

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 22-32
Z.C. Case No. 22-32
1232 Shift Cubed Partners, LLC
(Consolidated Planned Unit Development and
Related Zoning Map Amendment @ Square 772, Lot 17)
July 27, 2023

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a virtual public hearing on June 5, 2023, to consider the application (the “Application”) of 1232 Shift Cubed Partners, LLC (“Applicant”) to construct a new mixed-use building with all-affordable dwellings (the “Project”) in the property located at 1232 4th Street, N.E. (Lot 17 in Square 772) (the “Property”). The Applicant requested the following relief pursuant to Subtitles X and Z, Chapter 3; and Subtitle X §§ 301.3, 303.1, 303.12, under the Zoning Regulations for 2016, Title 11 of the District of Columbia Municipal Regulations (“DCMR”) (the “Zoning Regulations,” to which all references are made unless otherwise specified):

- A consolidated planned unit development (“PUD;
- A PUD related amendment to the Zoning Map (“Map Amendment”) from the PDR-1 zone to the MU-9B zone;
- Flexibility from the rear yard requirements of Subtitle G §§ 405.3; 405.6;
- Flexibility from the side yard requirements of Subtitle G §§ 406.1; 406.3;
- Flexibility from the vehicular parking requirements of Subtitle C § 701.5;
- Flexibility from the loading requirements of Subtitle C § 901.1;
- Flexibility from the minimum land area requirements for a PUD; and
- Such other design flexibility as are set forth in the Conditions hereof.

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z. For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. The following were automatically parties to this proceeding pursuant to Subtitle Z § 403.5:
 - The Applicant;

- Advisory Neighborhood Commission 6C (“ANC 6C”), the ANC in which the Property is located and, therefore, an “affected ANC” pursuant to Subtitle Z § 101.8.
2. The Commission received no requests for party status.

NOTICE

3. Pursuant to Subtitle Z § 300.7, on August 10, 2022, the Applicant mailed a Notice of Intent to file a Zoning Application to all property owners within 200 feet of the Property and ANC 6C. (Exhibits (“Ex.”) 3B1, 3B2.)
4. Pursuant to Subtitle Z § 402, the Office of Zoning (“OZ”) sent notice of the June 5, 2023 virtual public hearing on March 7, 2023 to:
- The Applicant;
 - ANC 6C;
 - ANC Single Member District (“SMD”) 6C07;
 - Councilmember Charles Allen;
 - Office of ANCs;
 - Office of Planning (“OP”);
 - D.C. Department of Transportation (“DDOT”);
 - D.C. Department of Buildings (“DOB”);
 - Zoning Commission lead attorney;
 - D.C. Department of Energy and Environment (“DOEE”);
 - At-Large Councilmembers and the Chair of the Council; and
 - Owners of property within 200 feet of the Property.
- (Ex. 11, 12.)
5. OZ published the Notice of Public Hearing in the March 17, 2023 issue of the *District of Columbia Register* (69 DCR 003334 *et seq.*) as well as on the calendar on OZ’s website. (Ex. 10, 11.)
6. Pursuant to Subtitle Z § 402.3, the Applicant posted notice of the hearing on the Property on April 21, 2023, and maintained such notice in accordance with Subtitle Z § 402.10. (Ex. 15, 23.)

THE PROPERTY

7. The Property is an approximately 8,982 square feet rectangular-shaped lot located in the NoMa neighborhood between M Street, N.E. and Florida Avenue, N.E. The Property is in the PDR-1 zone and improved with an existing, two-story building (the “Existing Building”), which is currently used for glass fabrication and installation business with an accompanying warehouse. (Ex. 3.)

8. The Property is an interior lot that abuts an 11-story mixed use development (the “M Street Development”) that was recently constructed, and a four-story building used for the Two Rivers Public Charter School. (Ex. 3.)
9. To the west of the Property, there is a 30-foot-wide alley (the “Alley”) that leads into a courtyard associated with the neighboring development. The Alley can be accessed by a 15-foot-wide alley that connects 3rd and 4th Streets, N.E. The Property is not in an historic district. (Ex. 3.)
10. The Property is 0.1 miles from the NoMa/Gallaudet U Metrorail Station, which is just under the railroad trestle off Florida Avenue. Union Station is one metro stop to the south of NoMa/Gallaudet U and provides connections to interstate rail lines such as Amtrak, MARC, and VRE. There are two separate Metrobus stops serving Routes 90 and 92 located one block away on Florida Avenue, N.E. There are two Capital Bikeshare stations within one block of the Property, including at the corner of 4th Street and Florida Avenue, N.E. and at the corner of 3rd Street and M Street, N.E. (Ex. 3.)

CURRENT ZONING

11. The Property is currently located in the PDR-1 zone, which allows a maximum floor area ratio (“FAR”) of 2.0 to 3.5 depending on the use. (*See* Subtitle J § 202.1.) The PDR-1 zone does not permit residential use except in limited special circumstances. (*See* Subtitle U § 801.1(w).) The maximum building height in the PDR-1 zone is 50 feet plus a 12-foot penthouse. (*See* Subtitle J §§ 203.1, 203.6.) Through a planned unit development, building height can increase to 60 feet and penthouse height can increase to 18’6”. (*See* Subtitle X §§ 303.7, 303.18.) There are no restrictions on lot occupancy in the PDR-1 zone.

COMPREHENSIVE PLAN

12. The Comprehensive Plan’s (Title 10A DCMR) Future Land Use Map (“FLUM”) identifies the Property as mixed-use “High-Density Residential,” “High-Density Commercial,” and “Production, Distribution and Repair” uses. The “High-Density Residential” designation includes “neighborhoods and corridors, generally, but not exclusively, suited for high-rise apartment buildings” where “[d]ensity is typically greater than a FAR of 4.0, and greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development.” (10A DCMR § 227.8.) The “High-Density Commercial” designation is defined to include “commercial areas with the greatest scale and intensity of use in the District...with densities greater than a FAR of 6.0...” (10A DCMR § 227.13.) The “Production, Distribution and Repair” designation provides that “[i]n an area striped to include PDR, development must include PDR space, and on sites containing existing PDR space the amount of PDR space on-site should be substantially preserved.” (10A DCMR § 227.14.)
13. The Comprehensive Plan’s Generalized Policy Map (“GPM”) identifies the Property as “Central Washington,” which is “the heart of Washington, DC” and a place “of great importance to the District, the region, and the nation.” (10A DCMR §§ 1600.1; 1600.3.) The Central Washington Area Element refers to NoMa as a “former light industrial enclave

[that] is today a vibrant and mixed-use neighborhood...” (10A DCMR § 1600.9.) As such, the Comprehensive Plan urges the District “to expand the number of affordable units through land disposition with affordability requirements and through the use of zoning and other regulatory incentives.” (10A DCMR § 1608.6.)

NOMA VISION PLAN

14. The Property is subject to the NoMa Vision Plan and Development Strategy (“NoMa Vision Plan”), a small area plan enacted in 2010. The NoMa Vision Plan proposes a vibrant, walkable, mixed-use neighborhood with housing and retail opportunities. The Property is within “Neighborhood Transition Area B,” which is encouraged to be a “mix of diverse residential and nonresidential uses, with greater height and density along rail tracks, Florida Avenue and N Street...” (Ex. 3.)

II. THE APPLICATION

THE PROJECT

15. The Applicant proposes to raze the Existing Building and construct a new, 10-story plus penthouse building at the Property. (Ex. 3.)
16. Overall, the Applicant proposes the Project to have:
 - Approximately 79,421 square feet of gross floor area (“GFA”), plus habitable penthouse space, for a total FAR of 8.84;
 - A maximum building height of 105 feet plus a penthouse of 20 feet;
 - A lot occupancy of 88%;
 - Approximately 96 dwelling units, including 30 studios, 55 one-bedroom units, and 11 two-bedroom units. All of the dwelling units will be affordable to households with income levels at or below 60% Median Family Income (“MFI”) with 20% of the units at or below 30% MFI for the first 40 years of operations. Following the initial 40-year control period, the Applicant has committed to set aside 15% of the total residential GFA, or approximately 15 units, as inclusionary zoning (“IZ”) units for households at or below 60% MFI;
 - Approximately 657 square feet of PDR space that will provide employment training opportunities to the community through the United Planning Organization (“UPO”);
 - 62 long-term bicycle parking spaces and 5 short-term bicycle parking spaces;
 - No on-site parking or loading facilities; and
 - Public space improvements to include a more open and accessible entry to the ground floor PDR space. Additionally, the Applicant has provided for an outdoor public art space to display artwork near the entry to the building.(Ex. 3, 5, 8, 17, 29.)

APPLICANT’S SUBMISSIONS, REVISIONS AND TESTIMONY

17. On October 4, 2022, the Applicant filed the initial Application and related materials. (Ex. 1-3G4.)

18. On December 14, 2022, the Applicant filed a supplemental statement which included a clarification that the Applicant was seeking a PUD-related Map Amendment to the MU-9B zone and a racial equity analysis which concluded that the Project advances the Comprehensive Plan's racial equity goals by providing a 100% all-affordable residential building in the highly-amenitized NoMa neighborhood. (Ex. 5.)
19. On February 21, 2023, the Applicant filed a prehearing statement (Ex. 8-8A2.), which responds to the issues and comments raised by the Commission during the January 26, 2023 setdown meeting as well as OP's comments in its January 13, 2023 setdown report (Ex. 6.), as further discussed below. In sum, the prehearing statement included the following:
- Inclusionary Zoning Set Aside: In response to OP comments, the Applicant provided additional clarification on the Project's Inclusionary Zoning ("IZ") set aside following the Project's initial affordability period. The Applicant stated that once the initial 40-year control period ends, the Applicant will comply with the IZ program set aside requirements¹;
 - Courts: In response to OP's concerns about light and air for units abutting each court, the Applicant proposed a series of light reflectors to be installed along the sides of the structure to diffuse light into each courtyard. Additionally, the Applicant proposed design features that maximize air flow through several window penetrations along the court;
 - PDR Use: In response to OP's request for more details about the PDR use space, the Applicant stated that there will be a partnership with UPO to implement UPO's Workforce Institute training programs in the industrial area. The program will be available to both the building's residents and the public and will provide job training in fields such as plumbing, electrical, building maintenance, food handling, and emergency medical training;
 - Pepco Vault: In response to OP's request that the Pepco vault be moved from public space in front of the Project to the alley in the rear, the Applicant provided revised architectural plans to reflect that change; and
 - Architectural Updates: The Applicant provided an updated architectural plan set that included revisions such as increased long-term bicycle parking, public space improvements including more green space at the Project's frontage and a public art space, additional balconies on the third and fourth floors, and windows in the courtyard.
20. On April 21, 2023, the Applicant submitted a Comprehensive Transportation Review ("CTR") prepared by Gorove/Slade, the Applicant's traffic and transportation expert. The CTR noted that the Project is not expected to have a detrimental impact on the surrounding transportation and alley networks, or on surrounding parking, due to the Project's low

¹ In the Applicant's public hearing presentation and in its draft proffers, the Applicant later committed to exceed IZ program set aside requirements and set aside 15% of the total residential GFA, or approximately 15 units, at or below 60% MFI in perpetuity following the initial 40-year control period. (Ex. 24, 28.)

vehicular trip generation. The CTR included a Transportation Demand Management (“TDM”) plan and Loading Management Plan (“LMP”) to support the Application’s requested zoning relief from parking and loading requirements. (Ex. 14-14B.)

21. On May 12, 2023, the Applicant filed a supplemental statement, as permitted under Subtitle Z § 401.5, which included the following: (Ex. 17-17E.)
 - Architectural Updates: The Applicant provided an updated architectural plan set that included increased PDR space in response to ANC 6C comments, a reduction in the approximate number of residential units from 98 to 96, example images of the proposed heliostats and sunlight reflector systems (Ex. 17B.), increased number and accessibility of bicycle spaces, and a relocation of the hallway corridor to improve accessibility;
 - Community Outreach: The Applicant included a discussion of community outreach with ANC 6C and the neighboring property across 4th Street, N.E., Planned Parenthood of Metropolitan Washington, D.C. (PPMW). In response to ANC 6C’s request, the Applicant reconfigured the ground floor to increase the amount of PDR space, agreed to an explicit policy to allow bicycles in the elevators, committed to keeping both the bike lane and sidewalk open during construction until they must be closed, added more electrical plugs in the bike room, and ensured that the upper rack of bicycles are easily accessible;
 - Agency Outreach: The Applicant provided a synopsis of continued outreach to D.C. agencies in connection with the Application. In response to communications with OP, the Applicant submitted its Enterprise Green Communities Checklist (Ex. 17C.), which provided information regarding the Project’s environmental and sustainable public benefits; and
 - Supplemental Racial Equity Analysis: The Applicant provided a supplemental analysis of the Application through a racial equity lens, which applied the Zoning Commission’s Revised Racial Equity Analysis Tool released on February 3, 2023. The supplemental racial equity analysis included additional information about the demographic makeup of the neighborhood as well as the Applicant’s outreach with ANC 6C. The Applicant states that over the course of its community engagement, it modified the ground floor plan to accommodate more PDR space, moved the Pepco vault to the alley, added more electrical plugs to the bike room, and moved the hallway to create a more activated breezeway that makes the trash room more accessible.
22. The Applicant provided testimony at the public hearing on June 5, 2023, which included a PowerPoint presentation. (Ex. 24.) Four witnesses testified during the Applicant’s presentation: Emmanuel Egoegonwa from 1232 Shift Cubed Partners, LLC; Sean Pichon from Michael Graves/PGN Architects; William Zeid from Gorove Slade; Andrea Thomas from UPO; and Meridith Moldenhauer from Cozen O’Connor. Mr. Pichon and Mr. Zeid were accepted as expert witnesses by the Commission.
23. On June 14, 2023, the Applicant filed draft proffers and conditions. (Ex. 28.) On July 11, 2023, the Applicant filed its revised proffers and conditions. (Ex. 32.)\

24. On June 20, 2023, the Applicant filed a post-hearing submission responding to issues and comments from the Commission during the June 5, 2023 hearing. (Ex. 29-29A5.) The post-hearing submission included the following:
- Architectural Updates: The Applicant included revised architectural plans to address comments from the Commission during the June 5, 2023 hearing. The revised architectural plans provide more detail on the side yard measurements and include the percentage of compliant areas and those requiring relief; and
 - Community Outreach: In response to the Commission's request at the June 5, 2023 public hearing that the Applicant reach out to the owners of the abutting properties to the north and south to generally inform them about the Application and Project design, the Applicant provided statements of the Applicant's outreach and communication with the two abutting property owners, Cielo Modern Apartments located at 300 M Street, N.E. and Two Rivers Public Charter School located at 1227 4th Street, N.E. The Applicant reports its discussions with representatives of both property owners were productive and that it looks forward to continued engagement with them.
25. On June 27, 2023, the Applicant filed proposed findings of fact and conclusions of law pursuant to Subtitle Z § 601.1. (Ex. 30.)

RELIEF REQUESTED

26. The Applicant requested the Commission approve a consolidated PUD with a related Map Amendment to the MU-9B zone district. As a result of the PUD and Map Amendment, the Project can achieve the additional height and density in the chart below:

Development Standards	PDR-1	MU-9B	Proposed Project
Height	50 ft.	90-100 ft. (130 ft. with PUD)	105 ft.
FAR	2.0-3.5 FAR	7.8 FAR (9.25 FAR with PUD)	8.84 FAR
Penthouse Height	12 ft.	20 ft.	20 ft.

27. The Applicant requested additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1, as follows:
- Rear Yard: To provide a rear yard of 15 ft. where 21'10" is required pursuant to Subtitle G §§ 405.3; 405.6. The Applicant states the flexibility will allow the Project to provide more affordable housing units with efficient layouts;
 - Side Yard: To provide 5 ft. side yards where 17'6" is required pursuant to Subtitle G §§ 406.1; 406.3. The Applicant states allowing flexibility would allow light and air to the residential units. The Project also includes light reflectors to help improve the amount of sunlight reaching the lower units along the courtyard;
 - Vehicle Parking: To provide zero off-street vehicular parking spaces where 16 spaces are required for the Project pursuant to Subtitle C § 701.5. The Applicant states the Property's size makes access to below-grade parking challenging, and providing a

surface parking area would sacrifice affordable housing units and require a challenging structural design to support the floors above;

- **Loading:** To provide zero loading berths or service-delivery spaces where 1 loading berth and 1 service-delivery space is required for the Project pursuant to Subtitle C § 901.1. The Applicant states the Property's size creates difficulties in providing zoning-compliant loading; and
- **Minimum PUD Land Area:** To allow the minimum land area requirement for a PUD in the MU-9 zone to be decreased from the required 15,000 square feet per Subtitle X § 301.1 to the provided 8,982 square feet pursuant to Subtitle X § 301.3. The Applicant states the Project is of exceptional merit and in the best interests of the city as this Application proposes an all-affordable development in a mixed-use, pedestrian-friendly neighborhood.

(Ex. 3.)

III. APPLICANT'S JUSTIFICATION FOR RELIEF

28. **Consistency with Comprehensive Plan and Other Public Policies (Subtitle X § 304.4(a).)** The Applicant provided evidence that the Application complies with Subtitle X § 304.4(a) because it is not inconsistent with the Comprehensive Plan and other public policies related to the Property, which includes the NoMa Vision Plan, as follows:

- **GPM:** The Project is not inconsistent with the GPM's designation for the Property of "Central Washington" because the Project's proposed density is consistent with the intent of the "Central Washington" area and will contribute approximately 96 units to the District's affordable housing stock in a desirable and amenity-rich neighborhood. (Ex. 3.) The Project will also promote walkability by improving the public sidewalks and streetscape;
- **FLUM:** The Project is not inconsistent with the FLUM's designation for the Property, which is a mix of uses to include "High-Density Residential," "High-Density Commercial," and "Production, Distribution and Repair." The Comprehensive Plan's Framework Element defines "High-Density Residential" to include "neighborhoods and corridors, generally, but not exclusively, suited for high-rise apartment buildings," where density greater than a 4.0 FAR "may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development." (10A DCMR § 227.8.) Similarly, the Framework Element defines "High-Density Commercial" to include "commercial areas with the greatest scale and intensity of use in the District." 10A DCMR § 227.13. Densities greater than 6.0 FAR are predominant in the "High-Density Commercial" designation. (*Id.*) The Project will have a density, scale and mix of uses that is consistent with the recommendations in the FLUM and in context with the surrounding built environment. Additionally, as noted in the OP reports (Ex. 6, 20.), while the "Production, Distribution, and Repair" designation calls for the preservation of existing PDR space, the Comprehensive Plan also places a strong emphasis on the provision of housing, and especially affordable housing. As such, the Applicant claims the Project's reduction of the existing amount of PDR space to provide more affordable housing is on the whole not inconsistent with the FLUM

- designation because the Project will be all affordable during the initial 40-year control period and thereafter exceed current IZ set aside requirements;
- *Citywide Elements*: The Project is not inconsistent with a number of policies reflected in the Comprehensive Plan's Citywide Elements, including:
 - Land Use Element: The Project will be an all-affordable development located within blocks of a Metrorail station. The Project will improve a former industrial site in a prime location within the NoMa neighborhood and near Union Market. Further, the Project has been designed to encourage non-auto-oriented transit, such as public transportation, bicycling and walking. Residents will have access to grocery stores, a library and other basic necessities within two blocks. The Applicant's proposed improvements to and activation of the surrounding streetscape will further support these Project goals; (Ex. 3.)
 - Transportation Element: The Project will encourage pedestrian and bicycle transportation by improving the public realm, with no vehicle access points or curb cuts, and providing better connections to metro and the surrounding neighborhood. The Project's long-term bicycle parking will encourage residents to use bicycle transportation. By not providing any parking, the Project discourages personal automobile use. These findings are supported by the reports of the Applicant's transportation expert, Gorove Slade, and DDOT; (Ex. 3, Ex. 14-14B, 21-21A.)
 - Housing Element: The Project will have approximately 96 affordable units, including 11 two-bedroom units, in a high-cost, downtown neighborhood. The Project will be constructed with high-end materials and design features. The Property's location will ensure that residents, including families, have access to one of the City's most "well-resourced" neighborhoods. Further, the Applicant has committed to offer the affordable units at or below 60% MFI and 20% of the units at or below 30% MFI, which is a deeper level of affordability than required by the IZ program; (Ex. 3.)
 - Environmental Element: As part of the Project, the Applicant will make landscaping improvements to the surrounding public space, including the planting of approximately three new street trees. The Applicant is committed to achieving an Enterprise Green Communities Plus certification, which is a higher level of performance in what is already a leading standard for affordable housing development. The Project's green elements will include a large green roof area with solar panels; (Ex. 3.)
 - Urban Design Element: The Project proposes an architectural style and density that is complementary to the other buildings in the surrounding area. The Project will connect the surrounding streetscape, with improved sidewalks and other improvements to the public realm; and (Ex. 3, 17-17E.)
 - Arts and Culture Element: The Project will feature a dedicated space at the entryway of the Property to display public art. The Project's proximity to Two Rivers Public Charter School presents a unique opportunity for partnership with UPO and Two Rivers. (Ex. 17, 24.)
 - *Area Element*: The Project will be consistent with the pattern of development in Central Washington and the NoMa neighborhood by proposing a high-density residential development. Of particular note, the Project meets the policy goal of providing housing

diversity in Central Washington through its all-affordable residential character.; (Ex. 3.)

- *NoMa Vision Plan*: The Project is not inconsistent with the NoMa Vision Plan. Specifically, the Project is consistent with the following recommendations: promoting mixed-use active neighborhoods (Rec. 1); residential diversity and street level character (Rec. 7); a neighborhood designed for multi-modal balance increasing walking, biking and transit usage (Rec. 8); create identity and market strength through innovative, contemporary architecture (Rec. 23); ground floor design excellence (Rec. 26); balancing scale/density with potential for increased neighborhood amenities (Rec. 30); and building a sustainable neighborhood (Rec. 37). The Project is also consistent with the goals for the “Neighborhood Transition Area B,” which includes the Property, and encourages a “[m]ix of diverse residential and nonresidential uses, with greatest height and density along rail tracks, Florida Avenue and N Street, transitioning to lower density along streets facing existing rowhouses.”; and (Ex. 3.)
- *Racial Equity Lens*: The Project furthers the Comprehensive Plan’s racial equity goals by providing a 100% all-affordable residential building in the highly-amenitized NoMa neighborhood. By offering all units at or below 60% MFI, with one-fifth of the units at or below 30% MFI, the Project well exceeds the standard IZ affordability requirements that would require 8%-10% of units to be set aside at 60% MFI. The Project also includes larger, two-bedroom apartments that are suitable for families. The Project will provide a ground level PDR space dedicated to the community where people of all backgrounds and ages can connect, create and learn. This space is anticipated to serve children, youth and family services, and act as an incubator for creative individuals. In addition to the PDR space, the Applicant has committed to the inclusion of resident services within the Project, which would provide job training, work placement, housing assistance, financial assistance, and small business support to the residents of the Project. From an equity perspective, the Project provides affordable homes in an area that is increasingly affluent and well-served by amenities. Low-income families who may otherwise be priced out of such an accessible and amenity-rich neighborhood will be able live among these features as a result of the Project. The lack of affordable housing in a “high opportunity” neighborhood such as NoMa is not surprising given its central location and accordant land values. From a policy perspective, the goals achieved by the Project – providing housing proximate access to economic, education and employment opportunities – are vital in achieving the District’s racial equity goals. Finally, the Applicant has also demonstrated equity as part of this zoning process through outreach to the community, including six meetings with ANC 6C, and revisions to the Project plans in response to ANC 6C’s comments, as noted above. (Ex. 3, 17, 20.)

29. **No Unacceptable Impacts on the Surrounding Area or to City Services (Subtitle X § 304.4(b).)** The Application asserted that the Project satisfies the requirements of Subtitle X § 304.4(b) because the Project will not result in any unacceptable impacts to the surrounding area or to city services and facilities, as the impacts are either favorable, capable of being mitigated or acceptable given the quality of public benefits, as follows:

- The Project will have a favorable impact on land use and zoning by providing approximately 96 affordable residential units in a mixed-use building in the NoMa neighborhood. The proposed MU-9B zone district is consistent with the surrounding buildings in terms of height and density; (Ex. 3.)
- The Project will not have unacceptable impacts on city services and facilities as the Property is already served by major utilities. With respect to the transportation network, the Project provides excellent access to alternative forms of transportation, the Applicant's traffic expert from Gorove/Slade found no unacceptable impacts (Ex. 14-14B.), and the Project's provision of bicycle parking in excess of requirements will encourage alternative forms of transportation to and from the site. Additionally, the Applicant has provided an extensive TDM plan and LMP to reduce impacts to the transportation network; and (Ex. 3, 14-14B.)
- The Project will not have unacceptable environmental impacts because it is designed to meet the Enterprise Green Communities Plus certification and will include a green roof and solar panels. (Ex. 3.) The Project will also meet or exceed the green-area-ratio requirement under the Zoning Regulations. (Ex. 3.)

30. **The Project Provides Specific Public Benefits and Amenities (Subtitle X § 304.4©.)** In accordance with Subtitle X § 304.4vis-à-vis, the Project will provide specific public benefits and amenities that are not inconsistent with the Comprehensive Plan and other adopted public policies and active programs related to the Property. The Applicant's benefits and amenities exceed what could result from a matter-of-right development, are tangible, measurable, and able to be arranged prior to issuance of the certificate of occupancy, and benefit either the immediate neighborhood or address District-wide priorities. (See Subtitle X §§ 305.2, 305.3.) The Application proposes the following public benefits and project amenities:

- **Superior Urban Design and Architecture (Subtitle X § 305.5(a).):** The Project's modern design offers notable architectural style and will create a memorable imprint on the NoMa neighborhood. The front and rear façades will incorporate contrasting light and dark metal detailing with chocolate brick and red vertical detail brick accents. The side facades will feature similar contrasting metal detailing with a light brick accent. This Project includes a modern design featuring solar panels and sunlight reflectors to provide increased light to courtyards; (Ex. 29-29A5.)
- **Site Planning and Efficient and Economical Land Utilization (Subtitle X § 305.5(c).):** The Application proposes to activate a relatively small parcel in the middle of a vibrant neighborhood with approximately 96 new units of affordable housing and ground level PDR space. The Project efficiently utilizes the Property by not providing any on-site parking or loading but ensures limited impact through transportation mitigation measures and a loading management plan; (Ex. 3, 14-14B.)
- **Housing (Subtitle X § 305.5(f).):** The Project will provide housing that exceeds the amount that would have been required through matter-of-right development under existing zoning. Under the existing PDR-1 zone, the Property could only be improved with an apartment for a caretaker, watchman, or janitor employed on the premises or an apartment unit integrated with and accessory to an artist studio. Accordingly, the

Project will provide an additional approximate 95 units over the amount permitted through by-right development; (Ex. 3.)

- **Affordable Housing (Subtitle X § 305.5(g).):** The Project proposes approximately 96 all-affordable units at deeper level of affordability than required under IZ. The Project will have all units at or below 60% MFI and 20% of units at or below 30% MFI for the first 40 years of operations. Following the initial 40-year control period, the Applicant has committed to set aside 15% of the total residential GFA, or approximately 15 units, as IZ units for households at or below 60% MFI; (Ex. 3.)
- **Environmental and Sustainable Benefits (Subtitle X § 305.5(k).):** The Applicant proposes for the Project to achieve Enterprise Green Communities Plus certification, which is an increased level of rigor over-and-above the baseline 2020 Enterprise Green Communities criteria, the latter of which can be fairly regarded as compared to a LEED Gold certification. The Project also incorporates sustainability features such as a green roof and solar panel array; (Ex. 3.)
- **Streetscape Plans (Subtitle X § 305.5(l).):** The Project will make improvements to the streetscape by providing landscaping improvements to the surrounding public space, including the planting of approximately three new street trees; and
- **Other Public Benefits Advancing Policy Objectives (Subtitle X § 305.5(r).):** The Project will feature 657 square feet of ground floor PDR space which will be used in partnership with UPO for job training programs. The programs and training skills developed will enhance the employability of low-income individuals by providing them with the means to earn more substantial wages in the production, distribution, and repair field. One of the important economic development policies of the Comprehensive Plan is workforce development, which encourages PDR businesses and training programs to “link unemployed and underemployed residents to career pathways” and this Project advances that objective. (See 10A DCMR § 711.8.) Additionally, the Project will include approximately 996 square feet of penthouse amenity space which will be reserved for recreational use and for programmed activities and wrap around services. (Ex. 3, 8, 17, 29-29A5.)

IV. RESPONSES TO APPLICATION

OFFICE OF PLANNING

31. OP submitted a report dated January 13, 2023 (the “OP Setdown Report”, Ex. 6) recommending that the Commission set the Application down for a hearing based on OP’s conclusion that the Project is not inconsistent with the Comprehensive Plan or the NoMa Vision Plan and meets the requirements of Subtitle X, Chapter 3. The OP Setdown Report indicated support for the requested PUD related map amendment noting that the Property’s underlying PDR-1 zoning does not permit new residential development while the proposed MU-9B zone would allow for the creation of new residential units. The OP Setdown Report also requested additional information from the Applicant regarding the IZ set aside, court size, PDR space, and relocation of the Pepco vault. As noted above, the Applicant provided responses to OP’s requests in its prehearing and supplemental statements at Ex. 8, 17.

32. OP submitted a report dated May 26, 2023 (the “OP Hearing Report”) recommending that the Commission approve the Application. (Ex. 20.) The OP Hearing Report concluded that:
- The Project, on balance, is not inconsistent with the Comprehensive Plan and would further policy statements under the Land Use, Transportation, Housing, Environmental Protection, Economic Development and Urban Design Citywide Elements, and the Central Washington Area Element. The Project is not inconsistent with the Property’s FLUM and GPM designations. With respect to the “Production, Distribution and Repair” designation on the FLUM, the Comprehensive Plan calls for existing PDR space to be substantially preserved. OP noted that the proposed PUD and map amendment would not be in line with this specific recommendation because the existing industrial building would be replaced with an affordable housing building that contains considerably less PDR space. However, OP found that the Comprehensive Plan’s emphasis on housing, and especially affordable housing, outweighs the PDR stripe in this case. As such, the Applicant’s proposed reduction in the amount of PDR space is, on balance, not inconsistent with the FLUM designation for the Property.
 - The Project is consistent with the NoMa Vision Plan;
 - The Applicant responded to the issues and concerns identified in the OP Setdown Report and raised by the Commission at the January 26, 2023 public meeting;
 - OP is supportive of the requested zoning flexibility from the standards for rear yard, side yard, vehicular parking, loading, and minimum land area;
 - OP has no objections to the Applicant’s requested design flexibility; and
 - The Project provided benefits and amenities that are commensurate with the related Map Amendment and other requested zoning flexibility through the PUD.
33. The OP Hearing Report included disaggregated race and ethnicity data for the Central Washington Planning Area in response to the Commission’s Revised Racial Equity Analysis Tool released on February 3, 2023. OP’s disaggregated data shows that the percentage of Black residents in the Planning Area drastically decreased over a ten-year period from 32% in the 2012-2016 period to 19% in the 2017-2021 period. The data further shows that only the median income for white households increased between the 2012 to 2021 period. Minority households experienced a decline in their median household income. Considering this data, OP found that the Project’s affordable units could potentially give more housing options to retain some of the existing minority residents in the area or attract new minority households to the area. OP noted that the Project includes space for a work training program, which could provide some minority residents in Central Washington with the skills needed to pursue higher income employment opportunities. (Ex. 20.)
34. At the June 5, 2023 public hearing, OP testified in support of the Application and noted the Project “would provide much needed affordable housing to the Central Washington area, which is strongly recommended in the Comprehensive Plan” and “could provide more affordable housing options to the area and could potentially retain some of the existing minority residents in the area and attract new minority residents.” (6/5/23 Hearing Tr. 60-61.)

DDOT REPORT

35. DDOT filed a report dated May 26, 2023 (the “DDOT Report,”) stating that it has no objection to the Application and supports the requested zoning relief from the parking and loading requirements. (Ex. 21, 21A.) DDOT conditioned its support on the Applicant implementing the proposed TDM Plan and LMP for the life of the project as reflected in the Applicant’s Comprehensive Transportation Review. (Ex. 14-14A2.)
36. At the public hearing on June 5, 2023, DDOT testified in support of the Application. (6/5/23 Hearing Tr. 58.)

ADDITIONAL AGENCY REPORTS

37. In the OP Hearing Report, OP stated that the D.C. Department of Housing and Community Development (“DHCD”), D.C. Department of Public Works (“DPW”), and the D.C. Department of Energy and the Environment (“DOEE”) emailed OP regarding the Project. DHCD stated that they do not object to the Project and that “if the Project is approved by DCHD’s Development Finance Division for District funding it would be considered exempt from the Inclusionary Zoning requirements during the term of the funding.” DPW stated that they do not believe the Project will have any impact on DPW collections operation. DOEE stated it has no objection to the Project. (Ex. 20.)
38. The D.C. Office of the Attorney General (“OAG”) submitted a report recommending approval of the Application. (the “OAG Report”, Ex. 22.) The OAG Report stated that the PUD’s affordable housing benefits alone, even without the other proffered public benefits, satisfy the balancing test of Subtitle X § 304 and advance numerous policies of the Citywide Elements and Central Washington Area Element as well as the NoMA Vision Plan. The OAG Report argued that the Commission should look to the IZ Plus standard as a means of valuing a PUD’s affordable housing proof vis-à-vis its requested bonus density; in essence the more density gained through a map amendment, the greater the affordable housing set aside should be. OAG nevertheless found that in this case the PUD’s affordable housing benefit exceeds both IZ and IZ Plus requirements “by providing an all-affordable building with deeper levels of affordability than would be required for a matter-of-right development”; is “a truly significant affordable housing benefit”; and is consistent with Comprehensive Plan § 224.9 guidance identifying the production of new affordable housing units above existing legal requirements as a high priority benefit in the evaluation of residential PUDs. OAG also stated that likewise, the Zoning Regulations, specifically Subtitle X § 305.5(g), “identify the provision of affordable housing above what is required under IZ regulations as a high-priority public benefit.” In addition, the OAG Report noted that the PUD’s proposed use of the PDR “maker space” for job training appears to conflict with the Comprehensive Plan’s directive to preserve PDR uses on-site. OAG does not believe job training qualifies as a “maker space” use and encourages the next Comprehensive Plan rewrite to clarify a vision for the PDR zone that provides clearer guidance to both applicants and the Zoning Commission. However, OAG concluded that the PUD’s substantial affordable housing proffer satisfies the Comprehensive Plan’s

overriding directive to prioritize affordable housing, particularly in PUDs, and so renders the PUD not inconsistent with the Comprehensive Plan as a whole.

ANC REPORT

39. ANC 6C submitted a resolution dated May 14, 2023 (the “ANC Report,”), which was adopted at a duly noticed and regularly scheduled monthly meeting, with a quorum present. (Ex. 18.) The ANC Report states that ANC 6C voted to support the Project, subject to five conditions:
- As to the bike room, the ANC wanted the Applicant to allow bicycles in the passenger elevators to enable residents to store their bicycles in their units. The ANC Report notes the Applicant agreed to this condition in its supplemental statement at Ex. 17;
 - Additionally, the ANC expressed concern regarding the accessibility of the bike racks and wanted the Applicant to fit the two-tiered bike racks with hydraulics or a similar mechanism to easily store and remove bikes from the upper tier. The ANC Report notes the system described in the Applicant’s supplemental statement at Ex. 17 satisfies this condition;
 - The ANC also wanted the Applicant to provide more electrical connections to the bike room to facilitate the charging of additional electric bikes. The ANC Report notes the Applicant agreed to add additional electric plugs in the bike room in its supplemental statement at Ex. 17;
 - As to the bike lane/sidewalk, the ANC understood the Applicant’s need to close the bike lane and sidewalk during construction, but wanted the Applicant to limit the closures to a temporary basis when safety required the closure and to keep these areas open at all other times. The Applicant proposed condition language stating it “will work with DDOT to keep both bicycle lanes and sidewalks adjacent to the Project on 4th Street, N.E. open until those areas must be closed.” However, the ANC believed the condition language needed to be more emphatic and ensure that closures are kept to the minimum amount feasible; and
 - Regarding advertising, the ANC wanted the Applicant to commit to not advertise on the building’s north elevation. The Applicant agreed to this condition in its revised proffers and conditions at Ex. 32, which are incorporated as conditions of this Order.
40. During the hearing on June 5, 2023, no representative from ANC 6C testified. (6/5/23 Hearing Tr. 67, 68.)

LETTERS IN SUPPORT OR OPPOSITION

41. On May 2, 2023, Niharika Singh, submitted a letter of support for the Project as a nearby neighbor located at 250 K Street, N.E. and wanted this letter considered as they were unavailable to attend the hearing on June 5, 2023. (Ex. 16.)
42. There were no letters of opposition filed in the case record. Additionally, no individuals or groups spoke in support or opposition at the Commission’s hearing.

NATIONAL CAPITAL PLANNING COMMISSION (“NCPC”)

43. On June 9, 2023, the Commission referred the Application to the NCPC for review and comment pursuant to the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Section 1-201 et seq. (Ex. 27.)
44. NCPC submitted letter dated July 6, 2023, stating that the Application is not inconsistent with the Comprehensive Plan for the National Capital and would not adversely impact any other identified federal interests. (Ex. 31.)

CONCLUSIONS OF LAW

AUTHORITY

1. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a Consolidated PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 300, a PUD-related map amendment pursuant to Subtitle X § 303.12, and flexibility from all other development standards pursuant to Subtitle X § 303.1.

STANDARD OF REVIEW FOR APPROVAL OF PUD AND PUD-RELATED MAP AMENDMENT

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 § 303.1: “As part of the PUD process, the Commission may grant relief from any building development standard or other standard referenced in the zone reference table with the exception of use regulations. Housing and arts credits are considered use regulations and are not eligible for flexibility through the PUD process.”
4. Pursuant to Subtitle X § 303.12: “A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD.”
5. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application, the Commission must: “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” and must find that the proposed development:
 - (a) *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - (b) *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable,*

- capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
- (c) *Includes specific public benefits and Building amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
6. Pursuant to Subtitle X §§ 305.2, 305.3, 305.4, and 305.12, the PUD’s benefits and amenities must “*benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions*”, in majority part “*relate to the geographic area of the Advisory Neighborhood Commission in which the application is proposed*” and “*meet the following criteria: (a) Benefits shall be tangible and quantifiable items; (b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) Benefits may primarily benefit a particular neighborhood or area of the city or service a critical city-wide need; and (d) Monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.*” Moreover, a PUD “*may qualify for approval by being particularly strong in only one (1) or a few categories [of public benefits], but must be acceptable in all proffered categories and superior in many.*”
7. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP’s purposes as: (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.
8. In determining whether a PUD is not inconsistent with the Comprehensive Plan, the Commission shall balance the various elements of the Comprehensive Plan. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related zoning map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)) (the “McMillan PUD”). In its decision affirming the Commission’s approval of the McMillan PUD, the Court stated the following:
- “The Comprehensive Plan is a ‘broad framework intended to guide the future land use planning decisions for the District. *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). ‘[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the

Comprehensive Plan as a whole.’ *Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous ‘occasionally competing policies and goals,’ and, ‘[e]xcept where specifically provided, the Plan is not binding.’ *Id.* at 1167, 1168 (internal quotation marks omitted). Thus ‘the Commission may balance competing priorities’ in determining whether a PUD is consistent with the Comprehensive Plan as a whole.’ (*D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013).) ‘[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.’” (*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016).)

9. The Comprehensive Plan also requires the Commission to evaluate all zoning actions through a racial equity lens. (10A DCMR § 2501.8.) Consideration of equity is intended to be based on the policies of the Plan and part of the Commission’s consideration of whether the PUD in this case is “not inconsistent” with the Comprehensive Plan, rather than a separate determination about a zoning action’s equitable impact.
10. The Comprehensive Plan’s Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (10A DCMR § 213.6.) Further “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development and employment opportunities.” (10A DCMR § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (10A DCMR § 213.9.)
11. The Comprehensive Plan’s Implementation Element provides guidance for 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 difference areas in the District.” (10A DCMR § 2501.6.) In addition, the Implementation Element suggests to prepare and implement tools to use as a part of the Commission’s evaluation process. (10A DCMR § 2501.8.) The Commission released a revised Racial Equity Analysis Tool on February 3, 2023 with new components requiring applicants to include information about their community outreach and engagement efforts and OP to include disaggregated race and ethnicity data for the affected Planning Area in their respective Comprehensive Plan consistency submissions regarding racial equity.

COMPLIANCE WITH PUD ELIGIBILITY STANDARDS

12. For a PUD in the MU-9B zone, the Zoning Regulations require a minimum land area of 15,000 square feet pursuant to Subtitle X §§ 301.1, 301.3. However, the Property has 8,982 square feet of land area. (Findings of Fact (“FF”) 27.)
13. For a parcel within Zone Group 6, which includes the MU-9B zone, the Commission may waive the minimum land area to no less than 5,000 square feet if the Commission finds that the “development is of exceptional merit and is in the best interests of the District of Columbia” and one of the following: (a) The development is identified in an approved Small Area Plan and will be generally not inconsistent with the Small Area Plan; (b) The development will be constructed or operated by the District of Columbia or federal government and serves a compelling government interest; or (c) If the development is to be located outside the Central Employment Area, at least eighty percent (80%) of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto.” (See Subtitle X § 301.3.)
14. The Commission agrees with OP’s analysis, as stated in the OP Hearing Report, and finds the Project meets the standard of Subtitle X § 301.3 because the Project is of exceptional merit and in the best interest of the District of Columbia. As such, the Commission waives the minimum land area for the Application to 8,982 square feet. (FF 27, 32.)

CONSISTENCY WITH THE COMPREHENSIVE PLAN AND PUBLIC POLICIES (SUBTITLE X § 304.4(A).)

15. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies the burden of proof that the Project, including the PUD and related Map Amendment, is not inconsistent with the Comprehensive Plan, considered in its entirety, and other public policies and active programs related to the Property.
16. The Commission concludes that the Application is not inconsistent with the GPM’s “Central Washington” designation for the Property because the PUD and Map Amendment will allow for a new all-affordable, mixed-use building to be constructed in the middle of a vibrant and walkable neighborhood. The Commission also notes the Project’s consistency with the Central Washington Area Element’s emphasis on housing diversity, including highly affordable units. (FF 13, 28.)
17. The Commission concludes the Application is not inconsistent with the FLUM’s mixed-use High-Density Residential/High-Density Commercial/Production, Distribution and Repair designations for the Property because:
 - The Project’s density and mix of uses are consistent with that envisioned by the High-Density Residential and High-Density Commercial designations;
 - The High-Density Residential designation is used to define neighborhoods with high-rise apartment buildings. This designation is usually defined by densities greater than 4.0 FAR, and greater density may be achieved through IZ compliance or the PUD process;

- The High-Density Commercial designation is used to define the central employment district, other major office centers, and other commercial areas with the greatest scale and intensity of use in the District, and commonly includes densities with FAR greater than 6.0; and
 - With respect to the Production, Distribution and Repair designation, the Commission acknowledges the Comprehensive Plan calls for existing PDR space to be “substantially preserved.” (10A DCMR § 227.14.) The Project will be reducing the amount of PDR space on the Property from the entirety of the existing two-story building to approximately 657 square feet and is therefore potentially inconsistent with this recommendation. However, the reduction in PDR space on site allows for the provision of approximately 96 new all-affordable units in a highly-amenitized and transit-oriented neighborhood. As noted above, the Comprehensive Plan reflects numerous “occasionally competing policies and goals,” and, as such, the Commission must “balance competing priorities” in determining whether a PUD is consistent with the Comprehensive Plan *as a whole*. The Commission must recognize policies that are inconsistent and “explain why they are outweighed by other, competing considerations.” Here, the Commission agrees with OP’s analysis that the Project’s provision of approximately 96 new all-affordable units outweighs the FLUM’s policy of preserving PDR space within the FLUM’s Production, Distribution and Repair designation. The Comprehensive Plan, as well as several other public policies such as the Mayor’s 2019 Housing Equity Report, place great emphasis on creating new housing and, in particular, affordable housing, to meet the needs of the District of Columbia. This policy is especially critical in the Central Washington planning area where there is currently a dearth of affordable housing. Conversely, the amount of PDR space is declining in the NoMa neighborhood, a trend that was viewed positively in the NoMa Vision Plan. Nonetheless, the Project will incorporate a PDR space that will be run by UPO. Because of the emphasis on creating affordable housing in Central Washington in the Comprehensive Plan and other public policies, the Commission finds these policies to outweigh the Production, Distribution and Repair designation, and that the Project is not inconsistent with the FLUM. (FF 12, 28, 32.)
18. The Commission concludes that the Project is not inconsistent with the Central Washington Area Element. The Commission finds that the Area Element incorporates policies that encourage high-density, mixed-use development with residences and street-activating commercial space. The Commission also notes the Area Element’s support for new housing and housing diversity. The proposed public space improvements will make the site more pedestrian-friendly as called for in the Area Element. (FF 28.)
19. The Commission concludes that the Project furthers the goals of the Comprehensive Plan’s Citywide Elements, including the Land Use, Transportation, Housing, Environmental and Urban Design Elements. In particular, the Commission emphasizes the over-arching goal in the Land Use and Housing Elements to provide new affordable housing in the District. The Project will provide approximately 96 new units of highly affordable housing in an excellent location with access to amenities, public transportation and employment opportunities. The Project proposes substantial improvements to the surrounding public

space in order to improve walkability and connectivity around the site, as well as include both long-term and short-term bicycle parking that exceeds the minimum zoning requirements. The Project is also designed with exceptional and memorable architecture, high-quality materials, and to meet Enterprise Green Communities Plus standards. (FF 28.)

20. The Commission concludes that the Project is not inconsistent with the Racial Equity goals of the Comprehensive Plan. Overall, the Project will provide affordable housing opportunities, at deep levels of affordability, in a neighborhood where many such opportunities do not currently exist as reflected in increases to median income levels over the past 20 years. The new housing will be provided without displacing any existing residents, as the Property is currently unimproved. To that end, the Commission agrees with the Applicant and OP's analysis finding that the Project's approximately 96 units of new affordable housing will substantially increase the existing affordable housing stock in ANC 6C. Similarly, the Commission acknowledges the Project's contribution to the goals in the Mayor's 2019 Housing Equity Report to create 1,040 new affordable housing units in the Central Washington planning area. The Commission agrees that the location of the Project provides residents with the ability to improve their lives through access to opportunities and amenities in the context of job training, education, and access to the Resident Resource Center. To that end, the Project's Resident Resource Center offers invaluable social services and education. The Commission acknowledges that the Applicant detailed its community outreach with ANC 6C and abutting property owners and, as informed by its discussions with the ANC, revised the Project plans to incorporate many of the ANC's suggestions, including increasing the amount of PDR space and bicycle accessibility. The Commission also notes that the disaggregated race and ethnicity data provided by OP reveals that there is a declining number of Black residents in the Central Washington Planning Area and that the Project has the potential to provide more housing options to retain and attract minority residents to the area. Therefore, the Commission finds that the Application responds to the District's racial equity goals as the Applicant utilized community outreach and engagement guidance, considered the Project's potential impact on existing racial disparities as informed by OP's disaggregated race and ethnicity data for the Planning Area, and revised the design of the Project accordingly. The Project will advance many desired Comprehensive Plan policies and themes identified in the Commission's revised Racial Equity Analysis Tool. (FF 21, 28, 33.)
21. The Commission finds the Project is consistent with the NoMa Vision Plan, which incorporates policy goals encouraging high-density, mixed-use and walkable neighborhoods. The NoMa Vision Plan also specifically identifies the area along the rail tracks by Florida Avenue and N Street (where the Property is located) as a place to be improved with the "greatest height and density." (FF 28.)

POTENTIAL ADVERSE IMPACTS – HOW MITIGATED OR OUTWEIGHED (SUBTITLE C § 304.4(B).)

22. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts that are not capable of being mitigated or outweighed by the Project's proffered public benefits and amenities as detailed below.

23. The Commission concludes the Project will not create any unacceptable impacts to land use and zoning because:
- The Project will improve a parcel in the middle of a high-density, transit-friendly neighborhood;
 - The increase to height and density permitted as a result of the PUD related Map Amendment to the MU-9B zone is being used to add substantially more affordable housing to the neighborhood on a relatively small site; and
 - The proposed height, density and mix of uses in the Project is consistent with the surrounding built environment in NoMa and the Union Market district, as many of the buildings are constructed to a similar building height. (FF 29.)
24. The Commission concludes the Project will not create any unacceptable impacts to city services and facilities or that any impacts are capable of being mitigated or acceptable given the Project's public benefits because:
- The Property is already served by major utilities and provides excellent access to alternative forms of transportation as confirmed by the Applicant's traffic expert from Gorove/Slade who found no unacceptable impacts; and
 - The Project's provision of bicycle parking in excess of requirements will encourage alternative forms of transportation to and from the site. Additionally, the Applicant has provided an extensive TDM plan and LMP to reduce impacts to the transportation network. The Commission believes that any remaining impacts are acceptable given the quality of public benefits provided, particularly the provision of an all-affordable residential building in a highly-amenitized neighborhood. (FF 29.)
25. The Commission concludes the Project will not create any unacceptable impacts on the environment. The Project is designed to meet Enterprise Green Communities Plus certification and includes sustainability features such as a large green roof and solar array. The Project will also meet its green-area-ratio requirement under zoning. (FF 29.)

PUD FLEXIBILITY BALANCED AGAINST PUBLIC BENEFITS (SUBTITLE X §§ 304.3, 304.4(c).)

26. Based on the case record and the Findings of Fact above, the Commission concludes the Application satisfies the PUD balancing test under Subtitle X §§ 304.3 and 304.4(c) because the Project includes specific public benefits and project amenities that are not inconsistent with the Comprehensive Plan or other public policies and active programs related to the Property. Furthermore, the public benefits outweigh the requested zoning flexibility as well as any potential adverse impacts that are not capable of being mitigated, and therefore justify approval of the PUD. The Commission notes that while the Application's proffer of an all-affordable housing project advances the Comprehensive Plan goal of prioritizing affordable housing, the Commission finds that the whole of the Application's proffered public benefits and amenities satisfy the PUD balancing test and advance Comprehensive Plan policies of the Citywide and Central Washington Area Element, as well as the NoMa Vision Plan. In applying the PUD balancing test, the Commission evaluates the adequacy of an Application's entire proffered public benefits and amenities package based on the criteria set forth in Subtitle X § 305. (See Conclusions

of Law (“COL”) 31-38 below.) While the advancement and/or prioritization of particular Comprehensive Plan policies or goals is encouraged and desirable, no specific proffer can itself be a determinative factor in arriving at the Commission’s conclusion that an Application’s proffered benefits and amenities satisfy the PUD balancing test.

27. The Commission concludes the Application’s proposed amendment to the Zoning Map from the current PDR-1 zone to the MU-9B zone is appropriate because the MU-9B zone is consistent with the Comprehensive Plan, as described above, and allows for a density that is consistent with the surrounding area. The Map Amendment is directly correlated with the primary public benefit of affordable housing by increasing the permitted density at the Property. (FF 30.)
28. The Commission concludes that the Application’s request for development flexibility from the standards for vehicle parking and loading are appropriate because:
 - The Property does not have adequate depth or width to provide the appropriate amount of parking or loading. Providing parking or loading would considerably reduce the usable square footage on the site. Alternatively, the Property is too narrow to provide an appropriately safe access ramp to underground parking or loading;
 - The Property’s location has access to alternative forms of transportation, including train, bus, bicycle and pedestrian networks; and
 - The Applicant agreed to a TDM plan and LMP reviewed and approved by DDOT. (FF 10, 20, 27, 29, 35.)
29. The Commission concludes that the Application’s request for development flexibility from the standards for rear yard and side yard are appropriate because:
 - The Property’s narrow width necessitates the use of the entire length of the Property in order to maximize the number of affordable dwelling units on site. If the rear yard requirement were to be applied, the Project would lose one unit per floor on floors 3 through 10;
 - Similarly, the Property’s narrow width makes it challenging to provide compliant side yards, which would greatly reduce the usable square footage in the Project. Whereas the provision of courts on each side of the building, which are treated as side yards, allow for light and air to access units that abut each court;
 - The Project proposes to include reflectors along each court to ensure light can access units toward the bottom of the court;
 - The rear yard flexibility will not negatively impact neighboring properties because there is a 30-foot-wide Alley to the rear of the Property; and
 - The side yard flexibility will not substantially impact neighboring properties as the charter school to the north is shorter than the Project and does not have windows facing the Property. Additionally, the M Street Development has a large courtyard on the side facing the Project. (FF 19, 21, 27, 30.)

30. The Commission concludes the Application's request for flexibility from the minimum PUD land area requirement is appropriate as described in COL 14 above.
31. The Commission concludes the Application provides superior public benefits that benefit the surrounding neighborhood or general public to a greater degree than what would result from a matter-of-right development at the Property. (FF 30.)
32. The Commission concludes that the Project will provide superior urban design and architecture (Subtitle X § 305.5(a).) due to its modern design that will provide an appropriate addition to the neighborhood architecture. The Project features high-quality materials on the façades. (FF 30.)
33. The Commission concludes that the Project will provide superior site planning and efficient and economical land utilization (Subtitle X § 305.5(c).) because the Project will improve a relatively small site in the middle of a vibrant neighborhood with approximately 96 new units of affordable housing and ground level PDR space. The Project will make efficient use of Property by not providing any on-site parking or loading, and instead focusing on improvements to bicycle access. (FF 30.)
34. The Commission concludes that the Project will provide superior housing benefits (Subtitle X § 305.5(f).) because the approximately 96 units of housing is significantly greater than that permitted under matter-of-right PDR-1 zoning. (FF 30.)
35. The Commission concludes that the Project's will provide superior affordable housing benefits (Subtitle X § 305.5(g).) The Project proposes approximately 96 all-affordable units, with approximately 77 units at or below 60% MFI and approximately 19 units at or below 30% MFI. The Project exceeds the amount of affordable housing that would be normally required under the IZ program both in terms of amount and level of affordability. Under by-right PDR-1 zoning, IZ set aside requirements would not be applicable to development on the Property and the Property could only be improved with one residential dwelling. Even if IZ was applicable, the Zoning Regulations dictate that IZ rental unit must be set aside at or below 60% MFI. By comparison, all of the Project's units will be set aside at levels of affordability at or below 60% MFI. (FF 30.) With respect to OAG's argument that the adequacy of the Project's affordable housing proffer should be measured against a set-aside derived from applying IZ Plus to the Project, the Commission believes that IZ Plus is not the relevant standard or baseline given that the Zoning Regulations expressly state that IZ Plus does not apply to a PUD-related map amendment. (Subtitle X § 502.2(a).) Accordingly, while the Commission notes OAG's overall support for the Application, it does not agree with OAG's argument that IZ Plus should apply as a baseline for evaluating the adequacy of the Project's affordable housing proffer. (FF 38.) Consistent with Subtitle X § 305.5(g)(1), the Commission evaluates the adequacy of affordable housing proffers based on the extent the proffer exceeds what would have been required as a matter-of-right under existing zoning, and the Commission evaluated the affordable housing proffer in this case accordingly, as explained immediately above.

36. The Commission concludes that the Project will provide superior environmental and sustainable benefits (Subtitle X § 305.5(k).) by achieving Enterprise Green Communities Plus certification and incorporating sustainability features such as a green roof and solar panel array. (FF 30.)
37. The Commission concludes that the Project will provide superior streetscape plans (Subtitle X § 305.5(l).) because the Project will provide landscaping improvements to the surrounding public space, including the planting of approximately three new street trees. (FF 30.)
38. The Commission concludes that the Project provides other superior public benefits that advance policy objectives (Subtitle X § 305.5(r).), including approximately 657 square feet of ground floor PDR space which will be used for job training programs (Subtitle X § 305.5(h).) in the industrial space. The programs and training skills developed will enhance the employability of low-income individuals by providing them with the means to earn more substantial wages in the production, distribution, and repair field. The Project advances the Comprehensive Plan policy which states that one of the important economic development policies of the Comprehensive Plan is workforce development, which encourages PDR businesses and training programs to “link unemployed and underemployed residents to career pathways.” (See 10A DCMR § 711.8.) Additionally, the Project will include approximately 996 square feet of penthouse amenity space which will be reserved for recreational use and for programmed activities and wrap around services. (FF 30.)

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

39. The Commission must give “great weight” to the recommendation of OP, pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl).) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016).)
40. The Commission finds persuasive OP’s evaluation of the Application as having satisfied the applicable PUD standards, including that the Application is not inconsistent with the Comprehensive Plan as a whole, including when viewed through a racial equity lens, and other applicable public policies; the requested zoning flexibility for the PUD related Map Amendment as well as from the standards for side yard, rear yard, parking, loading, and minimum lot area is appropriate; the requested design flexibility is acceptable; and that the Application’s public benefits and amenities are commensurate with the zoning flexibility requested. (FF 31-34.)

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

41. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl).)

and Subtitle Z § 406.2. To satisfy this great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

42. As discussed above, the ANC Report identifies five areas where ANC 6C has concerns with the Project: bicycle storage and use of the elevators, bike rack accessibility, more electrical outlets in the bike room, keeping the bicycle lane/sidewalk open during construction, and prohibiting exterior advertising on the building’s north elevation. (FF 39.)
43. As to the bike room, the ANC wanted the Applicant to allow bicycles in the passenger elevators to enable residents to store their bicycles in their units. (FF 39; Ex. 18.) The Applicant has agreed to this term in the Draft Proffers and Conditions, which is incorporated into the Conditions of this Order. (Ex. 28.) Therefore, the Applicant sufficiently addressed ANC 6C’s concerns regarding bikes in the elevators.
44. Additionally, the ANC expressed concern regarding the accessibility of the bike racks and wanted the Applicant to fit the two-tiered bike racks with hydraulics or a similar mechanism to easily store and remove bikes from the upper tier. (FF 39; Ex. 18.) The ANC Report notes that the system described in the Applicant’s supplemental statement appears to satisfy this condition. (Ex. 17.) Therefore, the Applicant sufficiently addressed ANC 6C’s bike room accessibility concerns.
45. The ANC also wanted the Applicant to provide more electrical connections to the bicycle room to facilitate the charging of additional electric bikes. (FF 39; Ex. 18.) The ANC Report notes that the Applicant’s supplemental statement indicates the Applicant added more electric plugs in the bike room in response to ANC’s request. (Ex. 17.) Therefore, the Applicant sufficiently addressed ANC 6C’s bicycle room accessibility concerns.
46. As to the bicycle lane/sidewalk on 4th Street, the Commission understands the ANC wants the Applicant to limit the closures during construction to an absolute minimum. (FF 39; Ex. 18.) In response the Applicant has agreed to “work with DDOT to keep both bicycle lanes and sidewalks open during construction until those areas must be closed” as a condition which has been incorporated into this Order. (Ex. 28.) While the Commission acknowledges that ANC 6C would prefer to see a more emphatic condition minimizing such closures, the Commission believes that the Applicant’s language adequately addresses concerns about maintaining open access to the bicycle and sidewalk while also ensuring that the route is closed when necessary to protect the safety of pedestrians and cyclists. Therefore, the Commission does not believe the ANC’s request for a more stringent condition is needed and finds that the Applicant’s condition language is sufficient.

47. Regarding exterior advertising, the ANC wanted the Applicant to commit to not advertise on the building's north elevation. (FF 39; Ex. 18.) The Applicant has agreed to this term in the Draft Proffers and Conditions, which is incorporated into the Conditions of this Order. (Ex. 28.) Therefore, the Applicant sufficiently addressed ANC 6C's advertising concerns.

DECISION

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

- A Consolidated PUD;
- A PUD related map amendment of the Zoning Map to rezone the Property from the PDR-1 zone to the MU-9B zone;
- Flexibility from the side yard requirements (Subtitle G §§ 406.1, 406.3.);
- Flexibility from the rear yard requirements (Subtitle G §§ 405.3, 405.6.);
- Flexibility from the minimum land area requirements for a PUD (Subtitle X § 301.1.);
- Flexibility from the requirements for vehicular parking (Subtitle C § 701.5.); and
- Flexibility from the requirements for loading (Subtitle C § 901.1.)

Said approval is subject to the following guidelines, conditions, and standards. Whenever compliance is required prior to, on or during a certain time, the timing of the obligation is noted in bold and underlined text.

A. Project Development

1. The Project shall be developed substantially in accordance with the architectural plans and drawings submitted on June 20, 2023, at Ex. 29-29A5 in the case record (the "Architectural Plans"), subject to the following areas of flexibility:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided such variations do not change the exterior configuration of the building;
 - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
 - c. To vary the location, attributes and general design of the approved streetscape to comply with the requirements of and approval by the DDOT Public Space Division;

- d. To vary the font, message, logo and color of the approved signage for the Project, subject to full compliance with applicable signage restrictions under the D.C. Building Code and consistent with the indicated dimensions and materials;
- e. To vary the features, means and methods of achieving the required GAR and Enterprise Green Communities PLUS Certification; and
- f. To vary the number of residential dwelling units by an amount equal to plus or minus 10% from the number depicted on the Architectural Plans approved by the Zoning Commission.

B. Certificate of Occupancy Requirements

2. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall furnish a copy of its preliminary Enterprise Green Communities Plus certification application to the Zoning Administrator demonstrating that the building has been designed to meet the Enterprise Green Communities Plus standard for residential buildings.

C. Requirements for the Life of the Building

3. **For the life of the Building**, The Applicant shall provide affordable housing as set forth in the following chart titled “Affordable Housing Chart” (the “Affordable Chart”):

Residential Unit Type	Percentage of Total	Unit Count	Income Type	Affordable Control Period	Affordable Unit Type
Total	100%	96	Mixed		Rental
DHCD Affordable Units	80%	77 (approx.)	Up to 60% MFI	40 years	Rental
	20%	19 (approx.)	Up to 30% MFI	40 years	Rental
IZ Units (After 40-year period)	15%	15	Up to 60% MFI	Perpetual	Rental

- a. The Affordable Chart assumes that the Applicant will be granted an exemption from the Inclusionary Zoning Regulations (“IZ”) set forth in Subtitle C, Chapter 10 of the Zoning Regulations, pursuant to 11 DCMR Subtitle C § 1001.6. However, the Commission takes no position as to whether an exemption from the IZ Regulations should be granted;
- b. Each control period shall commence upon the issuance of the first certificate of occupancy;

- c. Should the exemption from the IZ Regulations be granted, the affordable housing requirements of this condition shall be stated in the covenant required under 11 DCMR Subtitle C § 1001.6(a)(4); and
 - d. Should the exemption from the IZ Regulations be denied, the Applicant shall provide affordable housing in accordance with this condition, unless the IZ Regulations impose more restrictive standards. The Applicant shall record the covenant required by the Inclusionary Zoning Act as to 10% of the residential gross floor of the Project and shall execute the monitoring and enforcement documents required by 11 DCMR Subtitle X § 311.6 as to the remaining residential gross floor area.
4. **For the life of the Project**, 657.13 sq. ft. of ground floor space will be reserved for PDR, creative, art, and job training.
5. **For the life of the Project**, 996.65 sq. ft. of penthouse space will be reserved as amenity space for the benefit of residents for recreational use and for programmed activities and wrap around services (including but not limited to employment services, counseling services, social services, and financial literacy).
6. **For the life of the Project**, the Applicant shall implement the following Transportation Demand Management (“TDM”) measures:
- a. Identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;
 - b. The Transportation Coordinator will conduct an annual commuter survey of building employees and residents on-site, and report TDM activities and data collection efforts to goDCgo once per year;
 - c. The Transportation Coordinator will 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 property website and in any internal building newsletters or communications;
 - d. The Transportation Coordinator will subscribe to goDCgo’s residential newsletter and receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan;
 - e. Provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT’s goDCgo program by emailing info@godcgo.com;

- f. Provide residents who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future;
 - g. Provide a copy of the Loading Management Plan (LMP) to the Transportation Coordinator so they are aware of this commitment;
 - h. Post all transportation and TDM commitments on building website, publicize availability, and allow the public to see what has been promised;
 - i. Offer a SmarTrip card and one (1) complimentary Capital Bikeshare coupon good for a free ride to every new resident;
 - j. Provide at least five (5) short - and sixty - two (62) long -term bicycle parking spaces, meeting or exceeding ZR -16 minimum requirements for at least five (5) short - and thirty -two (32) long -term bicycle parking spaces;
 - k. The long -term bicycle storage rooms will accommodate non -traditional sized bicycles including cargo, tandem, and kids bikes, with a minimum 5% of zoning -required spaces (2 for this Project) be designed for longer cargo/tandem bikes (10 feet by 3 feet), a minimum of 10% of zoning -required spaces (3 for this Project) will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum of 50% of spaces (31 for this Project) will be placed horizontally on the floor. There will be no fee to the residents or employees for usage of the bicycle storage room and strollers will be permitted to be stored in the bicycle storage room;
 - l. Following the issuance of a Certificate of Occupancy for the Project, the Transportation Coordinator will submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case; and
 - m. Following the issuance of a Certificate of Occupancy for the Project, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final Certificate of Occupancy for the Project) summarizing continued substantial compliance with the transportation and TDM conditions in the Order, unless no longer applicable as confirmed by DDOT. If such a letter is not submitted on a timely basis, the building shall have sixty (60) days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter.
7. **For the life of the Project**, the Applicant shall provide the following loading management measures:

- a. A loading manager will be designated by the building management who will be on duty during delivery hours. The loading manager will be responsible for coordinating with vendors and tenants to schedule deliveries and will work with the community and neighbors to resolve any conflicts should they arise;
- b. A lease provision will require all tenants to use only the designated loading area adjacent to the building in the alley for all deliveries and move-in and move-out activities;
- c. All tenants will be required to schedule deliveries that utilize the designated loading area (any loading operation conducted using a truck 20-feet in length or larger);
- d. The loading manager will schedule deliveries using the loading area such that its capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the loading area is full, that driver will be directed to return at a later time when the area will be available, so as to not compromise safety or impede the functionality of the public alley;
- e. The loading manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading area do not block vehicular, bike, or pedestrian traffic within the public alley;
- f. Service vehicle/truck traffic interfacing with traffic in the public alley will be monitored during peak periods and management measures will be taken if necessary to reduce conflicts between truck and vehicular movements;
- g. Trucks using the loading area will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight). The dock manager will also distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure and others from DDOT and goDCgo, to drivers as needed to encourage compliance with idling laws. The dock manager will also post these materials and other relevant notices in a prominent location within the loading area or internal receiving areas; and
- h. The loading manager will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading dock as well as notifying all drivers of any access or egress restrictions.

D. ANC Mitigation

8. **During construction of the Project**, the Applicant will work with DDOT to keep both bicycle lanes and sidewalks adjacent to the Project on 4th Street, N.E. open until those areas must be closed.
9. **For the Life of the Project**, there shall be no advertisement on the Project's north-facing façade.
10. **For the Life of the Project**, residents with bicycles shall be permitted to use the passenger elevators and store bicycles within individual dwelling units.

E. Miscellaneous

11. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of Zoning Legal Division and the Zoning Division, Department of Buildings. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
12. The PUD shall be valid for a period of two years from the effective date of this Order within which time an application shall be filed for a building permit. Construction must begin within three years of the effective date of this Order.
13. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2 -38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2 -1401.01 *et seq.* (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
14. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On June 5, 2023, upon the motion of Vice Chair Miller, as seconded by Commissioner May, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the Application at the close of

the public hearing by a vote of **3-0-2** (Robert E. Miller, Peter G. May, and Anthony J. Hood to **APPROVE**; Joseph S. Imamura not present, not voting; third Mayoral appointee seat vacant, not voting).

On July 27, 2023, upon the motion of Vice Chair Miller, as seconded by Commissioner May, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **3-0-2** (Robert E. Miller, Peter G. May, and Anthony J. Hood to **APPROVE**; Joseph S. Imamura not present, not voting; third Mayoral appointee seat vacant, not voting).

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *District of Columbia Register*; that is, on November 24, 2023.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING