

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Dennis R. Hughes
202.419.2448
dennis.hughes@hklaw.com

August 20, 2026

BY ELECTRONIC DELIVERY

District of Columbia Zoning Commission
441 4th Street, NW
Suite 210-S
Washington, DC 20001

**Re: Request for Two-Year Extension
Zoning Commission Nos. 15-24B/15-24D
6th Street, NE (Square 3591, Lot 9, Square 3593, Lot 6)**

Dear Members of the Zoning Commission:

On behalf of Gallaudet University (the “University” or “Applicant”), this letter serves as a request for a two-year extension of the time period to file a building permit application for the second-stage planned unit development (“PUD”) that was approved pursuant to Order No. 15-24B and initially extended pursuant to Order No. 15-24D (collectively with Order No. 15-24/15-24A, the “PUD Approval”). A copy of Orders Nos. 15-24B and 15-24D are attached hereto as Exhibit A. The PUD Approval controls the development of three mixed-use buildings containing multifamily residential, retail/service, university uses and related open space across three University-owned parcels (Parcels 1, 2, 3) fronting 6th Street, NE (Square 3591, Lot 9, Square 3593, Lot 6) (collectively, the “Property”). An additional parcel, Parcel 4, located at 1331 5th Street, NE (Parcel 129/112) is the subject of a separate second-stage PUD approval from the Zoning Commission (ZC Orders 15-24C and 15-24E) and is not included in the present request.

Pursuant to Order 15-24D, and consistent with 11-Z DCMR § 702.2, the PUD approval is valid for a period of two years from the effective date of that Order, that is until August 26, 2026, within which time an application must be filed with the Department of Buildings (“DOB”) for a building permit for Parcels 2 and 3. For the reasons set forth herein, the University requests an additional two-year extension of the time periods established by the PUD Approval, such that building permit applications for Parcels 2 and 3 must be filed no later than August 26, 2028, and second-stage PUD application for Parcel 1 must be filed not later than March 28, 2029. This application includes a request for waiver from the limitation of 11-Z DCMR § 705.5 that a second extension be granted for no more than one year.

The subject application is filed pursuant to 11-Z DCMR Chapter 700 for good cause shown herein. A letter authorizing Holland & Knight LLP to file and process the application is attached hereto

ZONING COMMISSION
District of Columbia
CASE NO. 15-24F
EXHIBIT NO. 2A

as Exhibit B. The Applicant also is completing Form 106, Application for a Time Extension to a PUD, online as part of the submission of this application. Payment of the requisite filing fee in the amount of \$5,000, pursuant to 11-Z DCMR § 1600.10, will be paid by check made payable to the D.C. Treasurer and delivered to the Office of Zoning.

I. INTRODUCTION

A. Background

The Property is located in the Florida Avenue/Union Market District and comprises Parcels 1, 2 and 3 of the University's four-parcel PUD located along 6th Street, NE, abutting the University's campus. First stage approval of the PUD was originally granted in Z.C. Order 15-24/15-24A, effective June 23, 2017, which approval included a Zoning Map amendment that rezoned Parcels 1 and 2 from C-M-1 to C-3-A zone and rezoned Parcels 3 and 4 from C-M-1 to C-3-C zone (all pursuant to the 1958 Zoning Regulations).

By Order 15-24B, effective August 26, 2022, the Zoning Commission approved a "Modification of Significance" for Parcels 1, 2 and 3, and second-stage PUD approval for Parcels 2 and 3 along with a related Zoning Map amendment for approximately 6,000 square feet of land previously controlled by the University's campus plan approval. This Order provided that the second-stage PUD application for Parcel 1 would be filed with the Office of Zoning not later than March 28, 2027.

As provided in Order 15-24B, Parcel 2, located on the east side of 6th Street, NE, is approved for development with two six-story mixed-use buildings that will provide a total of approximately 240 dwelling units, 29,000 square feet of ground floor retail/service space, and 17,000 square feet of university space. Parcel 3, located on the west side of 6th Street, NE, is likewise approved for development with an eleven-story mixed-use building containing approximately 600 dwelling units and 38,000 square feet of ground floor retail/service space.

Development of Parcel 4 is controlled by the second-stage PUD approval granted by the Zoning Commission in Order 15-24 C, effective December 15, 2023, and Order 15-24E, effective May 15, 2026, and is not the subject of the present time extension request.

The Property lies within the boundaries of Advisory Neighborhood Commission ("ANC") 5D. In addition, ANC 6C is located across Florida Avenue, NE, from Parcel 1, which fronts the corner of 6th Street and Florida Avenue.

By Order No. 15-24D, the Zoning Commission previously approved a two-year time extension for Order 15-24B, extending the deadline for filing building permit applications for Parcels 2 and 3 to August 26, 2026. In so doing, the Commission concluded that the Applicant satisfied the requirements of 11-Z DCMR § 705.2 for grant of the extension "due to the adverse conditions affecting the financing market for commercial real estate development beyond the Applicant's reasonable control".

Earlier this year, the Commission likewise approved a two-year time extension related to development of Parcel 4. In Order 15-24E, the Commission extended the deadline for filing permit application for Parcel 4 to December 15, 2027. The Commission again concluded that the Applicant satisfied the requirements of 11-Z DCMR § 705.2 for grant of the extension “due to the significant adverse conditions affecting the financing market for commercial real estate development”.

Subsequent to the Commission’s approval of Order 15-24E, the University and its longtime ground lessee and development partner, JBG/6th Street Associates, LLC, have terminated their ground lease and development agreement for the Property. As part of that disengagement, the University retains ownership of design and construction drawings and rights thereunder and fully intends to proceed with development of the Property consistent with the PUD Approval. To that end, the University already has initiated its selection process for a new development partner.

B. Jurisdiction of the Zoning Commission

Pursuant to 11-Z DCMR § 705.2, the Zoning Commission is authorized to extend time periods of PUD orders for good cause provided the following conditions are met:

- a. The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- b. There is no substantial change in any of the material facts upon which the Commission based its original approval of the application that would undermine the Commission’s justification for approving the original application; and
- c. The applicant demonstrates with substantial evidence that there is good cause for such extension, as further provided in 11-Z DCMR § 705.2(c).

The Zoning Regulations define “good cause” in 11-Z DCMR § 705.2(c) as one or more of the following:

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.

II. COMPLIANCE WITH STANDARDS FOR EXTENDING PUD VALIDITY

A. Extension Request Served on All Parties

Other than the Applicant, the only parties to the PUD were ANC 5D, ANC 6C, and NL 1271 5th St, LLC, a neighboring property owner to Parcel 3 who participated in Application No. 15-24B as a party in support. As indicated in the Certificate of Service attached hereto, the Applicant is serving this request for time extension on all these parties. The Applicant has informed ANC 5D and ANC 6C of its intention to request the time extension and has offered to meet with the ANCs. The Applicant requests that the Zoning Commission schedule this matter for discussion at its earliest available public meeting date that affords the ANCs the requisite 30-day time period to respond.

B. No Substantial Change in Material Facts

There has been no substantial change in any of the material facts upon which the Zoning Commission based its original approval that would undermine the Commission's justification for granting the PUD Approval. The Project remains consistent with the design and program approved by the Commission in Order 15-24B and will continue to provide approximately 840 dwelling units, 67,000 square feet of retail/service uses, 17,000 square feet of university uses, publicly accessible open spaces and significant public benefits approved as part of the PUD.

The University remains committed to moving forward with the Project despite the loss of its long-term development partner. While the partner's departure represents an additional timing setback to the University's schedule for proceeding to construction, the many years of effort and expense invested in the PUD Approval have resulted in a thoughtfully-conceived and thoroughly reviewed mixed use project that promises to further enhance the maturing Union Market neighborhood, construction-level drawings for Parcels 2 and 3 are significantly developed, and the University intends to continue this momentum upon its selection of a new development partner and improvement in the commercial real estate economic climate.

C. Good Cause Shown

This application satisfies the criteria of 11-Z DCMR § 705.2(c) and thus meets the requirements for an extension of the PUD approval as it is delayed in moving forward given the continuing financing and construction materials pricing challenges confronting the commercial real estate sector and the Applicant's need to engage a replacement development partner to advance the PUD Approval to construction.

The continuing financing challenges for the commercial real estate sector are well-documented by the Commission. In its review of time extension requests over the past several months, the Commission has consistently concluded that sustained inflation and high interest rates, and related increased construction costs, have created a pervasive and challenging development environment beyond an applicant's reasonable control. The University believes that an additional two-year time extension of the PUD Approval for Parcels 2 and 3 will allow meaningful time for the current economic fundamentals to improve and for it to select and engage a replacement development partner to move forward to permitting and construction.

III. NO HEARING NECESSARY

Subtitle Z § 705.7 of the Zoning Regulations provides:

The Commission shall hold a public hearing on a request for an extension of the validity of an application approval only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the proceeding concerning any of the criteria in Subtitle Z § 705.2. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

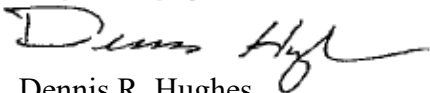
A hearing is not necessary for this request since there are no material factual conflicts that have been generated concerning any of the criteria set forth in 11-Z DCMR § 705.2.

IV. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein and in the attached exhibits, the Applicant respectfully requests that the Zoning Commission approve a two-year extension of time for the Applicant to submit a building permit application for Parcels 2 and 3, to no later than August 26, 2028, and a two-year extension of time for the Applicant to submit a second-stage PUD application for Parcel 1, to no later than March 28, 2029. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
Dennis R. Hughes

Attachments

cc: Office of Planning
ANC 5D
ANC 6C
NL 1271 5th St, LLC

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2026, electronic copies of the foregoing application were served on the following:

D.C. Office of Planning:

Ms. Radhika Mohan
Mr. Philip Bradford

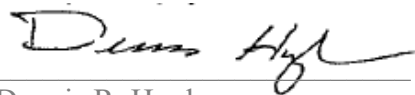
Advisory Neighborhood Commission:

ANC 5D Chair Salvador Saucedo-Guzman
ANC 5D-01 Isabel Cholbi

ANC 6C Chair Karen Wirt
ANC 6C-01 Jeremiah Foxwell

Party in Support:

NL 1271 5th St, LLC
c/o Meridith Moldenhauer, Cozen O'Connor



Dennis R. Hughes
Holland & Knight LLP

EXHIBIT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-24B

Z.C. Case No. 15-24B

Gallaudet University and JBG/6th Street Associates, LLC
(Second-Stage Planned Unit Development (“PUD”), Consolidated PUD, and Related Map
Amendment and Modification of Significance to an Approved First-Stage PUD @
Square 3591, Lot 4 & Square 3593, Lots 5-6¹)
January 27, 2022

Pursuant to notice, at its January 27, 2022 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Gallaudet University and JBG/6th Street Associates, LLC (collectively, the “Applicant”) for review and approval of the following for Lots 5-6 in Square 3593 and Lot 4 in Square 3591 (collectively, the “Property”):

- A modification of significance to the First-Stage PUD (“First-Stage PUD”) approved by the Commission in Z.C. Order No. 15-24/15-24A (the “First-Stage Order”) for Parcels 1, 2, and 3;
- A Second-Stage PUD for Parcel 2, consolidated PUD for approximately 5,977 square feet of land being removed from the Gallaudet Campus in Z.C. Case No. 12-15C and incorporated into Parcel 2 and PUD-related map amendment from RF-1 to MU-7, special exception relief from rear yard requirements of Subtitle G § 405.3 for Buildings 2A and 2B, special exception relief pursuant to § 2516 of the 1958 Zoning Regulations (“ZR-58”) to allow two buildings on Parcel 2, and special exception relief pursuant to §§ 735 and 3104 of ZR-58 and § 513.1(b) of Subtitle U of the (2016) Zoning Regulations to allow animal boarding uses; and
- A Second-Stage PUD for Parcel 3 and special exception relief pursuant to §§ 735 and 3104 of ZR-58 to allow animal boarding uses.

The Commission considered the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the “Zoning Regulations” or “ZR-16”] to which all subsequent citations refer unless otherwise specified). The Applicant’s plan to develop the Property with a modified project is described more completely below in § II.B of this Order at Findings of Fact (“FF”) 15-30 (collectively the “Modified Project” or “Project”). For the reasons stated below, the Commission **APPROVES** the Application.

¹ The Property was previously captioned to include Parcels 129/70, 129/103 and a portion of Parcel 141/69. This property was subdivided subsequently to create Lots 5-6 in Square 3593.

FINDINGS OF FACT

I. Background

Prior Approvals

1. The First-Stage Order approved a First-Stage PUD pursuant to ZR-58 for Parcels 1-4 with related map amendments from the C-M-1 Zone District to the C-3-A Zone District for Parcels 1 and 2 and to the C-3-C Zone District for Parcels 3 and 4.
2. The First-Stage Order established the height, massing, program of uses and vehicular access considerations for the four parcels, as well as flexibility for these considerations.
3. The First-Stage Order approved a mix of university, retail, office, and residential uses, with an option to pursue additional office use in place of residential use on Parcel 1. The maximum approved height on Parcel 1 was 70 feet, with a maximum gross floor area of 163,450 square feet. (Exhibit ["Ex."] 3, p. 17.)
4. The First-Stage Order approved a mix of university, retail, and residential uses on Parcel 2, with a maximum height of 70 feet and a gross floor area of 124,390 square feet. (Ex. 3, p. 20.)
5. The First-Stage Order approved a mix of residential and retail uses, with flexibility to provide additional office uses, on Parcel 3. A maximum height of 120 feet and a gross floor area of 651,280 square feet was approved for Parcel 3. (Ex. 3, p. 23.)
6. The First-Stage Order set forth the approved benefits and amenities of the PUD and noted that no additional benefits and amenities would be expected when the Second-Stage applications are processed. (Ex. 3E, p. 33.)

Parties

7. Gallaudet University ("University") is the landowner of the Property and JBG/6th Street Associates, LLC, an affiliate of JBG Smith, is the ground lessee.
8. Advisory Neighborhood Commissions ("ANC") 5D and 6C are automatically parties to the proceedings. ANC 5D is the ANC in which the Property is located; ANC 6C is located across Florida Avenue immediately to the south of the Property. Therefore, both are an "affected ANC" per Subtitle Z § 101.8.
9. NL 1271 5th St, LLC, an affiliate of EDENS, (hereinafter, "EDENS") submitted a request for party status in support of the application. (Ex. 38.) The Commission granted the request at the public hearing on November 29, 2021. (Nov. 29 Transcript ["Tr."], p. 4.)

Notice

10. The Office of Zoning ("OZ") sent notice of the public hearings to be held on November 4, 2021, November 22, 2021, and November 29, 2021 on or before September 14, 2021 to:

- The Applicant;
 - ANC 5D;
 - ANC 5D01, the single member district representative within whose area the Property is located;
 - The Ward 5 Councilmember;
 - The ANC Office;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Consumer and Regulatory Affairs (“DCRA”);
 - The Office of the Attorney General (“OAG”);
 - The Department of Energy and Environment (“DOEE”);
 - At-large Councilmembers; and
 - Property owners within 200 feet, including ANCs 6C and 5D.
- (Ex.21- 22.)
11. Pursuant to Subtitle Z § 402, OZ published notice of the public hearings in the September 17, 2021, *DC Register* (68 DCR 009798-009811). (Ex. 20.)
 12. Pursuant to Subtitle Z § 402.3, the Applicant submitted evidence that it had posted notice of the public hearing on the Property. (Ex. 24A.) The Commission granted the Applicant’s request for a waiver (Ex. 24.) from the requirement to submit a notarized affidavit at the public hearing on November 4, 2021. (Nov. 4 Tr., p. 14.)
 13. Pursuant to Subtitle Z § 402.10, the Applicant filed an affidavit attesting that it had maintained the posting of the notice on the Property. (Ex. 29.)

II. The Application

A. Introduction

14. The Application is comprised of the following components:
 - A Modification of Significance of the First-Stage Order as follows:
 - Parcel 1: modify the land area, the proposed program and use mix, building massing, including height, gross floor area (“GFA”), lot occupancy and open space;
 - Parcel 2: modify the land area, the proposed program, building massing, including height, foot print, lot occupancy, GFA, parking, loading, and circulation; and
 - Parcel 3: modify the proposed program, massing, including GFA, lot occupancy, parking, loading and circulation;
 - A Second-Stage PUD application for the detailed site plan review and final building and landscape design for Parcels 2 and 3;

- Consolidated PUD and zoning map amendment to expand Parcel 2 to include approximately 5,977 square feet of land from the University's campus; and
- An application to remove the 5,977 square feet of land area from within the boundaries of the Campus Plan was reviewed and approved simultaneously by the Commission in Z.C. Case No. 12-15C.

This is an abbreviated listing of the relief requested through the Application. The complete list of relief is at § II.C of this Order at FF 31-39.

Modified Project Description

15. Parcel 1: The First-Stage Order approved a modest university building consisting of 6,750 square feet and an office building with ground floor university and retail uses consisting of approximately 64,150 square feet; the Application proposes a single building dedicated solely to university use consisting of approximately 93,088 square feet, an increase of 22,188 square feet of area. The maximum height on Parcel 1 has increased from 70 feet to 89 feet. (Ex. 3.)
16. The First-Stage Order required that Parcel 1 (as defined in the Stage 1 application) include approximately 16,000 square feet in a Gateway Plaza; however, the modified footprint of the building on Parcel 1 no longer allows for all of the open space to be included on Parcel 1. Approximately 27,023 square feet of land area from Parcel 1 will be transferred to Parcel 2, resulting in a new land area of 34,477 square feet for Parcel 1. Accordingly, the Applicant has shifted the open space previously associated with Parcel 1 to a proposed linear park to be constructed immediately to the east of Parcel 2, on the University's campus, known as Creativity Way. Creativity Way is a pedestrian-focused promenade between Parcel 2 and Gallaudet's Faculty Row to the east and is being offered as an off-site amenity of the PUD. (*Id.*)
17. The Application includes an interim plan for a surface parking lot on Parcel 1 for the life of the First-Stage approval. (*Id.*)
18. Parcel 2: Parcel 2 includes two buildings: Buildings 2A and 2B. The two buildings on Parcel 2 form an edge on the campus side of 6th Street and create visual connection between the market district and the University, with the buildings drawing influences from both. The proposed development incorporates DeafSpace design standards, including an emphasis on visual accessibility, transparency and daylight, and visual cadence and pattern. The "front porch" concept established by Creativity Way will be reinforced by the porosity created by the through connections to 6th Street across Parcel 2: Morse Street on the south end; a "green finger" park/plaza between the north and south wings of Building 2A on the south portion of the parcel; Tapscott Street, which was located on the north end of the parcel under the First-Stage Order and is now proposed to be relocated to align with the continuation of Tapscott Street as it runs through Parcel 3 on the west side of 6th Street; and the Neal Place viewshed to the north of Building 2B. (*Id.*)

19. The Parcel 2 buildings create a consistent pedestrian experience along both 6th Street and Creativity Way while also being able to leverage the close interrelation — including a second-floor connection between the two southern most structures — in order to share residential amenities and provide the high level of facilities and service commensurate with the quality of the residential development. (*Id.*)
20. As part of this Application, the Applicant is increasing the size of Parcel 2 from the 45,440 square feet of land area approved in the First-Stage Order to include approximately 27,023 square feet of land from Parcel 1 and approximately 5,977 square feet of land to the north currently located within the Gallaudet campus, resulting in a new land area of 78,440 square feet. The area of land being added from the Gallaudet campus is approved as a consolidated PUD and being rezoned from the RF-1 zone to the MU-7 zone with a PUD-related map amendment. (*Id.*)
21. The southernmost structure on Parcel 2, in addition to being physically connected via a second-story bridge, maintains a consistent overall design scheme and material and color palette, as depicted in the Plans, and includes mirrored second-floor terraces oriented towards Creativity Way on the east. These second-floor terraces will have the additional effect of reducing the overall building mass facing onto Creativity Way, thereby stepping the level of development down as the Project transitions towards the lower density of Faculty Row on the University campus. The buildings take on warm tones of brick from the adjacent campus as their primary expression, with details in dark gray and the use of subtle diagonal window compositions harkening the geometric patterns evident in the campus's brick, roof, and glazed windows. (*Id.*)
22. Building 2B will benefit from the additional land area added to Parcel 2 from the University's campus, as it will allow for a more generous building footprint and provide an opportunity for improved landscaping to the north of the building. This building takes its color and material influences most directly from the palette of the buildings in the Market District. (*Id.*)
23. Parcel 3: Parcel 3, located on the west side of 6th Street, is rooted in the Market District and provides greater mass on the west side of 6th Street while also incorporating a high degree of permeability. The building sets back approximately 25-30 feet from the northern lot line to accommodate the expansion of the pedestrian-only Neal Place, which was designed in collaboration with the adjoining property owner. The 11-story building will consist of north and south wings bisected by a shared-mode private alley extension of Tapscott Street over which two iconic bridges span to maintain internal connectivity within the building. The north wing of the building includes a ground-level open passageway providing access between the Tapscott Street extension running through the building's courtyard and Neal Place on the north, with entrances to the retail spaces and adjacent seating alcoves incorporated into this passage. These spaces help break down the scale of the building and create intimate pedestrian experiences through the parcel, Project and Market District. (*Id.*)

24. Parking: The Project contains one level of below-grade parking on Parcel 2 and two levels of below-grade parking on Parcel 3 to serve the mix of uses on each parcel. The garage on Parcel 2 will extend beneath both Buildings 2A and 2B and will be accessed from Morse Street. The garage will include approximately 201 parking spaces and will include knock-out panels so that it can be expanded below Parcel 1, if necessary. For Parcel 3, the below grade garage will be shared with the residential development to the south. Vehicular access to the two proposed levels of below-grade parking will be accessed via a curb cut on 5th Street with an additional entrance and exit provided through a curb cut located on the adjoining property to the south on 6th Street. Knockout panels will be provided on Parcel 3 for a potential connection to the garage for the adjacent development to the southwest. Parcel 3 will provide approximately 321 parking spaces. Parcel 2 will include approximately 121 long-term bicycle spaces and Parcel 2 will include approximately 242 long-term bicycle spaces. (*Id.*)
25. Loading: Loading facilities for Building 2A will be accessed from Morse Street and Tapscott Street. Loading for Building 2B will be accessed from Tapscott Street. Each of the buildings on Parcel 2 will include one 30-foot loading berth with adjacent service/delivery spaces, and Parcel 3 will include two 30-foot berths and an adjacent platform. Loading for Parcel 3 will be accessed from Morse Street through a joint alley shared with the development project immediately to the south of the Project on Morse Street. All loading maneuvers will occur within private property on both parcels. (*Id.*)
26. Landscape: The landscape and open space plan is a focal point of the Project, striving to connect the University campus with the surrounding neighborhood. The Project features a variety of landscaping improvements at street level, both along the public street rights-of-way and on the open spaces proposed within the two parcels. Substantial landscaping, planters, and seating areas will be incorporated into the pedestrian streetscape along 6th, 5th, Morse, and Tapscott Streets. Likewise, the Green Finger open space on Parcel 2 and the north wing passage on Parcel 3 will incorporate café seating, with significant landscaping elements proposed for the Green Finger. All areas of the Project will integrate DeafSpace design principles, as noted above and in the First-Stage Order, from maintaining clear sight lines to signaling change through the use of textural cues at the ground plane, as well as creating niches and eddies along paths to allow for spontaneous interaction and ease of signing. (*Id.*)
27. Public Open Space: The following open spaces will be provided in the Project:
- a. Creativity Way: The Second-Stage PUD application for Parcel 1 will provide for the off-site benefit of Creativity Way as shown in the updated plans provided by the Applicant, and the revised plan set provided by the Applicant, and in the record for the University's Campus Plan Amendment, Case No. 12-15C. (Ex. 30A, 40C-40F.) The First-Stage Order anticipated the provision of a Gateway Plaza on Parcel 1; however, the increased footprint of the university building on Parcel 1 eliminates the plaza. As an alternative, Creativity Way will be provided and will contain a minimum of 20,000 square feet of publicly accessible open space. Gates may be

provided along the property line shared with the University to regulate access to and from the University from 10:00 p.m. until 6:00 a.m. For the life of the project, the Applicant shall be responsible for the maintenance of the space, including but not limited to, landscaping, trash collection, and snow removal;

- b. Morse Street: Morse Street was included in the open space plan approved in the First-Stage Order. It will provide an east west visual connection between the Market and the University campus with flexibility to modify the color and materials palette in order to match that of Creativity Way in an effort to establish a visual connection between the two. It will allow vehicular traffic and provide loading access to both Parcel 1 and Building 2A, as well as parking access to Buildings 1, 2A, and 2B. The area, inclusive of roadway, pedestrian circulation, and landscaping will consist of approximately 7,200 square feet. Bollards will be placed in the vehicular right-of-way to preclude vehicles from accessing Creativity Way. A gate may be placed at the property line with the University to regulate access to and from the campus between 10:00 p.m. and 6:00 a.m.;
- c. Green Finger: The green finger was included in the open space plan approved in the First-Stage Order. A pedestrian connection between 6th Street and the Creativity Way shall be provided via a green finger through the courtyard in Building 2A. The green finger will have flexibility to modify the color and materials palette in order to match that of Creativity Way in an effort to establish a visual connection between the two. It will be approximately 5,900 square feet in size. A gate may be placed at the property line with the University to regulate access to and from the campus between 10:00 p.m. and 6:00 a.m.;
- d. Tapscott Street: Tapscott will be relocated to align with Tapscott alley in Parcel 3. This alignment was contemplated and encouraged in the First-Stage Order. The alignment will replace the campus promenade on Parcel 2. Tapscott Street will provide a two-way vehicular connection between 6th Street and the University campus and will have flexibility to modify the color and materials palette to match that of Creativity Way in an effort to establish a visual connection between 6th Street and Creativity Way. The area will consist of approximately 7,700 square feet of area, inclusive of roadway, pedestrian circulation and landscaping. A gate may be placed at the property line with the University to regulate access to and from the campus between 10:00 p.m. and 6:00 a.m.;
- e. Tapscott Alley: The Applicant will incorporate a private alley on Parcel 3 that will be a shared roadway prioritizing pedestrian occupation. This was included in the open space plan approved in the First-Stage Order. It will be a one-way, curbless roadway. The entire open space, inclusive of the roadway, pedestrian, and outdoor retail spaces will consist of approximately 12,800 square feet of area. The alley may be closed periodically for public events;

- f. Neal Place: The Applicant will dedicate approximately 7,600 square feet of area along the northern property line of Parcel 3 for a pedestrian-only area, which was included in the open space plan approved in the First-Stage Order. The Applicant will extend the Neal Place viewshed east of 6th Street to provide a visual connection with the campus. This area is a new addition to the open space plan. The area will consist of approximately 3,000 square feet of area. Security fencing will be placed at the property line with the University; and
 - g. Gallery: The Applicant will provide a public connection between Neal Place and Tapscott Alley consisting of approximately 1,500 square feet of area. This space is a new addition to the open space plan. This space may be closed to the public from dusk to dawn to allow for daily cleaning and maintenance.
28. Streetscape: Consistent with the First-Stage Order, the streetscape plan incorporates elements that encourage walking and cycling. A raised pedestrian crossing at 6th Street allows for safe and easy movement between the Market District and campus; a protected bike lane allows for safe and efficient cycling; ample street trees provide a comfortable environment year-round; and lush planting buffers paired with distinct paving at different zones allow for clear separation of modes. Sixth Street also becomes an important piece of green infrastructure with the incorporation of bioswales. Terraces at each of the parcels provide refuge for residents and incorporate a mix of green roof and planters to absorb stormwater and offset runoff. Planting is incorporated at various levels in each of the buildings, including at mechanical roofs and private terraces. These spaces will create a vibrant and engaging environment for everyday pedestrian traffic and activity and will also establish natural gathering places to create a well-rounded neighborhood environment for residents and visitors. (*Id.*)
29. Sustainability. The buildings on Parcel 2 are designed to LEED Silver v.4 standards (which is the functional equivalent of LEED Gold 2009, the regime in effect at the time the First-Stage Order became effective). The building on Parcel 3 is designed to LEED Gold v.4 standards. Specific sustainable design features include green roof, heavy plantings throughout Parcels 2 and 3 and the adjacent public space, solar arrays on Parcels 2 and 3 and bioswales proposed to be incorporated on 6th Street. (*Id.*)
30. Housing and Affordable Housing. The First-Stage Order required that 10% of the residential gross floor area be set aside as Inclusionary Zoning (“IZ”) units, with 70% of the set-aside provided at a maximum of 50% of Median Family Income (“MFI”) and 30% of the set-aside provided at a maximum of 80% of MFI. The Application modified this proffer to increase the percentage of residential GFA dedicated to the IZ set-aside so that a minimum of the greater of 77,098 square feet or 11.2% of the residential gross floor area would be dedicated to inclusionary housing between Parcels 2 and 3. This commitment ensures that despite the reduction in residential gross floor area, there will be no change in the GFA dedicated to affordable housing. The Applicant further enhanced its affordable housing proffer by committing to set aside a minimum number of two-bedroom units on Parcel 3 and a minimum number of three-bedroom units on Parcel 2.

Relief requested, including modifications to the First-Stage Order, additional zoning relief and flexibility.

31. The Application requested the Commission approve a Modification of Significance for Parcels 1, 2, and 3; a consolidated PUD and PUD-related map amendment to the MU-7 zone for approximately 5,977 square feet of land being removed from the Gallaudet Campus in Z.C. Case No. 12-15C and incorporated into Parcel 2, and Second-Stage PUD review and approval for Parcels 2 and 3.
32. The Application further requested additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1 to allow:
 - Relief from the screening and landscaping requirements under Subtitle C §§ 714 and 715 for the interim surface parking lot on Parcel 1;
 - Flexibility to treat the entirety of the MU-7 zoned area of Parcel 2 as if it were rezoned to the C-3-A zone;
 - Relief from rear yard requirements of Subtitle G § 405.3 on Parcel 2;
 - Relief from single record lot requirements of ZR-58 § 2516 on Parcel 2; and
 - Special exception relief pursuant to §§ 735 and 3104.1 of ZR-58 and Subtitle U § 513.1(b) of ZR-16 to allow animal boarding uses on Parcels 2 and 3.
33. Parcel 1: The Applicant proposes to modify the massing (including footprint, FAR, height, and lot occupancy) for Parcel 1, some of which is a result of a transfer of approximately 27,023 square feet of land area from Parcel 1 to Parcel 2, resulting in a new land area of 34,477 square feet for Parcel 1. The proposed modifications include a modest change in the approved lot occupancy from 60% under the First-Stage PUD to be 66.4%, an increase of 13,328 square feet of GFA for a total building size of 93,088 square feet; and an increase in height from 70 feet to 89 feet. The Parcel 1 building will be devoted to university uses. The amount of parking provided on Parcel 1 will be reduced by 15 spaces for a total of 125 spaces. Finally, the open space provided on Parcel 1 will be reduced and the 16,132 square feet of open space formerly dedicated to the Gateway Plaza will be shifted off-site to Creativity Way, which will be a minimum of 20,000 square feet in size. The Applicant seeks flexibility to demolish the existing one-story industrial Appleby building currently occupying the parcel and to provide a surface parking lot as an interim condition on Parcel 1 until such time as the Applicant pursues construction of a Second-Stage application for the parcel. (Ex. 24B.)
34. Parcel 1 Relief: The interim surface parking area requires relief from the screening and landscaping requirements under Subtitle C §§ 714 and 715.
35. Parcel 2. The massing of the buildings on Parcel 2 will be modified pursuant to the Application, including FAR, height, and lot occupancy. As a result of the above-noted proposed transfer of 27,023 square feet of land from Parcel 1 and the additional 5,977 square feet of land being added from the University campus area to the north, Parcel 2 will have a new land area of 78,440 square feet. The Application modifies the approved lot

occupancy from 69% under the First-Stage PUD to 75% and increases the GFA of Building 2A by approximately 8,090 square feet and Building 2B by approximately 18,000 square feet. The height of Building 2A has increased from 45 and 55 feet to 65 feet, with an additional habitable penthouse on both Buildings 2A and 2B. The courtyards on Building 2A have been modified and a stepdown in height toward the University campus has been introduced. The building footprint for Building 2B has expanded to incorporate a portion of the new land area to the north; both buildings will expand west to align with the lot line along 6th Street. Parking on Parcel 2 has increased by approximately 93 spaces. Loading on Parcel 2 has increased to three berths, with their location having shifted. Loading for Building 2A will no longer be accessed from the alley east of the building (now the future site of Creativity Way) but will be shifted to Tapscott Street. Loading has been added to Building 2B. (*Id.*)

36. Parcel 2 Relief: As part of the First-Stage approval, the Commission granted: relief to allow multiple buildings on a single record lot (§ 2516 of the then-effective ZR-58); relief from the required number and depth of berths; relief from the side yard requirements; and relief from the required number of parking spaces. The Application does not modify the approved relief under ZR-58 § 2516 but it no longer requires relief for loading, parking, or side yard requirements. The Application requires relief from the rear yard (ZR-16) requirements of Subtitle G § 405.3 for both Buildings 2A and 2B and requires relief pursuant to §§ 735 and 3104.1 of ZR-58 to allow animal boarding (i.e., dog boarding and/or dog grooming uses serving 10 or more pets at a time) for both buildings. In addition, as relates to Building 2B which covers a portion of the new land area that will be subject to MU-7 zoning under ZR-16, the Application requires the same relief for animal boarding under ZR-16 Subtitle U § 513.1(b).
37. Parcel 3. The land area for Parcel 3 was reduced by 9,269 square feet as a result of a land swap with the development to the south (approved in Z.C. Order No. 16-05), flexibility for which was granted in the First-Stage Order. The resulting land area for Parcel 3 is 78,369 square feet. The Application modifies the approved lot occupancy slightly from 73% to 74%, decreases the amount of GFA by approximately 110,501 square feet and the amount of below-grade parking from 403 spaces to 306 spaces. The Application modifies the circulation of Tapscott Alley from two-way to one-way access and reduces the size of the loading berths from 55-foot berths to 30-foot berths.
38. Parcel 3 Relief: The Applicant seeks relief pursuant to ZR-58 § 3104.1 to allow animal boarding.
39. The Application includes flexibility with the development of the buildings on Parcels 2 and 3 as follows:
 - a. Mezzanines. To incorporate up to 9,827 square feet of mezzanine space in Building 2A and 2,800 square feet of mezzanine space in Building 2B, for a total of an additional 12,627 square feet of gross floor area than otherwise reflected in the zoning tabulations;

- b. Parking Number and Layout. To modify the total number of parking spaces in each building by $\pm 10\%$ and to modify the garage layout to increase efficiency and/or to accommodate its expansion to include adjacent properties;
- c. Streetscape Design. To vary the location, attributes, and general design of the public streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
- d. Ground Floor Façade. To modify the design of the eastern ground-floor façade and signage on Building 2A in order to adapt to evolving program needs of the University;
- e. Interior Components. To vary the interior partitions and configurations upon final construction drawings so long as the exterior configuration or appearance of the buildings is not changed. Residential unit number, types and sizes may vary within the range proposed;
- f. Exterior Materials. To vary the final selection of the exterior materials within the color ranges and material types (maintaining the same general level of quality) proposed based on availability at the time of construction provided such colors and materials are within the color ranges and material types shown on the plans approved by the order;
- g. Exterior Details. To make minor refinements to exterior details, dimensions, and locations or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the buildings or their systems;
- h. Signage. To vary the final design of the signage for the Project, subject to full compliance with applicable signage restrictions under the D.C. Building Code and consistent with the indicated dimensions;
- i. Retail Spaces. Retail storefronts, signage, and associated features and fixtures in public space are subject to change upon individual retailer modifications subject to any required approval by the Public Space Committee and in full compliance with applicable signage restrictions under the D. C. Building Code and consistent with the indicated sign dimensions;
- j. Residential Units. To modify the number of residential units in each building by $\pm 10\%$ and to shift the distribution and location of the inclusionary units as the floor plans are refined so long as their location and distribution continues to meet the requirements of Subtitle C of the Zoning Regulations;

- k. Sustainability. To vary the features, means and methods of achieving the required GAR and LEED certification, including modification to location/orientation and type of green roof, solar panels and paver areas as required to meet stormwater requirements and sustainability goals. The Applicant also seeks the flexibility to incorporate solar panels as necessary to meet Building Code requirements so long as their inclusion in the penthouse plan is consistent with penthouse requirements;
- l. Landscape. To modify species in the plant palette during subsequent design phases and availability upon final completion;
- m. Public Art. To determine the final locations of the public art on Parcels 2 and/or 3;
- n. Balconies. To make refinements to the location, number, and dimensions of exterior balconies, so long as the final design remains consistent with the design intent of the Commission's approval, as depicted in the Approved Plans, no east-facing balconies are provided, and the final number of balconies varies by no more than $\pm 10\%$ from the number of balconies shown in the Approved Plans;
- o. Interim Uses. To provide interim uses on Parcel 3 that are consistent with the underlying zoning of C-M-1 and shall be permitted for the life of the First-Stage PUD approval.
- p. MU-7/C-3-A. To treat all of Parcel 2 as if it were rezoned in its entirety to the C-3-A Zone District for purposes of development standards;
- q. Lighting. The final lighting plan may vary from the plan in the Record but it shall be consistent with the intent of the plan; and
- r. Courtyards and Rooftop. To vary the configuration and layout of the exterior courtyards and rooftops, so long as the courtyards and rooftops continue to function in the manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained.

B. Justification for Relief

i. Not inconsistent with the Comprehensive Plan (Title 10A of the DCMR, the "CP")

- 40. The Applicant asserted the Application was not inconsistent with the CP for the following reasons.
- 41. Subtitle X § 302.2(a) of the Zoning Regulations clarifies that the First-Stage PUD review includes an analysis of the compatibility of the proposed development with the CP, and city-wide, and area plans of the District. The record for the First-Stage PUD includes extensive analysis of the development's compatibility with the CP, which is reflected in

Z.C. Order No. 15-24 on pages 17-24, including the Florida Avenue Market Small Area Plan. (See FF 75.)

42. The Commission found during its review of the First-Stage PUD that the proposal was not inconsistent with the CP and the Plan's Future Land Use Map and Generalized Policy Map, which is reflected in Z.C. Order No. 15-24 on page 18. (See FF 70, 71, 73.)
43. OP noted in its February 16, 2021 report, however, that the initial filing of the Application was not consistent with the First-Stage Order and the proposed modifications were significant. Nevertheless, it agreed with the Applicant that the modifications were supported by the CP and were not inconsistent with the CP or the CP maps. OP noted in its subsequent reports that the Project, as revised, was generally consistent with the First-Stage Order and, as such, the Commission's review regarding consistency with the CP and public policies remained relevant.
44. While the Commission had already found the Project to be not inconsistent with the CP in the First-Stage Order, the Application included an extensive analysis asserting that the Project and the proposed modifications were not inconsistent with the 2021 CP as a whole, including its maps and policies and other public policies, as required by Subtitle X § 304.4(a). The CP was updated by the Council during the course of the Commission's review of the Application and the Application, as well as OP's reports, includes an analysis under both iterations of the CP.
45. The Future Land Use Map ("FLUM") indicates that Parcels 1 and 2 are appropriate for Institutional uses, and Parcels 3 and 4 are appropriate for PDR/High Density Commercial/Medium Density Residential uses. As part of the PUD approval, Parcels 1 and 2 were rezoned to the C-3-A zone and Parcel 3 was rezoned to the C-3-C zone, which was found to be not inconsistent with the FLUM. The Modifications of Significance are in keeping with the FLUM designations and within the maximum height and densities allowed in the C-3-A and C-3-C zones.
46. The Generalized Policy Map ("GPM") designates the Property as Institutional use. Parcels 1 and 2 will serve as gateways to the University campus and Parcel 3 improves visual connections to the campus and as such, the proposal is not inconsistent with this designation.
47. The Project is not inconsistent with the elements discussed below.
48. Framework Element: The Project does not displace current tenants and provides residential use where it does not otherwise exist or is permitted to exist. The residential project will help stabilize rents in the community and will introduce over 90 affordable units across Parcels 2 and 3, including three-bedroom affordable units on Parcel 2 and two-bedroom affordable units on Parcels 2 and 3. The Project also incorporates a series of open spaces that will be accessible to the public and will provide east-west connections that create porosity between the market and the University's campus. The Project also includes a

significant amount of retail space that will provide job opportunities for residents. The Applicant has also executed a First Source agreement with the District Department of Employment Services (“DOES”) that will prioritize the hiring of District residents for certain positions. The Project maximizes its location near public transit and along a significant bicycle corridor, making its provision of residential and retail uses ideal.

49. Land Use Element: The Project introduces a series of public spaces, including the “green finger”, Tapscott Alley, Neal Place and access to Creativity Way. The Project is pedestrian friendly and includes generous sidewalk widths for easy circulation, it uses materials to notify pedestrians of potential conflicts and implements traffic calming techniques to minimize conflicts between vehicular and pedestrian traffic. It also includes a number of streetscape improvements that will beautify the community, including landscaping that incorporates the principles of DeafSpace design to ensure the spaces are accessible and comfortable for the deaf and hard of hearing community. The Project also provides residential use on a site where residential use wouldn’t otherwise be permitted, which is further supported by the Property’s proximity to the New York Avenue Metrorail Station. As noted above, the Project will set aside a significant number of units as inclusionary units, some of which will be made available at the lowest income levels administered in the program.
50. Transportation Element: The Project incorporates an extensive pedestrian network, much of which does not currently exist. The circulation plan also establishes east/west connections that create much needed porosity that is otherwise lacking in the market. A cycle track down 6th Street will be included in the Project and will enhance the bike network. Fixtures will be provided in public space such as seating, bike racks, signage, plantings to support the pedestrian and bicycle networks. The Project includes a robust Transportation Demand Management (“TDM”) program to mitigate any impacts of vehicular transportation and parking associated with the Project.
51. Housing Element: The Project provides more affordable housing than is otherwise required by the IZ program. It is also providing the affordable housing at lower affordability levels than required under IZ and the affordable housing will be indistinguishable from the market rate housing. Housing is not otherwise permitted under the existing zoning but is made possible through the PUD process and will be provided in appropriate density levels. A variety of unit sizes will be available at both market and affordable levels, including at least two three-bedroom units on Parcel 2 that will be set aside as IZ units.
52. Environmental Protection Element: The Project incorporates extensive tree plantings in public and private spaces, which will include native plantings and pollinator gardens. The buildings on Parcel 2 will be certified at the LEED v. 4 Silver level and the building on Parcel 3 will be certified at the LEED v.4 Gold level. The buildings on Parcels 2 and 3 will both incorporate solar panels.
53. Economic Development Element: The Project includes an extensive level of retail uses and reserves space for maker-space uses and for deaf and hard of hearing entrepreneurs. The

maker-space uses will be made available at lower rental rates. The Applicant committed to providing training opportunities for Gallaudet students and for Market employees. It has also executed a First Source agreement with DOES.

54. Parks, Recreation and Open Space Element: The Project incorporates a series of small open spaces in an extensive landscape plan, which incorporate extensive plantings and encourage engaging with nature. The open areas will help encourage social interaction, provide creative seating and public art.
55. Urban Design Element: The Project provides appropriately massed buildings that are supplemented by an extensive landscape plan, both of which consider the Property's context between the University and the market. High-quality materials are incorporated throughout both the building and landscape design to help enhance the pedestrian experience. The Application includes a number of improvements in the site plan to provide an efficient site plan, including alignment of Tapscott Street and Tapscott Alley and the streetscape improvements are consistent with the guidelines published by DDOT. The proposed buildings will provide balconies and ground floor retail, both of which will help activate that area. Habitable penthouses will also be included to further provide another plane of activity.
56. Historic Preservation Element: The PUD is not within a historic district but it neighbors both the Market and Gallaudet historic districts and the buildings are designed to acknowledge and respect the balance between neighboring preservation objectives and establishing a sense of place within the Market.
57. Educational Facilities Element: The PUD creates east-west connections between the University campus and the Market in a way that does not currently exist. These connections better integrate the University with the community and provides better access for the University and its students to the Market.
58. Infrastructure Element: The Project incorporates a number of sustainable techniques to meet stormwater requirements and LEED objectives.
59. Arts and Culture Element: The Applicant is proposing public art on 5th and 6th Streets.
60. Upper Northeast Planning Area: The Applicant has executed a First Source agreement with DOES to encourage employment of District residents. The PUD also improves circulation around the Market neighborhood with the creation of east-west vehicular and pedestrian connections and a cycle path on 6th Street. It also improves the pedestrian realm by designing these spaces consistent with DDOT guidelines and by introducing ground floor uses that will help activate the streetscape.
61. Implementation Element: The PUD incorporates measures to mitigate potential impacts of the PUD, namely a TDM plan and sustainable design. The affordable housing and

employment priorities of the PUD promote District policies and indicate the Project does not have an adverse impact on racial equity.

62. Florida Avenue Market Small Area Plan: The PUD incorporates a mix of uses including retail, residential and university uses and the proposed buildings enhance adjacent market and University buildings. The materials, amassing and articulation complement the existing fabric and the pedestrian network encourages activity at the ground plane. Vehicular, pedestrian and bicycle circulation are all improved through the PUD and wayfinding cues will help all visitors navigate the area. The Project also incorporates a number of sustainable design elements and the buildings on Parcels 2 and 3 will be LEED certified.

ii. No Unacceptable Impacts

63. The Applicant asserted the Application would have no unacceptable impacts for the reasons discussed below.
64. The Commission found in the First-Stage Order that the Project would not have unacceptable impacts on the surrounding area. The modifications to the Project would not alter this conclusion and the Application complies with Subtitle X § 304.4's requirement to not create any potential adverse impacts that could not be mitigated or balanced out by public benefits because the Project.
65. The Application asserts that the Project would not result in potential adverse impacts in terms of displacement of current residents due to its location on vacant or underutilized land. The Project is also expected to help mitigate rising rental rates in the area by providing housing in a range of prices, which will have an overall positive impact on housing. The provision of residential, retail and university uses on underutilized parcels furthers the planning objectives of the Union Market area and the First-Stage Order.
66. The Project, as modified, is consistent with the zoning objectives of the Small Area Plan and Future Land Use Map. The heights and densities of the buildings on Parcels 1, 2, and 3 are consistent with the zoning designations approved in the First-Stage Order. Incorporating an additional 5,977 square feet of area into the PUD supports the activation of the streetscape by eliminating a vacant pipestem land area and incorporating it into the Project.
67. The Project, as modified, will not have an adverse environmental impact as it rezones industrially zoned property to allow less intense uses such as residential, retail and university uses. The buildings on Parcels 2 and 3 will be LEED certified, will incorporate sustainable design elements such as solar panels and will meet all stormwater and GAR requirements.
68. The Project, as modified, will not have an adverse facilities or transportation impact as it is reduced in scale by nearly 100,000 square feet of residential density from what was

approved in the First-Stage Order, where the Commission found that there would be no adverse impacts that could not otherwise be mitigated or balanced with benefits. The Project is located near a Metrorail station, improves vehicular, pedestrian and bicycle circulation and establishes a robust TDM plan.

- 69. The modification to the open space plan will not have an adverse impact on the community as Part 1 of the Application proposes alternative open spaces that will be incorporated into the Project.
- 70. The Applicant prepared a detailed analysis of the potential impacts of the Project, including a CTR and an Analysis of Potential Impact of the Development on Displacement, Rents, Property Values and Gentrification, both of which further support that the Project, on balance, will have positive contributions to the community. (Ex. 25A, 26C.)

iii. Modifications to Public Benefits

- 71. The Application enhanced the affordable housing approved in the First-Stage Order. These changes were provided in response to the reduction in residential gross floor area on Parcel 3 and the loss of open space on Parcel 1. The Applicant asserted it was making the following enhancements to the public benefits of the Project.
- 72. The First-Stage Order required that 10% of the residential gross floor area be set aside as Inclusionary Zoning (“IZ”) units, with 70% of the set-aside provided at a maximum of 50% of Median Family Income (“MFI”) and 30% of the set-aside provided at a maximum of 80% of MFI. The Application modified this proffer to increase the percentage of residential GFA dedicated to the IZ set-aside so that a minimum of the greater of 77,098 square feet or 11.2% of the residential gross floor area would be dedicated to inclusionary housing between Parcels 2 and 3. This commitment ensures that despite the reduction in residential gross floor area, there will be no change in the GFA dedicated to affordable housing. The Applicant further enhanced its affordable housing proffer by committing to set aside a minimum number of two-bedroom units on Parcel 3 and a minimum number of three-bedroom units on Parcel 2.
- 73. The First-Stage Order required that 23,200 square feet of open space be provided on Parcel 1, including 16,132 square feet dedicated to a Gateway Plaza. The Application eliminates the Gateway Plaza and shifts the open space to an off-site location immediately to the east of Parcel 2, on Gallaudet’s campus, and referred to as Creativity Way. Creativity Way will be a minimum of 20,000 square feet in size. The Applicant asserted that its proposed improvements to Creativity Way were enhancements to the public benefits. The Commission believes that the proposed improvements are of high quality, and are thoughtfully designed, and the guarantee of public access to them qualifies as a public benefit of the Project. However, the Commission wants to be clear that removing the public open space from the PUD Site diminishes the value of the proffer as a public benefit.

74. The Applicant is also introducing the Neal Place viewshed, the Tapscott alignment and the Gallery as part of its open space plan.

iv. Applicant's Submissions and Testimony

75. On August 4, 2020, the Applicant filed an Application for review and approval of a Second-Stage PUD, Consolidated PUD and Zoning Map Amendment, and Modification of Significance of the First-Stage Order in Z.C. Case No. 15-24/15-24A ("Approved PUD") pursuant to Subtitle X, Chapter 3 and Subtitle Z, Chapter 3 for the development of a mixed-use project with ground floor retail/service and university uses, multifamily residential and lodging uses above, and below-grade parking on the parcels known as Parcels 2 and 3. (Ex. 2-4). The Application included: a Modification of Significance to the Approved PUD for Parcels 1, 2, and 3; a Second-Stage PUD application for Parcels 2 and 3; and a Consolidated PUD and Zoning Map Amendment to expand the proposed lot for Parcel 2 to include approximately 5,977 square feet of land from the University's campus. The Applicant stated that the University will file an application to amend its approved Campus Plan to account for the reduced area of the campus, and that once that application is filed, the Applicant intends to request that the applications be heard together.
76. The Applicant filed a supplemental submission on February 10, 2021, to amend its application in response to comments provided by OP. It withdrew several requests for flexibility, including an initial request for flexibility to introduce alternative uses, including second floor retail and/or lodging space, on Parcel 3 and to minimize the flexibility requested with respect to the location of maker space and space for deaf and hard of hearing entrepreneurs. It also provided additional background on its IZ proffer and the rationale for maintaining the 10% set aside approved in the First-Stage PUD. It modified its LEED commitment for Parcel 3 to a minimum of LEED (v.4) Gold and, finally, it provided additional information concerning the replacement of the Gateway Plaza with Creativity Way.
77. The Commission considered whether to schedule a hearing on the Application at its public meeting on February 25, 2021, and requested that the Applicant adjust its IZ proffer in response to the OP's setdown report. It also directed the Applicant to provide more details justifying its revised open space plan and to propose a workable plan for hearing the Application given the expansive scope of the Application. The Commission declined to set the application down for a public hearing until those issues were resolved. (Feb. 25 Transcript)
78. The Applicant submitted a response to the Commission's and the OP's comments on May 24, 2021. It committed to providing a minimum of 77,098 square feet of affordable housing through the IZ program on Parcels 2 and 3, it clarified the benefits of its open space proposal and its consistency with the Florida Avenue Market Small Area Plan and it proposed a strategy for scheduling the hearings for the Application. (Ex. 14-14A.)

79. The Commission considered the Application at its public meeting on June 10, 2021, and voted to set the Application down for a public hearing. At the meeting, the Commission requested that the Applicant consider further enhancing its IZ proffer. Following the Commission's June 10, 2021 public meeting, the Applicant filed three prehearing submissions on August 10, 2021, with responses to the items raised in OP's February 16, 2021 setdown report as well as comments made by the Commission at its public meeting on February 25, 2021. (Ex. 16-18A.)
80. The first prehearing submission addressed the First-Stage Modification of Significance application. It included the following:
- a. An overview of the proposed modifications to Parcels 1, 2, and 3;
 - b. Updated modification plans;
 - c. Responses to comments made in OP's setdown report and by the Commission at its public meeting; and
 - d. Outlines of witness testimony and expert resumes. (Ex. 16-16D.)
81. The second prehearing submission addressed the Second-Stage PUD for Parcel 2 and consolidated PUD and zoning map amendment for approximately 5,977 square feet of land being added to Parcel 2. It included the following:
- a. Updated architectural plans for Parcel 2; and
 - b. Responses to comments made in OP's setdown report and by the Commission at its public meeting. (Ex. 17-17A.)
82. The third prehearing submission addressed the Second-Stage PUD for Parcel 3. It included the following:
- a. Updated architectural plans; and
 - b. Responses to comments made in OP's setdown report and by the Commission at its public meeting. (Ex. 18-18A.)
83. Three separate hearings were scheduled for consideration of the three components of the Application on November 4th, November 22nd, and November 29th, respectively, as follows:
- a. Part 1: Modification of Significance of the First-Stage PUD approved for Parcels 1, 2, and 3,
 - b. Part 2: a Second-Stage PUD and consolidated PUD and PUD-related Map Amendment to the MU-7 Zone District for Parcel 2; and

- c. Part 3: a Second-Stage PUD for Parcel 3.
84. The Applicant filed a Comprehensive Transportation Review (“CTR”) on October 5, 2021, prepared by Gorove/Slade regarding the Project, pursuant to Subtitle Z Section 401.8. (Ex. 25-25A.)
85. On October 15, 2021, the Applicant filed a supplemental submission for Part 1 of the Application. The first submission included:
- a. An overview of the proposed modifications of the First-Stage Order as it pertains to Parcels 1, 2, and 3;
 - b. An overview of the requested zoning relief for Parcels 1, 2, and 3;
 - c. An overview of the proposed flexibility for Parcels 1, 2, and 3;
 - d. The benefits and amenities associated with Parcels 1, 2, and 3;
 - e. Plans for the interim parking lot on Parcel 1;
 - f. A table of Applicant responses to agency comments;
 - g. An analysis of development impacts prepared by Robert Charles Lesser & Co. (“RCLCO”), a real estate consulting firm;
 - h. An extensive Comprehensive Plan analysis;
 - i. Proposed conditions of approval; and
 - j. Supplemental expert resume. (Ex. 26-26E.)
86. On November 2, 2021, the Applicant filed a supplemental submission for Part 2 of the Application. The second submission included:
- a. Updated Parcel 2 plans, including its updated proposal for both Creativity Way and Tapscott Street in response to comments from DPR²;

² The Applicant described these changes, as follows:

The Applicant has updated its proposal for both Creativity Way and Tapscott Street in response to comments from the Department of Parks and Recreation (“DPR”) with the objective that both will meet the Commission’s expectations to be considered a public benefit. 1. Creativity Way: The Applicant has updated its plans to increase the visibility of Creativity Way through the use of wayfinding signage and materials. The Applicant is incorporating wayfinding stations along 6th Street, as shown on Sheets L-201, 203. It is also requesting flexibility to modify the palette color on Morse Street, the green finger and Tapscott Street to coordinate with the palette ultimately chosen for Creativity Way to signify an aesthetic coordination and linkage. See Sheet L-203b. The attached plans also show

- b. An overview of the flexibility and relief requested for the buildings on Parcel 2;
 - c. A table of Applicant responses to Agency comments;
 - d. Proposed conditions of approval; and
 - e. Supplemental expert resume. (Ex. 30-30D.)
87. On November 3, 2021, the Applicant filed its hearing presentation for Part 1 of the Application, as well as a supplemental resume for its landscape architect. (Ex. 31A, 32.)
88. At the November 4, 2021 public hearing, the Applicant presented Part 1 of the Application, including the testimony of eight witnesses:
- a. President Cordano, President of Gallaudet University;
 - b. Sam Swiller, a representative of Gallaudet University;
 - c. Alastair Hall of Hall McKnight, project architect for Parcel 1, who was qualified as an expert in architecture and design;
 - d. Robbie Saclarides, representative of JBGSmith;
 - e. Kirsten Murray of Olson Kundig, project architect for Parcel 2, who was qualified as an expert in architecture and design;
 - f. Lucas Posada of Morris Adjmi Architects, project architect for Parcel 3, who was qualified as an expert in architecture and design;

that there are clear connections with Creativity Way from Morse Street, the green finger and Tapscott Street, each of which will be underscored through the coordination of the color palette and/or signage. The University will use gates at these connection points to secure the campus overnight. Ensuring the safety of its deaf and hard-of-hearing population is the University's top priority and the gates are necessary to minimize potential vehicular and pedestrian conflicts after dark. That said, in response to the Office of Planning's request for the space to remain open for more of the day, the University is extending the proposed closure of the gates to 10 pm, which will allow for greater public enjoyment of Creativity Way into the evening hours without unduly compromising security and safety for the campus. The above additional measures further support the appropriate recognition of Creativity Way as a public benefit under the PUD, one that will serve an important role in weaving the University campus into the fabric of the Market neighborhood and providing an important and compelling space for residents and visitors of the area to amble, gather, and experience the unique confluence of the Market area and the University's unique and diverse campus life. The multiple connections of Morse Street, the green finger, and Tapscott will interlock the Market Area with Creativity Way and, indeed, of the roughly 500 feet of frontage Parcel 2 has along Creativity Way, these open connections constitute nearly a quarter (121 feet or 24.2%) of this frontage. Further, the direct alignment of each connection with Morse Street, 6th Street pedestrian crossing, and private Tapscott extension on Parcel 3, will provide greater public sightlines into Creativity Way, attracting greater attention and foot traffic to that amenity.

(Ex. 30.)

- g. Zenobia Meckley of FutureGreen, landscape architect for the Project, who was qualified as an expert in landscape architecture; and
 - h. Erwin Andres of GoroveSlade, transportation planner for the Project, who was qualified as an expert in transportation planning.
- 89. On November 9, 2021, the Applicant filed a supplemental submission for Part 3 of the Application. It included:
 - a. Updated Parcel 3 plans;
 - b. An overview of the flexibility and relief requested for the buildings on Parcel 3; and
 - c. A table of Applicant responses to Agency comments. (Ex. 36-36B.)
- 90. On November 17, 2021, the Applicant filed its post-hearing statement for Part 1 of the Application, which included additional information regarding the pedestrian circulation around the Market; details regarding the pedestrian experience around the Market and between the Market and Creativity Way and potential public art locations. The filing also included a complete set of plans for all three components of the Application. (Ex. 40-40F.)
- 91. On November 19, 2021, the Applicant filed its hearing presentation for Part 2 of the Application. (Ex. 42A.)
- 92. On November 22, 2021, the Applicant filed its response to EDENS' request for party status in support of the Application. (Ex. 44.)
- 93. At the November 22, 2021 public hearing, the Applicant presented Part 2 of the Application, including the testimony of four witnesses: Robbie Saclarides, representative of JBGSmith; Kirsten Murray of Olson Kundig, project architect for Parcel 2; Zenobia Meckley of FutureGreen, landscape architect for the Project; and Daniel Solomon of GoroveSlade, transportation planner for the Project, who was qualified as an expert in transportation planning.
- 94. On November 28, 2021, the Applicant filed its hearing presentation for Part 3 of the Application. (Ex. 47A.)
- 95. At the November 29, 2021 public hearing, the Applicant presented Part 3 of the Application, including the testimony of four witnesses: Robbie Saclarides, representative of JBGSmith; Lucas Posada of Morris Adjmi Architects, project architect for Parcel 3; Zenobia Meckley of FutureGreen, landscape architect for the Project; and Erwin Andres of GoroveSlade, transportation planner for the Project.
- 96. On December 6, 2021, the Applicant filed its post-hearing submission for Parts 2 and 3 of the Application, pertaining to the Second-Stage components for Parcels 2 and 3 and the

consolidated PUD and PUD-related map amendment. The submission included clarification of the materials proposed for Building 2B; the parking proposal for Parcels 2 and 3; the distribution of IZ units on Parcel 2; the provision of E-bicycle charging stations; an update of the Building 2B ground-floor design; details regarding the open-air bridge spanning Tapscott Alley; the lighting and design for the north wing passage on Parcel 3; the IZ proffer for Parcel 3. Finally, the Applicant submitted a complete set of updated plans for both Parcels 2 and 3, which were accepted into the record. (Ex. 49-49I.)

97. On December 23, 2021, the Applicant filed its draft proffers and conditions. (Ex. 52.)
98. On January 6, 2022, the Applicant filed final proffers and conditions that incorporated comments from the Office of Zoning Legal Division. (Ex. 53-53A.)
99. On January 13, 2022, the Applicant filed proposed findings of fact and conclusions of law. (Ex. 54-54A.)
100. On January 18, 2022, the Applicant submitted a summary and update on efforts to resolve the concerns that EDENS raised at the hearing on November 29, 2021. The Applicant attached a draft condition to include in this Order intended to ensure that EDENS will have sufficient access to both the private alley on the Applicant's property and the ramp into the Applicant's parking garage to allow EDENS access to its own parking garage. (Ex. 55-55A.)
101. On January 27, 2022, the Applicant submitted response to the EDENS update. (Ex. 57.)

III. Responses to Application

C. OP

i. OP Reports

102. OP submitted six reports to the record in addition to testimony at the public setdown meetings and the public hearings. Its submissions included two set down reports, three hearing reports, and one post-hearing report as discussed below.
103. OP submitted a Setdown Report dated February 16, 2021. (Ex. 13.) The report stated that "OP does not object" to setting the Application down for a public hearing but that it further recommended that "the benefits and amenities of the PUD be recalibrated" to account for the modifications proposed in the Application, namely the loss of affordable housing and the change in the open space plan. OP recommended that the affordable housing proffer be increased to the greater of 77,038 square feet of residential gross floor area or 11.2% of the residential gross floor area. The OP Setdown Report stated that this recommendation to enhance the benefits was based on the extent of the modifications, the proposed reduction of affordable housing in the Project, and policies that supported the production of affordable housing.

104. The OP Setdown Report also made the following requests:
- a. Identification of the locations of Maker Space and space reserved for deaf and hard of hearing entrepreneurs on floor plans for each building;
 - b. Details regarding Campus Plan amendment;
 - c. Confirm consistency of all FAR calculations;
 - d. Confirm the amount of open space being provided;
 - e. Encourage use of solar energy systems;
 - f. Provide a detailed site plan showing location, landscape and general design of Creativity Way, along with general programming information;
 - g. Detailed plans showing interim condition for the surface parking lot on Parcel 1;
 - h. Additional information regarding inclusion of three-bedroom IZ units;
 - i. Incorporate additional balconies into design;
 - j. Provide dimensioned window details;
 - k. Provide details regarding enclosed bridge in Building 2A;
 - l. Provide habitable penthouse area and verify IZ contribution;
 - m. Provide a sign plan;
 - n. Demonstrate need for flexibility regarding the location of planters on penthouse;
 - o. On the Parcel 3 building include a canopy on 5th Street and art installations adjacent to the Project;
 - p. Additional information regarding character and design of Neal Place;
 - q. Details regarding greenery on the Parcel 3 building; and
 - r. Identify the number of units in building on Parcel 3.
105. OP submitted a second setdown report dated May 27, 2021. (Ex. 15.) The report noted that the Commission delayed setdown of the Application to allow the Applicant to address the comments in OP's initial report, and to allow OP to address the concerns expressed by the Commission when it considered the Application at its February 25, 2021 public meeting. The report made suggestions to address the three issues raised by the Commission. First, the report made a suggestion for breaking up the Application into three parts for

purposes of the hearings. Second, the report noted that the Applicant responded to the Commission by enhancing the affordable housing proffer. Third, the report addressed the open space component of the Application and the revised open space plan. (Ex. 14A.) The report recommended that the Commission set down the Application for a public hearing.

106. OP submitted a hearing report for Part 1 of the Application dated October 25, 2021. (Ex. 28.) The report covered the overall modifications of significance to the approved First-Stage application for the entire PUD Site, in anticipation of the Commission considering these broad brush changes at the first hearing. The report recommended that the Commission approve the requested modifications of significance. The report further recommended that the Commission **not** consider Creativity Way an amenity to the related PUD³, and that the Applicant continue to refine the design of this space in response to the suggestions by the D.C. Department of Parks and Recreation or that the benefits and amenities of the PUD be adjusted to reflect the provision of less open space than is required by the Order for Z.C. Case No. 15-24.
107. OP submitted a hearing report for Part 2 of the Application dated November 12, 2021. (Ex. 37.) The report primarily covered the Second-Stage PUD application for Parcel 2 of the PUD Site. In the report, OP recommended the Commission approve the Second-Stage PUD application for Parcel 2, along with the Consolidated PUD and PUD-related map amendment. The report noted that since the case was set down, the Applicant modified the Project in several ways in response to questions and comments from the Commission, and the report also responded to those modifications, including comments related to other aspects of the Project that were discussed as a part of the overall site review at the first hearing on November 4th. The most important change was that the Applicant increased its IZ proffer such that the Applicant committed to a minimum square footage of 11.2% of the residential gross floor area as affordable housing, which was an increase from the 10% that was a condition of the existing order. Seventy percent of the affordable housing would be set aside for households earning 50% MFI and 30% of the affordable housing would be set aside for households earning 80% MFI. The increase would result in approximately 8,300 square feet of additional affordable housing in the PUD. OP stated it was supportive of this modified proffer. OP noted that it requested comments from Department of Housing and Community Development (“DHCD”), DOEE, DPR, and DC Water regarding the Second-Stage PUD for Parcel 2 and each agency provided comments.
108. OP submitted a hearing report for Part 3 of the Application dated November 19, 2021. (Ex. 41.) The report primarily covered the Second-Stage PUD application for Parcel 3. OP recommended the Commission approve the Second-Stage application for Parcel 3. OP recommended modifications to the language of four of the conditions:
 - a. Interior partitions: OP recommended that language be added indicating that there would be no reduction in the number or size of the required or proffered IZ units;

³ The reason for not considering it a public benefit is that the PUD originally called for the large open space to be located within the PUD Site. By shifting it off-site, the value of the benefit is diminished.

- b. Number of residential units: OP recommended that language be added indicating that there would be no reduction in the number or size of the required or proffered units;
- c. Retail space: OP recommended that language be added indicating that retailer modifications would be subject to any required approval by the Public Space Committee and in full compliance with sign regulations and indicated sign dimensions; and
- d. Sustainability: OP recommended that language be removed from the flexibility to incorporate solar panels on the rooftops.

In addition, OP acknowledged that the Applicant had revised and provided further detail regarding the location, landscape, and general design of Creativity Way in response to the Commission's comments at the first hearing.

- 109. OP filed a post-hearing report dated December 13, 2021, noting its continued recommendation that the flexibility granted for interior components and residential units should not allow a reduction in the number or size of the required or proffered IZ units. (Ex. 50). It also proposed further revisions to the requested sustainability flexibility regarding the incorporation of solar panels. (*Id.*)

ii. OP Public Hearing Testimony

- 110. At the public hearings, OP testified in support of the Project.
- 111. At the hearing for Part 1 of the Application, OP testified that the Modification of Significance for the First-Stage PUD for Parcels 1, 2, and 3 would not be inconsistent with the maps and written elements of the CP. OP further testified that it evaluated the PUD through a racial equity lens. OP stated that in reviewing the Application through the racial equity lens, it found that Part 1 of the Application would increase affordable housing opportunities, provide inclusive economic opportunities and encourage a healthy neighborhood. OP reiterated its belief that while Creativity Way will clearly be an asset for the campus, it should not be included as a benefit of the PUD because it does not serve the same purpose as Gateway Plaza was intended to serve; however, this did not affect OP's recommendation to approve Part 1 of the Application. (Nov. 4 Tr., p. 93.)
- 112. At the hearing for Part 2 of the Application, OP recommended approval of the Second-Stage application and stated that it would not be inconsistent with the First-Stage PUD and proposed Modification of Significance reviewed in Part 1 of the Application. It also provided a racial equity analysis for Part 2 of the Application and found it would increase affordable housing opportunities, provide inclusive economic opportunities and encourage a healthy neighborhood. (Nov. 22 Tr., p. 57-59.)

113. At the hearing for Part 3 of the Application, OP testified that it recommended approval of the Second-Stage application for Parcel 3, as it would not be inconsistent with the First-Stage PUD and the Modification of Significance proposed in Part 1 of the Application. OP noted that the Applicant had added approximately 3,000 square feet of solar panels to the mechanical screen around the penthouse. It analyzed Part 3 through a racial equity lens and again found that the Application would increase affordable housing opportunities, provide inclusive economic opportunities and encourage a healthy neighborhood. OP reiterated its recommendation to modify the IZ proffer to incorporate a commitment to a minimum number of 2-bedroom units because DHCD confirms that the waitlist for two-bedroom units in the IZ program is very long and two-bedrooms are of greatest need. (Nov. 29 Tr., pp. 81-84.)
114. OP noted that the Applicant responded to OP's and the other agency comments and had submitted additional materials to the record to address the comments raised in its setdown and hearing reports.
115. The Applicant agreed with OP's proposed revisions to the conditions of approval with the exception of committing to a minimum number of two-bedroom IZ units on Parcel 3.

D. DDOT

i. DDOT Reports

116. DDOT filed a report on October 23, 2021, and stated it has no objection to approval of the Second-Stage PUD applications, consolidated PUD and related map amendment and First-Stage Modification of Significance applications with the following conditions in the final order:
 - a. Implement a TDM Plan for the life of the Project, as proposed in the Applicant's CTR dated September 30, 2021; and (Ex. 25A1, 25A2.)
 - b. Implement the infrastructure improvements required by the First-Stage Order, with the following revisions:
 - i. Fund and install a HAWK signal or traditional traffic signal at the intersection of 6th Street and Tapscott Street, subject to DDOT approval. During permitting, include an engineering study to assess the need for the HAWK signal based on field observations, MUTCD volume warrants, DDOT's HAWK Scoring Matrix, and engineering judgment. If DDOT is not yet ready for installation or DDOT determines the pedestrian signal is not warranted, the Applicant will make a contribution in the amount of \$250,000 to the DDOT Transportation Mitigation Fund to be used toward pedestrian, bicycle, and transit improvements within ½ mile of the site;

- ii. Make a \$150,000 contribution to the DDOT Transportation Mitigation Fund to be used toward additional bikeshare, pedestrian, bicycle, transit or street tree improvements within .5 mile of the site;
- iii. Clarify that the traffic signal to be installed at 6th Street and Morse Street will be installed prior to the certificate of occupancy for Parcels 2 or 3, whichever occurs first. Note that if DDOT is not ready to make the installation or determines it is not warranted, the Applicant will make a contribution of \$250,000 to the DDOT Transportation Mitigation Fund that will be used for additional bikeshare, pedestrian, bicycle, transit, or street tree improvements within ½ mile of the site;
- iv. Upgrade 580 feet of off-site streetscape on east side of 6th Street between Neal Street and Penn Street in conjunction with development of Parcel 2;
- v. Provide a minimum of four electric vehicle (“EV”) charging stations on Parcel 2 and six EV charging stations on Parcel 3;
- vi. Do not allow gates or barriers to preclude public use of Tapscott Alley or Neal Place on Parcel 3; and
- vii. Work with DDOT on public space improvements.

(Ex. 27.)

117. DDOT made the following findings regarding the Application:

- a. Vehicle access to parking is consistent with the First-Stage PUD. Loading access has shifted to the shared driveway for Parcel 3 and to realigned private Tapscott Street from private Creativity Way for Parcel 2;
- b. There are larger trees to the east of Parcel 2 that could be impacted by the alignment of Tapscott Street and the Applicant should schedule a site visit with the Ward 5 Arborist;
- c. Parcels 2 and 3 meet the ZR-16 requirements for loading facilities;
- d. While some loading berths are accessed with back-in loading from private driveways or private streets, trucks are able to make head-in/head-out maneuvers through public space, consistent with DDOT standards and best practices for pedestrian safety;
- e. The proposed combined off-street parking supply for Parcels 2 and 3 meets the ZR-16 minimum and is in line with the supply DDOT would expect for a project of this size, land use mix and proximity to Metrorail. The parking supply includes 156 spaces for general Market retail use;

- f. Parcels 2 and 3 meet ZR-16 short- and long-term bicycle parking requirements and shower/locker requirements;
- g. The provision of EV charging stations is consistent with DDOT's recommendation to install at least one station for every 50 vehicle spaces;
- h. The site is six blocks east of the NoMa Gallaudet Metrorail Station and served by several Metrobus routes along Florida Avenue;
- i. Approximately 5%-30% of trips are anticipated to be made by vehicle, with the remainder made by transit, walking and biking;
- j. Parcels 2 and 3 are projected to generate 96 and 208 vehicle trips during the weekday morning and evening commuter peak hours, respectively;
- k. The neighborhood will have a mostly complete and up to DDOT standards pedestrian network connecting to transit and neighborhood amenities;
- l. The site is in proximity to several constructed or planned bicycle facilities, such as the 6th Street bike lanes and Florida Avenue cycle track;
- m. The Applicant utilized sound methodology and assumptions to perform the analysis in the CTR;
- n. The CTR identified four intersections under future conditions with minor intersection impacts from Parcels 2 and 3 site-generated traffic;
- o. The CTR demonstrated that signal adjustment at 6th Street and Florida Avenue, signalization of 6th Street and Morse Street, and a HAWK signal at 6th Street and Tapscott Street could significantly improve conditions at all four intersections, all of which the Applicant has committed to and several of which were required by the First-Stage Order;
- p. The Applicant has committed to implement substantial physical improvements to the transportation network as required by the First-Stage Order that sufficiently offset the impacts of Parcels 2 and 3 to the network as identified in the CTR; and
- q. The TDM Plan, in conjunction with physical transportation improvements, is sufficiently robust to encourage walking, biking, and transit to the site while discouraging driving.

(Ex. 27.)

ii. DDOT's Public Hearing Testimony

- 118. DDOT testified at the hearing for Part 1 of the Application, stating that it is supportive of the development proposal for Parcels 2 and 3 and the First-Stage modifications. It believes

that the mitigation measures proposed by the Applicant are adequate and will contribute greatly to the quality of the public realm. (Nov. 4 Tr., p. 96-97)

119. The Applicant agreed with DDOT's proposed modifications to the mitigation conditions that were yet to be satisfied and being carried forward from the First-Stage Order.

E. ANC 5D

120. ANC 5D filed reports on November 4 and 5, the latter report having been updated to include quorum requirements for the ANC, as requested by the Commission ("ANC Reports"). (Ex. 33, 35.) The ANC Reports stated the ANC supported the Application. The ANC specifically noted its support for the open space plan and affordable housing. It stated that it continued to believe that the Project, as modified, was appropriate in scale, height and mix of uses and is consistent with the CP. The ANC stated that the Applicant considered potential impacts of the PUD and agreed to implement mitigation measures as appropriate. The ANC Reports did not state any issues or concerns with the Application or Project.

F. Other District Agencies

121. DC Water, DPR, DOEE, and DHCD comments on the Application were reflected in OP's hearing report dated October 25, 2021. (Ex. 28.)
122. DC Water noted that there are two critical 48-inch transmission water mains on either side of 6th Street and that the streetscape plan to provide a second line of trees on the east side of 6th Street would conflict with the line. DC Water stated that the Applicant needs to coordinate with DC Water and DDOT to resolve the issue. The Applicant removed the second line of trees to eliminate this conflict in response to this comment. (Ex. 36B.)
123. DPR provided comments on the open space plan, including the following (the Applicant's response follows each comment):
 - a. The Applicant should take effort to ensure that Creativity Way is public and accessible;
 - The Applicant is exploring modifying its open space plan to incorporate an alternate matching color palette among the spaces and wayfinding stations to inform visitors on how to access Creativity Way from the Market and provide visual connectivity between 6th Street and Creativity Way. (Ex. 26B.)
 - b. Recommended connections to Creativity Way at Morse Street, the green finger and Tapscott Street through signage, color and materials;
 - The Application provides connections to Creativity Way at Morse Street, the green finger and Tapscott Street. It requests flexibility to coordinate the

material palettes for these connections with that used on Creativity Way and will incorporate signage to signal the location of Creativity Way. (*Id.*)

- c. Creativity Way should be extended to Neal Place;
 - The Applicant explained that it would not extend Creativity Way to Neal Place to avoid vehicular and pedestrian conflicts that could be created by crossing Tapscott Street, to maintain the privacy of units on the ground floor of Building 2B and prevent heavy pedestrian circulation along the Neal Place extension, and to discourage competition with other points of interest on the Gallaudet campus such as Kendall Memorial. (*Id.*)
- d. Details regarding the use of gates and how the public will be aware of the public amenity;
 - The Applicant submitted additional information in the record depicting the location and functionality of the gates. It also confirmed that the gates would remain open between 6 am and 10 pm and that signage and materials would alert the public to Creativity Way. (*Id.*)
- E. Encouragement that Creativity Way should incorporate a series of innovative fixtures to encourage engagement such as seating with backs and armrests for older adults and playable space that includes playable art;
 - The Applicant agreed that these recommendations would be considered as Creativity Way is further designed. (*Id.*)
- F. Tapscott should not be included in the public space calculation and innovative fixtures should be incorporated to encourage engagement; and
 - The Applicant submitted information into the record confirming that many of the suggested innovative fixtures would be incorporated onto Tapscott. The Applicant also submitted an overview of the benefit of the Tapscott alignment proposed, which moves Tapscott from its current location north of Parcel 2 to instead align with the alley included with Parcel 3, eliminating the campus promenade. The Applicant noted that Tapscott's new location provides many circulation benefits including reducing the potential for pedestrian and vehicular conflicts and improving the pedestrian experience into Gallaudet's Campus. (*Id.*)
- G. The Project open spaces should be included in Union Market marketing material.
 - The Applicant agreed to undertake efforts to include the spaces, specifically Creativity Way, as public amenity spaces in marketing materials.

124. DOEE submitted the following comments and encouraged the Applicant to incorporate sustainable design and construction strategies to yield higher LEED scores and minimize the Project's impact on the environment (the Applicant's response follows each comment):
- a. Undertake efforts to maximize energy efficiency and on-site renewable energy;
 - The Applicant responded that it continues to study paths and approaches to reducing energy consumption at Parcels 2 and 3 and that it uses the energy modeling process to iterate on predicted reductions at each stage of the design process, and modeling results are verified using the ENERGYSTAR Target Finder tool. (Ex. 36B.)
 - b. Explore net-zero energy construction/certification;
 - The Applicant responded that it commits to continue studying paths and approaches to achieve zero-carbon buildings on Parcels 2 and 3. The buildings on Parcels 2 and 3 are designed to be within the guidelines from DOEE's Net-Zero Energy Project Guide. (*Id.*)
 - c. Incorporate solar panels;
 - The Applicant responded that it commits to installing solar arrays on both Parcels 2 and 3. Approximately 16,500 square feet of solar arrays will be included on Parcel 2 and approximately 3,308 square feet of solar arrays will be included on Parcel 3. (*Id.*)
 - d. Incorporate climate resilient design strategies; and
 - The Applicant agrees with the importance of incorporating resilient design strategies wherever feasible and is evaluating those strategies best suited to the Project location and building type. (*Id.*)
 - e. Exceed minimum stormwater retention requirements.
 - The Applicant is studying ways to maximize stormwater management. It will otherwise comply with all requirements and will include bio-retention and storm planter boxes for surface runoff reduction and stormwater retention as well as intensive and extensive green roof design. (*Id.*)
125. DHCD submitted comments in support of the Applicant's increase in the IZ set-aside and requested the Applicant consider an additional increase above 11.2%:
- The Applicant maintained its commitment to set aside the greater of 77,098 square feet or 11.2% of residential gross floor area as inclusionary housing and noted that it is also

maintaining its commitment to provide 70% of the IZ set-aside at the 50% MFI level, which exceeds current IZ requirements. Further, the Applicant has increased its affordable set aside during the course of the Application to 11.2%, an increase of approximately 8,363 square feet of affordable housing, for a total of approximately 92 IZ units. (Ex. 26B.)

126. The Applicant submitted responses and supplemental materials in response to the other District agencies' comments, the substance of which is discussed above. (Ex. 26B and 36B)

G. Parties in Support/Opposition

127. At the November 29th hearing, a directly abutting property owner, EDENS was granted party status in support.
128. Both EDENS and the Applicant must access their properties through a shared alley easement that passes through the property of a third property owner, LCOR, who is developing its property pursuant to a separate PUD, granted through Z.C. Order No. 16-05. A diagram showing the respective properties and the proposed easement location is in the record. (Ex. 44, p. 3.)
129. EDENS alleged the following facts in its party status application, and they were not contested by the Applicant:
- The EDENS Property is land-locked, with no curb cut from 5th Street, N.E. and no existing public alley within Square 3591. The Applicant's proposal for Parcel 3 would be constructed to the shared lot line with the EDENS Property;
 - The First-Stage PUD confirmed the Project would "modify the site plan on [the subject property] to accommodate the private alley approved by the Z.C. Order No. 16-05 [the "LCOR PUD Case]." However, LCOR failed to comply with the LCOR PUD Case conditions regarding the shared alley (the "Shared Alley"). Accordingly, EDENS seeks the Commission's review of access and vehicular travel for Square 3591 in connection with this application;
 - Under the LCOR PUD Case, the Commission approved a PUD/Map Amendment for the parcel at the southern end of Square 3591. In that case, LCOR proposed a new curb cut and the Shared Alley from Morse Street NE that would provide access to LCOR's property, the EDENS Property and Parcel 3 in the subject application; and
 - The Shared Alley was specifically intended to provide loading access to both the EDENS Property and Parcel 3, as referenced by the Applicant in this case and the First-Stage PUD.
- (Ex. 38.)

130. At the November 29th hearing, EDENS conceded that its dispute with LCOR regarding the Shared Alley was subject to a pending Board of Zoning Adjustment appeal that would decide the merits.

131. However, it further testified that it believed its comments related to the dispute were still relevant in *this* proceeding because:

- LCOR granted an easement to the Applicant and to EDENS for use of the Shared Alley that has several conditions, including that LCOR could unilaterally revoke the easement;
- The Applicant does not have sufficient alley access to its property through LCOR's property because the easement conditions provide that LCOR could unilaterally terminate the easement;
- If LCOR unilaterally terminates the easement, it could cause adverse effects for the tenants of the building, and for neighboring properties, that are not adequately mitigated in this Application; and
- It further testified that the CTR submitted in support of the Project should not be considered because it was based on flawed information and that it should instead be analyzed solely relying on the 5th Street garage entry.

(11/29 Tr. at 95-97.)

132. In response to cross-examination by the Commission at the hearing, EDENS conceded:

- There is nothing physically wrong with the way the alley is configured that prevents access; (11/29 Tr. at 106.)
- The First-Stage order in this case does not require LCOR to provide a "perpetual and unconditional access" easement, as EDENS is now stating should be a requirement; and (11/29 Tr. at 107.)
- The justification for its objection in this case is that "EDENS owns a lot of property in the vicinity," and believes the Applicant's willingness to proceed here without a perpetual and unconditional easement will create "an untenable situation on the horizon;" (11/29 Tr. at 25-29, 108-110.)

133. At the hearing, EDENS further alleged that the Commission should not approve the application unless the Applicant provides an agreement in record showing "reliable perpetual access" through the LCOR property or a condition in the order requiring the same. (11/29 Tr. at 95-98.)

134. The Applicant testified that:

- The Applicant could not control whether LCOR granted an access easement over LCOR's property to EDENS;
- The Applicant was not concerned about its access to loading and parking for its own Property notwithstanding the lack of a perpetual and unconditional easement;
- The Applicant has an agreement with LCOR that allows it access to the LCOR PUD Site through the Shared Alley for a time period of 75 years, but this access could be unilaterally terminated by LCOR; and
- The Applicant was willing to grant to EDENS an easement over the property that it did control to allow for truck and other vehicular maneuvers.

(11/29 Tr. at 59-61, 79-81).

135. The Commission finds that the Applicant cannot unilaterally grant an access easement through LCOR's property, and that absent such an easement, the Applicant cannot guarantee EDENS or itself the "reliable, perpetual access" that EDENS demands.
136. Nonetheless, the Commission encouraged the parties to try to reach a mutually agreed upon resolution of these issues, and left the record open after the November 29th hearing for written submissions by the parties related to their efforts.
137. The Commission also encouraged these talks because it believed the Applicant could potentially mitigate any potential adverse effects to EDEN's caused by EDENS's inability to access the *Applicant's* property to complete vehicular maneuvers. (11/29 Tr. at 110-111.)
138. Following the November 29th hearing, the parties submitted letters attaching draft agreement proposals with differing terms. (Ex. 55-58.) The key difference in the terms of the agreements is that while the Applicant's submissions were limited to promises that it and EDENS could make bilaterally, the EDENS submissions also included several terms requiring the Applicant to make commitments regarding its relationship with LCOR. The Applicant asserted that it was not willing to make these commitments because it did not control what LCOR was willing to agree to.
139. The Commission has included as a condition of this Order that the Applicant will offer EDENS an easement agreement with the terms as stated in Exhibit 55A. It has done so because it believes the easement agreement will mitigate the potential adverse effects to EDENS by allowing EDENS access to the Applicant's property to complete vehicular maneuvers. The Commission has added a term to this condition to allow the parties to agree to add or modify the easement agreement terms required by the condition if they mutually agree to the modified or additional terms.

140. The Commission acknowledges that this condition does not mitigate all of the potential adverse effects identified by EDENS, namely, the possibility that LCOR could restrict access to through its property in the future, and that such a future restriction would create potential adverse effects related to the Applicant's access to its property.
141. The Commission finds that these potential spillover effects on neighboring properties are speculative, and contingent on LCOR deciding to unilaterally terminate access, and the Commission considers this unlikely. Further, the Commission can only impose conditions on the Applicant regarding the property that is the subject of this proceeding.
142. The Commission therefore finds that the CTR is not based on "flawed information" as alleged by EDENS.

H. Persons in Support

143. Paul Mandsager submitted a letter in support of the Application on September 22, 2021. He lives in close proximity to the Property and believes the Project is a clear improvement over existing conditions and that it would improve all aspects of the neighborhood. (Ex. 23.)

CONCLUSIONS OF LAW

A. Authority

1. Pursuant to the authority granted by the Zoning Act (June 20, 1938, 52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Rep1.)), the Commission may approve a PUD and modifications to an approved PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 704.
2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
 - (a) *Results in a project superior to what would result from the matter-of-right standards;*
 - (b) *Offers a commendable number or quality of meaningful public benefits; and*
 - (c) *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
3. Pursuant to Subtitle X § 304.3, in evaluating a proposed PUD, the Commission shall:
Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.

4. Pursuant to Subtitle X § 304.4, to approve a proposed PUD, the Commission must determine that the proposed development:
 - (a) *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - (b) *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
 - (c) *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
5. A PUD's proposed public benefits must comply with Subtitle X § 305.12:
A project may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many.
6. 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:
 - (1) *to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
 - (2) *to guide executive and legislative decisions on matters affecting the District and its citizens;*
 - (3) *to promote economic growth and jobs for District residents;*
 - (4) *to guide private and public development in order to achieve District and community goals;*
 - (5) *to maintain and enhance the natural and architectural assets of the District; and*
 - (6) *to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*
7. 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 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) (internal quotation marks and references omitted).)

8. The CP also requires the Commission evaluate all zoning actions through a racial equity lens. (10-A DCMR § 2501.8.) Consideration of equity is intended to be based on the policies of the CP, and part of the Commission’s consideration of whether the PUD and modifications to an approved PUD in this case are “not inconsistent” with the CP, rather than a separate determination about a zoning action’s equitable impact.
9. The CP Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (10-A DCMR § 213.6.) Further, “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development, and employment opportunities.” (10-A DCMR § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (10-A DCMR § 213.9.)
10. The CP Implementation Element provides guidance to help guide 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.)

B. Modification - Scope of Review

11. Pursuant to Subtitle Z § 704.4, the scope of the Commission’s hearing to evaluate the modification “shall be limited to the impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision.” The Commission interprets this to mean that the scope of the Commission’s review of modification applications is limited to impact of the changes to the original application, and does not include revisiting aspects of the original decision that are not changing.

12. In this case, the Applicant requested a modification of significance to the First-Stage PUD approved through the First-Stage Order (described in § II.C of this Order, FF 31-39). With the one exception that the Applicant requested to rezone to the MU-7 zone the portions of Parcel 2 that were previously rezoned to the C-3-A zone in the First-Stage Order, the requested modification did not change the PUD-related map amendments approved through the Original Order. The exception is a very minor change because the MU-7 zone was intended to replace the C-3-A zone when the Commission adopted the 2016 Zoning Regulations. Accordingly, the Commission will not revisit this aspect of its original decision, and considers it vested for purposes of considering the impact of the modifications sought through this Application.
13. This Application includes the following requests that are either new or modified from the original application and which accordingly are subject to Commission review in this case:
- Modifications to the First-Stage PUD approved by the First-Stage Order, including new zoning relief;
 - A PUD-related map amendment from the RF-1 to MU-7 zone and Consolidated PUD approval for the approximately 5,977 square feet of property removed from the Gallaudet Campus and added to Parcel 2; and
 - Second-Stage PUD approval for Parcels 2 and 3.
- (Collectively, the “Modified PUD”). These modifications are described in detail in § II.C of this Order at FF 31-39.
14. Pursuant to Subtitle A § 102, the PUD approved by the Order is vested under the 1958 Zoning Regulations under which it was approved and is subject to those rules, except that any modification shall be subject to the current 2016 Zoning Regulations. However, because the scope and number of changes included in the Modified PUD are so extensive, the Commission applied the current Zoning Regulations to its review of the Application.
15. The Commission referred the proposed action to NCPC for the 30 day review period and comment prior to final action because it includes the new map amendment for the property that was formerly part of the Gallaudet Campus and added to Parcel 2. (Ex. 52.) NCPC did not provide any comments within the 30 day review period.

C. Consistency with the Comprehensive Plan (Subtitle X § 304.3(a))

16. As discussed above, the Commission did not revisit the decision made in the First-Stage Order to approve the PUD-related map amendments from the C-M-1 zone to the C-3-A zone for Parcels 1 and 2 and to the C-3-C zone for Parcels 3 and 4. Accordingly, there was no need to consider whether these amendments were consistent with the Comprehensive Plan in deciding this new application.

17. The Commission considered whether the Modified PUD is not inconsistent with Comprehensive Plan, and concludes the revised Project is not inconsistent with the Comprehensive Plan for the following reasons:
- a. The Future Land Use Map (“FLUM”) indicates that Parcels 1 and 2 (including the newly added property) are appropriate for Institutional uses, and Parcels 3 and 4 are appropriate for PDR/High-Density Commercial/Medium-Density Residential uses. (FF 45.) The Modifications of Significance are in keeping with the FLUM designations and within the maximum height and densities allowed in the C-3-A and C-3-C Zone Districts. (*Id.*) The heights and densities of the buildings in the Modified Project are within the same general range approved through the First-Stage Order. The Modified Project is therefore not inconsistent with these designations;
 - b. The Generalized Policy Map (“GPM”) designates the Property as Institutional use. (FF 46.) Parcels 1 and 2 (including the newly added property) will serve as gateways to the University campus by including the public open spaces described in FF 27 and Parcel 3 improves visual connections to the campus (FF 46). The Modified Project is therefore not inconsistent with this designation;
 - c. The Application continues to provide a project that includes a mixed-use development that provides market rate housing, affordable housing, university use and ground floor commercial development. (FF 15-23.) The uses within the Modified Project remain generally the same, but are shifted within the Modified Project. (*Id.*) The Modified Project increases the height and density of the proposed buildings on Parcels 1 and 2 while reducing the density of the proposed building on Parcel 3. (FF 35-37.) The heights, densities, and uses of the Modified Project are within the range contemplated by the PUD-related map amendments approved in the First-Stage Order; (FF 45.)
 - d. The Application enhances the development approved in the First-Stage PUD by providing additional attributes such as the alignment of Tapscott Street with the alley in Parcel 3. (FF 27.) The Application also enhances the affordable housing benefit because the First-Stage Order required that 10% of the residential gross floor area be set aside as Inclusionary Zoning (“IZ”) units, with 70% of the set-aside provided at a maximum of 50% of Median Family Income (“MFI”) and 30% of the set-aside provided at a maximum of 80% of MFI. However, the Application modified this proffer to increase the percentage of residential GFA dedicated to the IZ set-aside so that a minimum of the greater of 77,098 square feet or 11.2% of the residential gross floor area would be dedicated to inclusionary housing between Parcels 2 and 3. (FF 72.) This commitment ensures that despite the reduction in residential gross floor area, there will be no change in the GFA dedicated to affordable housing. The Applicant further enhanced its affordable housing proffer by committing to set aside a minimum number of two-bedroom units on Parcel 3 and a minimum number of three-bedroom units on Parcel 2; (*Id.*)

- e. The Commission agrees with OP's conclusions that the Application advances the goals and policies in the Citywide and Area Elements of the CP, including the:
 - i. Land Use Element policies promoting redevelopment around Metrorail stations, design to encourage transit use, transit-oriented employment and housing, infill development, neighborhood revitalization, and redevelopment of obsolete industrial land; (FF 49.)
 - ii. Transportation Element policies promoting transit-oriented development and employment, discouraging automobile-oriented uses, and improving the bicycle and pedestrian networks; ((FF 50.)
 - iii. Economic Development Element policies to increase the retail base, link residents with jobs, promote small and local businesses, hire District residents, provide job training and job creation; (FF 53.)
 - iv. Housing Element policies to provide housing in mixed-use developments, expanding the housing supply, and providing quality affordable housing; (FF 51.)
 - v. Parks, Recreation, and Open Space and Arts and Culture Elements related to creation of plazas in higher-density developments, improving access to open space, providing a diversity of open space; and (FF 54.)
 - vi. Environmental Element policies encouraging street tree planting, designing for energy efficiency, improving air quality through transportation efficiency. (FF 52.)
- f. The Commission reviewed the Application through a racial equity lens and agrees with OP that the Application advances racial equity by increasing affordable housing opportunities, providing inclusive economic opportunities and encouraging a healthy neighborhood. (FF 61, 111-113.)

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

- 18. The Commission concludes that while the Modified Project may create the following adverse impacts, these impacts are acceptable and sufficiently mitigated for the reasons discussed below.
 - a. The Modified Project will create potential adverse impacts on the District's transportation network, including increased traffic, loading and parking demand. The Commission concludes these impacts are mitigated by the Modified Project's

TDMP and LDMP, which DDOT agreed would be sufficient. (FF 116-119). Issues raised by EDENS related to the alley easement are discussed separately below;

- b. The Modified Project will create potential adverse impacts caused by the increases in height and density of the buildings on Parcels 1 and 2, including increased shadows and reduction of light and air. (FF 15, 18.) The Commission believes these impacts will be minor because the Applicant designed the buildings thoughtfully, pulling the massing of the buildings toward 6th Street and away from the adjacent Campus spaces that would be most directly affected. (FF 21.) These impacts are also mitigated by the surrounding open spaces in the Project. (FF 27.)
19. With respect to the alley access issue raised by EDENS, the Commission concludes: (FF 127-133.)
- a. The potential adverse effects related to EDENS' inability to access the Applicant's property to complete vehicular maneuvers is mitigated by the condition described in FF 139-140 and included as Condition B.7 of this Order; and
 - b. The potential adverse effect related to the alleged possibility that LCOR could restrict access to the Applicant in the future, and that such a future restriction would create potential adverse effects related to the Applicant's access to its own property, and potential spillover effects on neighboring properties is remote, attenuated, and speculative at present. (FF 132-135, 140-141.) The Commission therefore concludes that such a possibility is not an "unacceptable" potential adverse effect, per Subtitle X § 304.4(b). Nonetheless it is possible that LCOR could restrict access to the Applicant in the future, and the Applicant's proposed condition would not mitigate effects of that occurrence. However, the Commission concludes that this potential adverse effect is acceptable given the quality of the public benefits of the Project, per Subtitle X § 304.4(b).

PUD Flexibility Balanced Against Public Benefits and Potential Adverse Effects (Subtitle X §§ 304.4(c) and 304.3)

20. The Commission balanced: (a) the enhanced public benefits of the Modified Project; against (b) the reduction in the public benefits by shifting some of the public open space off the PUD Site and onto the adjacent Gallaudet Campus; (c) the additional zoning relief required by the Modified Project; and (d) the potential adverse effects of the Project as a result of the Modifications, which are described further below. The Commission concludes that the enhanced public benefits of the Modified Project are sufficient to justify approval of the Project:
- a. The Applicant enhanced the public benefits of the Modified Project as follows:
 - i. Despite the reduction in the amount of residential density on Parcel 3, the Applicant committed to providing the same level of affordable housing in

- the Project as was approved in the First-Stage Order, which effectively increases the IZ set-aside from the 10% set-aside required in the First-Stage Order to the greater of 11.2% or 77,098 square feet of GFA;
 - ii. The Applicant committed to providing a minimum number of two-bedroom IZ units on Parcel 3 and a minimum number of three-bedroom IZ units on Parcel 2;
 - iii. The Applicant committed to enhancing the quality of the public open spaces in response to feedback from public agencies and the Commission;
 - iv. A higher LEED standard on Parcel 3 (LEED v. 4 Gold instead of the LEED v. 2009 Gold approved in First-Stage Order);
 - v. Provision of solar panels on Parcels 2 and 3;
 - vi. Providing more EV and e-bicycle charging facilities not included in the First-Stage Order; and
 - vii. Enhancing the pedestrian realm beyond what was required by the First-Stage Order, including aligning Tapscott Street with Tapscott Alley, and providing an elevated crossing across 6th Street for pedestrians.
- b. The public benefits of the PUD are reduced by shifting the public open space that was formerly included in the PUD Site (now known as Creativity Way) to the Gallaudet Campus. This reduction is partially offset by the quality of the improvements to Creativity Way, and the guarantee of public access to this portion of the Gallaudet Campus;
 - c. The Project would require the additional zoning relief described in FF 31-39; and
 - d. The Applicant concluded the Modified Project would have the potential adverse effects described above in Conclusions of Law 18-19.

Second-Stage PUD Approval

- 21. Pursuant to Subtitle X § 302.2(b), “the Second-Stage application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the First-Stage approval, and this title.”
- 22. If the Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the First-Stage approval, the Commission shall grant approval to the Second-Stage application, including any guidelines, conditions, and standards that are necessary to carry out the Commission's decision. (Subtitle X § 309.2.)
- 23. The Commission concludes the Application is in accordance with the purposes of the Zoning Regulations, the PUD process, and the First-Stage Order, as modified by this Order. Accordingly, the Commission concludes that it must approve the Second-Stage PUDs for Parcels 2 and 3 subject to the Conditions of this Order.

Great Weight to Recommendations of OP

24. The Commission is required to 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, 1087 (D.C. 2016).)
25. The Commission agreed with the position stated in OP’s initial report that the benefits and amenities package needed to be recalibrated to account for modifications to the Project, namely the loss of affordable housing and changes to the open space plan. Accordingly, the Commission deferred setting down this case so the Applicant could respond to this feedback.
26. The Applicant responded by enhancing the package in several ways, principally, by adding additional affordable housing, and after receiving additional feedback from the Commission at the first hearing, by improving access to the public open spaces. (FF 72-74, 90, 105.) After the Applicant made these changes, OP recommended four changes to the proposed conditions. (FF 108.) The Applicant agreed to these changes and this Order includes conditions that are consistent with OP’s recommendations. Finally, OP filed a post-hearing report in which it noted its continued recommendation that the flexibility granted for interior components and residential units should not allow a reduction in the number or size of the required or proffered IZ units; OP also recommended revisions to the flexibility granted to incorporate solar panels. The Applicant agreed to these limitations and this Order includes conditions that are consistent with OP’s recommendations.
27. The Commission found OP’s analysis of the Application, as it was revised in response to the comments by OP, its conclusion that the Application satisfied the PUD requirements, and its recommendation to approve the Application persuasive, and concurs with this judgment.
28. The Commission found OP’s recommendation that Creativity Way should not be considered an off-site benefit of the PUD unless the Applicant refined the design of the space (or the benefits and amenities of the PUD needed to be adjusted) to be persuasive. In response, the Applicant refined the design of the space by enhancing the public accessibility to the space and by modifying the potential location of public art to a location along Tapscott that highlights Creativity Way. (FF 86, 90.) The Commission found these changes to be adequate under the circumstances to consider the improvements and public access to Creativity Way a public benefit of the Project. The Commission nonetheless acknowledges that relocating the public open space and shifting it off site diminished its value as a PUD benefit.

Great Weight to Written Reports of the affected ANC

29. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC 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 the great weight requirement, the Commission must acknowledge the ANC’s issues and/or concerns, then articulate with particularity and precision the reasons why the 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).) If there are no issues or concerns expressed, then there is nothing to give “great weight” to. (*Id.*)
30. ANC 5D submitted a report stating its support for the Application and listing several reasons for its support. (FF 120.) The report did not list any issues or concerns with the Application. (*Id.*) Accordingly, there is nothing for the Commission to give “great weight” to.
31. The Commission nonetheless carefully considered the ANC’s reasoning for its support for the Application, and concurs with the ANC’s conclusion that the Application should be approved.

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:

- The review and approval of the Modification of Significance of a First-Stage PUD for Parcels 1, 2 and 3,
- A consolidated PUD and PUD-related Map Amendment to the MU-7 zone for Parcel 2, and
- A Second-Stage PUD for Parcels 2 and 3 for the mixed-use development described herein, subject to the following conditions.⁴

Conditions relating to Parcel 4 remain as stated in Z.C. Order No. 15-24/15-24A, unless updated by the conditions below:

A. Project Development

1. The Second-Stage design of the building on Parcel 1 shall be based on further development and refinement of the plans marked as Ex. 40D1-40D5 of the record,

⁴ This is an abbreviated version of the relief granted through this Order. The complete list is at § II.C at FF 31-39.

as modified by the guidelines, conditions, and standards of this Order. The building on Parcel 1 shall have a maximum height of 89 feet and FAR of 2.7.

2. The Applicant shall submit, as part of the Second-Stage application for Parcel 1, landscape plans, detailed architectural plans, and elevations indicating the design treatment of the building.
3. The Applicant shall have flexibility to provide an interim surface parking lot, consistent with pages 15-16 in Ex. 40D2, to be permitted for the life of the First-Stage PUD, with noted flexibility from screening and landscaping requirements.
4. The Applicant shall have flexibility with the design of the Second-Stage application for Parcel 1 to modify the total number of parking spaces in the proposed below-grade garage by $\pm 10\%$.
5. The buildings on Parcels 2 and 3 shall be built in accordance with the plans marked as Ex. 49G-I of the Record, as modified by the guidelines, conditions, and standards of this Order. The maximum FAR on Parcel 2 shall be 3.08. Building 2A shall have a maximum height of 65 feet. Building 2B shall have a maximum height of 70 feet. The maximum FAR of Parcel 3 shall be 6.90. The maximum building height on Parcel 3 shall be 120 feet.
6. The buildings on Parcel 2 shall have relief from the lot and rear yard requirements and shall be permitted to include animal boarding uses, as described in this order.
7. The building on Parcel 3 shall have relief to include animal boarding uses, as described in this Order.
8. The Applicant shall have the following flexibility with the development on Parcels 2 and 3 in the following areas:
 - a. Mezzanines. To incorporate up to 9,827 square feet of mezzanine space in Building 2A and 2,800 square feet of mezzanine space in Building 2B, for a total of an additional 12,627 square feet of gross floor area than otherwise reflected in the zoning tabulations;
 - b. Parking Number and Layout. To modify the total number of parking spaces in each building by $\pm 10\%$ and to modify the garage layout to increase efficiency and/or to accommodate its expansion to include adjacent properties;
 - c. Streetscape Design. To vary the location, attributes, and general design of the public streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;

- d. Ground Floor Façade. To modify the design of the eastern ground-floor façade and signage on Building 2A in order to adapt to evolving program needs of the University;
- e. Interior Components. To vary the interior partitions and configurations upon final construction drawings so long as the exterior configuration or appearance of the building is not changed. Residential unit number, types and sizes may vary within the range proposed, but there shall be no reduction in the number or size of the required or proffered IZ units;
- f. Exterior Materials. To vary the final selection of the exterior materials within the color ranges and material types (maintaining the same general level of quality) proposed based on availability at the time of construction provided such colors and materials are within the color ranges and material types shown on the plans approved by the order;
- g. Exterior Details. To make minor refinements to exterior details, dimensions, and locations or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building or its systems;
- h. Signage. To vary the final design of the signage for the Project, subject to full compliance with applicable signage restrictions under the D.C. Building Code and consistent with the indicated dimensions;
- i. Retail Spaces. Retail storefronts, signage, and associated features and fixtures in public space are subject to change upon individual retailer modifications subject to any required approval by the Public Space Committee and in full compliance with applicable signage restrictions under the D. C. Building Code and consistent with the indicated sign dimensions;
- j. Residential Units. To modify the number of residential units in each building by $\pm 10\%$ and to shift the distribution and location of the inclusionary units as the floor plans are refined so long as their location and distribution continues to meet the requirements of Subtitle C of the Zoning Regulations and there shall be no reduction in the number or size of the required or proffered IZ units;
- k. Sustainability. To vary the features, means and methods of achieving the required GAR and LEED certification, including modification to location/orientation and type of green roof, solar panels and paver areas as required to meet stormwater requirements and sustainability goals. The Applicant also seeks the flexibility to incorporate solar panels as necessary

to meet Building Code requirements so long as their inclusion in the penthouse plan is consistent with penthouse requirements;

- l. Landscape. To modify species in the plant palette during subsequent design phases and availability upon final completion;
- m. Public Art. To determine the final locations of the public art on Parcels 2 and/or 3;
- n. Balconies. To make refinements to the location, number, and dimensions of exterior balconies, so long as the final design remains consistent with the design intent of the Commission's approval, as depicted in the Approved Plans, no east-facing balconies are provided, and the final number of balconies varies by no more than $\pm 10\%$ from the number of balconies shown in the Approved Plans;
- o. Interim Uses. To provide interim uses on Parcel 3 that are consistent with the underlying zoning of C-M-1 and shall be permitted for the life of the First-Stage PUD approval;
- p. MU-7/C-3-A. To treat all of Parcel 2 as if it were rezoned in its entirety to the C-3-A zone for purposes of development standards;
- q. Lighting. The final lighting plan may vary from the plan in the Record but it shall be consistent with the intent of the plan; and
- r. Courtyards and Rooftop. To vary the configuration and layout of the exterior courtyards and rooftops, so long as the courtyards and rooftops continue to function in the manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained.

B. Transportation Mitigation

1. **Prior to the issuance of a building permit for Parcel 2 or Parcel 3, whichever is earlier**, the Applicant shall submit to DDOT an engineering study based on field observations, MUTCD volume warrants, DDOT's HAWK Scoring Matrix and engineering judgment assessing the need for a HAWK signal at the intersection of 6th Street and Tapscott Street. **Prior to the issuance of the last residential certificate of occupancy for Parcel 2 or Parcel 3, whichever is earlier**, the Applicant shall fund and install either said HAWK signal or a traditional traffic signal at the intersection of 6th Street and Tapscott Street, subject to DDOT approval. If DDOT is not ready to make the installation or determines that it is not warranted, the Applicant shall provide the Zoning Administrator evidence of having made a contribution of \$250,000 to the DDOT Transportation Mitigation Fund.

2. **Prior to the issuance of a certificate of occupancy for Parcel 2 or Parcel 3, whichever is earlier**, the Applicant shall construct the raised crossing table on 6th Street, N.E. as shown on Page L104 of Exhibit 49G2, subject to DDOT approval. If the raised crossing table, or something comparable, is not ultimately approved by either DDOT or the Public Space Committee, the Applicant shall provide the Zoning Administrator evidence of having contributed \$150,000 to the DDOT Transportation Mitigation Fund.
3. **Prior to the issuance of a building permit for Parcel 2 or Parcel 3, whichever is earlier**, the Applicant shall submit to DDOT an engineering study assessing the need for a traffic signal at the intersection of Morse and 6th Streets. **Prior to the issuance of the first residential certificate of occupancy on either Parcels 2 or 3, whichever is earlier**, the Applicant shall fund and install a traffic signal at the intersection of Morse and 6th Streets, subject to DDOT approval. If DDOT is not ready to make the installation or determines that it is not warranted, the Applicant shall provide the Zoning Administrator evidence of having made a contribution of \$250,000 to the DDOT Transportation Mitigation Fund.
4. **Prior to the issuance of a certificate of occupancy for Parcel 2**, the Applicant shall upgrade the streetscape, sidewalks, and landscaping, not to include underground utilities, on the east side of 6th Street, between Neal Place and Penn Street, N.E., which is approximately 580 feet long and does not abut the Property, as shown on Page L101 in Exhibit 49G2.
5. Each parcel shall include, at a minimum, the following quantities of 240-volt electric car charging stations:
 - a. Parcel 2: four stations; and
 - b. Parcel 3: six stations.
6. No less than 10%)of the bicycle parking spaces on Parcels 2 and 3 shall have access to an electrical outlet to support e-bicycle charging.
7. Parcel 3 Alley and Parking Access: Prior to the issuance of the building permit for above-grade construction of the new building to be located on Parcel 3, the Applicant shall record easement(s) providing certain ingress and egress access rights for the owner of the property located at 1271 5th Street, N.E. (Square 3591, Lot 3) (“Lot 3”). The purpose of the easement(s) will be to allow the owner of Lot 3 and its successors and assigns (hereinafter referred to as “Edens”) parking and loading access to its future building to be located on Lot 3, as follows:
 - a. The Applicant will allow perpetual and unrestricted access to Edens to allow vehicles to access its future parking garage on Lot 3 via the 5th Street NE curb cut onto Parcel 3 and over the 5th Street, N.E. ramp into the Parcel 3 parking garage. This access shall be provided through knockout panels that

will connect the Applicant's parking garage on Parcel 3 to the Lot 3 parking garage. The access to be provided to Edens shall not impede the parking operations or use of Parcel 3;

- b. The Applicant will allow Edens perpetual access over the portion of the private alley to be located on Parcel 3 for purposes of accessing the loading area on Lot 3. In no event shall Edens be permitted to load or unload on Parcel 3. The purpose of the easement(s) is solely to provide access to Edens to access its loading area on Lot 3;
 - c. In addition to the above terms, the easement(s) to be provided to Edens may include commercially reasonable terms commonly accepted in the industry;
 - d. Edens may waive the easement(s) required in this condition by providing notice of such waiver in writing to the Applicant at any time;
 - e. The Applicant shall provide a final draft of the easement(s) to Edens for its review at least 30 days prior to recordation; and
 - f. The easement(s) may contain additional or modified terms if mutually agreed by the Applicant and Edens.
8. Transportation Demand Management. For the life of the Project, the Applicant shall adhere to the following TDM plan measures:
- a. Parcel 2 Residential TDM Plan:
 - i. 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;
 - ii. 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;
 - iii. Provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year;
 - iv. Require Transportation Coordinators to develop, distribute, and market various transportation alternatives and options to the residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications;
 - v. Require Transportation Coordinators to receive TDM training provided by goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;

- vi. Provide welcome packets to all new residents that, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, a Capital Bikeshare (CaBi) coupon or rack card, a 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;
- vii. Provide residents who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOC) or another comparable service if MWCOC does not offer this in the future;
- viii. Require the Transportation Coordinator to subscribe to goDCgo's residential newsletter;
- ix. Offer a free SmarTrip card to every new resident and a complimentary CaBi coupon good for one ride;
- x. Offer either a one-year membership to CaBi or a one-year membership to a carsharing service to each unit for the initial lease up of each unit;
- xi. Meet ZR16 short- and long-term bicycle parking requirements. Long-term bicycle space will be provided free of charge to residents. A minimum of 70 long-term and 27 short-term spaces will be provided within Parcel 2;
- xii. Accommodate non-traditional sized bikes including cargo, tandem, and kids bikes in the long-term bicycle storage rooms;
- xiii. Provide at least one bicycle repair station for the parcel within a bicycle storage room or at another convenient and accessible location;
- xiv. Install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby CaBi locations indicating the availability of bicycles;
- xv. Within one year following the issuance of a certificate of occupancy for the project, the Transportation Coordinator shall submit documentation summarizing compliance with the transportation and TDM conditions of the Order to the Zoning Administrator's office to evidence compliance with the TDM conditions; and
- xvi. Following the issuance of a certificate of occupancy for the Project, the Transportation Coordinator shall 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 compliance with the transportation and TDM conditions in the Order;

- b. Parcel 2 Retail TDM Plan:
- i. Identify Transportation Coordinators for the planning, construction, and operations phases of development. There will be a Transportation Coordinator for each tenant and the entire site. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement;
 - ii. Provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year;
 - iii. Require Transportation Coordinators to develop, distribute, and market various transportation alternatives and options to employees and patrons, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications;
 - iv. Require Transportation Coordinators to receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;
 - v. Post "getting here" information in a visible and prominent location on the property 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 patrons discouraging parking on-street in Residential Permit Parking (RPP) zones;
 - vi. Require Transportation Coordinator to demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law and 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;
 - vii. Provide employees who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOC) or another comparable service if MWCOC does not offer this in the future;
 - viii. Meet ZR16 requirements for showers and lockers for use by employees. Two showers and five lockers will be provided within Parcel 2;
 - ix. Meet ZR16 short- and long-term bicycle parking requirements. Long-term bicycle parking will be provided free of charge to all employees. A minimum of 70 long-term and 27 short-term spaces will be provided within Parcel 2;

- x. Accommodate non-traditional sized bikes including cargo, tandem, and kids bikes in the long-term bicycle storage rooms;
 - xi. Provide at least one bicycle repair station for the parcel within a bicycle storage room or at another convenient and accessible location;
 - xii. Within one year following the issuance of a certificate of occupancy for the project, the Transportation Coordinator shall submit documentation summarizing compliance with the transportation and TDM conditions of the Order to the Zoning Administrator's office to evidence compliance with the TDM conditions; and
 - xiii. Following the issuance of a certificate of occupancy for the Project, the Transportation Coordinator shall 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 compliance with the transportation and TDM conditions in the Order;
- c. Parcel 2 University TDM Plan:
- i. Identify Transportation Coordinators for the planning, construction, and operations phases of development. There will be a Transportation Coordinator for university/academic uses and the entire site. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement;
 - ii. Provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of faculty, staff, and students on-site, and report TDM activities and data collection efforts to goDCgo once per year. The University must survey their faculty, staff, and students on-site and report back to the Transportation Coordinator;
 - iii. Require Transportation Coordinators to develop, distribute, and market various transportation alternatives and options to the employees, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications;
 - iv. Require Transportation Coordinators to receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;
 - v. Notify goDCgo if any tenant of university/academic space other than Gallaudet University moves in and provide TDM information to any potential tenant as they move in;
 - vi. Provide links to CommuterConnections.com and goDCgo.com on the property website;
 - vii. Implement a carpooling system such that faculty, staff, and students utilizing the building who wish to carpool can easily locate other faculty, staff, and students who live nearby;

- viii. Distribute information on the Commuter Connections Guaranteed Ride Home (GRH) program, which provides commuters who regularly carpool, vanpool, bike, walk, or take transit to work with a free and reliable ride home in an emergency;
- ix. Require Transportation Coordinator to demonstrate to goDCgo that Gallaudet University or any other potential tenant of university/academy space with 20 or more employees is in compliance with the DC Commuter Benefits Law and participates in at least 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;
- x. Provide faculty, staff, and students who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOC) or another comparable service if MWCOC does not offer this in the future;
- xi. Meet ZR16 requirements for showers and lockers for use by employees. Two showers and five lockers will be provided within Parcel 2;
- xii. Meet ZR16 short- and long-term bicycle parking requirements. Long-term bicycle parking will be provided free of charge to all faculty, staff, and students. A minimum of 70 long-term and 27 short-term spaces will be provided within Parcel 2;
- xiii. Accommodate non-traditional sized bikes including cargo, tandem, and kids bikes in the long-term bicycle storage rooms;
- xiv. Provide at least one bicycle repair station for the parcel within a bicycle storage room or at another convenient and accessible location;
- xv. Install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby CaBi locations indicating the availability of bicycles;
- xvi. Within one year following the issuance of a certificate of occupancy for the project, the Transportation Coordinator shall submit documentation summarizing compliance with the transportation and TDM conditions of the Order to the Zoning Administrator's office to evidence compliance with the TDM conditions; and

- xvii. Following the issuance of a certificate of occupancy for the Project, the Transportation Coordinator shall 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 compliance with the transportation and TDM conditions in the Order;
- d. Parcel 3 Residential TDM:
 - i. 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;
 - ii. 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;
 - iii. Provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year;
 - iv. Require Transportation Coordinators to develop, distribute, and market various transportation alternatives and options to the residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications;
 - v. Require Transportation Coordinators to receive TDM training provided by goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;
 - vi. Provide welcome packets to all new residents that, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, a Capital Bikeshare (CaBi) coupon or rack card, a 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;
 - vii. Provide residents who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or another comparable service if MWCOG does not offer this in the future;
 - viii. Require the Transportation Coordinator to subscribe to goDCgo's residential newsletter;
 - ix. Offer a free SmarTrip card to every new resident and a complimentary CaBi coupon good for one ride;

- x. Offer either a one-year membership to CaBi or a one-year membership to a carsharing service to each unit for the initial lease up of each unit;
 - xi. Meet ZR16 short- and long-term bicycle parking requirements. Long-term bicycle spaces will be provided free of charge to residents. A minimum of 129 long-term and 41 short-term spaces will be provided within Parcel 3;
 - xii. Accommodate non-traditional sized bikes including cargo, tandem, and kids bikes in the long-term bicycle storage rooms;
 - xiii. Provide at least one bicycle repair station for the parcel within a bicycle storage room or at another convenient and accessible location;
 - xiv. Install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby CaBi locations indicating the availability of bicycles;
 - xv. Within one year following the issuance of a certificate of occupancy for the project, the Transportation Coordinator shall submit documentation summarizing compliance with the transportation and TDM conditions of the Order to the Zoning Administrator's office to evidence compliance with the TDM conditions;
 - xvi. Following the issuance of a certificate of occupancy for the Project, the Transportation Coordinator shall 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 compliance with the transportation and TDM conditions in the Order; and
- e. Parcel 3 Retail TDM Plan:
- i. Identify Transportation Coordinators for the planning, construction, and operations phases of development. There will be a Transportation Coordinator for each tenant and the entire site. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement;
 - ii. Provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year;
 - iii. Require Transportation Coordinators to develop, distribute, and market various transportation alternatives and options to employees and patrons, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications;

- iv. Require Transportation Coordinators to receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;
- v. Post “getting here” information in a visible and prominent location on the property website with a focus on non-automotive travel modes;
- vi. Require Transportation Coordinator to demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law and 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;
- vii. Provide employees who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOC) or another comparable service if MWCOC does not offer this in the future;
- viii. Meet ZR16 requirements for showers and lockers for use by employees. Two showers and five lockers will be provided within Parcel 3;
- ix. Meet ZR16 short- and long-term bicycle parking requirements. Long-term bicycle parking will be provided free of charge to all employees. A minimum of 129 long-term and 41 short-term spaces will be provided within Parcel 3;
- x. Accommodate non-traditional sized bikes including cargo, tandem, and kids bikes in the long-term bicycle storage rooms;
- xi. Provide at least one bicycle repair station for the parcel within a bicycle storage room or at another convenient and accessible location;
- xii. Within one year following the issuance of a certificate of occupancy for the project, the Transportation Coordinator shall submit documentation summarizing compliance with the transportation and TDM conditions of the Order to the Zoning Administrator’s office to evidence compliance with the TDM conditions;
- xiii. Following the issuance of a certificate of occupancy for the Project, the Transportation Coordinator shall 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 compliance with the transportation and TDM conditions in the Order.

C. Benefits and Amenities

1. Affordable Residential Housing: A total minimum of 77,098 square feet of affordable housing shall be provided on Parcels 2 and 3, as provided below.
2. Parcel 2: Affordable Residential Housing: **Prior to issuance of a Certificate of Occupancy for the residential portion of each Building 2A and 2B, and for the life of said residential uses on Parcel 2**, the Applicant shall demonstrate to the Zoning Administrator the following:
 - a. **For the life of Building 2A**, the Applicant shall set aside no less than 11.2% of the residential GFA in Building 2A as affordable housing. More specifically, the Applicant shall:
 - i. Devote 11.2% (approximately 13,662 square feet) of the base residential GFA to affordable housing;
 - A. Set aside no less than 7.8% of the base residential set-aside (approximately 9,515 square feet) as IZ units for households earning no more than 50% MFI; and
 - B. Set aside 3.4% of the base residential set-aside (approximately 4,147 square feet) as IZ units for households earning no more than 80% MFI; and
 - ii. Devote 10% (approximately 1,630 square feet) of the habitable penthouse space dedicated to residential units to affordable housing with 100% of the penthouse set-aside (approximately 1,630 square feet) as IZ units for households earning no more than 50% MFI;
 - b. The set-aside requirements are set forth in the following chart:

BUILDING 2A					
Residential Unit Type	Residential GFA/% of Total	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	121,981 sf		Life of Project	Rental	NA
Market Rate	108,319 sf	Market	Life of Project	Rental	NA
IZ	4,147 sf/3.4%	80% MFI	Life of Project	Rental	NA
IZ	9,515 sf/7.8%	50% MFI	Life of Project	Rental	NA
Penthouse IZ	1,630 sf/10%	50% MFI	Life of Project	Rental	NA

- c. **For the life of Building 2B**, the Applicant shall set aside no less than 11.2% of the residential GFA in Building 2B as affordable housing. More specifically, the Applicant shall:
 - i. Devote 11.2% (approximately 8,096 square feet) of the base residential GFA to affordable housing:

- A. Set aside no less than 7.8% of the base residential set-aside (approximately 5,638 square feet) as IZ units for households earning no more than 50% MFI; and
- B. Set aside 3.4% of the base residential set-aside (approximately 2,458 square feet) as IZ units for households earning no more than 80% MFI.
- ii. Devote 10% (approximately 770 square feet) of the habitable penthouse space dedicated to residential units to affordable housing with 100% of the penthouse set-aside (approximately 770 square feet) as IZ units for households earning no more than 50% MFI;
- d. The set-aside requirements are set forth in the following chart:

BUILDING 2B					
Residential Unit Type	Residential GFA/% of Total	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	72,287 sf		Life of Project	Rental	NA
Market Rate	64,191 sf	Market	Life of Project	Rental	NA
IZ	2,458 sf/3.4%	80% MFI	Life of Project	Rental	NA
IZ	5,638 sf/7.8%	50% MFI	Life of Project	Rental	NA
Penthouse IZ	770 sf/10%	50% MFI	Life of Project	Rental	NA

- e. The Inclusionary Zoning Covenant required by D.C. Official Code § 6-1041.05(a)(2) (2012 Repl.) shall include a provision or provisions requiring compliance with all the terms of this Condition; and
- f. The above affordable housing set aside for Parcel 2 shall include no fewer than two (2) three-bedroom units.
- 3. Parcel 3: Affordable Residential Housing: **Prior to issuance of a Certificate of Occupancy for the residential portion of the building on Parcel 3, and for the life of said residential uses on Parcel 3,** the Applicant shall demonstrate to the Zoning Administrator the following:
 - a. **For the life of the building,** the Applicant shall set aside no less than 11.2% of the residential GFA in Parcel 3 as affordable housing. More specifically, the Applicant shall:
 - i. Devote 11.2% (approximately 56,295 square feet) of the base residential GFA to affordable housing:
 - A. Set aside no less than 7.8% of the base residential set-aside (approximately 39,407 square feet) as IZ units for households earning no more than 50% MFI; and

- B. Set aside 3.4% of the base residential set-aside (approximately 16,888 square feet) as IZ units for households earning no more than 80% MFI.
- ii. Devote 8% (approximately 1,585 square feet) of the habitable penthouse space dedicated to residential units to affordable housing with 100% of the penthouse set-aside as IZ units for households earning no more than 50% MFI;

b. The set-aside requirements are set forth in the following chart:

PARCEL 3					
Residential Unit Type	Residential GFA/% of Total	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	502,630 sf/100%		Life of Project	Rental	NA
Market Rate	446,335 sf/88.8%	Market	Life of Project	Rental	NA
IZ	16,888 sf/3.4%	80% MFI	Life of Project	Rental	NA
IZ	39,407 sf/7.8%	50% MFI	Life of Project	Rental	NA
Penthouse IZ	1,585 sf/8%	50% MFI	Life of Project	Rental	NA

- c. The Inclusionary Zoning Covenant required by D.C. Official Code § 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with all the terms of this Condition.
- d. The above affordable housing set-aside for Parcel 3 shall include no fewer than 14 two-bedroom units.

4. Sustainability.

- a. **Prior to the issuance of a Certificate of Occupancy for each Building 2A and 2B,** the Applicant shall demonstrate to the Zoning Administrator that it has registered that respective portion of the development with the USGBC to commence the LEED certification process under the USGBC's LEED v.4 rating system. The Applicant shall also furnish a copy of the LEED certification application for such building submitted to the USGBC to the Zoning Administrator. The application shall indicate that the residential portion of Buildings 2A and 2B have been designed to include at least the minimum number of points necessary to achieve LEED v.4 Silver standards; and
- b. **Prior to the issuance of a Certificate of Occupancy for the building on Parcel 3,** the Applicant shall demonstrate to the Zoning Administrator that it has registered that the development with the USGBC to commence the LEED certification process under the USGBC's LEED v.4 rating system. The Applicant shall also furnish a copy of the LEED certification

application submitted to the USGBC to the Zoning Administrator. The application shall indicate that the residential portion of the building on Parcel 3 has been designed to include at least the minimum number of points necessary to achieve LEED v.4 Gold standards.

5. Public Open Space.

- a. Applicant shall provide a minimum total of 65,000 square feet of open space on Parcels 1, 2, and 3 of the PUD;
- b. Creativity Way shall be constructed prior to the issuance of a final certificate of occupancy for the Parcel 1 building to be constructed following Second-Stage PUD approval and shall consist of a minimum of 20,000 square feet. It shall be consistent with the guidelines shown in Ex. 31C-E in Z.C. Case No. 12-15C, and the Applicant shall be responsible for the maintenance of the space, including, but not limited to, landscaping, trash collection and snow removal **for the life of the project**;
- c. The following open spaces shall be provided on Parcel 2. **For the life of the buildings on Parcel 2**, the Applicant shall provide the following improvements and be responsible for the maintenance of each of the spaces, including but not limited to, landscaping, trash collection and snow removal:
 - i. **Morse Street:** Morse Street will provide an east west visual connection between the Market and the University campus and shall be constructed in a manner consistent with Sheet L201 of Ex. 49G2 of the Record, with flexibility to modify the color and materials palette in order to match that of Creativity Way in an effort to establish a visual connection between the two. It shall allow vehicular traffic and provide loading access to both Parcel 1 and Building 2A, as well as parking access to Buildings 1, 2A, and 2B. The area, inclusive of roadway, pedestrian circulation, and landscaping shall consist of approximately 7,200 square feet. Bollards shall be placed in the vehicular right-of-way to preclude vehicles from accessing Creativity Way. A gate may be placed at the property line with the University to regulate access to and from the campus between 10:00 p.m. and 6:00 a.m.;
 - ii. **Green Finger:** A pedestrian connection between 6th Street and the Creativity Way shall be provided via a green finger through the courtyard in Building 2A. The green finger shall be constructed in a manner consistent with the landscape plan provided on Sheets L201 and L202 of Ex. 49G2 of the Record, with flexibility to modify the color and materials palette in order to match that of Creativity Way in an effort to establish a visual connection between the two. It shall be approximately 5,900 square feet in size. A gate may be

- placed at the property line with the University to regulate access to and from the campus between 10 pm and 6 am;
- iii. **Tapscott Street:** Tapscott shall be realigned as shown on Sheet 08 of Exhibit 16A1 of the Record. It shall provide a two-way vehicular connection between 6th Street and the University campus and be constructed in a manner consistent with the landscape plan provided on Sheets L203 and L204 of Exhibit 40D1 of the Record, with flexibility to modify the color and materials palette to match that of Creativity Way in an effort to establish a visual connection between 6th Street and Creativity Way. The area shall consist of approximately 7,700 square feet of area, inclusive of roadway, pedestrian circulation and landscaping. A gate may be placed at the property line with the University to regulate access to and from the campus between 10:00 p.m. and 6:00 a.m.;
 - iv. **Neal Place:** The Applicant shall extend the Neal Place viewshed east of 6th Street to provide a visual connection with the campus. The area shall consist of approximately 3,000 square feet of area and be landscaped in a manner consistent with the landscape plan provided on Sheet L203 of Ex. 49G2 of the Record, with flexibility to provide outdoor seating in connection with adjacent retail uses. Security fencing will be placed at the property line with the University.
- d. The following open spaces shall be provided on Parcel 3. **For the life of the building on Parcel 3**, the Applicant shall provide the following improvements and be responsible for the maintenance of each of the spaces, including but not limited to, landscaping, trash collection and snow removal:
- i. **Tapscott Alley:** The Applicant shall incorporate a private alley that shall be a shared roadway prioritizing pedestrian occupation. It shall be a one-way, curbless roadway and designed as shown on Sheets L309 and L310 of Ex. 49H11 of the Record. The entire open space, inclusive of the roadway, pedestrian, and outdoor retail spaces shall consist of approximately 12,800 square feet of area. The alley may be closed periodically for public events. The Applicant shall not include permanent gates or barriers to preclude entrance to Tapscott Alley;
 - ii. **Neal Place:** The Applicant shall dedicate approximately 7,600 square feet of area along the northern property line of Parcel 3 for a pedestrian-only area. The design shall be generally consistent with the design shown on Sheets L301-L303 of Ex. 49H10 of the Record. The Applicant shall not include permanent gates or barriers to preclude entrance to Neal Place, though it may be closed from time to time for public events; and

- iii. **Gallery:** The Applicant shall provide a public connection between Neal Place and Tapscott Alley consisting of approximately 1,500 square feet of area. The space shall be constructed in a manner consistent with the design on Ex. 49F and Sheets P3-319 and P3-320 of Ex. 49H8 of the Record. This space may be closed to the public from dusk to dawn to allow for daily cleaning and maintenance.
6. Public Space Improvements. The Applicant shall be responsible for constructing public space improvements depicted in Sheets L104 and L105 of Ex. 49G2 of the Record, adjacent and abutting the Property, as well as the improvements along the east side of 6th Street to the north of the Parcel 2, as shown on the plans. The Applicant shall provide evidence to the Zoning Administrator of such improvements **prior to issuance of a Certificate of Occupancy for Parcel 2 or Parcel 3, whichever is later.**
7. Florida Avenue Market: The Applicant shall:
- a. **Prior to the issuance of a building permit for the first building on Parcel 1,** the Applicant shall contribute \$50,000 to the NOMA BID for the study and implementation of an additional entrance for the Noma/Gallaudet metro station and shall provide evidence to the Zoning Administrator that the contribution has been initiated, deemed no longer necessary, or that implementation of an additional entrance for the NoMa /Gallaudet U. Metro Station has been or is being provided;
 - b. Fund and host at least one training session per year, for five years, for the benefit of market vendors and members of the community regarding how to interact effectively with the deaf and hard-of-hearing community. These training sessions shall be free of charge for attendees and shall be made available on a first-come, first-served basis. Evidence of having provided the required training sessions must be provided to the Zoning Administrator **prior to issuance of a certificate of occupancy for the building on Parcel 1 or Parcel 4, whichever is later;** and
 - c. Sponsor two community events per year for at least five years after the issuance of this Order, up to a total cost of \$20,000. The events shall be open to the public and free of charge on a first-come, first-served basis. Evidence of having fulfilled this commitment must be provided to the Zoning Administrator **prior to issuance of a certificate of occupancy for the building on Parcel 1 or Parcel 4, whichever is later.**
8. Special Use Space. The Applicant shall reserve a minimum of 5,000 square feet of space for deaf or hard of hearing entrepreneurs on either Parcel 2 or 3. The overall square footage of the underlying use shall be reduced accordingly. The location of

the deaf or hard of hearing entrepreneur space use may shift from the location depicted on Sheet P2-501 of Ex. 49G2 of the Record depending on the needs of the tenant. This space shall be reserved **for the life of the Project.**

9. **Special Use Space.** The Applicant shall reserve a minimum of 5,000 square feet of space for maker uses on either Parcel 2 or 3, with the balance of 5,000 square feet to be provided on Parcel 4, if not otherwise provided on either Parcels 2 or 3. If more than 5,000 square feet of maker space is provided on Parcels 2 and 3 together, the balance to be provided on Parcel 4 shall be reduced accordingly such that the total requirement remains 10,000 square feet across the entire PUD. The location of the maker use may shift from the location depicted on Sheet P2-501 of Ex. 49G2 of the Record depending on the needs of the tenant. The overall square footage of the underlying use shall be reduced accordingly. Maker uses are defined as:
 - Production, distribution, or repair of goods, including accessory sale of related product;
 - Uses encompassed within the Arts, Design and Creation Use Category as defined in Subtitle B § 200.2, including an Art Incubator as defined in Subtitle B § 100.2, but not including a museum, theatre or gallery as a principal use;
 - Production and/or distribution of food or beverages and the accessory sale or on-site consumption of the related food and beverage; and
 - Design-related uses, including media/communications, computer system and software design; fashion design; graphic design; or product and industrial design.
10. The Applicant shall make the space reserved for Maker Uses available to qualified retail tenants at a rate that is 10% below then market-rate rents, **for the life of the Project.**
11. **Employment:** The Applicant shall:
 - a. Provide a copy of the executed First Source agreement included as Exhibit 36B in Case No. 15-24 **prior to issuance of a building permit for the first building on Parcels 2 or 3** to proceed; and
 - b. Hire at least two Gallaudet students per year as interns or employees **upon issuance of the first building permit on Parcels 2 or 3 throughout active construction of the project until completion of all four parcels.** Evidence confirming fulfillment of this commitment shall be provided to the Zoning Administrator **prior to issuance of a certificate of occupancy for Parcel 1 or Parcel 4, whichever is the last phase to be constructed.**

D. Miscellaneous

1. The Applicant shall file the final Second-Stage application for the final phase(s) of development prior to March 28, 2027.
2. No building permit shall be issued for Parcel 2 until the Applicant has recorded a covenant binding Parcel 2 in the land records of the District of Columbia by the Applicant for the benefit of the District of Columbia that is satisfactory to the Office of Zoning Legal Division and to the Zoning Administrator (the “Parcel 2 PUD Covenant”). The Parcel 2 PUD Covenant shall bind the Applicant and all successors in title to construct and use Parcel 2 in accordance with this Order, as may be amended by the Commission. The Applicant shall file a certified copy of the Parcel 2 Covenant with the Office of Zoning.
3. No building permit shall be issued for Parcel 3 until the Applicant has recorded a covenant binding Parcel 3 in the land records of the District of Columbia by the Applicant for the benefit of the District of Columbia that is satisfactory to the Office of Zoning Legal Division and to the Zoning Administrator (the “Parcel 3 PUD Covenant”). The Parcel 3 PUD Covenant shall bind the Applicant and all successors in title to construct and use Parcel 3 in accordance with this Order, as may be amended by the Commission. The Applicant shall file a certified copy of the Parcel 3 Covenant with the Office of Zoning.
4. The respective map amendments to the C-3-A, MU-7, and C-3-C zones shall be effective upon the recordation of each respective PUD Covenant.
5. In accordance with the DC Human Rights Act of 1977, as amended, DC Official Code § 2-1401.01 et al (Act), the District of Columbia does not discriminate on the basis of actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identify or expression, familial status, familial responsibilities, matriculation, political affiliation, genetic information, disability, source of income or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

VOTE FINAL ACTION: 5-0-0 (Chairman Anthony J. Hood, Vice Chairman Robert E. Miller, Joseph Imamura, Peter G. May, and Peter A. Shapiro, to **APPROVE**).

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

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY HOOD
CHAIRMAN
ZONING COMMISSION



SARA BARDIN
DIRECTOR
OFFICE OF ZONING

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. 15-24D
Z.C. Case No. 15-24D

Gallaudet University and JBG/6th Street Associates, LLC
(Two-Year Time Extension of an Approved Consolidated PUD and Zoning Map
Amendment @ Square 3591, Lot 9 and Square 3593, Lot 6)
June 27, 2024

Pursuant to notice, at its public meeting on June 27, 2024, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of Gallaudet University and JBG/6th Street Associates, LLC (collectively, the “Applicant”) for a two-year time extension of the approved consolidated Planned Unit Development (“PUD”) and Zoning Map amendment approved in Z.C. Order No. 15-24B for the development of three mixed-use buildings with a combined total of approximately 700,000 square feet of new multifamily housing, 67,000 square feet of ground-floor retail space, 17,000 square feet of university space, and 65,000 square feet of public open space (the “Project”) located at Lot 9 in Square 3591 and Lot 6 in Square 3593 (collectively, the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedure, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations”, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Prior Approvals

1. The Property is located in the Florida Avenue Market neighborhood and constitutes Parcels 2 and 3 of the Applicant’s overall four-parcel PUD consisting of Parcels 1-4, located along 6th Street, N.E.
2. The First-Stage approval for the overall PUD was originally approved in Z.C. Order 15-24/15-24A, effective June 23, 2017, which also included a Zoning Map amendment to rezone Parcels 1 and 2 from C-M-1 to the C-3-A zone and to rezone Parcels 3 and 4 from C-M-1 to the C-3-C zone pursuant to the 1958 Zoning Regulations then in effect.
3. The Commission approved Z.C. Order 15-24B (the “Order”), effective August 26, 2022, granting a Modification of Significance for Parcels 1, 2, and 3, and Second-Stage PUD for Parcels 2 and 3, as well as a Consolidated PUD to expand Parcel 2 to include approximately 6,000 square feet of land and a Zoning Map amendment to be consistent with the previously approved PUD map amendment. Under the conditions of the Order,

the Second-Stage PUD application for Parcel 1 is required to be filed by March 28, 2027; construction of Parcels 2 and 3 will precede Parcel 1.

4. The Project will include the development of Parcels 2 and 3. Parcel 2, located on the east side of 6th Street, N.E., is approved for development with two 5-6 story mixed-use buildings that will have a combined total of approximately 240 residential units, 29,000 square feet of ground-floor retail space, and 17,000 square feet of ground-floor university space. Parcel 3, on the west side of 6th Street, N.E., is approved for development with an 11-story mixed-use building with approximately 600 residential units and 38,000 square feet of ground-floor retail space.
5. The Commission approved Z.C. Order 15-24C, effective December 15, 2023, granting a Second-Stage PUD for Parcel 4 to construct a mixed-use building.

Parties and Notice

6. Advisory Neighborhood Commission (“ANC”) 5D, in which the Property is located, and ANC 6C, located to the south of Florida Avenue, N.E. across from Parcel 1 of the PUD, are both “affected ANCs” and automatically parties to the Application. Aside from the affected ANCs, there were no other parties to the original proceeding for Z.C. Case No. 15-24B.
7. On May 21, 2024, the Applicant served the Application on ANC’s 5D and 6C, as well as the Office of Planning (“OP”) and District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2.)

II. The Application

8. On May 21, 2024, the Applicant filed the Application requesting a two-year time extension of the Order, prior to the expiration of the validity period on August 26, 2024, to extend the PUD and Zoning Map amendment approval. The Applicant requested that it be allowed until August 26, 2026, to file a building permit application for the Project. The Application stated that it met the standards for a time extension enumerated in Subtitle Z § 705.2. (Ex. 2.)
9. The Applicant stated there has been no substantial change of material facts since the Commission’s approval of the Order and that the Project remains consistent with the design and program approved by the Commission. (Ex. 2.)
10. The Applicant asserted that there is good cause to grant the requested extension in this case. Specifically, while the Applicant has advanced the Project toward development, including preparing permit plans and pursuing financing for construction, additional time is required to secure financing due to the ongoing challenges facing the commercial real estate sector, in particular, elevated construction costs and the current shifts in the interest rate environment for financing. (Ex. 2.)

III. Responses to the Application

11. On June 17, 2024, OP submitted a report stating that OP believed the Application met the standards for the requested two-year extension and recommending approval of the Application. OP agreed with the Application that there has been no substantial change in any of the material facts upon which the Commission based its original approval and that the Applicant had demonstrated good cause for the extension. (Ex. 4.)
12. Neither ANC 5D nor ANC 6C submitted a written report in response to the Application.

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 compliance with the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6.
2. The Commission concludes that the Applicant timely filed the Application prior to the expiration of the Order on August 26, 2024, which deadline the Application seeks to extend.
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 that the Applicant satisfied the requirement of Subtitle Z § 705.2(a) by demonstrating that it had served ANC 5D and ANC 6C, the only other parties to the Order, and that the ANCs were given 30 days to respond from the May 21, 2024, 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 that would undermine the Commission's justification for approving the original application.
6. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the Application and OP Report, which stated that no substantial change has occurred to the material facts upon which the Commission relied in issuing the Order that would undermine the Commission's justification for that approval.
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 that the Application met the standards of Subtitle Z § 705.2(c)(1) due to the adverse conditions affecting the financing market for commercial real estate development beyond the Applicant's reasonable control. The Commission agrees that these conditions constitute good cause for the requested two-year extension of the Order.

“Great Weight” to the Recommendations of OP

9. The Commission is required to give “great weight” to the recommendations of OP stated in the OP Report 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. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
10. The Commission notes OP’s conclusion that there has been no substantial change to the material facts upon which the Commission’s original approval was based and finds persuasive OP’s recommendation to approve the requested two-year extension.

“Great Weight” to the Written Report of the ANCs

- 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 the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Spring Valley-Wesley Heights Citizens Ass’n v. District of Columbia Zoning Comm’n*, 856 A.2d 1174, 1180 (D.C. 2004).) 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 Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978.) (citation omitted).)
11. Neither ANC 5D nor ANC 6C submitted a written report to which the Commission can give great weight.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore

APPROVES the Application's request for a Two-Year Time Extension of Z.C. Order No. 15-24B, to extend the validity period and deadline to file a building permit application until August 26, 2026.

VOTE (June 27, 2024): 3-0-2

(Anthony J. Hood, Tammy Stidham, and Robert E. Miller to approve; Joseph S. Imamura not present, not voting; 3rd Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 15-24D shall become final and effective upon publication in the *District of Columbia Register*; that is, on August 23, 2024.



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.

EXHIBIT B



District of Columbia Zoning Commission

441 4th Street, NW

Second Floor

Washington, DC 20001

August 20, 2026

Re: Gallaudet University – Zoning Commission Case Nos. 15-24B / 15-24D
Application for Time Extension for the Approved Second Stage Planned Unit
Development and Zoning Map Amendment

Dear Members of the Commission:

This letter will serve as authorization for the law firm of Holland & Knight LLP to represent Gallaudet University in all proceedings before the Zoning Commission concerning the processing of a request for a further time extension of the above-referenced Orders. This authorization shall include authority to bind the University in the case before the Commission, as required pursuant to Subtitle Z Section 200.3 of the Zoning Regulations.

Should you have any questions, please contact the undersigned.

Sincerely,

GALLAUDET UNIVERSITY

A handwritten signature in black ink, appearing to be "Richard", written over a horizontal line.

By: