should ensure that the short-term spaces are in easily accessible locations within the public realm;
- A voluntary Loading Management Plan in Exhibit 27A is proposed to ensure safe and efficient management of trash collection and move-ins/outs. Since loading relief or back-in loading through public space is not proposed, DDOT does not request it be included as a condition;
- A shared-use path connecting to the Metropolitan Branch Trail is proposed across the site. DDOT requests the Applicant provide an easement for the portion on private property;
- The project exceeds zoning requirements for vehicle parking and the parking supply exceeds DDOT's preferred parking minimums for sites within immediate proximity to priority transit;
- DDOT estimates a project of the size, mix of uses, and distance from transit should provide less than 130 spaces. The availability of excess parking has the potential to induce additional demand for driving, which has been accounted for in the traffic analysis;
- The capacity analysis indicated minor impacts at two (2) study area intersections. The analysis demonstrated signal timing adjustments could improve LOS back to Background conditions;
- DDOT does not implement independent signal timing adjustments since there are upstream and downstream impacts to coordinated signal networks. In lieu, DDOT prefers Transportation Demand Management (TDM) programming to encourage non-auto travel; and
- The Applicant has agreed to implement a TDM Plan which DDOT finds sufficiently robust. It includes a 23-dock Capital Bikeshare station, pedestrian improvements at the intersection of Cedar Street & Eastern Avenue, improvements to the intersection of the WMATA bus loop and Carroll Street, N.W., and three (3) years of bikeshare memberships." (Ex. 63.)

38. The DDOT report concluded by recommending that it "has no objection to the approval of the Application with the following conditions included in the Commission's final Order:

- Implement the Transportation Demand Management (TDM) Plan as proposed in the May 25, 2023, Technical Memo (Exhibit 38B and Attachment 1, for the life of the project, unless otherwise noted; and
- Prior to issuance of a Certificate of Occupancy for the multi-family building, the Applicant will provide an easement, subject to DDOT approval, for the portion of

shared-use path proposed across the site. The Trail must be constructed at a minimum of 12 feet where possible and maintained in perpetuity by the Applicant. The materials and design of the shared-use path will be coordinated with DDOT.” (Ex. 63.)

39. The DDOT report provided a site plan showing the Project and its surroundings, including the Takoma Metro Station, the new alignment of the bus loop/kiss and ride driveway, the current parking/kiss and ride driveway to be consolidated with bus loop/kiss and ride driveway and Project garage access, the shared use paths for access from Cedar Street, the curbless driveway to be used for vehicular and loading access, the narrowed entrance to the bus loop, and the raised crossing for the kiss and ride and bus loop. The report also provided a detailed analysis of the vehicular parking, bicycle parking, loading, heritage and special trees, streetscape and public realm, mode split and trip generation, and pedestrian network. (Ex. 63.)

ANC 4B Report

40. On January 24, 2023, ANC 4B filed a letter noting that it was strongly supportive of the Application. The ANC letter noted that at a duly noticed public meeting on January 23, 2023, with a quorum present, ANC 4B voted 10-0-0 to support the PUD application. The ANC noted that this letter supplemented ANC 4B’s prior actions on this Application (See Ex. 10, a letter dated June 27, 2022.) and incorporates them by reference. ANC 4B acknowledged the Applicant’s response (Ex. 3I.) to ANC 4B’s conditions of support outlined in Ex. 10, as the Applicant’s response did not agree to all conditions of support as proposed by the ANC. The ANC’s letter noted the following:

- The current Planned Unit Development is significantly improved from the plan proposed by the Developer in 2005 and approved through the WMATA compact hearing process by offering almost twice as much public area recreational and green space, twice as much housing, and three times as much affordable housing, as well as better bicycle and pedestrian facilities and improved connections to neighborhood businesses and retail in Takoma, Washington, DC and Takoma Park, Maryland;
- The Developer’s application is reflective of extensive engagement with both the community and the Commission [ANC 4B]. The design and proffered amenities have iteratively improved through that process and are aligned with community priorities and the Commission’s [ANC 4B] extensive feedback. The Commission [ANC 4B] looks forward to the ongoing engagement around the public spaces as part of this project, as provided in the Developer’s application. The changes to the project since the Commission’s [ANC 4B] June 27, 2022, letter have been relatively minor and in-line with the Commission’s [ANC 4B] goals;
- The Developer’s application is responsive to the feedback provided in the Commission’s [ANC 4B] June 27, 2022, letter. The Commission [ANC 4B] requests that the Zoning Commission order specifically include the requirement that the Developer engage in ongoing efforts (not just efforts via the initial application or cycle) to seek participation in the Tax Abatements for Affordable Housing in High Needs Areas (HANTA) program offered by the Department of Housing and Community Development (until granted or no longer available) that will increase the percentage of

- residential square footage dedicated to income-restricted affordable housing to at least 33%; and
- The Commission [ANC 4B] appreciates the prominent placemaking and signage in the current renderings and plans and requests the Developer and the Zoning Commission preserve them in future revisions. (Ex. 11.)

OAG Report

41. On June 7, 2023, the Equitable Land Use Section of the Office of the Attorney General (“OAG”) submitted a report in support of the Application. OAG encouraged the Commission to approve the Application given the PUD’s significant affordable housing proffer. OAG believed that this affordable housing proffer alone satisfies the PUD balancing test by “balancing out the requested development incentives and by advancing the Comprehensive Plan’s identification of affordable housing as the only high-priority PUD public benefit needed to address the District’s ‘housing affordability crises’ and the CP’s goal to make the District an ‘equitable and inclusive city’”. OAG also noted that it finds the Project’s density and height to be entirely consistent with the contemplated scale for Development of the site. The OAG Report noted that the Project’s proposed density is significantly below what is permitted under existing zoning and does not use any density gained through the proposed MU-5A zone. The OAG also noted that it does not believe that the Project will result in adverse impacts to the Takoma Park Historic District based on its scale. OAG stated that this conclusion was based on the HPO Staff Report “which did not raise any concerns with the proposed PUD’s height or density and instead concluded that given the site’s considerable size, it ‘can accommodate a large building that is compatible with the Takoma Park Historic District’ ”. (Ex. 100A, 195A.)

No Other Agencies

42. Apart from OP (which noted comments received from DOEE, DHCD, DPR, WMATA, and DPW in its Hearing Report), and DDOT, no other agencies filed written comments in the record of this proceeding.

Persons and Organizations in Support

43. Approximately 101 letters/e-mails of support were submitted to the record. In general, these letters noted their support for the Project’s creation of a transit-oriented development that provides housing and much needed affordable housing on an underutilized parking lot that will better serve transit riders. The supporters also noted the Project’s creation of dedicated public open spaces and the creation of a community place with increased retail opportunities. (Ex. 229B, list of names and mailing addresses of letters in support.)
44. Coalition for Smarter Growth (“CSG”) submitted two letters and provided testimony in support of the Application. CSG identified the proposed affordable units as a major benefit of the Project and how the proposed housing advances the housing equity goals for the Rock Creek East planning area. CSG also noted that the proposed reconfiguration of the Metro Station fits into the existing community while improving access to transit and bringing new community benefits. In conclusion, CSG stated:

Making the most of the Takoma Metro station, as this proposal does, helps DC and the region address critical goals of equity, sustainability and affordability. The project offers an inviting, human-scale environment with increased access to transit and community spaces. It also enables more households in our region to access sustainable transportation options, reducing their reliance on private vehicles, and promotes energy efficiency by incorporating LEED Gold buildings into their living spaces. (Ex. 138, 160.)

Opponent Party

45. The Opponent Party submitted a detailed written analysis of its objections to the Application and provided testimony at the Public Hearing. The Opponent Party raised the following issues:

- Building Height – The Opponent Party stated that while the chosen building height measuring point of 76 feet was lawful, looking at the height of the building as it will actually appear all around the Property is essential for proper evaluation of compatibility. The building will range in actual height from a low of 78 feet along Carroll Avenue (the south side) to over 90 feet on the north side. The Opponent Party also argues that the proposed 76' zoning height may be at or near the maximum available height that can be allowed considering the constraints of the D.C. Height Act. The Opponent Party argued that if 76' is not the actual limit under the Height Act, it is close enough to it that the Applicant could not design the building to accommodate even one more floor without violating the Height Act; (Ex. 123A.)
- Scale – The Opponent Party employed a “mathematical equivalent” to FAR and determined that the Project comprises a GFA of approximately 11.4 acres of floor space spread over 6-8 floors of the building. The Opponent Party stated that the Application fails to disclose any existing building in the surrounding neighborhood that comes close to approaching the GFA of the Project. The Opponent Party analyzed the areas of the Transit Zone, the Building Zone, and the Open Space/Buffer Zone and calculated that the actual development proposed in the Building Zone would produce a FAR at the top end of what would be allowed in the MU-5A zone without a PUD. The Opponent Party concludes that the Applicant’s decision to utilize “only” 1.69 of the allowable FAR, fairly and objectively considered, is not an act of moderation by the Applicant in recognition of the need to achieve neighborhood compatibility but is in fact limited by the Height Act constraints; (Ex. 123A.)
- Comprehensive Plan – The Opponent Party stated that the Project is not consistent with the Comprehensive Plan because its height and scale are in overpowering contrast to the surrounding neighborhood and to the larger context of its location amidst two historic districts. The Opponent Party argues that the Applicant and OP only make conclusory assessments of Comprehensive Plan policies and the Project’s consistency with those policies and that the Applicant and OP fail to address competing policies in the Comprehensive Plan. The Opponent Party notes that central to its objections to the size and scale of the Project is Urban Design Policy UD-2.2.5, which prescribes that “[n]ew construction . . . should respond to and complement the defining visual and spatial qualities of the surrounding neighborhood [and] [a]void overpowering contrasts of scale and height . . .”. (Ex. 123A.) The Opponent party further notes

that, “[n]umerous other policies ... include language about the necessity for new developments to respect the character and needs of the surrounding neighborhoods. See LU-1.4.1, LU-1.4.2, LU 2.4.5, UD-2.2.1, UD-4.2.4, HP-2.5.3, and RCE-2.1.1. (Ex. 123A.) and argues that there are multiple ways that a modest reduction in the size and scale of the Project could result in a satisfactory level of compatibility with the surrounding neighborhood. (*Id.*)

In furtherance of this argument the Opponent Party states: “The Opposing Parties’ major objections are not centered on any of the following attributes of the Project or the fact that these attributes advance Comprehensive Plan Policy goals: (1) transformation of the 6.78 acres of WMATA Property adjacent to the Takoma Metro Station into a three-part combination of Bus Loop, mixed-use housing with ground floor retail; and 1.8 acres of open space; (2) a major increase in the availability of both market-rate and affordable housing in the neighborhood; (3) EYA’s tree preservation plans; (4) the increase in permeable surface on the Property; and (5) the Project’s energy efficiency goals. But the Opposing Parties’ position is that these and other worthy goals can all be furthered while not conflicting with the Policy goals that promote respecting the character and needs of the surrounding neighborhood. [A] modest reduction in the size and scale of the Project could result in a satisfactory level of compatibility with the surrounding neighborhood. The required Project adjustments are such that no competing policy need be sacrificed in the process: the 1.8 acres of open space, the redesigned Bus Loop; the size and location of the new retail space, and all other identified Project amenities. [A]t most what might be lost in the process is a relatively small number of market rate and affordable housing units.”; (Ex. 123A.)

- Comprehensive Plan – Framework Element – The Opponent Party argues that the Applicant’s analysis of the Framework Element is also defective and states that a more complete and objective analysis of consistency with the Framework Element would assess whether a reduction in size and scale of Project along the lines proposed by the Opponent Party would or would not be more likely to result in an invigoration and enhancement of Takoma Park. The Opponent Party stated that Framework Element policies include § 219.7, which the Opponent Party stated closely echoes UD-2.2.5, reiterating that infill development should “respect the integrity of stable neighborhoods and the broader community context ...”; (Ex. 123A.)
- Comprehensive Plan – Historic Preservation Element – The Opponent Party argues that neither the Applicant nor OP has discussed compliance with the Historic Preservation Element in detail. The Opponent Party claims the Application is inconsistent with the following policies in the Historic Preservation Element of the Comprehensive Plan: (Ex. 123A.)
 - The Historic Preservation Element “[r]equires that ‘full consideration’ be given to concerns expressed in the SAP. Policy HP-1.1.3. 1003.6. That Policy also expressly recognizes the important role of ‘community preservation groups in planning matters affecting historic preservation.; and (*Id.*)

In historic districts ...Policy HP-2.5.3 specifies that ‘new construction’ should be ‘in scale with and respect their historic context through sensitive siting and design, and the appropriate use of materials and architectural detail.’ (*Id.* §1014.9.)

- Comprehensive Plan – FLUM – The Opponent Party asks the Commission to reject the Applicant’s “simplistic” analysis that a rezoning to MU-5A is not inconsistent with the FLUM simply because the MU-5A zone is oriented to “medium-density, compact mixed-use development”. The Opponent Party argues that the Commission should not ignore the strategically selected building height measuring point (“BHMP”) near the highest land elevation on the entire Property resulting in a mostly 90’ tall, 8-story building. A height of 76 feet might work out well in the typical context of side-by-side medium density residential buildings on flat earth fronting just one street, but it is a wholly different matter on sloping ground where the building’s increased exposure from the slope will be readily visible by the public on all sides; (Ex. 123A.)
- Comprehensive Plan – GPM - The Opponent Party notes that the Neighborhood Enhancement Area calls for “compatible infill development” that is not achieved by the Project. The Opponent party also alleged that the Applicant did not address the GPM; (Ex. 123A.)
- 2002 Takoma Central Business District SAP/Rock Creek East Element – The Opponent Party argues that the Comprehensive Plan, Action RCE-2.1.C, requires the Zoning Commission to review the SAP redevelopment guidelines in accordance with the updated FLUM and Rock Creek East Area Elements. What is contemplated by the Comprehensive Plan is that approval of the Project must be mindful of recommendations in the SAP and the Rock Creek Area East Elements, even as the proposed increased level of development anticipated in the FLUM is considered. The Opponent Party requests that the Zoning Commission reject, if only for this Property, the Applicant’s attempt to characterize its massive building of over 11 acres of GFA, fully exposed on all sides, and rising to over 90’ for most of its facades, as what the FLUM envisioned here. The Opponent Party also argues that the Application is inconsistent with the provision of the Rock Creek East element that provides that “the Plan specifies that development of the WMATA Property ‘should maximize Metro access while taking care to provide appropriate buffers and transitions to adjacent uses.’” See Subtitle §2211.4. Furthermore, the Applicant’s discussion of the Takoma SAP fails to reference all of the policies in the Rock Creek East Area Element bearing on redevelopment of the WMATA property. Specifically, Policy RCE-2.1.1: Historic Preservation in Takoma, is not mentioned. See Subtitle §2211.5; (Ex. 123A.)
- Alternative MU-4A Application – The Opponent Party argued that a proposed rezoning to the MU-4A zone would promote and advance all of the Comprehensive Plan policies that the Project is claimed to serve and will be consistent with the Takoma SAP, the FLUM and the Comprehensive Plan; (Ex. 123A.)
- PUD Balancing Test – The Opponent Party states that the Applicant’s appraisal of the PUD balancing test of public benefits and project amenities against the requested development incentives is significantly overstated. The Opponent Party claims that in general many of the Project’s public benefits and project amenities are overstated or erroneous and in some instances the Applicant fails to detail how the benefits and amenities are tangible, quantifiable, and measurable or how they are superior features that are beneficial to a significantly greater extent than would occur under matter-of-right development; and (Ex. 123A.)

- Response to OAG Report – The Opponent Party responded to the OAG Report and stated that “the AG Memo is so lacking in even-handed, objective assessment of the Project under all considerations that must go into the Commission’s evaluation of the Project that it all but self-destructs as credible advice to the Commission. It warrants only a brief, separate discussion here, demonstrating that it is owed no credence by the Commission.” (Ex. 123A.)

Persons and Organizations in Opposition

46. Approximately 72 letters/e-mails of opposition were submitted to the record. In general, opposition to the Application was based on the height and scale of the Project, purported incompatibility with the Takoma Historic District and the surrounding neighborhood, and the loss of parking spaces at the Metro Station parking lot. (Ex 229A, list of names and mailing addresses of letters in opposition).
47. On June 15, 2023, the Commission held a duly noticed public hearing in accordance with its rules and regulations. The Applicant presented witnesses on behalf of the Applicant (Mr. Evan Goldman, Executive Vice President of Acquisition and Development of EYA; Ms. Caren Garfield, Vice President of Multifamily Development of EYA, and Mr. Steven Segerlin of WMATA) and five experts: Mr. Federico Olivera-Sala as an expert in architecture, Ms. Gabriela Canamar-Clark as an expert in landscape architecture, Mr. Kyle Oliver as an expert in civil engineering, Mr. William Zeid as an expert in transportation analysis and engineering, and Mr. Shane Dettman as an expert in land use and zoning. The Commission accepted Mr. Olivera-Sala, Ms. Canamar-Clark, Mr. Oliver, Mr. Zeid, and Mr. Dettman as experts in their respective fields. Thereafter, the Applicant’s representatives and the experts presented testimony about the Project as follows:
 - The Applicant testified in support of the Project. In its testimony, the Applicant stated that:
 - It consented to the:
 - Conditions listed in the OP Hearing Report related to design flexibility;
 - Conditions listed in the DDOT report; and
 - Conditions listed in the first ANC 4B report as stated in its response to the ANC at Ex. 3I.
 - The density of the Project was lower than the guidelines listed in the FLUM for the site, and less than would be possible under matter of right zoning;
 - The primary benefit of the Project was the additional housing and affordable housing it would provide at a transit rich location;
 - it was seeking the PUD related map amendment primarily so it could achieve additional height;
 - It rejected the idea of underground parking because it would reduce the number of housing units; and
 - It rejected the notion of developing under existing zoning because it wanted the ability to aggregate the density across the site and would not be able to achieve the 76-foot height that allows it to build a more compact building.

- In response to questions by the Commission, the Applicant stated as follows:
 - In response to the issue raised about the loss of the kiss and ride and metro parking, the Applicant stated that utilization of the kiss and ride was low, longer-term parking was more common, and Metro decided to direct longer term parking to the parking facility at Ft. Totten. The Applicant further stated that users can utilize the 66 retail parking spaces in the Project, and the 16 dedicated Metro kiss and ride spaces in the Project. The Applicant further testified that it would provide handicap accessible spaces in the Kiss and Ride facility and additional handicap accessible spaces outdoors adjacent to the Metro elevator;
 - In response to the issue raised about stormwater runoff, the Applicant stated the Project improves runoff over current conditions for all levels of storms;
 - In response to the DOEE letter criticizing the tree plan, the Applicant stated that it would respond in a post hearing submission;
 - In response to criticism about the large size of the bus loop area and related concerns about pedestrian safety, and lack of trees, the Applicant discussed the mitigation measures it was providing and the design of the area and stated it would address the large bus loop size in a post-hearing submission;
 - In response to community comments in the design process, the Applicant stated it pulled the building back from Eastern Avenue, added retail, reduced parking, included 30% MFI level affordable housing, added family sized units, moved the driveway to preserve existing trees, and refined the stormwater management plan. The Applicant further stated that MD residents wanted it to preserve all existing metro parking, which it did not do;
 - In response to a question about the HANTA financing and related additional affordable units, the Applicant described the additional affordable units, but that it did not yet know whether it would qualify so could not commit to providing those units in the Project;
 - In response to a question about whether the proposed park will be open to the public, the Applicant stated that it would be privately owned, but that the Applicant would commit to record an easement allowing public access;
 - In response to a question about how many balconies would be provided, the Applicant said it would respond in a post-hearing submission;
 - In response to a question about the number of heritage trees that will be removed, the Applicant stated that none would be removed, and one would be moved on site;
 - In response to a question about handicapped parking, the Applicant stated that there were currently six handicapped spaces on the site, and it would provide three spaces for metro, and four spaces in the retail parking area;
 - In response to questions about the playground, the Applicant stated it would be similar to a park located in Michigan Park built as part of a recent PUD project, and it would provide playground information in a post-hearing submission; and
 - In response to a question of what would happen to the Project if the Applicant was required to remove one floor, the Applicant stated that it would reduce the amount of affordable housing included as a public benefit of the Project.

- In response to cross examination by the Opponent Party, the Applicant stated as follows:
 - In response to questions about the percentage of green roof, the Applicant stated that it would respond in a post-hearing submission;
 - In response to a question about the width of the Carroll Street ROW, and the location of the building height measuring point, the Applicant stated that it varied and would respond further in a post-hearing submission;
 - In response to questions about the height of building relative to the building height measuring point, the Applicant conceded that the building will appear taller because of the grade change, that Slides⁷ 29-30 show that it will be 2-3 feet taller on Carroll Street side, and that Slide 56 shows that appearance of building will be approximately 10 feet taller than “measured height” on the other side, and that buildings shown on Slide 24 are not the same height;
 - In response to questions about ownership of the park shown on Slides 36-38, the Applicant stated that it would retain ownership, but that it was willing to provide a public access easement;
 - In response to questions about the amount of impervious surface on the site, the Applicant conceded it was increasing, and would provide the amount in a post-hearing submission;
 - In response to a question about the recent FLUM change for the site, the Applicant conceded that the change was proposed by WMATA with assistance from EYA;
 - In response to a question about whether the “available GFA” listed on Slide 54 would actually be achievable in a project that included the bus loop and public amenity space included in this Project, the Applicant didn’t directly respond but conceded that the figure in the slide was the maximum achievable under existing matter of right zoning for the site;
 - In response to a question about the statement on Slide 55 that the CP does not provide specific guidance on building height, the Applicant conceded that there were references in the Comprehensive Plan to height that pertain to the Project.
 - In response to a question about whether there was any difference between the MU-5 and MU-4 other than height, the Applicant said no; and
 - In response to a question about whether the Applicant was applying for the maximum amount under HANTA, the Applicant stated it would respond in a post hearing submission.

48. At the public hearing, OAG noted its support of the Application, based on the amount of affordable housing provided.
49. At the public hearing, OP noted its support for the Application, with conditions, that the Applicant said it would meet.

⁷ The Slide references in this and the remaining bullets in this subsection reference the Applicant’s PowerPoint presentation. (Ex. 222.)

50. At the public hearing, DDOT testified it had no objection to the approval of the Application, with conditions that the Applicant said it would meet.
51. At the public hearing, individuals and representatives of organizations testified in support of the Application: four persons testified in support.
52. At the public hearing, witnesses on behalf of the Opponent Party testified in opposition to the Application as described below.
- Ms. Kohn testified on behalf of Historic Takoma Inc.
 - Concerned about height and density;
 - Mentions other developments that have been built that are 50-55 feet tall and three stories, claims that is what is compatible with Takoma neighborhood; and
 - Traffic is gridlocked and would be worsened by Project;
 - Mr. Feiden
 - Lives across from the driveway access point of Project;
 - Mr. Feiden testified that he lives within 200 feet of the Project, is a resident of Maryland, did not receive written notice of the hearing, and that this lack of written notice to him was a notice defect of the Application;
 - Height;
 - Traffic;
 - Runoff;
 - Pollution;
 - Says setback is insufficient;
 - Neighborhood compatibility; and
 - Says 50-55 feet in height, three stories are compatible; and
 - Claims he would support building if it was shorter;
 - Ms. Eaton
 - Lives across from site on Eastern;
 - Wants to reduce height; and
 - Her property is at the topographical low point in neighborhood, concerned about runoff, asks for condition related to stormwater runoff;
 - Ms. Kurlansky
 - Lives at 202 Cedar Street, N.W.;
 - Height and mass are out of character with Historic Takoma;
 - Thinks underground parking would result in lower height;
 - Air quality; and
 - Increased traffic and noise from driveway;
 - Mr. Brown testified as counsel for the Opponent Party
 - Refers to arguments made in brief submitted before hearing;
 - Says needs to scale back height and density;
 - Height – 76 feet if MU-5 and additional PUD height;
 - Says reason Applicant is not going higher is that adding another floor would result in Height Act violation;
 - Says the slope/topography makes the perceived height higher;

- Bulk of building;
 - Says the building is lower than MU-5 max because much of the lot is not buildable;
 - Says that OP and OAG do not mention the potential inconsistencies with CP; and
 - Claims MU-4 rezoning and knocking off a floor would result in 65 less units.
53. At the public hearing, individuals and representatives of organizations testified in opposition to the Application as described below:
- Ms. Wheeler – Concerned about reduction of green space and preservation of trees;
 - Mr. Kovar – Asked Commission to do ongoing consultation with neighborhood regarding compliance and mitigations;
 - Ms. Green
 - Endorsed the Committee of 100 written submission;
 - Wants to know how much of the developer contribution for affordable housing is a tax benefit;
 - Doesn't think the Applicant should get credit as a public benefit for affordable housing that is a tax credit; and
 - Thinks the private space called park is not a park because it's privately owned; and
 - Ms. Richards testified on behalf of the Committee of 100
 - Concerned about Comprehensive Plan consistency;
 - Believes the Takoma Small Area Plan been given short shrift; and
 - Preservation of neighborhood character is part of Comprehensive Plan policies.

Post Hearing Submissions

54. On June 29, 2023, the Applicant filed a post-hearing submission, which addressed the Commission's requests for additional information. The Applicant's post-hearing statement addressed the following issues: information on the size of the existing green space and the proposed retail plaza/public park and open spaces; a "point-by-point" response to the Opponent Party's pre-hearing statement and public hearing testimony – including information regarding the right-of-way width of Carroll Street at the Building Height Measuring Point; further analysis of the ability to remove hardscape or enhance green space in the areas adjacent to the bus loop and parking spaces; additional information on tree removal, retention, and planting; information on the number of residential units with balconies; information on the design of the community park adjacent to Eastern Avenue; information on the percentage of roof area along Eastern Avenue; information regarding the existing and proposed impervious surface areas; further analysis of the ability to place green roof under the solar panels; information on the amount of the HANTA real estate tax abatement; and information regarding the outreach and contacts with Takoma Park Maryland residents (Ex. 233.), with Plans Depicting Green Space (Ex. 233A.), "Point-by-point" rebuttal to the Opponent pre-hearing brief (Ex. 233B.), Sediment Control Erosion Plan (Ex. 233C.), Community Park Site Plan and Park Safety Strategies (Ex. 233 D.), and Applicant's draft order (Ex. 235.)
55. The Applicant's post-hearing submission provided the following information listed immediately above.

- With respect to the size of the existing green area and multifaceted community park, the Project will include 0.55 acres for the retail plaza open space (which includes public seating areas), 1.15 acres for the community park open space, and 0.15 acres of additional community park open space, located north of vehicular access on Eastern Avenue; (See depiction at Ex. 233A.)
- With respect to removing hardscape or enhancing green elements adjacent to the bus loop and parking spaces, the Applicant stated it is working to explore the possibility of planting additional trees within the bus station while adhering to WMATA regulations and believes that approximately six additional trees could be added to the site;
- With respect to the number of existing trees, the number of trees to be removed or retained, and the number of trees to be planted, the Applicant stated that there are 133 trees on site, the Project requires removal of 118 trees and retention of 15 trees, and the Project proposes the planting of 70 new trees, with the potential for six additional trees near WMATA facilities discussed immediately above (See Sediment Control and Erosion Plan reflecting tree inventory at Ex. 233C.);
- With respect to the number of units with balconies, the Applicant stated that the Project will include 188 units with balconies;
- With respect to the design of the community park, the Applicant stated that a key feature is a multigenerational climbable element, with safety strategies that prioritize containment, buffer, and location. The design also includes multiple seating options with the goal of safe enjoyment of space for all; (See Community Park Site Plan and Safety Strategies at Ex. 233D.)
- With respect to the percentage of Eastern Avenue roof area that is lowered compared to total roof area, the Applicant stated that the total roof area of the building is approximately 65,935 square feet, of which the lowered area of the roof along Eastern Avenue is approximately 5,571 square feet or approximately 8% of the total roof area of the building;
- With respect to the existing and proposed impervious surface area, the Applicant stated that the existing site area is approximately 50% impervious area and after development of the PUD Project, approximately 69% of the site area will be impervious;
- With respect to the ability to include green roof areas under the solar panels, the Applicant stated that it recognizes that DOEE allows for this design, and it will consider this factor as the PUD Project goes through the final building permit process;
- With respect to the amount of real estate tax abatement requested as part of the HANTA application, the Applicant stated that it requested an annual real estate tax abatement of \$1,725,419 with annual market escalations; however, the Applicant explained it has not yet received written approval or confirmation of this amount; and
- With respect to the outreach and contacts with Takoma Park Maryland residents, the Applicant stated it had an extensive list of meetings with local Maryland officials, groups, and residents. These meetings included a meeting with the Opposition party itself, and two meetings with the residents of Eastern Avenue that faced the Project before the hearing, and an additional meeting with the residents of Eastern Avenue after the hearing to discuss stormwater runoff issues. (Ex. 233.)

56. The Applicant's post hearing submission's point-by-point analysis of the Opponent Party's pre-hearing statement and public hearing testimony noted the following (Ex. 233B.):

- Building Height - The Opponent Party does not dispute the legality of the manner in which the Applicant has located the building height measuring point for the Project, nor whether the proposed height complies with the technical requirements of the Zoning Regulations, both generally and specifically with respect to the proposed MU-5A zone. The Applicant provided a plat that depicted a 1974 street closing and dedication which widened Cedar Street to 65 feet and Carroll Street to 60 feet. Further, 10-foot BRLs were recorded on the WMATA Property along Cedar and Carroll Streets, resulting in a street width for Height Act purposes of 75 feet and 70 feet, respectively. Based on either of these street widths, the Height Act allows the Applicant to fully realize the 90-foot maximum height permitted under the proposed MU-5A PUD, a fact that is critical in two respects. First, from a technical perspective the location of the PUD Project's BHMP and proposed 76-foot building height are both fully compliant with the Zoning Regulations and the Height Act. Second, and more importantly, the fact that the proposed height of the PUD Project is well below the 90 feet that could be achieved under an MU-5A PUD clearly demonstrates the Applicant's cognizance of responding to and respecting neighborhood context and character, while also advancing other competing Comprehensive Plan policies and priorities related to housing, land use, transportation, environmental protection, and parks and open space; (Ex. 233B.)
- Project Scale – The fatal flaw in the Opponent Party's "scale" comparison becomes clearer upon review of its theoretical evaluations of the Project's GFA, which involve calculating FAR using a fictitious lot area that is based solely on the proposed building's footprint, and a second lot area that excludes the PUD site's Transit Zone and Open Space/Buffer Zone. The Opponent Party's second FAR calculation, that bases the PUD Project's density on the land area of the Building Zone only, results in a density of 4.2 FAR which the Opponent Party specifically acknowledges is within the density that is permissible in the MU-5A zone as a matter-of-right. In other words, the Applicant does not even need to rely upon the land area of the Transit Zone or Open Space/Buffer Zone, nor does it need to utilize any of the bonus density that is available through the requested PUD-related map amendment to MU-5A. Together with the fact that the PUD Project could achieve even greater building height than what is proposed, this further proves that the Applicant has indeed exercised moderation in recognition of the need to achieve neighborhood compatibility. The Opponent Party's unconventional way of evaluating the Project's scale using irrelevant land areas is misleading and ignores the critical fact that this is a PUD, a process that exists for the purpose of providing flexibility from the underlying Zoning Regulations, in part to achieve Comprehensive Plan consistency and goals in ways that are not possible under matter-of-right development. The PUD regulations address this flexibility as it relates to the calculation of density. Specifically, "the FAR of all buildings shall not exceed the aggregate of the FARs as permitted in the zone or zones included in the PUD boundary." (11-X DCMR § 303.2.) The flexibility to shift/concentrate density within a PUD to achieve other planning objectives or advance other Comprehensive Plan policies (such as providing open space) is also expressly addressed in the Framework Element, and in decisions of the Commission and the D.C. Court of Appeals. The

Opponent Party incorrectly treats scale as a wholly quantifiable topic, ignoring several other critical qualitative design techniques that, taken together with quantifiable measures such as FAR and lot occupancy, establish the PUD Project's scale and how it relates to its context. These techniques include the PUD Project's setbacks; massing reductions; material type, color, and texture; façade articulation; and open spaces. These techniques are proven, and routinely employed in developments, both matter-of-right and PUD, to address contextual compatibility and character. In fact, the numerous qualitative design techniques that are incorporated into the PUD Project's site plan and building design play critical roles in the PUD Project's overall success in addressing Comprehensive Plan policies related to neighborhood compatibility and character while still significantly advancing other competing policies and priorities related to housing, land use, transportation, environmental protection, and parks and open space; (Ex. 233B.)

- Comprehensive Plan Consistency – The Opponent Party asserts that the Applicant's Comprehensive Plan evaluation omits and downplays the relevance of the various Comprehensive Plan policies related to neighborhood character and compatibility. The Applicant conducted a full evaluation of the Project's consistency with the Comprehensive Plan, including the Land Use, Urban Design, Historic Preservation, and Rock Creek East Area Element policies cited by the Opponent Party, and, in accordance with the Implementation Element, has determined that the Project is "not inconsistent" with the Comprehensive Plan when read as a whole through a racial equity lens. In reference to the Applicant's Comprehensive Plan evaluation, the Opponent Party states "[i]nstead of explaining Policy-by-Policy how the Project furthers each identified Policy, a brief, conclusory discussion of the Project in relation to each Element is provided." However, as made clear by the Court in *Durant I*, the Applicant need not address each individual Comprehensive Plan policy, stating, in relevant part, "we do not suggest that the Commission must exhaustively review, or even cite, every policy in the entire [Comp] Plan; we hold only that it is insufficient to recite that a particular action is consistent with the Plan as a whole." *Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013). The Applicant's Comprehensive Plan evaluation goes far beyond a mere statement that the Project is not inconsistent with the Comprehensive Plan. Rather, the Applicant's Comprehensive Plan determination is informed by a thorough review that addresses, both individually and as a whole, the FLUM, GPM, and the policies of the Citywide and Rock Creek East Elements. In fact, the Applicant's Comprehensive Plan evaluation and public hearing testimony address every Comprehensive Plan policy that was noted by the Opponent Party; (Ex. 233B.)
- Comprehensive Plan – FLUM Consistency- The Opponent Party challenges the Project's consistency with the FLUM because the Applicant's discussion of the proposed PUD-related map amendment to MU-5A would also be true of a rezoning to MU-4A, and because no examples of comparable MU-5A zoned properties with similar height or density were provided. The Applicant is not required to compare the proposed PUD and related map amendment to other zones or other projects. This is particularly true of a PUD-related map amendment which sets no precedent for the Commission's consideration of a standalone map amendment or future PUDs. This is because a PUD

is evaluated on a case-by-case basis upon its own merits and allows the Commission to fully evaluate a proposed PUD-related map amendment against a specific project's design, site planning, provision of open spaces and amenities. A PUD-related map amendment is analyzed in the narrow context of the proposed project, and through the flexibility afforded in the PUD process the Commission may grant a PUD-related map amendment in circumstances where it might reject a standalone map amendment. This flexibility is also expressly addressed in the Framework Element ("[A]s part of the PUD process, the Zoning Commission may include a zoning map amendment for the purpose of the PUD, which is applicable only for the duration of the PUD, and subject to PUD conditions") and in decisions of the Court. The Opponent Party also states that the Applicant fails to explain how the Project is "truly emblematic of FLUM-defined 'Medium Density Residential Development.'" The Project's FLUM designation calls for medium density Mixed-Use development that favors residential use over commercial use. The Project is not inconsistent with the FLUM. The Project's 1.69 FAR is consistent with the guidance provided by the Framework Element which states "the general density and intensity of development within a given Mixed Use area is determined by the specific mix of uses shown" 10A DCMR § 227.21. In this case, the Project's density is well within even the typical [matter-of-right] guidance on density for two components of its Mixed-Use designation (Low Density Commercial and Medium Density Residential⁸). The Comprehensive Plan does not provide any specific guidance on building height and consistency with the FLUM (feet, stories, or otherwise). The only general guidance provided on building height relative to PUDs is that the Commission has flexibility to permit greater height than specified by matter-of-right zoning. While the Commission has substantial latitude to grant additional height when considering a PUD, general, non-binding guidance on height may be obtained from the land use categories that make up the PUD Site's Mixed Use FLUM designation. Specifically, the Framework Element identifies the MU-4 zone as being consistent with the Low Density Commercial FLUM category. The Opponent Party argues that an MU-4 PUD can achieve a height of 68'-3" (including the additional 5% height that may be obtained under 11-X DCMR § 303.10). The Framework Element identifies the RA-3 zone as being consistent with the Medium Density Residential FLUM category. Applying the same assumptions as the Opponent Party, an RA-3 PUD may achieve a height of 78'-9". Clearly, the proposed 76-foot height of the Project is within the range of the above-stated heights. Notably, consistent with the FLUM's preference for residential use on the PUD Site, the proposed height of the Project trends slightly closer to the height that could potentially be achieved through an RA-3 PUD. In attempting to make its case regarding FLUM inconsistency, the Opponent Party states that the Commission "should not ignore the strategically selected BHMP near the highest land elevation on the Property, which slopes away from this point for most of the Property, resulting in a mostly 90' tall, 8-story building." Observations regarding the inaccuracy of this statement are necessary. First, the Project's BHMP was not "strategically selected," but rather it was legally selected by the Applicant in accordance with the Zoning Regulations and the Height Act. Secondly, the proposed

⁸ The Property's designation as Local Public Facilities is not included in this discussion because the Local Public Facilities FLUM category does not identify typical density ranges or any zones as being consistent with the category.

building is not 90 feet and 8 stories. Rather, as measured in accordance with the Zoning Regulations the proposed building's height is 76 feet. While the change in grade will cause the perceived height of the proposed building to appear taller at certain points around the PUD Site compared to the height as it is measured at the BHMP, this does not render the Project to be inconsistent with the FLUM. When evaluating FLUM consistency, the Commission correctly considers the actual height and density of the Project because that is what the FLUM land use descriptions focus on. In that regard, and without any consideration of the qualitative site planning and design techniques employed by the Applicant to address neighborhood compatibility and character, the actual height and density of the Project are both well within the parameters for areas on the FLUM that are designated for medium-density mixed-use development. Finally, the proposed MU-5A zone is perfectly suited for the PUD Site's Mixed-Use FLUM designation where, as stated by the Framework Element, "a variety of zoning designations are used...depending on the combination of uses, densities, and intensities." [Emphasis added (10A DCMR § 227.23; Ex. 233B.)]

- Comprehensive Plan – Citywide and Rock Creek East Area Element Consistency – The Opponent Party's argument that the Project is inconsistent with the Comprehensive Plan hinges on its subjective opinion that the proposed height and scale "are in overpowering contrast to the surrounding neighborhood and to the larger context of its location amidst two historic districts." The Opponent Party's Comprehensive Plan evaluation solely focuses on 11 Comprehensive Plan policies that all address the same consideration, namely compatibility with surrounding neighborhood context and character. This is contrary to Comprehensive Plan and Court guidance that a zoning action shall be evaluated against the Comprehensive Plan when read as a whole. The Opponent Party's 18-page legal memorandum evaluates the Project against only a select number of policies within the Land Use, Urban Design, Historic Preservation, and Rock Creek East Elements of the Comprehensive Plan. Its evaluation ignores the numerous other policies within those same Elements that are advanced by the Project, not to mention the substantial number of policies in other Elements that are also advanced by the Project, most importantly the Housing Element. The DC Court of Appeals has made clear that a Comprehensive Plan evaluation need not review or cite every Comprehensive Plan policy. The Opponent Party further states that proper assessment of a zoning action's consistency with the Comprehensive Plan requires "consideration of whether conflicts between competing Policies can be avoided or significantly ameliorated, such that, ideally, virtually all relevant Policies are furthered by the Project." This assertion is also incorrect. While the number of potential Comprehensive Plan inconsistencies factors into the Commission's determination of whether a zoning action is "not inconsistent" with the Comprehensive Plan when considered as a whole, there is no express requirement that a zoning action be modified to avoid or minimize potential inconsistencies until "virtually all relevant policies are furthered." The Opponent Party then offers multiple alternatives to the Project design that involve what it refers to as a "modest reduction in size and scale" that it believes will resolve its alleged Comprehensive Plan inconsistencies while still maintaining consistency with all other aspects of the Comprehensive Plan. The Commission and the Applicant are not required to evaluate alternatives to a proposed zoning action. More importantly, however, is while the Opponent Party promotes how its alternatives

would continue to provide the proposed “1.8 acres of open space, the designed Bus Loop, the size and location of new retail space, and all other identified Project amenities,” it downplays the significant impact its alternatives would have on housing. The Opponent Party states, “at most what might be lost in the process is a relatively small number of market rate and affordable housing units.” The “modest reductions” in the Opponent Party’s alternatives would result in the loss of approximately 70 dwelling units, including approximately 13 affordable units. This amounts to an approximately 16% and 18.5% reduction in total dwelling units and affordable units, respectively. During the Public Hearing, the Applicant specifically stated that having to remove a floor from the Project would require reconsideration of the entire building program and proffered public benefits and amenities, specifically the affordable housing proffer. This is particularly salient given the Framework Element’s statement that “in light of the acute need to preserve and build affordable housing the production of new affordable housing units above and beyond existing legal requirements should be considered a high-priority public benefit in the evaluation of residential PUDs.” (10A DCMR § 224.9.) The Court’s guidance is abundantly clear that to the extent certain Comprehensive Plan policies are at odds with each other when evaluated against the Project, the Commission may balance said policies in its determination as to whether the PUD Project is consistent with the Comprehensive Plan as a whole. Further, if the Commission does indeed find the Project inconsistent with one or more Comprehensive Plan policies, it simply must explain why said inconsistencies are outweighed by other competing considerations before approving the Project. As noted above, the Applicant’s Comprehensive Plan evaluation considered every policy that is referenced by the Opponent Party. Contrary to the Opponent Party’s assertions, the record clearly reflects that the Applicant was aware of these policies and took them into consideration while designing the PUD Project and preparing its Comprehensive Plan evaluation. Upon careful consideration of these policies, the Applicant concluded that the PUD Project is not inconsistent with each of these specific policies and with the Comprehensive Plan as a whole. The Opponent Party acknowledges the Court of Appeal’s recognition that the Comprehensive Plan reflects policies that sometimes compete with each other. This is not the same as a zoning action being inconsistent with one or more Comprehensive Plan policies. Where Comprehensive Plan policies promote competing planning objectives, such as one policy encouraging maximizing housing on a site while another policy encourages maximizing open space, the Commission can balance these competing priorities and find that a proposed zoning action advances both policies. Such is the case with the proposed PUD Project and its consistency with the Comprehensive Plan policies cited by the Opponent Party. All of the Comprehensive Plan policies referred to by the Opponent Party address subjective planning and design considerations of the Project’s compatibility with the scale and character of the Takoma Park historic district and surrounding context. These are more matters of design than quantifiable considerations. Furthermore, the Opponent Party treats these Comprehensive Plan policies as if they are mandates, when in fact all of them are worded in non-mandatory terms. For example, UD-2.2.5 (Infill Development), a policy the Opponent Party says is central to its objections to the size and scale of the PUD Project, says that new construction “should respond to and complement the defining visual and spatial qualities of the surrounding neighborhood.”

Emphasis added. Per the Court's guidance, these policies do not mandate that the Applicant take a specific course of action. This is in contrast to, for example, the mandatory language of the Housing Element policy regarding density bonuses for affordable housing, which states:

- H-1.2.7: Density Bonuses for Affordable Housing: Provide zoning incentives, such as through the PUD process, to developers proposing to build affordable housing substantially beyond any underlying requirement. Exceeding targets for affordable housing can refer to exceeding the quantity or depth of affordability otherwise required. Affordable housing proffered shall be considered a high priority public benefit for the purposes of granting density bonuses, especially when the proposal expands the inclusiveness of high-cost areas by adding affordable housing. When density bonuses are granted, flexibility in development standards should be considered to minimize impacts on contributing features and the design character of the neighborhood. [Emphasis added.] (See 10A DCMR § 504.15.)
- Notwithstanding the non-mandatory, non-binding language of these policies the Applicant still gave them substantial consideration while designing the Project to ensure neighborhood compatibility. The Applicant did not disregard these Comprehensive Plan policies in favor of other policies. The Applicant also worked closely with D.C. Historic Preservation Office staff to give full consideration of historic preservation interests and concerns and ensure compatibility with the Takoma Park Historic District. As a result, through its moderated height and density, compact site plan, massing reductions and use of bay projections, façade articulation, provision of open space setbacks/buffers, and use of context-sensitive materials, the Project is not inconsistent with all of the Comprehensive Plan policies cited by the Opponent Party that promote visual and spatial compatibility and respecting the character and needs of the surrounding community. Through these effective planning and design techniques, the Project successfully avoids overpowering contrasts in scale and balances Comprehensive Plan policies promoting increased density, particularly for housing, around Metrorail stations (LU-1.4.C, H-1.1.2, H-1.1.3, H-1.1.4, H-1.2.7.) with those that promote consideration of neighborhood scale and compatibility (LU-1.5.1, UD-2.2.5, HP-1.1.3, HP-2.5.3, RCE-2.1.1.) This is supported by the June 1, 2023, concept review of the PUD Project by HPRB which commented favorably on the site plan and general conceptual approach of the Project. In its deliberation, HPRB members did not express any objections to the height and massing of the Project and asked for further refinement of the architecture of the building facing Carroll Street. HPRB also requested further evaluation of color, materials, detailing and composition of the proposed building; (Ex. 233B.)
- Takoma Central District Small Area Plan – The “Takoma SAP” was adopted by the D.C. Council in 2002. At that time, development at the Takoma Metrorail Station, an identified “Opportunity Site” in the Takoma SAP, generally envisioned redevelopment of the PUD Site with a 3-4 story townhome or garden-style apartment project with approximately 65-95 total dwelling units, limited retail uses, and a “village green.” Following adoption of the Takoma SAP, the Comprehensive Plan was amended to incorporate the recommendations of the Takoma SAP. Since then, the Comprehensive Plan has been amended twice (2012 and 2021), and both times included amendments

to the PUD Site's FLUM designation and to the Rock Creek East policies that address development on the PUD Site. The 2021 Comprehensive Plan amendments made the following notable amendments:

- Changed the GPM designation for the portion of the PUD Site designated as Neighborhood Conservation Area to Neighborhood Enhancement Area;
 - Changed the FLUM designation of the PUD Site to support medium-density mixed-use development with a preference for residential uses; and
 - Made policy changes to support redevelopment of the PUD Site with multi-family residential development to accommodate housing demand in accordance with the amended FLUM;
- The Opponent Party inquires how to properly synthesize the SAP in relation to the 2021 Comprehensive Plan amendments, including the FLUM, but fails to mention the specific guidance that was included in the updated Framework Element and Implementation Element regarding this question. The Framework Element states, "unless a Small Area Plan has been made binding on the Zoning Commission through its enactment as part of a Comprehensive Plan amendment, a Small Area Plan provides only supplemental guidance to the Zoning Commission and it does so only to the extent it does not conflict with the Comprehensive Plan." (10A DCMR § 224.5.) Additional language from the Implementation Element states that "a Small Area Plan provides supplemental guidance to the Comprehensive Plan, unless incorporated into the Comprehensive Plan by a D.C. Council act." (10A DCMR § 2503.1.) This guidance is important in the context of the Takoma SAP and the Project, and specifically as it relates to instances where Takoma SAP recommendations to moderate development on the PUD Site conflict with the site's current FLUM designation and recommendations to increase density around Metrorail stations to accommodate the critical, high priority need for new housing in the District. The Applicant reiterates that the Project is fully consistent with those parts of the 2002 Takoma SAP that remain applicable to the PUD Site, and that are not inconsistent with the current Comprehensive Plan. The Rock Creek East Element – Takoma Central District Policy Focus Area contains nine policies and actions that relate to development on the PUD Site. The Applicant's written submissions and testimony at the public hearing have already demonstrated how the Project is not inconsistent with these policies. The height, massing, and overall design of the Project have been developed in close consultation with Historic Preservation Office Staff and HPRB. This close consultation and the Applicant's thoughtful consideration of the surrounding context have resulted in a Project that recognizes and respects Takoma's historic character while balancing other competing demands for housing, transit-oriented development, open space, and environmental protection (RCE-2.1.1, RCE-2.1.3.) The Project also addresses the demand for additional neighborhood-serving retail and service uses, and consistent with the Takoma SAP does so with active ground-floor uses that are concentrated along Carroll Street (RCE-2.1.4.) Through effective site planning the Project successfully advances the Takoma SAP's housing and retail strategies while still being able to meet all transit needs (Metrorail, Metrobus, Ride-On) on the PUD Site itself, and provide a substantial "village green" that will serve as a signature open space feature (RCE-2.1.5, RCE-2.1.D.) Finally, the Project adheres to the Takoma SAP redevelopment guidelines (*see* Takoma SAP pp. 52-53.) for the PUD Site in a manner that is not inconsistent with the

updated FLUM that supports medium-density, mixed-use development. Indeed, with the exception of the redevelopment guidelines that refer to specific building heights or number of dwelling units, the Project is fully consistent with all supplemental guidance provided in the Takoma SAP that is not inconsistent with the current Comprehensive Plan. (Ex. 233B.)

57. On July 6, 2023, the Opponent Party submitted a cover letter, its response to Applicant's rebuttal of its pre-hearing brief, and its draft order. (Ex. 236-236B, 236C.)
58. On July 6, 2023, Faith Wheeler submitted her comments in opposition. (Ex. 237.)
59. On July 19, 2023, the Applicant submitted its initial list of final proffers and draft conditions, (Ex. 238.), and on August 3, 2023, submitted its final list (Ex. 239.)
60. On August 14, 2023, the Applicant submitted a cover letter and its final architectural plans. The Applicant indicated that the plans had been approved by HPRB. (Ex. 240, 240A-240A18.)
61. The Application was referred to the National Capital Planning Commission ("NCPC") on August 21, 2023. (11-Z DCMR §§ 603.1(b)(2), 603.4(a).)
62. On October 6, 2023, NCPC submitted a report stating that NCPC found that the Application is not inconsistent with the Federal Elements of the Comprehensive Plan and would not adversely impact any identified federal interest. (Ex. 242.)

Contested issues

63. The Commission considered the entire record and finds that the following are the contested issues in the case:

A. Alleged Comprehensive Plan inconsistencies.

1. FLUM – The Opponent Party asks the Commission to reject the Applicant's "simplistic" analysis that a rezoning to MU-5A is not inconsistent with the FLUM simply because the MU-5A zone is oriented to "medium-density, compact mixed-use development". The Opponent Party argues that the Commission should not ignore the strategically selected BHMP near the highest land elevation on the entire Property resulting in a mostly 90' tall, 8-story building. A height of 76 feet might work out well in the typical context of side-by-side medium density residential buildings on flat earth fronting just one street, but it is a wholly different matter on sloping ground where the building's increased exposure from the slope will be readily visible by the public on all sides; (Ex. 123A.)
2. GPM - The Opponent Party notes that the Neighborhood Enhancement Area calls for "compatible infill development" that is not achieved by the Project. The Opponent party also alleged that the Applicant did not address the GPM, and that

the OP argument that characterizes the “one-acre park planned for the Project as a ‘neighborhood enhancement’ is an absurdity” because the Site already includes what they allege is a park of the same size. (Ex. 123A.)

3. Citywide and Rock Creek East, Framework, and Historic Preservation Elements – The Opponent Party stated that the Project is not consistent with the Comprehensive Plan because its height and scale are in overpowering contrast to the surrounding neighborhood and to the larger context of its location amidst two historic districts. The Opponent Party argues that the Applicant and OP only make conclusory assessments of Comprehensive Plan policies and the Project’s consistency with those policies and that the Applicant and OP fail to address competing policies in the Comprehensive Plan. The Opponent Party notes that central to its objections to the size and scale of the Project is Urban Design Policy UD-2.2.5, which prescribes that “[n]ew construction . . . should respond to and complement the defining visual and spatial qualities of the surrounding neighborhood [and] [a]void overpowering contrasts of scale and height . . .”. (Ex. 123A.) The Opponent party further notes that numerous other policies . . . include language about the necessity for new developments to respect the character and needs of the surrounding neighborhoods. (See LU-1.4.1, LU-1.4.2, LU 2.4.5, UD-2.2.1, UD-4.2.4, HP-2.5.3, RCE-2.1.1; Ex. 123A.); and argues that there are multiple ways that a modest reduction in the size and scale of the Project could result in a satisfactory level of compatibility with the surrounding neighborhood. (*Id.*) The Opponent Party made a related argument that the Applicant’s analysis of the Framework Element is defective and states that a more complete and objective analysis of consistency with the Framework Element would assess whether a reduction in size and scale of Project along the lines proposed by the Opponent Party would or would not be more likely to result in an invigoration and enhancement of Takoma Park. The Opponent Party stated that Framework Element policies include § 219.7, which the Opponent Party stated closely echoes UD-2.2.5, reiterating that infill development should “respect the integrity of stable neighborhoods and the broader community context . . .” (*Id.*) The Opponent Party further contends that its major objections are not centered on any of the following attributes of the Project or the fact that these attributes advance Comprehensive Plan Policy Goals: (1) transformation of the 6.78 acres of WMATA Property adjacent to the Takoma Metro Station into a three-part combination of Bus Loop, mixed-use housing with ground floor retail; and 1.8 acres of open space; (2) a major increase in the availability of both market-rate and affordable housing in the neighborhood; (3) EYA’s tree preservation plans; (4) the increase in permeable surface on the Property; and (5) the Project’s energy efficiency goals. The Opponent Party’s position is that these and other worthy goals can all be furthered while not conflicting with the Policy goals that promote respecting the character and needs of the surrounding neighborhood. A modest reduction in the size and scale of the Project could result in a satisfactory level of compatibility with the surrounding neighborhood. The required Project adjustments are such that no

competing policy need be sacrificed in the process: the 1.8 acres of open space, the redesigned Bus Loop; the size and location of the new retail space, and all other identified Project amenities. At most what might be lost in the process is a relatively small number of market rate and affordable housing units. (*Id.*)

4. 2002 Takoma Central Business District SAP/Rock Creek East Area Element – The Opponent Party argues that the Comprehensive Plan, Action RCE-2.1.C, requires the Commission to review the SAP redevelopment guidelines in accordance with the updated FLUM and Rock Creek East Area Elements. What is contemplated by the Comprehensive Plan is that approval of the Project must be mindful of recommendations in the SAP and the Rock Creek Area East Elements, even as the proposed increased level of development anticipated in the FLUM is considered. The Opponent Party requests that the Commission reject, if only for this Property, the Applicant's attempt to characterize its massive building of over 11 acres of GFA, fully exposed on all sides, and rising to over 90' for most of its facades, as what the FLUM envisioned here. The Opponent Party also argues that the Application is inconsistent with the provision of the Rock Creek East element that provides that "the Plan specifies that development of the WMATA Property 'should maximize Metro access while taking care to provide appropriate buffers and transitions to adjacent uses.'" (§ 2211.4.) Further, the Application's discussion of the Takoma Central District Small Area Plan fails to reference all of the policies in the Rock Creek East Area Element bearing on redevelopment of the WMATA property. Specifically, Policy RCE-2.1.1: Historic Preservation in Takoma, is not mentioned. (§ 2211.5.) The Opponent Party also argued that Takoma Central District Small Area Plan "recommends more moderate density town house development at the site;" (Ex. 123A.)
5. The Commission made a related request that the Applicant review the 2002 Takoma Central District Small Area Plan to see if it recommends that five percent of new housing units on the site should go to households making no more than 30% MFI.
6. Historic Preservation Element – The Opponent Party argues that neither the Applicant nor OP has discussed compliance with the Historic Preservation Element in detail. The Opponent Party claims the Application is inconsistent with the following policies in the Historic Preservation Element of the Comp. Plan:
 - The Historic Preservation Element "[r]equires that 'full consideration' be given to concerns expressed in the SAP. Policy HP-1.1.3. 1003.6. That Policy also expressly recognizes the important role of 'community preservation groups in planning matters affecting historic preservation.'
 - In historic districts ...Policy HP-2.5.3 specifies that 'new construction' should be 'in scale with and respect their historic context through sensitive siting and design, and the appropriate use of materials and architectural detail.'"(Ex. 123A.)

B. Alleged potential adverse effects/impacts

1. The Opponent Party and persons in opposition raised concerns about several alleged adverse effects of the Project as follows:
 - Concerns about height and density of the Project, the impact of the height and density on neighborhood character, and compatibility with the historic district, and alleged insufficiency of setbacks to adequately mitigate;
 - Impact of the increased traffic and noise from the new driveway location on the directly adjacent neighbors, as well as more general impacts related to increased traffic and noise on the general vicinity of the Site;
 - Access to metro station and loss of commuter lot;
 - Neighbor at the topographical low point in neighborhood, concerned about runoff, asks for condition related to stormwater runoff;
 - Reduction of open space on site;
 - Insufficient setback between building and neighboring properties; and
 - Increased pollution.
2. The Commission believes, based on its review of the Site Plan attached to the DDOT report, that the Project will create an adverse impact on the residences located on Eastern Avenue near the combined vehicular entrance due to traffic and associated noise and pollution from the buses and vehicles entering and exiting the Site.
3. The OP Hearing Report and DOEE comments therein stated that the Project would have a significant negative impact on the tree canopy in the area. The DOEE comments requested that the Applicant provide more detailed information about the net tree loss as a result of the Project.
4. The Commission and OP requested more details on the pedestrian circulation in the courtyard because of concern about pedestrian/vehicular conflicts.

C. Public benefits

The Opponent Party alleged the Application did not demonstrate the claimed public benefits in the following categories:

1. Affordable housing/HANTA units – The Opponent Party alleged that there is no indication in the record about whether the Applicant intends to claim the HANTA units in the Project as a public benefit, and that the Commission should state that the HANTA units are not considered a public benefit of the PUD;
2. Superior design and architecture – The Opponent Party claimed the Applicant provides only a conclusory claim that the Project exhibits many characteristics of exemplary urban design, and that this is not sufficient;
3. Superior Landscaping and Open Spaces – The Opponent Party argued that the Applicant's claim it is replacing a "just a tree/lawned area" with an "engaging neighborhood-oriented park," is insufficient without a better comparison of the value of what is existing vs. what is being provided. The Opposition party argues

that the development will result in a reduction on vacant land, which necessarily reduces open space;

4. Site Planning and Land Use. The Opponent Party argued the Applicant should not get credit for site planning as a public benefit because the “Applicant claims this public benefit by comparing the current use of the Property with what is proposed. This is the wrong comparison because the benefit must be significantly greater than matter of right development;”
5. Streetscape Plans – The Opponent Party argued the Applicant should not get credit for streetscape plans as a public benefit because Applicant’s submission does not explain how what it is proposing for the streetscape is superior to matter of right development;
6. Environmental and Sustainability Benefits – The Opponent Party argued the Applicant should not get credit for some of the claimed environmental benefits because the development’s adjacency to Takoma Metro Station should not count as a public benefit because it would also be true of matter of right development of the site; and the Applicant claims rooftop solar as a public benefit, but does not state an amount, and therefore the benefit is not quantified or measurable;
7. Uses of Special Value – The Opponent Party argued the Applicant should not get credit for some of the claimed uses of special value because the Applicant states it has agreed to work with the community to identify art projects but does not identify what these projects are, and that this is a mere promise that needs to be further developed before it can count as a benefit; and
8. Comprehensive Plan - The Opponent Party argued the Applicant should not get credit for consistency with the Comprehensive Plan as a public benefit because the Applicant claims that the Project substantially advances the Comprehensive Plan but does not explain what “substantial advancement” will occur.

D. Relief required

The Opponent Party made three arguments about the relief required:

1. Height. The Applicant misrepresented the 76-foot height of the Project and its related impact on neighbors because of the topography of the site, and the fact the building height measuring point was taken from Carroll Street;
2. Height Act. The Applicant did not adequately explain how it is entitled to the 76-foot height, under the constraints of the Height Act limit, because it has not shown sufficient information; and
3. Density. The scale of the Project is greater than its 1.69 FAR suggests because the Project site also includes the bus turn around transit zone and the open space buffer zone, and if these were excluded the same building placed elsewhere on MU-5A zoned property would produce a FAR at the top end of that allowed in the MU-5A zone without a PUD. Therefore, the Applicant’s utilization of 1.69 of the allowable FAR is not an act of moderation in recognition of achieving neighborhood compatibility.

CONCLUSIONS OF LAW

Authority

1. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a Consolidated PUD consistent with the requirements of 11-X DCMR, Chapter 3 and 11-Z DCMR § 300, and a PUD-related map amendment pursuant to 11-X DCMR § 303.12.

Purpose, Flexibility, and Evaluation Standards

2. Pursuant to 11-X DCMR § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
 - (a) *Results in a project superior to what would result from the matter-of-right standards;*
 - (b) *Offers a commendable number or quality of meaningful public benefits; and*
 - (c) *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
3. Pursuant to 11-X DCMR § 303.11: *"The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission."*
4. Pursuant to 11-X DCMR § 303.12: *"A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD."*
5. Pursuant to 11-X DCMR §§ 304.3 and 304.4, in reviewing a PUD application the Commission must: *"Judge, balance, and reconcile the relative value of the of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case;"* and must find that the proposed development:
 - (a) *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - (b) *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
 - (c) *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
6. Pursuant to 11-X DCMR §§ 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*