

criteria: (a) Benefits shall be tangible and quantifiable items; (b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) Benefits may primarily benefit a particular neighborhood or area of the city or service a critical city-wide need; and (d) Monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided." Moreover, a PUD "may qualify for approval by being particularly strong in only one (1) or a few categories [of public benefits], but must be acceptable in all proffered categories and superior in many."

7. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b).) established the CP's purposes as:
 - (a) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
 - (b) to guide executive and legislative decisions on matters affecting the District and its citizens; and*
 - (c) to promote economic growth and jobs for District residents;*
 - (d) to guide private and public development in order to achieve District and community goals;*
 - (e) to maintain and enhance the natural and architectural assets of the District; and*
 - (f) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*
8. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)) (the "McMillan PUD"). In its decision affirming the Commission's approval of the McMillan PUD, the Court stated the following:

"The Comprehensive Plan is a 'broad framework intended to guide the future land use planning decisions for the District. *Wisconsin-Newark Neighborhood Coal. V. District of Columbia Zoning Comm'n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). '[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.' *Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous 'occasionally competing policies and goals,' and, '[e]xcept where specifically provided, the Plan is not binding.' (*Id.*) At 1167, 1168 (internal quotation marks omitted.) Thus 'the Commission may balance competing priorities' in determining whether a PUD is consistent with the Comprehensive Plan as a whole.' (*D.C. Library Renaissance Building/West End Library Advisory Grp. V. District of Columbia Zoning Comm'n*, 73 A.3d 107, 126 (D.C. 2013).) '[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they

are outweighed by other, competing considerations.” (*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016).)

Procedural and Jurisdictional Conclusions

9. A PUD application must adhere to certain procedural requirements. (11-X DCMR § 307.1; 11-Z DCMR §§ 205, 300, 400-08, 600-06, 700-707.) The Commission must hear any PUD in accordance with the contested case procedures of its Rules of Practice and Procedure. (11-X DCMR § 300.3.) The Commission has found and hereby concludes: (i) the Application satisfies the PUD application requirements, and (ii) the Applicant, OZ, OP, and this Commission have satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations. (FF 3-4.)
10. The Commission considered the argument raised at the hearing by Mr. Feiden of the Opposition Party that the notice requirements of the Zoning Regulations were not satisfied because written notice mailed to owners of property within 200 feet of the Property did not include owners of properties located in Maryland.

The Commission acknowledges that written notice was not mailed to property owners in Maryland within 200 feet of the Property.

The Commission notes that there is ample evidence in the record that the owners of property within 200 feet of the Property located in Maryland received actual notice of the hearing. This Project has been well known in the community for a very long time. The Applicant submitted a list of the extensive meetings before the hearing it held with Maryland officials, groups, and residents, including the Opposition party who raised the issue, and Maryland residents of Eastern Avenue who were within 200 feet and most likely to be directly impacted by the Project. (FF 55.) The Applicant posted notice of the hearing on the Property and advertised in the District of Columbia Register. (FF 3, 4.) Several Maryland neighbors clearly had actual notice of the hearing because they attended and participated in the hearing, including Mr. Feiden. (FF 53.)

The Commission voted to waive the requirements of 11-Z DCMR § 300.7 that the Applicant file a written notice of its intent to file the Application to owners of property within 200 feet of the Property for the properties located in Maryland. As well as the corresponding requirements of 11-Z DCMR § 300.11 to submit a list of the Maryland property owners to the Office of Zoning, and 11-Z DCMR § 402.1(d) that the Office of Zoning use that list to mail notice to those property owners in Maryland.

The Commission has the explicit authority to waive this alleged notice defect pursuant to 11-Z DCMR § 402.12, which authorizes the Commission to hold the hearing as scheduled despite a minor notice defect after a consideration of the nature and extent of the actual notice received by the parties and public from all sources, attendance, or lack thereof, at the public hearing, and the nature and extent of the construction and/or use involved in the application. The Commission also has the authority to waive the alleged defect pursuant to 11-Z DCMR § 101.9 which authorizes the Commission to waive any of the provisions

of Subtitle Z for good cause if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

The Commission believes that the notice defect is minor, and there is ample evidence of actual notice to the affected Maryland residents, some of whom attended and participated in the hearing, and the Applicant even met with some of them in person to discuss the Application prior to the hearing. The Commission further believes the type of construction and use was such that there was additional actual notice of the Application because the Property is located at a busy metro station where the neighbors were likely to see the signs notifying the public about the hearing. The Commission further concludes there is good cause for the waiver because of the extensive actual notice, and had the Commission not proceeded with holding the hearing as scheduled it would have prejudiced the Applicant's rights.

The Commission believes the Zoning Regulations cited above that require notice to property owners within 200 feet were only intended to apply to properties located in the District of Columbia and should not apply to properties in Maryland. The Commission notes that the longstanding practice has been for Applicants to provide the Office of Zoning with the list of property owners within 200 feet generated from the list of District of Columbia property taxpayers maintained by the District's Office of Tax and Revenue. It is the Commission's understanding that the District's Office of Tax and Revenue only maintains District of Columbia property taxpayer information and therefore could not generate a list of properties outside of the District of Columbia. The Commission nonetheless recognizes that the text of the rules themselves do not explicitly limit the notice requirements to just District of Columbia properties within 200 feet. For these reasons, the Commission believes granting the waiver was the appropriate decision in these factual circumstances.

11. The minimum area included within a proposed PUD must be no less than 15,000 square feet and all such area must be contiguous. (11-X DCMR § 301.) The Application satisfies these minimum area and contiguity requirements. (FF 6.)
12. The Application is subject to compliance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. (the "Act"). The Conditions of this Order require that the Project and the Applicant comply with the Act.

Evidentiary Standards

13. The Applicant has the burden of proof to justify the granting of the Application according to the PUD evaluation standards. (11-X DCMR § 304.2.) The Commission's findings in relation to a PUD must be supported by substantial evidence. (*See Howell v. District of Columbia Zoning Comm'n.*, 97 A.3d 579 (D.C. 2014).) Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support" the conclusions contained herein. (*D.C. Library Renaissance Project v. District of Columbia Zoning Comm'n.*, 73 A.3d 107, 125 (D.C. 2013).) The Applicant's filings, testimony, and expert witness presentations are credible and thorough and reasonably adequate to support the Commission's analysis and conclusions contained herein. Accordingly, the Applicant

has provided substantial evidence to demonstrate that the Project satisfies the relevant PUD evaluation standards and has carried its burden of proof sufficiently to allow the Commission to approve the Application.

14. The Commission is required to give “great weight” to the issues and concerns of the affected ANC. D.C. Code § 1-309.10(d)(3)(A). The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

The Commission has considered the written testimony from ANC 4B, which included proposed conditions of support. (FF 40.) The Commission concludes that the Applicant appropriately engaged in dialogue with the ANC 4B providing suggested revisions to ANC 4B’s conditions of support, and ANC 4B supports the Project with such conditions. (*Id.*) The Commission affords the requisite great weight to the ANC’s written submission with the conditions of support as agreed to by the ANC and Applicant.

ANC 4B requested that this Order include a condition requiring the Applicant engage in “ongoing efforts (not just efforts via the initial application or cycle) to seek participation in the ... (HANTA) program ...that will increase the percentage of residential square footage dedicated to income-restricted affordable housing to at least 33%.” (*Id.*)

In response to this issue, the Commission requested that the Applicant provide an update on the pending HANTA application at the public hearing and in its post-hearing submission. In response, the Applicant noted that it had been in regular contact with DHCD and anticipates approval of the HANTA application that will allow the Project to increase the number of affordable units (IZ and non-IZ units) to 33% of the total number of units (approx. 144 units). The 74 HANTA units would consist of 6 studios, 49 one-bedroom units, and 19 two-bedroom units. (FF 10 n.4.)

The Commission believes this is adequate to address the ANC’s concern about the HANTA application. The Commission has not included the requested condition because it believes the condition would not be effectively enforceable, and that relying on the Applicant’s good faith efforts thus far is sufficient.

15. The Commission is also required to give great weight to the written reports of OP. D.C. Code § 6-623.04. (11-Z DCMR § 405.8.)

The Commission found the recommendation and analysis in the OP Setdown Report persuasive and accordingly set the case down for a hearing and requested that the Applicant address the issues listed in the OP Setdown Report before the hearing. (FF 20-21, 35.)

The Commission also found the recommendation and analysis in the OP Hearing Report persuasive. (FF 36-37.) Specifically, OP recommended approval of the PUD with revisions to the condition language to further specify the Applicant’s LEED commitment for the Project, and to further limit parking space design flexibility. The Report further

recommended that the Applicant submit final plans that included all revisions required by HPRB.

OP's proposed condition language further specifying the Applicant's LEED commitment is incorporated into the conditions of this Order below.

With respect to OP's proposed language limiting parking flexibility, the Applicant proposed alternative language that captures the intent of OP's proposed revision in its final proffers and draft condition. The Applicant's alternative is acceptable to the Commission and is incorporated into the conditions of this Order below.

The Applicant submitted final plans approved by HPRB. (FF 61.)

The Commission gives great weight to OP's support of the Application and concurs with OP's conclusions and findings with respect to the Project's consistency with the Comprehensive Plan (and the Takoma Central District Plan), satisfaction of the PUD Balancing Test, and racial equity analysis.

Consistency with the CP and Public Policies (Subtitle X § 304.4(a).)

16. Based on the case record and the Findings of Fact above, the Commission concludes that the Project, including the PUD and related Zoning Map amendment, is not inconsistent with the Comprehensive Plan and with other public policies and active programs related to the Property. (FF 17, 32, 35-36, 55-56, 63.) In reaching this conclusion, the Commission balanced several competing policies:
 - a. The Commission concludes the Application is consistent with the Comprehensive Plan policies cited by the Applicant and OP and recited in this Order. The Commission found the Project was particularly strong because it advanced the following policies:
 - Comprehensive Plan – FLUM – The Project would not be inconsistent with the FLUM land use recommendation for the site, which encourages a mix of medium-density residential development, low density commercial development, and local public facility use on the site. The Project is for a medium density residential building with retail on the ground floor. The Project also includes improvements to the Takoma Metrorail station's Kiss and Ride and bus stop area;
 - Comprehensive Plan – GPM – The Project would not be inconsistent with the GPM's Neighborhood Enhancement Area designation. It advances the policy's guidance by improving an underutilized site with a building that provides 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 that would provide a space for community gatherings. The Project would also not be inconsistent with the small southern portion of the site designated Main Street Mixed Use Corridor on the GPM as it would enhance an underutilized corridor with redevelopment that supports transit use and enhances the pedestrian environment;
 - Comprehensive Plan – Land Use Element – The Project furthers at several policies of the Land Use Element (Policies LU-1.4.1, 1.4.2, 1.4.3, 1.4.4, 1.4.5, 1.4.7, 2.1.8, 2.2.4, 2.4.5.) The Project furthers these Policies by providing housing near a

Metrorail station. It would also transform the station area into a neighborhood center by replacing a surface parking lot with a mixed-use building, neighborhood-focused retail plaza, and a community park. As a mixed-use project the development's location near a Metrorail station should encourage more non-auto transportation to the site;

- Comprehensive Plan – Transportation Element – The Project furthers several policies of the Transportation Element (Policies T-1.1.4, 1.1.5, 1.2.3, 1.3.A, 2.3.1, 2.3.3, 2.4.1.) The Project would provide a transit-oriented development in close proximity to the Takoma Metrorail station and includes considerable bicycle and pedestrian improvements. The Project proposes a new pedestrian/bike shared use path and bicycle facilities. Furthermore, the building itself with its residential units and pedestrian-oriented retail near a Metrorail station encourages non-auto transportation to the site;
- Comprehensive Plan – Housing Element – The Project furthers several policies of the Housing Element (Policies H-1.1.2, 1.1.3, 1.1.4, 1.1.8, 1.2.3, 1.2.7.). The Project would replace an underutilized parking lot with a mixed-use development that includes 430-440 residential units. Approximately 70 of these units would be affordable through the IZ program. The affordable units would include units dedicated to households earning 60% MFI and 30% MFI or below;
- Comprehensive Plan – Environmental Protection Element – The Project furthers several policies of the Environmental Protection Element (Policies E-3.2.3, 3.2.6, 3.2.7, 4.1.2, 4.2.1, 4.4.1, 5.1.5.) The site's location adjacent to the Metrorail station should result in many of the new residents and visitors opting not to use a vehicle. The Project will be designed to achieve LEED Gold certification. On the roof, solar panels will be installed on the top roof levels and green roof areas will be installed on the lower roof levels. Tree preservation is an important component in the design of open space. The Applicant has committed to preserving as many healthy trees as possible on the site, which includes relocating Heritage Trees;
- Comprehensive Plan – Economic Development Element – The Project furthers policies of the Economic Development Element (Policies ED-2.2.3, 2.2.9.) Along with the new residential units the Project would add 15,000 – 18,000 square feet of high-quality retail/service space to this currently underutilized site. This retail/service space would be located along the high foot traffic area along Carroll Street, N.W. that leads to the Metrorail entrance. Providing retail in this location would also connect the Takoma DC and Takoma Park, MD retail core with the Takoma retail area along 4th Street, N.W. The retail/service space would also provide opportunities for local employment;
- Comprehensive Plan – Urban Design Element – The Project advances several policies of the Urban Design Element (Policies UD-2.1.4, 2.1.7, 2.2.1, 2.2.5, 2.3.1, 2.4.1, 3.2.2, 3.3.2, 4.1.3, 4.1.4, 4.2.2, 4.2.4.) OP stated that the Project would connect the Takoma Metrorail station entrance to a mixed-use building with a retail plaza. This retail plaza will be activated by the ground floor retail in the new residential building. The building would also have features that significantly engage the pedestrian experience along the plaza, such as having storefront windows. Each side of the building would have a massing and scale that reflects

the scale of the adjacent properties. The Project's community park and retail plaza would provide an outdoor gathering space and community play space for the neighborhood;

- Comprehensive Plan – Parks, Recreation and Open Space Element – The Project advances at least one policy of the Parks, Recreation and Open Space Element (Policy PROS 4.3.3.) A key component of the Project is providing public open space to the community for passive recreation use; and
 - Comprehensive Plan – Rock Creek East Area Element - The Project advances several policies of the Rock Creek East Area Element (Policies RCE-1.1.3, 1.1.7, 2.1, 2.1.3, 2.1.4, 2.1.C, 2.1.D.) The Project would provide a multi-family building with affordable units adjacent to the Takoma Metrorail station. The Project will also fill in the gap in retail along Carroll Street, N.W. at the Metrorail station by providing 15,000 - 18,000 square feet of retail along Carroll Street, N.W. The Project will also fulfill the Rock Creek East Area Element's recommendation for a Village Green by providing a large public open space.
- b. The Commission carefully considered whether the Application is inconsistent with the text of the Comprehensive Plan and other policies cited by the Opponent Party. The Commission will address each below:
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;

Commission's Response: The Commission does not need to compare the Project to what would be possible under other zones. The Project's 1.69 FAR is within the guidelines for the components of the Property's Mixed Use Medium Density Residential/Low Density Commercial designations, which both have FLUM descriptions that list typical density ranges and consistent zone districts. The 1.69 FAR is also not inconsistent with the guidelines for the Property's Local Public Facilities designation as its FLUM description does not list typical density ranges and consistent zone districts. Heights are not explicitly mentioned in the FLUM descriptions. The height is within the range contemplated by the RA-3 Zone mentioned in the Medium Density Residential designation FLUM description, and not much taller than the maximum permitted under the MU-4 mentioned in the Low-Density Commercial designation FLUM description. The Commission acknowledges that the Project will appear taller than the measured height because of the topography of the Site and the change in grade, but it concludes the appropriate measurement of height, that is the

zoning height, for analyzing Comprehensive Plan consistency was calculated from a building height measuring point in compliance with the Zoning Regulations;

2. GPM – The Opponent Party notes that the Neighborhood Enhancement Area calls for “compatible infill development” that it claims 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;

Commission Response: The Commission disagrees that this is not a compatible infill development as called for in Neighborhood Enhancement Areas. While the Project is denser than much of the surrounding development, this is consistent with the FLUM guidance for the Site, which calls for a denser node of development in close proximity to the existing Metrorail station. While the Project’s density is greater than much of the surrounding development, it also is surrounded by thoughtfully designed open space which provides sufficient buffering. In addition, the higher activity level of the Site is driven in large part because it is already a very active Metrorail station. The Commission disagrees that the Applicant did not address the GPM as the Applicant’s submissions to the case record describe the Property’s GPM designations (Neighborhood Enhancement Area and Main Street Mixed Use Corridor) and provide analysis for why the Project is not inconsistent with these designations. While it is true that the Site currently functions as community open space, the owner of the property is under no obligation to continue this use in the future. Significantly, the Project includes Community Park open space and, as a public benefit of the Project, the Applicant has agreed to record a permanent public use easement to ensure that the space is public and maintained by the Applicant;

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 . . .”. 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.); 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. 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 ..." 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. 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 modest reduction in the size and scale of the Project could result in a satisfactory level of compatibility with the surrounding neighborhood, at most what might be lost in the process is a relatively small number of market rate and affordable housing units;

Commission Response: The Commission interprets the CP policies cited by the Opponent Party as saying essentially the same thing, that new construction should be of a scale and height that suits the visual and spatial context of the neighborhood. The Commission disagrees with and rejects the Opponent Party's suggestion that consideration of an alternative Project of smaller scale with less housing units (and/or an alternative MU-4A PUD related map amendment) is required so that no competing CP policy objectives are sacrificed in the CP consistency evaluation process. The Commission is not required to consider alternative projects that are not before it, rather the Commission is charged with evaluating whether the proposed Project is not inconsistent with the CP, on the whole, when its competing policy objectives are considered and weighed. The Commission recognizes that the Project is taller and denser than the surrounding buildings but believes that this height and density is appropriate because the FLUM calls for more intense uses on the Site because it is a large parcel adjacent to a Metrorail Station, and the Project includes sufficient open space to buffer surrounding properties so that it does suit the visual and spatial context of the neighborhood. To the extent that the Project is

inconsistent with the Opponent Party cited CP policies, the Commission believes they are outweighed by the density guidance of the FLUM, and by other CP policies that support density bonuses for affordable housing (H-1.2.7.), promoting increased density for housing, particularly near Metrorail stations (LU-1.4.C, H-1.1.2, H-1.1.3, H-1.1.4, H-1.2.7.), providing retail/service space on an underutilized site at a Metrorail station (ED-2.2.3, 2.2.9.), providing common open space (PROS 4.3.3.), and providing activated ground floor retail plaza space and community play space (UD-2.3.1, 3.3.2, 4.2.2.);

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 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 (what the Opponent Party describes as) 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, and that there were other policies that were not addressed by the Applicant. The Opponent Party also argued that Takoma Central District Small Area Plan "recommends more moderate density town house development at the site." At setdown, 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.

Commission Response: The Commission acknowledges that the Project is significantly taller and denser than the townhouse and garden style apartment development envisioned in the Takoma SAP. However, the Commission believes that this guidance has been superseded by changes to the Comprehensive Plan in the 20+ years since the Takoma SAP was adopted, and that this newer guidance outweighs the inconsistency. Since the Takoma SAP was adopted, 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 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.” (See 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.” (See 10A DCMR § 2503.1.) The Commission concludes that this guidance is important in the context of the Takoma SAP and the Project, 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 Commission believes that the additional density called for in the FLUM, and other more recently adopted policies supersede the guidance of the Takoma SAP that call for lower intensity development of the Site. Accordingly, the Commission disagrees with the Opponent Party’s assertions that the Applicant failed to adequately respond to policies in the Rock Creek East Area Element that cite Takoma SAP guidance specific to development of the Site.

With respect to the Commission’s question related to whether the Takoma SAP recommends that 5% of new housing units go to households making less than 30% of MFI, the Commission is satisfied with the Applicant and OP’s responses that there is no such requirement in the Takoma SAP.

5. 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;’ 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.’ (Subtitle §1014.9.)

Commission Response: With respect to the first policy, the Commission believes the Project does give full consideration to the concerns expressed in the Takoma SAP. The Commission further believes for the reasons discussed above the guidance in the Takoma SAP relating to a townhouse development on the Site has been superseded by subsequent Comprehensive Plan amendments that direct for higher density development on the Site to advance other important policies. The Commission also acknowledges the Applicant’s coordination with the D.C. Historic Preservation Office in furtherance of efforts to develop a Project design that respects the historic architecture and influence within the neighborhood.

With respect to the second policy, the Commission believes the Project is in scale with and respects the historic context of the Site, notwithstanding the fact that the Project is larger than the surrounding buildings. This is because the Project includes generous setbacks and is sensitively designed, including appropriate use of materials and architectural detail to lessen impacts on surrounding properties.

For both cited Historic Preservation Element policies, the Commission also agrees with the Applicant that the language is worded in non-mandatory terms, and that to the extent the Project is inconsistent with the language, this policy guidance is outweighed by other CP policies that support density bonuses for affordable housing (H-1.2.7.), promoting increased density for housing, particularly near Metrorail stations (LU-1.4.C, H-1.1.2, H-1.1.3, H-1.1.4, H-1.2.7.), providing retail/service space on an underutilized site at a Metrorail station (ED-2.2.3, 2.2.9.), providing common open space (PROS 4.3.3.), and providing activated ground floor retail plaza space and community play space. (UD- 2.3.1, 3.3.2, 4.2.2.)

- c. OP identified a potential CP inconsistency in its Hearing Report, namely that 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.”

Commission Response: The Commission agrees with OP that the Project is inconsistent with this policy because it involves the removal of so many trees. However, the Commission notes that this is mitigated by the fact that the Applicant is taking care to preserve and plant so many trees on the Site. The Commission further agrees with the OP that this inconsistency is outweighed by the many ways the Project advance’s other themes of the Environmental Protection Element (listed in the OP Hearing Report summary at FF 36.)

- d. The Commission concludes that the ways in which the Project advances the CP policies discussed in section (a), far outweigh the inconsistencies and potential inconsistencies with the CP policies discussed in sections (b), and (c), above.
- e. Racial Equity – Pursuant to 10A DCMR §§ 2501.4-2501.6 and 2501.8, the Commission is tasked with evaluating the Application’s consistency with the Comprehensive Plan through a racial equity lens. The Comprehensive Plan Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (10A DCMR § 213.6.) Further, “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development, and employment opportunities.” (10A DCMR § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (10A DCMR § 213.9.) In addition, 10A DCMR § 2501.8 suggests to prepare and implement tools to use as a part of the Commission’s evaluation process. Consistent with Comprehensive Plan guidance, the Commission utilizes a Racial Equity Analysis Tool in evaluating zoning actions through a racial equity lens; the Commission released a revised Tool on February 3, 2023. The revised Tool requires submissions from applicants and the Office of Planning analyzing the zoning action’s consistency with the Citywide and Area Elements of the Comprehensive Plan, and Small Area Plans, if applicable (Part 1); a submission from applicants including information about their community outreach and engagement efforts regarding the zoning action (Part 2); and a submission from the Office of Planning including disaggregated race and ethnicity data for the Planning Area affected by the zoning action (Part 3).

The Commission concludes that the Project is not inconsistent with the Comprehensive Plan overall when evaluated through a racial equity lens. The Commission reaches this conclusion based on the case record, which includes:

- The Applicant and OP’s racial equity analysis submissions, required by Part 1 of the Commission’s revised Racial Equity Tool;
- The Applicant’s community outreach and engagement submission, required by Part 2 of the Tool; and
- The disaggregated race and ethnicity data for the Rock Creek East Planning Area provided by OP, required by Part 3 of the Tool. (FF 32, 35-36.)

The Commission concludes that the racial equity analyses provided by the Applicant and OP address the components of the Commission’s Racial Equity Tool.

The Commission further concludes that the Project will further Comprehensive Plan policies related to racial equity. The outcomes of the Project have the potential to positively impact racial equity through substantial improvements in housing, affordable

housing, retail and service amenities, and environmental sustainability. Of the many substantial benefits of the Project, perhaps the most important is the over 400 new units of housing that will be provided, of which approximately 70 will be devoted to affordable housing at the 30% and 60% MFI levels of affordability. The Project will contain six 3-bedroom units that will all be devoted to households earning no more than 30% MFI. Through the proposed ground-floor retail and service program, the Project will bring desired neighborhood-serving retail and service uses to Rock Creek East residents, which will also strengthen the Takoma Park business district on both sides of the District / Maryland border. Finally, another major aspect of the Project that contributes to advancing racial equity is the new 1.8-acre open space. The open space will be open to the public for small day-to-day recreation and larger community events, and will contain play equipment for local children, and public art created by local woman or women of color. In addition, the Project will not displace any existing residents as there is currently no residential use on the Site. (*Id.*)

The Commission is satisfied with the community outreach and engagement performed by the Applicant. The Applicant provided evidence in the case record to demonstrate that it engaged in outreach with the community and community stakeholders/organizations regarding the Project, including ANC 4B, the ANC 4B Housing Justice Committee, Single Member District's ANC 4B01, 4B02, and 4B07, the Takoma Park neighbors, Maryland residents along Eastern Avenue, and Old Takoma Business Association. Based on the input received through its outreach and engagement efforts, the Applicant made adjustments to the Project design and to its affordable housing proffer to respond to community input, as detailed in FF 32.

Moreover, the Commission notes that the disaggregated race and ethnicity data for the Rock Creek East Planning Area provided by OP showed several trends. 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. In addition, the data showed that more than half of Planning Area residents (56.2%) owned their homes for the period of 2017-2021, a much higher percent than Districtwide (41.5%) for the same period. The Planning Area also had a lower cost burdened percent of households (33.3%) for the 2017-2021 period than Districtwide (36.1%); this indicates that Rock Creek East is one of the more affordable neighbors to purchase a home in the District. The Commission is encouraged that the Project's 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 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. (FF 35-36.)

Potential Adverse Impacts – How Mitigated or Outweighed (Subtitle X § 304.4(b).)

17. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts, and that any potential adverse impacts are favorable, capable of being mitigated, or are acceptable given the quality of the Project's proffered public benefits. (FF 12-14, 19-21, 25, 27-29, 32, 35-37, 47, 55-56.)

A number of potential adverse effects were identified in the record. (FF 63.)

- The Opponent Party raised concerns about several alleged adverse effects of the Project:

- Concerns about height and density of the Project, and alleged insufficiency of setbacks to adequately mitigate the adverse effects on neighboring properties, and on neighborhood character, and compatibility with the historic district.

Commission Response: The Commission acknowledges that the Project is taller and denser than surrounding properties, and this creates potential adverse effects and impacts. The Commission also acknowledges that because of existing topography and change in grade, the building will seem taller. However, these effects and impacts are mitigated by the thoughtful design of the Project, which includes extensive setbacks and buffering, as well as thoughtful building design, and landscaping and hardscaping that sufficiently mitigate these effects and impacts so that they do not rise to an unacceptable level;

The Commission is satisfied with the evidence the Applicant presented showing that the Project building height complies with the Height Act, with the caveat that the Mayor, not the Commission is the ultimate arbiter of Height Act compliance;

With respect to bulk and scale, the Commission notes that while the building is large and bulky, it is located on a large lot that includes open space and setbacks that mitigate the potential adverse effects and impacts of the bulk and scale. The building's 1.69 FAR is well below the maximum contemplated on the FLUM for the Site; and

The Commission believes that this is a very unique site and the Project responds well to the neighborhood context, such that it does not adversely impact neighborhood character, or compatibility with the historic district;

- 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;

Commission Response: The Commission believes the Project will have an adverse impact on the residences located on Eastern Avenue, particularly on those located near the combined vehicular entrance due to the traffic, and associated noise and pollution from the buses and vehicles entering and exiting the Site;

The Commission further believes that the induced vehicular demand created by the Project will have adverse effects on nearby traffic, availability of on-street parking, and increased noise and pollution;

The Commission concludes that the mitigation measures proposed by the Applicant are sufficient to prevent these from becoming unacceptable, and that public benefits of the Project justify the adverse effects;

- Access to metro station and loss of commuter lot;

Commission Response: The Commission believes that this is an adverse effect of the Project, but it is partially mitigated by the inclusion of adequate Kiss and Ride spaces and handicap accessible spaces in the Project, as well as the Project's integrated and enhanced multi-modal transit facilities, streetscape and pedestrian safety improvements, and improved bicycle and pedestrian shared path access. The Commission believes that the loss of the commuter lot does not rise to the level of an unacceptable impact, and that the public benefits of the Project justify the adverse effects;

- Neighbors at the topographical low point in neighborhood expressed concerns about stormwater runoff and asked for a condition related to stormwater runoff;

Commission Response: The Commission believes the Project will not have an adverse effect related to stormwater runoff;

The existing site area is approximately 50% impervious surfaces and has minimal stormwater management controls to treat or to slow down stormwater exiting the property. After development of the Project, approximately 69% of the site area will be impervious, so the Commission understands the neighbors' concern.

However, the development of the Project will include the installation of numerous bioretention facilities and extensive and intensive green roof areas that will allow the PUD Project to meet all DOEE stormwater standards and regulations, on a site that currently has minimal stormwater management controls to treat or to slow down stormwater exiting the property. The Project improves runoff over current conditions for all levels of storms.

The Commission therefore concludes that the Project will not create an adverse impact related to stormwater runoff and in fact will be a significant improvement. For these reasons, the Commission does not believe a condition related to stormwater runoff is necessary;

- Reduction of open space on site, and a related concern that the open space will be privately owned and therefore not accessible to the public;

Commission response: The Commission does not believe that the Project will in fact result in a reduction in open space on the Site, because much of what the opponents are counting as "open space" is in fact a lightly used parking lot. However, assuming for the sake of argument that the large existing surface parking lot on the Site is "open space", the Commission believes that the reduction in the amount of "open space" is mitigated by the ways in which the Project will improve the quality of the open space provided. The Commission further believes that the Project's open space, while privately owned, will be permanently open to the public, and therefore should count as open space. The Commission concludes that the public benefits of the Project outweigh any adverse effects related to a reduction in existing "open space.";

- Insufficient setback between building and neighboring properties.

Commission Response: The Commission carefully studied the plans, particularly the Applicant's and DDOT's Site Plans (FF 39.) showing the setbacks from the neighboring properties on Eastern Avenue. The Commission notes that the building is oriented, so the greatest amounts of buffering and open space are arranged to buffer these adjacent properties, and that the Project's landscape plan includes extensive plantings to further buffer the impact. Nonetheless, the Commission recognizes that the height and bulk of the Project, and the fact that the primary driveway access point is on Eastern Avenue creates adverse impacts on neighboring properties. The Commission believes these impacts, while significant, are sufficiently mitigated that they are not unacceptable. The Commission notes that the Applicant stepped down the building closest to Eastern Avenue and the building is buffered by a large green space along Eastern Avenue. (FF 32.) The Commission further concludes that the public benefits of Project justify these adverse effects;

- Increased pollution;

Commission Response: Pollution related to increased vehicular traffic is addressed above. Regarding general pollution, the Commission believes the Project will contribute to pollution, but that this is adequately mitigated such that it is not an adverse effect of the Project. Specifically, the Project will provide a number of environmental benefits, including the installation of numerous bioretention facilities and extensive and intensive green roof areas, on a site that has minimal stormwater management controls to treat or to slow down stormwater exiting the Property, and the Project will be designed to achieve LEED Gold certification pursuant to the LEED B+C: Multifamily Midrise v4 standards. Solar Panels will be provided on top roof levels and green roofs will be provided on lower levels. The Project removes a large surface parking lot with virtually no stormwater management controls and provides a new development immediately adjacent to Metrorail and Metrobus facilities, reducing dependency of auto uses for residents, employees and visitors to the Project;

- The OP Hearing Report and DOEE comments 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 net tree loss as a result of the Project.

Commission Response: The Commission notes that the Applicant provided additional information about the net tree loss as a result of the Project. (FF 55.) The Commission believes that the loss of trees is an adverse impact of the Project. The Commission concludes that the Applicant's tree plan mitigates some of the impact, but not all of it. The Commission concludes these impacts are acceptable given the quality of the public benefits of the Project.; and

- Pedestrian/vehicular conflicts between the Project, pedestrian courtyard, bus loop and Metro access.

Commission response: At setdown, the Commission requested more details about pedestrian circulation in the courtyard because of concern about pedestrian/vehicular conflicts. In response, the Applicant provided additional diagrams that more clearly show the use of pedestrian crossing points, bollards, and signage, and stated that there will be a secondary entrance for residents to the wing of Carroll Street, N.W. side of the building. After reviewing the supplemental information, the Commission is satisfied that the proposed pedestrian circulation plan is sufficient to mitigate this potential adverse impact.

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

18. The Commission concludes that the Project includes specific public benefits and amenities that are not inconsistent with the Comprehensive Plan or other policies relevant to the PUD Site pursuant to 11-X DCMR §§ 304.4(c), and 305. The Commission evaluated the benefits proffered by the Applicant and concludes as follows: (FF 10, 12-13, 15, 20, 24-25, 27, 32, 35-36, 54-55, 56, 63.)

- a. The Commission believes the Application has demonstrated public benefits in several of the categories under 11-X DCMR § 305.5 (FF 25.) and for the reasons set forth above. The Commission further believes that the Project's contribution of affordable housing, permanent dedicated community open space, a commitment to providing public art, and the community engagement process that accompanied this PUD process all exceed what would be provided under matter-of-right standards. The Application is also particularly strong in proffered public benefits in the area of site planning. The Project takes a significantly underutilized site and creates a thoughtfully planned, community-oriented development. The Property's current use as a large surface parking lot, with conflicting bus, car, pedestrian, and bicycle infrastructure is inefficient and outdated. By contrast, the Project will create a safe, efficient development with integrated multi-modal transit facilities, large open spaces to serve the community, and focuses on new housing and retail uses immediately adjacent to Metro;
- b. The Commission concurs with the recommendation of OP that the impacts of the Applicant's requested zoning flexibility are outweighed by the Project's benefits of furthering the District's efforts towards meeting its housing and land use goals by redeveloping an underutilized site with a mixed-use development that would provide a significant amount of housing, including affordable housing, and retail near a Metrorail station, and that the benefits provided would balance the flexibility requested;

Opponent Party Arguments Regarding Public Benefits

The Opponent Party made several arguments regarding the Project's public benefits;

- c. The Opponent Party alleged that there is no indication in the record about whether the Applicant intends to claim the HANTA affordable housing units in the Project as a public benefit;

Commission Response: The Applicant clarified that it could not guarantee it would qualify for the HANTA units, so it was not proffering them as a public benefit of the PUD. The Commission therefore did not count the HANTA units as a public benefit for purposes of the PUD balancing test. The Commission nonetheless recognizes that the possibility of the Project including this additional affordable housing is commendable;

- d. The Opponent Party claims the Applicant provides only a conclusory claim that the Project exhibits many characteristics of exemplary urban design, and that this is not sufficient;

Commission Response: The Commission disagrees with this assertion and instead agrees with the analysis that the Office of Planning provided in its hearing report (FF 36.), stating that 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 Commission therefore concludes that the Applicant has demonstrated superior urban design;

- e. The Opponent Party argues 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 versus what is being provided, and a related claim that the development will result in a reduction on vacant land, which necessarily reduces open space;

Commission response: The Applicant provided supplemental information about the landscaping and open space at the hearing and in its post-hearing submission. (FF 55.) The Commission notes that the Opponent Party is at times claiming that the surface parking lot on the Site is "open space." The Commission does not believe the parking lot should count as open space, even if it is underutilized for its intended purpose. The Commission concurs with the analysis provided by the OP that concludes that 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. 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;

- f. The Opponent Party contended that the Applicant should not get credit for the site planning, streetscape plans, and environmental and sustainability benefits as public benefits of the Project because the Applicant had not demonstrated the Project was superior to a matter of right development in those areas;

Commission response: The Commission concludes that the site planning, streetscape plans, and environmental and sustainability benefits listed in FF 25 are public benefits and amenities of the Project, including site because it believes they are superior to what would be required as a matter of right, which is a somewhat subjective standard. With respect to Site Planning, the Commission believes the Project is exemplary in the way that it strengthens the network of open and accessible gathering spaces in the Takoma neighborhood by creating a high-quality transit-oriented design with an emphasis on bicycle and pedestrian access; connects the retail corridors of Takoma DC and Takoma Park, MD along Carroll Street, N.W.; and creates clearly defined development zones on the Property (transit zone, building zone, and open space/buffer zone). In doing so, it creates a safe, efficient development with integrated multi-modal transit facilities, large open spaces to serve the community, and focuses on new housing and retail uses immediately adjacent to Metro. Similarly, the Commission believes the streetscape plans are a public benefit because they will be superior to what is required as a matter of right. The Commission notes that the Project will include improvements to the streetscape along Carroll Street, Cedar Street, and Eastern Avenue, in accordance with DDOT standards. DDOT commented that these will include extensive pedestrian improvements around the Property and at the Carroll Street intersection with the WMATA bus-loop, including the signalization, curb extensions and installation of the missing crosswalk on the east leg of Carroll Street. The Commission further believes the environmental and sustainability features should count as public benefits. The Project will be designed to achieve LEED Gold certification pursuant to the LEED B+C: Multifamily Midrise v4 standards and will include installation of numerous bioretention facilities and extensive and intensive green roof areas, on a site that has minimal stormwater management controls to treat or to slow down stormwater exiting the property. The Commission notes that the Applicant did not claim proximity to the Metro station or solar panels as public benefits of the PUD. Nonetheless, if it had chosen to do so, the Commission would consider the Project's proximity to Metro to be an environmental public benefit because of the way the Project integrates such a large amount of housing in a location proximate to transit. Similarly, the Commission considers the Project's use of solar panels to be an environmental public benefit, even if the amount was not explicitly stated in the record, because the Applicant stated that it required flexibility on this issue because of several competing concerns related to the roof of the building. The Commission did not consider the Project's proximity to Metro or its

inclusion of solar panels as environmental public benefits. However, for the reasons stated above, the Commission concludes that the Applicant's proffered site planning, streetscape plans, and environmental and sustainability benefits qualify as public benefits because they benefit the surrounding neighborhood to a significantly greater extent than would likely result from development of the Site under the matter-of-right provisions of the Zoning Regulations, and therefore meet the standard of public benefits under 11-X DCMR § 305.2;

- g. The Opponent Party asserted that the Applicant's promise to work with the community to identify and select art projects to include in the Project should not count as a use of special value because the Applicant has not identified what those projects will be, and therefore it is a mere promise that needs to be further developed before it can be properly assessed;

Commission Response: The Applicant has agreed to work with the Takoma community and ANC 4B to identify and create art projects as part of the PUD with the goal to include art from local women or women of color and participatory or playable art in the open spaces. This Order includes a condition requiring the Applicant to show that it has done so in order to receive a certificate of occupancy for the Project. The Commission believes it is commendable that the Applicant has sought community input for this feature, and believes the condition is sufficient to ensure that it is actually performed. When evaluating the value of art, the Commission is aware that "beauty is in the eye of the beholder" and is always hard to quantify. The Commission therefore believes that the Applicant has done enough to show that its commitment qualifies as a public benefit of the Project; and

- h. The Opponent Party asserted that 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 Comprehensive Plan but does not explain what "substantial advancement" will occur;

Commission Response: The Commission believes this Project is truly exceptional in the ways in which it advances so many policies of the Comprehensive Plan, as discussed in detail herein, and therefore qualifies as providing a public benefit in this category.

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

19. Based on the case record, the Findings of Fact, and the Conclusions of Law above, the Commission concludes that the Application satisfies the PUD balancing test under 11-X DCMR § 304.3 because it concludes the value of the Application's public benefits sufficiently outweigh the requested zoning and design flexibility as well as any potential adverse impacts that are not capable of being mitigated. (FF 10, 23-24, 32, 35-36, 47, 55-56.)

- a. The Commission concludes that the Applicant's proffered public benefits and amenities collectively advance the major themes and objectives of the CP and are commendable. The Commission's analysis of the public benefits is above Conclusions of Law 18.
- b. The Opponent Party alleged the Applicant was misrepresenting the zoning flexibility required for the Project because:
 - 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;
 - The Applicant did not adequately explain how it was entitled to the 76 foot height, under the constraints of Height Act limit, because it has not shown sufficient information; and
 - The scale of the Project is greater than its 1.69 FAR suggests because the Project site 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 allowable FAR is not an act of moderation in recognition of achieving neighborhood compatibility.

Commission Responses:

- The Applicant acknowledged the topography of the Site and that it would result in a building that appeared taller than the 76-foot building height, and the Commission agrees. The Commission believes that the appropriate measure of the height of the building when assessing a zoning application is the zoning height, and the zoning height was calculated from a building height measuring point in accordance with the Zoning Regulations. The Commission nonetheless considered that the building will feel taller than the 76-foot height in its assessment of the Application;
 - The Applicant provided additional information to support its claim that the Project height complied with the Height Act. The Commission reviewed this information and believes it is sufficient to show that the Project complies. However, the Commission further states that the Mayor is the ultimate arbiter of whether the Project complies with the Height Act when it reviews the building permit application; and
 - The Applicant argued that it appropriately aggregated FAR across the Site in accordance with the calculation rules of the Zoning Regulations. The Commission agrees with the Applicant that the proper way to assess the scale of the building is a FAR calculation in accordance with the rules established by the Zoning Regulations;
- c. The Commission concludes that the requested PUD-related map amendment of the Property from the NC-2, MU-4 and RA-1 zones to the MU-5A zone is appropriate because:

- The Project's height of 76 feet is appropriate for the Site given the Project's buffering of surrounding uses, thoughtful design; the Project's density is within the range of matter-of-right guidance for the individual components of the Site's FLUM designation; and the Project's uses are appropriate for the Site; and
 - The Project is a high-quality development that is superior to what could be constructed on the Property as a matter-of-right via the underlying zoning. The Project public benefits and amenities are meaningful and commendable both in number and quality. Finally, the Project advances the public health, safety, welfare and convenience, and is not inconsistent with the Comprehensive Plan or other adopted public policies applicable to the Property;
- d. The Commission further concludes that the requested zoning flexibility, specifically the PUD-related map amendment to the MU-5A Zone District, is appropriately balanced by the value of the proffered benefits and amenities resulting from the Project, and any adverse effects or impacts of the Project. The Commission notes that the Application did not request any zoning relief from the development standards of the Zoning Regulations;
 - e. The Commission concludes that the requested design flexibility is appropriate for the Project and is balanced by the value of the proffered benefits and amenities resulting from the Project, and any adverse effects or impacts of the Project; and
 - f. The Commission's analysis of the potential adverse effects/impacts of the Project is at Conclusions of Law 17.

DECISION

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

A. PROJECT DEVELOPMENT

1. The Project shall be constructed in accordance with the plans and materials dated May 25, 2023 (Ex. 38A1-38A17.), as modified in the materials presented to the Zoning Commission on June 15, 2023 (Ex. 222.) and as modified by the plans submitted to the Commission on August 14, 2023 (the "Final Plans"). (Ex. 240A1-240A18.) The Applicant shall have flexibility from the Final Plans in the following areas:
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the Project as shown on the Final Plans;

- b. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction, without reducing the quality of the materials, provided such colors are within the color ranges shown on the Final Plans; and to make minor refinements to exterior details, dimensions and locations, including curtainwall mullions and spandrels, window frames and mullions, glass types, belt courses, sills, bases, cornices, balconies, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or to address the structural, mechanical, design, or operational needs of the building uses or systems;
- c. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the Project as shown on the Final Plans; examples of exterior details include, without limitation, retail signage and storefronts, doorways, canopies, railings, and skylights;
- d. To provide a range in the number of residential units in the Project of plus or minus five percent relative to the number depicted on the Final Plans, subject to the housing requirements of Condition No. B.1;
- e. To make refinements to the approved parking configuration, including layout and number of parking spaces of minus 10%, provided the number of parking spaces maintains a ratio of no more than 0.3 spaces per residential unit;
- f. To vary the design of the public space surrounding the Property and/or the selection of plantings in the landscape plan depending on seasonal availability within the range and quality as proposed in the Final Plans or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, DOB, or other applicable regulatory bodies and/or service to the Property from utilities;
- g. To vary the amount, location and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the Project achieves a minimum GAR required by the Zoning Regulations;
- h. To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the Project does not decrease below the minimum required for LEED Gold certification under the LEED B+C: Multifamily Midrise v4 standards.
- i. To vary the final design and layout of the mechanical penthouses to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Final Plans and remain compliant with all applicable penthouse dimensional requirements of the Zoning Regulations; and

- j. To vary the final design and size of the sculptural playspace included within the Community Park space, in coordination with public input.
2. The Property shall be subject to the requirements of the MU-5A zone.

B. PUBLIC BENEFITS

1. **For the life of the Project**, the Project shall provide housing, including affordable housing as set forth in the following chart:

Residential Unit Type	Total Residential Gross Floor Area ("GFA")	Units (Type)	Affordable Control Period
Total	389,850 sf of GFA	434	
Market Rate	331,372 sf of GFA (net)	364 (49 studios, 238 one-bedrooms, 77 two-bedrooms)	
IZ	38,800 sf GFA (net) (12% of Residential GFA) at 60% MFI	60 (11 studios, 41 one-bedrooms, 8 two-bedrooms)	Life of Project
	9,700 sf of GFA (net) (3% of Residential GFA) at 30% MFI	10 (2 one-bedrooms, 2 two-bedrooms, and 6 three-bedrooms)	Life of Project

2. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall demonstrate that it has registered the Project with the USGBC to commence the LEED Gold certification process by furnishing a copy of its LEED Gold certification application to the Zoning Administrator. The building permit application shall indicate that the Project has been designed to achieve at least the minimum number of points necessary to achieve Gold certification under the USGBC's LEED B+C: Multifamily Midrise v.4 standards.
3. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator, with a copy delivered to OZ, with information showing that:
 - a. The Applicant has recorded a public use easement in the land records of the District of Columbia for the Community Park and the Retail/Café plaza, such easement will require the Applicant to repair and maintain the Community Park and the Retail/Café plaza **for the life of the Project**;
 - b. The Applicant has recorded a public use easement in the land records of the District of Columbia for the portion of shared-use path proposed across the Property, such easement will allow the public to access the shared-use path every day of the year 24 hours per day and will require the Applicant to repair and maintain the shared-use path **for the life of the Project**;
 - c. The Applicant has engaged local female artists and/or female artists of color in the creation of public art to be located on the Property, with the Applicant's

contracts with the local female artists and/or female artists of color requiring such artists to engage members of the community in the creation of the public art; and

- d. The Applicant has provided 15-20 electric vehicle parking spaces and has made 20% of the residential parking spaces "EV make ready" equipped with conduits to facilitate the installation of future electric chargers.

C. MITIGATION

1. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with information showing that:

- a. The Applicant has completed the following pedestrian and safety improvements, subject to DDOT approval:
 - Realign and reconfigure the Carroll Street and WMATA bus loop intersection to include the following pedestrian safety improvements:
 - Concrete curb extensions on the northwest corner to replace the existing striping and flex-posts;
 - Expanded concrete median divider on Carroll Street to replace the existing striping and flex-posts;
 - Concrete curb extensions on the south curb of the intersection to replace the existing striping and flex-posts; and,
 - New crosswalk on the eastern leg of the intersection, which currently lacks a crosswalk.
 - Provide a new mid-block raised pedestrian crossing across the realigned kiss-and-ride lane connecting to a striped crossing of the new bus loop, connecting the Project with the Takoma Metro station entrance;
 - The Applicant will fund and construct pedestrian safety enhancements at the intersection of Eastern Avenue and Cedar Street, N.W., subject to DDOT approval. The construction will include a new concrete curb extension on the west side, removal of the concrete island, installation of any missing curb ramps, and signage/striping changes; and
 - Install a traffic signal at the Carroll Street intersection with the realigned bus loop, including pedestrian phasing/signals, subject to DDOT Traffic Engineering and Signal Division (TESD) approval. Signal warrant analysis and signal design plans will be provided to TESSD for review prior to issuance of a building permit. If TESSD determines the signal is not warranted or is not ready for installation to occur, the Applicant will contribute \$250,000 to the DDOT Transportation Mitigation Fund;
- b. The Applicant shall provide \$100,000 in funding for Capital Bikeshare improvements, with the type and location of improvements to be determined by DDOT;
- c. The Applicant shall complete the superior landscaping and open space improvements described in FF 25, and the community park element shall be

constructed consistent with the design principles and site plan attached as Ex. 233D.

2. **For the life of the Project**, the Applicant shall implement the following Transportation Demand Management program:

- a. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit or commercial lease and charge a minimum rate based on the average market rate within a quarter mile. Only hourly, daily, weekly or monthly rates will be charged. Free parking, validation, or discounted rates will not be offered;
- b. Identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;
- c. Transportation Coordinator will conduct an annual commuter survey of building employees and residents on-site, and report TDM activities and data collection efforts to goDCgo once per year for three years;
- d. Transportation Coordinator will develop, distribute, and market various transportation alternatives and options to residents, employees and customers, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications for three years;
- e. Transportation Coordinator will subscribe to goDCgo's residential newsletter and receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan;
- f. Provide residents and employees who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOC) or other comparable service if MWCOC does not offer this in the future;
- g. Offer a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident or employee for the initial lease up period of the building operations, as amended by Paragraph n. below with regards to the residents of the building;
- h. Provide at least 27 short- and 149 long-term bicycle parking spaces;
- i. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids' bikes, with a minimum five percent of spaces (eight for this project) being designed for longer cargo/tandem bikes

(10' by 3'), a minimum of 10% of spaces (15 for this project) will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum of 50% of spaces (75 for this project) will be placed horizontally on the floor. There will be no fee to the residents or employees for usage of the bicycle storage room and strollers will be permitted to be stored in the bicycle storage room;

- j. Install a minimum of five electric vehicle (EV) charging stations;
- k. Install a Transportation Information Center Display (electronic screen) within the building amenities containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
- l. Provide a bicycle repair station in the long-term bicycle parking storage room;
- m. Hold a transportation event for residents, customers, employees, and members of the community once per year for a total of three years. Examples include resident social, walking tour of local transportation options, goDCgo lobby event, transportation fair, WABA Everyday Bicycling seminar, bicycle safety/information class, bicycle repair event, etc.);
- n. The Applicant will offer an annual Capital Bikeshare membership to each resident over the age of 18 years for each of the first three years after the building opens;
- o. Provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing info@godcgo.com;
- p. Post all transportation and TDM commitments on building website, publicize availability, and allow the public to see what has been promised;
- q. Provide one collapsible shopping cart (utility cart) for every 50 residential units, for a total of nine, to encourage residents to walk to the grocery store and run errands;
- r. Post "getting here" information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for [customers, attendees, patrons] discouraging parking on-street in Residential Permit Parking (RPP) zones;

- s. Transportation Coordinator will demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law to participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future such as the Parking Cash-Out Law;
- t. Provide at least one locker for use by employees; and
- u. Coordinate with WMATA and DDOT on a way finding plan along walking routes to the property from the Takoma Metro station.

3. Following the issuance of a Certificate of Occupancy for the Project:

- a. The Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five years (as measured from the final Certificate of Occupancy for the Project) summarizing continued substantial compliance with the transportation and TDM conditions in the Order, unless no longer applicable as confirmed by DDOT. If such letter is not submitted on a timely basis, the building shall have 60 days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter; and
- b. The Transportation Coordinator shall collect parking demand and trip generation data, annually, for three years after building opening and report this information to DDOT's Planning and Sustainability Division (PSD).

D. MISCELLANEOUS

- 1. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of Zoning Legal Division and the Zoning Administrator (the "PUD Covenant"). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of OZ.
- 2. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.
- 3. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment

based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

FINAL ACTION

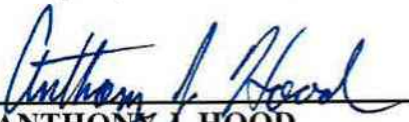
VOTE (September 28, 2023): 4-0-1

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

In accordance with the provisions of 11-Z DCMR § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *District of Columbia Register*; that is, on July 26, 2024.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. GARDIN
DIRECTOR
OFFICE OF ZONING