

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 22-08
Z.C. Case No. 22-08
NRP Properties, LLC
(Voluntary Design Review @ Square 5085, Lots 40 and 61)
June 9, 2022

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a virtual public hearing on May 16, 2022, to consider the application of NRP Properties, LLC (“Applicant”) for voluntary design review (“Application”) of a new all-affordable residential building (the “Project”) in Square 5085. The Applicant requested the following relief under Title 11 of the District of Columbia Municipal Regulations (“DCMR”) (Zoning Regulations of 2016 [the “Zoning Regulations”]) to which all references are made unless otherwise specified):

- Voluntary design review approval pursuant to Subtitle X § 601.2, with zoning flexibility for building height (Subtitle G § 403.1), rear yard (Subtitle G § 405.3), and side yard (Subtitle G § 406.1); and
- Special exception relief from the vehicular parking space requirements (Subtitle C § 703.2) and the location of two parking spaces within the front setback (Subtitle C § 710.3).

Relief is requested for the property located at 4401-4435 Benning Road, N.E. (Lots 40 and 61 in Square 5085) (the “Property”) in the MU-7B zone. The public hearing was conducted in accordance with Subtitle Z, Chapter 4. For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. The following were automatically parties to this proceeding pursuant to Subtitle Z § 403.5:
 - The Applicant; and
 - Advisory Neighborhood Commission 7D (“ANC”), the ANC in which the Property is located and, therefore, an “affected ANC” pursuant to Subtitle Z § 101.8.
2. The Commission received no requests for party status.

NOTICE

3. Pursuant to Subtitle Z § 301.6, on December 23, 2021, the Applicant mailed a Notice of Intent to file a Zoning Application to all property owners within 200 feet of the Property and to ANC 7D. (Exhibit [“Ex.”] 3D.)

4. Pursuant to Subtitle Z § 402, the Office of Zoning (“OZ”) provided notice of the May 16, 2022 virtual public hearing by:
 - A February 24, 2022 letter with the Notice of Public Hearing sent to: (Ex. 7, 8.)
 - The Applicant;
 - ANC 7D;
 - ANC Single Member District (“SMD”) 7D05;
 - The Ward 7 Councilmember;
 - Office of ANC;
 - Office of Planning (“OP”);
 - D.C. Department of Transportation (“DDOT”);
 - D.C. Department of Consumer and Regulatory Affairs (“DCRA”);
 - Office of Zoning Legal Division (“OZLD”);
 - D.C. Department of Energy and Environment (“DOEE”);
 - At-Large Councilmembers and the Chair of the Council;
 - Owners of property within 200 feet of the Property; and
 - Publication of the Notice of Public Hearing in the March 4, 2022 edition of the *D.C. Register*. (Ex. 6, 8.)
5. Pursuant to Subtitle Z § 402.3, the Applicant posted notice of the hearing on the Property on April 6, 2022, and maintained such notice in accordance with Subtitle Z § 402.10. (Ex. 10, 16.)

THE PROPERTY

6. The Property is an interior lot with 25,925 square feet of land area and frontage on Benning Road, N.E. There is a 20-foot-wide unimproved alley (the “Alley”) to the rear. (Ex. 3.)
7. The Property is comprised of two record lots: Lot 40 and Lot 61. Lot 40 is unimproved and open green area. Lot 61 is the larger of the two lots and is improved with a one-story building that is currently vacant, but was most recently used as a dental office. There are two existing curb cuts off Benning Road for Lot 61. (Ex. 3.)
8. The Property is restricted by several encumbrances, including a building restriction line, WMATA vent shafts, and a utility easement. At the northwestern side of the Property, there are two WMATA vent shafts associated with the nearby Benning Road Metrorail station. WMATA also holds an underground tunnel easement along the front of the Property and a utility easement cutting through the center of the Property (the building restriction line, WMATA vent shafts, tunnel easement, and utility easement shall be collectively referenced as the “Encumbrances”). (Ex. 3, 3F1.)
9. The Benning Road Metrorail Station is one-half block from the Property. The Property is located in a small swath of MU-zoned property with nearby commercial lots primarily improved with one-story buildings, including several gas stations. Directly across Benning Road from the Property is the Conway Center, a new residential building providing housing to the homeless and low-income residents. The broader surrounding area is residential in nature, with lower-density apartment buildings and single-family homes. Fort Mahan Park and Fort Chaplin Park are both within two blocks of the Property. (Ex. 3.)

CURRENT ZONING

10. The Property is located in the MU-7B zone; the MU-7 zones are intended to “permit medium-density mixed-use development” and to “be located on arterial streets, in uptown and regional centers, and at rapid transit stops.” (Subtitle G § 400.6(a)-(b).) The MU-7B zone permits a maximum floor area ratio (“FAR”) of 4.0, or 4.8 with the Inclusionary Zoning (“IZ”) bonus density. (Subtitle G § 402.1.) The MU-7B zone permits a maximum building height of 65 feet. (Subtitle G § 403.1.) The MU-7B zone permits a maximum lot occupancy for residential use of 75% or 80% with IZ. (Subtitle G § 404.1.) Additionally, a rear yard of at least 12 feet is required, and side yards (if provided) of at least five feet are required. (Subtitle G §§ 405.3, 406.1.)

COMPREHENSIVE PLAN

11. The Comprehensive Plan’s (Title 10-A of the DCMR) Future Land Use Map (“FLUM”) identifies the Property as mixed-use for both “Medium Density Residential” and “Medium Density Commercial” uses. The Framework Element describes “Medium Density Residential” as “neighborhoods or areas generally, but not exclusively, suited for mid-rise apartment buildings. (10-A DCMR § 227.7.) The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space.” (*Id.*) Under the Medium Density Residential designation, “[d]ensity typically ranges from 1.8 to 4.0 FAR, although greater density may be possible when complying with Inclusionary Zoning...” (*Id.*) The “Medium Density Commercial” designation is defined to include “shopping and service areas that are somewhat greater in scale and intensity than the Moderate Density Commercial areas. Retail, office, and service businesses are predominant uses, although residential uses are common.” (10-A DCMR § 227.12.) Under the Medium Density Commercial designation, “[d]ensity typically ranges between a FAR of 4.0 and 6.0, with greater density possible when complying with Inclusionary Zoning....” (*Id.*)
12. The Comprehensive Plan’s Generalized Policy Map (“GPM”) identifies the Property as a “Neighborhood Commercial Center,” which is intended to provide both residential and commercial uses that meet the day-to-day needs of residents and workers in the adjacent neighborhoods. (10-A DCMR § 225.15.)
13. The Property is within the Comprehensive Plan’s “Far Northeast and Southeast” Area Element, which, among other things, encourages “development of the Benning Road Metro station area as a pedestrian-oriented, mixed-use area, including moderate-density housing, retail, service uses, and public spaces and amenities that serve adjacent neighborhoods. Future development should recognize and provide appropriate, well-designed transitions to the low-density residential character of the adjacent neighborhoods.” (10-A DCMR § 1714.3.)
14. In applying the standard of review applicable to the Application, the Comprehensive Plan requires the Commission to do so through a racial equity lens. (10-A DCMR § 2501.8.) Consideration of equity is intended to be based on the policies of the Comprehensive Plan, and part of the Commission’s consideration of whether the Application is “not

inconsistent” with the Comprehensive Plan, rather than a separate determination about a zoning action’s equitable impact.

15. The Comprehensive Plan includes a number of policies regarding equity, equitable development, and affordable housing. The Comprehensive Plan’s 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. 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.” The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (10-A DCMR § 213.6.)
16. The Comprehensive Plan’s Implementation Element provides guidance to help the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states that “[a]long with consideration of the defining language on equity and racial equity in the Framework Element, guidance in the Citywide Elements on District-wide equity objectives, and the Area Elements should be used as a tool to help guide equity interests and needs of different areas in the District.” (10-A DCMR § 2501.6.)

II. THE APPLICATION

THE PROJECT

17. The Project proposes to subdivide the two lots, raze the existing office building, and construct a new, 9-story plus penthouse, all residential building at the Property. (Ex. 3.)
18. Overall, the Applicant proposes the Project to have:
 - Approximately 118,537 square feet of gross floor area (“GFA”), plus habitable penthouse space, for a total FAR of 4.56;
 - A maximum building height of 93’6” plus a penthouse of 18’4”;
 - 109 dwelling units with amenities to include a fitness center and training/education space. All of the residential units will be affordable to income levels at or below 80% Median Family Income (“MFI”). The Applicant proposes to make 22 units available at 30% MFI, 65 units available at 50% MFI, and 22 units available at 80% MFI. Additionally, the Project proposes 27 two-bedroom units and 22 three-bedroom units;
 - Approximately 13 vehicular parking spaces, 1 loading berth and 1 service/delivery space, 45 long-term bicycle parking spaces, and 6 short-term bicycle parking spaces; and
 - A large, landscaped front setback that will feature children’s play equipment, seating, and an art sculpture, which is partly located in the Property’s front yard and partly within the building restriction line, and subject to public space approval.(Ex. 3, 3F1-3F2, 13.)

APPLICANT'S SUBMISSIONS

19. In addition to the testimony at the public hearing, the Applicant made the following submissions to the record in support of the Application:

- The initial application and related materials filed on February 14, 2022 requesting voluntary design review approval, related zoning flexibility, and special exception approval; (Ex. 3-3F2.)
- A Comprehensive Transportation Review (“CTR”) filed on April 12, 2022; (Ex. 11-12B.)
- A prehearing statement filed on April 26, 2022, which includes architectural plan revisions, a request for additional special exception relief for two vehicular parking spaces in the front setback, an analysis of the application through a racial equity lens (as required under the Comprehensive Plan), additional information on the request for building height flexibility, additional information on the Project’s sustainability features, and information on community outreach; (Ex. 13-13A3.)
- A supplement to the prehearing statement filed on May 11, 2022, which provides updated landscape plans to address comments from OP and DDOT (filed following the 20-day deadline of Subtitle Z § 401.5.);¹ (Ex. 15-15B.)
- A hearing presentation filed on May 12, 2022; (Ex. 18.)
- A response to the OP Report filed on May 13, 2022, which included proposed design flexibility language, additional information on the public art sculpture, proposed signage for the two “pick-up/drop-off” spaces, and clarification on the Project’s penthouse height; (Ex. 19-19B.)
- A post-hearing submission filed on May 27, 2022, which included revised architectural plans responsive to Commission comments during the hearing, clarification on the Project’s side yards, clarification on the rear yard measurement, a revised ANC resolution, and revised design flexibility language. (Ex. 23-23C.) The Applicant concurrently filed an additional request for side yard flexibility related to the clarification in the post-hearing submission; (Ex. 24.)
- A response to the OP Supplemental Report filed on June 7, 2022, which included updated building façade plans, clarity about access to the green roof, and a formal signage plan for the residential entry sign; and (Ex. 26-26B.)
- Proposed findings of fact and conclusions of law filed on June 8, 2022. (Ex. 27-27A.)

RELIEF REQUESTED

20. The Applicant requested:

- Voluntary design review approval of the Project, including flexibility from the building height requirements of Subtitle G § 403.1, the rear yard requirements of Subtitle G § 405.3, and the side yard requirements of Subtitle G § 406.1; and
- Special exception relief from the requirements for vehicular parking spaces under Subtitle C § 703.2 and the location of two parking spaces within the front setback under Subtitle C § 710.3.

¹ The supplement was accompanied by a Motion to Late File. At the public hearing on May 16, 2022, the Commission granted the Motion to Late File and accepted the supplement into the case record. (Transcript [“Tr.”] from May 16, 2022 hearing at p. 6.)

21. The Applicant also requested the following design flexibility for the Project:
- Interior Components - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided such variations do not change the exterior configuration of the building;
 - Exterior Materials - To vary the final selection of the colors of the exterior materials, based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the Order;
 - Exterior Details – To make minor refinements to exterior façade details and dimensions, including curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, balcony railings and trim, or any other changes, providing such minor refinements do not substantially alter the plans approved by the Commission and are necessary to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
 - Number of Dwellings - To vary the number of residential dwelling units by an amount equal to plus or minus 10% from the number depicted on the architectural plans approved by the Zoning Commission or as dictated by DHCD financing;
 - Front Setback Design - To vary the location, attributes, and general design of the front setback area, provided it is generally consistent with the Commission’s approval, including the type and height of fencing; type and size of playground equipment; design of public art; orientation of electric transformers; and elements in public space subject to approval by the Department of Transportation’s Public Space Division;
 - Signage² - To vary the font, message, logo and color of the approved signage for the Project, subject to full compliance with applicable signage restrictions under the D.C. Building Code and consistent with the indicated dimensions and materials; and
 - Environmental - To vary the features, means and methods of achieving the required GAR and Enterprise Green Communities PLUS Certification.
- (Ex. 23C.)

APPLICANT’S JUSTIFICATION FOR DESIGN REVIEW APPROVAL

General Design Review (Subtitle X § 604)

22. Consistency with Comprehensive Plan and Other Public Policies (Subtitle X § 604.5). The Project is not inconsistent with the Comprehensive Plan and other public policies related to the Property, which includes the Benning Road Corridor Redevelopment Framework (the “Redevelopment Framework”), as follows:
- *Maps:* The Project’s height, density, and use are consistent with the Property’s FLUM and GPM designations. The FLUM designates the Property for “Medium Density Residential” and “Medium Density Commercial” uses. The Project will have an FAR of 4.56, with a building height that is buffered by a large front setback area. Additionally, the redevelopment of the Property from a one-story office building to an

² The Applicant included this design flexibility condition at Exhibit 19A but subsequently removed the reference based on OP’s comments at Ex. 23C; however due to the OP Supplemental Report requesting a signage plan from the Applicant, this condition is included. The signage plan is in the record at Ex. 26B.

all-affordable multi-family residential building is consistent with the GPM designation of “Neighborhood Commercial Center,” which is intended to provide both residential and commercial uses that meet the day-to-day needs of residents and workers in the adjacent neighborhoods;

- *Citywide Elements*: The Project is not inconsistent with a number of policies reflected in citywide elements, including the Land Use, Transportation, Housing, and Urban Design Elements. In particular, the Project will redevelop an underutilized site with new, all-affordable housing featuring family-sized units. The Project is a transit-oriented development due to its adjacency to a Metrorail station and other forms of public transportation;
- *Area Element and Redevelopment Framework*: The Project implements the goals of the Far Northeast and Southeast Area Element and Redevelopment Framework by providing new residential development and increased density around the Benning Road Metrorail station. In particular, the Redevelopment Framework identifies the Property as an “opportunity site” that can be developed with either retail or residential uses; and
- *Racial Equity Lens*: The Project furthers the racial equity goals in the Comprehensive Plan by providing all-affordable dwelling units on an under-developed parcel in Ward 7. The Project provides housing for a range of family-sizes by incorporating 27 two-bedroom units and 22 three-bedroom units. Through the Marshall Heights Community Development Organization (“MHCDO”), the Project will also provide a Resident Resource Center that will offer a wide range of services tailored to specific residents’ needs on topics such as financial planning, work-force development skills, environmental, health and wellness, and community-building. From a transportation and employment perspective, the Project’s proximity to Metrorail and Metrobus will offer residents excellent public transit access to move around the city and to make commuting to jobs and the city’s employment sector easier. In addition, the planned Benning Road Streetcar Expansion will have a stop adjacent to the Metrorail station (steps from the Property), providing a direct line to the H Street Corridor and Union Station.

(Ex. 3, 13.)

23. No Adverse Effects to Neighboring Properties and Harmonious with Purpose and Intent of Zoning Regulations and Maps (Subtitle X § 604.6). The Project satisfies both prongs of the general special exception standard, as follows:

- *Will Not Tend to Adversely Affect the Use of Neighboring Property*: Although the Applicant is seeking flexibility for the Project’s height, rear yard, and side yards, the Project will have a lot occupancy of 50% (first and second floors) and 56% (third floor and above) that is well under the maximum for residential use of 75% or 80% with IZ in the MU-7B zone. The Project also provides a large, landscaped front setback from Benning Road that will further reduce any impacts to nearby properties. The neighboring buildings to the west, south, and east are setback considerably from the Property, and there is an unimproved alley to the rear of the Project that provides additional buffer. The Project has been designed so that its window openings are compliant with the Building Code even if neighboring parcels are redeveloped to abut the side lot lines; and

- *In Harmony with the Zoning Regulations and Maps:* The Project is consistent with the MU-7B zone, which is intended for medium-density, mixed-use development that is located near rapid transit stops. (Subtitle G § 400.6.) Although the Project is not mixed-use, it is a new residential building that is located near a Metrorail station. The Project is also compliant with the MU-7B development standards for FAR and lot occupancy. The Project's building height is permitted as part of the voluntary design review process, which allows the Zoning Commission to grant flexibility for building height up to that permitted for a Planned Unit Development ("PUD") (including an increase of up to 5% under Subtitle X § 303.10) in the subject zone. (Subtitle X § 603.3.)

(Ex. 3.)

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

- *Street frontages are designed to be safe, comfortable, and encourage pedestrian activity:* The Project's frontage on Benning Road is designed to be safe, comfortable and encourage pedestrian activity through the large landscaped front setback with improved walking connectivity around the Property and in public space. The Project's ground level will incorporate large glass windows for a majority of the front façade. The residential lobby space and amenity area are intended to further encourage pedestrian activity in and around the Benning Road street frontage. The Applicant also intends to bring the surrounding public space up to current DDOT standards. The Applicant has reduced the number of curb cuts from two to one;
- *Public gathering spaces and open spaces are encouraged:* Although the Project will not have a public gathering place, it will feature approximately 12,960 sq. ft. of landscaping and open space along the Benning Road frontage. The front setback area will have children's play equipment, ample seating, a water feature, and a public art sculpture. The substantial open green space will provide a recreation area for residents and improve the overall aesthetics and connectivity of the Property to the broader neighborhood;
- *New development respects the historic character of Washington's neighborhoods:* There is a variety of architectural character in the surrounding neighborhood, which now includes the recently-constructed Conway Center. While the Project will employ a modern aesthetic, it is designed to preserve a large amount of open green space similar to the layout of the older apartment buildings in the area;
- *Buildings strive for attractive and inspired façade design:* The Project proposes attractive design features and high-quality materials. The façade of the first and second levels is large glazing framed by brick and metallic cladding. Beginning at the third level, the façade is comprised of red Nichiha panels broken up with dark gray bands. The Project's "c-shape" with a center courtyard provides further visual interest. Additionally, every unit in the Project will have an exterior balcony;
- *Sites are designed with sustainable landscaping:* The Project's frontage will be designed with extensive, sustainable landscaping features, including new grass, shrubs, trees, and other plantings; and
- *Sites are developed to promote connectivity both internally and with surrounding neighborhoods:* The Project is designed to promote connectivity and walkability in the

surrounding neighborhood through the substantial improvements to the frontage along Benning Road. The open green area is designed as a safe and inviting space for residents that will reintegrate the site within the broader area. The Project will incorporate 45 long-term bicycle parking spaces, exceeding the required 36 spaces, as well as six short-term spaces at the Property's frontage. The ground floor bicycle room will also provide EV outlets and family-sized bicycle parking consistent with DDOT standards
(Ex. 3, 13.)

Design Review Flexibility (Subtitle X § 603.1)

25. Building Height. The Applicant justified its flexibility request from the building height requirement in the MU-7B zone, which is 65 feet under Subtitle G § 403.1. The Project will have a height of 93'6". Under Subtitle X § 603.3, the Commission "may grant no greater height than that permitted if the application were for a PUD." Under Subtitle X § 303.7, a PUD in the MU-7B zone may have a building height of 90 feet, which may be increased by 5% under Subtitle X § 303.10. The height flexibility to 93'6" is within the 5% allowed and essential to the successful functioning of the Project by allowing for the desired floor-to-ceiling height on the ground level, which is industry-standard for market rate residential buildings, while still maintaining a viable all-affordable project. The flexibility allows for approximately two additional floors over the 65-foot height permitted by-right in the MU-7B zone. Thus, the height flexibility results in an additional 26 affordable dwelling units, including six 3-bedroom units. The flexibility request will not adversely impact neighboring properties as the large front setback maintains open space on the Property. Benning Road is an 80-foot-wide right-of-way that supports the proposed height. There is also an unimproved alley to the rear of the Property and all three abutting properties have substantial setbacks adjacent to the Project. (Ex. 3, 13.)
26. Rear Yard. The Applicant justified its flexibility request from the rear yard requirement in the MU-7B zone to have no rear yard for the Project. Under Subtitle G § 405.3, the rear yard requirement is 23 feet for a building height of 93'6". The rear yard flexibility allows the Applicant to maximize the buildable portion of the Property and provide the appropriate uses on the ground level, including the residential lobby, bicycle parking room, and parking and loading garage. Whereas, a compliant rear yard would greatly restrict the size and functionality of the Project by squeezing the building between the rear yard and the Encumbrances at the front of the Property, resulting in an awkward and inefficient design. The rear yard flexibility will not adversely impact neighboring properties due to the 20-foot-wide unimproved rear Alley that provides a buffer from the Property to the south. (Ex. 3, 23.)
27. Side Yard. The Applicant justified its flexibility request from the side yard requirement in the MU-7B zone. The Project will provide a six-foot-wide western side yard and a 9-foot-wide eastern side yard that narrows to 3-feet toward the rear of the building. The Project is required to have side yards of 15'7" in width for a proposed building height of 93'6" under Subtitle G § 406.1. As with the rear yard, the Project's side yards are driven by the Encumbrances, which significantly restrict the buildable area on the Property. Given these limitations, compliant side yards would lead to a substantial loss in floor area.

Alternatively, if the Project proposed no side yards, which is permitted in the MU-7B zone, then the Project could not have side windows under the Building Code. This would result in the loss of at least two units per floor and undesirable conditions in other units. The side yard flexibility will not adversely impact neighboring properties. To the west, there are existing garden-style apartments that are setback 27 feet from the Property's western lot line. That property is also located in the RA-1 zone, which requires a setback of at least 8 feet. (Subtitle F § 306.2(a).) Thus, the Project will always maintain at least a minimum 14-foot buffer from the western neighbor. To the east, there is a one-story commercial building setback 25 feet from the Property's eastern lot line. This existing setback plus the Project's nine-foot side yard (briefly narrowing to three feet) beginning at the second level will be sufficient to avoid impacts to light, air, and privacy. If in the future the eastern lot is redeveloped, it could be constructed to the shared lot line. However, the Applicant incorporated the required amount of glazing on each side of the Project to ensure the Project meets Building Code requirements even if neighboring properties are redeveloped closer to the shared lot line. (Ex. 23, 24.)

Special Exception for Number of Vehicular Parking Spaces (Subtitle C § 703.2)

28. The Applicant requested special exception relief from the required number of vehicular parking spaces. Under Subtitle C § 701.5, a residential multi-family use must provide one space per three units in excess of four units. This standard would require 35 spaces for the Project's 109 units. The Project is entitled to a 50% transit reduction due to its proximity within one-half mile of the Benning Road Metro Station. (Subtitle C § 702.1(a).) After applying the transit reduction, the Project is required to have 18 parking spaces. Special exception relief is needed because the Project proposes 13 parking spaces. (Ex. 3.)
29. The Project satisfies the general special exception standard under Subtitle X § 901.2 as well as the special conditions under Subtitle C § 703.2 to warrant vehicular parking relief, as follows:
 - *The Relief is in Harmony with the Purpose and Intent of the Zoning Regulations and Maps:* The Project proposes as many parking spaces as possible given the significant site constraints on buildable area and programming needs for the residential building. There will be a row of 11 parking spaces spanning the rear of the garage. Additional parking would require removal of the loading berth or a re-design and removal of important support spaces for the appropriate functioning of the building, including the lobby or utility rooms. Both DDOT and the Applicant's transportation expert submitted reports (Ex. 12A, 14) that supported the parking relief;
 - *The Relief Will Not Adversely Affect the Use of Neighboring Properties:* The Project has excellent access to public transportation, thereby reducing the need for on-site vehicular parking. In particular, the Project is within ½ block of the Benning Road Metrorail station. There is nearby access to bus lines and the expected expansion of the streetcar running along Benning Road in front of the Property;
 - *The Project Satisfies the Special Conditions Under Subtitle C § 703.2:* The Project satisfies two of the conditions under Subtitle C § 703.2 to warrant parking relief. Under Subtitle C § 703.2(b), the Project is particularly well-served by mass transit, shared vehicle, or bicycle facilities. In addition to the access to public transportation outlined above, there are Capital Bikeshare stations at the Benning Road Metro and at the

Benning Neighborhood Library approximately ½ mile from the Property. The Project will provide 46 long-term bicycle spaces, exceeding the minimum requirement, that will further encourage the use of bicycle transportation. Additionally, under Subtitle C § 703.2(f), all of the Project's dwelling units are dedicated as affordable housing units. The Project will have 109 affordable housing units at deeper levels of affordability than required by IZ. The Applicant proposes to make 22 units available at 30% MFI, 65 units available at 50% MFI and 22 units available at 80% MFI;

- *Any reduction in the required number of parking spaces shall be only for the amount that the applicant is physically unable to provide, and shall be proportionate to the reduction in parking demand demonstrated by the applicant (Subtitle C § 703.3):* The Project is physically unable to provide the required 18 parking spaces on the Property. The row of parking spaces in the garage spans the entire width of the Property. There is no physical room for additional parking spaces in the garage while meeting requirements for turning radius and access. Due to the Encumbrances, the Project's floorplate cannot be expanded and the Project cannot provide below-grade parking; and
- *Any request for a reduction in the minimum required parking shall include a transportation demand management plan approved by the District Department of Transportation, the implementation of which shall be a condition of the Commission's approval (Subtitle C § 703.4):* The Applicant worked with DDOT throughout the design review application and has agreed to a transportation demand management plan, as detailed in Exhibit 14, that is a condition of the Commission's approval.

(Ex. 3.)

Special Exception Relief for Surface Parking Spaces in Front Setback (Subtitle C § 710.3)

30. The Applicant requested special exception relief to have two parking spaces located in the Project's front yard area. Under Subtitle C § 710.2, surface parking spaces must not be located between the front façade of a building, as extended for the full width of the front of the lot, and the front lot line. The two parking spaces will be located off the drive aisle and will be designated as "pick-up/drop-off spaces" ("PUDO Spaces"). (Ex. 13.)
31. The Project satisfies the general special exception standard under Subtitle X § 901.2 as well as the special conditions under Subtitle C § 710.3 to warrant vehicular parking relief, as follows:
 - *The Relief is in Harmony with the Purpose and Intent of the Zoning Regulations:* The two PUDO Spaces will be removed from the Property's front lot line and the Benning Road right-of-way. The abnormally large front setback provides a large open area to locate two parking spaces without the parking spaces being directly adjacent to public space. Given the challenges created by the site and Encumbrances, the Applicant is seeking to maximize the number of parking spaces by providing two parking spaces within the front setback. Both DDOT and the Applicant's transportation expert submitted reports (Ex. 12A, 14) that supported the provision of the PUDO Spaces in the front setback;
 - *The Relief Will Not Adversely Affect the Use of Neighboring Property:* In addition to being substantially setback from Benning Road, the two parking spaces in the front setback will be screened by plantings and landscaping. The location relief will allow two additional on-site parking spaces for the Project that otherwise could not be

provided. Therefore, the relief directly limits any impact of the parking relief sought by the Applicant; and

- *The Project Satisfies the Special Conditions Under Subtitle C § 710.3:* In accordance with subsection (A), the Applicant set forth that it is not practical to provide the parking spaces within the garage or elsewhere on the lot due to the unusual shape, size, and dimension of the Property. The Encumbrances along the Property's frontage create an unusual condition where the Project's footprint is limited to the rear portion of the Property, and the Project only has a lot occupancy of 50% where up to 80% is permitted in these circumstances. Therefore, the Project's garage is already reduced in size, so the Applicant cannot provide additional parking spaces within the building. Parking cannot be provided elsewhere on the site because the Project does not have a rear yard or large enough side yards. The PUDO Spaces are located off the drive aisle from Benning Road to provide quick and convenient access from the street. The Project proposes a new walkway directly adjacent to the parking spaces that will provide access to the residential lobby.

(Ex. 13.)

III. RESPONSES TO THE APPLICATION

OFFICE OF PLANNING REPORT

32. OP filed³ a report dated May 12, 2022 (the "OP Report") that recommended approval of the Application, including the requested flexibility⁴ and zoning relief. (Ex. 17.) OP evaluated the Application against the general design review criteria of Subtitle X § 601 through 604. OP provided a detailed analysis of the Comprehensive Plan and concluded the Project is not inconsistent with the Comprehensive Plan for the following reasons:

- *Maps:* The proposed Project is not inconsistent with the GPM and FLUM. The Medium Density Residential FLUM designation may apply to taller residential buildings surrounded by areas of permanent open space. Furthermore, the Project is not inconsistent with the Medium Density Commercial definition that states that residential uses are a common feature of these areas. The Project would include a nine-story residential building, with a large open space area at the front of the building, which would be appropriate for a Medium Density Residential and Medium Density Commercial area. The densities within a given area on the FLUM reflect contiguous properties on a block – individual buildings may be higher or lower than the ranges within each area. The residential building proposed would not be inconsistent with the FLUM as it is part of the larger block (Square 5085) that is comprised of a range of residential and commercial buildings including the one-story retail to the east of the Property, as well as significant areas that cannot be developed due to the Encumbrances. The building height would not exceed that anticipated in a PUD and the height flexibility requested is driven by site constraints, while being offset by a large landscaped open space at the front of the building. Though the Applicant could

³ OP requested a waiver to late file its report less than 10 days before the hearing, which the Commission granted at the May 16, 2022 public hearing. (Tr. from May 16, 2022 hearing at p. 6.)

⁴ The Applicant's formal request for side yard flexibility was submitted after the OP Report. As explained below, OP later recommended approval of the side yard flexibility in a separate report. (Ex. 25.)

- provide ground floor commercial uses, the nine-story all affordable residential building would provide housing in close proximity to the Benning Road Metrorail Station and would serve to support existing and future commercial development in the area, in furtherance of the Neighborhood Commercial Centers' aim of providing new residential uses and day-to-day amenities for area residents;
- *Land Use Element:* The Applicant is proposing a 109-unit all-affordable residential development less than one block from the Benning Road Metro Station. The site is currently vacant and this infill development would activate the site with a well-designed building, landscaping, and public art. The Project will further a multitude of Land Use policies listed in the OP Report;
 - *Transportation Element:* The Applicant is proposing:
 - The provision of housing in close proximity to the Metro. Future improvements in the area include the extension of the streetcar line along Benning Road, for which final design is underway;
 - A reduced number of on-site parking spaces. The Applicant is providing long-term bike parking in excess of the requirement, along with electric bike charging and storage for cargo bikes;
 - A reduction in the number of curb cuts on Benning Road and siting two PUDO spaces on the property to ensure the free flow of traffic on Benning Road;
 - Loading in the building with head-in/head-out movements; and
 - Extensive landscaping, public art, and other improvements that would improve the pedestrian experience on Benning Road;
 - *Housing Element:* The Applicant is proposing an all-affordable development with 109 dwelling units, all of which would be affordable to income levels at or below 80% MFI. The Project would feature a range of unit types from studios to three-bedrooms. The Applicant is proposing to provide 27 two-bedroom units and 22 three-bedroom units. The Applicant is seeking Housing Production Trust Fund financing for the project. MHCDO would provide a Resident Resource Center with a wide range of services tailored to residents' needs. Planned services and offerings would include training and educational programming in topics such as financial planning, workforce development skills, environmental, health and wellness, community-building, and more. The Housing Equity Report notes that the Far Northeast and Southeast Planning Area provides 9,690 of the District's existing 51,960 existing dedicated affordable units. The Planning Area has a goal of providing 490 additional dedicated affordable housing units. The proposed Project would help achieve this goal;
 - *Environmental Protection Element:* The Applicant intends to obtain Enterprise Green Communities (EGC) Plus certification for the Project using the 2020 EGC version. Projects that earn the 2020 EGC certification will automatically be awarded certification to the WELL Building Standard, the benchmark standard for measuring how buildings impact occupant health and wellbeing. Projects pursuing the Green Communities Plus level certification will have also achieved at minimum, certification to DOE's Zero Energy Homes (ZERH) program. ZERH represents a significant elevation in energy performance that is essentially the mid-point between Energy Star Multifamily New Construction and PHIUS (Passive House) certifications;
 - *Urban Design Element:* The proposed infill development would employ high quality materials and thoughtful design of the open space at the front of the Property;

- *Far Northeast and Southeast Area Element:* The Project would provide new residential development on a vacant lot. The addition of new residential units would support existing and proposed development in the area and would support future development around the Benning Road Metro Station;
- *Benning Road Corridor Redevelopment Framework:* The Benning Road Corridor Redevelopment Framework (Resolution 17-0879) considers the Benning Road Metro Station Area an opportunity site for redevelopment, including transit-oriented redevelopment and contemplates that the subject site could support retail and residential use. The Applicant's proposal for a residential development is consistent with this vision; and
- *Racial Equity Lens:* The proposed development would provide a new residential building with units targeted at low- and moderate-income families. The Property is currently improved with a one-story office building at 4435 Benning Road, N.E. (Square 5085, Lot 61) and a vacant property at 4401 Benning Road, N.E. (Square 5085, Lot 40). The office building is currently vacant but served most recently as a dental office. Based on the above, the proposed development would not result in the displacement of any existing residents. The proposed development would provide 109 new residential units including 87 units at or below 50% MFI. The Project would include family-sized units with 27 two-bedroom units and 22 three-bedroom units. MHCDO is a partner in the Application and would provide training and educational programming through a Resident Resource Center, in a range of topics that could include financial planning, workforce development skills, environmental, health and wellness, community-building, and others. In the Far Northeast and Southeast Planning Area, 38.9% of the population has no vehicle available as compared to 34.9% in the District as a whole. The average median income in the planning area is \$47,003 as compared to \$92,266 District-wide. Finally, the unemployment rate in the planning area is 14.6% versus 8.2% in the District. The proposed development would provide affordable housing, with wrap-up education and employment training services provided by MHCDO in close proximity to Metro and would be located along the proposed Benning Road extension of the streetcar line. The provision of new affordable housing units on a vacant site would also support existing and proposed commercial development along the Benning Road corridor.

33. OP's Report stated that its recommendation of approval was subject to the Applicant providing the following documents or information:
 - Proposed design flexibility language;
 - Proposed plan for public art, including efforts to secure a local DC artist;
 - Proposed signage for pick-up/drop-off spaces;
 - Revised penthouse to reduce the height from 19-20', to 18'6" to conform to the penthouse height limits; and
 - Color and materials board.
34. Prior to the hearing, the Applicant submitted a response to the OP Report providing the documents and information requested. The Applicant's response noted that the OP Report's reference to a 19-foot penthouse was mistaken and that the actual proposed penthouse height is 18'4", comprised of an 11'4" habitable penthouse and a 7' mechanical

penthouse above. The total penthouse height of 18'4" is lower than the MU-7B zone's maximum penthouse height of 18'6" under Subtitle G § 403.3. Therefore, the Project complies with the penthouse height limits, and the Applicant clarified that it was not requesting flexibility or relief from the penthouse height requirement. (Ex. 19-19B.)

35. At the hearing, OP testified in support of the Application and confirmed the Applicant's responses to the OP Report were satisfactory. In addition, OP recommended approval of the Applicant's requests for flexibility from the building height and rear yard requirements as well as the Applicant's request for special exception relief related to parking. (Tr. from May 16, 2022 hearing at pp. 79-82.)
36. Following the hearing, OP submitted a supplemental report dated June 3, 2022 (the "OP Supplemental Report,") to provide responses to Commission comments during the hearing and new information provided by the Applicant in its post-hearing submission. (Ex. 25.) In the OP Supplemental Report, OP recommended approval of the Applicant's request for side yard flexibility. OP also requested additional information from the Applicant, including consistency in the Project renderings, maintenance of the green roof above the garage, and a signage plan.
37. Prior to the Commission's decision meeting, the Applicant submitted a response to the OP Supplemental Report providing the documents and information requested. (Ex. 26-26B.)

DDOT REPORT

38. DDOT filed a report dated May 5, 2022 (the "DDOT Report," Ex. 14) stating that it has no objection to the Application including the requested zoning relief provided the Applicant implements the proposed Transportation Demand Management ("TDM") Plan contained in the Applicant's Comprehensive Transportation Review, subject to the following minor revisions proposed by DDOT: (Ex. 12A.)
 - Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile; and
 - The long-term bicycle storage room bullet should be revised to state that at least 50% of spaces will be provided horizontally and located on the ground.
39. DDOT also requested the Applicant to provide proposed signage for the PUDO Spaces and ensure the spaces will be screened with landscaping to minimize viewsheds from Benning Road.
40. At the hearing, the Applicant confirmed that it agreed to the revisions DDOT requested to the TDM Plan. (Tr. from May 16, 2022 hearing at pp. 37-38.) The Applicant also filed proposed signage for the PUDO Spaces in the record. (Ex. 19B.)
41. At the hearing, DDOT testified in support of the Application and confirmed the Applicant's responses were satisfactory. (Tr. from May 16, 2022 hearing at pp. 84-85.)

ANC REPORT

42. ANC 7D submitted a resolution dated April 12, 2022 in support of the Project (the “ANC Report,”) stating that at its regularly scheduled and duly noticed public meeting on April 12, 2022, at which a quorum of commissioners was present, the ANC voted to support the Application. (Ex. 20.) The ANC Report noted the Project would improve an underdeveloped property with new affordable residential units that includes larger, family-sized units. The ANC commended the Applicant for making good use of the site constraints by providing the landscaped front setback area. The ANC also noted its support for the requested flexibility and special exception relief in the Application.⁵
43. During the hearing on May 16, 2022, the Commission noted that the ANC Report was not executed by the Chair or Vice-Chair of the ANC, as required under Subtitle Z § 406.2(i). (Tr. from May 16, 2022 hearing at pp. 39-40, 68.)
44. Following the hearing, the Applicant worked with the ANC to have an updated report signed by the Chair or Vice-Chair. As such, the ANC submitted a revised resolution in support dated May 16, 2022, which is signed by the ANC’s Vice-Chair. (Ex. 22.)

LETTERS IN SUPPORT OR OPPOSITION

45. There were no letters of support or opposition filed in the case record. Additionally, no individuals or groups spoke in support or opposition at the Commission’s hearing.

CONCLUSIONS OF LAW

AUTHORITY – DESIGN REVIEW

1. Pursuant to the authority granted by the Zoning Act, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Rep1.)), the Commission may approve a voluntary design review application consistent with the requirements of Subtitle X, Chapter 6 and Subtitle Z § 301.
2. Pursuant to Subtitle X § 600.1, the purpose of the design review process is to:
 - (a) *Allow for special projects to be approved by the Zoning Commission after a public hearing and a finding of no adverse impact;*
 - (b) *Recognize that some areas of the District of Columbia warrant special attention due to particular or unique characteristics of an area or project;*
 - (c) *Permit some projects to voluntarily submit themselves for design review under this chapter in exchange for flexibility because the project is superior in design but does not need extra density, provided that FAR is measured as the aggregate of all buildings within a Voluntary Design Review boundary;*
 - (d) *Promote high-quality, contextual design; and*

⁵ The ANC Report is silent as to the Applicant’s request for side yard flexibility. With respect to the Project’s side yards, the architectural plans presented to the ANC are the same as those presented for approval by the Commission. The ANC did not respond to the Applicant’s request for side yard flexibility prior to the Commission’s decision meeting.

(e) Provide for flexibility in building bulk control, design, and site placement without an increase in density or FAR beyond that allowed within the overall Voluntary Design Review application boundary or a map amendment.

3. Subtitle X § 603.1 authorizes the Commission, as part of the design review process, to “grant relief from development standards for height, setbacks, yards, lot occupancy, courts, and building transitions; as well as any specific design standards of a specific zone ... [but] not ... other building development standards including FAR, Inclusionary Zoning, or Green Area Ratio.”
4. Subtitle X § 603.3 provides that “[e]xcept for height, the amount of relief from the standards authorized by Subtitle X § 603.1 is at the discretion of the Zoning Commission, provided that the relief is required to enable the applicant to meet all of the standards of Subtitle X § 604. The Zoning Commission may grant no greater height than that permitted if the application were for a PUD.”
5. Subtitle X § 603.4 provides that “[a]n application for a special exception or variance that would otherwise require the approval of the Board of Zoning Adjustment may be heard simultaneously with a Design Review application, and shall be subject to all applicable special exception criteria and variance standards”

GENERAL DESIGN REVIEW CRITERIA (SUBTITLE X § 604)

6. Subtitle X § 604 requires that in order for the Commission to approve a Design Review application it must:
 - Find that the proposed design review development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (Subtitle X § 604.5.)
 - Find that the proposed design review development will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of Subtitle X, Chapter 9; (Subtitle X § 604.6.)
 - Review the urban design of the site and the building according to certain enumerated criteria of Subtitle X § 604.7 (set forth below); and
 - Find that the criteria of Subtitle X § 604.7 are met in a way that is superior to any matter-of-right development possible on the site. (Subtitle X § 604.8.)
7. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies the applicable general design review requirements of Subtitle X § 604.
8. The Commission concludes that the Application satisfies the requirement of Subtitle X § 604.5 and is not inconsistent with the Comprehensive Plan for the following reasons:
 - The Project proposes a height, density, and residential use that are consistent with the Property’s FLUM designation for “Medium Density Residential” and “Medium Density Commercial” uses and the Property’s GPM designation of a “Neighborhood Commercial Center.” To the extent the Project’s lack of a commercial use component

- may be inconsistent with the Property's FLUM designation, the Commission concludes that such inconsistency is outweighed by the Application's consistency with other Comprehensive Plan policies described above relating to the development of affordable housing near the Benning Road Metrorail Station, which the Commission believes will support and promote commercial development in the area. The Commission notes that the Project fits the description of new residential development that complements existing uses, which is permitted in Neighborhood Commercial Centers;
- The Project is creating 109 new dwelling units, all of which will be affordable in excess of the requirements under the Inclusionary Zoning program. The Project will also provide housing for families, including 27 two-bedroom units and 22 three-bedroom units;
 - The Project will improve a currently under-developed site that is directly adjacent to the Benning Road Metrorail Station, thereby furthering the goals of turning metro station areas into neighborhood centers and providing easy access to public transportation for residents;
 - The Project is not inconsistent with the objectives of the Far Northeast and Southeast Area Element or the Framework Plan, which encourage new development by the Benning Road Metrorail Station; and
 - The Project advances the racial equity goals in the Comprehensive Plan by providing an all-affordable Project on an underdeveloped parcel. The Commission concludes that the Project will not displace any existing residents at the Property, as it is currently improved with a vacant office building, and finds that the provision of the Resident Resource Center to be administered by the MHCDO furthers racial equity by providing the community with services and training on financial planning, workforce development skills, environmental, health and wellness, and community-building.
9. The Commission concludes that the Application satisfies the requirements of Subtitle X § 604.6 and will not tend to adversely affect the use of neighboring property and satisfies the general special exception criteria of Subtitle X, Chapter 9, for the following reasons.
- **Subtitle X § 901.2(a)** – The Project is harmonious with the purpose and intent of the Zoning Regulations and maps because it will be consistent with the goals for the MU-7 zones for medium-density development near rapid transit stops. (Subtitle G § 400.6.) The Project also proposes a FAR and lot occupancy that are within the by-right development standards for the MU-7B zone; and
 - **Subtitle X § 901.2(b)** – The Project will not tend to adversely affect the use of neighboring property because the Project will provide a large, landscaped front setback from Benning Road that will reduce the impacts of the requested flexibility from building height, rear yard, and side yard requirements. In addition to the 20-foot-wide rear Alley provides a buffer to the Property from the south, and the neighboring buildings to the west, south, and east are all substantially setback from the Property. The Applicant has ensured that the Project's side window openings will meet Building Code requirements in the event neighboring property is redeveloped. The Commission also notes the ANC and OP supported the Application and there are no letters in opposition in the case record.

10. The Commission concludes that the Application satisfies the requirements of Subtitle X §§ 604.7 and 604.8 that the Project be superior to matter-of-right construction with respect to the Project's creative massing, detailing, materials selection, and other design features for the following reasons.
- **Subtitle X § 604.7(a)** – The Project encourages a safe and vibrant street frontage on Benning Road by providing a large front setback area with landscape features, seating, and children's play equipment. In response to the Commission's comments at the hearing, the Applicant re-designed the Project's ground level to incorporate large windows for a majority of the façade, including the activating residential lobby area. While the Project must provide a drive aisle from Benning Road, the Applicant has reduced the number of curb cuts on site from two to one and plans improvements to surrounding public space in accordance with DDOT standards;
 - **Subtitle X § 604.7(b)** – The large front setback area will activate the Property and include lawn, play areas, seating areas, public art, and a dog relief area to improve the Property's connectivity to the surrounding neighborhood. While the front setback area is not open to the public, it is a net positive part of the Project and consistent with the design review criteria;
 - **Subtitle X § 604.7(c)** – The Property is not located in a historic district; however the Project respects the variety of architectural character in the surrounding neighborhood. The Project will reinforce the existing urban form by providing an ample setback from Benning Road that is consistent with the open spaces on nearby properties. The Project also responds to the Conway Center residential building across Benning Road, NE and establishes both the density and character of the Benning Road corridor in proximity to Metrorail while providing an appropriate separation from existing multi-unit residential development to the west and south;
 - **Subtitle X § 604.7(d)** – The Project has an inspired façade design with attractive material and color choices. The ground floor will reinforce the pedestrian realm through the use of large amounts of glazing. The Nichiha panels proposed for the third floor and above are high-quality materials, and the gray banding provides visual interest throughout the façade;
 - **Subtitle X § 604.7(e)** – The Project's front setback area is designed with sustainable landscaping features, including new grass, shrubs, trees, and other plantings. The Project also proposes three separate green roof features; and
 - **Subtitle X § 604.7(f)** – The Project will promote connectivity and walkability in the surrounding neighborhood through the substantial improvements to the frontage along Benning Road, including new pedestrian pathways and improved public space. The Project also incorporates 45 long-term bicycle parking spaces, which exceeds the minimum zoning requirement, and six short-term bicycle spaces as well as a bike storage room providing electrical outlets for bike charging.
11. The Commission concludes that the requested design flexibility pursuant to Subtitle X § 603 from the requirements for building height, rear yard, and side yard meet the standards of Subtitle X § 604. Overall, the requested flexibility allows the Applicant to maximize the already limited buildable area on the Property and, therefore, contributes to a better and more efficient building design. The building height flexibility furthers the successful functioning of the Project and is consistent with the design goals under Subtitle X § 604

by allowing for larger floor-to-ceiling height on the ground level while providing additional levels of affordable housing beyond the by-right height limitation in the MU-7B zone. The requested flexibility for rear yard and side yard requirements is driven by the Encumbrances, which push the Project's buildable area to the rear half of the Property. Without reductions to the rear yard and side yard, the Project's design would be significantly compromised. The Applicant's flexibility requests will not adversely impact neighboring properties, including as to light, air, and privacy. The Project features a large setback from Benning Road and abuts a 20-foot-wide unimproved Alley to the rear. The neighboring properties to each side of the Property are improved with buildings that are already setback from the shared lot lines sufficiently to avoid any adverse impacts to the light, air, or privacy of the eastern and western neighbors. Nonetheless, the Project design accounts for the possibility of the neighboring lots being redeveloped by complying with Building Code requirements for window openings.

AUTHORITY – SPECIAL EXCEPTION

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

SPECIAL EXCEPTION – NUMBER OF VEHICULAR PARKING SPACES (SUBTITLE C § 703.2)

14. The Commission concludes that the Application's request for special exception relief to reduce the number of vehicular parking spaces from 18 spaces required to 13 spaces satisfies the general special exception criteria and the special conditions of Subtitle C § 703 as follows:
 - *The Relief is in Harmony with the Purpose and Intent of the Zoning Regulations and Maps:* Given the significant site constraints caused by the Encumbrances, the Project maximizes the number of on-site parking spaces. The record reflects that additional parking spaces would require a substantial re-design and loss of residential programming on the ground floor, or would otherwise impact accessibility to the loading berth and service-delivery space. Both DDOT and the Applicant's transportation expert submitted reports that supported the parking relief; (Ex. 12A, 14.)

- *The Relief Will Not Adversely Affect the Use of Neighboring Properties:* The Project has excellent access to public transportation, thereby reducing the need for on-site vehicular parking. In particular, the Project is within one-half block of the Benning Road Metrorail station. There is nearby access to bus lines and the expected expansion of the streetcar running along Benning Road in front of the Property;
- **Subtitle C § 703.2** - The Project satisfies two of the special conditions under Subtitle C § 703.2 to warrant parking relief. Under Subtitle C § 703.2(b), the Project is particularly well-served by mass transit, shared vehicle, or bicycle facilities, as explained above. In addition to the access to public transportation outlined above, there are Capital Bikeshare stations at the Benning Road Metro and at the Benning Neighborhood Library approximately ½ mile from the Property. Under Subtitle C § 703.2(f), all of the Project's dwelling units are dedicated as affordable housing units. Therefore, the special conditions of Subtitle C § 703.2 have been satisfied;
- **Subtitle C § 703.3** - The Project is physically unable to provide the required 18 parking spaces on the Property. The row of parking spaces in the garage spans the entire width of the Property. There is no physical room for additional parking spaces in the garage while meeting requirements for turning radius and access. Due to the Encumbrances, the Project's floorplate cannot be expanded and the Project cannot provide below-grade parking; and
- **Subtitle C § 703.4** - The Applicant worked with DDOT throughout the design review application and has agreed to a transportation demand management plan that is a condition of the Commission's approval as outlined below and in Ex. 14.

SPECIAL EXCEPTION – SURFACE PARKING SPACES IN FRONT SETBACK (SUBTITLE C § 710.3

15. The Commission concludes that the Application's request for special exception relief to locate two surface parking spaces within the front setback area satisfies the general special exception criteria and the special conditions of Subtitle C § 710.3 as follows:
 - *The Relief is in Harmony with the Purpose and Intent of the Zoning Regulations:* The relief is requested due to the site constraints, which limit the Applicant's ability to provide more parking elsewhere in the Project. The two PUDO Spaces will be removed from the Property's front lot line and the Benning Road right-of-way. The abnormally large front setback provides a large open area to locate two parking spaces without the parking spaces being directly adjacent to public space. Both DDOT and the Applicant's transportation expert submitted reports that supported the provision of the PUDO Spaces in the front setback; (Ex. 12A, 14.)
 - *The Relief Will Not Adversely Affect the Use of Neighboring Property:* The two parking spaces in the front setback will be screened by plantings and landscaping. The location relief will allow two additional on-site parking spaces for the Project that otherwise could not be provided. Therefore, the relief directly limits any impact of the parking relief sought by the Applicant;
 - **Subtitle C § 710.3(a)(1)(A)** - In accordance with Subtitle C § 710.3(a)(1)(A), it is not practical to provide the parking spaces within the garage or elsewhere on the lot due to the unusual shape, size, and dimension of the Property. The Encumbrances along the Property's frontage create an unusual condition where the Project's footprint is limited to the rear portion of the Property, and the Project only has a lot occupancy of 50% where up to 80% is permitted. Therefore, the Project's garage is already reduced in

size, so the Applicant cannot provide additional parking spaces within the building. Parking cannot be provided elsewhere on the site because the Project does not have a rear yard or large enough side yards; and

- **Subtitle C § 710.3(a)(2)** - The PUDO Spaces are located off the drive aisle from Benning Road to provide quick and convenient access from the street. The Project proposes a new walkway directly adjacent to the parking spaces that will provide access to the residential lobby.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

16. The Commission must give “great weight” to the recommendation of OP, pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016).)
17. The Commission finds OP’s evaluation of the Application as having satisfied the applicable design review and special exception relief requirements to be persuasive, concurs with OP that the Applicant has satisfactorily addressed OP’s recommendations, and concurs with OP’s recommendation to approve the Application.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

18. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy this great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).)
19. The Commission agrees with the ANC Report, which supports the Application and the Project. Although the ANC Report does not raise any issues or concerns with the Application, the Commission notes the ANC’s comments regarding the Project’s provision of affordable and family-sized housing by the Benning Road Metrorail station.

DECISION

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

- Design review approval pursuant to Subtitle X, Chapter 6, with flexibility from the requirements for building height, rear yard, and side yards; and

- Special exception relief from the requirements for vehicular parking spaces under Subtitle C § 703.2 and to locate two parking spaces within the front setback area under Subtitle C § 710.3.

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

Project Development

1. The Project shall be built in accordance with the architectural plans and elevations dated April 26, 2022 (Ex. 13A1-13A3), as updated by the plans dated May 11, 2022 (Ex. 15A1-15A2), as updated in Ex. 19B, Ex. 23A1-23A4, and Ex. 26A-26B (collectively, the “Final Plans”), and with requested zoning flexibility, subject to the following areas of flexibility:
 - Interior Components - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided such variations do not change the exterior configuration of the building;
 - Exterior Materials - To vary the final selection of the colors of the exterior materials, based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the Order;
 - Exterior Details – To make minor refinements to exterior façade details and dimensions, including curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, balcony railings and trim, or any other changes, providing such minor refinements do not substantially alter the plans approved by the Commission and are necessary to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
 - Number of Dwellings - To vary the number of residential dwelling units by an amount equal to plus or minus 10% from the number depicted on the architectural plans approved by the Commission or as dictated by DHCD financing;
 - Front Setback Design - To vary the location, attributes, and general design of the front setback area, provided it is generally consistent with the Commission’s approval, including the type and height of fencing; type and size of playground equipment; design of public art; orientation of electric transformers; and elements in public space subject to approval by the Department of Transportation’s Public Space Division;
 - Signage - To vary the font, message, logo and color of the approved signage for the Project, subject to full compliance with applicable signage restrictions under the D.C. Building Code and consistent with the indicated dimensions and materials; and
 - Environmental - To vary the features, means and methods of achieving the required GAR and Enterprise Green Communities PLUS Certification.

2. Enterprise Green Communities Plus. The Project shall be designed to achieve Enterprise Green Communities Plus certification, provided that the Applicant shall have the flexibility to vary the means of achieving such certification. Prior to the issuance of a building permit, the Applicant shall submit evidence from its architect certifying compliance with this condition.

Transportation Demand Management Measures

3. **For the life of the Project**, the Applicant shall adhere to the following transportation demand management measures:
 - a. Identify a Transportation Coordinator for the planning, construction, and operations phases of development;
 - The Transportation Coordinator will act as the point of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo.
 - b. Develop, distribute, and market various transportation alternatives and options to residents, including promoting transportation events (e.g., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications;
 - c. Direct the Transportation Coordinator to 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;
 - d. Provide welcome packets to all new residents that will, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map;
 - Brochures can be ordered from DDOT's goDCgo program by emailing info@godcgo.com.
 - e. Post all transportation and TDM commitments on the building website, publicize availability, and allow the public to see what has been promised;
 - f. Offer a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident;
 - g. Provide at least six short- and 45 long-term bicycle parking spaces, exceeding ZR16 minimum requirements for at least five short- and 36 long-term bicycle parking space;
 - h. Accommodate non-traditional sized bikes including cargo, tandem, and kids bikes in the long-term bicycle storage room, with a minimum 5% of spaces (two spaces) that will be designed for longer cargo/tandem bikes, and a minimum of 10% of spaces (five spaces) that will be designed with electrical outlets for the charging of electric bikes and scooters;

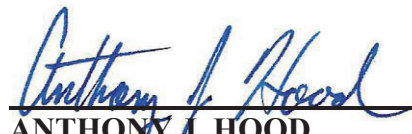
- There will be no fee to building employees or residents for usage of the bicycle storage room; and
 - At least 50% of spaces will be provided horizontally and located on the ground.
- i. Install a minimum of one electric vehicle (EV) charging station, per DDOT recommendations of a minimum of one out of every 50 vehicle parking spaces being served by an EV charging station; and
 - j. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile.

General

4. This Application approval shall be valid for a period of two years from the effective date of this Order. Within such time, an application for building permit must be filed as specified in Subtitle Z § 702.2. Construction must begin within three years after the effective date of this Order. (Subtitle Z §702.3.)
5. The design calls for a public art piece that will act as a focal point on the Benning Road corridor in front of the building. The Applicant envisions a sculpture of a scale and materiality that is appropriate to the setting. The Applicant will work with the DC Commission on the Arts and Humanities to secure the services of a local artist, providing information to guide the process. As part of this process, the Applicant might also assist with the “Call to Artists” and serve on the selection committee.

On June 9, 2022, upon the motion of Vice Chair Miller as seconded by Commissioner May, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Joseph S. Imamura to approve; third Mayoral appointee seat vacant, not voting).

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 26, 2022.


 ANTHONY J. HOOD
 CHAIRMAN
 ZONING COMMISSION


 SARA A. BARDIN
 DIRECTOR
 OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION,

FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA ZONING
COMMISSION ORDER NO. 22-08A

Z.C. Case No. 22-08A

NRP Properties, LLC

(Two-Year Design Review Time Extension @ Square 5085, Lots 40 and 61)

July 31, 2025

Pursuant to notice, at its July 31, 2025 public meeting, the Zoning Commission for the District of Columbia (“Commission”) held a virtual public meeting to consider the application (the “Application”) of NRP Properties, LLC (“Applicant”) for a two-year time extension of the deadline to commence construction of the design review approved in Z.C. Order No. 22-08 (the “Original Order”) for the subject property at 4401-4435 Benning Road, N.E. (Square 5085, Lots 40 and 61) (the “Property”).

The Commission reviewed the Application pursuant to Subtitle Z of the Zoning Regulations for 2016, Title 11 of the District of Columbia Municipal Regulations (the “Zoning Regulations” or “ZR-16”). For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

I. Background

Prior Approvals

1. The Property is located near the juncture of Benning Road, N.E. and East Capitol Street, N.E., and approximately one-half block from the Benning Road Metrorail Station.
2. Pursuant to the Original Order, effective on August 26, 2022, the Commission approved voluntary design review authorizing the construction of a new, 9-story plus penthouse residential building with 109 all-affordable dwelling units (the “Project”).
3. The Original Order required an application for a building permit to be filed by August 26, 2024, and for construction of the Project to commence no later than August 26, 2025.

Parties and Notice

4. The parties to the Original Order were the Applicant and Advisory Neighborhood Commission 7F (the “ANC”).¹

¹ At the time of the Original Order, the Property was located within the boundaries of ANC 7D. Due to ANC re-districting, the Property is now within the boundaries of ANC 7F.

5. On June 12, 2025, the Applicant served the Application on ANC 7F and the D.C. Office of Planning (“OP”) (Exhibit (“Ex.”) 2).

II. The Application

6. On June 12, 2025, the Applicant timely filed the Application requesting a two-year time extension of the Order to extend the deadline by which construction of the Project must commence from August 26, 2025 to August 26, 2027 (Ex. 2-2D).
7. The Applicant asserted that it meets the requirements for a time extension enumerated in Subtitle Z § 705.2 as follows:
 - The extension request was served on all parties and all parties were allowed 30 days to respond (Ex. 2);
 - There have been no changes to the material facts upon which the Commission based its approval of the Original Order, including the applicable Zoning Regulations and Comprehensive Plan (Ex. 2); and
 - There is good cause to grant the requested extension due to the Applicant’s inability to obtain sufficient Project financing despite the Applicant’s good faith efforts to obtain such financing. Additionally, the Applicant has been unable to secure all required government agency approvals due to delays beyond the Applicant’s reasonable control. With respect to financing, the Applicant secured tax-exempt bond financing from the D.C. Housing Finance Agency; however, the bond financing represents only a portion of the capital needed to construct the Project. The Applicant has been unable to finalize the remainder of the Project’s public financing due to significant instability in the real estate market, which has had a particular impact on affordable housing developments like the Project. With respect to government agency approvals, the Applicant applied for a building permit within the timeframe set forth in the Original Order. Yet, permit issuance has been delayed due to encumbrances on the Property, which require the Applicant to coordinate with multiple agencies and subjects the Project to additional layers of review. While the Applicant anticipates permit issuance in Q3 of 2025, the delays in permit issuance are beyond the Applicant’s reasonable control (Ex. 2, 2D).

III. Responses to the Application

8. On July 16, 2025, OP submitted a report recommending approval of the Application. OP agreed that the Applicant demonstrated compliance with the criteria under Subtitle Z § 705.2, including that the Application was served on all parties, there is no substantial change in materials facts, and the Applicant demonstrated good cause for the extension (Ex. 4).
9. ANC 7F did not submit a report on the Application in the case record.

IV. Conclusions of Law

1. Subtitle Z § 705.2 authorizes the Commission to extend the period of an order upon determining that the time extension request demonstrates satisfaction of the requirements

of Subtitle Z § 705.2 and complies with the limitations of Subtitle Z §§ 705.3, 705.4, and 705.6.

2. The Commission concludes the Applicant timely filed the Application prior to expiration of the period to commence construction of the Project approved in the Original Order.
3. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that all parties are allowed 30 days to respond.
4. The Commission concludes the Applicant satisfied the requirement of Subtitle Z § 705.2(a) by demonstrating that it served the extension request on ANC 7F, the only other party to the Original Order, and that the ANC was given 30 days to respond from the June 12, 2025, date of service.
5. Subtitle Z § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the Order that would undermine the Commission's justification for approving the Order.
6. The Commission concludes the Applicant satisfied the requirement of Subtitle Z § 705.2(b) based assertions in the Application and by OP that there has been no substantial change in any material facts upon which the Commission based its approval in the Original Order.
7. Subtitle Z § 705.2(c) requires that an application demonstrate with substantial evidence one or more of the following criteria:
 - (1) *An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;*
 - (2) *An inability to secure all required governmental agency approvals for a development by the expiration date of the order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or*
 - (3) *The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.*
8. The Commission concludes the Applicant satisfied the requirement of Subtitle Z §§705(c)(1) and (c)(2) due to an inability to secure necessary financing despite the Applicant's diligent good faith efforts and an inability to obtain a building permit to construct the Project due to delays beyond the Applicant's reasonable control, respectively. With respect to the former, the Commission agrees the current instability in the real estate market creates challenges in obtaining sufficient financing, which are particularly acute for an all-affordable development like the Project. With respect to the latter, the Commission agrees the Applicant is pursuing a building permit for the Project but the encumbrances and additional coordination have created delays beyond the Applicant's reasonable control.

“Great Weight” to the Recommendation of OP

9. The Commission must give “great weight” to the recommendation of OP, pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.9 (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016))).
10. The Commission finds OP’s recommendation to approve the Application persuasive and concurs with OP’s judgment.

“Great Weight” to the Recommendation of the ANC

11. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy this great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)). The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted)).
12. ANC 7F did not submit a written report into the case record and, therefore, there is nothing to which the Commission can give “great weight.”

DECISION

Based on the case record and the above Findings of Fact and Conclusions of Law, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Applicant’s request for a two-year time extension of Z.C. Order No. 22-08, to extend the validity period and deadline to commence construction until August 26, 2027.

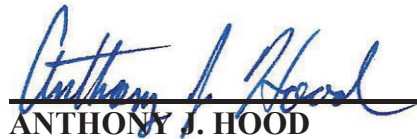
Vote (July 31, 2025): 5-0-0

(Anthony J. Hood, Robert E. Miller, Tammy Stidham, Joseph S. Imamura, and Gwen Marcus Wright to approve.)

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order No. 22-08A shall become final and effective upon publication in the *District of Columbia Register*; that is, on **October 3, 2025**.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



**ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION**



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

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