

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 22-04
Z.C. Case No. 22-04
Hanover R.S. Limited Partnership
(Consolidated Planned Unit Development and Related Map Amendment
@ Squares 3841 and 3846)
October 13, 2022

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on July 21, 2022, to consider the application (the "Application") of Hanover R.S. Limited Partnership (the "Applicant") requesting the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, to which all subsequent citation refer unless otherwise specified):

- A consolidated planned unit development ("PUD"), pursuant to Subtitle X, Chapter 3, and Subtitle Z, Chapter 3; and
- A PUD-related map amendment from the PDR-2 to the MU-6A and MU-4 zones.

The Applicant proposes to construct a new, mixed-use development comprised of two buildings with three massings (the "Project") at Square 3846, Lots 82, 846, 856, and 859, and Square 3841, Lots 38, 825, 829, 832, 833, and 834 (collectively, the "PUD Site"). Reed Street (Alley)¹, which traverses through the PUD Site, will be realigned to bifurcate the overall Project and extend to Franklin Street, N.E. The significant majority of the PUD Site is currently zoned PDR-2, with a small portion at the southeastern corner zoned MU-6B.

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 **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. The Applicant is a private real estate investment and services company and was authorized to file and process the Application on behalf of the various owners of the PUD Site. (Exhibit ["Ex."] 2A and 3A.)

¹ See Finding of Fact ("FF") No. 10.

2. Advisory Neighborhood Commission (“ANC”) 5B, in which the PUD Site is located, is an “affected ANC” pursuant to Subtitle Z § 101.8.
3. The Applicant and ANC 5B are automatically parties in this proceeding pursuant to Subtitle Z § 403.5.
4. There were no requests for party status.

NOTICE

5. The Office of Zoning (“OZ”) sent notice of the July 21, 2022 public hearing, in accordance with Subtitle Z § 402.1 to:
 - Authorized counsel for the Applicant;
 - The affected ANC 5B;
 - The ANC 5B04 Single Member District (“SMD”) Commissioner, whose district includes the PUD Site;
 - The Office of the ANCs;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Consumer and Regulatory Affairs (“DCRA”);
 - The Office of Zoning Legal Division (“OZLD”);
 - The District Department of Environment (“DOEE”)
 - Councilmember Kenyan McDuffie, the Ward 5 Councilmember in whose district the PUD Site is located;
 - The Chairman and At-Large Members of the D.C. Council; and
 - The owners of property located within 200 feet of the PUD Site.(Ex. 20-21.)
6. OZ published notice of the public hearing in the April 29, 2022 *D.C. Register* (69 DCR 4162), as well as on the calendar on OZ's website. (Ex. 19-21.)
7. The Applicant submitted evidence that it had posted notice of the public hearing on the PUD Site in accordance with Subtitle Z § 402.9 and maintained said notice in accordance with Subtitle Z § 402.10. (Ex. 31, 48.)

THE PUD SITE

8. The PUD Site has a total land area of approximately 156,361² square feet and is located on the south side of Franklin Street, N.E., bounded by the Washington Metropolitan Area Transit Authority (“WMATA”) tracks to the west and a north-south public alley on the east (which is located to the west of 10th Street, N.E). Several alleys traverse through the PUD

² As noted in the Applicant's Prehearing Statement, the total land area comprising the PUD Site decreased slightly between the time of filing the original Application (Ex. 1-3O) and the Prehearing Submission (Ex. 17-18M). This reduction resulted from the calculation of additional land area that will be dedicated to the District for sidewalk purposes abutting Lot 859 and additional calculations of the resulting land area by the Office of the Surveyor for the District of Columbia (the "Office of the Surveyor"). (Ex. 18 at p. 8.)

Site. (Ex. 3, 18.) A portion of Reed Street, N.E. as well as other public alleys traverse through the PUD Site.

9. The PUD Site is presently improved with a mixture of industrial structures and parking lots. The character of and existing improvements on the PUD Site are further described as follows:
 - Lots 82, 846, and 856 in Square 3846 currently serve as the operational headquarters for the various business units of Historic Tours of America;
 - Lot 859 in Square 3846 is unimproved;
 - Lot 38 in Square 3841 is used by two auto-repair service tenants;
 - Lot 825 in Square 3841 is used as general office space for Pathways to Housing DC;
 - Lot 832 in Square 3841 is used for surface parking;
 - Lot 829 in Square 3841 is used as office and personal storage space for the owner;
 - Lot 833 in Square 3841 is used as a warehouse for a commercial flooring company;
 - Lot 834 in Square 3841 is used for botanical oil extraction and consulting services; and
 - Some portion of these lots are also used for associated surface parking.(Ex. 3.)
10. To enable the Project, the Applicant has an application pending with the Office of the Surveyor (S.O. 22-01115) that seeks to close portions of the alley systems in Squares 3841 and 3846, including portions of Reed Street (Alley), N.E., as well as a 10-foot portion of the south side of Franklin Street. This application also includes dedications of land to effectuate the proposed realignment of Reed Street (Alley), N.E. The realigned Reed Street (Alley), N.E. has been and will continue to be a public alley, although it will be improved to street standards, with the exception of its width, as finally approved by DDOT. It is referred to herein as “Reed Street” despite its legal classification as an Alley. (Ex. 2B, 3.)
11. The PUD Site is located in the Northeast quadrant of the District, within Ward 5 and ANC 5B04 and in the southeastern portion of the Brookland neighborhood. The PUD Site is generally surrounded by a mix of residential and non-residential uses. (Ex. 3.)

Surrounding Area

12. The properties to the east of the PUD Site are predominantly residential in character, with row homes located directly to the east along Evarts Street, N.E. and along 10th Street, N.E., across an existing north-south public alley that is 16 feet wide. The Noyes Education Campus is further to the east of the PUD Site. (Ex. 3.)
13. Additional non-residential uses are located on the PUD Site, and higher density residential uses surround the PUD Site generally to the south, including the recently constructed Rowan apartment house located at 2607 Reed Street, N.E. and the Brookland Press apartment house located on Channing Place, N.E. Further to the south, across Rhode Island Avenue, N.E., is the Rhode Island Station development including residential and retail uses. (Ex. 3.)

14. The area surrounding the PUD Site is well served by various transit options. The PUD Site is located approximately 0.25 mile from the Rhode Island Avenue-Brentwood Metrorail station to the south and just under one mile from the Brookland-CUA Metrorail station to the north. In addition, 12th Street, N.E. to the east of the PUD Site is served by two Metrobus routes (H8, H9). Further, the Metropolitan Branch Trail ("MBT") generally traverses the western side of the WMATA tracks and Metrorail red line from Union Station up to Franklin Street, N.E., offering another link between the PUD Site and many of the city's northeast neighborhoods. (Ex. 3.)

Current Zoning

15. Lots 82, 846, and 856 in Square 3846, and Lots 38, 825, 829, 832, 833, and 834 in Square 3841 that comprise the PUD Site are currently zoned PDR-2. Lot 859 in Square 3846 is currently zoned MU-6B.
16. Subtitle J § 100.2 establishes that the PDR zones are intended to, among other things:
- Regulate the use of land and structures and the erection and modification of structures in areas characterized by PDR uses, typically with heavy truck traffic and loading and unloading operations;
 - Encourage the retention of viable land to accommodate production, warehousing, distribution, light and heavy industrial, and research and development activities;
 - Minimize encroachment by uses that are incompatible with PDR uses, including residential uses, which could impair existing PDR activities; and
 - Manage transitions between PDR-zoned areas and surrounding neighborhoods.
17. Subtitle J § 200.2 establishes that the PDR-2 zone is intended to permit medium-density commercial and PDR activities employing a large workforce and requiring some heavy machinery under controls that minimize any adverse impacts on adjacent, more restrictive zones.
18. Multifamily residential use is not permitted in the PDR-2 zone. New residential uses are limited to either: (1) an apartment unit for a caretaker, watchman, or janitor employed on the premises; or (2) an apartment unit that is integrated with and accessory to an artist studio. (Subtitle U § 801.1(w).)
19. The MU-6 zones are intended to:
- Permit medium- to high-density mixed-use development with a focus on residential use; and
 - Provide facilities for shopping and business needs, housing, and mixed-uses for large segments of the District of Columbia outside the central core. (Subtitle G § 400.5.)

Comprehensive Plan (Title 10-A DCMR, the "CP")

20. The CP's Generalized Policy Map ("GPM") designates the PUD Site as a "Neighborhood Conservation Area" (Ex. 3F.):

- The CP's Framework Element states that "Neighborhood Conservation areas have little vacant or underutilized land. They are generally residential in character. Where change occurs, it will typically be modest in scale and will consist primarily of infill housing, public facilities, and institutional uses...Neighborhood Conservation Areas that are designated 'PDR' on the Future Land Use Map are expected to be retained with the mix of industrial, office, and retail uses they have historically provided" (§ 225.4.);
- The Framework Element further states that "[t]he guiding philosophy for Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the FLUM and CP policies. Approaches to managing context-sensitive growth in Neighborhood Conservation Areas may vary based on neighborhood socio-economic and development characteristics. In areas with access to opportunities, services, and amenities, more levels of housing affordability should be accommodated." (§ 225.5.)

21. The Future Land Use Map ("FLUM") designates the western portion of the PUD Site as Mixed Use (High Density Residential / PDR) and the northeastern portion of the PUD Site as Mixed Use (Moderate Density Residential / PDR) (Ex. 3G):

- According to the CP's Framework Element, the Mixed Use designation "indicates areas where the mixing of two or more land uses is especially encouraged" and applies in various circumstances, such as "[c]ommercial corridors or districts which may not contain substantial amounts of housing today, but where more housing is desired in the future", as well as "[d]evelopment that includes residential uses, particularly affordable housing, and residentially compatible industrial uses, typically achieved through a Planned Unit Development or in a zone district that allows such a mix of uses (§ 227.20.);
- The general density and intensity of development within a given Mixed Use area is determined by the specific mix of uses shown on the FLUM. The CP Area Elements may also provide detail on the specific uses envisioned (§ 227.21.);
- The High Density Residential "designation is used to define neighborhoods and corridors generally, but not exclusively, suited for high-rise apartment buildings. Pockets of less dense housing may exist within these areas. Density 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" (§ 227.8.);
- The Moderate Density Residential "designation is used to define neighborhoods generally, but not exclusively, suited for row houses as well as low-rise garden complexes." A density of up to 1.8 FAR is considered appropriate, although greater density may be possible when complying with Inclusionary Zoning ("IZ") or when approved through a PUD (§ 227.6.); and

- The Production, Distribution, and Repair (“PDR”) "category is used to define areas characterized by manufacturing" and similar activities "which may require substantial buffering from housing and other noise-, air-pollution- and light-sensitive uses." It is important for the District "to ensure that adequate, appropriate land" is provided for PDR-related uses that are deemed critical to the city's retail, service, and transportation needs. In an area striped to include PDR, as is the case for the PUD Site, development must include PDR spaces. The Framework Element also states that "on sites containing existing PDR spaces the amount of PDR space on-site should be substantially preserved." (§ 227.14.)
22. The CP's Upper Northeast Area Element, which applies to the PUD Site, includes the following development priorities:
- The Area Element "encourage[s] growth while enhancing the neighborhood of Upper Northeast," such as Brookland, which is where the PUD Site is located. "The residential character of these areas should be preserved while allowing new housing opportunities for all incomes" (§ 2408.2; UNE-1.1.1: Neighborhood Conservation.);
 - The Area Element calls for leveraging the presence of the Rhode Island Avenue Metro Station "to provide new transit-oriented housing, community services and jobs" and that new development around this Metro station is "strongly supported" (§ 2408.4; UNE-1.1.3: Metro Station Development.);
 - The Area Element "[e]ncourages the long-term reuse of older commercial and industrial sites in the Rhode Island Avenue Metro station vicinity with mixed uses, including housing and PDR uses" (§ 2415.7; UNE-2.5.3: Redevelopment of Older Commercial and Industrial Sites.); and
 - Development within the Area Element should include improvements that establish "safer pedestrian crossings, street trees, and other amenities that make the street more attractive" and "enhance pedestrian connections between the neighborhoods around the Rhode Island Avenue Metro station and the station itself." (§ 2415.8; UNE-2.5.4: Pedestrian Improvements.)

Small Area Plan

23. The PUD Site is also subject to the objectives and recommendations of the Rhode Island Avenue Diamond of the District Small Area Plan ("SAP"), which:
- Assigns the PUD Site to Subarea 1 from 4th to 10th Streets, N.E., where transit-oriented development at medium to high density is encouraged. (SAP at p. 12);
 - Specifically designates the western portion of the PUD Site within Site E of Subarea 1, where the SAP indicates support for rezoning to allow mixed-use development, including housing, and 90 feet in height. (SAP at p. 17); and
 - Specifically designates the northeastern portion of the PUD Site within Site F of Subarea 1, where the SAP indicates support for mixed-use development, including housing, and pedestrian improvements along Reed Street. (SAP at p. 17.)

II. THE APPLICATION

THE PROJECT

24. The Application, as amended, proposes to construct a mixed-use development comprised of two buildings, in two phases, with Reed Street being realigned³ to bifurcate the overall Project and extend to Franklin Street. The overall Project will provide:
- Approximately 766,109 square feet of gross floor area ("GFA");
 - A total blended FAR of 4.90;
 - A residential FAR of 4.76, generating approximately 683 units;
 - Approximately 22,159 square feet devoted to PDR/makerspace use, including:
 - Approximately 18,400 square feet devoted to ground floor non-residential use;
 - Approximately 3,759 square feet devoted to three affordable artist live-work units reserved for local artists with a maximum Median Family Income ("MFI") not exceeding 60%;
 - An allocation of a minimum of 15% of the residential GFA⁴ for IZ units, generating approximately 100-105 IZ units at varying levels of income:
 - 5% of the affordable GFA will be reserved for households with a maximum MFI not exceeding 30%;
 - 5% of the affordable GFA will be reserved for households with a maximum MFI not exceeding 50%;
 - 80% of the affordable GFA will be reserved for households with a maximum MFI not exceeding 60%;
 - 10% of the affordable GFA will be reserved for households with a maximum MFI not exceeding 80%;
 - Four three-bedroom IZ units;
 - Approximately 267 below grade vehicle parking spaces, distributed among the phases of the Project;
 - Approximately 235 long term and approximately 35 short term bicycle parking spaces, allocated among the phases of the Project; and
 - Various outdoor amenities including courtyard spaces, swimming pools, outdoor dining and fire features, and private patios.
- (Ex. 3, 18-18A11 33-33A11, 39, 64-64A3.)
25. The Project will also include significant streetscape and landscaping improvements along the redesigned Reed Street and the existing rights-of-way abutting the PUD Site, including Franklin Street, N.E., and the north-south and east-west alleys surrounding the Phase II-A Building (defined in FF No. 29).

Buildings

26. The building to the west of Reed Street will consist of the "Phase I Building" and the "Phase II-B Building" (together referred to as the "West Building"). The Phase I Building and the

³ See FF No. 10.

⁴ This results in a residential gross floor area of 111,593 sq. ft. of IZ and a net residential sq. ft of 83,235 of IZ. (See Ex. 33A1, Sheet A12.)

Phase II-B Building will be connected by a bridge housing shared amenity space, which will create a single building for zoning purposes in accordance with Subtitle B § 309. The West Building will have a maximum height of 84 feet as measured from the building height measuring point ("BHMP") located at grade along Franklin Street, N.E. The BHMP for the West Building is located at a position that is between the face of the West Building and the Franklin Street bridge – not at the higher bridge elevation. (Ex. 3, 18.)

27. The Phase I Building, the first stage of the West Building, will provide:
 - Approximately 428,922 square feet of GFA, including:
 - Approximately 425,163 square feet of GFA devoted to residential uses, generating approximately 395 new residential units; and
 - Approximately 3,759 square feet of GFA devoted to three affordable artist live-work units facing the green space at the southern end of the PUD Site;
 - Residential amenity space fronting a courtyard opening onto Reed Street; and
 - A total of 3.45 FAR based on the West Building lot area, prior to the construction of Phase II-B.
28. The Phase II-B Building, the second stage of the West Building, will provide:
 - Approximately 218,387 square feet of GFA, bringing the total overall West Building to a total of 5.20 FAR upon full completion, including:
 - Approximately 210,227 square feet of GFA devoted to residential uses, generating approximately 192 new residential units; and
 - Approximately 8,160 square feet of ground-floor PDR/makerspace uses concentrated at the corner of Evarts Street, N.E. and Reed Street, N.E.; and
 - Residential amenity space fronting two courtyards opening onto Reed Street.
29. The "Phase II-A Building" is the building located to the east of Reed Street and will have a maximum height of 65 feet as measured from the BHMP located at grade along Franklin Street. The Phase II-A Building will provide approximately 118,800 square feet of GFA, or 3.72 FAR based on the Phase II-A lot area, including:
 - Approximately 108,560 square feet of GFA devoted to residential uses, generating approximately 96 new residential units;
 - Approximately 10,240 square feet of ground-floor PDR/makerspace fronting Franklin Street, N.E.; and
 - An elevated courtyard fronting onto the adjacent north-south public alley.

Phasing

30. The first phase will include the construction of the Phase I Building ("Phase I").
31. The second phase will include the construction of the Phase II-A Building ("Phase II-A") and Phase II-B Building ("Phase II-B") (together referred to as "Phase II").

RELIEF REQUESTED

32. The Application requested the Commission approve a Consolidated PUD with a related map amendment from the current PDR-2 zone to rezone the western portion of the PUD

Site to the MU-6A zone and the northeastern portion of the PUD Site to the MU-4 zone. (Ex. 3D, 3E.)

33. As a result of this map amendment, the Project can achieve the additional height and density as follows:
- Map Amendment from PDR-2 to MU-6A zone for the West Building:
 - Height: 84 feet proposed; gain of 24 feet when compared to matter-of-right and PUD height permitted under existing zoning (maximum 60 feet); and
 - Density: 5.20 FAR proposed; gain of 0.70 FAR when compared to matter-of-right density permitted under existing zoning (maximum 4.5 FAR), but no gain when compared to PUD density permitted under existing zoning (maximum 5.4 FAR); and
 - Map Amendment from PDR-2 to MU-4 zone for the Phase II-A Building:
 - Height: 65 feet proposed; gain of five feet when compared to matter-of-right or PUD height permitted under existing zoning; and
 - Density: 3.72 FAR proposed; no gain when compared to matter-of-right or PUD density permitted under existing zoning.
34. The Application further requested additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1 to allow:
- The proposed side yard in two areas on the west side of the West Building, where a minimum of 14 feet is required pursuant to Subtitle G § 406.1;
 - The proposed side yards abutting Reed Street, where a minimum of 14 feet is required for the West Building, and a minimum of 11 feet is required for the Phase II-A Building pursuant to Subtitle G § 406.1;
 - The proposed rear yard of 11 feet, 8 inches for an approximately 20-foot vertical segment of the Phase II-A Building, where a minimum of 15 feet is required in the MU-4 zone pursuant to Subtitle G § 405.2; and
 - The proposed lot occupancy of 80% for the Phase II-A Building, where a maximum of 75% is permitted (for IZ Developments) in the MU-4 zone pursuant to Subtitle G § 404.1.
35. The Application also requested the Commission approve design flexibility to vary certain elements in the Application's final plans as approved by the Commission and still comply with the requirement of Subtitle X § 311.2 and Subtitle Z § 702.8 to construct the Project in complete compliance with the final plans.
36. During the Commission's public hearing of July 21, 2022, the Applicant requested flexibility to set aside 10% of the affordable GFA as IZ units for households with incomes not exceeding 80% of the MFI, because Subtitle C § 1001.9 requires that IZ units or square footage that exceeds IZ requirements shall comply with the requirements of Subtitle C, Chapter 10, unless otherwise specified by the Commission's order.

APPLICANT'S ORIGINAL SUBMISSION AND SUBSEQUENT REVISIONS

37. On January 21, 2022, the Applicant filed its original Application and initially proffered the following benefits and amenities in connection with the consolidated PUD:
- Superior urban design and architecture (Subtitle X § 305.5(a));
 - Superior landscaping, or creation or preservation of open spaces (Subtitle X § 305.5(b));
 - Site planning and efficient economical land utilization (Subtitle X § 305.5(c));
 - Housing (Subtitle X § 305.5(f));
 - Affordable housing (Subtitle X § 305.5(g));
 - Environmental and sustainable benefits (Subtitle X § 305.5(k));
 - Streetscape plans (Subtitle X § 305.5(l));
 - Transportation infrastructure (Subtitle X § 305.5(o)); and
 - Uses of special value to the neighborhood or the District of Columbia as a whole (Subtitle X § 305.5(q));
 - Under this public benefit category, the Applicant proposed to support various community groups or neighborhood organizations, as follows:
 - Total contribution of \$100,000 to Noyes Elementary School ("Noyes") to fund facility upgrades (e.g., auditorium, science garden, lab classroom) and for teacher services (e.g., field trips and electronic classroom equipment);
 - Total contribution of \$100,000 (two installments) to the Greater Brookland Intergenerational Village ("GBIV") to fund the "Age Well Together" initiative, which is geared towards addressing social isolation in older adults. Each \$50,000 contribution would fund specified social programming, wellness, and education resources for one year;
 - Total contribution of \$60,000 (two installments) to the Village of Brookland Traditional Schools (the "Village"), which is comprised of the following five schools: John Burroughs Elementary School, Noyes, Bunker Hill Elementary School Brookland Middle School, and Luck C. Moor Opportunity Academy, to fund increased learning resources and opportunities, including field trips, multicultural books, and STEAM support, and to provide support for each of the five schools for new technology, arts integration, professional development, and international experiences;
 - Total contribution of \$20,300 to the Mint Project, Inc., which hires at-risk homeless young people and students from the community to become Project Management Interns, whom would help complete a beautification project for a new holistic health and nature drive teletherapy clinic within a 24-hour drop-in center located in ANC 5B;
 - Total contribution of \$50,000 to either the DC Department of Parks and Recreation ("DPR") or the Friends of Noyes Park, Inc. ("FoNP") to fund the labor and materials needed for the expansion of the garden area in Noyes Park, including surface preparation and installation of soil and fencing;

- Total contribution of \$20,000 to Mary House, a non-profit, community-based transitional organization, to provide housing and customized support programs for one year for three low-income immigrant/refugee families residing in ANC 5B to help achieve independence and self-sufficiency;
- Total contribution of \$140,000 for start-up costs associated with the creation of a seasonal farmers market, which is estimated to fund up to five years of operations. Support would also include the re-design and reconstruction of Reed Street to accommodate said farmers market, and the provision of physical items needed for operations, including a designated storage room, electrical outlets, and a hose spigot; and
- Total contribution of up to \$50,000 for the creation of an off-site dog park within the boundaries of ANC 5B; and
- Support letters regarding the proposed contributions and the specific items or services that would be funded for Noyes and Mary House were provided with the original Application.

(Ex. 3-4A7.)

38. The Commission voted to set down the Application for a public hearing at its March 31, 2022, public meeting. At that meeting, the Commission concurred with the additional information requested by OP in its Setdown Report (*see* FF No. 72-73) and also requested additional information regarding the proposed massing and height of the Project, proposed density, and affordable housing proffer, among other things.
39. Following the Commission's March 31, 2022 public meeting, the Applicant filed a prehearing submission on April 8, 2022, which responded to the Commission's questions and included the following:
 - Updated architectural plans, which included:
 - Additional aerial images;
 - Further details on the proposed building color and materials;
 - Refined landscape drawings;
 - Updated civil drawings; and
 - Initial details regarding the proposed signage;
 - Information regarding the proposed unit mix;
 - Further details regarding the Applicant's affordable housing proffer, including:
 - An IZ unit location plan;
 - A revised request for IZ design flexibility that would not have the effect of reducing the amount of affordable housing provided by the Project; and
 - An analysis of how the Project's affordable housing component compared to an "IZ Plus" scenario;
 - Additional information regarding the proposed rezoning of the west portion of the PUD Site to MU-6A and the proposed density of the West Building;
 - Clarification of the BHMP for the West Building;

- A reduction of the vehicle parking proposed for the Phase II-A and Phase II-B Building garage;
- Support letters from GBIV, the Mint Project, FreshFarms, and the Village that provided additional information regarding the Applicant's contributions and the specific programs and services that would be funded; and
- Updates regarding the Applicant's community outreach and meeting history since filing the initial Application.

(Ex. 17-18M.)

40. On May 16, 2022, the Applicant submitted the Comprehensive Transportation Review ("CTR") prepared by Gorove/Slade regarding the Project at the PUD Site concluding that the Project will not have a detrimental impact to the surrounding transportation network assuming the proposed site design elements are implemented, and the improvements proposed within the traffic control and calming plan, subject to DDOT approval, would provide additional enhancements to the surrounding transportation network. (Ex. 24-24A.) A professional resume for Erwin N. Andres, PE, the traffic consultant responsible for preparing the CTR, had previously been submitted with the Applicant's prehearing submission. (Ex. 18D.)
41. On June 17, 2022, the Applicant submitted a supplemental prehearing submission that included the following:
- A complete set of updated architectural plans;
 - A revised design for the Phase II-B Building due to the location and required relocation of certain public utilities;
 - Additional information regarding opportunities for private outdoor space and balconies, and associated increase in the number and types of balconies to be provided with the Project;
 - A further reduction of vehicle parking for the overall project from 310 parking spaces to 267 parking spaces, such that the parking ratio was approximately 0.4 (parking spaces to units);
 - Updates regarding the proposed PDR/makerspace component of the Project, including:
 - The addition of three artist live-work units to the Phase I Building, which would be reserved for local artists earning no more than 60% of the MFI, and information regarding the execution and delivery of said artist live-work units;
 - Revisions to the Applicant's proposed definition for "maker" space or "maker" use; and
 - Additional analysis regarding the Project's consistency with the PUD Site's FLUM designation, specifically the PDR stripe;
 - A summary of the CTR that had been previously submitted (*see* FF No. 40);
 - An updated traffic calming and control enhancement package (the "Traffic Calming Plan");
 - Updates regarding the Applicant's affordable housing proffer, including:

- The addition of two three-bedroom affordable units, such that the overall Project would provide a total of four three-bedroom affordable units (i.e., two with each phase); and
 - An updated IZ unit location plan based on coordination with DHCD;
 - Updates regarding the Applicant's recent coordination with DPR, including:
 - The Applicant's agreement to either contribute \$50,000 to FoNP to fund the labor and materials to create approximately 20 additional garden plots for an expansion of the garden area of Noyes Park (*see* FF No. 37) or to obtain the permits and complete the construction of itself; and
 - The Applicant's proposal to, in lieu of the dog park (*see* FF No. 37), contribute up to \$50,000 to either DPR to fund recreation services to residents of ANC 5B, or to FoNP to fund the construction of a shade structure at Noyes Park.
 - The identification of DC Doors, Inc. ("DC Doors") as the substituted recipient of the \$20,300 contribution that had been initially allocated for the Mint Project, Inc. (*see* FF No. 37), and that said contribution would be used for the same purpose and improvements, as detailed in the accompanying support letter from DC Doors; and
 - An update regarding the Applicant's outreach to the community.
- (Ex. 32-33G.)

42. On July 1, 2022, the Applicant submitted a second supplemental prehearing submission that included the following:
- Updates regarding the Applicant's communications with the Cultural Development Corporation ("CuDC") to ensure proper execution and delivery of the three artist live-work units proposed with the Phase I Building;
 - Support letters from FoNP that provided additional information regarding the garden area expansion and the shade structure that would be either supported by the Applicant's contributions or constructed by the Applicant itself; and
 - An update on the Applicant's community engagement with the ANC since filing the first supplemental prehearing submission.
- (Ex. 39-39C.)

43. On July 20, 2022, the Applicant submitted response to requests from OP and DDOT that included the following:
- Signage plans with additional detail; and
 - An updated Transportation Demand Management ("TDM") plan that incorporated additional measures, as requested by DDOT.
- (Ex. 52-52B.)

Testimony

44. At the July 21, 2022, public hearing, the Applicant presented the Application, including the testimony of three witnesses:
- Daniel Gordon, Applicant's representative, Hanover Company;
 - Chris Harvey, Project Architect, Hord Coplan Macht; and

- Erwin Andres, Traffic Engineer, Gorove-Slade Associates, Inc. (Transcript of July 21, 2022 Public Hearing ["Hrg. Tr."].)

Post-Hearing Submissions

45. On July 28, 2022, the Applicant submitted its proposed list of proffers and corresponding conditions in compliance with the Commission's procedures set forth in Subtitle X § 308.8 *et seq.* (Ex. 61.)
46. On August 11, 2022, the Applicant submitted its revised draft list of proffers and corresponding conditions in compliance with Subtitle X § 308.12 and noted the following in an accompanying letter to the Commission:
 - In response to dialogue with DDOT, the Applicant incorporated three additional conditions and distinguished the separate phases (i.e., Phase I, Phase II-A, and Phase II-B) with respect to delivery of certain transportation benefits;
 - In response to dialogue with OP:
 - The Applicant refined the language of its housing proffer to clarify that three artist live-work units are in addition to the proffer to set aside 15% of the overall residential GFA as IZ; and
 - Stated its disagreement with OP's position regarding the IZ flexibility condition;
 - Summarized its dialogue with OZLD; and
 - In response to dialogue with the Brookland Neighborhood Civic Association ("BNCA"), the Applicant added a corresponding condition to the affordable housing proffer to ensure that the IZ units will be administered and implemented by DHCD.
 (Ex. 62-62A.)
47. On August 26, 2022, the Applicant submitted a post-hearing submission that included the following items to address the Commission's requests for additional information:
 - Updated landscaping sheets showing additional streetscape and landscaping improvements intended to activate the public realm;
 - Additional justification for the proposed façade design and maintenance of the light colored brick proposed for the Project; and
 - Additional detail regarding the proposed mechanical enclosures.
 (Ex. 64-64A3.)

JUSTIFICATION FOR RELIEF

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

48. The Applicant asserted it complied with Subtitle X § 304.4 because the Application is not inconsistent with the CP as a whole, including its maps and policies, and other public policies, as set forth in FF Nos. 49-62 below.

Framework Element

49. The Project is not inconsistent with the PUD Site's Neighborhood Conservation Area designation on the GPM since the Project is a residential infill development that transforms a vacant and underutilized site, and is compatible with the diversity of existing land uses and building types found in the surrounding area. Over the past decade, the area surrounding the Rhode Island Avenue Metrorail has experienced a period of major transition away from industrial with the construction of several mixed-use and multi-family developments. The residential and PDR/makerspace uses proposed in the Project are consistent with this pattern. Further, the Project successfully relates to the scale and character of the surrounding area, with greater height and density focused in the West Building, west of Reed Street along the WMATA tracks and away from the residential uses along 10th and Evarts Streets. (Ex. 3H, 15, 18, 45.)
50. The Project is not inconsistent with the FLUM's Mixed Use (High Density Residential / PDR) designation, which applies to the western portion of the PUD Site along the WMATA tracks, and the FLUM's Mixed Use (Moderate Density Residential / PDR) designation, which applies to the northeastern portion of the PUD Site:
- The "Mixed Use" designation is found in areas where two or more uses are encouraged and is generally assigned to commercial corridors or districts that may not contain substantial amounts of housing but where more housing is desired in the future. It is also assigned to development that includes residential uses, particularly affordable housing, and residentially compatible industrial uses, typically achieved through a PUD or in a zone district that allows such a mix of uses (CP § 227.20.);
 - Typically, the general intensity of development within a given Mixed Use area is determined by the specific mix of uses shown on the FLUM. (CP § 227.21.) In this case, the FLUM itself does not indicate a preference for any particular use on either side of Reed Street, partially because the FLUM does not assign densities to the PDR land use category like it does for residential and commercial categories;
 - A reasonable assumption can be made that the CP generally favors residential use within the PUD Site over any other use, including PDR uses, based on recent amendments to the FLUM for the PUD Site and the policies and recommendations of the SAP;
 - The Framework Element states that typical (matter-of-right) densities in High Density Residential areas are greater than 4.0 FAR, with higher densities possible when complying with IZ or through a PUD, and identifies the RA-4 and RA-5 zones as consistent. Under a PUD that includes IZ, the RA-4 zone permits 5.04 FAR, and the RA-5 zone permits 8.64 FAR (CP § 227.8.);
 - The Framework Element states that typical (matter-of-right) densities in Moderate Density Residential areas can go up to 1.8 FAR, but notes that higher densities are possible when complying with IZ or through a PUD, and identifies the R-3, RF, and RA-2 zone districts as consistent. Under a PUD that includes IZ, the RA-2 zone permits 2.59 FAR (CP § 227.6.);
 - The purposes of the proposed MU-6A zone are consistent with the Mixed Use (High Density Residential / PDR) FLUM designation applicable to the western

- portion of the PUD Site; and, despite being a PUD, the West Building will be consistent with MU-6A matter-of-right and density parameters;
- The purposes of the proposed MU-4 zone are consistent with the Mixed Use (Moderate Density Residential / PDR) FLUM designation on the northeastern portion of the PUD Site; and, although the density of the Phase II-A building (3.72 FAR) exceeds that permitted under a PUD in the MU-4 zone (3.6 FAR), this does not create an inconsistency with the FLUM since, pursuant to Subtitle X § 303.2, the density of a PUD "shall not exceed the aggregate of the FARs as permitted in the zone or zones included within the PUD boundary";
 - When computed as an aggregate across the PUD Site the proposed density of the overall Project (4.90 FAR / 766,109 GFA) is far less than what could otherwise be achieved through a PUD under the proposed MU-6A and MU-4 zone districts, and less than what is permitted through a PUD under existing PDR-2 zoning (5.4 FAR / 845,807 GFA);
 - The Land Use Element description of the PDR land use category states "[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" (CP § 316.4.);
 - The Applicant proposes to devote approximately 22,159 square feet for PDR/makerspace uses, which substantially preserves the amount of active PDR space currently on the PUD Site because:
 - There is approximately 27,500 square feet of GFA devoted to active PDR-related uses on-site at the time of the Application;
 - The Applicant's proposal to devote approximately 22,159 to PDR/makerspace uses results in over 80% of the active PDR space on-site being substantially preserved;
 - The designated PDR/makerspace to be provided with the Project includes three artist live-work units in the Phase I Building that will be reserved for local artists at 60% of the MFI and neighborhood-serving "maker" space or "maker" use that would specifically contemplate the following: production, sale, distribution, and/or consumption of food and beverages (provided that the on-site consumption of food and beverages is permitted only as an accessory use of such production, sale, and/or distribution use); small-scale production and repair of goods and related sales; media/communications production and distribution; arts and entertainment; traditional crafts and trades; specialty sports and recreation (not including traditional gyms or fitness clubs); engineering and design; and technology design and production; and
 - These various types of PDR/makerspace are located within each phase of the Project.
 - While the emphasis of related CP policies may be on residential use, the presence of the PDR strip warrants use of a mixed-use (MU) zone to allow for the PDR/makerspace uses that are proposed in the Project; and
 - Thus, the Application is not inconsistent with the FLUM designations applicable to the PUD Site, and any potential inconsistencies are offset and outweighed by the Project's satisfaction of multiple other CP policies as set forth below.

(Ex. 3H, 15, 18, 45, 54A4.)

Upper Northeast Area Element

51. The Project is not inconsistent with the CP's Upper Northeast Area Element because the Project will redevelop an older, underutilized industrial site with a new mixed-use development that is compatible with the surrounding area. Furthermore, as called for by relevant policies of the Upper Northeast Area Element, the Project will increase access to quality affordable housing, replace existing industrial uses with residentially-appropriate PDR uses, improve the environmental quality of the PUD Site, and improve area public facilities and neighborhood services through coordination and contributions of items and services to a number of area-serving institutions and organizations. (Ex. 3H, 15, 18, 45.)

Citywide Elements

52. The Project is not inconsistent with the CP's Land Use Element because the Project is a pedestrian-oriented, infill development that will provide new multi-family housing, including substantial affordable housing at a wide range of income levels, in a high opportunity area in close proximity to transit. Moreover, the Project successfully balances the District's interest in retaining PDR uses with the need for greater production of housing and affordable housing. (Ex. 3H, 15, 45.)
53. The Project is not inconsistent with the CP's Transportation Element because the Project will establish a new transit-oriented development within close proximity to the Rhode Island Avenue Metrorail station. The Project includes various development-related improvements that will encourage transit use (e.g., bicycle storage areas) as well as public space improvements that will serve to create a safer, multi-modal environment where one does not currently exist. Such improvements include the realignment and reconstruction of Reed Street, dedication of land for new public streetscape, traffic mitigation measures, and new paving, lighting, and landscaping. (Ex. 3H, 15, 45.)
54. The Project is not inconsistent with the CP's Housing Element because it creates a mixed-use development with mixed-income housing, including a substantial affordable housing component. The Project will set aside 15% of the total residential GFA for affordable housing and at varying levels of MFI. The Project will also reserve four three-bedroom units as IZ units (two with each phase of the Project). Furthermore, Phase I of the Project includes three artist live-work units that will be reserved for local artists earning equal to or less than 60% of the MFI. Thus, consistent with the policies of the CP's housing element, the Project addresses critical citywide housing needs by redeveloping an underutilized, transit-oriented site to provide substantial housing (approximately 683 new units) and affordable housing opportunities. (Ex. 3H, 15, 45.)
55. The Project is not inconsistent with the CP's Environmental Protection Element by achieving LEED Gold certification and by integrating various sustainability measures, including solar panels, green roof, landscaping improvements, pervious paving, and street trees that will add tree canopy, provide shade, improve air quality, provide urban habitat, and add aesthetic value. (Ex. 3H, 15, 45.)

56. The Project is not inconsistent with the CP's Economic Development Element because the Project contains approximately 22,159 square feet of GFA of residentially-appropriate PDR/makerspace use, of which approximately 3,759 square feet of GFA will be devoted to three artist live-work units. As such, the Project will provide new opportunities for employment and for new, potentially locally-owned, neighborhood-serving retail/service uses, thus creating a unique shopping experience along Reed Street where one does not currently exist. (Ex. 3H, 15, 45.)
57. The Project is not inconsistent with the CP's Parks, Recreation, and Open Space Element because the Project creates open spaces for community interaction, such as the seasonal Farmers Market. In addition, the Applicant's benefits and amenities package includes contributions to fund specific improvements to Noyes Park (e.g., expansion of community garden area, shade structure). (Ex. 3H, 39-39B.)
58. The Project is not inconsistent with the CP's Urban Design Element because it reflects a quality design that integrates elements to achieve compatibility with the surrounding context. In addition, the Applicant has designed the ground floors of the Project to be engaging at the pedestrian level and to support the programmed space that is contemplated along the realigned Reed Street, such as the seasonal Farmers Market at the intersection of Reed Street and Evarts Street. (Ex. 3H, 15, 15, 64.)
59. To the extent the Project is inconsistent with any CP policies, and specifically Policy LU-3.2.4 (Redevelopment of Obsolete Industrial Uses)⁵, such inconsistency is far outweighed by the Project's advancement of numerous CP policies under the Upper Northeast Area Element and the Citywide elements, and other competing considerations that strongly weigh in favor of transitioning the PUD Site away from industrial uses and towards mixed-use development with an emphasis on residential use. (Ex. 3H.)

SAP

60. The Project is not inconsistent with the SAP because it contributes to the desired transformation of the area surrounding the Rhode Island Avenue Metrorail station into a mixed-use, multi-neighborhood center that consists of new housing, retail, service, and other neighborhood-serving amenities. (Ex. 3H, 15.)

Other Public Policies

61. The Project advances the Mayor's Order 2019-036 on affordable housing which sets a goal of creating 36,000 new housing units by 2025, including 12,000 affordable housing units, by introducing approximately 683 residential units, including approximately 100-105 affordable units, which represents more than 50% of the projected affordable housing shortage in the Upper Northeast planning area (190 units). The Project's affordable housing units will also be reserved at varying levels of MFI, helping to establish a mixed-income community. Phase I of the Project will also include three artist live-work units reserved for local artists at 60% of the MFI. (Ex. 3H, 15, 45, 54A4.)

⁵ The Commission notes that other potentially relevant policies are LU-3.2.3 and LU-3.2.6, which argue for the retention of PDR land.

Racial Equity

62. The Application noted that equity is conveyed throughout the CP where priorities of affordable housing, displacement, and access to opportunity are distinguished. In light of the guidance provided by relevant CP policies, the Applicant asserted that the Project and related Zoning Map amendment to the MU-6A and MU-4 zones would not be inconsistent with the CP when evaluated through a racial equity lens. In support of its assertion, the Applicant evaluated the Project's consistency with the CP through a racial equity lens by applying the Commission's Racial Equity Tool. (Ex. 3H, 54A4.)
63. The Applicant asserted that the expected goals of the proposed zoning action are as follows:
- Approve a consolidated PUD and related amendment to the Zoning Map that would facilitate new housing, including affordable housing, and PDR/makerspace at an underutilized, transit-oriented site that could not be constructed as a matter of right;
 - Permit the following development program:
 - Approximately 683 new housing units;
 - A minimum set aside of 15% of the total residential GFA as affordable housing at varying affordability levels;
 - Three affordable artist live-work units (60% MFI); and
 - Approximately 22,159 square feet for PDR/makerspace, which would substantially preserve active PDR uses on-site; and
 - Deliver a comprehensive public benefits and amenities package, including the realignment and redesign of Reed Street, construction of a safer, pedestrian-friendly streetscape, implementation of various sustainability measures, and funding to neighborhood organizations for a variety of items and services.
- (Ex. 3H, 54A4.)
64. The Applicant asserted the proposed zoning action would:
- Not result in negative outcomes with respect to displacement because of the following:
 - No physical displacement of residents;
 - Limited displacement of existing industrial and office uses is mitigated because current tenants have been given advance notice of potential redevelopment, several of the tenants have already determined their relocations plans, and the current owner has provided or offered assistance with relocation, as needed, for other tenants;
 - No economic displacement due to affordable housing proffer and varying levels of affordability; and
 - No cultural displacement or lost sense of shared neighborhood identity due to the focus on creating community activities, including establishment of a seasonal Farmers Market and funding to several neighborhood organizations for of items and services which further community connection;
 - Result in positive changes with respect to housing because the Project would:

- Generate approximately 683 new dwelling units consisting of new market rate and dedicated affordable units;
 - Dedicate new IZ units for low and very low-income households;
 - Provide funding to Mary House, Inc. for housing and social services for three families in ANC 5B; and
 - Include market-rate and affordable three-bedroom units to accommodate family-sized households;
 - Result in positive changes with respect to transportation and pedestrian safety because the Project would:
 - Improve access to transit, because the PUD Site is located approximately 0.25 miles to the Metrorail and other modes of public transportation;
 - Include the construction of a Capital Bikeshare (CaBi) bike station and transit benefits for residents; and
 - Result in an enhanced road network and pedestrian experience due to the dedication of private property for the realignment of Reed Street and the Traffic Calming Plan;
 - Result in positive changes with respect to employment because the Project would:
 - Create new job opportunities associated with construction, the artist live-work units, the proposed PDR/makerspace, and building maintenance; and
 - Increase access to job opportunities because of PUD Site's proximity to multiple forms of public transit and nearby retail, service, and neighborhood-serving uses;
 - Result in positive changes with respect to the environment because the Project would:
 - Enable the construction of a LEED Gold certified project;
 - Include the installation of green roofs, solar panels, and stormwater management improvements, and
 - Replace high-impact land uses with residential use and residentially-compatible PDR/makerspace uses;
 - Result in positive changes with respect to education, health, and wellness because the public benefits and amenities associated with the Project include various contributions to neighborhood organizations that would fund important items and critical services supported in the community; and
 - Result in positive changes with respect to expanding access to amenities because the Project includes high-quality amenity spaces for residents, PDR/makerspace, and is in close proximity to nearby retail, service, and neighborhood servicing uses.
- (Ex. 3H, 54A4.)

65. Based on the themes of the Commission's Racial Equity Tool addressed above (FF No. 64), the Applicant asserted that the proposed zoning action would result in positive outcomes for all residents and future residents of the District, and therefore, the Application is not inconsistent with the CP when evaluated through a racial equity lens (Hrg. Tr. at pp. 40-43.)

No Unacceptable Project Impacts on the Surrounding Area (Subtitle X § 304.4(b))

66. The Applicant asserted that the Application complied with Subtitle X § 304.4(b), which requires that a PUD not create any potential adverse impacts that could not be mitigated or balanced out by public benefits because the Project:

- Would have a favorable land use impact by:
 - Transforming an underutilized site improved with outdated industrial buildings into a transit-oriented, mixed-use development consisting of new housing and affordable housing;
 - Resulting in a more efficient and economical use of land with a mix of uses that better align with relevant CP policies and objectives;
 - Substantially preserving appropriate PDR uses; and
 - Helping to achieve greater compatibility with residential uses to the east and the new multifamily buildings to the south;
- Would have transportation impacts that are favorable or capable of being mitigated because:
 - With the implementation of the proposed TDM plan, the proposed development would not have a detrimental impact on the surrounding transportation network, as fully analyzed in the Applicant's CTR report;
 - The realignment of Reed Street and installation of new streetscape would result in significant enhancements to the surrounding traffic network and foster a pedestrian-friendly environment;
 - Potential impacts could be mitigated through the implementation of the Applicant's proposed TDM plan and proposed Loading Management Plan; and
 - The Applicant's proposed Traffic Calming Plan would increase safety and enhance the pedestrian environment;
- Would have a favorable housing impact by:
 - Providing approximately 683 new residential units where no housing is currently permitted;
 - Setting aside a minimum of 15% of the residential GFA for affordable housing at varying levels of MFI;
 - Providing three affordable artist live-work units; and
 - Not involving the demolition of existing housing or displacement of existing residents;
- Would have a favorable environmental impact by:
 - Achieving a LEED Gold design under the LEED v4 Multifamily Midrise standard;
 - Implementing various sustainability measures including rooftop solar panels, green roofs, and charging stations for electric vehicles,
 - Improving stormwater infrastructure within the PUD Site; and
 - Transforming an impervious site with a sustainable mixed-use development;
- Would have a favorable impact on economic development by:
 - Redeveloping an underutilized site currently improved with dated industrial uses with a mixed-use, transit-oriented development;

- Devoting ground-floor space for PDR/makerspace uses that would support artists, producers, and other types of creative uses that would serve the local neighborhood;
- Providing three artist live-work units that can generate additional employment opportunities; and
- Accommodating an influx of residents that can support nearby commercial uses;
- Would have a favorable impact on parks, recreation, and open space by:
 - Incorporating streetscape and landscaping improvements to accommodate safe pedestrian activity and encourage community recreation and assembly;
 - Activating new private open spaces and adjacent public space; and
 - Contributing to or constructing new garden plots and a new playground shade structure at Noyes Park;
- Would have impacts on urban design that are favorable or acceptable given the quality of public benefits and amenities because the Project:
 - Is a quality, context-sensitive design that concentrates density towards the WMATA tracks;
 - Will create a pedestrian-oriented, mixed-use development;
 - Provide significant enhancements to the streetscape and the public realm; and
 - Create new sidewalks and better vehicular and bicycle connections that will facilitate safer travel within and around the PUD Site;
- Would not have any impacts on historic preservation;
- Would have impacts on community services and facilities that would be favorable or acceptable given the quality of public benefits and amenities because the Project:
 - Will have no adverse impacts to publicly-owned land or community services and facilities;
 - Reconfigures Reed Street to accommodate a new seasonal Farmers Market;
 - Involves improvements to Noyes Park as an associated public benefit; and
 - Involves improvements to the DC Doors Wellness center as an associated public benefit;
- Would have impacts on educational facilities that would be favorable or acceptable given the quality of public benefits and amenities because the Project:
 - Will not adversely impact operations at Noyes or other nearby educational facilities;
 - Enhances walkability for students at nearby schools;
 - Involves contributions to support educational resources and other programs at Noyes and the schools comprising the Village; and
- Would have favorable impacts on infrastructure given the proposed realignment of Reed Street and construction of new sidewalks where no pedestrian network exists.
(Ex. 3, 33E, 33F, 52B, 54A.)

Requested Zoning Flexibility (To Be Balanced Against Public Benefits (Subtitle X §§ 304.3 and 304.4(c))

67. The Applicant asserted that the Application complied with Subtitle X §§ 304.3 and 304.4(c), which, when read in conjunction, requires the Commission to judge, balance, and reconcile the relative value of the public benefits and project amenities offered with the degree of development incentives requested.

Map Amendment

68. The requested map amendment of the western portion of the PUD Site to the MU-6A zone district and the northeastern portion of the PUD Site to the MU-4 zone will bring the PUD Site into greater compliance with the CP, will be compatible with the surrounding context, and is necessary for the PUD Site to be developed under a zone district that will allow for the provision of substantial housing, including affordable housing. (Ex. 3, 18.)

Technical Flexibility

69. The requested technical flexibility (*see* FF No. 34) is necessary for the following reasons:
- Minimum Side Yard (MU-6A zone and MU-4 zone):
 - The areas where the West Building does not comply with the minimum side yard requirement on the west side of the West Building are due to the jogged side lot line, and the two areas of noncompliance are *de minimis*; and
 - The side yards of the West Building and the Phase II-A Building do not comply with the minimum requirement along Reed Street; however the buildings are setback in a way that provides greater area for landscaping, pedestrian circulation, and building entries, and accommodates a more generous and green public space;
 - Minimum Rear Yard (MU-4 zone):
 - The yards of the Phase II-A Building were flipped in order to provide a more consistent distance from backyards of the row homes along Evarts and 10th Streets and had the effect of widening the abutting north-south alley, which provides greater maneuverability for vehicles accessing the loading and parking from that alley. Thus, there is an approximately 20-foot vertical segment of the Phase II-A Building that does not comply with the minimum rear yard requirement; and
 - Lot Occupancy (MU-4 zone):
 - Following coordination with DDOT, the Applicant agreed to dedicate more than 1,900 square feet of private land area from the Phase II-A Building site in order to dedicate the sidewalk in fee rather than by easement, which decreased the lot area and thus increased the lot occupancy to a noncompliant percentage (80%).

(Ex. 3.)

70. In response to comments received from OP, the Applicant requested flexibility to set aside 10% of the affordable GFA as IZ units for households with incomes not exceeding 80% of the MFI. (Hrg. Tr. at pp. 45-46.) IZ units or square footage required by an order of the Commission that exceeds IZ requirements shall comply with the requirements of Subtitle

C, Chapter 10, unless otherwise specified by the Commission's order. (Subtitle C § 1001.9.) The Applicant believes that flexibility to offer IZ units at the 80% MFI level is appropriate for the following reasons:

- The affordable units that will be offered at the 80% MFI level are counterbalanced by the affordable units that will be offered at the 30% MFI level (5% of the affordable GFA) and the 50% MFI level (5% of the affordable GFA);
- The proposed affordability levels were specifically established pursuant to the Applicant's coordination with the ANC and community stakeholders;
- The varying levels of affordable housing will serve to create a mixed-income community that was directly informed by specific neighborhood need; and
- The IZ units to be offered at the 80% MFI level will be administered pursuant to an affordable housing covenant that is required by Subtitle X § 311.6.

Public Benefits and Amenities

71. The final Application proffered the following categories of public benefits and amenities as defined by Subtitle X § 305:

- **Superior Urban Design and Architecture (Subtitle X § 305.5(a))**
 - The Project is designed to be compatible with the overall neighborhood, and particularly with the adjacent residential community. The majority of the Project's density – i.e., the West Building – is placed close to the existing WMATA tracks and away from the residential properties to the east. The Phase II-A Building is sculpted away from the neighboring residences, particularly the rowhouse areas to the east and south, in that it steps back above the fourth floor. Moreover, the integration of courtyards and balconies break up the façade along Reed Street and help to create a pedestrian-friendly scale;
 - The PDR/makerspace is concentrated toward the commercial corridor of Franklin Street where it is viable, visible, and accessible, and thus will generate visitor activity at the PUD Site, along with the seasonal Farmers Market; and
 - The three-artist live work units in the Phase I-Building will further strengthen the residential node that is forming at the southern end of the PUD Site where newer multifamily projects have been recently constructed.
- **Superior Landscaping, or Creation or Preservation of Open Spaces (Subtitle X § 305.5(b))**
 - The Project includes substantial landscaping improvements to help create a safe and active pedestrian environment. Street frontages will be lined with ornamental street trees, shrubs, bio-retention planters, new paving, and street lighting fixtures, all of which will function to transform an industrial site into a visually appealing mixed-use community;
 - The 20-foot east-west public alley and the 16-foot north-south public alley – which separate the Phase II-A Building from the residential rowhomes on 10th and Evarts Streets – will be repaved with a pervious paver system, which will significantly enhance the aesthetic and walkability of these public spaces; and

- The reconfiguration and redesign of Reed Street will accommodate a new seasonal Farmers Market located in the area north of Evarts Street and south of the east-west alley (i.e., on the south side of the Phase II-A Building), creating a new open space for community engagement and commercial activity.
- **Site Planning and Efficient and Economical Land Utilization (Subtitle X § 305.5(c))**
 - The Project will transform an underutilized, industrial land area with residential and PDR/makerspace uses, and provide major enhancements to the pedestrian experience. The replacement of underutilized sites constitutes a significant benefit because it will enhance safety, result in aesthetic improvements to the neighborhood, and accommodate uses that are more compatible with the surrounding community and the District's planning objectives. Ultimately, the proposed development will create a new mixed-use community that better leverages the PUD Site's transit-oriented location.
- **Housing and Affordable Housing (Subtitle X §§ 305.5(f) and (g))**
 - The Project results in the creation of new housing consistent with the goals of the Zoning Regulations, the CP, and the FLUM. Overall, the Project will create approximately 683 new units in close proximity to Metrorail. This amount of housing exceeds the amount that would have been provided if the PUD Site was developed as a matter-of-right under the existing PDR zoning as no multifamily residential use is permitted in the PDR zone district.
 - The Applicant will set aside a minimum of 15% of the residential GFA in the Project as affordable units at varying levels of the MFI, which will create a mixed-income community. The Applicant will set aside approximately 100 – 105 IZ units.
 - The affordable housing will be set aside as follows: 5% of the affordable GFA at 30% MFI; 5% of the affordable GFA; 80% of the affordable GFA at 60% MFI; 10% of the affordable GFA at 80% MFI.
 - The Applicant will reserve a total of four three-bedroom units as IZ units (two with each phase of the Project); and
 - In addition to the Applicant's proffer to set aside a minimum of 15% of the residential GFA for affordable housing, Phase I of the Project also includes three artist live-work units that will be designed and constructed in accordance with Subtitle B § 100.2 of the Zoning Regulations. These three artist live-work spaces will be reserved for local artists earning equal to or less than 60% of the MFI and will remain affordable for the life of the Project;
- **Environmental and Sustainable Benefits (Subtitle X § 305.5(k))**
 - The Project is designed to LEED v4 Multifamily Midrise standard, which is specifically tailored to the unique aspects of multifamily buildings and includes prescriptive requirements for onsite testing and performance. The

Applicant intends to seek LEED Gold certification of the Project under the LEED v4 Multifamily Midrise standard;

- The Project includes approximately 3,200 square feet of solar panels on the Phase I Building that are anticipated to generate approximately 1% of the energy for the overall Project;
- The Project includes approximately 30,000 square feet of extensive and intensive green roof systems to collect, filter, and detain stormwater runoff;
- The Project includes electric vehicle ("EV") charging stations in the parking area in an amount equal to 10% of the total number of parking spaces. In addition, the Applicant will include EV infrastructure (i.e., power, wiring, junction boxes, etc.) to accommodate the charging equipment for up to an additional 10% of the number of parking spaces;
- The Project will provide a minimum of 24 spaces within the bike parking rooms that will be designed with electrical outlets for the charging of electric bikes and scooters; and
- The new pervious paving system in the public alleys abutting the Phase II-A Building will result in significant improvements to stormwater infrastructure;

- **Streetscape Plans (Subtitle X § 305.5(l))**

- The streetscape design for the Project fosters a pedestrian-friendly environment where one currently does not exist, particularly along the realigned Reed Street and the south side of Franklin Street. Since the PUD Site is presently improved with mostly industrial uses along circuitous alleys, there is little to no streetscape within the PUD Site. The Project includes substantial streetscape improvements to be constructed with each phase, including new paving for sidewalks, street lighting fixtures, and new shade trees;

- **Park Maintenance (Subtitle X § 305.5(m))**

- The Applicant will contribute \$50,000 to the FoNP to fund the labor and materials for the expansion of the garden area in Noyes Park. Alternatively, the Applicant will obtain permits and complete the construction of the additional garden plots in lieu of a contribution. The proposed scope of work is the creation of approximately 20 additional garden plots, including surface preparation and installation of soil and fencing. Additional details regarding this amenity are outlined in FoNP's letter included in the record at Ex. 39A; and
- The Applicant will contribute \$50,000 to either (i) DPR to fund services and/or improvements to Noyes Park that serve the residents of ANC 5B or (ii) FoNP to fund the labor and materials necessary to create a new shade structure in Noyes Park. In lieu of the contribution, the Applicant proposes to perform the work necessary to create a new shade structure in Noyes Park, which will generally include foundation prep, as well as the installation of pole and shade sail materials. Additional details regarding this amenity are set forth in the letter from FoNP included in the record at Ex. 39B;

- **Transportation Infrastructure (Subtitle X § 305.5(o))**
 - The Project includes the realignment and redesign of Reed Street so that it looks, feels, and functions like a street and establishes a new connection to Franklin Street, N.E.;
 - The dedication of more than 16,500 square feet of private property for roadway and sidewalk purposes will greatly enhance the surrounding traffic network and foster a pedestrian-oriented environment where one generally does not exist;
 - The pervious paver system to be installed in the public alleys abutting the Phase II-B Building will serve to calm vehicular traffic in these areas; and
 - The Applicant's proposed Traffic Calming Plan is intended to go beyond mitigating any potential adverse impacts of the Project and will directly address issues and concerns related to vehicle and pedestrian safety that are paramount to the community.
- **Mass Transit Improvements, including, but not limited to, location and funding of a shared bike station (Subtitle X § 305.5(p))**
 - The Applicant proffers to install a CaBi station at a location to be determined by DDOT;
- **Uses of Special Value to the Neighborhood or the District of Columbia as a Whole (Subtitle X § 305.5(q))**
 - The Applicant proffers contributions to: (i) Noyes; (ii) GBIV; (iii) Village; (iv) DC Doors Inc.; (v) Mary House Inc.; and (vi) FreshFarms (collectively, the "Designated Organizations") for the items and/or services of special value to the neighborhood or the District of Columbia as a whole, as further detailed below:
 - Noyes.
The Applicant will contribute a total of \$100,000 to support projects at Noyes. Specifically, the contribution will be split as follows: \$63,000 to D.C. Public Schools to fund (a) upgrades to the auditorium (which doubles as a public meeting and community space), (b) upgrades to the science garden, (c) upgrades to the science lab classroom, and/or (d) other similar projects for additional funds that are not used, all as specifically set forth in the letter from Noyes (Ex. 3K.); and (2) \$37,000 to the Parent-Teacher Organization for teacher special projects, field trips and/or additional electronic equipment for classrooms (computers or iPads), all as specifically set forth in the letter from the Noyes Elementary Parent Teacher Organization (Ex. 3L.);
 - GBIV.
The Applicant will contribute a total of \$100,000 to the GBIV, which will be provided to the GBIV in two installments of \$50,000. Each \$50,000 contribution will fund the GBIV's Age Well Together Initiative for one year. This initiative is comprised of two focus areas – “Programs” and “Inclusion” – both geared towards addressing social isolation in older adults. Approximately \$29,000 of the contribution will be used for Programs to expand the virtual and in-person social, wellness and education resources. The remaining \$21,000 of the contribution will be used for

Inclusion and such funds will be used to recruit participants, increase total membership, and facilitate the GBIV website and social media member engagement. Additional details regarding this amenity are outlined in the letter from GBIV (Ex. 18H.);

○ *Village.*

The Applicant will contribute a total of \$60,000 to the Village \$30,000. Each \$30,000 contribution will provide for increased learning resources for each of the five schools comprising the Village, including field trips, multicultural books, and STEAM support. Each school will receive \$3,600 to support these efforts, for a total of \$18,000. The remaining funds (approximately \$12,000) will be given to each school (in an amount of \$2,400 per school) to be used for technological tools, arts integration, professional development and international experiences as determined by the principal of the school. Additional details regarding this amenity are outlined in the letters from the Village (Ex. 18K1-18K2.);

○ *DC Doors, Inc.*

The Applicant will contribute \$20,300 to DC Doors to fund the Nature Spot Wellness Clinic within the DC Doors Drop-In Center for Homeless Youth. DC Doors operates a 24-hour drop-in center in for youth ages 18-24, which is located in Ward 5. The Drop-In Center is designed to give youth support through positive reinforcement and knowledge, and also to serve as a "one stop shop" for a multitude of services and workshops. The contribution will be used to outfit the Wellness Clinic and fund various programs and supplies, including participation incentives, music room improvements and instruments, UV lighting and irrigation (planting), technology upgrades (e.g., sound system) and other materials, such as exercise equipment. Additional details regarding this amenity are set forth in the letter from DC Doors, Inc. (Ex. 33G.);

○ *Mary House Inc.*

The Applicant will contribute \$20,000 to Mary House Inc., a non-profit, community-based traditional organization, to fund supplemental housing assistance and other social services. The designated funds will cover housing and social services for three families residing in ANC 5B. Additional details regarding this amenity are set forth in the letter from Mary House (Ex. 3M.); and

○ *Farmers Market / FreshFarms*

- The design of Reed Street will accommodate the incorporation of a seasonal Farmers Market. The Farmers Market amenity will be located on Reed Street, in the area north of Evarts Street and south of the east-west alley (i.e., on the south side of the Phase II-A Building). A plan showing the proposed location and design of the Farmers Market is included with Sheets L16-L17 of the Approved Plans (defined below);
- To deliver the Farmers Market, the Applicant has coordinated FreshFarms, a District-based non-profit organization, which has indicated that it costs approximately \$30,000 to operate, on average,

including equipment, insurance, permits, management, and programming. Accordingly, to support the creation and long-term viability of the Farmers Market, the Applicant will contribute a total of \$140,000 for start-up and operational costs. This contribution is estimated to fund up to five years of operations and will be placed in an escrow fund for use by FreshFarms to support the Farmers Market annually. Additional details regarding this amenity are outlined in the letter from FreshFarms (Ex. 18J.); and

- FreshFarms has requested additional physical support to include access to electrical outlets and a hose spigot, which the Applicant will commit to provide. In addition, FreshFarms has indicated that the Farmers Market needs access to a storage room in order to house tents, tables and other equipment necessary to operate the Farmers Market. The Applicant commits to providing a designated storage room within the Project for use by operator of the Farmers Market for so long as the Farmers Market is located along Reed Street.

III. RESPONSES TO THE APPLICATION

OP

72. OP submitted a March 21, 2022, report (the "OP Setdown Report") recommending that the Commission set down the Application for a public hearing based on OP's conclusion that the Project would not be inconsistent with the CP, but requested the Applicant to provide additional information and/or consider the following prior to public hearing: (Ex. 15.)

- Residential unit breakdown by number of bedrooms;
- Additional 3-bedroom units;
- IZ unit location;
- Reduced amount of parking;
- Detail of makerspace size and uses;
- Detail of buildings' entries including signage; and
- Color and materials board.

73. The OP Setdown Report concluded that the Project was not inconsistent with the CP because:

- The proposed MU-6A zone is not inconsistent with the FLUM's Mixed Use (High Density Residential / PDR) designation for the western portion of the PUD Site; and the proposed MU-4 zone is not inconsistent with the FLUM's Mixed Use (Moderate Density Residential / PDR) designation for the northeastern portion of the PUD Site. As intended by both zones, the Project is a mixed use development with a focus on residential use;
- The Project is not inconsistent with the PUD Site's GPM designation because a Neighborhood Conservation Area does not preclude development, particularly to address city-wide housing needs;
- The overall Project would further other CP policies under the Land Use Element, including those related to creating development around Metrorail stations and the

rezoning of industrial areas, because the Project would bring housing, including affordable housing, and makerspace retail uses near transit. OP also discussed how the Project would advance specific policies under the Area Element and various Citywide Elements, including Transportation, Housing, Environmental, Economic Development, Urban Design;

- While there may be a potential inconsistency with policies that encourage the retention and use of industrially-zoned land (citing LU-3.2.3 and LU-3.2.4 and LU-3.2.6), the Project endeavors to preserve a substantial amount of PDR use, and on balance a mixed use development with significant affordable housing is appropriate at this location; and
- Overall when evaluated through a racial equity lens, the Project would not be inconsistent with the CP. According to the 2019 Housing Equity Report, the Upper Northeast Planning Area has 9% of the District's affordable housing units and ANC 5B has 0.4% of affordable housing. Given the Planning Area's goal to create 6,900 new housing units and 1,350 new affordable housing units, the Project would support the goal because it would provide market-rate and affordable housing. The Project would also provide PDR/makerspace that could bring job opportunities suitable for those with a wide range of skills and provide needed job diversity. The Project's streetscape and landscaping improvements would also transform an industrial-based site that would foster a pedestrian-oriented environment and bring positive health impacts to the area.

(Ex. 15, pp. 10-26.)

74. OP submitted a July 11, 2022, report (the "OP Hearing Report" and, together with the OP Setdown Report, the "OP Reports") which recommended that the Commission approve the Application. The OP Hearing Report stated that: (Ex. 45.)

- The Project, on balance, is not inconsistent with the CP, and the changes made to the Application following setdown did not impact the CP consistency analysis in the OP Setdown Report. OP also found that the provision of three artist live-work units and addition of two three bedroom units furthered CP policies;
- The Applicant's benefits and amenities proffer is acceptable, in that it contains a significant number and scope of items that will benefit the community, the city as a whole, and the new occupants of the Project;
- OP was supportive of the Applicant's requested technical flexibility – i.e., to allow the proposed side yard, rear yard, and lot occupancy;
- OP stated that flexibility was also needed from the IZ requirements to enable the Applicant's proffer to set aside IZ units at 80% of the MFI, pursuant to Subtitle C § 1001.9, to which OP had no objection (to which the Applicant agreed to add to its list of relief);
- OP had no concerns about the Applicant's requests for design flexibility subject to its proposed amendments. Specifically, OP wanted amendments to the IZ design flexibility language to reference the 112,664 square feet of IZ proffered at the time the Application was setdown for public hearing;
- OP found the Applicant's IZ unit location plan to be acceptable;

- OP was supportive of the Applicant's reduction in proposed parking and increase in number of bicycle parking spaces;
- OP was very supportive of the three artist live-work spaces proposed for the Phase I Building, all of which would be provided at 60% MFI, and also found the Applicant's refined definition of "maker" space or "maker" uses to be acceptable; and
- OP was supportive of the overall material and color choices selected by the Applicant.
- OP requested additional clarification on the proposed signage for the Project (to which the Applicant responded in a subsequent submission (*see* FF No. 43).

75. At the July 21, 2022, public hearing, OP testified in support of the Application and reiterated the findings in the OP Reports. OP also restated its conclusion that, on balance, the proposed mixed use development would not be inconsistent with the CP. (Hrg. Tr. at pp. 88-94.)

DOEE

76. DOEE provided comments as an attachment to the OP Hearing Report that recognized and commended the Applicant's commitment to certify the Project at the LEED v4 Gold level, as doing so would offer the greatest benefits for future residential tenants. DOEE also encouraged the Applicant to pursue certain environmental benefits beyond the LEED rating system that could maximize energy efficiency, solar production, and climate resilience. (Ex. 45 at pp. 17-21.)

DDOT

77. DDOT filed a July 11, 2022, report (the "DDOT Report") that assessed the potential safety and capacity impacts of the proposed Project on the District's transportation network. The DDOT Report concluded that DDOT had no objection to the approval of the Application, provided that this Order includes the following conditions: (Ex. 44.)

- Prior to recordation of the plat, the Applicant, or property owner, as applicable, must enter into a signed Horizontal Public Use Agreement with DDOT outlining the process for design review, construction, inspection, and acceptance of the new alignment of Reed Street;
- Prior to issuance of the first building permit for the Project, the Applicant shall prepare and submit a traffic signal warrant analysis for the intersection of Franklin Street and Reed Street to DDOT's Transportation Engineering and Safety Division;
- The Applicant's implementation of the TDM plan as proposed in the Applicant's CTR (Ex. 24A), with the suggested revisions and additions noted in the DDOT Report;
- Clarification that the Applicant's proposed Traffic Calming Plan (Ex. 33F) were all "subject to DDOT approval" and that they will all be "designed, funded, and installed by the Applicant"; and
- Clarification that the Applicant's CaBi proffer will be a 19-dock station, unless DDOT agrees to a smaller size.

78. At the July 21, 2022 public hearing, DDOT testified in support of the Application and confirmed that the Applicant had agreed to DDOT's proposed changes to the TDM plan, as indicated in the Applicant's updated TDM plan. (Ex. 52B; Hrg. Tr. at pp. 94-95.)

ANC

79. ANC 5B did not submit a written report into the case record.
80. On July 5, 2022, Ra Amin, the affected SMD representative for ANC 5B04, submitted a letter to the case record in support of the Application. (Ex. 41.)
81. On July 21, 2022, Prita Piekara, the SMD representative for ANC 5B03, submitted a letter to the case record in support of the Application; however, the letter expressed concerns about the traffic safety impacts of the Project and the redesign of Reed Street (alley) and encouraged incorporating traffic calming measures. (Ex. 57.)
82. On July 21, 2022, Gayle Carley, chair of ANC 5B, submitted a letter to the case record stating that Ra Amin, the SMD for ANC 5B04, had recused himself from any ANC vote on the Application because of a potential conflict of interest. (Ex. 58.)
83. At the July 21, 2022 public hearing, Gayle Carley, chair of ANC 5B provided testimony regarding the ANC's community outreach and meetings concerning the Application and the ANC's review of the Application. (Hr. Tr. at pp. 100-105.) As previously noted, the ANC did not vote on the Application and did not submit a written report to the case record.

Persons in Support

84. Letters in support of the Application were submitted to the record from the following:
- Michael Tran, resident of 900 Evarts Street, N.E. (Ex. 25.);
 - Nicole Muryn Clement, resident of 914 Evarts Street, N.E. (Ex. 27.);
 - Joshua Beatty, resident of 2722 10th Street, N.E. (Ex. 29.);
 - Danae Gaines, resident of 2732 10th Street, N.E. (Ex. 30.);
 - Emma Brownstein, resident of 15th Street, N.E. and Lawrence Street, N.E. (Ex. 34.);
 - Jennifer Brundage, resident of 2716 10th Street, N.E. (Ex. 35.);
 - Andrei Ponomarev, resident 2718 10th Street, N.E. (Ex. 36 and 56.);
 - Donald Maley, resident of 906 Evarts Street, N.E., Apt. 4 (Ex. 37.);
 - Marchant Wentworth, resident of 903 Hamlin Street, N.E. (Ex. 38.);
 - Marion Granigan, resident of 903 Hamlin Street, N.E. (Ex. 40.);
 - Ra Amin, affected SMD, 5B04 (Ex. 41.);
 - Julia Hurley and Erik Schmidt, residents of 902 Evarts Street, N.E. (Ex. 42.);
 - Kathy Jacquart, president of the BNCA, on behalf of the BNCA (Ex. 43.);
 - Caroline Petti, resident of 1502 Otis Street, N.E. (Ex. 46.);
 - John S. Leibovitz, resident of 1219 Kearny Street, N.E. (Ex. 47.);
 - Colleen Costello, ANC 5B05 (Ex. 55.)
 - Andrei Ponomarev, resident of 2718 10th Street, N.E. (Ex. 56.); and
 - Prita Piekara, ANC 5B03 (Ex. 57.).

85. A petition in support that was signed by 12 residents of ANC 5B04 was submitted to the case record. (Ex. 50.)
86. At the July 21, 2022 public hearing, the following persons testified in support of the Application:
- Daniel Schramm, resident of 12th Street, N.E. (Hrg. Tr. At pp. 110-12.);
 - Andrei Ponomarev, resident of 2718 10th Street (Hrg. Tr. At pp. 113-16.);
 - Ra Amin, SMD 5B04 (Hrg. Tr. At p. 119); and
 - Nicole Muryn Clement, resident of 914 Evarts Street. (Hrg. Tr. At 119-20.)

Persons in Opposition

87. No letters in opposition to the Application were submitted to the case record.

Undeclared Persons

88. At the July 21, 2022 public hearing, Joshua Beatty, resident of 2722 10th Street, N.E., offered testimony regarding the Application. He testified he was concerned about the potential for adverse effects caused by pet waste.

National Capital Planning Commission ("NCPC")

89. The Commission referred the Application to NCPC on July 25, 2022. (Ex. 59.) NCPC filed an August 24, 2022 report, stating that the proposed Project fell under an exception listed in Chapter 8 (Exceptions and Project Changes) of NCPC's submission guidelines because the following conditions were satisfied:
- The Project is consistent with the Height Act;
 - The Project would not cause adverse impacts on federal property or other federal interests; and
 - The Project site is located outside the boundary of the L'Enfant city plan. (Ex. 63.)
90. NCPC made the Project available for public review and no comments were received. Accordingly, NCPC staff determined that the Project is exempt from review. (Ex. 63.)

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, and a PUD-related map amendment pursuant to Subtitle X, § 303.12.

PUD and PUD-Related Map Amendment Approval

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 § 303.11:
“The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission.”
- 4. Pursuant to Subtitle X § 303.12:
“A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weight 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 project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
- 6. A PUD’s proposed public benefits must comply with Subtitle X § 305.12:
“A project may qualify for approval by being particularly strong in only one (1) or a few of the categories in this section, but must be acceptable in all proffered categories and superior in many.”
- 7. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP’s purposes as:
 - (a) *to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
 - (b) *to guide executive and legislative decisions on matters affecting the District and its citizens;*
 - (c) *to promote economic growth and jobs for District residents;*
 - (d) *to guide private and public development in order to achieve District and community goals;*
 - (e) *to maintain and enhance the natural and architectural assets of the District;*
and

(f) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.

8. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)) (the “McMillan PUD”). In its decision affirming the Commission’s approval of the McMillan PUD, the Court stated the following:

“The Comprehensive Plan is a ‘broad framework intended to guide the future land use planning decisions for the District. *Wisconsin-Newark Neighborhood Coal. V. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). ‘[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.’ *Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous ‘occasionally competing policies and goals,’ and, ‘[e]xcept where specifically provided, the Plan is not binding.’ *Id.* At 1167, 1168 (internal quotation marks omitted). Thus ‘the Commission may balance competing priorities’ in determining whether a PUD is consistent with the Comprehensive Plan as a whole.’ (*D.C. Library Renaissance Building/West End Library Advisory Grp. V. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013).) ‘[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.’” (*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016).)

CONSISTENCY WITH THE PUD ELIGIBILITY STANDARDS (SUBTITLE X § 304.4(A))

9. The Commission concludes that the Application meets Subtitle X § 301.1’s minimum 15,000 square feet of land area for a PUD in the MU-6A and the MU-4 zone because the PUD Site consists of approximately 156,361 of land area. (FF No. 8.)

Consistency with the CP and Public Policies

10. Based on the case record and the Findings of Fact above, the Commission concludes that the Project, including the PUD and related Zoning Map amendment, is not inconsistent with the CP and with other public policies and active programs related to the PUD Site, when the CP is considered in its entirety. (FF Nos. 20-23, 48-62, 72-75.)
11. The Commission concludes that the Project is consistent with the PUD Site’s “Neighborhood Conservation Area” designation on the CP’s GPM because the Project is a mixed-use infill development that transforms and revitalizes an underutilized site, will address city-wide housing needs, and is compatible with the diversity of existing land uses and building types found in the surrounding area. (FF Nos. 9, 20, 49, 73.)

12. The Commission concludes that the Project is consistent with the Mixed Use (High Density Residential / PDR) and Mixed Use (Moderate Density Residential / PDR) designations on the CP's FLUM because the proposed density and mix of uses are in line with what is envisioned under these designations, as increased through a PUD. The Project is residentially-focused and substantially preserves existing PDR uses on-site by devoting approximately 22,159 square feet of GFA to ground-floor PDR/makerspace uses and three artist live-work units. (FF Nos. 21, 50, 73.)
13. The Commission concludes that the Project is not inconsistent with the Upper Northeast Area Element which applies to the PUD Site because the Project is precisely the type of redevelopment that this Element promotes, in that it provides transit-oriented housing, including affordable housing, and fosters a pedestrian friendly environment. Additionally, the Project transforms an older, industrial site in a manner that is compatible with the surrounding character. (FF Nos. 22, 51, 73.)
14. The Commission concludes that the Project furthers the CP's Land Use, Transportation, Housing, Environmental Protection, Economic Development, Parks, Recreation and Open Space, and Urban Design Elements because the Project will develop an underutilized site into a mixed-use, LEED Gold certified development in close proximity to transit, which includes ground-floor PDR/makerspace use, quality materials and design, green roof, and solar panels. Additionally, the design of the Project is compatible with the surrounding neighborhood because the density and height are focused toward the WMATA tracks and away from the residential uses to the east of the PUD Site. (FF Nos. 9, 52-58, 73.)
15. The Commission concludes that to the extent the Project is inconsistent with any CP policies that favor the retention of PDR land, namely LU-3.2.3 and LU-3.2.4⁶, such inconsistencies are outweighed by the Project's advancement of numerous CP policies under the Upper Northeast Area Element and the Citywide elements, and other competing considerations that strongly weigh in favor of redeveloping areas with good access to Metrorail Stations like the PUD Site with new housing and affordable housing and with residentially-compatible PDR/makerspace uses (namely LU-1.4.1, LU-1.4.2, LU1.4.3, UNE-2.5.3). (FF Nos. 9, 51, 59, 73.)
16. The Commission concludes that the Project is consistent with the SAP. The Project will transform an aging industrial site that is in close proximity to the Rhode Island Avenue Metrorail station into a viable mixed-use community, which furthers the SAP's goal to create a multi-neighborhood center with housing and neighborhood-serving amenities. (FF Nos. 8, 9, 23, 60.)
17. The Commission concludes that the Project will further the housing goals of Mayor's Order 2019-036 by introducing approximately 683 residential units, of which approximately 100-

⁶ The OP Setdown Report also stated that there was a potential inconsistency with LU-3.2.6. The Commission disagrees and instead believes the Application promotes the policy because it allows rezoning of industrial land for non-industrial purposes if land is in the immediate vicinity of Metro, as is the case with the Project.

105 are affordable at varying levels of MFI, as well as by providing three artist live-work units. (FF No. 61.)

18. The Commission concludes that the Project is not inconsistent with the CP when evaluated through a racial equity lens. The anticipated goals of the consolidated PUD and related map amendment are to provide new housing and affordable housing (beyond what could be constructed as a matter of right), offer residentially-compatible PDR/makerspace opportunities at an appropriate and viable location, which would also substantially retain existing PDR uses on-site, and deliver a public benefits and amenities package that would, among other things, significantly enhance the surrounding traffic network, foster a pedestrian-friendly environment where one does not currently exist, and provide tangible support to various neighborhood organizations. In light of these goals, the Commission anticipates that the zoning action would generally bring positive outcomes. The Project does not result in the physical displacement of residents and has properly accounted for the limited displacement of existing industrial and office uses. Furthermore, the Project is likely to generate favorable outcomes when considering other equitable development indicators and measures related to housing, transportation, employment, and environmental, education, health and wellness, and access to amenities. The Project will generally expand opportunities for current and future residents of the District, regardless of socioeconomic status. In light of the foregoing, the Commission generally concurs with the analysis of the Applicant and of OP, and finds that the Project advances the racial objectives underlying the CP. (FF Nos. 62-65, 73.)
19. Based on the evidence provided in the case record, the Commission agrees that the Project is not inconsistent with the CP or other adopted and applicable public policies.

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

20. 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 are outweighed by the Project's proffered public benefits, and therefore protects and advances the public health, safety, welfare and convenience as detailed below.
21. The Commission concludes that the Project will result in favorable land use impacts because the Project will transform an underutilized site, currently improved with outdated industrial buildings, into a quality, transit-oriented mixed-use development that will address citywide housing needs and provide opportunities for neighborhood-serving retail and services. (FF Nos. 9, 24, 66.)
22. The Commission concludes that the Project will not create any unacceptable zoning impacts because, as compared to existing matter of right zoning, there is very limited gain for the Project as proposed, and any adverse impacts of the rezoning are effectively mitigated by the Project's design. The proposed zone change from PDR-2 to the MU-4 zone results in a height gain of five feet for the Phase II-A Building. Although the proposed zone change from PDR-2 to the MU-6A zone results in a height gain of 24 feet, the height is shift towards the WMATA tracks and away from adjacent residential uses. Moreover, the proposed density of the overall Project is less than what is permitted through a PUD

under existing PDR-2 zoning. For these reasons, the impact of the height and bulk of the Project is favorable or acceptable given the quality of public benefits of the Project, namely the additional housing, the affordable housing, and the other public benefits of the Project. (FF Nos. 15-18, 24, 32, 66, 71.)

23. The Commission finds that the Project will result in favorable transportation impacts and any potential adverse impacts will be mitigated or balanced by the Project's public benefits, namely the proposed transportation improvements. The Applicant's proposed TDM plan, as approved by DDOT will mitigate any potential adverse impacts on the transportation network resulting from the Project. The Project is located in close proximity to multiple forms of public transit. Furthermore, the Traffic Calming Plan, subject to approval by DDOT, will have a positive impact on pedestrian, bicycle, and vehicular safety in the area. (FF Nos. 40, 43, 66, 71, 77.)
24. The Commission finds that the Project will result in favorable impacts to the environment because the Project will be built to LEED Gold standards and will include green roof and solar panels. (FF Nos. 66, 71, 76.)
25. The Commission concludes that the Project will result in favorable impacts to housing because the mixed-use development will provide approximately 683 new dwelling units, of which approximately 100-105 units will be set aside as affordable at varying levels of MFI. The Phase I Building also will include three artist live-work units. (FF Nos. 66, 71.)
26. The Commission concludes that the Project will result in favorable impacts to economic development because it will redevelop an underutilized site with residentially-compatible PDR/makerspace uses that will support artists, producers, and other types of creative uses that would serve the local neighborhood and will also provide three artist live-work units that can generate additional employment opportunities. (FF No. 66.)
27. The Commission finds that the Project will result in favorable impacts to parks, recreation, and open space because the improvements to adjacent public space will encourage community recreation and assembly, and further finds that the proposed benefits relating to the Farmers Market and the improvements at Noyes Park will create new and enhanced open spaces. (FF Nos. 66, 71.)
28. The Commission concludes that impacts to urban design are favorable or are acceptable given the quality of public benefits because the Project is a quality context-sensitive design that concentrates density towards the WMATA tracks and the reconfiguration of Reed Street will establish new sidewalks and better connections for vehicles, bicyclists, and pedestrians. (FF Nos. 66, 71.)
29. The Commission does not find that the Project will result in any impacts to the District's historic preservation efforts. (FF No. 71.)
30. The Commission finds that impacts to community services and facilities are favorable or acceptable given the quality of public benefits because the Project involves the creation of

a new Farmers Market and includes other benefits that will upgrade important community facilities. (FF Nos. 66, 71.)

31. The Commission concludes that the Project's impacts to educational facilities will be favorable or acceptable given the quality of public benefits because the proposed streetscape improvements, coupled with the Traffic Calming Plan, will enhance the walkability for students at nearby schools and the contributions to Noyes and the Village will fund critical resources for teachers and learning opportunities for both students and the wider community. (FF Nos. 66, 71.)
32. The Commission concludes that the Project will result in favorable impacts to infrastructure given the realignment and redesign of Reed Street that will, among other improvements, bring new sidewalks and stormwater management facilities to the PUD Site. (FF No. 66.)
33. The Commission finds that the potential adverse effects generated by pet waste will be modest, do not rise to an unacceptable level, and are acceptable given the public benefits of the Project. (FF No. 86.)

PUD FLEXIBILITY BALANCED AGAINST PUBLIC BENEFITS (SUBTITLE X §§ 304.3 AND 304.4(C))

34. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies the balancing test under Subtitle X § 304.3 because the Application's public benefits outweigh the requested zoning flexibility as well as any potential adverse impacts that are not capable of being mitigated, as discussed below.
35. The Commission concludes that the Applicant's proffered public benefits and amenities resulting from the Project, including superior urban design and architecture, superior landscaping, or creation or preservation of open spaces, site planning and efficient and economical land utilization, housing and affordable housing, environmental and sustainable benefits, streetscape plans, park maintenance, transportation infrastructure, mass transit improvements, and uses of special value to the neighborhood or the District of Columbia as a whole, are commendable. (FF No. 71.)
36. The Commission concludes that the Applicant's proposed amendment of the Zoning Map to rezone the western portion of the PUD Site from the current PDR-2 zone to the MU-6A zone and the northeastern portion of the PUD Site from the current PDR-2 zone to the MU-4 is appropriate because:
 - The Map Amendment is not inconsistent with the CP when taken as a whole; and
 - The PUD Site is currently underutilized given its aging industrial character and transit-oriented location, and the Map Amendment will allow the PUD Site to be developed as a mixed-use Project at a density and height that can produce substantial new housing, including affordable housing, as well as PDR/makerspace uses that are more compatible with the surrounding area and appropriate for this location.(FF Nos. 15-18, 32, 39, 67-68.)

37. The Commission concludes that the requested relief to permit the proposed side yard, rear yard, and lot occupancy, is outweighed by the proffered benefits and amenities resulting from the Project. (FF Nos. 34, 71.)
38. The Commission concludes that the requested relief from Subtitle C § 1001.9 to set aside 10% of the affordable GFA at the 80% MFI level is acceptable because doing so will help to create a mixed-income community that has been informed by the Applicant's coordination with the community and will enable the Applicant to allocate other IZ units at deeper levels of affordability. (FF Nos. 36, 71.)
39. The Commission concludes that the requested design flexibility is appropriate for the Project and is balanced by the proffered benefits and amenities resulting from the Project. (FF Nos. 35, 71.)

GREAT WEIGHT TO RECOMMENDATIONS OF OP

40. The Commission is required to give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
41. The Commission finds OP's analysis of the Application, its conclusion that the Application satisfies the PUD evaluation requirements, and its commendation to approve the Application persuasive and concurs with this judgement. (FF 72-75.) The Commission also wants to address several issues raised by OP’s hearing report.
- The Commission concurs with OP that relief is necessary pursuant to Subtitle C § 1001.9, which states that “IZ Units or square footage required by an order of the Zoning Commission or the Board of Zoning Adjustment that exceeds IZ requirements shall comply with the requirements of this chapter, unless otherwise specified in the order.” The IZ square footage exceeds the IZ requirements. However, some of the IZ is provided at the higher 80% of MFI level, which does not comply with Chapter 10’s requirement to provide rental IZ units at the 60% MFI or less level. The Commission wants to be clear that it believes that pursuant to the rule, the additional IZ at the 80% of MFI level does not comply with the requirements of Subtitle C, Chapter 10, and that this Order specifically authorizes the higher 80% of MFI level;
 - The OP Hearing Report also recommended that the Applicant should be required to provide a minimum of 112,664 square feet of IZ in the IZ design flexibility language of Condition A.8.b of this Order. The OP hearing report stated that it made this recommendation because that was the amount of IZ stated in the Application when it was setdown for a public hearing by the Commission. The Applicant responded by stating that it has revised the Application by lowering the total to 111,593 sq. ft because that amount is consistent with what has always been its stated intention: that it set aside a minimum of 15% of the residential GFA as IZ, and the reduction in the square footage total was the result of a reduction in the overall size of the Project, which it made as a result of community input regarding

the Project's design. This Order includes the Applicant's preferred lower 111,593 sq. ft. amount because the Commission does not want to punish the Applicant for reducing the size of the Project especially when the reduction was to satisfy community input. As noted in FF 24, n. 4, this results in a net residential square footage of 83,235 of IZ; and

- The OP Hearing Report also contains an analysis, performed at the Commission's request, comparing the amount of IZ included in the Project to the amount that would be required by a non-PUD map amendment case under the new IZ + rules. The OP Hearing Report concluded that an IZ + map amendment for the Property would likely result in a greater amount of IZ than is included in the Project. The OP Hearing Report further concluded that the Project included a number of additional benefits which would not be present under a development that took place pursuant to a IZ + map amendment, namely:
 - PDR space;
 - Other benefits and amenities of the PUD, including the IZ units that are provided at less than 60% of MFI, the 3 bedroom units, and the three artist live-work units;
 - Public space and circulation improvements; and
 - Review and comment on the overall design of the Project by the Commission, and the ANC.

The Commission concludes that the IZ provided by the Project is a public benefit because it qualifies pursuant to Subtitle X § 305.5(g)(1), and for the reasons stated in the OP Hearing Report.

GREAT WEIGHT TO WRITTEN REPORT OF THE ANC

42. The Commission must give "great weight" to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2 (emphasis added). To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*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. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

ANC 5B did not file a written report to which the Commission can give great weight. (FF No. 79).

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law contained in this Order, the Commission concludes that the Applicant has satisfied its burden of proof and therefore, **APPROVES** the Application, subject to the following guidelines, conditions, and standards, for:

- A Consolidated PUD; and
- An amendment of the Zoning Map to rezone the western portion of the PUD Site to the MU-6A zone and the northeastern portion of the PUD Site to the MU-4 zone. Lot 859 in Square 3846 is zoned MU-6B and is not rezoned.

A. PROJECT DEVELOPMENT

1. Phase I of the Project shall be developed and constructed substantially in accordance with the plans titled "Hanover Reed Street", as modified by the guidelines, conditions, and standards herein, prepared by Hord Coplan Macht, submitted June 17, 2022, included in the record as Ex. 33A1-33A11, as supplemented by the detailed signage plan included in the record as Ex. 52A, and as modified in the post-hearing submission dated August 26, 2022, and included in the record as Ex. 64A1-64A3 (the "Approved Plans").
2. Phase II-A of the Project shall be developed and constructed substantially in accordance with the Approved Plans.
3. Phase II-B of the Project shall be developed and constructed substantially in accordance with the Approved Plans.
4. In accordance with the Approved Plans, as modified by the guidelines, conditions, standards, and flexibility herein, the Approved PUD shall have:
 - A maximum building height of approximately 84 feet for the West Building and a maximum building height of approximately 65 feet for the Phase II-A Building;
 - Approximately 766,109 square feet of GFA;
 - A FAR of 4.90 for the overall PUD Site, with:
 - A density of 4.76 FAR devoted to residential uses;
 - A density of 0.12 FAR devoted to non-residential uses; and
 - A density of 0.03 FAR devoted to artist live-work units;
 - Approximately 683 residential units;
 - Three artist live-work units;
 - 22,159 square feet devoted to PDR/makerspace use;
 - 267 on-site vehicle parking spaces; and
 - 235 long term and 35 short term bicycle parking spaces.
5. In accordance with the Approved Plans, as modified by the guidelines, conditions, standards, and flexibility herein, **Phase I** of the Approved PUD shall have:
 - Approximately 428,922 square feet of GFA;
 - A FAR of 3.45 as calculated over the West Building site area, with:
 - A density of 3.42 FAR devoted to residential uses; and
 - A density of 0.03 FAR devoted to artist live-work units;
 - Approximately 395 residential units;

- Three artist live-work units consisting of approximately 3,759 square feet of GFA, which will be implemented and delivered in coordination with CuDC or similar organization;
 - 153 on-site vehicle parking spaces; and
 - 124 long term and 20 short term bicycle parking spaces.
6. In accordance with the Approved Plans, as modified by the guidelines, conditions, standards, and flexibility herein, **Phase II-A** of the Approved PUD shall have:
- Approximately 118,800 square feet of GFA;
 - A FAR of 3.72 as calculated over the Phase II-A Building site area, with
 - A density of 3.4 FAR devoted to residential uses; and
 - A density of 0.32 FAR devoted to PDR/makerspace;
 - Approximately 96 residential units;
 - Approximately 10,240 square feet of GFA devoted to PDR/makerspace;
 - 38 vehicle parking spaces; and
 - 72 long term and five short term bicycle parking spaces.
7. In accordance with the Approved Plans, as modified by the guidelines, conditions, standards, and flexibility herein, **Phase II-B** of the Approved PUD shall have:
- Approximately 218,387 square feet of GFA;
 - A FAR of 1.76 as calculated over the West Building site area, with:
 - A density of 1.69 FAR devoted to residential uses; and
 - A density of 0.07 FAR devoted to PDR/makerspace uses;
 - Approximately 192 residential units;
 - Approximately 8,160 square feet of GFA devoted to PDR/makerspace;
 - 76 on-site vehicle parking spaces; and
 - 39 long term and 10 short term bicycle parking spaces.
8. The Applicant shall have PUD design flexibility in the following areas:
- a. To provide a range in the approved number of residential dwelling units of plus or minus ten percent (10%);
 - b. To vary the number and mix of inclusionary units if the total number of dwelling units changes within the range of flexibility requested, provided that the total square footage reserved for affordable units shall be the greater of 15% of the residential GFA, or 111,593 square feet of GFA⁷; and provided that of this amount, no more than 10% shall be reserved for units at 80% MFI maximum; no less than five percent be reserved for units at 30% MFI maximum; and no less than five percent shall be reserved for units at 50% MFI maximum; and provided that the location and proportionate mix of the inclusionary units will substantially conform to the layout shown

⁷ The total square footage here is expressed in GFA. This is the equivalent to 83,235 of net residential square footage. (See FF No. 24, n.4.) The net residential square footage amounts are used in Condition I.2, I.4, and I.6 below.

on the Approved Plans; and provided further that there are two three-bedroom units in Phase I (both provided at no more than 60% MFI) and two three-bedroom units in Phase II (one provided at no more than 60% MFI and one provided at no more than 80% MFI). In addition, three artist live-work units shall be provided at no more than 60% MFI;

- c. To vary the location and design of all interior components, including amenities, partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;
- d. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, so long as the number of parking spaces does not decrease below the minimum level required by the Zoning Regulations;
- e. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed by the Approved Plans;
- f. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the Approved Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railing, and skylights;
- g. To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the Approved Plans;
- h. To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
- i. To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the PUD does not decrease below the minimum proposed for the Project as specified by this Order; and
- j. To vary the types of uses designated as “PDR/makerspace” uses on the Approved Plans to include the following uses: production, sale, distribution, and/or consumption of food and beverages (provided that the on-site consumption of food and beverages is permitted only as an accessory use of such production, sale, and/or distribution use); small-scale production and repair of goods and related sales; media/communications production and distribution; arts and entertainment; traditional crafts and trades; specialty sports and recreation (not including traditional gyms or fitness clubs); engineering and design; and technology design and production.

B. BUILDING PERMIT REQUIREMENTS – PHASE I

1. **The Applicant shall submit with its building permit application for Phase I of the Project** a checklist evidencing that Phase I of the Project has been designed to LEED Gold standards under the LEED v4 Multifamily Midrise standard.
2. **Prior to issuance of the first building permit for Phase I of the Project**, the Applicant shall prepare and submit a traffic signal warrant analysis for the intersection of Franklin Street and Reed Street, N.E. to DDOT's Transportation Engineering and Safety Division (TESD) for review and approval. If approved by TESS, the Applicant shall enter a Memorandum of Agreement with DDOT and then design, fund, and install the traffic signal **prior to issuance of the final Certificate of Occupancy for Phase I of the Project**.

C. BUILDING PERMIT REQUIREMENTS – PHASE II

1. **The Applicant shall submit with its building permit application for Phase II-A of the Project** a checklist evidencing that Phase II-A of the Project has been designed to LEED Gold standards under the LEED v4 Multifamily Midrise standard.
2. **The Applicant shall submit with its building permit application for Phase II-B of the Project** a checklist evidencing that Phase II-B of the Project has been designed to LEED Gold standards under the LEED v4 Multifamily Midrise standard.

D. CONSTRUCTION REQUIREMENTS

1. **During the construction of Phase I of the Project**, the Applicant shall abide by the terms of the Construction Management Plan included in the record at Ex. 33C.
2. **During the construction of Phase II-A of the Project**, the Applicant shall abide by the terms of the Construction Management Plan included in the record at Ex. 33C.
3. **During the construction of Phase II-B of the Project**, the Applicant shall abide by the terms of the Construction Management Plan included in the record at Ex. 33C.

E. CERTIFICATE OF OCCUPANCY REQUIREMENTS – PHASE I

1. **Prior to the issuance of a final certificate of occupancy for Phase I of the Project**, the Applicant shall provide a signed affidavit to the Zoning Administrator evidencing that the Applicant has registered the Project for LEED Gold under the LEED v4 Multifamily Midrise standard. The signed affidavit shall also include the

steps taken by the Applicant towards achieving such certification for Phase I of the Project.

2. **Prior to the issuance of a final certificate of occupancy for Phase I of the Project**, the Applicant shall install solar panels within approximately 3,200 square feet of roof area of the Phase I Building.
3. **Prior to the issuance of a final certificate of occupancy for Phase I of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has installed approximately 16,450 square feet of extensive and intensive green roof systems.
4. **Prior to the issuance of a final certificate of occupancy for Phase I of the Project**, the Applicant shall construct the landscaping improvements abutting Phase I of the Project, as shown on the Approved Plans.
5. **Prior to the issuance of a final certificate of occupancy for Phase I of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has submitted a Curbside Management Plan ("CMP") to DDOT for the public space abutting Phase I for approval, and will implement the CMP as fully approved by DDOT. As part of the CMP, the Applicant will recommend metered parking and no-parking zones that can be used for short-term loading/unloading.
6. **Prior to the issuance of a final certificate of occupancy for Phase I of the Project**, the Applicant shall contribute \$50,000 to FoNP to fund the labor and materials for the expansion of the garden area in Noyes Park with approximately 20 additional garden plots, including surface preparation and installation of soil and fencing. The Applicant shall provide proof to the Zoning Administrator that the funds have been contributed and that the items or services described in this condition have been or are being provided. Alternatively, in lieu of said contribution, the Applicant shall present evidence to the Zoning Administrator that it has constructed the additional garden plots, including surface preparation and installation of soil and fencing.
7. **Prior to the issuance of a final certificate of occupancy for Phase I of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has constructed Reed Street pursuant to the Approved Plans, subject to review and approval by DDOT.
8. **Prior to the issuance of the final certificate of occupancy for Phase I of the Project**, the Applicant shall present evidence to the Zoning Administrator that it has funded and installed and/or delivered the following measures identified in the Applicant's Traffic Calming Plan, all of which are subject to DDOT approval:
 - a. Installation of traffic signal at the intersection of Reed Street and Franklin Street;

- b. Additional signage or signaling technology at the intersection of Reed Street and Franklin Street or at the intersection of the north-south alley and Franklin Street;
- c. All way stop at Reed Street and Evarts Street;
- d. All way stop at 10th Street and Evarts Street;
- e. Incorporation of bump-outs on Reed Street to narrow roadway and allow for better crossing in locations identified on the Applicant's Traffic Calming Plan (Ex. 33F.);
- f. Incorporation of bump-outs at the intersection of 10th Street and Evarts Street to narrow roadway and installation of a new, raised crosswalk at the northern leg of the intersection as identified on the Traffic Calming Plan;
- g. Addition of crosswalks, including raised crosswalks, as applicable to Phase I of the Project, as shown on the Traffic Calming Plan;
- h. In the event that DDOT does not approve a traffic signal at the intersection of Reed Street and Franklin Street, limitation of Reed Street and Franklin Street intersection to right-in, right-out for the intersection of Reed Street and Franklin Street, installation of appropriate signage and installation of flexible bollards in the median of Franklin Street at that location;
- i. Limitation of north-south alley and Franklin Street intersection to right-in, right-out, installation of appropriate signage and installation of flexible bollards in the median of Franklin Street at that location;
- j. Request DDOT and MPD to install speed cameras facing both directions on the Franklin Street Bridge and red light cameras facing both directions along Franklin Street at the intersection of 10th and Franklin Streets;
- k. Request DDOT and MPD to install red light cameras facing both directions of Franklin Street at the Reed and Franklin Street intersection, in the event that a signal is installed at the intersection;
- l. Installation of pedestrian plaza paving in area of future Farmers Market on Reed Street; and
- m. In the event that DDOT does not approve any of the elements of the Traffic Calming Plan listed above in subsections a.-l., the Applicant shall provide information to the Zoning Administrator reflecting the same.

9. **Prior to the issuance of a final certificate of occupancy for Phase I of the Project**, the Applicant shall contribute \$100,000 to Noyes, which will be specifically distributed as follows:

- a. \$63,000 to D.C. Public Schools to fund (i) upgrades to the auditorium (which doubles as a public meeting and community space), (ii) upgrades to the science garden, (iii) upgrades to the science lab classroom, and/or (iv) other similar projects for additional funds that are not used; and
- b. \$37,000 to the Parent-Teacher Organization for teacher special projects, field trips and/or additional electronic equipment for classrooms (computers or iPads).

As to subsection a. of this condition, the Applicant shall provide proof to the Zoning Administrator that these funds have been contributed to D.C. Public Schools. As to subsection b. of this condition, the Applicant shall provide proof to the Zoning Administrator that these funds have been contributed to the Parent-Teacher Organization and that the items or services described in this condition have been or are being provided.

10. **Prior to the issuance of a final certificate of occupancy for Phase I of the Project**, the Applicant shall contribute \$50,000 to the GBIV to fund GBIV's Age Well Together Initiative. Approximately \$29,000 of the contribution will be used for the "Programs" focus area to expand the virtual and in-person social, wellness and education resources. The remaining \$21,000 of the contribution will be used for the "Inclusion" focus area, and such funds will be used to recruit participants, increase total membership, and facilitate GBIV website and social media member engagement. The Applicant shall provide proof to the Zoning Administrator that the funds have been contributed and that the items or services described in this condition have been or are being provided.

11. **Prior to the issuance of a final certificate of occupancy for Phase I of the Project**, the Applicant shall contribute \$30,000 to the Village for increased learning resources, including field trips, multicultural books, and STEAM support. Each school comprising the Village⁸ will receive \$3,600 to support these efforts, for a total of \$18,000. The remaining funds (approximately \$12,000) will be given to each school (in an amount of \$2,400 per school) to be used for technological tools, arts integration, professional development and international experiences as determined by the principal of the school. The Applicant shall provide proof to the Zoning Administrator that the funds have been contributed and that the items or services described in this condition have been or are being provided.

12. **Prior to the issuance of a final certificate of occupancy for Phase I of the Project**, the Applicant shall contribute \$20,300 to DC Doors Inc. to help establish

⁸ See FF No. 37.

a new holistic health and nature-driven wellness clinic within DC Doors' 24-hour drop-in center located in Ward 5. The funds will be used for programming and youth participation incentives, music room improvements and instruments, UV lighting and irrigation (planting), technology upgrades (e.g., sound system) and other materials, such as exercise equipment. The Applicant shall provide proof to the Zoning Administrator that the funds have been contributed and that the items or services described in this condition have been or are being provided.

13. **Prior to the issuance of a final certificate of occupancy for Phase I of the Project**, the Applicant shall contribute \$20,000 to Mary House Inc. to fund supplemental housing and social services for three families residing in ANC 5B. The Applicant shall provide proof to the Zoning Administrator that the funds have been contributed and that the items or services described in this condition have been or are being provided.
14. **Prior to the issuance of a final certificate of occupancy for Phase I of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has constructed Reed Street pursuant to the Approved Plans, subject to review and approval by DDOT.

F. CERTIFICATE OF OCCUPANCY REQUIREMENTS – PHASE II-A

1. **Prior to issuance of a final certificate of occupancy for Phase II-A of the Project**, the Applicant shall provide a signed affidavit to the Zoning Administrator evidencing that the Applicant has registered the Project for LEED Gold under the LEED v4 Multifamily Midrise standard. The signed affidavit shall also include the steps taken by the Applicant towards achieving such certification for each Phase II-A and Phase II-B of the Project.
2. **Prior to issuance of a final certificate of occupancy for Phase II-A of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has installed approximately 6,125 square feet of extensive and intensive green roof systems.
3. **Prior to the issuance of a final certificate of occupancy for Phase II-A of the Project**, the Applicant shall construct the landscaping improvements abutting Phase II-A of the Project, as shown on the Approved Plans.
4. **Prior to the issuance of a final certificate of occupancy for Phase II-A of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has submitted a CMP to DDOT for the public space abutting Phase II-A for approval, and that it will implement the CMP as approved by DDOT.
5. **Prior to the issuance of a final certificate of occupancy for Phase II-A of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has replaced, or planted in existing tree boxes, up to five street trees on 10th Street (the

"10th Street Trees"), subject to approval by DDOT and in accordance with the following:

- a. The Applicant shall provide ANC 5B notice and an opportunity to select the 10th Street Trees;
 - b. **If the ANC fails to select the 10th Street Trees within thirty (30) days of receiving notice from the Applicant pursuant to subparagraph a.,** the Applicant shall select the five 10th Street Trees in the worst condition and replace those with new trees, subject to approval by DDOT; and
 - c. The Applicant shall include Casey Trees on the bid list when seeking bids for the installation of the 10th Street Trees.
6. **Prior to the issuance of a final certificate of occupancy for Phase II-A of the Project,** the Applicant shall contribute \$50,000 to either (i) DPR to fund services and/or improvements to Noyes Park that serve the residents of ANC 5B or (ii) FoNP to fund the labor and materials necessary to create a new shade structure in Noyes Park. The Applicant shall provide proof to the Zoning Administrator that the funds have been contributed to DPR or, in the event that the funds are contributed to FoNP, the funds have been contributed and the shade structure has been constructed. Alternatively, in lieu of said contribution, the Applicant shall present evidence to the Zoning Administrator that it has performed the work to install the new shade structure.
7. **Prior to the issuance of the final certificate of occupancy for Phase II-A of the Project,** the Applicant shall present evidence to the Zoning Administrator that it has funded and installed and/or delivered the following elements of the Traffic Calming Plan, all of which are subject to DDOT approval:
- a. Installation of a pervious paver system within the north-south and east-west alleys abutting the Phase II-A Building;
 - b. Installation of a bollard at the southern end of the north-south alley, near Evarts Street, to prevent vehicles from driving over the curb; and
 - c. Installation of two speed bumps on the north-south alley between Evarts Street and Franklin Street.

In the event that DDOT does not approve any of the elements of the Traffic Calming Plan listed above in subsections a.-c., the Applicant shall provide information to the Zoning Administrator reflecting the same.

8. **Prior to the issuance of the final certificate of occupancy for Phase II-A of the Project,** the Applicant shall present evidence to the Zoning Administrator that it has funded and installed a 19-dock Capital Bikeshare (CaBi) station, unless a

smaller size station is agreed to by DDOT. The location of the CaBi station shall be determined by DDOT.

9. **Prior to the issuance of a final certificate of occupancy for Phase II-A of the Project**, the Applicant shall contribute \$50,000 to GBIV to fund GBIV's Age Well Together Initiative. Approximately \$29,000 of the contribution will be used for the "Programs" focus area to expand the virtual and in-person social, wellness and education resources. The remaining \$21,000 of the contribution will be used for the "Inclusion" focus area, and such funds will be used to recruit participants, increase total membership, and facilitate GBIV website and social media member engagement. The Applicant shall provide proof to the Zoning Administrator that the funds have been contributed and that the items or services described in this condition have been or are being provided.
10. **Prior to the issuance of a final certificate of occupancy for Phase II-A of the Project**, the Applicant shall contribute \$30,000 to the Village for increased learning resources, including field trips, multicultural books, and STEAM support. Each school comprising the Village⁹ will receive \$3,600 to support these efforts, for a total of \$18,000. The remaining funds (approximately \$12,000) will be given to each school (in an amount of \$2,400 per school) to be used for technological tools, arts integration, professional development and international experiences as determined by the principal of the school. The Applicant shall provide proof to the Zoning Administrator that the funds have been contributed and that the items or services described in this condition have been or are being provided.

G. CERTIFICATE OF OCCUPANCY REQUIREMENTS – PHASE II-B

1. **Prior to issuance of a final certificate of occupancy for Phase II-B of the Project**, the Applicant shall provide a signed affidavit to the Zoning Administrator evidencing that the Applicant has registered the Project for LEED Gold under the LEED v4 Multifamily Midrise standard. The signed affidavit shall also include the steps taken by the Applicant towards achieving such certification for Phase II-B of the Project.
2. **Prior to issuance of a final certificate of occupancy for Phase II-B of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has installed approximately 7,425 square feet of extensive and intensive green roof systems.
3. **Prior to the issuance of a final certificate of occupancy for Phase II-B of the Project**, the Applicant shall construct the landscaping improvements abutting Phase II-B of the Project, as shown on the Approved Plans.

⁹ See FF No. 37.

4. **Prior to the issuance of a final certificate of occupancy for Phase II-B of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has submitted a CMP to DDOT for the public space abutting Phase II-B for approval, and will implement the CMP as approved by DDOT. As part of the CMP, the Applicant will recommend metered parking and no-parking zones that can be used for short-term loading/unloading.
5. **Prior to the issuance of the final Certificate of Occupancy for Phase II-B of the Project**, the Applicant shall present evidence to the Zoning Administrator that it has funded and installed and/or delivered the addition of crosswalks, including raised crosswalks, as applicable to Phase II-B of the Project and as shown on the Traffic Calming Plan, all of which are subject to DDOT approval.

In the event that DDOT does not approve this element of the Traffic Calming Plan, the Applicant shall provide information to the Zoning Administrator reflecting the same.
6. **Prior to the issuance of a final certificate of occupancy for Phase II-B of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has created an escrow account and contributed \$140,000 for use by FreshFarms to fund up to five years of operation for the Farmers Market, including but not limited to, the cost of equipment, insurance, permits, management and programming. The escrow account shall be structured such that these funds are released to FreshFarms annually to fund various elements of operating and maintaining the seasonal Farmers Market.
7. **Prior to the issuance of a final certificate of occupancy for Phase II-B of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it provided electrical outlets and a hose spigot that will be accessible to the Farmers Market and that it has designated a storage room within Phase II-B of the Project for the Farmers Market to use as a storage room.

H. CERTIFICATE OF OCCUPANCY REQUIREMENTS – ALL PHASES

1. **Prior to the issuance of a final certificate of occupancy for Phase I, Phase II-A or Phase II-B, as applicable**, in the event that any of the Designated Organizations (as defined in FF No. 71) either reject funding or are otherwise unable to receive the designated funding (the "Rejected Funding"), the Applicant shall inform ANC 5B that the organization cannot receive funding and ask ANC 5B to reallocate the funds among the other Designated Organizations to further projects, goods and services otherwise approved in this Order. **If ANC 5B fails to reallocate the funding within 90 days of receiving notice of the Rejected Funding from the Applicant, the Applicant shall split the Rejected Funding among the other Designated Organizations.**

I. REQUIREMENTS FOR THE LIFE OF THE PROJECT

1. **For the life of the Project**, Phase I of the Project shall devote approximately 425,163 square feet of GFA to residential use.
2. The Applicant shall provide the affordable housing for Phase I of the Project in accordance with this condition:
 - a. **For the life of the Project**, the affordable housing for Phase I of the Project shall be administered by the DC Department of Housing and Community Development through the IZ program. The affordable housing shall comply with all development standards, tenancy regulations and implementation requirements for IZ units as set forth in DCMR Chapter 10 of Title 11-C and Chapter 22 of Title 14;
 - b. **For the life of the Project**, the Applicant shall provide the affordable housing for Phase I of the Project as set forth in the following chart¹⁰:

Residential Unit Type	Net Residential Square Feet/ Percentage of Total	Units	Reserved for household earning equal to or less than	Affordable Control Period	Affordable Unit Type	Notes
Total	329,854 sf (100%)	395	N/A	N/A	N/A	
Market Rate	280,347 sf (85.0%)	336	Market Rate	N/A	Rental	
IZ	4,851 sf (1.4%)	6	Up to 80% MFI	Life of the project	Rental	
IZ	39,652 sf (12%)	47	Up to 60% MFI	Life of the project	Rental	
IZ	2,505 sf (0.8%)	3	Up to 50% MFI	Life of the project	Rental	
IZ	2,499 sf (0.8%)	3	Up to 30% MFI	Life of the project	Rental	
Total IZ	49,507 sf (15%)	59				
Affordable Artist Live-Work Units (Non-IZ)		3	Up to 60% MFI	Life of the Project	Rental	The Applicant shall reserve three units at the southern end of the Phase I building as artist live-work spaces. The artist live-work spaces shall be reserved for <u>and made affordable to</u> local artists earning equal to or less than 60% MFI.

¹⁰ The sf of IZ space in these charts is expressed in net residential square footage. (See FF No. 24, n.4.)

- c. **For the life of the Project**, the Applicant shall reserve two three-bedroom units in Phase I at no more than 60% MFI;
 - d. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this condition; and
 - e. **For the life of the Project**, the Applicant shall reserve three artist live-work units at no more than 60% MFI.
3. **For the life of the Project**, Phase II-A of the Project shall devote approximately 108,560 square feet of GFA to residential use.
 4. The Applicant shall provide the affordable housing for Phase II-A of the Project in accordance with this condition:
 - a. **For the life of the Project**, the affordable housing for Phase II-A of the Project shall be administered by the DC Department of Housing and Community Development through the IZ program. The affordable housing shall comply with all development standards, tenancy regulations and implementation requirements for IZ units as set forth in DCMR Chapter 10 of Title 11-C and Chapter 22 of Title 14;
 - b. **For the life of the Project**, the Applicant shall provide the affordable housing for Phase II-A of the Project as set forth in the following chart:

Residential Unit Type	Net Residential Square Feet/ Percentage of Total	Units	Reserved for household earning equal to or less than	Affordable Control Period	Affordable Unit Type	Notes
Total	81,925 sf (100%)	96	N/A	N/A	N/A	
Market Rate	69,631 sf (85.0%)	82	Market Rate	N/A	Rental	
IZ	1,134 sf (1.4%)	1	Up to 80% MFI	Life of the project	Rental	
IZ	9,840 sf (12.0%)	11	Up to 60% MFI	Life of the project	Rental	
IZ	725 sf (0.9%)	1	Up to 50% MFI	Life of the project	Rental	
IZ	595 sf (0.7%)	1	Up to 30% MFI	Life of the project	Rental	
Total IZ	12,294 sf (15%)	14				

- c. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this condition.

5. **For the life of the Project**, Phase II-B of the Project shall devote approximately 210,227 square feet of GFA to residential use.
6. The Applicant shall provide the affordable housing for Phase II-B of the Project in accordance with this condition:
 - a. **For the life of the Project**, the affordable housing for Phase II-B of the Project shall be administered by the DC Department of Housing and Community Development through the IZ program. The affordable housing shall comply with all development standards, tenancy regulations and implementation requirements for IZ units as set forth in DCMR Chapter 10 of Title 11-C and Chapter 22 of Title 14;
 - b. **For the life of the Project**, the Applicant shall provide the affordable housing for Phase II-B of the Project as set forth in the following chart:

Residential Unit Type	Net Residential Square Feet/ Percentage of Total	Units	Reserved for household earning equal to or less than	Affordable Control Period	Affordable Unit Type	Notes
Total	142,682 sf (100%)	192	N/A	N/A	N/A	
Market Rate	121,248 sf (85%)	163	Market Rate	N/A	Rental	
IZ	1,983 sf (1.4%)	2	Up to 80% MFI	Life of the project	Rental	
IZ	17,171 sf (12%)	23	Up to 60% MFI	Life of the project	Rental	
IZ	1,140 sf (0.8%)	2	Up to 50% MFI	Life of the project	Rental	
IZ	1,140 sf (0.8%)	2	Up to 30% MFI	Life of the project	Rental	
Total IZ	21,434 sf (15%)	29				

- c. **For the life of the Project**, the Applicant shall reserve two three-bedroom units in Phase II-B; one provided at no more than 60% MFI and one provided at no more than 80% MFI; and
 - d. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this condition.
7. **For the life of the Project**, the Applicant shall provide EV charging stations in the parking area in an amount equal to 10% of the total number of parking spaces in each of Phase I, Phase II-A and Phase II-B. In addition, the Applicant shall include EV infrastructure (i.e., power, wiring, junction boxes, etc.) to accommodate the

charging equipment for up to an additional 10% of the number of parking spaces in each of Phase I, Phase II-A and Phase II-B.

8. **For the life of the Project**, the Applicant shall implement a Loading Dock Management Plan for the Phase II-A Building which will include the designation of a Loading Dock Manager, whose contact information will be provided to the community when designated. Duties of the Loading Dock Manager will include the following: (i) monitor left behind debris from move in/move outs within in alley or area outside of the loading facility; and (ii) will clean the loading dock at least once a week and clean spilled over trash after each collection. No trash containers will be stored outside the Project buildings.
9. The Applicant shall restrict Residential Permit Parking ("RPP") in accordance with this condition:
 - a. **For the life of the Project**, the Applicant will not seek any RPP designation on streets or alleys that would allow residents of the Project to apply for RPPs; and
 - b. **During the operation of the Project**, if any of the Project buildings become eligible for the RPP program in the future, the Applicant will include a lease rider on all leases thereafter that shall restrict tenants from obtaining RPPs.

J. TRANSPORTATION DEMAND MANAGEMENT

1. **During the operation of the Project (unless otherwise noted)**, the Applicant shall provide the following TDM measures:
 - a. Identify Transportation Coordinators for the planning, construction, and operations phases of development. There will be a Transportation Coordinator for each PDR/makerspace tenant and for each phase of the Project. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;
 - b. Transportation Coordinator(s) will conduct an annual commuter survey of employees and residents on-site, and report TDM activities and data collection efforts to goDCgo once per year;
 - c. Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to residents, employees and customers, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications;

- d. Transportation Coordinators will receive TDM training from goDCgo to learn about the TDM conditions for this Project and available options for implementing the TDM Plan;
- e. Provide residents and employees who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOC) or other comparable service if MWCOC does not offer this in the future;
- f. Provide a SmarTrip card and one complimentary CaBi coupon good for a free ride to each new resident and each new employee;
- g. Install at least 27 parking spaces with EV chargers for the Project, distributed as follows:
 - i. 15 spaces with EV charges shall be installed in the Phase I garage **prior to the issuance of a final certificate of occupancy for Phase I of the Project.**
 - ii. Eight spaces with EV chargers shall be installed in the Phase II-B garage and four spaces with EV chargers shall be installed in the Phase II-A garage **prior to the issuance of a final certificate of occupancy for Phase II-A or Phase II-B of the Project, as applicable;**
- h. The Project will provide at least 235 long-term and at least 35-short-term bicycle spaces, distributed by Phase as provided in the table below, which should be provided **prior to the issuance of a final certificate of occupancy for the applicable Phase of the Project.**

Site Parking Summary Hanover Reed Street PUD		West Building			East Building Phase IIA	Total
		Phase I	Phase IIB	Building Total		
Bicycle	Short Term	20	10	30	5	35
	Total Long Term (Including Cargo/Tandem)	124	39	163	72	235
	w/ Power Outlets	10% (12 spaces)	10% (4 spaces)	10% (16 spaces)	10% (7 spaces)	10% (24 spaces)
	Cargo/Tandem (3'x10')	5% (6 spaces)	5% (2 spaces)	5% (8 spaces)	5% (4 spaces)	5% (12 spaces)

- i. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids bikes, with a minimum of 12 spaces be designed for longer cargo/tandem bikes (10 feet by 3 feet), a minimum of 24 spaces will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum of 118 spaces will be placed horizontally on the floor. There will be no fee to the residents or employees for usage of the bicycle storage room and strollers will be permitted to be stored in the bicycle storage room;
 - j. Install a Transportation Information Center Display (electronic screen) within the lobby of each building containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, carsharing locations, and nearby CaBi locations indicating the availability of bicycles;
 - k. Will not lease unused residential parking spaces to anyone aside from residents or tenants of the building unless the other building(s) have no on-site parking (e.g., will not lease to other nearby office employees, single family home residents, or sporting events);
 - l. Offer an annual CaBi membership with each residential lease and to each employee for the first year after the building opens;
 - m. Provide a bicycle repair station in each long-term bicycle parking storage room; and
 - n. Offer SmarTrip cards pre-loaded with \$100 to each new residential lease for one year after the building opens.
2. **Following the issuance of a certificate of occupancy for each Phase of the Project**, the Transportation Coordinator shall submit documentation used to summarize 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 OZ for inclusion in the IZIS case record of the case.
3. **Following the issuance of a certificate of occupancy for each Phase of the Project**, the Transportation Coordinator shall submit a letter to the Zoning Administrator, DDOT, and goDCgo every five years (as measured from the final Certificate of Occupancy for the applicable Phase of the Project) summarizing compliance with the transportation and TDM conditions in the Order, unless no longer applicable as confirmed by DDOT. **If such letter is not submitted on a timely basis the building shall have 60 days from the date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter.**

4. **For the life of the Project**, for the residential component of the Project, the Applicant shall provide the following TDM measures:
- a. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile;
 - b. 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;
 - c. 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;
 - d. Post all transportation and TDM commitments on building website, publicize availability, and allow the public to see what has been promised; and
 - e. Provide one collapsible shopping cart (utility cart) for every 50 residential units in each Phase, for a total of 14 for the Project, to encourage residents to walk to the grocery store and run errands.
5. **For the life of the Project**, for the PDR/makerspace component of the Project, the Applicant shall provide the following TDM measures:
- a. Will post "getting here" information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for customers and patrons discouraging parking on-street in RPP zones;
 - b. Transportation Coordinator will demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law to participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future such as the Parking Cash-Out Law;
 - c. Employers will participate in the CaBi Corporate Membership program and offer discounted annual memberships to employees; and

- d. Coordinate with BID, WMATA, ANC, and/or other relevant entities on a way finding plan along walking routes to the property from the Rhode Island Avenue-Brentwood Metro station.

K. MISCELLANEOUS

1. **Prior to recordation of the alley closure plat for S.O. 22-01115**, the Applicant, or property owner, as applicable, shall enter into a signed Horizontal Public Use Agreement with DDOT outlining the process for design review, construction, inspection, and acceptance of the new alignment of Reed Street. These facilities along Reed Street must meet or exceed DDOT streets standards, not alley standards, for streetscape, draining, lighting, paving, and other public space elements, unless otherwise approved by DDOT.

L. PHASING AND VALIDITY

1. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the OZLD and the OZ, DCRA (the “PUD Covenant”). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of OZ.
2. Approval of Phase I of the Project shall be valid for a period of two years from the effective date of this Order. Within that time, the Applicant shall file a building permit application for Phase I. The Applicant shall begin construction of Phase I within three years of the effective date of this Order.
3. Approval of Phase II-A and Phase II-B of the Project shall be valid for a period of two years following issuance of the first Certificate of Occupancy for Phase I. Within that time, the Applicant shall file building permit applications for both Phase II-A and Phase II-B. The Applicant shall begin construction of both Phase II-A and Phase II-B within three years of issuance of the first Certificate of Occupancy for Phase I.
4. If no Certificate of Occupancy for Phase I is issued within seven years following the effective date of this Order, the approval shall expire, unless otherwise extended by the Zoning Commission.

Proposed Action

Vote (July 21, 2022): 4-0-1

(Anthony J. Hood, Peter G. May, Joseph S. Imamura, Robert E. Miller to **APPROVE**; 3rd Mayoral Appointee seat vacant)

Final Action

Vote (October 13, 2022): 4-0-1

(Robert E. Miller, Peter G. May, Anthony J. Hood,
Joseph S. Imamura, to **APPROVE**; 3rd Mayoral
Appointee seat vacant)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 22-04 shall become final and effective upon publication in the *D.C. Register*; that is, on February 24, 2023.

BY ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY HOOD
CHAIRMAN
ZONING COMMISSION



SARA B. BARDIN
DIRECTOR
OFFICE OF ZONING

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS THE D.C. HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (THE “ACT”). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE ACT, THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.