GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28Q
Z.C. Case No. 05-28Q
Parkside Residential, LLC
(Approval of a Second-Stage PUD and Modification of an Approved First-Stage PUD @ Square 5041, Lot 806 and Square 5056, Lots 809 and 813)
July 24, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing ("Public Hearing") on June 19, 2017 to consider an application ("Application") from Parkside Residential, LLC ("Applicant") for review and approval of a second-stage planned unit development and related modification of an approved first-stage planned unit development and Zoning Map amendment (collectively, a "PUD"). The Commission considered the Application pursuant to Title 11 of the District of Columbia Municipal Regulations ("Zoning Regulations"), Subtitles X and Z. The Public Hearing was conducted in accordance with the provisions of Chapter 4 of Title 11, Subtitle Z of the District of Columbia Municipal Regulations. For the reasons stated below, the Commission hereby approves the Application.

FINDINGS OF FACT

I. PUD History and Procedural History of the Application

1. The property that is the subject of this PUD includes Lot 806 in Square 5041, Lots 809 and 813 in Square 5056, and portions of closed streets in Square 5041 and Square 5056 (collectively, the "Property" or "Parcel 9") in the Parkside neighborhood of Ward 7. (Exhibit ["Ex."] 3 at 2.) The Property is bounded by Kenilworth Terrace, N.E. to the southeast, Grant Place, N.E. to the southwest, Parkside Place, N.E. to the northwest, and Burnham Place, N.E. to the northeast. (*Id.* at 10.) Grant Place, N.E. and Burnham Place, N.E. have been closed as public streets by act of the City Council and are incorporated into the Property. The Property is approximately 54,423 square feet in area and is currently unimproved. (*Id.*) The Applicant proposes to construct two new buildings containing a mix of retail, residential, and office uses, with below-grade parking ("Project") on the Property. (*Id.* at 2.) The Project contains approximately 76 total residential units. (Ex. 27A(2).)

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2. In an order effective as of April 13, 2007, the Commission approved the first-stage planned unit development application of the Applicant in Z.C. Order No. 05-28 ("Parkside PUD"), the first-stage order to which this Application for a second-stage PUD succeeds. (Ex. 3F.)

3. The Parkside PUD approves a plan of development for 10 "building blocks" across the approximately 15.5-acre site that is the subject of such PUD (collectively, "Parkside"). (Ex. 3H.) The Parkside PUD authorizes a mix of residential, mixed-use, commercial, and retail buildings to contain approximately 3,003,000 square feet of gross floor area ("GFA"), including 1,500-2,000 dwelling units, 500,000-750,000 square feet ("sf") of office space, 30,000-50,000 sf of retail, 260,000 sf of educational uses, and 43,000 sf of healthcare uses; an overall density of 4.4 floor area ratio ("FAR"); and a maximum height of 110 feet for the office buildings and 90 feet otherwise. (Ex. 3 at 1.)

4. In 2008, in Z.C. Case No. 05-28A, the Commission approved a second-stage application for three of the 10 blocks in the Parkside PUD—Blocks A, B, and C. The Commission approved a senior living facility consisting of 98 units to be reserved for individuals with an income no greater than 60% of the area median income ("AMI"). It also approved 100 townhouses, 42 of which would be reserved for buyers with incomes between 80% and 120% AMI. This proposal was later modified in Z.C. Case No. 05-28G. The senior housing has been constructed on Block A and the townhouses are now complete on both Blocks B and C. (*Id*.)

5. In 2010, in Z.C. Case Nos. 05-28B and 05-28C, the District of Columbia Primary Care Association ("DCPCA") and Lano Parcel 12, LLC, working with the University of the District of Columbia's Community College of the District of Columbia ("CCDC"), submitted second-stage PUD applications for portions of Blocks H and I. The applicants submitted a simultaneous request (Z.C. Case No. 05-28E[1]) to modify the Parkside PUD in order to accommodate the projects proposed in the second-stage applications. The Commission approved both second-stage applications, as well as certain modifications to the Parkside PUD. The DCPCA building has been constructed (subject to modifications approved in Z.C. Case No. 05-28I); however, the second-stage approval for CCDC has lapsed. (*Id*. at 1-2.)

6. In 2011 in Z.C. Case No. 05-28F, the Commission approved a second-stage application for a one-acre park ("Community Green") located on Block D. The park was included as a benefit and amenity of the Parkside PUD as a whole. The Community Green provides passive recreation for neighbors and provides a central gathering place for the community. The Community Green has been constructed. (*Id*. at 2.)

[1] Z.C. Cases 05-28D, 05-28G, 05-28H, 05-28I, 05-28L, 05-28M, and 05-28N consisted of either minor modifications to various second-stage PUDs or extensions to the first-stage PUD. (*See* Ex. 2 at Appendix.)

7. In 2013, in Z.C. Case Nos. 05-28J and 05-28K, the Commission approved a modification to the Parkside PUD and second-stage application for Block E. Block E contains a multi-family building consisting of 186 affordable residential units reserved for individuals with an income no greater than 60% of the AMI. Construction on Block E is complete and is currently being leased for occupancy. (*Id*. at 1; Ex. 16B at 12.)

8. In April 2017, in Z.C. Case No. 05-28P, the Commission approved an approximately 190-unit market-rate multi-family residential building with below-grade parking on Block J.

9. Nearly concurrent with the Application, in Z.C. Case Nos. 05-28R and 05-28S, the Applicant sought second-stage PUD approval for two multi-family residential buildings, 25 townhouses, and optional ground-floor retail in the multi-family buildings, all with underground parking and at-grade pedestrian improvements on Parcels 8 and 10 of Block F.

10. On March 3, 2017, in Z.C. Case No. 05-28T, an affiliate of the Applicant applied for modification of the Parkside PUD and second-stage approval for Block H ("Block H Application"), which is pending before the Commission. The Block H Application proposes to construct an office building designed to accommodate a federal anchor office tenant, and includes ground-floor retail uses and approximately 111 enclosed, at-grade parking spaces.

11. On October 11, 2016, the Applicant delivered a notice of its intent ("NOI") to file a zoning application to all owners of property within 200 feet of the perimeter of the Property as well as to Advisory Neighborhood Commission 7D ("ANC"). (Ex. 3C.) On November 18, 2016, the Applicant delivered an amended NOI. (*Id*.) On January 13, 2017, the Applicant filed the Application for this PUD and certified that the Application satisfied the PUD filing requirements. (Ex. 1, 3D). The Application was accepted as complete by the Office of Zoning ("OZ") on October 5, 2016. (Ex. 5.) OZ referred the Application to the ANC, the Councilmember for Ward 7, and the District Office of Planning ("OP"), and notice of the filing of the Application was published in the *D.C. Register*. (Ex. 6-10.)

12. On March 17, 2017, the Applicant filed modified architectural plans, drawings, and renderings for the Application in response to preliminary comments from OP. (Ex. 12-13.)

13. On March 17, 2017, OP delivered a report regarding the Application ("OP Setdown Report"), recommended that the Commission set the Application down for public hearing, and requested additional information from the Applicant. (Ex. 15; *see also* Finding of Fact ["FF"] ¶ 74.)

14. At a Commission public meeting on March 27, 2017 ("Setdown"), OP presented the OP Setdown Report. (March 27, 2017 Transcript ["Tr. 1"] of the

Commission's Regular Public Meeting at 32-47.) The Commission then requested additional information from the Applicant. (*Id.*; *see also* FF ¶ 69.)

15. On April 25, 2017, the Applicant filed its pre-hearing statement ("PHS"), which included updated plans and information in response to the requests from OP and the Commission. (Ex. 16.)

16. Notice of the public hearing for Z.C. Case No. 05-28Q was published in the *D.C. Register* on May 5, 2017 (64 *D.C. Reg.* 67361) and was mailed to the ANC and to owners of property within 200 feet of the Property. (Ex. 18-20.) On May 9, 2017, the Applicant posted notice of the public hearing at the Property. (Ex. 21.) On June 14, 2017, the Applicant filed an affidavit describing the maintenance of such posted notice. (Ex. 30.)

17. Pursuant to the Zoning Regulations, 11-X DCMR ("X") § 405.3,[2] OP requested comments on the Project from the District Department of Consumer and Regulatory Affairs ("DCRA"); Department of Employment Services ("DOES"); Department of Energy and the Environment ("DOEE"); Department of Health; the Department of Housing and Community Development ("DHCD"); Department of Parks and Recreation; District of Columbia Office on Aging; District of Columbia Public Schools; District Department of Transportation ("DDOT"); Fire and Emergency Medical Services; Metropolitan Police Department; DC Water; and the Washington Metropolitan Area Transit Authority. (Ex. 15 at 15.) On May 11, 2017, OP held an interagency meeting, inviting representatives from numerous agencies. (Ex. 29 at 11.)

18. On May 19, 2017, the Applicant filed a comprehensive transportation review ("CTR") for the Project. (Ex. 25.)

19. On May 30, 2017, the Applicant filed its supplemental pre-hearing statement ("Supplemental PHS"), which included additional updated plans and drawings, and further information in response to the requests for the OP and the Commission. (Ex. 27.)

20. On June 9, 2017, OP and DDOT each submitted a final report dated June 9, 2017 (respectively, the "OP Final Report" and "DDOT Report"). (Ex. 28, 29.)

21. On June 16, 2017 the Applicant filed a motion for a waiver of the 20-day period required pursuant to Subtitle Z, § 401.5 to submit information into the record in response to the OP Final Report, the DDOT Report, and the ANC. (Ex. 34.)

22. On June 16, 2017, Applicant filed its responses to agency reports ("Responses"). The Responses included revised proposed flexibility, revisions to the

[2] This Application proceeds under the provisions of the Zoning Regulations in effect as of September 6, 2016. Accordingly, the provisions of 11 DCMR §§ 2407.3 and 2408.3 are inapplicable to the instant proceeding.

transportation demand management plan ("TDM Plan"), and an amendment to the community benefits agreement (as so amended, the "CBA"). (Ex. 33.)

23. On June 19, 2017, the ANC, which is automatically a party to this proceeding, filed a report ("ANC Report"). (Ex. 48-50.) The ANC Report stated that the ANC had voted in support of the Project by a vote of 5-0, on the condition of continued collaboration between the parties. (Ex. 48.) No requests for party status were filed in this proceeding.

24. On June 19, 2017, the Commission conducted a public hearing in accordance with Subtitle Z of the Zoning Regulations on Z.C. Case No. 05-28Q. (June 19, 2017 Transcript ["Tr. 2"] of Z.C. Case No. 05-28Q at 3-4.)

25. As a preliminary matter prior to Applicant's testimony, the Commission accepted the following Applicant's witnesses as experts: Mr. Brian Earle in architecture; Mr. Robert Schiesel in traffic engineering and design; and Mr. Otto Condon in urban design. (*Id.* at 5-6.)

26. At the Public Hearing, the Applicant provided testimony from Mr. Jonathan Novak, (*id.* at 11–17); Mr. Condon, (*id.* at 17-21); Mr. Earle, (*id.* at 21-31); and Mr. Schiesel, (*id.* at 31-35.) These witnesses also answered questions from the Commission. (*Id.* at 38-99, 125-41.) The ANC cross-examined Applicant's witnesses. (*Id.* at 96-99.)

27. OP testified and presented its report at the Public Hearing. (*Id.* at 99-101; Ex. 29; *see also* FF ¶ 77.) DDOT also testified and presented its report. (Tr. 2 at 101-03; *see also* FF ¶ 77.) Neither the Applicant nor the ANC cross-examined OP or DDOT. (Tr. 2 at 105.)

28. At the Public Hearing, the ANC testified, presented its resolution in favor of the Application, and answered the Commission's questions. (*Id.* at 106-19; *see also* FF ¶ 89-91.)

29. At the Public Hearing, Ward 7 resident Mr. Sheridan Fuller testified to express his "cautious support" for the Application, and answered the Commission's questions. (Tr. 2 at 120-125.)

30. No persons or organizations spoke in opposition to the Application at the Public Hearing. (*Id.*)

31. At the conclusion of the public hearing, the Commission closed the record with the exception of items requested from the Applicant and the ANC, and a request for Mr. Fuller's written testimony. (*Id.* at 141; *see also* Ex. 54.)

32. On June 26, 2017, the Applicant provided its list of final proffers and draft conditions pursuant to Subtitle X § 308.8. (Ex. 56.) On July 3, 2017, the Applicant

filed a written post-hearing submission ("Post-Hearing Submission") in response to items requested by the Commission. (Ex. 57.)

33. On July 10, 2017, the Applicant provided its final proffers and conditions and filed a draft order. (Ex. 60, 59.)

34. On July 24, 2017, the ANC filed a report. (Ex. 61.)

35. On July 24, 2017, the Commission took final action to approve the Application. July 24, 2017 Transcript ["Tr. 3"] of the Commission's Regular Public Meeting at page 22.

II. Summary of the Property and the Project

36. The Applicant seeks review and approval for the Project as a second-stage PUD with related modifications to the approved Parkside PUD for the development of the Project on the Property. (Ex. 2A.) The Application does not modify the formerly approved PUD-related Map Amendment ("Map Amendment"), which was approved as part of the Parkside PUD to change the zoning for the Property to the C-3-A Zone District from the R-5-A Zone District. (*Id*.)

Overview of the Property and Surrounding Area

37. The Parkside PUD is located in Ward 7, northwest of the intersection of Minnesota Avenue, N.E. and Benning Road, N.E. Parkside is surrounded by the Anacostia River and Kenilworth Park to the northwest, the existing Mayfair Mansions residential apartment complex to the northeast, the Anacostia Freeway (Highway 295) and the Orange Line tracks to the southeast, and the former Pepco plant to the southwest. The Property is located midblock along the southeast boundary of the Parkside PUD and is part the large, currently vacant, "superblock" located between Kenilworth Terrace, N.E. and Parkside Place, N.E. The Property is currently entirely vacant.

38. The Property, Parcel 9 of Block F in the original Parkside PUD layout, is located at the center of Parkside. (*Id.* at 10.) Three of the four surrounding blocks are also currently unimproved, and the fourth contains the existing Community Green. (*Id.*) Although the Property and surrounding blocks are unimproved, Parkside already has streets, sidewalks, and other infrastructure in place to serve the many townhomes, apartments, senior units, and schools already in the neighborhood. (*Id.*)

39. The Parkside PUD is partially constructed. Approximately 100 townhomes, 186 apartments, 98 senior housing units, and a healthcare clinic have been built. Approximately nine acres of the Parkside PUD site remains vacant land. (Ex. 2.)

40. The Property is surrounded by currently vacant lots and the Community Green. The vacant lots are the subject of pending and future second-stage PUD

applications. (*See* Z.C. Case Nos. 05-28R, 05-28S, and 05-28T.) Immediately northeast of the Property, the Parkside PUD contemplated residential uses that have not yet been approved but that are part of a second-stage PUD application pending before the Commission in Z.C. Case No. 05-28S. Southwest of the Property, the Parkside PUD contemplated residential uses that have not yet been approved but that are part of a second-stage PUD application pending before the Commission in Z.C. Case No. 05-28R. The property included in Cases No. 05-28Q (referred to as Parcel 9), 05-28R (referred to as Parcel 8), and 05-28S (referred to as Parcel 10) comprise the entirety of Block F, as it was defined in the Parkside PUD. Opposite the Property along Kenilworth Terrace, N.E. is Parkside's Block H, which is the subject of an existing second-stage PUD application that is expected to contain a mix of office and retail uses. (*See* Z.C. Case No. 05-28T.) Further east of the Property is the Kenilworth Avenue, N.E./Anacostia Freeway/Orange Line corridor which creates a significant barrier between the Property and other land uses even further to the east. The surrounding undeveloped blocks are all controlled by the Applicant or affiliates of the Applicant and are expected to be constructed roughly contemporaneously with the proposed Project.

41. Land uses in the vicinity of the Property include a former Pepco plant, the Educare early-childhood educational facility, Neval Thomas Elementary School, Cesar Chavez Public Charter School, Metrotown apartments and townhomes, and the Parkside townhomes, which were constructed in the 1990s. Two blocks north of the Property are the Mayfair/Paradise multifamily rental communities. Eastland Gardens is located approximately one-half mile to the north of the Property.

42. The Property has vehicular access to the Baltimore/Washington corridor via Highway 295, a six-lane highway that provides convenient access to downtown Washington, to Route 50 and points east, to the Baltimore-Washington Parkway to Howard County and Baltimore, and to the Capital Beltway. The Minnesota Avenue Metrorail Station, with Orange Line service, is located immediately across Highway 295 from the site, within walking distance over a pedestrian bridge ("Bridge") that connects to the Metrorail Station. The Minnesota Avenue Station is seven stops (i.e., approximately 10 to 15 minutes) on the Orange Line from the Metro Center Station. In the opposite direction, the Orange Line runs to New Carrollton, a major employment center for Prince George's County, Maryland. (*Id*.) Two Metrobus lines, the U5 and U6, serve Parkside directly, and numerous other lines serve the nearby Minnesota Avenue, N.E.

43. Parkside is well-served by outdoor space, with thousands of acres of nearby protected parkland, including Kenilworth Aquatic Gardens, Anacostia Park, and the National Arboretum and Kingman Island forming a large, continuous, green space and recreational complex. The Anacostia Riverwalk Trail is under expansion, and approximately 15 miles of the 28-mile trail system are open today. The Parkside Community Green is also nearby.

44. Commercial uses predominate along Minnesota Avenue, N.E. to the northeast and southeast of the Property, and the heart of the Benning neighborhood to the southeast contains the East River Park Shopping Center with a public library, a grocery store, and pharmacy as well as other shops and restaurants. Parkside itself, like the adjacent residential blocks, contains no significant retail other than a single convenience store along Kenilworth Terrace, N.E.

45. Apart from other blocks of Parkside and the schools mentioned above, several other developments are currently planned or have recently been constructed. These include the construction of the first phase of the DOES Government Center, which Center consists of 230,000 sf of office space and first-floor retail. The Park 7 project near the Minnesota Avenue Metrorail Station contains 376 affordable rental units and approximately 20,000 sf of retail space with construction completed in 2014. Also nearby are: (i) a 172 rental unit-development known as Lotus Square; and (ii) a development containing 125 affordable townhouses along with public housing units known as MetroTowns at Parkside, both of which were completed in the recent past.

Parkside PUD

46. Parkside has been adopted by America's Promise Alliance, a coalition of over 400 national organizations working collaboratively to bring comprehensive education and social services to underserved communities based upon the Harlem Children's Zone model. (*Id.*) The Parkside community was accepted into the federal Promise Neighborhood Program with a $25 million grant from the US Department of Education in December 2012, which is the centerpiece of former President Obama's urban initiatives. (*Id*. at 12-13.) The Promise Neighborhoods Program seeks to engage all resident children and their parents into an achievement program based on tangible goals, including matriculation to college for each and every participating student, positive physical and mental health outcomes for children, and parenting classes. (*Id*. at 13.) The program also seeks to provide employment training and counseling to provide meaningful employment opportunities for the parents. (*Id*.)

47. The Parkside PUD was approved prior to September 6, 2016, and accordingly, pursuant to Subtitle A of the Zoning Regulations, the substantive requirements of the 1958 Zoning Regulations ("ZR58") apply to the Project, except as the Parkside PUD is modified.

48. In sum, once the modifications to the original approval are accounted for, the final Parkside PUD approval allows approximately three million sf of GFA: approximately 43,000 sf of health care uses, 260,000 sf of educational uses, 750,000 sf of commercial uses, and approximately two million sf of residential uses. (Ex. 2 at 2.) Prior to this Order (including the three pending cases cited above), the Commission approved 1.15 million sf of residential use and approximately 43,000 sf of health care use. (Ex. 2 at Appendix 2.)

49. The Parkside PUD approves the overall massing and program for the Parkside PUD site and set forth parameters for each of the site's building blocks, including Block F, which is the subject of the instant order. The Parkside PUD approved the following parameters with respect to Block F in total: Number of Units – 330-365; Lot Occupancy – 47.4 percent;[3] GFA – 444,825 sf; FAR – 3.13[4]; Height – 72-90 feet; and Parking – 485 surface parking spaces. (*Id.* at 7.)

50. In the Parkside PUD (which was approved three days after the adoption of the Inclusionary Zoning ["IZ"] regulations), the Applicant proffered a commitment, which the Commission accepted, to set aside 20% of the residential component of the overall Parkside PUD to be affordable for households at 80% AMI and an additional 20% of the overall residential component to be affordable for households at 80-120% of AMI. To date, the Applicant and its affiliates have constructed 384 total units, of which 284 (74%) are affordable at 60% AMI (i.e., at a deeper level of affordability than is required under the Parkside PUD, which required only that units be affordable at 80% AMI); 42 (11% of the total) are affordable at 80-120% AMI; and 58 (15% of the total) are market rate. (Ex. 3 at p. 16, n. 7.) Upon completion of the Project and including the new units added by the Project, 44% of the units in the Parkside PUD will be market-rate units. (Ex. 16, Tr. 2, p. 8.) The Commission finds that Parkside's mixed-income housing and mixed-use approach, of which the Project is a key element, is essential for attracting a mix of commercial uses to the Parkside neighborhood. (Ex. 3 at 5-6.) The Commission agrees with the OP's assessment that the inclusion of office space would further policies related to the provision of business and employment opportunities, and make the retail space that is desired for the neighborhood more viable. (Tr. 1 at 36.)

The Project

51. Overview. The Project consists of two new buildings containing a mix of retail, residential, and office uses, plus approximately 141 below-grade parking spaces and 10 sidewalk parking spaces shared among the uses on the Property. (Ex. 3 at 2; Ex. 3(I)(2).) One building will contain approximately 76 residential units (with approximately 20% of the units reserved as workforce housing). (*Id.*) The other building will contain office space. Both buildings will contain ground-floor retail. (*Id.*)

52. The Project that is the subject of this second-stage Application contains two buildings, one office and one residential, and both with ground-floor retail, and approximately 141 below-grade parking spaces. The office building will have a maximum height of 90 feet and the residential building will have a maximum height of 85 feet.

[3] Under the Parkside PUD, Lot Occupancy was calculated using area of the individual building blocks rather than lot area.

[4] As noted above, the first-stage PUD FAR of 3.13 was calculated based on the block area. Using lot area, the first-stage PUD FAR is 3.32.

53. The Applicant presented evidence that development in the Parkside neighborhood has led to sufficient critical mass of residents to support the proposed new retail uses. The development of office uses at the site will further support new retail by providing a daytime commercial use. The retail will be located on a new vehicular and pedestrian promenade that runs through the site and provides a direct connection between the central Community Green and the planned pedestrian bridge ("Bridge") from the Minnesota Avenue Metrorail station. The primary rationale for this phase of the development of Parkside are the addition of retail and office uses, the construction of additional multi-family units, and the activation of the keystone Parcel 9 at the center of the neighborhood, with its prominent linkage to the planned pedestrian walkway to the Metrorail station.

54. The Project's site plan addresses its important context in the Parkside neighborhood. The plan for Parcel 9 calls for two seven-story buildings separated by a promenade ("Promenade") that has a flexible relationship between pedestrian space and vehicular space. The Promenade links the Community Green and the greater Parkside neighborhood to the future Bridge. The placement of buildings of roughly equal height and mass on either side of the Promenade creates a framing effect that heightens the significance of the Community Green and signifies an arrival into the Parkside neighborhood. The near symmetry of the two buildings, offset slightly because of their differing uses, reinforces the nearly uniform grid of the neighborhood and recalls Parkside's classical street plan. Parking and loading access have been relegated to the periphery of this block with the primary urban design emphasis being the axial connection between the Community Green and the planned pedestrian pathway to the Metrorail station. The two buildings form strong edges along each of the surrounding streets, creating defensible boundaries and a strong sense of place and hierarchy. The two buildings have rectilinear configurations with more significant setbacks from Kenilworth Terrace, N.E. which is anticipated to be commercial in nature, than from Parkside Place, N.E., which will have a more residential character given its proximity to the Community Green. The size of the two proposed buildings also establishes a sense of commercial significance to Parkside when viewed from the adjacent Anacostia Freeway, serving as an indication that the neighborhood is maturing. The height and density of the two buildings is fairly uniform across the Property, with embellishments, articulation, and materials used to create visual interest and significance.

55. The Project's height and mass are appropriate relative to the existing context and the planned development of Parkside. The two buildings are each carved back at the upper levels on the Community Green side of the Project, in a gesture to the residential character of that portion of the neighborhood. Contrastingly, the two buildings rise to their full posture on Kenilworth Terrace, N.E., with the intent that the Project will contribute a strong presence on that street in anticipation of future commercial phases. The two buildings approximately mirror each other in height and mass, with the office building being slightly (five feet) taller and somewhat more massive given the market demands for broader floorplates for office uses

relative to residential ones. Parcel 9 has an overall density of approximately 3.81 FAR and will contain approximately 207,759 square feet. For comparison, the Parkside PUD authorized a maximum density of 3.13 FAR for Parcel 9. The FAR of 3.13 was based on the block area for Block F, whereas the 3.81 FAR for Parcel 9 is based on the lot area. Using the lot area, the first-stage PUD density is 3.32 FAR. As noted above, the office building will be approximately 90 feet and the residential building approximately 85 feet.

56. The Project is consistent with the Zoning Regulations and Parkside PUD with respect to other development standards, except as noted below. The Project will occupy approximately 55.4% of the overall lot area, which is slightly greater than what was contemplated (47.3%) in the Parkside PUD for all of Block F. As a result of this increase, the Applicant required a modification from the Parkside PUD with respect to lot occupancy.[5] Neither front nor rear yards are required for the Property (the Property is a through lot), and none are provided here. Two side yards, each 24 feet, are provided, and comply with the requirement that such yards be two inches for each foot of height. The Project includes three open courts, all of which comply with the Zoning Regulations.

57. The rectilinear form of each building creates significant efficiencies for the Project overall. The office building features a broad, approximately 18,400 square foot floorplate surrounding an elevator and stair core on each of the six upper levels. Likewise, the residential building has a single double-loaded corridor on each upper level. Each building has its main lobby entrance off of the Promenade between the two buildings, a design that encourages pedestrians to engage with the common space between the two buildings. Retail uses wrap the ground floor along both Parkside Place, N.E. and Kenilworth Terrace, N.E. Bike storage is provided at ground level in both buildings. Part of the Applicant's strategy with respect to neighborhood transportation issues is to encourage Parkside residents, especially future residents, to utilize non-automotive forms of transportation. Giving bicycles a prominent location in the Project at-grade opposite the Community Green sends a clear signal that bicycles are a priority transportation mode. By locating the Project's bicycle storage room at-grade with windows similar to those found on a retail storefront, the increased visibility will encourage engagement and adoption among the residents. This design is in line with studies that have shown that more visible bike storage leads to increased adoption.

58. The residential building contains a mix of studio, one-bedroom, one-bedroom plus den, and two-bedroom units. The residential building also has ample dedicated amenity space for resident events, and both buildings have occupiable outdoor rooftop terraces.

[5] The 47% from the first-stage PUD was calculated using the Block area, whereas the 54% is calculated from the lot area. Using the lot area, the first-stage PUD lot occupancy for Block F would be 50.2%.

59. The Applicant has made a significant commitment to providing affordable housing as part of the overall Parkside development, and has to date delivered residential units available to a mix of incomes.[6] Accordingly, the Applicant is ahead of schedule with respect to satisfying the Parkside PUD's affordability requirements, and as such, this Application's residential building contains only workforce units and not any affordable units.

60. The approach to the design of each of the Project's buildings creates a connection between function, massing and building expression through materials, detailing and scale. While each of the two buildings are treated differently, the overall approach develops building expressions that complements the surroundings context and anticipates the overall development of the neighborhood as it transitions from a smaller scale, less dense residential community into an active, safe, mixed-use and urban-focused environment as described below:

    (a) The overall form of the residential building emphasizes the pattern of the unit windows while incorporating larger modulations on the longer south and north façades that break down the buildings mass. At grade level, façade modulation is achieved through a careful balance of brick, and storefront glazing systems supporting an active pedestrian experience; and

    (b) The office building intentionally creates a larger, more civic presence with a fenestration aesthetic that draws on a simpler, larger scale grid pattern formed with cement panels and fixed window elements. In an approach similar to the residential building, façade modulation is concentrated at the grade level and rooftop areas featuring contrasting materials emphasizing the main form and discrete elements. The grade level façade is a highly transparent storefront system that visually connects the interior to the exterior creating the sense of interior spaces as an extension of the pedestrian environment. The rooftop modulation accentuates terrace areas with green roofs that breaks down the building mass towards the park and residential neighborhood.

61. Landscaping. The Project features landscaping at grade and on the rooftop of the office building. The central landscape feature at grade, and indeed the organizing principle of the site plan, is the Promenade through the center of Parcel 9. This Promenade accommodates both vehicles and pedestrians, with an emphasis on functioning as a shared space that is able to be flexibly closed and opened for special events, such as markets and festivals. The Promenade creates the vital pedestrian linkage between the Community Green and the Bridge. The Promenade features street trees and other ground level vegetation, which serve dual purposes of beautification and stormwater control. Street trees and vegetation also line Parkside Place, NE and Kenilworth Terrace, N.E. adjacent to the Project.

[6] To date, the Applicant has delivered 384 residential units, of which 286 are reserved at affordable (60% AMI) levels and 42 at workforce (80-120% AMI) levels; that is, 85% of the units delivered to Parkside thus far have been affordable or workforce units.

Vegetation is provided at the rooftop level as a green amenity for building occupants and for the environmental benefits. Innovative and artistic fixtures are employed to give the Project a unique character.

62. Parking and Loading. The Project includes a unified below-grade garage expected to contain approximately 141 parking spaces. Ten additional parking spaces are provided at grade along the Promenade. Eighty long-term bicycle parking spaces are provided in secure rooms at grade, and an additional 32 short-term spaces are provided in public space around the perimeter of the Project's two buildings. The Applicant anticipates constructing the garage with knock-out walls to allow connection to future below grade garages on the adjoining Parcels 8 and 10. Access to the garage and loading areas is via alleys at the periphery of the project, which alleys are also shared with Parcels 8 and 10. The existing curb cuts on the Property are relocated to accommodate the proposed configuration. Two new curb cuts are added to allow the proposed Promenade at the center of the Project. The Project's loading is entirely enclosed and does not necessitate any truck backing up into public right of ways. However, the Project does not provide the requisite number of loading berths and delivery areas required under the Zoning Regulations. Accordingly, the Application requires relief with respect to loading.

63. LEED. This Project is designed to the level of LEED-Gold for both the office building and the residential building.

Modifications to and Consistency with the Parkside PUD

64. The Project is consistent with the general parameters established for Block F in the Parkside PUD, but differs slightly with respect to certain elements. Therefore, this Application seeks modifications to the Parkside PUD. The elements of the Project that differ from the Parkside PUD include:

(a) Use: The first-stage PUD did not contemplate office use on the Property. After study, the Applicant presented evidence that locating at least some office use on the Property is essential to allowing the ground-floor retail to succeed and that the timing is appropriate for establishing office uses as part of this phase of development;

(b) Gross Floor Area/Floor Area Ratio: The first-stage PUD contemplated 151,200 square feet for Parcel 9, whereas 207,759 square feet are now proposed. The density contemplated under the first-stage PUD would have resulted in an FAR of 3.13,[7] whereas the Project will have an FAR of approximately 3.81 (for Parcel 9 only);

[7] As noted above, the first-stage PUD FAR of 3.13 was calculated based on the block area. Using lot area, the first-stage PUD FAR is 3.32.

(c) Lot Occupancy: The first-stage PUD authorized a lot occupancy of 50%[8] for the entirety of Block F, whereas the Project will have a lot occupancy of 55.4%. The reduced lot occupancy is primarily a result of the conversion of one of the two buildings to office use and the concomitant enlargement of the floor plate of such building to satisfy market demands for office layouts; and

(d) Parking: The first-stage PUD approved 114 surface parking spaces for Parcel 9, whereas the Project will provide 141 below-grade parking spaces plus 10 on-street spaces along the Promenade.

65. These modest proposed modifications are consistent with the overall massing, development envelope, policy objectives, impacts, consistency with planning objectives, character, and appropriateness of the Parkside PUD, and were undertaken following detailed studies of the Project's site plan, architecture, landscaping, and transportation as well as current market conditions.

66. The Applicant and the Project are in compliance with the conditions of the Parkside PUD as follows:

(a) Condition 1: As part of the Application, the Applicant formally confirmed the Map Amendment to rezone the Property from the underlying R-5-A Zone District to the C-3-A Zone District;

(b) Condition 2: The Application is largely consistent with the concepts the Commission approved in the Parkside PUD, subject to the modifications requested herein regarding the proposed uses, lot occupancy, GFA/FAR, and parking;

(c) Condition 3: The Project demonstrates further development and refinement of the concepts and massing submitted in connection with the Parkside PUD. The Public Benefits are consistent with those proposed during the Parkside PUD;

(d) Condition 4: The Project is consistent with the overall dimensional limits set forth in the Parkside PUD Conditions, as modified in Z.C. Order No. 05-28E. The Project is consistent with the maximum height limits allowed pursuant to the Parkside PUD. A construction schedule for the Bridge is expected to be issued in 2017. Construction of the Community Green is complete;

(e) Condition 5: Not applicable to this Application;

[8] As noted above, the first-stage PUD lot occupancy was calculated using the block area rather than the lot area. In the first-stage PUD, the block lot occupancy for Block 9 was 47%.

(f) Condition 6: Not applicable to this Application. The Project does not include any affordable housing. The Applicant has previously provided updates on its provision of affordable housing and is significantly ahead of its obligations with respect to this Condition;

(g) Condition 7: The Project includes workforce housing units.

(h) Condition 8: Landscape plans, and detailed architectural plans and elevations are included in the Final Plans;

(i) Condition 9: Not applicable to this Application. This analysis was addressed in prior first-stage and second-stage applications;

(j) Condition 10: The Applicant provided the CTR in fulfillment of this Condition;

(k) Condition 11: This Application addresses the design and anticipated use of the Promenade at the center of the Property in (a) of this Condition. The Applicant has previously given to DDOT a 45-foot-wide easement at the center of the site as part of the retail plaza. In a prior second-stage application, the Applicant submitted plans regarding buffering the Pepco site;

(l) Condition 12: Not applicable to this Application. The Applicant is not including for-sale affordable residential units in connection with this Application;

(m) Condition 13: This Application has been filed prior to October 3, 2017. This condition has been satisfied;

(n) Condition 14: The Applicant is developing Parkside in phases. The Application is one phase of the 10 building blocks that were approved during the Parkside PUD; and

(o) Condition 15: This Condition is restated as a Condition of this Order.

Community Outreach

67. The Applicant engaged in significant outreach to the surrounding community prior to and after the Public Hearing. The Project reflects the extensive Applicant-led community outreach. The Applicant undertook extensive outreach as part of the first-stage PUD process, and that outreach continues as Parkside comes to fruition as a fully realized neighborhood. The ownership team has continued to meet with the community, as well as government representatives from the OP (on November 22, 2016), DDOT (on December 13, 2016). The Applicant met with the ANC at its next meeting on February 14, 2017, and with the Parkside Civic Association on February 16, 2017, and has engaged in considerable efforts to

engage and inform the nearby residents and other affected and interested stakeholders. The Applicant continued its dialogue with the ANC and the community more generally after the Public Hearing, including, but not limited to, attending a special meeting of the ANC on June 28, 2017. The preferences and desires of numerous community groups and individuals shaped the Project's Public Benefits as evidenced in the Community Benefits Agreement with the ANC 7D for Parkside.

Summary of Public Benefits

68. The Commission approved a package of public benefits in its evaluation of the Parkside PUD ("Parkside Public Benefits") and determined those Benefits appropriately balanced the flexibility requested during the PUD process. The Parkside Public Benefits include: (a) provision of affordable housing in 20 % of the residential component of the Parkside PUD; (b) provision of workforce housing in 20% of the residential component of the Parkside; (c) superior site planning including the provision of the one-acre Community Green and four additional acres of landscaped and/or hardscaped areas; (d) superior urban design; (e) provision of easements for pedestrian access to the Bridge as well as a $3 million dollar contribution to the Bridge itself; (f) provision of transit-accessible jobs and training for Parkside residents; (g) conservation of natural resources and completion of the LEED-ND certification; and (h) other uses of special value to the community and the District as a transformational, mixed-use, mixed-income, transit-oriented development in Ward 7. As noted above, the Parkside Public Benefits were approved under ZR58. The Applicant has expanded upon and refined the Parkside Public Benefits in this Application. More specifically, the Applicant has proffered the following Public Benefits: (a) superior urban design, architecture, and landscaping; (b) efficient site planning; (c) transportation infrastructure and mass transit improvements; (d) environmental and sustainable benefits; (e) uses of special value to the neighborhood or the District as a whole; (f) other benefits that substantially advance the Comprehensive Plan; and (g) streetscape improvements.

III. Commission Comments and Questions

69. On March 27, 2017, following review of the Initial Statement, at Setdown the Commission provided comments on the Application and requested that the Applicant: (a) provide a comparison between what was originally approved in the first-stage PUD approval and what was proposed at the second-stage; (b) consider design modifications for the residential building that would make the building appear more residential in character, and consider including balconies and changing use and/or color of fiber cement panels in the building; (c) consider additional environmental enhancements, such as a green roof or solar panels, on the roof of the residential building; (d) provide information regarding the necessity of IZ compliance in light of the Application's modifications to the Parkside PUD and provide information on the status of the Parkside PUD's

provision of affordable housing through the instant Application; (e) provide information regarding the introduction of a new use (*i.e.*, office) in the second-stage application that was not included in the first-stage application in light of the Comprehensive Plan.

70. In response to the Commission's comments and questions at Setdown, the Applicant provided, in its PHS, and Supplemental PHS, and at the Public Hearing, the following:

(a) Comparison of First-Stage Approvals and Second Stage Applications. In the PHS, Applicant provided a detailed overview of the parameters of the approved Parkside PUD. (Ex. 16A.) Applicant also provided information regarding the second-stage applications, including the instant Application, which had followed from the Parkside PUD. (*Id.*) Applicant further provided comparisons of the first-stage approved design and second-stage approved or proposed designs and modifications for Blocks A through I. (*Id.*) In the Supplemental PHS, Applicant provided further illustrations of the differences between the approved first-stage plans and the proposed second-stage plans; (Ex. 27A.)

(b) Design Modifications for the Residential Building. In the PHS, the Applicant provided revised plans in response to Commission comments at Setdown. The design revisions included: (i) a warm accent color to distinguish the residential building from the office building; (ii) additional inset balconies in the residential building to further enhance its residential character; (iii) a change in the design and color of the windows of the residential building to further distinguish it from the office building; and (iv) additional information regarding proposed materials for the buildings. (Ex. 16.) In the Supplemental PHS, Applicant provided further refined designs, including revisions to the façade of the residential building to further enhance the residential appearance of the building. (Ex. 27; Ex. 27A.) The Applicant provided additional explanation of the modifications to the residential building at the Public Hearing; (Tr. 2 at 25-31, 50-56.)

(c) Environmental Enhancements. In the Supplemental PHS, the Applicant referred the Commission to its commitment to pursue a LEED-Gold level of design for both buildings and provided updated LEED scorecards. (Ex. 27; Ex. 27A4.) Applicant also stated it was continuing to research the feasibility of including solar panels on the residential building; (Ex. 27.)

(d) Necessity of IZ Compliance. The Commission agrees with the Applicant that this project is not subject to IZ because the Parkside PUD was set down prior to March 14, 2008, and is therefore exempt from IZ under 11

DCMR § 2608.2[9], which provides that IZ does not apply to buildings set down before that date.

In some instances, the Commission has found that a PUD modification can trigger IZ when the modifications are so great that the modified project is not the same "building." This is because the exemption rule states that IZ "shall not apply to any building approved by the Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008." (11 DCMR § 2608.2.) Thus, if the Applicant is no longer developing the same building, it no longer qualifies for the exemption.

In this case, there are some relatively significant changes to the office building, but the uses in the office building do not trigger any inclusionary zoning requirements. The residential building on Parcel 9 include uses that would trigger an IZ requirement, but the changes Applicant seeks through the modification are relatively minor, and do not include any additional residential gross floor area. The Commission therefore considers the residential building on Parcel 9 the same "building" the Commission approved previously, and for purposes of determining whether the modification triggers an IZ requirement under 11 DCMR § 2608.2, and finds that it remains exempt from IZ; and

(e) Information Regarding Introduction of Office Use at Second-Stage Approval. In its Supplemental PHS, the Applicant presented two examples of developments that proceeded pursuant to a PUD and that included an office use in an area currently designated as Medium Density Residential use on the Comprehensive Plan's Future Land Use Map ("FLUM"). The Applicant further stated, as it had previously, that the inclusion of office use is supported by the Comprehensive Plan's goals of commercial and economic development. (Ex. 27.) In the OP Final Report, the OP expressed support for the office use, and stated that the office use was consistent with the Comprehensive Plan and the FLUM. (Ex. 29 at 4.)

71. At the Public Hearing, the Commission questioned Applicant regarding: (a) the total amount of office versus retail space for the current proposed Parkside PUD; (b) the methodology of calculating market-rate parking and the facilities that were used to calculate market-rate; (c) the provision of solar panels on residential building, and logistics of allocating solar panel space to future residents; (d) the location of workforce units within the residential building; (e) other developments in the District that have street-level bicycle storage facilities; (f) the design and materials of the buildings; (g) the adoption of DDOT's proposed conditions; (h) the potential application of IZ requirements, and the Project's compliance with

[9] The Project has vested development rights and is therefore subject to the 1958 Zoning Regulations. (11-A DCMR §102.3(a).)

IZ; (i) potential tenants for the office building; (j) the size and location of retail space; (k) potential tenants for retail space; (l) language regarding the requested design flexibility in regards to exterior building materials; (m) traffic impacts; (n) division of parking among various uses at the Project; and (o) the make-up of the Project team.

72. The Commission finds that the Applicant responded completely to the Commission's questions at the Public Hearing as follows:

(a) Office versus Residential Uses in Parkside PUD. The Applicant explained that the office component of the Parkside PUD will ultimately likely increase over the amount originally approved as part of the Parkside PUD but the Applicant has not yet come close to exceeding the limit established in the Parkside PUD; (Tr. 2 at 39.)

(b) Calculation of Market-Rate Parking. The Applicant explained that the condition to establish the garage parking rates at no lower than nearby market rates was an industry convention and would be more meaningful in the future when other parking garages existed nearby. In its Post-Hearing Submission, the Applicant explained that the Minnesota Avenue Metrorail station park-and-ride garage located at 4000 Minnesota Ave., NE is within 0.25 miles (walking) of the Project's office building once the Bridge is complete. On weekdays, the park-and-ride garage's current daily rate is $4.60 and the current monthly rate is $65.00;

(c) Provision of Solar Panels/Green Roof. The Applicant provided evidence that the total rooftop area of the residential building available for solar is 4,500 square feet, which could accommodate up to 189 panels and produce a theoretical maximum of approximately 550,000 KW/h annually (which, for scale, equals approximately 25-30% of the electrical energy demand for the residential units in the building). The residential building will be constructed to contain the necessary infrastructure to accommodate future rooftop solar. Accordingly, the Applicant does not propose a green roof for this area. In lieu of providing a green roof on the condominium building, the Project provides the infrastructure necessary for the future installation of a photovoltaic array. Such infrastructure includes sizing the roof to support the increased load, a roof membrane warranted to support the installation of a ballasted array, and raceways from the roof to individual units and the building main electric room. This infrastructure eliminates many of the costliest barriers to installing such a system. At the same time, it allows the residential building's future condominium association ("Association") to procure an array in a manner that best suits their needs and the time of their choosing. This approach is beneficial for a variety of reasons including:

- It allows the Association to choose whether to purchase the array all at one time in a cooperative model, or to allow individuals unit owners to purchase panels at their election;

- If purchased cooperatively, the Association can choose whether to use the array to service common areas, individual units, or some combination thereof; and

- It allows the individual homeowners and/or the Association to take advantage of the Solar Renewable Energy Credit Program in the District.

In order to satisfy, in part, stormwater requirements applicable to the Project, the office building includes green roof rather than rooftop solar. The office building contains 6,500 square feet of green roof area plus outdoor roof terrace across two levels as an outdoor amenity space for building occupants. The provision of a green roof on the office building provides an overall greater environmental benefit and allows the Project's stormwater management requirements to be satisfied on-site. The Applicant has committed to construct the office building to the level of LEED-Gold and has studied sustainability measures for the building as a whole;

(d) Location of Workforce Units in Residential Building. The Applicant committed to following the distribution requirements of the IZ regulations with respect to the location of the Project's workforce housing unit; (Ex. 57.)

(e) Other District Buildings with Street-Level Bicycle Storage. Part of the Applicant's strategy with respect to neighborhood transportation issues is to encourage Parkside residents, especially future residents, to utilize non-automotive forms of transportation. Giving bicycles a prominent location in the Project at-grade opposite the Community Green sends a clear signal that bicycles are a priority transportation mode. The Commission finds that, by locating the Project's bicycle storage room at-grade with windows similar to those found on a retail storefront, the increased visibility has the effect of encouraging engagement and adoption of bicycle use among the residents. The Applicant provided examples in the District where secure, indoor bicycle storage is successfully included at the ground level. The Project is well-served by the Anacostia River Trail, which the Applicant hopes will serve as a meaningful bicycle connection for Parkside much as the MBT does for the NoMA neighborhood;

(f) Refinements to Building Designs. The Applicant explained the changes to the Project so that the residential building reads more clearly as such. (Tr.

2 at 50-52.) In the Post-Hearing Submission, the Applicant provided additional information on materials; (Ex. 57.)

(g) Adoption of DDOT Proposed Conditions. The Applicant committed to adopt DDOT's conditions with respect to TDM; (Tr. 2 at 56-57.)

(h) Potential Application of IZ Requirements. The Applicant provided a response that the Project's modification triggered IZ only with respect to the office building and that this position had been discussed with OAG. (Tr. 2 at 59; *see also* FF ¶ 70(d).) The Applicant confirmed that the office building's penthouse would not trigger the affordable housing contribution requirements because it does not meet the minimum size of 1,000 square feet. (Tr. 2 at 60.) The Post-Hearing Statement includes additional information on the size of the office building's penthouse; (Ex. 57.)

(i) Potential Tenants for the Office Building. The Applicant confirmed that it did not have specific tenants yet for the office building but that it was marketing the building to community-serving groups in Ward 7 and beyond, many of which currently occupy space designed for retail uses rather than office space. (Tr. 2 at 61-62.) The Applicant confirmed that the Project was designed to be constructed in a single phase given the below-grade garage; (*Id*.)

(j) Size and Location of Retail Space. The Applicant confirmed that the retail was divided unevenly among the Project's two buildings, with approximately 5,800 sf in the residential building and approximately 10,900 sf in the office building; (*Id*. at 63-64.)

(k) Potential Tenants for Retail Space. The Applicant confirmed that the Project is expected to be the first Parkside project to contain retail and that the Applicant had been in coordination with the community to identify their preferences for the type of retail included in the Project. (*Id*. at 64-66.) The Applicant further confirmed that identifying a small-footprint, fresh-food grocer was a priority; (*Id*.)

(l) Flexibility regarding Exterior Building Materials. In its Post-Hearing Submission, the Applicant proposed revised flexibility language incorporated herein as a Condition of this Order;

(m) Traffic Impacts. The Applicant provided a justification for continuing to develop in the Parkside neighborhood despite unresolved regional traffic issues; (Tr. 2 at 75-82.)

(n) Division of Parking among Various Uses. The Applicant included a plan showing the nesting of residential-restricted parking inside the garage; and (Ex. 27A.)

(o) Project Team. The Applicant confirmed that no one from the Project team was from Ward 7.

73. The Commission finds that the Applicant had thoroughly addressed its comments. The Applicant provided, in response to Commission's comments and questions, answers that are supported by substantial evidence contained in the record.

IV. Agency Reports and Testimony

Office of Planning

74. In the OP Setdown Report, the OP recommended that the Commission set the Application down for public hearing, and requested the following from the Applicant: (a) refinement and enhancement of the designs of each of the two buildings, including additional façade detail and enhancement of the building design to create a more interesting appearance to the buildings; (b) submission of a traffic study in advance of the Public Hearing; (c) consideration of additional green roof or solar panels on the residential building; (d) additional justification for opening the Promenade, which had been pedestrian-only under a previous design, to vehicular traffic; (e) information regarding the methodology that will be used to calculate the sale of the workforce units, and how workforce units will differ from market-rate units; and (f) submission of a LEED checklist for the office building and a Green Communities checklist for the residential building. (Ex. 15.)

75. In response to the OP Setdown Report, the Applicant provided the following:

(a) Design Modifications for the Residential Building. The Applicant's PHS and presentation the Public Hearing included information responsive to this request from OP; (*See* FF ¶¶ 70(b); 72(f).)

(b) Traffic Study. The Applicant timely filed the CTR.

(c) Green Roof or Solar Panels. In its Supplemental PHS, Applicant stated it was continuing to research the feasibility of including solar panels on the residential building. (Ex. 27.) In its Post-Hearing Submission, the Applicant provided a detailed response regarding solar and green roof strategies; (Ex. 57; *see* also FF ¶ 72(c).)

(d) Information Regarding Opening of Promenade to Vehicles. In its PHS, the Applicant included information regarding the necessity of opening the Promenade to vehicle traffic to support the viability of the retail uses at the Promenade. (Ex. 16.) The Applicant provided a letter from Joe Falcone of Lincoln Property Company, the Applicant's commercial broker, which explained the importance of vehicle access for the success of retail uses. (Ex. 16C.) The Applicant further stated that DDOT supported opening the

Promenade, in part to avoid the creation of a superblock with limited vehicle porosity; (Ex. 16.)

(e) Information Regarding Pricing and Design of Workforce Units. The Applicant provided information regarding pricing calculations for the workforce units; and (Ex. 16B.)

(f) Submission of LEED Checklists. In the PSH and Supplemental PHS, the Applicant provided LEED checklists, reiterated its previous commitment to pursue LEED-Gold level designs for both buildings, and provided updated LEED scorecards. (Ex. 16D3; 27; 27A4.)

76. In the Final OP Report, OP stated that Applicant had addressed all previous issues raised by the OP and the Commission at Setdown, and requested or recommended: (a) further information regarding the price of proposed workforce units in comparison to area market rates; (b) that the various design flexibility should be limited or refined; (c) that the Applicant revise certain façades; (d) the Project include a green roof and/or solar panels; (e) that the Applicant implement various TDM measures; (f) that the Applicant coordinate with UFA regarding protection or transplanting heritage trees on the Property; (g) provision of comparison of proposed workforce housing to area market rate housing. (Ex. 29 at 12.)

(a) Pricing Information. In its Responses, the Applicant noted the dearth of market-rate transactional information for new construction for-sale housing in Ward 7, the product type initially contemplated for the Project. The only recent comparables are the new three-bedroom market-rate townhouses on Blocks B and C which sold for between $400,000 and $470,000;

(b) Flexibility. With the Post-Hearing Submission, the Applicant substantially revised the flexibility in accordance with language approved by the Office of Attorney General and previously approved by the Commission; (Ex. 57.)

(c) Façade Design Revisions. In its Responses, the Applicant provided revisions to façade materials and further renderings depicting the exterior of the residential building; (Ex. 33D.)

(d) Provision of Green Roof or Solar Panels. As noted above, in the Post-Hearing Submission, the Applicant provided an explanation of its green roof and rooftop solar panel strategy;

(e) TDM Measures. The Applicant agreed to implement OP's recommendations in its TDM plan; (Ex. 33.)

(f) Coordinate with UFA Regarding On-Site Heritage Trees. The Applicant agreed to coordinate with UFA regarding protection or transplanting of five on-site heritage trees; and (Ex. 33.)

(g) Provision of Comparison of Proposed Workforce Housing to Area Market Rate Housing. The Applicant provided a comparison of proposed workforce housing to area market-rate housing. (Ex. 33.)

77. At the Public Hearing, OP testified in support of the Project, and specifically in favor of the proposed modifications. (Tr. 2 at 99-101.) The OP stated that the Applicant had responded to issues raised by the Commission and the OP, and reiterated the OP's support of providing solar panels on the roof of the residential building. (Tr. 2 at 100.) OP further testified that the proposed office use was not inconsistent with the Comprehensive Plan. (*Id*.)

78. The Commission finds that the Applicant satisfactorily addressed all of OP's comments and questions. The Applicant has responded to OP's comments and questions with answers that are supported by substantial evidence in the record.

DDOT

79. The DDOT Report noted no objection to the Project, provided that the TDM plan is effectively implemented. The DDOT Report also noted certain post-hearing conditions. (Ex. 28.)

80. The Commission finds that the Applicant has addressed all comments and questions raised by DDOT. The Commission further finds that, as DDOT testified at the Public Hearing, because all comments and questions have been addressed, DDOT does not object to the Project.

81. The DDOT Report included numerous findings, which the Commission hereby adopts. The DDOT Report found that the Applicant utilized sound methodology and assumptions to perform its analysis.

82. The DDOT Report requested that the Applicant provide three electronic vehicle charging stations at the Project. The Applicant agreed and the Post-Hearing Submission shows the location of such stations. **(**Ex. 57A.)

83. The DDOT Report supported the implementation of the TDM plan which requires the Applicant to:

(a) Designate a TDM coordinator;

(b) Unbundle the cost of residential parking from the lease or purchase price of units;

(c) Charge market-rate prices for all garage parking;

(d) Provide bicycle parking facilities in accordance with or exceeding the Zoning Regulations;

(e) Provide TDM Materials to New Residents in the Residential Welcome Packet;

(f) Install a transportation information center display in the lobby of the residential building;

(g) Provide bicycle repair stations within the bicycle storage room of each building;

(h) Provide showers and changing facilities in the office building;

(i) Dedicate two parking spaces within the garage for car-sharing services; and

(j) Fund the installation of a new 19-dock Capital Bikeshare station and one year of maintenance.

84. To address potential traffic congestion at the intersection of Kenilworth Terrace and Nannie Helen Burroughs N.E., DDOT proposed, and the Applicant agreed to, the following mitigation conditions. The Applicant must:

(a) Fund the installation of hardware necessary to implement proposed traffic signal changes at the intersection of Kenilworth Terrace, N.E. and Nannie Helen Burroughs N.E., up to $25,000;

(b) Install a transportation information center display in the lobby of the office building;

(c) Unbundle the cost of parking from office leases; and

(d) Provide at least 20 additional feet of space within the proposed 19-dock Capital Bikeshare station to accommodate and additional eight docks if expanded in the future.

85. At the Public Hearing, DDOT testified that it supported the Applicant's proposed conditions, and that DDOT had no objection to the approval of the Application. (Tr. 2 at 101, 103.) At the Public Hearing, DDOT also addressed regional traffic issues affecting Ward 7. (*Id.* at 102-103.) DDOT testified that it was making improvements in Ward 7, including the addition of a second left turn lane on Nannie Helen Burroughs to Kenilworth. (*Id.* at 102.) DDOT also testified regarding ongoing improvements that are intended to relieve traffic in Ward 7. (*Id.* at 102-103.)

86. The Commission requested that DDOT appear before the Commission again regarding improvements being made in and around the area of the Project, and scheduled for DDOT to attend and testify at the Commission meeting on July 10, 2017.

87. The Commission finds that DDOT's reports and testimony were thorough and credible and helpful in considering the Application, and accordingly gives such testimony appropriate weight in reviewing the Application.

UFA

88. DDOT's Urban Forestry Administration ("UFA") submitted comments memorialized in the OP Final Report. (Ex. 29 at 12.) UFA noted that five heritage trees are located within the Promenade and that the proposed buildings may interfere with the root zones of such trees. It noted that it will continue to work with the Applicant in resolving this issue.

V. ANC Reports and Testimony

89. ANC 7D submitted two reports. The first report was submitted June 19, 2017. (Ex. 48.) It stated that the ANC 7D and the Applicant were engaged in a continuing dialogue to address concerns the ANC had about potential transportation and traffic mitigations, retail strategy and planning, activation of public spaces and parking, and that both parties were committed to continue the dialogue with the goal of a mutual agreement.

90. The second ANC 7D Report was submitted July 24, 2017. (Ex. 61.) It stated that the ANC and the Applicant had reached an agreement that addressed all of the ANC's concerns, and that at a properly noticed meeting with a quorum present, the ANC had voted unanimously to support the application without conditions.

91. At the public hearing, the ANC expressed concerns regarding three issues, namely: (a) transportation and traffic issues; (b) provision of retail within Parkside; and (c) the provision of community spaces and community infrastructure. (*Id.* at 110.) These items are addressed below in the Findings on Core Issues section of this Order. (*See* ¶¶ 95-96 ("Core Issues").)

VI. Persons in Support

92. At the Public Hearing, Ward 7 resident Sheridan Fuller spoke in favor of the Project, and also expressed some concerns regarding the impacts of the Project. (Tr. 2 at 120-123.) Specifically, Mr. Fuller expressed his concerns regarding: (a) traffic; (b) community spaces; and (c) impact on housing costs. Mr. Fuller's concerns are addressed in more detail along with concerns raised by opponents of the Project. (*See* FF ¶ 94.)

VII. Opponents' Concerns an Objections

93. The Commission received written testimony from 19 individuals or organization expressing concerns regarding the Project. (Ex. 11, 32, 35-47, 49-50, and 52.)[10] Most of these Form Objections expressed support for the arrival of retail development in the neighborhood and stated that the Project had, from their perspective, improved since the initial designs. The Commission has reviewed all of the testimony in the record and finds such testimony to be generally credible. The following paragraph identifies and addresses the concerns and objections in the Form Objections. These collective concerns and objections are grouped into categories (rather than addressed as individual items of testimony from each individual author) for review and analysis. A subset of such concerns and objections, together with certain of those raised by the ANC, are addressed in more detail in the Core Issues section of this Order.[11]

94. The Form Objections expressed concerns about the following categories of issues:

(a) Parking. One individual expressed concern about the Project's potential impact on parking. (Ex. 11.) The Commission relies on DDOT's report and finds that the Project provides adequate parking for the mix and amount of uses proposed. DDOT's report reflects the same conclusion. Moreover, the Commission finds that the Applicant's proffer to study parking concerns in Parkside as part of the Public Benefits ensures that any adverse Parking impacts are offset by the quality of such Public Benefits;

(b) Noise. One individual expressed concern about the Project's potential impact on noise. (Ex. 11.) The Commission finds that noise impacts from the Project are either capable of being mitigated as part of the Construction Management Plan or not unacceptable in light of the Projects' public benefits and the Parkside Public Benefits as a whole;

(c) Property Value Impacts. One email expressed concern about the Project's potential impact on lowering property values. (Ex. 11.) Another witness raised concerns that the Project will increase property values. (Tr. 2 at 122.) These concerns were reiterated in the Form Objections. The Commission finds that the Applicant's substantial commitment to providing affordable housing and workforce housing as part of Parkside as a whole and as part of the instant Project offsets any impacts on

[10] Sixteen of the emails are form in nature. (*See* Ex. 35-47, 49-50, and 52 ("Form Objections").) However, this does not diminish the consideration that the Commission gives the Form Objections upon review. This note is merely to explain that citations to individual letters are generally not provided herein because the concerns and objections summarized herein are generally attributable to all opponents.

[11] The Commission does not suggest that the contested issues addressed in this paragraph are immaterial. Rather, the designated Core Issues grouped below all warranted a greater intensity of scrutiny by the Commission and are grouped together with concerns raised by the ANC purely for organizational purposes.

surrounding property values. The Commission tends to disagree that the Project will decrease property values given the investment in converting a currently-vacant land to productive uses;

(d) Property Uses. One email stated that the Property should be used for green space, commercial space, or condominiums. (Ex. 11.) The Commission finds that Parkside provides green space, as required pursuant to the Parkside PUD, in the form of the Community Green. The Commission also notes that the Applicant has committed to assisting with opening up nearby lands under the control of the National Park Service to community use. (Ex. 27B.) This Project includes both commercial space (office and retail) as well as multifamily residential units that are proposed to be for-sale products. Accordingly, the Commission finds that these concerns are more than adequately addressed;

(e) Traffic. Transportation issues are addressed in the Core Issues below; (*See* FF ¶ 96(a).)

(f) Public spaces and amenities for public. Public and community space issues are addressed in the Core Issues as well; (*See id*.)

(g) Invest in development/employment training/education. The Form Objections encouraged the Applicant to invest in community development, such as job training and the provision of employment opportunities. The Commission finds that the Applicant has committed to providing a robust package of employment-related benefits. (Ex. 27B.) A significant portion of the Parkside program is to include an education conveyor belt. (*See* FF ¶¶ 46; 122; 133(h).) The Commission finds that the Applicant is highly responsive to this issue;

(h) Community Engagement. Some of the Form Objections encouraged the Applicant to consider expanding its commitment in the CBA, and to continue to engage with the community. The Commission finds that the Applicant satisfied this request. The CBA was amended and expanded. (Ex. 33C.) The Applicant continued its dialogue with the ANC and the community more generally after the Public Hearing, including, but not limited to, attending a special meeting of the ANC on June 28, 2017; and (Ex. 57.)

(i) Tree Protection and Landscaping Measures. Casey Trees, a District-based tree advocacy organization included comments in the record regarding the heritage trees that exist on the Property. (Ex. 32.) The Commission finds that the Applicant has prepared a site and landscaping plan that can accommodate the appropriate treatment, including if necessary, relocation of such trees.

VIII. Findings regarding Core Issues

95. The Commission finds that the Applicant has responded fully and satisfactorily to each material contested issue raised in this Application. The Commission has reviewed the entire record in this case and finds that three categories of items raised by the ANC, community opponents, and the Commission are best consolidated in this section as Core Issues. Although the Commission ultimately agrees with the Applicant and affords OP's analysis its requisite great weight, the objections and concerns raised by the ANC and other opponents warrant careful scrutiny. In sum, the Commission resolves these contested questions in favor of the Applicant and finds that the Project is consistent with the Zoning Regulations and the PUD Evaluation Standards.

96. The Core Issues in this matter include: (a) traffic and transportation issues; (b) provision of retail space; and (c) provision of community space.

(a) Transportation and Traffic Issues. The Applicant committed, as part of the Community Benefits Agreement ("CBA") that the Applicant has provided to the ANC, to engage a transportation engineer to provide suggested solutions to larger, regional traffic issues outside the scope of the Project that affect Parkside and nearby neighborhoods. (Ex. 27B. The suggested solutions will be used to facilitate dialogue between the ANC and other members of the community on the one hand and DDOT on the other. The CBA also obligates the Applicant to engage a transportation engineer to develop a parking and curbside management plan with ANC and community input to identify the community's desired parking restrictions for each block of the Parkside neighborhood. The parking plan will provide DDOT and the community a context to develop a unified parking solution for the neighborhood. Altogether the Applicant has committed to spend $20,000 to study potential solutions to: (i) regional and neighborhood traffic concerns affecting Parkside and surrounding neighborhoods; and (ii) parking issues within Parkside. This amount is above what DDOT has requested, and the Applicant has committed to provide, as mitigation for the transportation impacts of the instant Application. The Commission understands that the locations, traffic and parking issues reviewed as part of this exercise are ultimately controlled by and subject to the discretion of DDOT, but finds the Applicant's willingness to be an advocate to DDOT on behalf of the community's interests constitutes a public benefit;

(b) Retail. Also as part of the CBA, the Applicant committed to engage in quarterly meetings and/or updates on retail leasing and marketing activities involving the Application and adjacent blocks. (Ex. 33C.) The meetings/updates will involve a working group composed of community residents. These meetings give the community a seat at the table in determining Parkside's retail future; and

(c) Community Infrastructure. To address the ANC's and other community members' concerns regarding the shortage of community space in Parkside that is both large enough and flexible enough to satisfy the various community needs and time constraints, the Applicant committed up to $20,000 to renovate and modernize an existing Parkside neighborhood community room currently under control of the Parkside Townhome Home Owner's Association ("Parkside HOA"). The renovation and future use of the existing community room by the ANC and other community groups is subject to the review and approval of the Parkside HOA, and the Applicant and the ANC are in active negotiations with the Parkside HOA regarding the possible renovation and use of this space. Renovating the existing community room is a preferable solution because it provides a space for the ANC and community groups in the very near term. The Applicant is awaiting the ANC's and Parkside HOA's response on this proposal, but is confident a mutually acceptable solution exists. In the event an agreement cannot be reached with the Parkside HOA regarding the renovation and use of the existing community room, the Applicant will work with the ANC and the community to identify another location for community meeting space within the Parkside PUD. The Commission also notes that the existing Community Green as well as the retail Promenade proposed as part of the Application and the elevated plaza ("Plaza") proposed as part of the pending application for Block H (i.e., Z.C. Case No. 05-28T) create a network of connected pedestrian-oriented public space infrastructure in the Parkside neighborhood. That is, the Applicant has already made a significant commitment to provide public gathering spaces at Parkside. At the request of the ANC, the Applicant is committed to studying additional means of further activating the public gathering spaces through dynamic landscaping and furniture to make the spaces feel more inviting and family-friendly. The proposals to identify and provide a community room and additional activation of the public space surrounding the Project are additive relative to the Parkside Public Benefits.

IX. Development Incentives: Map Amendment, Zoning Relief, and Flexibility

97. The PUD Process specifically allows greater flexibility in planning and design than is possible under strict application of the Zoning Regulations. Under the Zoning Regulations, the Commission retains discretion to grant relief from the development standards of the Zoning Regulations and to allow for project flexibility development incentives. (X §§ 303.1, 303.11, 303.13.) The Zoning Regulations specifically allow the Commission to approve any such zoning relief that would otherwise require the approval of the Board of Zoning Adjustment. Generally, such relief is available at the discretion of the Commission; however, where such relief is available only by special exception ordinarily, the Commission must determine that the relief request satisfies that standard for

relief. (*Id*. § 303.13.)[12] A Zoning Map amendment is a type of development incentive and accordingly is addressed here. (*Id*. § 303.12.)

98. As part of the Application, the Applicant requested the Commission grant relief from the strict application of loading requirements for both the office and residential buildings (collectively, the "Development Incentives") and the Map Amendment.

99. Minor Modifications to the Project do not need to comply with Zoning Regulations effective as of September 6, 2016 because this Application is vested under the 1958 Zoning Regulations. Subtitle A, § 102.4. Current Zoning Regulations do apply to the Project's loading because the Project's inclusion of office use is a modification from the first-stage PUD.

Map Amendment

100. The Property is currently in the R-5-A Zone District, and the Parkside PUD approved the Map Amendment to the C-3-A Zone District. The Commission previously found as part of the Parkside PUD that the Map Amendment is not inconsistent with the Comprehensive Plan, which finding satisfies the requirements for granting the Map Amendment. (*See* X § 500.3 and Z.C. Case 05-28.) The Commission sees no reason to disturb its previous findings regarding granting the Map Amendment.

Loading Requirements Relief

101. Under the Zoning Regulations applicable to the Project, the Project is required to provide two 30-foot loading berths for the office building; however, only one is proposed. The Commission finds that the requested relief is appropriate given the public benefits and amenities provided as part of the Project, the context surrounding the Project site, and the general consistency of the Project with the Zoning Regulations for similar relief under a matter-of-right development. Under the Zoning Regulations applicable to the Project, the Project is required to provide a 55-foot berth for the residential building; however, it is providing a 30-foot berth instead. The Commission finds that the requested relief is appropriate given the public benefits and amenities provided as part of the Project, the context surrounding the Project site and the general consistency of the Project with the Zoning Regulations for similar relief under a matter-of-right development.

[12] Subtitle X § 303.13 provides in relevant part that "[a]s part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards."

PUD-Related Flexibility

102. The Applicant requested certain flexibilities in relation to finalizing the design and construction of the Project. These flexibilities have been refined and narrowed pursuant to comments from the Commission and the OP. (Ex. 33A, 56.) The Commission finds that the proposed flexibilities are sufficiently minor and circumscribed, and approves the flexibilities as proposed in the Applicant Supplemental PHS. (Ex. 33A.)

Inclusionary Zoning.

103. This project is not subject to IZ because the Parkside PUD was set down prior to March 14, 2008, and is therefore exempt from IZ under 11 DCMR § 2608.2[13], which provides that IZ does not apply to buildings set down before that date. In some instances, the Commission has found that a PUD modification can trigger IZ when the modifications are so great that the modified project is not the same "building." This is because the exemption rule states that IZ "shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008." (11 DCMR § 2608.2.) Thus, if the Applicant is no longer developing the same building, it is no longer qualifies for the exemption. In this case, there are some relatively significant changes to the office building, but the uses in the office building do not trigger any inclusionary zoning requirements. So there is no reason to apply IZ to that building. The residential building on Parcel 9 does include uses that would trigger an IZ requirement, but the changes Applicant seeks through the modification are relatively minor, and do not include any additional residential gross floor area. The Commission therefore considers the residential building on Parcel 9 to be the same "building" the Commission approved previously, and for purposes of determining whether the modification triggers an IZ requirement under 11 DCMR § 2608.2, finds that it remains exempt from IZ.

104. The general intent and purposes of the Zoning Regulations are, *inter alia*, to promote the "public health, safety, morals, convenience, order, prosperity, and general welfare to (a) provide adequate light and air, (b) prevent undue concentration of population and the overcrowding of land, and (c) provide distribution of population, business, and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services." (11-A DCMR § 101.1 ["Zoning Purposes"]) The Commission finds that Project is in harmony with the Zoning Purposes because it protects light and air on the Property and surrounding Properties, prevents overcrowding by providing retail uses and public

[13] The Project has vested development rights and is therefore subject to the 1958 Zoning Regulations. 11-A DCMR §102.3(a).

gathering spaces, and provides a more equitable distribution of business land uses that create favorable conditions with respect to transportation (e.g., transit-oriented employment opportunities) and civic activity. The Project is also generally consistent with the height, density, and dimensional aspects of the Zoning Regulations and the Parkside PUD, requiring only modest flexibility with respect to loading. For the reasons set forth above, the Commission finds the Applicant has satisfied the standards necessary for the Commission to grant the requested Development Incentives.

X. PUD Requirements

105. As set forth in the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, provided that the project that is the subject of the 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; (c) protects and advances the public health, safety, welfare, and convenience; (d) is not inconsistent with the Comprehensive Plan and does not result in action inconsistent therewith; (e) does not circumvent the intent and purposes of the Zoning Regulations; and (f) undergoes a comprehensive public review by the Commission in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits (collectively, the "PUD Requirements"). (X §§ 300.1, 300.2, 300.5.)

(a) The Project is superior to the development of the Property under the matter-of-right standards for the following reasons:

- Public Space. The Project's physical form—loading and garage access from alleys, new construction facing the street, on-street parallel parking, a tree-lined streetscape—encourages pedestrian use and mitigates traffic impacts by promoting and encouraging active mobility over driving. The Project's Promenade also presents a key linkage between the Community Green and the nearby Metrorail Station;

- Retail and Office Uses. The Project adds office and retail uses in a transit-oriented location. These types of uses are rarely constructed anew in Ward 7 and would not be possible at this location but for the Project proceeding under a PUD with an approved PUD-related map amendment. The community has expressed its desire for more retail space in Ward 7. Additionally, these uses provide employment and economic benefits, which makes the Project superior to a matter-of-right development;

- Other Public Benefits. The Project includes the other public benefits, as discussed further below (FF ¶135-148), many of which

would not be required or feasible under a matter-of-right development; and

- Community Engagement. A matter-of-right development would not have afforded the community as many opportunities to engage with the Applicant and provide feedback. The PUD process has facilitated extensive community engagement and the Applicant has responded to community input through, among other actions, entering into the CBA;

(b) The public benefits are commendable in number and quality. For the reasons set forth more fully in the public benefits findings, the public benefits are of a commendable quality. (*See* FF ¶¶ 135-146.) There are at least nine distinct categories of public benefits for the Project and additional public benefits for the Parkside PUD overall, absolute numbers that the Commission finds to be commendable. Finally, the Commission finds that the public benefits are meaningful. The public benefits address the preferences, needs and concerns of community residents, were developed following the Applicant's robust community engagement process, supported by OP, and are not inconsistent with the Comprehensive Plan; (*See* FF ¶¶ 67,135-148.)

(c) The Project protects and advances the public health, safety, welfare, and convenience:

- Public Health. The Project protects and advances the public health by being designed in a high-quality manner and in compliance with all applicable construction codes. (Ex. 3 at 21.) There are no existing residential units on the Property or on any adjacent blocks. The availability of open adjacent lots for staging and parking will allow the Applicant to readily mitigate any construction-period impacts. (*Id.* at 30.) The Applicant has also agreed to enter into a Construction Management Plan with the ANC. (Ex. 56 at 2.) The Project includes a number of mitigation measures, notably the pedestrian-oriented design, linkage to the Community Green, and bicycle facilities, which protect and affirmatively advance the public health. The Project also includes funding to develop a re-design of a nearby park. The Project does not entail any unwarranted overcrowding or overpopulation. The Project also complies with all applicable environmental performance standards;

- Safety. The Project protects and advances safety: the Project has been designed in a manner that puts "eyes on the street" to promote public realm safety. The Project also includes funding for a transportation study to investigate issues surrounding circulation; (Ex. 56 at 5.)

- Welfare. The Project protects and advances the public welfare by bringing much-needed economic activity to Ward 7, which has long been overlooked for the purposes of locating new office tenants. The Applicant has also agreed to multiple measures to promote and encourage the hiring of Ward 7 residents for jobs, including permanent positions, related to the Project; and (Ex. 56 at 2-4.)

- Convenience. Finally, the Project protects and advances the public convenience by adding new neighborhood-serving retail uses. Such retail serves existing Parkside residents and has a strong transit-oriented component. The Project also facilitates the connection of the Bridge in the Parkside neighborhood, and the Bridge improves convenience in access to the Metrorail station;

(d) The Project is not inconsistent with the Comprehensive Plan and would not result in any action inconsistent with the Comprehensive Plan. Extensive findings regarding the Project's lack of inconsistency with the Comprehensive Plan are provided below; (*See* FF ¶¶ 111-125.)

(e) The Project does not circumvent the Zoning Purposes. The Project does not circumvent the Zoning Purposes. The general intent and purposes of the Zoning Regulations are, *inter alia*, to promote the "public health, safety, morals, convenience, order, prosperity, and general welfare." (11-A § 101.1.) Findings regarding the Project's protection and advancement of the public health, safety, convenience, and welfare are provided above: (FF ¶ 104(c).)

- Morals. The Project promotes morals insofar as the Application was undertaken with extensive community outreach. (FF ¶¶ 67) The Commission finds that this community dialogue exemplifies public morals as expressed through the Zoning Regulations and PUD process;

- Order. The Project exemplifies orderly, well-planned development that is undertaken on behalf of the best interests of the residents of the District with respect to the above-cited objectives. The Project complies with all of the specific development standards set forth in the Zoning Regulations, except where flexibility is hereby requested, which flexibility is minor in this instance and expressly contemplated as part of the PUD process. (X §§ 300.1, 303.1.) The Project allows for an appropriate amount of light and air by virtue of its bulk, height, orientation, setbacks, and location east of existing residences; and

- Prosperity. As noted with respect to public welfare above, the Project promotes prosperity by putting to productive use land, including office and retail space, which is currently vacant. (FF ¶ 37.) The Project also promotes public prosperity with respect to its future provision of tax revenue to the District and its addition of many new employees in Ward 7. It also introduces a new transit-oriented employment opportunity for District residents; and

(f) The Project has undergone a comprehensive public review by the Commission, which has evaluated the Project's flexibility and incentives in proportion to the public benefits. The Commission has reviewed the entirety of the record. The record is complete with multiple detailed briefings from the Applicant and reports from multiple District agencies and the ANC. The Commission heard presentations on the Application and had the opportunity to ask questions of the Applicant, OP, DDOT, and the ANC. In every material way, the Applicant responded satisfactorily to the requests from the Commission. The Applicant has also responded thoroughly to OP, DDOT and the ANC. The record in this matter is unquestionably full, and the Commission has reviewed it in its entirety.

106. The Commission finds that the Project satisfies the PUD Requirements.

XI. PUD Balancing and Evaluation Standards

PUD Balancing

107. As set forth in the Zoning Regulations, the Commission must evaluate and grant or deny a PUD application according to the standards of § 304 of Subtitle X. The Applicant has the burden of proof to justify the granting of the Application according to such standards. (X § 304.2.)

108. The Commission's findings in relation to a PUD must be supported by substantial evidence. (*See Howell v. District of Columbia Zoning Comm'n.*, 97 A.3d 579 (D.C. 2014). The Commission finds that the Applicant has satisfied the relevant evidentiary threshold to carry its burden of proof in the instant proceeding. The Applicant has provided multiple filings containing volumes of evidence all relevant to this proceeding. (Ex. 3, 12, 13, 14, 16, 25, 27, 56, 57 (plus exhibits thereto).) The Commission, in its reasonable determination, accepts such filings as containing evidence substantial to support the findings contained herein.

109. Pursuant to Subtitle X § 304.3, in deciding this PUD Application the Commission has, according to the specific circumstances of this Application, judged, balanced, and reconciled the relative value of: (a) the Public Benefits and other project amenities offered as part of the Project, (b) the Development Incentives requested by the Applicant (where, pursuant to Subtitle X § 303.12, the requested Map

Amendment is a type of PUD incentive), and (c) any potential adverse effects (collectively, the "PUD Balancing Test").

(a) The public benefits are numerous and of a high quality. In sum, the Project provides the numerous public benefits. A full accounting of the public benefits is provided below; (*See* FF ¶¶ 135-146.)

(b) The Project's Development Incentives are comparatively minor and appropriately granted in light of the public benefits. The Commission finds that the Applicant requests comparatively minor Development Incentives for the Project. The Project's individual Development Incentives are described above. (*See* FF ¶¶ 97.) The most significant, by far, of the Development Incentives is the Map Amendment, which was approved in the Parkside PUD. The Map Amendment allows the Applicant to construct the Project to a higher density and greater height than is possible as a matter of right. The Development Incentives underlie and indeed make possible the public benefits, and the public benefits justify the additional height and density afforded by the Map Amendment;

(c) Any potential adverse effects of the Project are appropriately mitigated or outweighed by the Public Benefits. The ANC lists potential adverse effects of the Project. (*See* FF ¶¶ 89-91.) The Applicant separately identified and studied potential adverse impacts of the Project. See FF ¶¶ 126-134. Such findings are incorporated herein. As the Commission found in response to each individual articulated concern or objection to the Project, these potential adverse effects are either capable of being mitigated or appropriate in light of the Public Benefits; and

(d) The Public Benefits together outweigh the Project's potential adverse effects and justify the Development Incentives. The Commission returns to a familiar point in its review of the record in this proceeding: the Project adds much needed commercial uses to Parkside and provides numerous Public Benefits. These items are the offset the additional density sought through the Application.

110. The Commission has reviewed the record, identified the circumstances of the Application, the Property, the Project and the surrounding area, and balanced, reconciled, and judged the Public Benefits against the PUD Incentives and potential adverse effects. In sum, the Commission finds that the Project satisfies the PUD Balancing Test.

PUD Evaluation Standards

111. As set forth in the immediately succeeding paragraphs, the Commission hereby also finds that the Project: (a) is not inconsistent with the Comprehensive Plan or other adopted public policies and active programs (collectively, the "Plan")

related to the Property; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and amenities, which are not inconsistent with the Plan with respect to the Property (collectively, the "PUD Evaluation Standards"). (*See* X § 304.3.)

PUD Evaluation Standards

112. Comprehensive Plan Purposes. The purposes of the Comprehensive Plan are to: (a) define the requirements and aspirations of District residents, and accordingly influence social, economic, and physical development; (b) guide executive and legislative decisions and matters affecting the District and its citizens; (c) promote economic growth in jobs for District residents; (d) guide private and public development in order to achieve District and community goals; (e) maintain and enhance the natural and architectural assets of the District; and (f) assist in conservation, stabilization and improvement of each neighborhood and community in the District. (*See* DC Code Section 1-306.01(b).) The Project advances these purposes by furthering social and economic development through the construction of new office and retail uses on currently vacant land, providing market-rate and workforce housing, investing in a District neighborhood that seeks new investment, committing to the implementation of the TDM measures, and improving the urban design and public space surrounding the Property. The Project assists in the improvement and stabilization of the urban environment in the immediate neighborhood and the District as a whole.

113. OP Findings regarding the Comprehensive Plan. The OP Final Report finds that the Project is not inconsistent with the Comprehensive Plan. (*See* Ex. 29.) The Commission gives great weight to these OP findings and incorporates them herein.

114. As part of the Parkside PUD, the Commission found that the proposal for Parkside, including the proposal for the Property (with which the Project hereby complies) was consistent with the Comprehensive Plan and other adopted policies of the District. (*See* Z.C. Order No. 05-28, FF ¶¶ 35, 36, 38, 45, 46 and Conclusions of Law ¶ 8 ("Approval of the first-stage PUD and the PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of the Office of Planning in this case and finds that the proposed project is consistent with and fosters numerous themes and elements of the Comprehensive Plan.").) Given the findings in the record, the clear conclusions of law in the Parkside PUD, and the consistency between the instant Project and the Parkside PUD, the Commission finds that the Project is not inconsistent with the Comprehensive Plan.

115. Future Land Use Map and Generalized Policy Map. The FLUM designates the Property as appropriate for medium density residential uses. The medium-density

residential designation is used to define neighborhoods where mid-rise apartment buildings are the predominant use (four to seven stories). By definition, the FLUM is to be interpreted broadly. (10-A2 DCMR § 226(a).) The FLUM is intended to provide a "generalized guide for development and conservation decisions" and is expressly "not a zoning map." (10-A2 DCMR § 226, *et. seq*.) The Map designations are generally imposed at the block scale, but the Comprehensive Plan's Map guidelines expressly accommodate differential treatment for different parcels or buildings on a single block. That is, the "the land use category definitions describe the general character of development in each area," but there may be "individual buildings" that deviate from the expressed designations. *(*10-A2 DCMR § 226(c).) The Map guidelines also provide for additional flexibility from the strict designations of the Map in the context of a PUD. (*Id.*) The DC Court of Appeals recently clarified that "even if a proposal conflicts with one or more individual policies associated with the [Comp. Plan], this does not, in and of itself preclude the Zoning Commission from concluding that the action would be consistent with the Comp. Plan as a whole." (*Friends of McMillan Park v. District of Columbia Zoning Comm'n*, 149 A.3d 1027, 1034 (D.C. 2016) (internal quotation omitted).) The Commission finds that the Project, in the context of the overall Parkside PUD, complies with the FLUM for the following reasons:

(a) An apartment building with seven floors of units is consistent with the FLUM designation;

(b) The Property was rezoned to the C-3-A Zone District under the first-stage PUD. Office use is permitted as a matter of right in the C-3-A Zone District;

(c) The inclusion of commercial uses on the Property is not inconsistent with the FLUM. Providing office in this location is also consistent with the Property's inclusion in the Central Employment Area ("CEA"). The CEA includes a variety of office users, including major government offices and draws workers and visitors from across the region;

(d) The Property is immediately adjacent to areas designated for mixed-use, high-density commercial uses. Accordingly, it is reasonable that the Property could be used for commercial uses because the intent of the FLUM is to be interpreted broadly;

(e) The Comprehensive Plan's Generalized Policy Map designates the Property as Neighborhood Enhancement Area, which is to ensure that new development fits in and responds to the existing character, natural features, and existing/planned infrastructure capacity. As OP noted, the Project is not inconsistent with such designation; and (Ex. 29 at 12.)

(f) The overall Parkside PUD, and the Project both substantially comply with the Comprehensive Plan. Specifically, the Project's introduction of office and commercial uses further the policies associated with the Comprehensive Plan, and any conflict with the FLUM created by the introduction of these uses is outweighed by the Project's benefits that promote the Comprehensive Plan's objectives. (*See* FF ¶¶ 115-124.)

116. Land Use ("LU") Element. The Project is not inconsistent with the LU Element. The Comprehensive Plan devotes a great deal of attention to the importance of transit-oriented development, mixed-use development and the promotion of commercial centers. The LU Element also encourages the integration of new developments into the existing urban fabric, the infilling of vacant lots that create gaps in the urban fabric, and the introduction of housing, while maintaining buffer zones from commercial developments and preserving neighborhood character. The Commission finds that the Project is not inconsistent with the LU Element:

(a) First, the Project encourages development around Metrorail stations, it is a mixed-use development, and it creates a commercial center in an area that desires commercial development. The residential and office components fulfill the Plan's objective to locate for infill development near the existing transportation infrastructure and provide the critical mass needed to support the commercial uses;

(b) Second, the Plan also seeks to achieve "land use compatibility" – specifically, the enhancement and stabilization of the District's neighborhoods by the protection of residential neighborhoods from non-residential and disruptive uses. The Project is an important infill development that replaces vacant lots, and, especially in the context of the overall Parkside PUD, incorporates of the surrounding neighborhood through pedestrian-oriented development and the inclusion of public spaces; and

(c) Third, the Project presents a "buffer" between the lower-density townhouse residential uses that exist at Parkside today and the higher intensity highway and highway-adjacent commercial uses planned for future phases. The Project serves as an important transition between the commercial nature of Kenilworth Terrace and the lower-density residential along Parkside Place.

117. Transportation Element. The Plan emphasizes creation of a multi-modal transportation system that links land use and transportation. The Plan encourages strengthening the linkage between land use and transportation as new development occurs, and the Project precisely strengthens such linkage. Parcel 9 is located between the commercial center of Kenilworth Terrace and the lower density residential uses in the Parkside community. The development will not only transition the uses and density, but it will provide a connection between the

uses, and that connection is the fundamental organizing principle for the Project's site plan and physical design. The project will transform the vacant lot into a contributing part of the Parkside community. Further, the Applicant is contributing funds to the construction of a pedestrian bridge—the construction of which is expected to begin within the year—to facilitate access between the site and the Metro station. In all, the Project facilitates and encourages the use of the Metro Station and is the first phase of Parkside to add jobs, in addition to housing, near transit.

118. Housing Element. The Plan's overarching goal for housing in the District is to increase the supply of safe and affordable housing. The Project advances that objective by providing new residential units and supporting the creation of housing in future phases of the Parkside PUD. The Parkside PUD is a private sector-led redevelopment effort that produces new housing, and particularly workforce housing on a vacant site in an historically underinvested portion of the District. The Project incorporates a mix of uses and residential units for a mix of income levels. Perhaps most significantly, the Project includes a comprehensive vision that matches social, economic, healthcare, education and other programs with real estate development to establish and nurture a fully functioning neighborhood.

119. Environmental Protection Element. The Project is not inconsistent with the Comprehensive Plan's environmental protection element's goal to protect and enhance the manmade and natural environmental through environmentally-conscious steps. The Project's landscape plan will help beautify Parkside, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity, thereby advancing these policies. There is an extensive landscape plan providing for abundant trees, retention of many existing trees, and comprehensive and creative stormwater treatment on the Property. The Project proposes elements to improve water quality through design features such as the use of a rain garden in the courtyard to treat runoff from impervious surfaces, including roofs and paved areas; and through the use of a vegetative swale (bio-filtration) to treat runoff from the Property. The Project will seek to be constructed to meet Green Communities and LEED-Gold certification levels. Finally, the overall PUD has been selected as a LEED-ND (Leadership in Energy and Environmental Design for Neighborhood Developments) Pilot project.

120. Economic Development Element. The Project is consistent with the economic development element, the overarching goal of which is to strengthen the District economy and help District residents find and keep jobs. The Project introduces a smaller-floorplate office concept that introduces some diversity into the Ward 7 office space market. In addition, the Project introduces retail and job opportunities to an area where such opportunities have traditionally been limited. In addition, in its proposed conditions the Applicant has agreed to: (i) direct the Project's contractors and subcontractors to use reasonable efforts to hire Ward 7 residents, with a goal of 51% of all new hires being Ward 7 residents; (ii) facilitate job

trainings for Ward 7 residents; (iii) assist in soliciting Ward 7 residents for available jobs; and (iv) hold a job fair for Ward 7 residents. (Ex. 56.)

121. Parks, Recreation, and Open Space Element. The development is consistent with the Parks, Recreation, and Open Space element, which calls for the inclusion of neighborhood or community parks on large sites. The Comprehensive Plan specifically recognizes the value of functional open space. The Parkside PUD contemplated the Community Green, a one-acre open park, that was approved by the Commission in Z.C. Case Nos. 05-28A and 05-28F. The Green has been constructed and has been well received by the community. The Community Green serves as an amenity for residents and neighbors and will create an attractive resting point that District residents can appreciate while they take an evening stroll, walk the dog, or simply read a book outside. The Project enhances that amenity by introducing ground-level activities, well-designed adjacent sidewalks and street uses, and by introducing new residents and officer workers to use and monitor the Green. The Project's Promenade also presents a key linkage between the Green and the nearby Metrorail Station.

122. Urban Design Element. The Project is consistent with the Comprehensive Plan's urban design policies insofar as they provide for: (a) neighborhood connectivity; (b) gateways from East-of-the-River neighborhoods to Anacostia River crossings, with landscape and transportation improvements along Howard Road, Martin Luther King Jr. Avenue, Pennsylvania Avenue, Randle Circle (Minnesota and Massachusetts), Benning Road, and Kenilworth Avenue; (c) use of the District's major avenues and boulevards, particularly important streets that suffer from poor aesthetic conditions, to reinforce the form and identity of the city; (d) the creation of neighborhood centers; (e) infill development; (f) the integration of large site developments; (g) the protection of open spaces; (h) the consideration of surrounding neighborhoods in large site developments; and (i) improving the street environment. The Urban Design Element of the Plan seeks to, among other goals, strengthen civic identity through a renewed focus on public spaces and boulevards; designing for successful neighborhoods and large site reintegration; improving the public realm, particularly street and sidewalk space; and promoting design excellence throughout the District. The Project reflects the beneficial architectural qualities of the surrounding residential neighborhoods. Parcel 9 includes an appropriate use, density and height, and the Parkside PUD allows for sufficient private and public open space for the residents. The buildings and the intervening Promenade provide an important connection between previously approved second-stage applications, providing the unity and cohesion of plan that Parkside needs.

123. Educational Facilities Element. The Comprehensive Plan encourages the development of educational facilities throughout the District in a manner that is compatible with adjacent residential uses. Accordingly, the Project supports this objective by providing a critical infusion of commercial and additional residential uses at a key location in the Parkside neighborhood. Ultimately, the Project helps

the educational facilities in existence in and planned for the Parkside neighborhood continue to thrive.

124. Far Northeast and Southeast Area Element. The Property is located in the Far Northeast and Southeast Area of the Comprehensive Plan. It is not located within the boundaries of any Policy Focus Area of that Area Element. The current condition of the Parkside neighborhood, with over nine vacant acres of land, discourages an active connection between the Anacostia waterfront and the Ward 7 community. The Parkside PUD and the Project create significant contributions to area elements, including, but not limited to, the development of retail use, the development of new housing, the increased accessibility of transit, and the connection to the waterfront. The contributions to these elements outweigh other inherently conflicting area elements, such as the preference for low density development. Additionally, the Parkside PUD and the Project also encourage the maintenance of the current low density neighborhoods by providing economic and residential uses to potentially absorb increased development without disrupting the current neighborhoods. The development of the Parkside PUD creates a more inviting, accessible and active connection to the Anacostia waterfront. The new Bridge and the urban design of the Project encourages the Ward 7 community to use the waterfront and its new and existing amenities. The Bridge also makes the waterfront accessible to visitors to the area who come from other parts of the District or the Maryland and Virginia suburbs. The increased activity engendered by these first phases of development creates a friendlier, more inviting atmosphere for residents wanting to access the waterfront. The strong visual corridors and pedestrian pathways of the site design encourage use of the waterfront. The Parkside PUD also reflects the District's plan for concentrating a mix of uses at the Minnesota Avenue Metrorail Station. The addition of a significant office and retail building as part of the Project supports the concept of Parkside as a true mixed-use development. The heights and density proposed for development are also appropriate for the PUD's proximity to public transit and its role in transitioning between uses and creating a buffer from the adjacent highway. Finally, the Project's design creates an appropriate transition between the greater heights along Kenilworth Avenue to the lesser heights as the development stretches toward the Anacostia River.

125. Taken as a whole, the Project is not inconsistent with the District or Area Elements of the Plan or with the objectives of other adopted public policies applicable to the Property. There are individual objectives in these site-specific plans that the Project either does not address or does not substantially advance. Planning policy documents by their very nature are comprehensive and occasionally internally contradictory. However, the Project is not inconsistent with the broad public planning objectives for Ward 7 and Parkside specifically.

126. The Commission finds that there were no particularized allegations of inconsistency with the Comprehensive Plan raised by the ANC or any other party or person. Therefore, for the reasons set forth more fully above the Commission

finds that the Application, including the Map Amendment, is not inconsistent with the Plan.

Project Impacts

127. For the following reasons, the Commission finds that the Project does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities, but instead creates impacts that are either favorable, capable of being mitigated, or acceptable given the Public Benefits.

128. Zoning and Land Use.

(a) The approved Map Amendment for the property's zoning to the C-3-A Zone District is consistent with the Transit-Oriented Development ("TOD") categories on the Generalized Land Use Map of the Comprehensive Plan and is compatible with the zoning designated for adjacent blocks pursuant to the first-stage PUD. The C-3-A designation for the Property is consistent with its development as a mixed-use, TOD node for the Parkside neighborhood; and

(b) From a land use perspective, the Project will create no unacceptable impacts on surrounding neighborhoods. Any impacts from the Project's proposed land use are either favorable, capable of being mitigated, or acceptable given the quality of the significant public benefits included as part of the Project. The Project's mix of office, retail and multi-family residential uses is entirely appropriate given the proximity to transit and highway access, the ongoing development efforts in the neighborhood, and the extensive planning and community support for the first-stage PUD. The Project's height and mass are an appropriate transition from the approved greater densities closer to the Anacostia Freeway and the Metrorail station to the less intense residential uses to the northwest. The Project's introduction of a critical mass of commercial uses to the neighborhood is a favorable land use impact. The proposed commercial uses will create economic opportunities and continue with the stabilization of the neighborhood. The continued contribution of new, high-quality, for-sale multi-family housing units to Ward 7 will have additional positive impacts on the surrounding areas as such contribution advances other aspects of the Parkside Vision. To the extent there are any ancillary unfavorable impacts arising out of the Project, such impacts are either mitigated by the Project's design or offset by the quality of the public benefits associated with this Project and the Parkside PUD as a whole outweigh any negative effect. Moreover, the Project's conversion of vacant lots to productive and active uses, and the creation of a thoughtfully-designed public pedestrian space will also have positive impacts.

129. Housing. The Project's addition of new housing is a favorable impact. The Project will contain 20% workforce housing for the life of the Project. (Ex. 56.) The Project continues the trend of creating new high-quality, transit-accessible housing units. Such units are in high demand across the District and the need for such units is particularly dire in Ward 7. The addition of new housing will have favorable impacts on surrounding areas by adding residents who will support the proposed commercial uses. The Project's inclusion of workforce- and market-rate units has favorable impacts because it will help establish Parkside as a mixed-income community and not one that overly concentrates affordable housing.

130. Construction-Period Impacts on Neighbors. During the development period for Parcel 9, the Project's impacts on neighbors are capable of being mitigated, and the Applicant has significant experience successfully completing construction projects in infill locations without disturbing neighbors. There are no existing residential units on the Property or on any adjacent blocks. The availability of open adjacent lots for staging and parking will allow the Applicant to readily mitigate any construction-period impacts.

131. Open Space, Urban Design and Massing Impacts. The Project favorably improves upon the existing conditions with respect to the relationship between the proposed buildings, proposed and existing open spaces, and the urban design of the Project. The existing conditions include a vacant block that does little to contribute to the adjacent Community Green. The Project will have favorable impacts on the Green by providing ground level uses and new residents to activate the public realm. In addition, the Project creates a strong, obvious connection between the Metrorail station and Parkside's Community Green. Finally, the Project has favorable impacts on the surrounding area as a keystone linking the multi-family buildings on Blocks J and E and establishing the context for the future, higher-density phases along Kenilworth Ave.

132. Design and Aesthetic Impacts. The Project's design and architecture have a favorable outcome, no unacceptable impacts, and are likely to become a point of resident and community pride. The Project incorporates the highest-quality architecture and exemplary design. Upon completion of Parcel 9, the new buildings will appear fresh and emblematic of new investment without appearing overly contemporary or out-of-place. Instead, the Project will continue the architectural vocabulary that is emerging in Parkside and that will establish a high baseline of quality of design and finishes expected for projects in the vicinity. The Project's landscaping and public realm detailing will be truly exemplary and will have a strongly favorable impact on surrounding areas, as it further contributes to the sense of place in the Parkside neighborhood with the introduction of retail uses. The Project's overall design and its details strongly reinforce and strengthen the character of the surrounding residential areas and will be favorable for the neighborhood.

133. Transportation and Mobility Impacts. The Project does not have an adverse impact on the public transportation facilities or roadways that cannot otherwise be mitigated. The Project's vehicular traffic impacts are mitigated by its transit options, and the Project achieves the right balance of mobility. The Property is well-served by transit and vehicular infrastructure, and the Project's relatively small scale will not introduce adverse impacts on either system that can't otherwise be mitigated. The Project's favorable transit access and its strong TDM program help mitigate any expected traffic concerns. Additionally, the Project includes $25,000 for the recommended signal operation upgrades at the Kenilworth Terrace, N.E. and Nannie Helen Burroughs Avenue, N.E. intersection to alleviate traffic congestion. Transportation-related mitigations are as follows: (Ex. 56.)

(a) Transit. The Minnesota Avenue Metrorail station is less than a half-mile walk from the Property, and that station is relatively underutilized relative to other stations in the WMATA system. Numerous Metrobus lines also service the Property, including a Priority Corridor Network route, and it is expected that many of the Project's residents will use public transit. The Property has a TransitScore of 73 (which indicates "Excellent Transit" with "transit convenient for most trips");

(b) Parking. The Project includes approximately 141 below-grade parking spaces to accommodate the parking demand of residents and occupants of the office building, and 10 street-level parking spaces to accommodate retail-use customers. The Applicant commits to providing $5,000 for use by the ANC for a traffic consultant to develop a parking and curbside management plan. (Ex. 56.) Bicycle usage is also coherently integrated into the design of the Project, with long-term spaces in a dedicated storage room and the required short-term spaces provided elsewhere in public space. The Project provides sufficient new off-street parking to serve new residents, but not so much parking as to induce unnecessary driving;

(c) Curb Cuts. The Project entails relocating existing curb cuts on the Property to accommodate the proposed configuration. The existing curb cuts on the Property will be relocated to accommodate the proposed configuration. Two new curb cuts will be added to allow the proposed through connection at the center of the Project. Loading and parking will be accessed from former rights-of-way that have been closed and will function as alleys;

(d) Pedestrian Realm. The landscaping and streetscaping improvements proposed as part of Parcel 9 prioritize pedestrian access along each of the surrounding streets and create a permeable connection through the Property between the Bridge and adjacent blocks. Additionally, the Applicant commits to providing $7,500 to be used by the ANC to develop a conceptual design for a play and/or athletic field in the nearby National

Park Service-owned land. (Ex. 56.) The Project's ground floor designs, site plan, building layout, and streetscape all prioritize pedestrian access to and interaction with the Project. The alley improvements anticipated will allow the Project to prioritize pedestrian access along each of the main streets surrounding Parcel 9 and to create a permeable connection between the Project and the Community Green;

(e) TDM. The Project includes an extensive TDM plan to mitigate any transportation impacts. The Project includes $25,000 for the recommended signal operation upgrades at the Kenilworth Terrace, N.E. and Nannie Helen Burroughs Avenue, N.E. intersection to alleviate traffic congestion. (Ex. 56.) The Applicant also commits to providing $15,000 for use by the ANC for the expertise of a traffic consultant to study solutions to circulation issues beyond what is required for mitigation of potential impacts of the overall Parkside PUD. (Ex. 56.) The Project's physical form—loading and garage access from alleys, new construction facing the street, on-street parallel parking, a tree-lined streetscape—mitigates traffic impacts by promoting and encouraging active mobility over driving. At the same time, the Project makes reasonable accommodations for those who choose to or must drive without interfering with the parking supply of neighboring residents. To the extent the Project creates transportation or mobility impacts on the neighborhood or District more generally, they are either capable of being mitigated through the TDM or acceptable given the quality of the Public Benefits. The TDM plan includes the following commitments: (Ex. 33B.)

- The Applicant shall designate a TDM coordinator, who is responsible for organizing and marketing the TDM plan and who will act as a point of contact with DDOT;

- All parking on site will be priced at market rates at minimum, defined as the average cost for parking in a 0.25-mile radius from the site;

- The Applicant will unbundle the cost of residential parking from the cost of lease or purchase of each unit;

- The Applicant will unbundle the cost of vehicle parking form the cost of the office lease;

- The Applicant will install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives;

- The Applicant will install a Transportation Information Center Display (electronic screen) within the office building lobby containing information related to local transportation alternatives;

- The Applicant will or exceed zoning requirements to provide bicycle parking facilities at the proposed development. This includes secure parking located on-site and short-term bicycle parking around the perimeter of the site;

- The Applicant will provide TDM materials to new residents in the Residential Welcome Package materials;

- The Applicant will provide bicycle repair stations to be located within the bicycle storage rooms.

- The Applicant will dedicate two spaces within the garage for car-sharing services to use with right of first refusal;

- The Applicant will provide showers and corresponding changing facilities for the office use; and

- The Applicant will fund the installation of a new Capital Bikeshare station and one year of maintenance. The station will be a 19-dock station. An additional 20 feet of space will be provided to accommodate eight additional docks is expanded in the future.

134. Project Impacts on City Services and Project Environmental Impacts. The Project does not have any adverse impacts on the public facilities or District services that it will rely on for service. Likewise, the Project will not have adverse environmental impacts as described below: (Ex. 3 (and exhibits thereto).)

(a) Water Demand. The Project contains approximately 207,759 square feet of new GFA. The average daily water demand for this project can be met by the existing District water system. The Project's connection for the fire and residential water supply will be made within the existing distribution system and will be coordinated with DC Water. The two buildings will have individual water meters; (*Id*.)

(b) Sanitary Sewer Demand. The sanitary sewer connections for the Project will be made within the existing distribution system and will be coordinated with DC Water. As noted above, the infrastructure for the Parkside neighborhood has largely already been constructed; (*Id*.)

(c) Stormwater Management. The Project has been designed to achieve high levels of on-site stormwater retention. The proposed bio-retention basin planters, green roofs, and permeable pavement are designed to exceed

DOEE stormwater management retention and detention requirements. The requisite inlets and closed pipe system will be designed and constructed in compliance with the standards set by DOEE, DC Water, and DDOT;

(d) Solid Waste Services. Solid waste and recycling materials generated by the Project will be collected regularly by a private trash collection contractor;

(e) Electrical Services. Electricity for the new Buildings will be provided by the Potomac Electric Power Company ("Pepco") in accordance with its usual terms and conditions of service. All electrical systems will be designed to comply with the D.C. Energy Code. Transformers will be installed on the Property in accordance with Pepco's design guidelines;

(f) Energy Conservation. The Project will be constructed in full compliance with Article 24 (Energy Conservation) of the District of Columbia Building Code. Conformance to code standards will minimize the amounts of energy needed for the heat, ventilation, hot water, electrical distribution, and lighting systems contained in the building;

(g) Erosion Control. During excavation and construction, erosion on the Property will be controlled in accordance with District of Columbia law; and

(h) Public Schools. The Project is highly unlikely to have an unacceptable impact on schools in the District given the size of the Project, its mix and type of units, and the capacity for the District's nearby schools to take on additional students. In addition, several private and charter schools are near the Project, offering educational options to residents who may seek alternatives to the neighborhood public schools. Moreover, in the city as a whole, the population of school-age children is declining while the population of childless households is increasing. Because of these trends, the nature of the Project's demographics, and the variety of school choices nearby, the Applicant expects that the school network will be able to accommodate, without any unfavorable impacts, the school-age children that may reside at the Project.

135. Other Impacts. The findings related to issues raised by the ANC includes additional discussion on the Project's impacts and the Commission's balancing thereof. In sum, the Project's impacts are either capable of being mitigated or not unacceptable in light of the public benefits.

Public Benefits

136. The objective of the PUD process is to encourage high-quality development that provides public benefits and amenities by allowing greater flexibility in planning and design than may be possible under matter-of-right zoning. (X § 305.1.)

137. The Project achieves the goals of the PUD process by creating a high-quality mixed-use commercial development with significant related public benefits. The Commission finds that the Project includes the public benefits enumerated in the following paragraphs, which are not inconsistent with the Plan as a whole with respect to the Property.

138. Subtitle X § 305.4 requires that a majority of the public benefits of the proposed PUD relate to the geographic area of the ANC in which the application is proposed. Findings with respect to the geographic effect of the public benefits are addressed in the following paragraphs. In general, the public benefits relate to the area of the ANC.

139. Superior urban design, architecture, and landscaping (Subtitle X § 305.5(a) and (b)). The Project's urban design and landscaping are superior public benefits. Subsections 305.5(a) and (b) of Subtitle X list urban design and landscaping as categories of public benefits and project amenities for a project proceeding under a PUD. The Project incorporates numerous design precepts that guide superior urban design in the District and that represent significant improvements over the existing aesthetic and functional conditions of Parcel 9. For instance, the Project's urban design prominently frames the pedestrian Promenade leading to the Community Green and creates a strong sense of arrival in the Parkside neighborhood. Similarly, the Project's strong edges along existing streets give the two buildings visual heft and create an urban condition that is hospitable for pedestrians and guides them through the center of the PUD site. The Project similarly includes elements of superior architectural and landscape design. For example, the Project presents a thoughtful ground-floor design that integrates seamlessly with the Promenade. The Project also utilizes high-quality façade materials and finishes. With respect to landscaping, the Project employs a palette of vegetation and fixtures that is simultaneously appropriate for the neighborhood and representative of the Project's place-making objectives.

140. Site planning, and efficient and economical land utilization (§ 305.5(c)). The proposed site plan is another superior benefit of the Project. Pursuant to Subtitle X § 305.5(c) of the Zoning Regulations, "site planning and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Commission. The benefits of the Project's site plan and efficient land utilization are captured in the Project's overall density, introduction of commercial uses, and absolute number of new residential units provided. The Project's greater heights and density near transit nodes exemplify economical land utilization. The proposed development serves as a transition from the commercial uses along Kenilworth Avenue and the residential uses along Parkside Place and its design is of the appropriate massing and height to establish this transition. The Project also improves land that has been vacant for decades, and its development will make it a significant contribution to establishing a community within the Parkside PUD. At an FAR of greater than 3.0, the proposed density is appropriate for the Property given the proximity to transit options while not overbearing the lower density

residential neighborhoods to the north, south, and east of the Site. The Project is designed to benefit from proximity to nearby protected areas, the Anacostia River and natural grades and perhaps most importantly, the major transportation corridor to the southeast, including the Minnesota Avenue Metrorail Station and the Anacostia Freeway. The site plan is designed to infill and continue the urban build out of the Parkside neighborhood. It will connect the existing Parkside Townhomes with the fabric of the city and will establish a true mixed-use and transit-oriented development in the heart of Ward 7.

141. Employment benefits. The Applicant has committed to providing employment benefits at the request of the ANC, and such commitments constitute public benefits under the Zoning Regulations. (X § 305.5(h).) The development provides a commercial development to bring full time workers and retail options to Parkside. Continuing the trend of reversing years of disinvestment in Ward 7, the Project is a potential economic boon for the surrounding area and contributes to the successful creation of a retail market. In addition, in its proposed conditions the Applicant has agreed to: (i) direct the Project's contractors and subcontractors to use reasonable efforts to hire Ward 7 residents, with a goal of 51% of all new hires being Ward 7 residents; (ii) direct the Project's managers of the retail, residential and office space to use reasonable good faith efforts to select permanent employees from among qualified Ward 7 residents (iii) facilitate job trainings for Ward 7 residents; (iv) assist in soliciting Ward 7 residents for available jobs; and (v) hold a job fair for Ward 7 residents. (Ex. 48B, 56.)

142. Housing and affordable housing (§ 305.5(f), (g)). The Project includes a greater number of housing units than could be developed on the site as a matter of right and reserves 20% of the units as workforce housing units for the first purchaser. (Ex. 56.) Pursuant to §§ 305.3(f) and (g) of Subtitle X, the production of housing that exceeds the amount that would have been required through matter-of-right development under existing zoning and affordable housing above what is required under the IZ provisions of the Zoning Regulations is a public benefit. The Project makes a significant contribution of new residential and new workforce units on a site that is transit-accessible, part of an exciting mixed-income development, and well-positioned to take advantage of economic opportunities that emerge in the Parkside neighborhood in the future. Specifically, the Commission finds that the Project provides housing and affordable housing public benefits because:

(a) Creation of additional housing. The housing proposed as part of the Project exceeds the amount possible through a matter-of-right redevelopment pursuant to the applicable limits in the underlying zone (i.e., the R-5-A Zone District) by approximately 53,170 square feet. Under existing zoning there is no residential minimum for the underlying RA-1 zone, which has a maximum FAR of 0.9 (1.08 with the IZ bonus). The provision of additional workforce and market rate units helps meet the housing needs of the District; and

(b) Creation of affordable housing in the Project and Parkside PUD. Although the Project that is the subject of this Application does not include any affordable housing units, the overall Parkside development approved pursuant to the first-stage PUD includes a significant contribution of affordable and workforce housing units. The overall PUD reserves: (i) 20% of the total residential component as affordable units to households having an income not exceeding 80% of AMI for the Washington, DC Metropolitan Statistical Area (adjusted for family size); and (ii) a further 20% of the total residential component for workforce housing targeted to households that have an income between 80-120% of the AMI. While this phase of the overall Parkside PUD will include market-rate units and workforce housing units only, the Parkside PUD as a whole provides a diverse number of housing options for households at different price points. This Project, with its addition of retail and other economic development opportunities, and its keystone site plan, is central to making possible the development of affordable units in other phases of the Parkside PUD.

143. Transportation infrastructure and mass transit improvements (§ 305.5(o) and (p)). Subtitle X § 305.5(p) provides that mass transit improvements, including construction of improvements to Metrorail station entrances, also constitute public benefits for a PUD. As noted above, a central organizing element of the Project's design is the construction of the vehicular and pedestrian Promenade through the center of Parcel 9. The Applicant committed to allowing pedestrian access through the Promenade as part of the street-closing process before the District Council. Further, as part of the Parkside PUD, the Applicant agreed to contribute to the construction of a new pedestrian bridge between the Parkside neighborhood and the Minnesota Avenue Metrorail Station. The Applicant has committed 25% of the cost of the bridge not to exceed $3 million to ensure that this bridge be constructed to improve access to this site. The Applicant and DDOT have entered into an agreement, secured by the $3 million that the Applicant has already posted, fulfilling this obligation. The groundbreaking for the pedestrian bridge is anticipated to occur in 2017, pending the commitment of the balance of the funds from public sources.

144. Environmental and sustainable benefits (§ 305.5(k)). The Project includes innovative sustainable design elements and will achieve appropriate levels of environmental certification. Subtitle X § 305.5(k) provides that environmental benefits are also public benefits to the extent such environmental benefits exceed the standards required by zoning or other regulations. The overall Parkside PUD has been designed to exceed the standards for LEED-ND certification. This Project will be designed to achieve LEED-Gold for both the office and residential buildings.

145. Uses of Special Value to the Neighborhood or the District of Columbia as a Whole (§ 305.5(q)). As part of the public process leading to the Parkside PUD,

the Applicant worked with residents, community members, the ANCs, and OP to identify additional public benefits of special significance to residents and neighbors. Subtitle X § 303.5(q) lists uses of special value to the neighborhood as public benefits of a PUD. The development will provide a multifamily and commercial development to bring full time residents, workers, and retail options to Parkside. The Project will also serve as an important transition between commercial uses and lower-density residential uses on the PUD Property. The proposed development will enhance a site that has been vacant for several years and will connect the existing Parkside Townhomes, senior housing, Community Green, and the multifamily units with the greater community.

146. Other public benefits which substantially advance the Comprehensive Plan (§ 305.5(r)). The Applicant commits to providing $5,000 for use by the ANC for a traffic consultant to develop a parking and curbside management plan. (Ex. 56.) Additionally, the Applicant commits to providing $7,500 to be used by the ANC to develop a conceptual design for a play and/or athletic field in the nearby National Park Service-owned land. (Ex. 56.) the Applicant committed up to $20,000 to renovate and modernize the existing Parkside HOA neighborhood community room. (Ex. 57.)

147. Streetscape improvements. The Project's physical form—loading and garage access from alleys, new construction facing the street, on-street parallel parking, a tree-lined streetscape—encourages pedestrian use and mitigates traffic impacts by promoting and encouraging active mobility over driving. The Project's Promenade also presents a key linkage between the Community Green and the nearby Metrorail Station.

Consistency of the Public Benefits with the Plan.

148. The Commission also finds that the Project's Public Benefits are not inconsistent with the Plan because each is an integral part of the Project, which itself is not inconsistent with the Plan. Moreover, such Public Benefits are each tangible, quantifiable, measurable, or capable of being completed or arranged prior to the issuance of a certificate of occupancy for the Project.

149. Accordingly, the Project satisfies the PUD Evaluation Standards.

CONCLUSIONS OF LAW

Procedural and Jurisdictional Conclusions

1. A PUD application must adhere to certain procedural requirements. (X § 307.1; Z §§ 205, 300, 400-08, 600-06, 700-707.) The Commission must hear any PUD case in accordance with the contested case procedures of Subtitle Z, Chapter 4 and Subtitle X § 300.3. The Commission has found and hereby concludes: (i) the Application satisfies the PUD application requirements; and (ii) the Applicant, OZ, OP, and the Commission have

satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations.

2. The minimum area included within a proposed PUD must be no less than 15,000 sf and all such area must be contiguous. (X § 301.) The Application satisfies these minimum area and contiguity requirements.

3. The Application is subject to compliance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. (the "Act").

Evidentiary Standards

4. The Applicant has the burden of proof to justify the granting of the Application according to the PUD and Map Amendment standards enumerated above. (X §§ 304.2, 500.2.) The Commission's findings in relation to a PUD must be supported by substantial evidence. (*See Howell v. District of Columbia Zoning Comm'n.*, 97 A.3d 579 (DC 2014).) Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support" the conclusions contained herein. (*D.C. Library Renaissance Project v. District of Columbia Zoning Comm'n.*, 73 A.3d 107, 125 (DC 2013).) The Applicant's filings, testimony, and expert witness presentations are credible and thorough and reasonably adequate to support the Commission's analysis and conclusions contained herein. Accordingly, the Applicant has provided substantial evidence to demonstrate that the Project satisfies the relevant PUD evaluation standards.

Consistency with the PUD Process, Zoning Regulations, and Plan

5. Pursuant to the Zoning Regulations, 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." (X § 300.1.) The Commission concludes that the approval of the Application is an appropriate result of the PUD process. The Project is a high-quality development that is superior to what could be constructed on the Property as a matter of right via the underlying zoning. The Commission has found that the public benefits are meaningful and are commendable both in number and quality. Finally, the Commission has found that the Project does not injure but instead advances the public health, safety, welfare or convenience, and is not inconsistent with the Comprehensive Plan.

6. The PUD process is intended to "provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan." (X § 300.2.) The Commission has found that the Project generally conforms to the requirements of the Zoning Regulations except for the few areas of articulated zoning relief, which are

nonetheless consistent with the intent and purposes of the Zoning Regulations. The Project is not inconsistent with the Comprehensive Plan. Therefore, the Commission concludes that Project does not circumvent the Zoning Regulations and is not inconsistent with the Comprehensive Plan.

Evaluation Standards

7. The Commission must evaluate the Map Amendment request and approve it only if it is not inconsistent with the Comprehensive Plan. (X §§ 500.1, 500.3.) The Commission has made extensive findings that the Map Amendment, as it supports the Project, is not inconsistent with the Plan. Accordingly, the Map Amendment satisfies the relevant standard for approval.

8. As part of a PUD application, the Commission may, in its discretion, grant relief from any building development standard or other standard (except use regulations). (X §§ 303.1, 303.11.) The Applicant seeks the Loading Relief pursuant to the Commission's discretion to grant relief from any development standards of the Zoning Regulations. The Commission has found that such item of relief does not impair the Zoning Purposes and is not inconsistent with the Comprehensive Plan. (*Id*.) The Commission concludes it may exercise its discretion to grant such Development Incentives subject to the Conditions (as such term is hereinafter defined) hereof.

9. The PUD provisions require the Commission to evaluate whether the Application: "(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." (*Id*. § 304.4.) The Commission has reviewed the entire record and issued findings to support its conclusion that the Application satisfies the PUD Evaluation Standards. The Commission concludes the Project is not inconsistent with the Comprehensive Plan as a whole, accepts the entirety of the Applicant's impact analysis contained in the record and concludes that the Project does not have any unacceptable impacts. The Commission further concludes that the Project includes Public Benefits, as described below, which are also not inconsistent with the Comprehensive Plan.

10. In particular, the Commission finds that the Project's inclusion of an office use is not inconsistent with the Comprehensive Plan. Provisions of the Comprehensive Plan guiding interpretation of the FLUM instruct that the FLUM use designations describe the "general character" of development for all of the properties on a block but that there may be individual buildings that deviate from the designation. This guidance supports office use on the Property because lots similarly designated are anticipated to contain residential use. The specific policy objectives of the District and Area Elements of the Comp. Plan offer significant support for office use as part of the Project. In particular, the consistency

of the Project's transit-oriented and economic development components justifies modest misalignment with the FLUM designation.

11. The Zoning Regulations define Public Benefits as "superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title." X § 305.2. Such public benefits must satisfy the following criteria ("Public Benefit Criteria"): (a) benefits must be tangible and quantifiable items; (b) benefits must be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) benefits must primarily benefit the geographic boundaries of the ANC; and (d) monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. (*Id.* §§ 305.3, 305.4). Based on the Commission's findings regarding the Public Benefits as well as the Conditions of this Order, the Commission concludes that the Public Benefits benefit the surrounding neighborhood and the District as a whole to a significantly greater extent than would a matter-of-right development and readily satisfy the Public Benefit Criteria.

12. The Commission must undertake a "comprehensive public review" of the PUD application "in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits." (X § 300.5.) In deciding on the Application, the Commission must "judge, balance, and reconcile the relative value of the public benefits project and amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case" as follows: (X §§ 304.3, 303.12.)

    (a) The Commission heard the Application at the Public Hearing and followed the contested case procedures of the Zoning Regulations. The Commission therefore concludes that it has satisfied the procedural requirements in order to review the Application and evaluate the flexibility and Development Incentives requested and potential adverse effects against the proposed public benefits, in light of the circumstances of the case;

    (b) The Commission's review of the Application has been comprehensive. The Commission has reviewed the entire record and has identified and examined the concerns and statements about the Project raised by the ANC and District agencies. The Commission has appropriately considered the substantial evidence presented by the Applicant. The Commission grants appropriate weight to the reports and testimony of the various reviewing District agencies and the ANC. There are no items in the record that the Commission has excluded from its consideration notwithstanding in some instances this Order does not contain precise citation to such items; and

(c) The Project warrants the Development Incentives (including the Map Amendment) and flexibility in light of the Project's extensive and comprehensive public benefits. The Development Incentives directly support the Project's provision of public benefits. The public benefit-supporting nature of the Development Incentives affords the public benefits ample cushion to offset any potential adverse effects. The Project has largely been designed to avoid such effects. However, to the extent such effects exist as a result of the Project—for instance with respect to traffic—the magnitude of the public benefits and the Applicant's mitigation efforts provide sufficient justification for the Project notwithstanding such effects. Moreover, the public benefits generally accrue most significantly to the area immediately surrounding the Project. Therefore, those most likely to be adversely affected by the Project nonetheless also benefit from it. The Commission concludes that the Project's Development Incentives are warranted in light of the public benefits, when considering the specific nature of the area surrounding the Project and the Project's overall consistency with the Comprehensive Plan.

13. Accordingly, the Project's public benefits justify the Development Incentives requested even in light of the background concerns of the ANC regarding the potential adverse effects of the Project. The Application satisfies the PUD Requirements.

14. The Commission must grant approval to any second-stage PUD application that it finds in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, provided such approval may be subject to conditions. (X § 309.2.) The Commission has found that the Application is in accordance with the Zoning Purposes, the PUD process, and the Parkside PUD. Accordingly, the Commission concludes that it must approve the Application subject to the Conditions of this Order.

15. The Commission is required under § 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)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. While ANC 7D's first report listed four areas of concern, it further stated that it was engaged in an ongoing discussion with the Applicant in an effort to resolve them. ANC 7D's second report stated that it had "reached agreement" on the areas of concern and that its support was without condition. The Commission understands this to mean that the ANC no longer had issues or concerns. Because the ANC expressed no issues or concerns, there is nothing for the Commission to give great weight to. (*See Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

16. The Commission is also required to give great weight to the recommendations of OP under § 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). The Commission has reviewed the OP Setdown Report and OP Final Report and heard testimony from OP and finds that OP supports the Application. The Commission gives OP's recommendation to approve the Application great weight.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the Application for review and approval of the second-stage PUD, modification to a first-stage approval and the related map amendment to the C-3-A Zone District for the Property that are the subject of the Application. The approval of this PUD is subject to the following guidelines, conditions, and standards ("Conditions").

A. PROJECT DEVELOPMENT

1. The Project shall be developed in accordance with plans and drawings filed in the record in this case as Exhibit 57A1-57A9 ("Final Plans"), as modified by the guidelines, conditions, and standards herein.

2. The Project shall have flexibility from the use, FAR, lot occupancy, and parking requirements set forth in Z.C. Order No. 05-28, as noted in the Findings of Fact. The Project shall further have flexibility from the Zoning Regulations from the loading requirements as noted in the Findings of Fact.

3. The Applicant shall have flexibility with the design of the PUD in the following areas:

   (a) To vary the location and design of interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the building;

   (b) To provide a range in the number of residential units and number of parking spaces plus or minus 10% from the number depicted on the Plans;

   (c) To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim, louvers and vents, such that the refinements do not substantially change the external configuration or appearance of the building; and

   (d) To coordinate with DDOT to finalize the streetscape design and materials during the public space process.

B. PUBLIC BENEFITS

1. **Prior to issuance of a building permit, the Applicant shall**:

(a) Execute a Development and Construction Management Plan with the ANC, which plan shall include terms substantially similar to those proposed in Exhibit 27B;

(b) Direct the Project's contractors and subcontractors to use reasonable good faith efforts to select new hires from among qualified persons with a goal of at least 51% of all new hires being residents of Ward 7. This commitment shall be included in each contract with Project contractors and subcontractors. The Applicant shall provide to the ANC on a quarterly basis for the duration of construction, an employment report documenting the number of Ward 7 residents hired for the Project. The employment reports to the ANC will provide a summary of: (i) the approximate number of employees working on the Project in total; (ii) the number of new hires working on the Project; and (iii) the number of the new hires that are Ward 7 residents, provided the specific contents of such report may be modified by mutual agreement of the Applicant and the ANC;

(c) In coordination with the ANC, identify a local representative, group, organization and/or coordinator to facilitate job training for future jobs related to the Project, and to help administer solicitations from Parkside to the Ward 7 community for available jobs. All solicitations shall include details regarding the specifications, requirements and/or skillset desired for the available jobs; and

(d) Host a job fair in coordination and in partnership with the ANC, Ward 7 Business Partnership, DC DOES and DC DSLBD, to identify (i) qualified candidates for construction job openings and (ii) Ward 7-based subcontractors.

2. **Prior to issuance of a certificate of occupancy, the Applicant shall:**

(a) Provide evidence to the Zoning Administrator that it advertised jobs and contracting opportunities with the following: (i) the Project's contractor's website, (ii) the ANC's website, (iii) community message boards, (iv) Project signage, and (v) referral partners, as applicable, and in each case providing clear instructions for how to apply and who to contact for information about such jobs and opportunities;

(b) Provide evidence to the Zoning Administrator that it has used or directed the managers of its office, residential and retail space to use, reasonable

good faith efforts to select permanent new hires from among qualified residents of Ward 7. These positions may include, but are not limited to, marketing positions, facilities management positions, or landscaping positions. The Applicant shall advertise these job opportunities on its website and through referral partners, as applicable, in each case providing clear instructions for how to apply and who to contact for information about such jobs and opportunities;

(c) Provide the Zoning Administrator evidence that it has provided the ANC with a written quarterly update on the number of Ward 7 residents hired for positions within the Project; and

(d) Submit evidence to the Zoning Administrator, in the form of a document certified by a LEED Accredited Professional that the Project will comply with the LEED requirements at the LEED-Gold level, however actual LEED certification shall not be required.

3. **Until the earlier of the issuance of a certificate of occupancy for the first retail space or 90% of lease up of the retail space,** the Applicant shall: Provide the Zoning Administrator evidence that it has no less than quarterly, either held a meeting or provided an update to the community working group ("Retail Working Group") to discuss the status of Parkside's efforts to market approved retail spaces in the Project. As part of the quarterly meetings, the Applicant shall provide the Retail Working Group copies of market studies, reports and marketing material for the Project for review and comments. The Retail Working Group members shall be obligated to keep confidential work product and information regarding the leasing effort and potential retail operators provided by the Applicant. The Retail Working Group shall be composed of eight individuals, which shall include the Single Member District representative for the Project, a member of the Parkside Civic Association, and a representative of the Applicant. The remaining members of the group shall be determined by the ANC Single Member District representative.

4. **Prior to the issuance of the first Certificate of Occupancy for the residential building on Parcel 9, the Applicant shall demonstrate the following:**

(a) **For the life of the Project**, the Applicant shall:

(i) Provide a total of approximately 78,460 square feet of residential GFA of housing in the residential building on Parcel 9;

(ii) Set aside no less than 20% of the residential units in the residential building on Parcel 9 as workforce housing units available to households with an annual median income between 80% of the Area Median Income and 120% of the Area Median Income

("Workforce Units"), provided such income restriction shall only apply to the first purchaser of the Workforce Units;

(b) The distribution of the Workforce Units shall generally be in accordance with Sheet A.1.04 of Exhibit 27; and

(c) The Applicant shall record a covenant pursuant to X § 311.6 requiring compliance with conditions B.4(a) and B.4(b).

5. **Prior to the issuance of the first certificate of occupancy for development approved in Z.C. Case Nos. 05-28P, 05-28Q, 05-28R, 05-28S, and 05-28T**, the Applicant shall provide evidence to the Zoning Administrator that it has funded, at a cost to the Applicant of up to $25,000, the recommended signal operation upgrades at the Kenilworth Terrace, N.E. and Nannie Helen Burroughs Avenue, NE intersection to help alleviate traffic congestion.

6. **Prior to issuance of the first building permit for the development approved in Z.C. Case Nos. 05-28P, 05-28Q, 05-28R, and 05-28S, the Applicant shall**:

(a) Contribute up to $7,500 (the "Landscape Fund") to an escrow account for use by the ANC to hire a landscape architect to develop a conceptual design for a play and/or athletic field in the National Park Service ("NPS")-owned open space ("NPS Land") behind Neval Thomas Elementary School. Preference for the landscape architect shall be given to qualified Ward 7-based CBE firms. The Landscape Fund shall be used for the following scope and for no other purpose: (i) one community charrette led by the landscape architect and include all involved stakeholders (including but not limited to the ANC, Parkside Civic Association, Neval Thomas Elementary School representatives, Cesar Chavez Middle and High School representatives, Mayfair Tenants Association, Parkside, and any additional community members interested) to identify play space needs, goals and objectives for the NPS Land; (ii) development by the landscape architect of a concept design and layout for the NPS Land utilizing the input and feedback generated from the community charrette to guide the design; (iii) one presentation of the conceptual design to community stakeholders by the landscape architect; and (iv) one meeting with the landscape architect, community stakeholders, and the appropriate NPS and/or DC representatives to review the proposed conceptual design and advocate for use of NPS Land, but only to the extent NPS and/or DC representatives agree to attend such a meeting. As NPS owns the NPS Land, the ANC acknowledges and agrees that NPS is solely responsible for the design and use of the NPS Land. The landscape design shall be developed to a concept level only and with the intent to be used as a community tool to show NPS what is possible in the

space and promote the conversion of the NPS Land by NPS to a play and/or athletic field for use by the community, and the design shall not include detailed plans that could be used for permitting and/or construction. Applicant shall provide evidence that funds were used for intended purpose prior to issuance of final certificate of occupancy;

(b) Contribute up to $15,000 in an escrow account ("Transportation Study Fund") for use by the ANC for the expertise of a traffic consultant to study solutions to circulation issues beyond what is required to mitigate the overall first-stage Parkside PUD ("Parkside Study"). The goal of the Parkside Study is to provide analysis and feasibility regarding potential solutions to larger, regional traffic issues to facilitate discussions with DDOT. The Parkside Study shall include the following scope and the Transportation Study Fund shall be used for no other purpose: (i) schedule a meeting with the traffic consultant and community, including but not limited to the ANC, Parkside Civic Association, Mayfair Tenant's Association and any additional community associations, parties or members interested, to identify the community's top traffic issues and/or congested locations; (ii) have the traffic consultant study the top issues and/or locations and develop a few potential solutions that might alleviate some of the issues; (iii) present the findings and potential traffic solutions to the community; and (iv) schedule a meeting between the traffic consultant, the ANC and/or appropriate community representatives and DDOT to present the potential traffic solutions to DDOT. It is understood that locations and traffic issues reviewed as part of the Parkside Study are ultimately controlled by and subject to the discretion of DDOT, and outside of the scope of any of the Projects, and that Parkside cannot guarantee DDOT's approval of the scope of the Parkside Study or any of the proposed traffic solutions or other recommendations developed by the traffic consultant. The intention of the Parkside Study is to identify potential traffic solutions for the locations of most concern to the community in a similar way to other DDOT studies that the traffic consultant has advised on to help facilitate DDOT's review. The Applicant shall provide evidence that funds were used for intended purpose prior to issuance of final certificate of occupancy; and

(c) Set aside up to $5,000 in an escrow account for use by the ANC for a traffic consultant to develop a parking and curbside management plan ("Parking Plan") with and for use by the ANC and community, with the understanding that DDOT is responsible for making and implementing any recommendations in the Parking Plan. The purpose of the Parking Plan is to identify the parking regulations, such as RPP and on-street parking meters, desired for each block to provide DDOT and the

community a context to develop a parking solution for the whole neighborhood instead of on a block-by-block basis. The boundaries for Parking Plan shall be the blocks within the area bordered by Foote St., N.E., Anacostia Street, N.E., Hayes St., N.E., and Kenilworth Terrace, N.E., plus the portion of Kenilworth Terrace, N.E. between Hayes Street, N.E. and Jay Street, N.E. Applicant shall provide evidence that funds were used for intended purpose prior to issuance of final certificate of occupancy.

C. Transportation Mitigation

1. **For the Life of the Project** (except where otherwise noted below), the Applicant shall abide by the terms of the TDM plan, which requires compliance with the following:

   (a) The Applicant shall designate a TDM coordinator, who is responsible for organizing and marketing the TDM plan and who shall act as a point of contact with DDOT;

   (b) All parking on site shall be priced at market rates at minimum, defined as the average cost for parking in a 0.25-mile radius from the site;

   (c) The Applicant shall unbundle the cost of residential parking from the cost of lease or purchase of each unit;

   (d) The Applicant shall unbundle the cost of vehicle parking form the cost of the office lease;

   (e) The Applicant shall install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives;

   (f) The Applicant shall install a Transportation Information Center Display (electronic screen) within the office building lobby containing information related to local transportation alternatives;

   (g) The Applicant shall meet or exceed zoning requirements to provide bicycle parking facilities at the proposed development. This includes secure parking located on-site and short-term bicycle parking around the perimeter of the site;

   (h) The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials;

   (i) The Applicant shall provide bicycle repair stations to be located within the bicycle storage rooms;

(j) The Applicant shall dedicate two spaces within the garage for car-sharing services to use with right of first refusal; and

(k) The Applicant shall provide showers and corresponding changing facilities for the office use.

2. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall adopt a loading management plan to coordinate resident moving operations, office deliveries, and trash removal operations.

3. **Prior to the issuance of a certificate of occupancy or the office building**, the Applicant shall fund the installation of a new 19-dock Capital Bikeshare station and one year of maintenance. The location of the station shall be finalized with DDOT during the public space process, and it must include an additional 20 feet of space to be left available to accommodate eight additional docks if expanded in the future

4. **Prior to issuance of a building permit for the Project**[14], the Applicant shall fund and install the hardware necessary to implement the proposed traffic signal changes at the intersection of Kenilworth Terrace, N.E. and Nannie Helen Burroughs, N.E., subject to DDOT approval, with a maximum cost to the Applicant of $25,000, if not already completed at the time such building permit is issued.

D. MISCELLANEOUS

1. The Zoning Regulations Division of DCRA shall not issue any building permits for the PUD until the Applicant has recorded a Covenant (the "PUD Covenant") in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The change of zoning to the C-3-A Zone District shall be effective upon the recordation of the PUD Covenant.

3. The PUD shall be valid for a period of two years from the effective date of this Order within which time an application shall be filed for a building permit. Construction must begin within three years of the effective date of this Order.

[14] This same requirement was stated in Condition B.2.g of Z.C. Order 05-28P effective September 1, 2017. It is the Commission's intent that this funding requirement be satisfied prior to whichever project's certificate of occupancy is issued first.

4. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On July 24, 2017, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0**.

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on March 23, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION
A majority of the Commission members approved the issuance of this Order.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28AC
Z.C. Case No. 05-28AC
Parkside Residential, LLC
(Modification of Significance to an Approved Second-Stage Planned Unit Development @ Square 5056, Lots 865-867)
July 10, 2023

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing ("Public Hearing") that opened on May 15, 2023, and was continued to July 10, 2023, to consider an application ("Application") from Parkside Residential, LLC ("Applicant") concerning Lots 865, 866, and 867 in Square 5056 ("Parcel 9A"). The Application requested review and approval of the following:

(i) A Modification of Significance of the second-stage planned unit development ("PUD"), previously approved in Z.C. Order No. 05-28Q, and modified in Z.C. Order Nos. 05-28W, 05-28W(1), 05-28Z, and 05-28AD,[1] for a change in use to Parcel 9A from office to residential use to the construct a mixed-use building containing approximately 127 residential units, a decrease from approximately 11,000 square feet of ground floor commercial uses to approximately 8,499square feet, a reduction of 58 parking spaces, plus below-grade parking in an enclosed garage, and an adjacent at-grade pedestrian promenade (collectively, the "Project") pursuant to Subtitle Z § 704 of Title 11 of the District of Columbia Municipal Regulations ("DCMR"), Zoning Regulations of 2016 (the "Zoning Regulations" or "ZR16" and to which all subsequent section references refer unless otherwise specified); and

(ii) Such other design flexibility as is set forth in the Conditions hereof.

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

[1] The Commission took final action to approve the time extension request in Z.C. Case No. 05-28AD at its May 11, 2023 public meeting. Z.C. Order No. 05-28AD is being issued simultaneously with this Order, and both shall have the same final and effective date as noted below.

ZONING COMMISSION
District of Columbia
CASE NO.05-28AC
EXHIBIT NO.45

FINDINGS OF FACT

I. BACKGROUND

BACKGROUND AND PRIOR APPROVALS

1. Parcel 9A is part of a larger site, Block F, that originally received approval for a First-Stage PUD, together with a related Zoning Map amendment rezoning from the R-5-A and C-2-B zone districts to, respectively, the C-3-A and CR zone districts, in Z.C. Order No. 05-28, effective April 13, 2007 (the "First-Stage Order"). The First-Stage Order authorizes construction of approximately 3.1 million square feet of mixed-use development on 15 vacant acres in Ward 7 (the "Parkside PUD"). (Exhibit ["Ex."] 2C1A.) Specifically, the First-Stage Order authorized construction of Block F with retail and residential uses.

2. Parcel 9A, along with the adjacent Lots 868 and 869 in Square 5056 ("Parcel 9B" and together with Parcel 9A, "Parcel 9"), received approval for a second-stage PUD and modification of the First-Stage PUD (the "Second-Stage Parcel 9 PUD") in Z.C. Order No. 05-28Q, effective March 23, 2018 (the "Second-Stage Order"). (Ex. 2C1B.) The Second-Stage Order authorized Parcel 9 to be constructed with a multi-family residential building on Parcel 9B of a maximum height of 80 feet, and an office building on Parcel 9A of a maximum height of 85 feet, both with ground floor retail and approximately 151 below-grade parking spaces.

3. Pursuant to Z.C. Order No. 05-28Z, effective May 6, 2022 (the "Parcel 9B Modification"), the Commission approved a Modification of Consequence to the Second-Stage Parcel 9 PUD for Parcel 9. As part of the Parcel 9B Modification, the Commission (a) approved minor design changes to Parcel 9B; and (b) authorized Parcel 9A and Parcel 9B to proceed on a phased basis, which was not contemplated under the Second-Stage Parcel 9 PUD. (Ex. 2C1C.)

4. Pursuant to Z.C. Order Nos. 05-28W, 05-28W(1), and 05-28AD, the Commission approved time extensions of the Second-Stage Parcel 9 PUD. (Ex. 2C2.)

PARTIES

5. Pursuant to Subtitle Z § 403.5(a), the Applicant is automatically a party to the Application.

6. Pursuant to Subtitle Z §§ 101.8 and 403.5(b), Advisory Neighborhood Commission ("ANC") 7D is automatically a party to the Application as the "affected" ANC. ANC 7F is automatically a party to the Parkside PUD and received notices of the Application but is not a party to this proceeding. ANC 7F did not participate in this proceeding.

7. The Commission received no requests for party status.

NOTICE AND SETDOWN

8. Pursuant to Subtitle Z §§ 300.7 and 300.8, on June 15, 2022, the Applicant mailed ANCs 7D and 7F and the owners of all lots within 200 feet of Parcel 9A a "Notice of Intent" to file the Application. (Ex. 2D2.)

9. Pursuant to Subtitle Z § 300.9, subsequent to the mailing of such Notice of Intent but prior to filing the Application with the Commission, the Applicant presented the Application to ANC 7D at its September 13, 2022 public meeting. (Ex. 2D2.)

10. Pursuant to Subtitle Z §§ 400.9-400.12, on February 9, 2023, at its duly noticed public meeting, the Commission considered the Application and voted to set the case down for a public hearing. (Transcript ["Tr."] of Commission February 9, 2023 Regular Public Meeting at 43-47.)

11. Pursuant to Subtitle Z §§ 402.1-402.2 and 402.6, on March 9, 2023, the Office of Zoning ("OZ") sent notice of the May 15, 2023 public hearing concerning the Application to:

    (a) The Applicant;
    (b) ANC 7D;
    (c) The ANC 7D07[2] Single Member District Commissioner, whose district includes Parcel 9A;
    (d) ANC 7F;
    (e) Councilmember Vincent C. Gray, the Ward 7 Councilmember, in whose Ward Parcel 9A is located;
    (f) The Office of ANC;
    (g) The Office of Planning ("OP");
    (h) The District Department of Transportation ("DDOT");
    (i) The Department of Buildings ("DOB");
    (j) The District Department of Energy & Environment ("DOEE");
    (k) The Chair and At-Large Members of the DC Council; and
    (l) The owners of all lots within 200 feet of Parcel 9A.

    (Ex. 14, 15.)

12. Pursuant to Subtitle Z § 402.1(a), OZ published notice of the May 15, 2023 public hearing, concerning the Application in the March 17, 2023, issue of the *District of Columbia Register* (70 DCR 003331, *et seq.*) as well as on the calendar on OZ's website. (Ex. 13, 14.)

13. Pursuant to Subtitle Z §§ 402.3-402.4, 402.8-402.10, on April 4, 2023, the Applicant submitted evidence that it had posted notices of the public hearing on Parcel 9A and on May 10, 2023, and July 6, 2023, submitted evidence that it had thereafter maintained such notices. (Ex. 18, 24, 36.)

14. On May 15, 2023, the Applicant filed a request for postponement of the public hearing until July 10, 2023, at the request of ANC 7D for additional time to continue to respond to issues raised by individual members of the nearby community. At the start of the May 15,

[2] Subsequent to the filing of the Application, ANC 7D was redistricted as part of the District's decadal redistricting. As part of that redistricting, Parcel 9A was redrawn into SMD 7D03, an office held at the time of the public hearing by Commissioner Wendell Felder, the same Commissioner who held the office of SMD 7D07 at the time of filing.

2023 public hearing, the Commission granted the Applicant's postponement request. (Ex. 30.; Tr. of May 15, 2023 Public Hearing at 5-8.)

15. Pursuant to Subtitle Z §§ 402.1-402.2 and 402.6, on June 8, 2023, OZ sent notice of the July 10, 2023 public hearing and published notice of the July 10, 2023 public hearing in the June 16, 2023, issue of the *District of Columbia Register* (70 DCR 008537, *et seq.*) as well as on the calendar on OZ's website.

PARCEL 9A AND SURROUNDING AREA

16. Parcel 9A, as with all the property within the Parkside PUD, is located in the Parkside neighborhood of Ward 7 near the Mayfair/Paradise and Eastland Gardens neighborhoods. The Anacostia River and Kenilworth Park are located to the north of the Parkside neighborhood, and the Anacostia Freeway and the Orange Line are located to the south. (Ex. 2A2.)

17. Land uses in the area surrounding Parcel 9A include residential neighborhoods, including the Mayfair Mansions apartment complex and the Parkside Townhomes, and educational institutions, including Educare, Neval Thomas Elementary School, and the Cesar Chavez Public Charter School. The former Benning Road Power Plant and Service Center, owned by PEPCO, comprising 77 acres (the "PEPCO Power Plant"), is located to the west of Parcel 9A adjacent to the District-owned Benning Road transfer station. The National Park Service controls large tracts of land between Parkside and the Anacostia River. (Ex. 2A2.)

18. The Parkside PUD approved a plan identifying ten "building blocks" of land. Parcel 9A is part of Parcel 9, as identified in the Second-Stage Order, which is part of Block F, as identified in the First-Stage Order. The remaining parcels in Block F include Parcel 9B, which is directly to the northeast of Parcel 9A, and Parcels 8 and 10, which bookend Parcel 9. Block F, including Parcels 8, 9, and 10, comprises a single record lot. (Ex. 2A2.)

19. Parcel 9A consists of approximately 37,988 square feet of land area that is currently unimproved and is bounded by Parkside Place, N.E. to the northwest, Kenilworth Terrace, N.E. to the southeast, Grant Place, N.E. to the southwest, and Parcel 9B to the northeast. (Ex. 2A2.)

20. Parcel 9A is situated near the center of the Parkside PUD and in the center of the Parkside neighborhood. The one-acre Parkside community green (the "Community Green") is located directly to the northeast of Parcel 9A across Parkside Place, N.E. Parcel 12 of the Parkside PUD is located to the southeast of Parcel 9A and is currently unimproved; however, Z.C. Order No. 05-28AB, effective January 20, 2023, approved interim uses to activate portions of the site, including a playground. (Ex. 2A2, 2C2.)

CURRENT ZONING

21. The underlying zoning for Parcel 9A is RA-1. A matter-of-right development in the RA-1 zone allows a maximum FAR of 0.9 and a maximum height of 40 feet. (Subtitle F §§ 302.1, 303.1.) Pursuant to the Parkside PUD, Parcel 9A was rezoned from the R-5-A zone district to the C-3-A zone district (as it was known under the 1958 Zoning Regulations; the C-3-A zone district is now the MU-7B zone under the 2016 Zoning Regulations). (Ex. 2A2.) The

Parkside PUD and the Second-Stage Parcel 9 PUD are both vested under the 1958 Zoning Regulations ("ZR58") pursuant to Subtitle A § 102.3(a).

COMPREHENSIVE PLAN (TITLE 10-A DCMR)

22. The Comprehensive Plan's ("Plan") Future Land Use Map ("FLUM") designates the southwestern half of Parcel 9A as "Medium Density Residential" and the northeastern half as "Parks, Recreation, and Open Space". (Ex. 21C.) The Plan's Framework Element provides that:

    (a) The Medium Density Residential designation "is used to define neighborhoods or areas generally, but not exclusively, suited for mid-rise apartment building . . . [the] designation also may apply to taller residential buildings surrounded by large areas of permanent open space . . . density typically ranges from 1.8 to 4.0 FAR, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development." (10-A DCMR § 227.7.); and

    (b) The Parks, Recreation, and Open Space designation "includes a mix of passive open space (for resource conservation and habitat protection) and active open space (for recreation) . . . zoning designations for these areas may vary." (*Id.* § 227.19.)

23. The Comprehensive Plan's Generalized Policy Map ("GPM") designates all of Parcel 9A as a Neighborhood Enhancement Area. (Ex. 21C.) The Framework Element defines Neighborhood Enhancement Areas as "neighborhoods with substantial amounts of vacant and underutilized land . . . present[ing] opportunities for compatible infill development, including new single-family homes, townhomes, other density housing types, [and] mixed-use buildings . . . New housing should be encouraged to improve the neighborhood." (*Id.* §§ 225.6, 225.7.)

24. The Comprehensive Plan includes Parcel 9A within the Far Northeast and Southeast Area Element.

25. Parcel 9A is not within the scope of any Small Area Plan although the Parkside PUD functions as an analogous neighborhood-scale plan. (Ex. 21C.)

II. THE APPLICATION

THE PROJECT, AS MODIFIED BY THE APPLICATION

26. The first-stage Parkside PUD approved Parcel 9A for residential use with a mid-block, pedestrianized promenade separating it from a residential building on Parcel 9B. The Second-Stage Parcel 9 PUD then modified the Parkside PUD to approve Parcel 9A for an office building with a gross floor area ("GFA") of approximately 123,494 square feet and a maximum height of 90 feet with a one-block street between Parcels 9A and 9B approved for both vehicular and pedestrian use with on-street parking. The Application proposes the following modifications to the Parcel 9A building relative to the building approved in the Second-Stage Parcel 9 PUD:

    (a) Revert Parcel 9A from the second-stage PUD approval for office use back to residential use approved in the first-stage Parkside PUD;

(b) Revert the mid-block area between Parcels 9A and 9B to a pedestrian-only promenade ("Promenade") and enhance the amount of plantings and landscaping in that area;
(c) Reduce the number of vehicle parking spaces from 151 spaces for Parcel 9 as a whole to approximately 93 spaces (± 10%) total for Parcel 9 as a whole, in a connected garage beneath Parcels 9A and 9B and remove all on-street parking approved as part of the Second-Stage Parcel 9 PUD;
(d) Reduce the height from 90 feet to approximately 82.5 feet;
(e) Reduce the commercial gross floor area from approximately 11,000 square feet to approximately 8,499 square feet; and
(f) Increase the footprint from a lot occupancy of 55.4% to a lot occupancy of approximately 57.2%.

(Ex. 2A2, 21A1, 21B1-21B7.)

27. The Application, as amended, proposes to construct a mixed-use Project (the "Project") on Parcel A, with:

(a) A maximum height of approximately 82.5 feet, plus a penthouse with a height of approximately 8.5 feet;
(b) Approximately 121,646 square feet of total GFA, for an approximate total FAR of 3.2, including approximately 113,147 square feet of residential GFA and approximately 8,499 square feet of non-residential GFA;
(c) Approximately 127 residential units;
(d) A lot occupancy of approximately 49% as to Parcel 9A only;
(e) 20% of the residential units reserved for workforce housing for households earning between 80% and 120% of the Median Family Income ("MFI");
(f) Landscaped areas totaling a green area ratio ("GAR") of not less than 0.25 as to Parcel 9A only;
(g) One 30-foot loading berth, one 100 square foot loading platform, and one 20-foot delivery space;[3]
(h) Approximately 52 below-grade vehicle parking spaces (± 10%) in the Project's garage;
(i) Approximately 43 long-term bicycle parking spaces; and
(j) 12 short-term bicycle parking spaces, which will exceed the minimum requirements of the Zoning Regulations for at least 6 spaces for residential use and 3 spaces for retail use in the Project.

(Ex. 21B1-21B7.)

[3] Under ZR58, the Project would be required to provide a 55-foot loading berth and a 200 square foot loading platform. Instead, the Project provides a 30-foot loading berth and a 100 square foot loading platform, which complies with the dimensional requirements of ZR16. Out of an abundance of caution, the Applicant submitted a list of additional potential relief from certain ZR58 requirements, including the aforementioned loading requirements, in the event that ZR58 should apply to the modifications requested by the Application. (Ex. 21A3.) However, the Commission agrees that relief from ZR58 is unnecessary since ZR58 has been repealed and replaced by ZR16. Therefore, the Applicant need not seek zoning flexibility from such ZR58 requirements.

28. Site Plan: The Project is designed to complement the residential building planned for Parcel 9B, with each building flanking the pedestrian Promenade at the center of Parcel 9, which connects the pedestrian bridge leading from the Metrorail to the southeast of Parcel 9A to the one-acre Community Green to the northeast of Parcel 9A. The Project's ground floor includes commercial space, as well as residential amenity space. The commercial uses generally face Kenilworth Terrace and the residential-focused uses face Parkside Place, N.E., and the Community Green with loading and mechanical uses at the back, adjacent to the alleyway. The Project design also pulls back the building façade on the Parkside Place, N.E. frontage in order to accommodate additional sidewalk width and space for the tree pits, in coordination with DDOT. (Ex. 2A2; Tr. of July 10, 2023 Public Hearing ["Hearing Tr."] at 25.)

29. Massing: The Project's height and massing serve as a transition from the future office and commercial uses on Parcel 12 to the lower-scale residential uses and the Community Green located to the north of Parcel 9A. The building steps back at its upper levels on Parkside Place, N.E. to gesture to the lower-scale residential character of the neighborhood on that side of Parcel 9A. (Ex. 2A2, 21B1-21B2, 21C; Hearing Tr. at 20-21.)

30. Materials: The Project's façade incorporates light, warm, grey-toned materials with brick at the lower levels of the structure with corrugated metal at the upper levels. A green screen is proposed for the east elevation, facing the Promenade. The façade on Kenilworth Terrace includes two bay projections to break down the mass of the building as well as a two- and three-story band of masonry that wraps the corner of the building to provide tactility to scale the building down towards the pedestrian level. These variations are intended to give the appearance of several buildings as opposed to one large urban wall. The stepping of the masonry also aligns with the cornice of the adjacent townhouses such that the Project fits into the context of the block. (Ex. 2A2, 21B3; Hearing Tr. at 21-22.)

31. Landscape: The Project incorporates a meaningful amount of landscaping. The Promenade includes tree planters providing a shaded canopy and a center lawn between the buildings on Parcels 9A and 9B as well as a vegetative rain garden on the northern portion of the Promenade closer to Parkside Place, N.E. (Ex. 2A2, 21B6; Hearing Tr. at 21-25.)

32. Sustainable Design: The Project is designed to comply with LEED Gold v4 and meets the GAR requirement of 0.25. The roof features a PV array and green roof areas. (Ex. 2A2, 21B6; Hearing Tr. at 21-25.)

33. Parking and Loading: The below-grade garage includes approximately 52 vehicle parking spaces (± 10%) and at least 43 long-term bike parking spaces. The garage is linked with the parking garage below the proposed building on Parcel 9B. The Applicant anticipates that the garage will be constructed in phases with parking spaces shared between the two buildings as the two buildings deliver. The total number of vehicle parking spaces between Parcel 9A and 9B is approximately 93 spaces (± 10%). The Applicant requested flexibility to apportion the spaces between Parcels 9A and 9B and for flexibility to construct knock-out walls between the Parcel 8 and Parcel 10 below-grade garages. A loading berth and a

loading space are located at grade and accessed via the alley between Parcel 9A and Parcel 8. (Ex. 2A2, 34.)

34. ANC Commitments: As part of the Project, the Applicant proffered public benefits and amenities, including commitments requested by ANC 7D (Ex. 39.), as incorporated in the Conditions of this Order. In addition to other proffered benefits and amenities offered by the Applicant, these ANC commitments include:

(a) Within 30 days of the effective date of this Order, providing ANC 7D with a schedule for permitting, purchasing, and installing solar lights in certain private alleys and common areas in the Parkside neighborhood;
(b) Installing solar lights pursuant to the schedule established;
(c) Delivering to DDOT any parking, curbside management, or other transportation analysis that the Applicant's transportation engineer develops for the Parkside neighborhood;
(d) Maintaining or causing to be maintained and/or enhancing or causing to be enhanced, as necessary, the existing vegetation and landscaping comprising the "green screen" along the southwest side of Foote Street, N.E. between Kenilworth Avenue, N.E. and Anacostia Avenue, N.E. between the existing PEPCO facility and the Parkside neighborhood, subject to the reasonable requirements of DDOT and/or the then-current fee owner of the property where such green screen is located;
(e) Being available to meet with a new development oversight committee established by the ANC 7D03 Commissioner at public meetings on a monthly basis (or if less often than monthly, as often as such committee actually meets and invites in writing the Applicant to participate);
(f) Being available to meet with the full ANC 7D at its public meetings when invited in writing to present and/or participate;
(g) Providing any presentation materials electronically not less than 48 hours prior to such public meetings and providing ANC 7D02 and 7D03 Commissioners no less than 60 days prior notice of intent to modify or develop any remaining parcels under the Parkside PUD; and
(h) Limiting construction hours, when feasible, on Parcel 9 to regular construction hours (i.e., Mondays through Fridays 7:00 a.m. to 7:00 p.m., and Saturdays, 7:00 a.m. to 3:00 p.m.) and providing prior notice, when feasible, of Saturday construction.

(Ex. 38B; Hearing Tr. at 27-31.)

APPLICANT'S REVISIONS, SUBMISSIONS, AND TESTIMONY

35. Initial Application. On October 14, 2022, the Applicant filed its initial application materials that included:

(a) A summary of the Application;
(b) A Statement of Support of the Application that provided an overview of the Project and justifications relating to the PUD evaluation criteria of Subtitle X § 304;
(c) An initial set of architectural drawings and elevations;

(d) A summary of the zoning history of the Parkside PUD;
(e) A summary of the public benefits and amenities of the Parkside PUD, including the status of each as of the date of such filing;
(f) A discussion of the Project's consistency with the Comprehensive Plan, including the Citywide and Far Northeast and Southeast Area Elements; and
(g) Procedural materials required by the Zoning Regulations.
(Ex. 1, 1A, 2, 2A1-2D4.)

36. Prehearing Submission. On February 23, 2023, the Applicant filed a pre-hearing submission and supporting materials responding to issues and comments raised by the Commission at the February 9, 2023 public meeting, and by OP in its February 1, 2023 Setdown Report, as further detailed below. (Ex. 10.) Such issues, comments, and responses are summarized as follows:

(a) Affordable Housing Set-Aside and Affordability Levels. In response to comments from the Commission, the Applicant provided additional information regarding the affordable housing benefit required under the Parkside PUD. The Applicant noted that the First-Stage Order required 20% of the units be restricted as affordable to households earning 80% MFI, which had been satisfied with 284 existing affordable units out of an anticipated 1,420 total units, including forthcoming units. The Applicant clarified that the affordability level required was 80% MFI per Condition 6 of the First-Stage Order, but that the existing affordable units had been provided at 30% MFI (45 units) and 60% MFI (239 units);
(b) Three-Bedroom Units. In response to questions from the Commission and OP, the Applicant noted that the First-Stage Order does not require three-bedroom units; however, approximately 125 three- or four-bedroom units have been delivered under the Parkside PUD and that approximately nine percent (9%) of all units at Parkside are anticipated to contain three or four bedrooms;
(c) Electric Vehicle Charging Stations. In response to OP's comment encouraging installation of electric vehicle ("EV") charging stations, the Applicant confirmed that the Project's garage would include multiple EV charging stations; and
(d) Additional Prehearing Materials. The Applicant also submitted an overview of the Parkside PUD, an overview of the Parkside PUD blocks and development status of each, a summary of the Parkside PUD's public benefits, and other materials required by the Zoning Regulations.
(Ex. 12, 12A1-12D4.)

37. Applicant's Transportation Report. On April 3, 2023, the Applicant filed a Transportation Report, including an updated Transportation Demand Management ("TDM") Plan and a Loading Management Plan ("LMP"), both prepared by Gorove Slade. The Transportation Report concluded that the Project will not result in an increase in vehicle trips or any material impact to the transportation network; and the approved Comprehensive Transportation Review ("CTR") for the Parkside PUD remains valid and an updated CTR is not required for this Application. (Ex. 17, 17A.)

38. Applicant's Supplemental Pre-Hearing Submissions. On April 25, 2023, the Applicant filed a supplemental submission containing updated plans for the Project and other supporting information including: (Ex. 21, 21A1-21C.)

(a) An updated one-page summary of the Application;
(b) A summary of the changes to the Application since the original filing, which noted that DDOT had asked the Applicant to move the building back from the lot line along Parkside Place to provide a wider sidewalk. The shift resulted in an addition of 2,400 square feet of overall GFA, adding projections over the service alley, modest changes to the courts, fenestration patterns, the landscape design of the pedestrian promenade, and the design of the loading area and back-of-house space, resulting in the reduction of non-residential GFA by approximately 1,100 square feet;
(c) A restatement of the Application's satisfaction of the standard of review for a second-stage PUD;
(d) Proposed revisions to the conditions and flexibility of the approved Second-Stage Order;
(e) Updated plans and drawings for the Project; and
(f) A supplemental analysis[4] of the Application's consistency with the Comprehensive Plan through a racial equity lens, which concluded that the Project advances racial equity and will create approximately 127 new residential units on currently vacant land, reserving 20% of its units as workforce housing for households between 80%-120% MFI. The Applicant summarized its community outreach and engagement efforts with ANC 7D and the residents of Parkside and nearby communities and noted that the Applicant received feedback concerning the need for more housing and neighborhood-serving retail uses, which are provided by the Project. In addition, the Applicant reduced the amount of parking in the Project, which is intended to reduce traffic around the neighborhood in response to community comments.

39. On June 20, 2023, the Applicant filed an updated pre-hearing submission, including the following: (Ex. 34, 34A-34B.)

(a) Inclusionary Zoning ("IZ"). In response to the Commission's comments at the opening of the May 15, 2023 public hearing, the Applicant provided a further explanation of the affordable housing offered by the Parkside PUD and the reason that the Application, as a Modification of Significance, does not trigger current IZ requirements. The Applicant explained that 284 affordable units have already been delivered at the Parkside PUD, affordable at 30% MFI and 60% MFI levels, which accounts for 20% of the total 1,420 units planned and meets the requirements of Condition 6 of the First-Stage Order. The Applicant also noted that the Commission had in prior modifications of the First-Stage Order previously imposed conditions that any units constructed at the Parkside PUD beyond the planned 1,420 units total,

[4] The Applicant's supplemental CP consistency analysis was submitted in response to and was guided by the Commission's revised Racial Equity Analysis Tool, which was released on February 3, 2023.

would trigger the 20% set-aside requirement for the initial control period specified in the First-Stage Order plus current IZ requirements upon expiration of the initial control period. (See conditions of Z.C. Order No. 05-28AA.) Because the Application's addition of approximately 127 residential units does not exceed the established threshold of 1,420 units total under the Parkside PUD, the IZ requirements are not triggered. The Commission agrees that IZ requirements are not triggered by the Application;

(b) Community Engagement. The Applicant provided an update on its communication with ANC 7D, including its planned attendance at meetings prior to the public hearing on the Application; and

(c) Parking Flexibility. The Applicant provided a revised parking plan showing the common garage beneath Parcels 9A and 9B and requested flexibility to apportion the parking spaces between the two parcels and to construct knock-out walls to the adjacent Parcel 8 and Parcel 10 below-grade garages. (Ex. 34B.)

40. Applicant's Direct Presentation. In advance of the May 15, 2023 public hearing, the Applicant filed a presentation. (Ex. 25A1-25A4.) The Applicant updated the presentation in advance of the rescheduled July 10, 2023 public hearing, and provided further revised proposed conditions in light of comments from the ANC. (Ex. 38, 38A1-38B.) At the public hearing on July 10, 2023, the Applicant presented the Application and proposed Project and addressed questions raised by the Commission:

(a) The Applicant provided testimony from five witnesses:
   i. Peter Farrell of City Interests Development Partners ("CIDP"), as a representative of the Applicant;
   ii. Derick Mitchell of CIDP, as a representative of the Applicant;
   iii. Michael Hodas of CIDP, as a representative of the Applicant;
   iv. Brian Gafney of Antunovich Architects, as the Project's architect, admitted as an expert in architecture and urban design; and
   v. Rob Schiesel of Gorove Slade, as the Project's transportation engineer, admitted as an expert in transportation engineering.

(b) The Applicant's presentation included a summary of recent progress at the Parkside PUD; a summary of the Project; the Applicant's community engagement and communication with ANC 7D, including its long-standing regular community meetings and additional meetings held in the interim period between the May 15th and July 10th public hearings for the Project; a review of the design of the Project and the rationale for the change of use; and an update on the transportation network, specifically timing of a DDOT initiative to connect the Parkside neighborhood to Benning Road via Anacostia Avenue; and (Hearing Tr. at 6-27.)

(c) Materials filed with the Applicant's presentation included rebuttal statements to objections raised in opposition letters. The Applicant stated that new condominium projects are not financially viable in Ward 7 at the moment. (Ex. 38A4.)

41. Draft Findings of Fact and Conclusions of Law. On August 2, 2023, the Applicant filed draft findings of fact and conclusions of law. (Ex. 42.) There were no other post-hearing filings from the Applicant.

APPLICANT'S JUSTIFICATION FOR RELIEF

Relief Requested

42. The Application requests that the Commission approve a Modification of Significance of the approved Second-Stage Parcel 9 PUD with respect to Parcel 9A. The Application proposes modifications to revert the approved use of Parcel 9A from office use to residential use; reduce the size of the building, the amount of parking, and the commercial GFA relative to the approved Second-Stage Parcel 9 PUD from approximately 11,000 square feet to approximately 8,499 square feet; and increase the lot occupancy relative to the approved Second-Stage Parcel 9 PUD. The proposed modifications would also change the design of the loading area and site plan with respect to the Promenade. (Ex. 2A2, 12, 21, 34.)

43. The Application further requests design flexibility as is set forth in the Conditions hereof and flexibility to apportion the below-grade vehicle parking spaces between Parcels 9A and 9B and construct knock-out walls between the Parcel 8 and Parcel 10 below-grade garages. (Ex. 2A2, 12, 21, 34, 38B.)

PUD Balancing Standard (Subtitle X § 304.3)

44. For the reasons set forth in the record and summarized in this Order, the Applicant asserted that the development incentives requested, and potential impacts of the Project are appropriate and fully justified given the public benefits, project amenities, and positive impacts of the Parkside PUD as modified by the Project.

Consistency with the Comprehensive Plan and Other Adopted Public Policies Related to Parcel 9A (Subtitle X § 304.4(a))

45. Comprehensive Plan. The Commission previously concluded that the first-stage Parkside PUD and Second-Stage Parcel 9 PUD were not inconsistent with the Comprehensive Plan as required by Subtitle X § 304.4(a). (Ex. 2C1A and 2C1B.) Since that time, the Comprehensive Plan has been amended with a particular focus on racial equity and environmental resiliency. The Applicant stated that the Application remains not inconsistent with the Comprehensive Plan for the reasons stated below:

    (a) FLUM. The Application remains consistent with the Medium-Density Residential and Parks, Recreation, and Open Space designations, and its reversion of the approved use for Parcel 9A from office to residential use improves its consistency with the FLUM. The Project's proposed FAR of 3.2 is less than the 4.0 FAR contemplated by the Medium-Density Residential category. The Medium-Density Residential category is suited for mid-rise apartment buildings and may also apply to "taller residential buildings surrounded by large areas of permanent open space." (10-A DCMR § 227.7.) The Project consists of a residential building that echoes the lower heights of adjacent townhouses at Parkside Place and rises to a higher height as it fronts on Kenilworth Terrace, N.E. to match the future taller commercial

buildings. The Project's Promenade is consistent with the Parks, Recreation, and Open Space designation on the FLUM;

(b) GPM. The Application remains consistent with the Neighborhood Enhancement Area designation on the GPM. The Neighborhood Enhancement Area category is defined as "neighborhoods with substantial amounts of vacant and underutilized land . . . present[ing] opportunities for compatible infill development, including new single-family homes, townhomes, other density housing types, [and] mixed-use buildings." This category includes "areas that are primarily residential in character, as well as mixed-use and industrial areas." *Id.* § 225.6. The Project provides mixed-use infill development that is compatible with surrounding areas, including new housing, that improves the surrounding neighborhood. The surrounding area is primarily residential in character, but also includes industrial areas, such as the former PEPCO Power Plant;

(c) Racial Equity Lens. The Application asserted that the Project advances the Plan's racial equity goals, including:

i. The Project advances racial equity as a process through the Applicant's extensive and consistent community engagement that spans over 16 years. The Applicant's affiliate, CIDP, meets regularly and as often as monthly, with the ANC and other community stakeholders to provide updates on the Parkside PUD and to listen to community feedback. The Applicant included a chart showing dozens of community meetings over the past three years; (Ex. 38A1.)

ii. The Project advances racial equity outcomes by providing transit-accessible housing in a historically underinvested and geographically isolated community. The Project develops currently vacant land, providing housing and resulting in no direct or indirect displacement;

iii. The Project provides approximately 127 new transit-accessible residential units, where no housing currently exists, in a geographically isolated and under-invested community;

iv. The Applicant included census data showing that unemployment in Parcel 9A's census tract is 16.8% as of 2020, approximately twice the unemployment rate of 7.1% in the District overall at that same time. The Project's new commercial uses provide employment opportunities, and the proximity of the Metro offers ease of access to employment opportunities elsewhere in the District;

v. The Applicant also described the lack of investment in the surrounding area. To the west of the Parkside neighborhood is the decommissioned 77-acre PEPCO Benning Power Plant site, closed since 2012. Kenilworth Park, to the north of Parkside, previously operated as a landfill, receiving municipal waste and ash. The National Park Service is still in the process of remediating the park; and

vi. The Parkside PUD overall has delivered significant benefits to the surrounding community, including $3 million towards construction of the pedestrian bridge, providing access to the Metro, a mix of affordable, workforce, and market-rate housing, environmental benefits, including solar

panels, and additional financial contributions, including towards traffic signal infrastructure and landscape improvements;

(d) Framework Element. The Application stated that the Project advances the goals of the Framework Element, including creating an equitable and inclusive city, by introducing residential uses, including market-rate and workforce units, on otherwise vacant land, to help stabilize rents in the community. The mixed-income nature of the PUD helps promote economic mobility. The Project also incorporates the pedestrian Promenade that improves access through the neighborhood to the Metro bridge. The Application has promoted equitable participation by engaging nearby residents, ANC 7D, and District agencies in the planning of Parkside since its inception. The Applicant maintains consistent engagement with the ANC and will continue to do so in the further planning stages of Parkside; (*See* 10-A DCMR §§ 219.1-219.7, 220.1-220.3, 220.5, 220.10.)

(e) Land Use Element. The Application stated that the Project is not inconsistent with the Land Use Element as it provides new housing on currently vacant land with easy walking access to the Minnesota Avenue Metrorail Station. The landscaped pedestrian Promenade, which connects Parcel 9A to the one-acre central Community Green in addition to the pedestrian bridge, helps establish a pedestrian corridor. The Project offers market rate and workforce housing, contributing to the overall mix of the PUD's residential uses. The Applicant noted that although the Project does not include affordable housing, the overall Parkside PUD sets aside 20% of residential units as affordable, with 284 affordable units already delivered. The Parkside PUD also includes 125 for-sale townhomes, balancing out the rental units proposed by the Project. The Applicant also noted recent Commission approval for interim community-serving uses on Parcel 12, located to the south of Parcel 9A across Kenilworth Terrace, N.E.; (*See id.* §§ 307.11-307.13, 308.6, 310.20, 311.5, 313.9.).

(f) Transportation Element. The Application stated that the Project furthers the goals and policies of the Transportation Element through the pedestrian Promenade that incorporates spaces for gathering and also connects the Community Green with the bridge to the Metro. The Project encourages pedestrian activity and the use of public transportation and includes spaces for bike storage. The Parkside PUD also includes funding commitments for a 19-dock Capital Bikeshare station and the Project includes EV charging stations in addition to EV stations already located in other phases of the Parkside PUD. The Application also included the updated TDM Plan and LMP; (*See id.* §§ 403.10, 406.2, 409.6, 410.9, 411.5, 411.8, 415.10, 430.4.)

(g) Housing Element. The Application stated that the Project is not inconsistent with the Housing Element because it develops currently vacant land with residential uses, adding new housing. The Parkside PUD, as a whole, sets aside 20% of the total number of units as affordable and 20% as workforce housing. The workforce and affordable housing throughout the Parkside PUD are of the same high-quality materials as the market rate housing and, similarly, the workforce housing proposed for the Project reflects the same quality as the market rate housing. The Parkside PUD includes a variety of housing options, with 125 three- or four-bedroom units

already delivered; (*See id.* §§ 503.3, 503.5-503.7, 503.9, 503.11, 504.8, 504.15, 505.8.).

(h) Environmental Protection Element. The Project incorporates sustainable features, including a commitment to achieve LEED Gold status, solar panels, as well as the green roof and terrace areas. The landscaped Promenade includes significant green space and bioretention features to assist with stormwater management. The Applicant has worked closely with DDOT regarding relocation of five willow oak "Heritage Trees" currently located on Parcel 9A, which is the subject of a separate zoning application (Z.C. Case No. 05-28AF). The Project meets GAR and stormwater requirements; (*See id.* §§ 603.6, 605.5-605.7, 605.9, 612.9, 615.4, 616.3, 618.3, 630.6.)

(i) Economic Development Element. The Application noted that the Project advances goals and policies of the Economic Development Element by introducing commercial uses to supplement the other commercial space currently under construction along Kenilworth Terrace, N.E. The Applicant also received approval to provide interim uses, including food trucks, on Parcel 12, prior to development of that parcel; (*See id.* §§ 703.18, 708.6, 708.8, 708.9, 713.5, 717.9.)

(j) Urban Design Element. The Application stated that the Project is not inconsistent with the Urban Design Element because it includes the heavily landscaped Promenade in addition to streetscape plantings and other streetscape elements to enhance the pedestrian experience. The Promenade encourages pedestrian traffic to the Community Green as well as the future commercial spaces along Kenilworth Terrace, N.E. The Project's design mimics its context as it aligns with the heights of the Parcel 8 and 10 multifamily buildings and steps down from the greater approved heights along Kenilworth Terrace to the lower heights of the townhouses on Parkside Place; (*See id.* §§ 903.16, 908.3, 908.4, 914.3, 914.4, 918.3, 918.4, 918.6.)

(k) Infrastructure Element. The Applicant stated that the Project is not inconsistent with the Infrastructure Element as the Promenade serves stormwater management functions through bioretention areas and the building incorporates green roofs and is designed to meet LEED Gold standards; (*See id.* § 1307.4.)

(l) Far Northeast and Southeast Area Element. The Application stated that it furthers the goals of the Area Element by developing vacant land in a transit-accessible location. The Project includes commercial uses, which provide employment opportunities for nearby residents, promoting a new commercial corridor in the neighborhood. The pedestrian Promenade further revitalizes the area by connecting open space; and (*See id.* §§ 1708.3-1708.5, 1709.3, 1718, 1718.7.)

(m) Implementation Element. The Application underwent a review and evaluation as part of the PUD modification process and the PUD's consistency with the Comprehensive Plan was refreshed. The PUD includes a mix of affordable, workforce, market rate, senior housing, for-sale townhouses, and three-bedroom units. (*See id.* §§ 2502.6, 2502.10-2502.13.)

(Ex. 2C4, 21C, 38A1.)

46. Mayor's Housing Order. The Project advances the Mayor's Order for new housing in the District, particularly new market rate housing in the Far Northeast and Southeast Planning

Area, which has a goal of 2,040 units before 2025. When combined with the residential units on Parcel 9B, the Project's additional 127 units represent 10% of the Mayor's goal for the entire planning area. (Ex. 21C.)

No Unacceptable Project Impacts on the Surrounding Area or the Operation of City Services (Subtitle X § 304.4(b))

47. In the Second-Stage Order, the Commission concluded that the Project did not result in any unacceptable project impacts on the surrounding area or on the operation of District services and facilities. Here, the Applicant asserted that the Application complies with Subtitle X § 304.4(b) because the impacts of the PUD, as modified by the Application, remain acceptable for the following reasons:

(a) Zoning and Land Use Impacts. The Project has no unacceptable zoning or land use impacts on the surrounding area and any impacts are instead either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the Project. The Project's mix of commercial and multi-family residential uses is appropriate given Parcel 9A's proximity to transit and highway access. The Project's height and massing is designed to focus greater bulk and height along Kenilworth Terrace, N.E. and provide an appropriate transition to a lower height along the lower scale residential uses of Parkside Place, N.E.;

(b) Housing Impacts. The Project adds approximately 127 new residential units, including market-rate and workforce housing, expanding the housing diversity of the PUD. The addition of new housing supports the proposed commercial uses and establishes the neighborhood as a mixed-income community. The Project results in no direct displacement and is unlikely to create any adverse impacts on the surrounding housing market. On the contrary, the addition of new market-rate and workforce housing contributes to the mixed-income balance of the neighborhood and promotes economic mobility;

(c) Economic Impacts. The Project has favorable economic impacts on the neighborhood by generating revenue for the District from property tax, sales tax, and income tax from its new residents. The proposed commercial uses in the Project provide new job opportunities for the surrounding residents;

(d) Open Space, Urban Design, and Massing Impacts. The Project has favorable impacts on the public realm through addition of the pedestrianized Promenade that connects to the adjacent Community Green, expanding the open space and activating the ground floor. The Project's massing complements the blocks along Kenilworth Terrace, N.E. and Parkside Place, N.E. and frames the Promenade which links the neighborhood to the pedestrian bridge accessing the Minnesota Avenue Metrorail Station;

(e) Transportation and Mobility Impacts. The Project does not have any unacceptable impacts on the public transportation facilities or roadways. The Project reduces the amount of proposed parking and incorporates the TDM Plan and LMP. In addition, Parcel 9A's proximity to the Metro and numerous Metrobus lines offers additional transportation options. The Project includes EV charging stations and bike storage

space. Among the PUD's benefits is funding for a 19-dock Capital Bikeshare station;

(f) Environmental and District Utility Impacts. The Project has favorable impacts on the environment. The Project meets stormwater management and GAR requirements and is designed to achieve a LEED Gold level of design. The Project includes a green roof and solar panels as well as tree plantings on the Promenade and nearby streetscape;

(g) Public Facilities. The Project is unlikely to have unacceptable impacts on public facilities, such as schools, recreation centers, libraries, or parks, given the size of the Project and its mix and type of units as well as the capacity of the nearby schools. The Parkside PUD offers additional community gatherings and recreation space;

(h) Public Health and Safety Impacts. The Project advances public health by incorporating open space for retreat and well-being and by being located within the Parkside PUD, which includes primary care access. The Project's bicycle facilities and proximity to Metro options encourage healthier modes of transportation. The increased activity and visibility improve public safety; and

(i) Construction Impacts. As described in the ANC 7D Report (Ex. 39.) and in the Applicant's proposed conditions (Ex. 38B.), the Applicant has agreed to certain construction mitigation measures, including limiting construction to normal hours, and giving the community advance notice, when feasible, of Saturday construction.

(Ex. 2A2, 21A3, 38B, 39.)

Includes Public Benefits and Project Amenities that are not Inconsistent with the Comprehensive Plan, Small Area Plan, or Other Adopted Public Policies Related to Parcel 9A (Subtitle X § 304.4(c))

48. The Applicant provided evidence that the Application complies with Subtitle X § 304.4(c). As amended by the Application, the Project includes the following public benefits and project amenities, which the Applicant stated are not inconsistent with the Comprehensive Plan and other adopted public policies and active programs related to Parcel 9A. The Application enumerated the following benefits and amenities, superior to a matter-of-right project, organized under the categories defined by Subtitle X § 305.5:

(a) Superior Urban Design (Subtitle X § 305.5(a)): The Project's superior architectural and urban design, featuring the pedestrian Promenade which frames the arrival to the Parkside neighborhood and leads to the Community Green, as well as high quality façade materials and finishes;

(b) Superior Landscaping or Creation of Open Spaces (Subtitle X § 305.5(b)): The creation of a pedestrianized Promenade and residential building terraces, which together feature superior landscaping;

(c) Site Planning and Efficient Land Utilization (Subtitle X § 305.5(c)): The Project's height and density near a transit node demonstrates superior site planning and efficient land utilization and serves as a transition to the lower scale residential uses along Parkside Place. The Project also develops currently vacant land;

(d) Housing and Affordable Housing (Subtitle X §§305.5(f), 305.5(g)): The provision of a greater number of residential units than could be developed on the site as a

matter-of-right with 20% reserved as workforce housing. The Project adds approximately 127 new units in a transit-accessible, mixed-income development. The Parkside PUD, as a whole, has already delivered 284 affordable units at 30% and 60% MFI;

(e) Employment and Training Opportunities (Subtitle X § 305.5(h)): The Project continues employment and training programs put in place as part of the Second-Stage Parcel 9 PUD;

(f) Environmental and Sustainable Benefits (Subtitle X § 305.5(k)): The Project commits to LEED Gold design under the v4 rating system, as well as rooftop solar panels and EV charging stations;

(g) Transportation Infrastructure and Mass Transit Improvements (Subtitle X §305.5(o) and (p)): The dedicated public easement for pedestrians at the Promenade as well as a $3 million contribution, which the Applicant has already made, to the pedestrian bridge connecting the Parkside PUD to the Minnesota Avenue Metrorail Station; and

(h) Uses of Special Value (Subtitle X § 305.5(q)): The Project enhances a currently vacant site and provides new residential and commercial uses to the neighborhood. The Applicant has ongoing engagement with the community, to identify additional public benefits.

(Ex. 2A2, 21A3, 34.)

III. RESPONSES TO THE APPLICATION

OP

49. On February 1, 2023, OP filed a setdown report recommending that the Commission set down the Application for a public hearing (the "OP Setdown Report").[5] (Ex. 10.) The OP Setdown Report included the following comments on the Application:

(a) The OP Setdown Report concluded that the Project was generally consistent with the Parkside PUD approval;

(b) OP made the following comments regarding the Project in the OP Setdown Report:
   i. The Applicant should consider the addition of EV charging stations within the proposed below-grade parking garage; and
   ii. The Applicant should consider the addition of three-bedroom units to the unit mix;

(c) The OP Setdown Report analyzed the Project's consistency with the Comprehensive Plan, including evaluating it through a racial equity lens, and concluded that the Application is not inconsistent with the Comprehensive Plan's maps or Citywide Elements and that it would further the Area Element's policy objectives and Citywide Elements, citing provisions of the Land Use Element (10-A DCMR §§ 307.11, 307.12, 307.13, 308.6, 310.20, 311.5); the Transportation Element (*Id.* §§ 403.10, 406.2, 409.6, 410.9, 411.5, 411.8, 415.10, 430.4); the Housing Element (*Id.* §§ 503.3, 503.4, 503.6, 503.7, 503.9, 503.11, 504.8, 504.15,

[5] OP requested a waiver to late file its OP Setdown Report less than 10 days before the meeting to consider setdown of the Application, which the Commission granted at the February 9, 2023 public meeting.

505.8); the Environmental Protection Element (*Id.* §§ 603.6, 605.5, 605.6, 605.7, 612.9, 615.4, 618); the Economic Development Element *Id.* §§ 703.18, 714.6, 717.9.); the Urban Design Element (*Id.* §§ 903.16, 908.4, 914.3, 914.4, 918.3, 918.4, 918.6.); and the Far Northeast & Southeast Area Element (*Id.* §§ 1708.3, 1708.5, 1718.6, 1718.7.);

(d) The OP Setdown Report's evaluation of the Application's consistency with the Comprehensive Plan through a racial equity lens found that the Project's construction would result in no displacement and would result in the provision of services and employment that would benefit future residents of the building; and

(e) In its prehearing submission, as discussed above, the Applicant responded to the comments and requests for information in the OP Setdown Report. (*See* Finding of Fact ["FF"] ¶ 36; Ex. 12A2.).

50. On May 9, 2023, OP submitted a hearing report recommending that the Commission approve the application (the "OP Hearing Report"):

(a) The OP Hearing Report affirmed that the proposal remained not inconsistent with the Comprehensive Plan and concluded that the Application was in conformance with the Parkside PUD with respect to affordable housing;

(b) The OP Hearing Report noted that larger, three-bedroom units had been provided throughout the Parkside PUD;

(c) The OP Hearing Report further noted that DDOT recommends a minimum of one (1) EV parking space for every 50 vehicle parking spaces;

(d) OP concluded that reverting Parcel 9A back to residential use would preserve the residential nature of the blocks west of Kenilworth Terrace, N.E. and that the proposed commercial space would be amongst the first commercial uses offered within Parkside;

(e) OP noted that higher density residential, commercial and office uses would be separated from the lower density residential uses east of Kenilworth Terrace, with the more intense uses provided east of Kenilworth Terrace, closest to the pedestrian bridge recently constructed by the Applicant providing direct pedestrian access to the Metrorail system; and

(f) The OP Hearing Report updated its Comprehensive Plan analysis for the Project, including disaggregated race and ethnicity data for the Planning Area to supplement its racial equity analysis in response to the Commission's revised Racial Equity Analysis Tool, which was released on February 3, 2023. OP noted that the Project would develop currently vacant and unused land such that there would be no displacement of existing residents. OP also cited the small amount of total land area, only 28.1 percent, that is dedicated to residential use in the District. The limited availability of housing increases cost burdens, particularly on lower and middle-income households. OP also highlighted that 18.2 percent of the population in the Northeast and Southeast Planning Area was unemployed between 2017 and 2020. (Ex. 23.)

DDOT

51. DDOT submitted a report dated April 28, 2023, expressing no objection to the Application provided that the Applicant implement its revised TDM Plan and LMP and re-incorporate the Second-Stage Order's condition requiring installation of a Capital Bikeshare station. (Ex. 22.)

OTHER DISTRICT AGENCIES

52. DOEE and the Department of Housing and Community Development ("DHCD") submitted the following comments on the Application which were included in the OP Hearing Report:

    (a) DOEE commented that the Applicant should design the building to be in conformance with "LEED v4 Multifamily Midrise (MMR)" instead of "Gold level of certification in the LEED v4 New Construction (NC)". The Applicant's representative addressed this comment at the July 10, 2023, public hearing and stated that it chose to proceed under the LEED v4 New Construction (NC) standards to maintain consistency with the standards that were followed for two adjacent buildings in the Parkside PUD (Hearing Tr. at 32-33); and
    (b) DHCD commented that it had been in discussions with the Applicant concerning an "Affordable Housing Covenant" for the Project's residential use.

    (Ex. 23.)

ANC 7D

53. On July 10, 2023, ANC 7D submitted a resolution dated July 7, 2023, stating that at its July 7, 2023 properly called and duly noticed meeting, with a quorum present, it voted unanimously to support the Application conditioned on the Applicant's commitment to several conditions (the "ANC Report"). (Ex. 39.)

    (a) ANC 7D expressed appreciation for the continued development at Parkside and efforts to improve housing diversity and to provide new and enhanced green space and community gathering spaces;
    (b) The ANC Report confirmed its understanding of the Application and the Modification of Consequence to relocate five existing Heritage Trees, separately filed as Z.C. Case No. 05-28AF and noted the many meetings the Applicant had attended over the recent several months prior to the public hearing;
    (c) The ANC Report included several conditions to its support of the Application, to which the Applicant has committed, and which are incorporated in the conditions of this Order, as described above; (*see* FF ¶ 34.)
    (d) The ANC Report also noted the recent progress at Parkside, including completion of the pedestrian bridge and 191 multifamily units at Vesta Parkside, the multifamily buildings on Parcels 8 and 10 under construction, as well as the interim uses along Kenilworth Terrace;
    (d) The ANC noted that the Applicant had attended nearly every ANC 7D monthly meeting since fall 2020 and led quarterly updates with a community retail working group; and
    (e) The ANC Report did not list any issues or concerns with the Application.

54. Chairperson Wendell Felder of ANC 7D testified at the public hearing, expressing his appreciation for the Applicant's engagement with the community. He noted that Parkside exemplifies a community that is diverse with neighborhood-serving amenities, schools, and a healthcare facility. (Hearing Tr. at 40-41.)

ORGANIZATIONS AND INDIVIDUALS IN SUPPORT

55. Artilie Wright filed a letter in opposition to the Application on May 15, 2023, requesting amendments to the existing Community Benefits Agreement ("CBA") between the Applicant and the community due to the Applicant's alleged failure to meet certain requirements including establishing a scholarship fund and providing jobs for Ward 7 residents; opposing the proposed conversion from office to residential; expressing a preference for lower-amenities condominiums as an alternative to the proposed rental apartments; requesting larger unit sizes; and noting concerns regarding parking demand in the neighborhood. (Ex. 26.)

56. Ms. Wright appeared at the July 10, 2023 public hearing, and modified her position as a result of the Applicant's engagement with the community, noting that the Applicant had agreed to new revisions to the CBA, including improvements in lighting to support public safety. Ms. Wright maintained her concern regarding parking supply, noting the neighborhood's proximity to the highway as a primary reason the area attracts new residents. However, she expressed confidence that the Applicant's positive working relationship with the community will continue. (Hearing Tr. at 48-50.)

57. Thomas N. Brown, Managing Partner of TNB & Associates, filed a letter in support of the Application on July 5, 2023. (Ex. 37.)

ORGANIZATIONS AND INDIVIDUALS IN OPPOSITION

58. Ruth Gonzalez filed a letter in opposition dated May 14, 2023, expressing concern with the Project's conversion from office to residential use, noting apprehension that future phases of the PUD will likewise convert office use to residential. Ms. Gonzalez further expressed a strong preference for condominium units as opposed to the rental units offered by the Application. The letter acknowledges the Applicant's assertion that building condos on Parcel 9A is not feasible in the current economic environment, but reiterates a desire for small, amenity-light condos to provide home ownership opportunities. The letter goes on to state that current residents want to attract longer term residents, especially families, to help create demand for retail in a Ward that is a food desert. (Ex. 27.)

59. Kimako Jones filed a letter in opposition dated May 14, 2023, stating concerns similar to those in the letter submitted by Ms. Gonzalez about the office to residential shift and expressing a desire for small, amenity-light condos over rental units. (Ex. 28.)

60. Janet Williams filed a letter in opposition dated May 13, 2023, stating concerns similar to those in the letter submitted by Ms. Gonzalez about the office to residential shift and expressing a desire for small, amenity-light condos over rental units. (Ex. 29.)

61. Victor Booth filed a letter dated May 15, 2023, expressing a desire for office use and a concern with the proposed residential units not including family sized three-bedroom units.

Mr. Booth noted that the previously planned office use was a move towards racial equity and reverting Parcel 9A to residential use without family sized housing was undesirable. The letter states negative impacts, including noise, air quality, public service, utility, transportation, and parking capacity, that the Project would have. The letter also states that market rate housing will increase property taxes in the area and housing costs on his home and his neighbors, which is the opposite of racial equity. (Ex. 31.)

62. No individuals in opposition presented testimony at the public hearing on July 10, 2023. The Applicant stated that it had met either individually or in community meetings with all persons that had filed a letter in opposition, except one person who could not be located, and all initial opponents the Applicant had spoken with changed their position and suggested that they were supportive of the Project. (Hearing Tr. at 36-37.)

63. No other persons, agencies, or organization filed written comments in the record or testified at the public hearing.

CONCLUSIONS OF LAW

AUTHORITY

1. Pursuant to the authority granted by the Zoning Act of 1938 (June 20, 1938, 52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Rep1.)), the Commission may approve a Modification of Significance to an approved second-stage PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 704.

MODIFICATION TO AN APPROVED SECOND-STAGE PUD

2. Pursuant to Subtitle Z § 704.3, an application for a modification of a second-stage PUD "shall meet the requirements for, and be processed as, a second-stage PUD application."

MODIFICATION OF SIGNIFICANCE – SCOPE OF REVIEW

3. Pursuant to Subtitle Z § 704.4, the scope of the Commission's hearing to evaluate modifications of significance "shall be limited to the impact of the modification on the subject of the original application and shall not permit the Commission to revisit its original decision."

4. In this case, the Applicant requested a Modification of Significance to the Second-Stage Parcel 9 PUD and such modification is limited to (a) the conversion of the previously-proposed office use to residential use; (b) the Project's building design, including its architecture and materials; (c) the design of the Promenade; (d) a decrease in the amount of parking in the Project's below-grade garage; (e) a decrease in the amount of commercial GFA provided; and (f) proposed changes to Conditions of the Second-Stage Order.

5. Pursuant to Subtitle A § 102, the Second-Stage Parcel 9 PUD approved by the Second-Stage Order is vested under the 1958 Zoning Regulations under which it was approved and is subject to those rules, except that any modified element of the Project is subject to the 2016 Zoning Regulations.

STANDARD OF REVIEW FOR A MODIFICATION OF SIGNIFICANCE OF AN APPROVED SECOND-STAGE PUD

6. 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.*

7. Pursuant to Subtitle X § 304.3, in evaluating a proposed PUD, the Commission shall:

> *Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.*

8. Pursuant to Subtitle X § 304.4, to approve a proposed PUD, the Commission must determine that the proposed development:

> *(a) Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
> *(b) Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
> *(c) Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*

9. A PUD's proposed public benefits must comply with Subtitle X § 305.12:

> *A project may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many*.

10. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the Plan's purposes as:

> *(1) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
> *(2) to guide executive and legislative decisions on matters affecting the District and its citizens;*
> *(3) to promote economic growth and jobs for District residents;*

(4) to guide private and public development in order to achieve District and community goals;
(5) to maintain and enhance the natural and architectural assets of the District; and
(6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.

11. In determining whether a PUD is not inconsistent with the Comprehensive Plan, the Commission shall balance the various elements of the Plan. The District of Columbia Court of Appeals discussed this balancing test:

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

12. The Comprehensive Plan also requires the Commission to evaluate all zoning actions through a racial equity lens. (10-A DCMR § 2501.8.) Consideration of equity is intended to be based on the policies of the Plan, and part of the Commission's consideration of whether the PUD and modifications to an approved PUD in this case are "not inconsistent" with the Plan, rather than a separate determination about a zoning action's equitable impact.

13. The Plan's Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (10-A DCMR § 213.6.) Further, "[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development, and employment opportunities." (10-A DCMR § 213.7.) The District applies a racial equity lens by targeting support to

communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (10-A DCMR § 213.9.)

14. The Plan's Implementation Element provides guidance to help the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states that "[a]long with consideration of the defining language on equity and racial equity in the Framework Element, guidance in the Citywide Elements on District- wide equity objectives, and the Area Elements should be used as a tool to help guide equity interests and needs of different areas in the District." (10-A DCMR § 2501.6.)

CONSISTENCY WITH THE COMPREHENSIVE PLAN AND OTHER ADOPTED PUBLIC POLICIES RELATED TO THE PROPERTY (SUBTITLE X § 304.3(A))

15. The Commission concludes the Project, as revised, is not inconsistent with the Plan and with other public policies and active programs for the following reasons:

(a) The FLUM provides that Parcel 9A is appropriate for Medium-Density Residential and Parks, Recreation, and Open Space uses. (FF ¶¶ 22 and 45.) The Project is appropriate for these FLUM designations as it is within the maximum height and densities contemplated by the Medium-Density Residential category and within the approved height and density of the Second-Stage Parcel 9 PUD. The pedestrian Promenade features thoughtfully designed open space and connects to the existing one-acre Community Green Park at the center of the Parkside neighborhood. The PUD as modified by the proposed Project is therefore not inconsistent with these FLUM designations.

(b) The GPM designates Parcel 9A as a Neighborhood Enhancement Area. (FF ¶¶ 23 and 45.) The Project provides new housing on currently vacant land and is compatible with the surrounding residential uses. The PUD as modified by the proposed Project is therefore not inconsistent with the GPM's designation.

(c) The Commission agrees with OP's conclusions that the Application advances the goals and policies in the Plan's Citywide Elements and the Area Element, including:

i. Land Use Element policies promoting infill development and improved landscaping, enhancing the public realm and pedestrian access to the Minnesota Avenue Metrorail station. Although the Project does not include affordable housing, 284 affordable units have been delivered to date for the Parkside PUD, as a whole, and the Project contributes market rate and workforce housing to balance the unit mix and create a mixed-income community (FF ¶¶ 45(e) and 49(c));

ii. Transportation Element policies promoting transit-oriented development, including access via the pedestrian bridge to the Minnesota Avenue Metrorail Station and pedestrianization of the Promenade, as well as the inclusion of EV charging stations in the below-grade garage (FF ¶¶ 45(f) and 49(c));

iii. Housing Element policies promoting new housing in mixed-use developments, including workforce housing (FF ¶¶ 45(g) and 49(c));

iv. Environmental Protection Element policies promoting green roof and solar panels as well as landscaping and compliance with Green Area Ratio

requirements. The Commission has also considered DOEE's comments, which were attached to the OP Hearing Report at Exhibit 23. The Commission acknowledges DOEE's preference for the Project's LEED rating to follow the standards of LEED v4 Multifamily Midrise (MMR) instead of LEED v4 New Construction (NC), as proposed. However, the Commission is persuaded by the Applicant's argument that LEED v4 New Construction (NC) standards should apply to maintain consistency with the LEED standards followed in the design of the adjacent buildings. In addition, the Commission notes that the Project includes a number of sustainability features including solar panels and green space and therefore concludes the Application is not inconsistent with the Environmental Protection Element (FF ¶¶ 45(h) and 49(c));

v. Economic Development Element policies to increase retail uses and provide new employment opportunities (FF ¶¶ 45(i) and 49(c));

vi. Urban Design Element policies including massing that fits in with the context of the neighborhood and materials that are likewise complimentary (FF ¶¶ 45(j), 49(c)); and

vii. Far Northeast & Southeast Area Element policies that encourage multi-family infill housing within walking distance of the Minnesota Avenue Metrorail station; (FF ¶¶ 45(l), 49(c).)

(d) Mayor's Housing Order. The Commission concludes that the Application advances the Mayor's Housing Order to add 2,040 units of housing in the Far Northeast and Southeast Planning Area before 2025 by delivering approximately 127 new residential units; and (FF ¶ 46.)

(e) The Commission concludes that the Application is not inconsistent with the Comprehensive Plan when viewed through the lens of racial equity based on the case record and the racial equity analyses provided by the Applicant and in the OP Reports. The Commission believes that the Project will provide new housing to the Far Northeast and Southeast Planning Area, consistent with the District's housing goals and objectives identified in the Mayor's Housing Order. The Project will not result in any direct displacement of residents given that the Property is currently vacant. The Commission believes the additional housing and ground-floor commercial use will support the diversity of the surrounding Parkside community and create a more active and engaging pedestrian environment for residents and visitors. The Commission notes the Applicant has conducted community outreach and engagement through multiple meetings with the ANC and the surrounding community. This outreach resulted in design changes to the Project as well as the addition of several Conditions of approval in response to the commitments requested in the ANC Report. Based on the foregoing, the Commission concurs with the analyses of the Applicant and OP and finds that the Project advances the racial equity objectives of the Comprehensive Plan. (FF ¶¶ 34, 38(f), 45(c), 49(d).)

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

16. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts on the surrounding area or District services or facilities that cannot be mitigated or that are not acceptable given the Project's benefits and amenities for the reasons discussed below.

17. The Commission acknowledges that the Project will have transportation and parking impacts. The Commission concludes that these impacts are capable of being mitigated or acceptable given the quality of public benefits. The Commission believes that the Project may create potential adverse impacts such as an increase in parking demand, as cited by the letters of opposition, particularly because the Application is requesting a reduction in the number of vehicle parking spaces. (FF ¶¶ 47, 56, 58-61.) The Commission concludes that these impacts are mitigated by the Project's TDM Plan and LMP, which DDOT reviewed and agreed would be sufficient. (FF ¶ 51.) In addition, the Project provides bike parking and improves the pedestrian network by connecting the Parkside pedestrian bridge connected to the Metro with the Community Green via the pedestrian Promenade. The Commission believes that any remaining transportation or parking impacts are acceptable given the Project's public benefits and furtherance of the District's goal of producing more housing in close proximity to transit. (FF ¶¶ 26, 28, 33.)

18. The Commission notes the objections of some residents to the conversion of office uses approved under the Second-Stage Parcel 9 PUD to residential uses proposed in the Project, which they claim will result in negative impacts on noise, air quality, and public services and utilities. (FF ¶¶ 58-61.) However, the Commission concludes that such impacts are capable of being mitigated or acceptable given the quality of public benefits. The Commission believes that the Project's height and massing is appropriate to mitigate impacts on the lower scale residential uses on Parkside Place. In addition, the Applicant has agreed to several commitments as requested by ANC 7D to reduce impacts on noise and air quality during construction. The Commission believes that any remaining impacts are acceptable given the Project's public benefits. The Commission notes that the Project meets all stormwater and GAR requirements and is designed to achieve a LEED Gold rating. The Commission also notes that other office uses are approved nearby for Parcel 12 and the Project retains job-providing economic development opportunities with its ground floor commercial uses. (FF ¶¶ 28-29, 47.)

19. The Commission notes the preferences of some residents for condominium or other for-sale housing options on Parcel 9. (FF ¶¶ 58-61.) The Commission is persuaded by the Applicant's statement that condominium projects are not financially viable in Ward 7 at the moment. (FF ¶ 40(c).) The Commission also recognizes some residents' preferences for units with three or more bedrooms. (FF ¶¶ 55, 58-61.) The Commission has found that the Parkside PUD has delivered a meaningful number of such units and does not believe more are required as part of this Application to satisfy the applicable standards of the Zoning Regulations. (FF ¶¶ 36(b), 50(b).) The Commission also notes that 284 affordable units have already been delivered at the Parkside PUD, as contemplated by the First-Stage Order, and that this Application represents the delivery of workforce and market rate housing as part of the Parkside PUD's overall goal of creating an income-diverse community in phases. (FF ¶ 39.)

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

20. The Applicant's submissions in this case provided a summary of the public benefits and amenities already delivered or in progress for the Parkside PUD, as a whole. (*see* Ex.

21A3.) In the First-Stage Order, the Commission found that "the large amount of affordable and workforce housing provided in this project is a significant amenity that will be available to District residents." (*See* Z.C. Order No. 05-28 Conclusion of Law ["COL"] ¶ 5. Then in the Second-Stage Order, which approved office use on Parcel 9A, the Commission concluded that the public benefits met the requirements of Subtitle X § 305, finding that "the Public Benefits benefit the surrounding neighborhood and the District as a whole to a significantly greater extent than would a matter-of-right development and readily satisfy the Public Benefit Criteria." (*See* Z.C. Order No. 05-28Q COL ¶ 11.) The public benefits and amenities specific to this Application were described by the Applicant in FF ¶ 48. The Commission finds the Application's specific public benefits and amenities to remain consistent with the First- and Second-Stage Orders because their substance has not changed despite the Commission's prior approval to change from residential to office use and the Application's proposed change back to residential use on Parcel 9A.

21. The Commission concludes that the Project's specific benefits and amenities satisfy the relevant criteria of Subtitle X §§ 304.4(c) and 305 because they are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to Property and the Project's benefits are superior to a matter-of-right development of the Property. Namely, the Project provides new residential units, which exceed the amount of housing that could otherwise be developed as a matter-of-right given the PUD related map amendment approval on the site, and 20% of the Project's units are reserved as workforce housing for households earning between 80%-120% of MFI. (FF ¶ 48.) Further, the Project's landscaping, site planning, and sustainability features are superior to a matter-of-right development, and the Project will continue to provide employment and training programs as part of the overall Parkside PUD package of public benefits. (*Id*.) Moreover, a majority of the Project's benefits relate primarily to the area of ANC 7D. (*Id*.)

22. The Commission concludes that the requested flexibility to apportion the below-grade vehicle parking spaces between Parcels 9A and 9B and construct knock-out walls between the Parcel 8 and Parcel 10 below-grade garages, and the requested design flexibility, as well as any potential adverse impacts of the Project that are not capable of being mitigated, are balanced and outweighed by the Project's proffered benefits and amenities. (FF ¶¶ 42, 43, 48.)

"Great Weight" to Recommendations of OP

23. 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).)

24. The Commission finds OP's analysis of the Application, its conclusion that the Application satisfies the PUD requirements and is not inconsistent with the Comprehensive Plan maps and the Citywide Elements and the Area Element, and its recommendation to approve the Application persuasive, and concurs with this judgment. (FF ¶¶ 49, 50.)

"Great Weight" to Written Reports of the Affected ANC

25. The Commission must give "great weight" to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.).) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must acknowledge the ANC's issues and/or concerns, then articulate with particularity and precision the reasons why the affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo.*, 141 A.3d at 1087.) If there are no issues or concerns expressed, then there is nothing to which to give "great weight." (*Id*.)

26. The Commission finds persuasive and concurs with ANC 7D's support for the Application. The Commission notes that the ANC Report did not list any issues or concerns but did request several conditions, which the Applicant agreed with and are incorporated into this Order. (FF ¶¶ 34, 53, 54.)

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Commission **ORDERS APPROVAL** of the Application for a modification of significance of the Second-Stage Parcel 9 PUD approved in Z.C. Order No. 05-28Q ("Second-Stage Order"), as modified by Z.C. Order Nos. 05-28W, 05-28W(1), 05-28Z, and 05-28AD, subject to the following conditions and provisions ("Conditions"). Changes to the conditions of the Second-Stage Order are shown below, with text to be deleted marked in ~~**bold** strikethrough~~ text and new text marked in **bold** and underline text. *Italicized* text in Condition A.1 was previously added pursuant to Z.C. Order No. 05-28Z, a prior modification of the Second-Stage Order, and is shown here for completeness.

A. PROJECT DEVELOPMENT

1. The Project shall be developed in accordance with plans and drawings filed in the record in ~~*this case*~~ *Z.C. Case No. 05-28Q* as Exhibit 57A1-57A9*, as modified by the plans and drawings filed in the record of Z.C. Case No. 05-28Z as Exhibits 2C1-2C3*, **and as further modified by the plans and drawings filed in the record of Z.C. Case No. 05-28AC as Exhibits 21B1-21B7 and 38A1-38A4** **(***collectively,* "Final Plans"), *and* as *further* modified by the guidelines, conditions, and standards ~~*herein*~~ *of Z.C. Order No. 05-28Q,* ~~*and*~~ *Z.C. Order No. 05-28Z*, **and Z.C. Order No. 05-28AC.** *The Applicant may file separate building permit applications to construct the mixed-use building on Parcel 9B and the mixed-use building on Parcel 9A and the below-grade parking garage(s) associated therewith on Parcel 9 of Block F, and the Applicant may start construction of such buildings and garages in separate phases in accordance with the Final Plans* ~~*as approved by Z.C. Order No. 05-28Q and modified by Z.C. Order No. 05-28Z,*~~ *and subject to the time extensions set forth in Z.C. Order Nos. 05-28W*, ~~*and*~~ *05-28W(1)* **and 05-28AD;** *provided, however, that the failure to file an application for a building permit for or to commence construction on one such building shall not divest the other building if the applicable vesting requirements have been satisfied for such other building*.

2. The Project shall have flexibility from the use, FAR, lot occupancy, and parking requirements set forth in Z.C. Order No. 05-28, as noted in the Findings of Fact **of Z.C. Order No. 05-28, as modified by Z.C. Order Nos. 05-28Q, 05-28Z, and 05-28AC.** The Project shall further have flexibility from the Zoning Regulations from the loading requirements as noted in the Findings of Fact **of such Orders. The Project shall have flexibility to apportion the below-grade vehicle parking spaces between Parcels 9A and 9B and construct knock-out walls between the Parcel 8 and Parcel 10 below-grade garages. The Project shall satisfy the GAR on the basis of Parcel 9A only and not on the basis of the entire lot of record (Square 5056, Lot 43) on which Parcel 9A is located.**

3. The Applicant shall have flexibility with the design of the PUD in the following areas:

~~**(a) To vary the location and design of interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the building;**~~

~~**(b) To provide a range in the number of residential units and number of parking spaces plus or minus 10% from the number depicted on the Plans;**~~

~~**(c) To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim, louvers and vents, such that the refinements do not substantially change the external configuration or appearance of the building; and**~~

~~**(d) To coordinate with DDOT to finalize the streetscape design and materials during the public space process.**~~

(a) **Interior Components. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the Final Plans;**

(b) **Exterior Materials – Color: To vary the final selection of the colors and types of the exterior materials based on availability at the time of construction, provided such colors and material types are within the color ranges and types (maintaining the same general level of quality) shown on the Final Plans;**

(c) **Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the Final Plans or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building or its systems. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;**

(d) **Number of Units: To provide a range in the approved number of residential dwelling units of plus or minus ten percent (10%), except that the number of**

units and the square footage reserved for workforce housing shall not be reduced;

(e) **Parking Layout: To make refinements to the approved parking configuration (including layout, connections with adjacent properties and to phasing of construction), and number of parking space plus or minus ten percent (10%), so long as the number of parking spaces is at least the minimum number of spaces required by the Zoning Regulations;**

(f) **Streetscape Design. 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;**

(g) **Signage. To vary the design and location of the signage for the Project, subject to full compliance with the applicable restrictions under the DC Construction Code regulations;**

(h) **Sustainability. To vary the approved sustainable features of the Project, including modification to location/orientation and type of green roof, paver areas and solar panels as necessary to meet stormwater requirements and sustainability goals, provided the total number of LEED points and GAR achievable for the Project does not decrease below the minimum required for the LEED standard and GAR specified by the Final Plans;**

(i) **Commercial Spaces. To vary commercial storefronts and associated features and fixtures upon individual commercial tenant needs consistent with the Final Plans; and**

(j) **Landscape. To modify species in the plant palette during subsequent design phases and availability upon final completion.**

B. **PUBLIC BENEFITS**

1. **Prior to issuance of a building permit, the Applicant shall**:

(a) Execute a Development and Construction Management Plan with the ANC, which plan shall include terms substantially similar to those proposed in Exhibit 27B **of Z.C. Case No. 05-28Q;**

(b) Direct the Project's contractors and subcontractors to use reasonably good faith efforts to select new hires from among qualified persons with a goal of at least 51% of all new hires being residents of Ward 7. This commitment shall be included in each contract with Project contractors and subcontractors. The Applicant shall provide to the ANC on a quarterly basis for the duration of construction, an employment report documenting the number of Ward 7 residents hired for the Project. The employment reports to the ANC will provide a summary of: (i) the approximate number of employees working on the Project in total; (ii) the number of new hires working on the Project; and (iii) the number of the new hires that are Ward 7 residents, provided the specific contents of such report may be modified by mutual agreement of the Applicant and the ANC;

(c) In coordination with the ANC, identify a local representative, group, organization and/or coordinator to facilitate job training for future jobs related to the Project, and to help administer solicitations from Parkside to the Ward 7 community for

available jobs. All solicitations shall include details regarding the specifications, requirements and/or skillset desired for the available jobs; and

(d) Host a job fair in coordination and in partnership with the ANC, Ward 7 Business Partnership, DC DOES and DC DSLBD, to identify (i) qualified candidates for construction job openings and (ii) Ward 7-based subcontractors.

2. **Prior to issuance of a certificate of occupancy, the Applicant shall:**

(a) Provide evidence to the Zoning Administrator that it advertised jobs and contracting opportunities with the following: (i) the Project's contractor's website, (ii) the ANC's website, (iii) community message boards, (iv) Project signage, and (v) referral partners, as applicable, and in each case providing clear instructions for how to apply and who to contact for information about such jobs and opportunities;

(b) Provide evidence to the Zoning Administrator that it has used or directed the managers of its office, residential and retail space to use, reasonably good faith efforts to select permanent new hires from among qualified residents of Ward 7. These positions may include, but are not limited to, marketing positions, facilities management positions, or landscaping positions. The Applicant shall advertise these job opportunities on its website and through referral partners, as applicable, in each case providing clear instructions for how to apply and who to contact for information about such jobs and opportunities;

(c) Provide the Zoning Administrator evidence that it has provided the ANC with a written quarterly update on the number of Ward 7 residents hired for positions within the Project; and

(d) Submit evidence to the Zoning Administrator, in the form of a document certified by a LEED Accredited Professional that the Project will comply with the LEED requirements at the LEED-Gold level, however actual LEED certification shall not be required.

3. **Until the earlier of the issuance of a certificate of occupancy for the first retail space or 90% of lease up of the retail space,** the Applicant shall: Provide the Zoning Administrator evidence that it has no less than quarterly, either held a meeting or provided an update to the community working group ("Retail Working Group") to discuss the status of Parkside's efforts to market approved retail spaces in the Project. As part of the quarterly meetings, the Applicant shall provide the Retail Working Group copies of market studies, reports, and marketing material for the Project for review and comments. The Retail Working Group members shall be obligated to keep confidential work product and information regarding the leasing effort and potential retail operators provided by the Applicant. The Retail Working Group shall be composed of eight individuals, which shall include the Single Member District representative for the Project, a member of the Parkside Civic Association, and a representative of the Applicant. The remaining members of the group shall be determined by the ANC Single Member District representative.

4. **Prior to the issuance of the first Certificate of Occupancy for the residential building on Parcel 9, the Applicant shall demonstrate the following:**

(a) **For the life of the Project**, the Applicant shall:

(i) Provide a total of approximately ~~**78,460**~~ **81,663**[6] square feet of residential GFA of housing in the residential building on Parcel **9B and a total of approximately 113,147 square feet of residential GFA of housing in the residential building on Parcel 9A**;

(ii) Set aside no less than 20% of the residential units in the residential building**s** on Parcel 9 as workforce housing units available to households with an annual median income between 80% of the Area Median Income and 120% of the Area Median Income ("Workforce Units"), provided such income restriction shall only apply **(x)** to the first purchaser of the Workforce Units **in the event the Workforce Units are for sale units or (y) as to Parcel 9A, for the term of the first permanent financing on the Project in the event the Workforce Units are rental units;**

(b) The distribution of the Workforce Units shall generally be in accordance with ~~**Sheet A.1.04 of Exhibit 27**~~ **(i) Sheet A1.04 of Exhibit 57A of Z.C. Case No. 05-28Q as to Parcel 9B and (ii) Sheet A1.07 of Exhibit 21B2 of Z.C. Case No. 05-28AC as to Parcel 9A**; and

(c) The Applicant shall record a **separate** covenant pursuant to X § 311.6 requiring compliance with conditions B.4(a) and B.4(b)**, as to each of Parcel 9A and Parcel 9B.**

5. **Prior to the issuance of the first certificate of occupancy for development approved in Z.C. Case Nos. 05-28P, 05-28Q, 05-28R, 05-28S, and 05-28T**, the Applicant shall provide evidence to the Zoning Administrator that it has funded, at a cost to the Applicant of up to $25,000, the recommended signal operation upgrades at the Kenilworth Terrace, N.E. and Nannie Helen Burroughs Avenue, N.E. intersection to help alleviate traffic congestion.[7]

6. **Prior to issuance of the first building permit for the development approved in Z.C. Case Nos. 05-28P, 05-28Q, 05-28R, and 05-28S, the Applicant shall**:[8]

(a) Contribute up to $7,500 (the "Landscape Fund") to an escrow account for use by the ANC to hire a landscape architect to develop a conceptual design for a play and/or athletic field in the National Park Service ("NPS")-owned open space ("NPS Land") behind Neval Thomas Elementary School. Preference for the landscape architect shall be given to qualified Ward 7-based CBE firms. The Landscape Fund shall be used for the following scope and for no other purpose: (i) one community charrette led by the landscape architect and include all involved stakeholders

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[6] The residential GFA of the Parcel 9B building was increased from 78,460 square feet to 81,663 square feet as part of the Modification of Consequence application approved in Z.C. Case No. 05-28Z. This increase was not reflected in the amended conditions of Z.C. Order No. 05-28Z and is therefore included with the changes here for completeness.

[7] **Note that this requirement has been satisfied as evidenced by the issuance of a certificate of occupancy for the project approved in Z.C. Case No. 05-28P.**

[8] **Note that these requirements have been satisfied as evidenced by the issuance of a certificate of occupancy for the project approved in Z.C. Case No. 05-28P.**

(including but not limited to the ANC, Parkside Civic Association, Neval Thomas Elementary School representatives, Cesar Chavez Middle and High School representatives, Mayfair Tenants Association, Parkside, and any additional community members interested) to identify play space needs, goals and objectives for the NPS Land; (ii) development by the landscape architect of a concept design and layout for the NPS Land utilizing the input and feedback generated from the community charrette to guide the design; (iii) one presentation of the conceptual design to community stakeholders by the landscape architect; and (iv) one meeting with the landscape architect, community stakeholders, and the appropriate NPS and/or DC representatives to review the proposed conceptual design and advocate for use of NPS Land, but only to the extent NPS and/or DC representatives agree to attend such a meeting. As NPS owns the NPS Land, the ANC acknowledges and agrees that NPS is solely responsible for the design and use of the NPS Land. The landscape design shall be developed to a concept level only and with the intent to be used as a community tool to show NPS what is possible in the space and promote the conversion of the NPS Land by NPS to a play and/or athletic field for use by the community, and the design shall not include detailed plans that could be used for permitting and/or construction. Applicant shall provide evidence that funds were used for intended purpose prior to issuance of final certificate of occupancy;

(b) Contribute up to $15,000 in an escrow account ("Transportation Study Fund") for use by the ANC for the expertise of a traffic consultant to study solutions to circulation issues beyond what is required to mitigate the overall first-stage Parkside PUD ("Parkside Study"). The goal of the Parkside Study is to provide analysis and feasibility regarding potential solutions to larger, regional traffic issues to facilitate discussions with DDOT. The Parkside Study shall include the following scope and the Transportation Study Fund shall be used for no other purpose: (i) schedule a meeting with the traffic consultant and community, including but not limited to the ANC, Parkside Civic Association, Mayfair Tenant's Association and any additional community associations, parties or members interested, to identify the community's top traffic issues and/or congested locations; (ii) have the traffic consultant study the top issues and/or locations and develop a few potential solutions that might alleviate some of the issues; (iii) present the findings and potential traffic solutions to the community; and (iv) schedule a meeting between the traffic consultant, the ANC and/or appropriate community representatives and DDOT to present the potential traffic solutions to DDOT. It is understood that locations and traffic issues reviewed as part of the Parkside Study are ultimately controlled by and subject to the discretion of DDOT, and outside of the scope of any of the Projects, and that Parkside cannot guarantee DDOT's approval of the scope of the Parkside Study or any of the proposed traffic solutions or other recommendations developed by the traffic consultant. The intention of the Parkside Study is to identify potential traffic solutions for the locations of most concern to the community in a similar way to other DDOT studies that the traffic consultant has advised to help facilitate DDOT's review. The Applicant shall provide evidence that funds were used for intended purpose prior to issuance of final certificate of occupancy; and

(c) Set aside up to $5,000 in an escrow account for use by the ANC for a traffic consultant to develop a parking and curbside management plan ("Parking Plan") with and for use by the ANC and community, with the understanding that DDOT is responsible for making and implementing any recommendations in the Parking Plan. The purpose of the Parking Plan is to identify the parking regulations, such as RPP and on-street parking meters, desired for each block to provide DDOT and the community a context to develop a parking solution for the whole neighborhood instead of on a block-by-block basis. The boundaries for Parking Plan shall be the blocks within the area bordered by Foote St., N.E., Anacostia Street, N.E., Hayes St., N.E., and Kenilworth Terrace, N.E., plus the portion of Kenilworth Terrace, N.E. between Hayes Street, N.E. and Jay Street, N.E. Applicant shall provide evidence that funds were used for intended purpose prior to issuance of final certificate of occupancy.

7. **Additional public benefits pursuant to the letter of support from ANC 7D:**

(a) **Within 30 days of the effective date of this Z.C. Order No. 05-28AC, the Applicant shall provide ANC 7D with a schedule for permitting, purchasing, and installing solar lights in certain private alleys and common areas in the Parkside neighborhood;**

(b) **Prior to issuance of a Certificate of Occupancy for the Project, the Applicant shall (i) install solar lights pursuant to the schedule established by Condition B.7(a) above; and (ii) deliver to DDOT any parking, curbside management, or other transportation analysis that the Applicant's transportation engineer develops for the Parkside neighborhood in coordination with the residents thereof together with written correspondence encouraging DDOT to adopt and implement such parking, curbside management or other recommendations contained in such analysis;**

(c) **For two years following the effective date of this Z.C. Order No. 05-28AC, the Applicant shall maintain or cause to be maintained or enhance or cause to be enhanced, as necessary, the existing vegetation and landscaping comprising the "green screen" along the southwest side of Foote Street, N.E. between Kenilworth Avenue, N.E. and Anacostia Avenue, N.E. between the existing PEPCO facility and the Parkside neighborhood, subject to the reasonable requirements of DDOT and/or the then-current fee owner of the property where such green screen is located;**[9]

(d) **Until the approval of the final second-stage PUD under Z.C. Order No. 05-28, the Applicant shall (i) be available to meet with a new development oversight committee established by the 7D03 Single Member District on a monthly basis (or if less often than monthly, as often as such committee actually meets and invites in writing the Applicant to participate); (ii) be available to meet with the full ANC 7D and/or the Parkside Civic Association when invited in writing to present and/or participate; (iii) provide any presentation materials electronically 48 hours prior to public meetings for ANC 7D, SMD 7D03,**

[9] This condition extends the existing maintenance obligation set forth in Condition B.7 of Z.C. Order No. 05-28Y.

and/or the Parkside Civic Association ; and (iv) provide written notice to SMD 7D02 and 7D03 no less than 60 days prior notice of intent to modify the remaining PUD parcels; and

(e) Prior to issuance of a Certificate of Occupancy for the Project, the Applicant shall (i) limit construction hours, when feasible, on Parcel 9 to regular construction hours (i.e., Mondays through Fridays 7:00 a.m. to 7:00 p.m., and Saturdays, 7:00 a.m. to 3:00 p.m.); and (ii) provide prior notice, when feasible, of Saturday construction.

C. Transportation Mitigation

1. **For the Life of the Project** (except where otherwise noted below), the Applicant shall ~~**abide by the terms of the TDM plan, which requires compliance with the following**~~ **with respect to the residential uses in the Project**:[10]

~~**(a) The Applicant shall designate a TDM coordinator, who is responsible for organizing and marketing the TDM plan and who shall act as a point of contact with DDOT;**~~

~~**(b) All parking on site shall be priced at market rates at minimum, defined as the average cost for parking in a 0.25-mile radius from the site;**~~

~~**(c) The Applicant shall unbundle the cost of residential parking from the cost of lease or purchase of each unit;**~~

~~**(d) The Applicant shall unbundle the cost of vehicle parking form the cost of the office lease;**~~

~~**(e) The Applicant shall install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives;**~~

~~**(f) The Applicant shall install a Transportation Information Center Display (electronic screen) within the office building lobby containing information related to local transportation alternatives;**~~

~~**(g) The Applicant shall meet or exceed zoning requirements to provide bicycle parking facilities at the proposed development. This includes secure parking located on-site and short-term bicycle parking around the perimeter of the site;**~~

~~**(h) The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials;**~~

~~**(i) The Applicant shall provide bicycle repair stations to be located within the bicycle storage rooms;**~~

~~**(j) The Applicant shall dedicate two spaces within the garage for car-sharing services to use with right of first refusal; and**~~

~~**(k) The Applicant shall provide showers and corresponding changing facilities for the office use.**~~

(a) Identify a Transportation Coordinator for the planning, construction, and operations phases of development of the Project, which Transportation

[10] Note that the revised Transportation Mitigation conditions here are from the Applicant's Transportation Memorandum at Ex. 17A.

Coordinator shall (i) act as the point of contact for the Project with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo; (ii) conduct an annual commuter survey of Project residents on-site and report TDM activities and data collection efforts to goDCgo once per year; (iii) develop, distribute, and market various transportation alternatives and options to residents of the Project, including promoting transportation events (e.g., Bike to Work Day, National Walking Day, Car Free Day) on the Project website and in any internal building newsletters or communications; and (iv) subscribe to goDCgo's residential newsletter and receive TDM training from goDCgo to learn about the transportation conditions for the Project and available options for implementing this Condition C.1;

(b) **Provide welcome packets to all new residents of the Project, which welcome packets shall, 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) **Provide Project residents who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments ("MWCOG") or another comparable service if MWCOG does not offer this in the future;**

(d) **Post all transportation and TDM commitments on the Project's website, publicize availability therefor, and allow the public to see what has been promised;**

(e) **Offer a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident of the Project;**

(f) **Offer either a one-year membership to Capital Bikeshare or a one-year membership to a carsharing service to each unit for the initial lease up (or sale) of each residential unit in the Project;**

(g) **Hold a transportation event for residents, employees, and members of the Project once per year for a total of three years (example events include resident social, walking tour of local transportation options, goDCgo lobby event, transportation fair, WABA Everyday Bicycling seminar, bicycle safety/information class, bicycle repair event, etc.);**

(h) **Install a "Transportation Information Center Display" (electronic screen) within the Project's lobby, which display shall at a minimum contain information related to local transportation alternatives and include information about the nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;**

(i) **Direct the Transportation Coordinator to submit documentation summarizing compliance with this Condition C.1 (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case following the issuance of a Certificate of Occupancy for the Project;**

(j) **Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit in the Project, and charge a minimum residential rate based on the average market rate within a quarter mile;**

(k) **Install a minimum of one electric vehicle (EV) charging station across all vehicle parking spaces in the Project, per DDOT recommendations of a minimum of one out of every 50 vehicle parking spaces being served by an EV charging station;**

(l) **Provide in the Project at least six short- and 42 long-term bicycle parking spaces, meeting the minimum requirements of the Zoning Regulations for at least six short- and 42 long term bicycle parking for the residential use in the Project;**

(m) **Accommodate in the Project non-traditional sized bikes including cargo, tandem, and kids bikes in the residential long-term bicycle storage room, with a minimum two spaces that will be designed for longer cargo/tandem bikes (10 feet by 3 feet), a minimum of four spaces that will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum 21 spaces that will be placed horizontally on the floor; provided, however, that the Applicant shall not charge a fee to building residents or employees for the usage of the bicycle storage room, and strollers will be permitted to be stored in the bicycle storage room;**

(n) **Provide at least one bicycle repair station within the Project's bicycle parking storage room or at another convenient and accessible location; and**

(o) **Provide to the Transportation Coordinator a copy of the Loading Management Plan ("LMP") at Condition C.4, so that the Transportation Coordinator is aware of the commitments therein.**

2. **For the Life of the Project (except where otherwise noted below), the Applicant shall with respect to the non-residential uses in the Project:**

(a) **Identify a Transportation Coordinator for the planning, construction, and operations phases of development, including one for each non-residential tenant and the Project, which Transportation Coordinator(s) shall (i) act as the point(s) of contact for the Project with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo; (ii) conduct an annual commuter survey of employees at the Project, and report TDM activities and data collection efforts to goDCgo once per year; (iii) develop, distribute, and market to such employees the various transportation alternatives and options to employees and patrons, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the Project website and in any internal Project newsletters or communications; (iv) receive TDM training from goDCgo to learn about the transportation conditions for the Project and available options for implementing this Condition C.2; (v) post "getting here" information in a visible and prominent location on the Project website with a focus on non-automotive travel modes including links to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area,**

and instructions for patrons discouraging parking on-street in Residential Permit Parking (RPP) zones; and (vi) require that tenants of the Project with 20 or more employees comply with the DC Commuter Benefits Law by, e.g., participating 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;

(b) Provide employees of the Project who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the MWCOG or other comparable services if MWCOG does not offer this in the future;

(c) Hold a transportation event for Project customers, employees, and members of the community once per year for a total of three years (example events include employee social, walking tour of local transportation options, goDCgo lobby event, transportation fair, WABA Everyday Bicycling seminar, bicycle safety/information class, bicycle repair event, etc.);

(d) Direct the Transportation Coordinator to submit documentation summarizing compliance with this Condition C.2 (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case following the issuance of a Certificate of Occupancy for the Project;

(e) Unbundle the cost of vehicle parking from the lease for each retail unit, and charge only hourly, daily, or weekly rates for retail parking;

(f) Install in the Project a minimum of one electric vehicle (EV) charging stations across all vehicle parking spaces, per DDOT recommendations of a minimum of one out of every 50 vehicle parking spaces being served by an EV charging station;

(g) Provide in the Project at least three short- and one long-term bicycle parking spaces, meeting the minimum requirements of the Zoning Regulations for at least three short- and one long term bicycle parking for the retail use;

(h) Provide in the Project at least one bicycle repair station within a bicycle parking storage room or at another convenient and accessible location; and

(i) Provide a copy of the LMP to the non-residential Transportation Coordinator(s), so that each is aware of the commitments therein.

3. **Five years after the issuance of the final certificate of occupancy for the Project, if the applicable Transportation Coordinator has not established a relationship with DDOT or goDCgo, direct such Transportation Coordinator to submit a letter to the Zoning Administrator, DDOT, and goDCgo summarizing continued substantial compliance with the transportation Conditions herein, unless no longer applicable as confirmed by DDOT; provided, however, that if such letter is not submitted on a timely basis, the Applicant shall have 60 days from the date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter as required herein.**

4. **Prior to the issuance of a Certificate of Occupancy for the Project, the Applicant shall adopt a loading management plan ~~to coordinate resident moving operations, office deliveries, and trash removal operations~~ as follows:**

(a) **Designate a loading manager for the Project who will be: (i) on duty during delivery hours at the Project; (ii) responsible for coordinating with Project vendors and tenants to schedule deliveries; and (iii) responsible for working with the community and neighbors near the Project to resolve any conflicts with loading at the Project should any arise;**

(b) **Require by lease provision all tenants of the Project to use only the Project's loading area for all deliveries and move-in and move-out activities;**

(c) **Require by lease provision all tenants of the Project to schedule deliveries that utilize the Project's loading area (any loading operation conducted using a truck 20 feet in length or larger);**

(d) **Require the loading manager to schedule deliveries such that the Project's loading area's capacity is not exceeded and in the event that an unscheduled delivery vehicle arrives at the Project while the loading area or relevant loading berth is full, direct the driver of such a delivery to return at a later time when the Project's berth(s) will be available so as to not compromise safety or impede the private alley's functionality;**

(e) **Require the loading manager to schedule all residential activities at the Project so as not to conflict with retail deliveries at the Project;**

(f) **Require the loading manager to monitor inbound and outbound truck maneuvers at the Project so that trucks accessing the loading area do not block vehicular, bicycle, or pedestrian traffic along Kenilworth Terrace NE or Parkside Place NE except during those times when a truck is actively entering or exiting the private alley;**

(g) **Require the loading manager to monitor Project-related service vehicle and truck traffic interfacing with Kenilworth Terrace NE or Parkside Place NE traffic during peak periods, and undertake management measures if necessary to reduce conflicts between truck and vehicular movements at the Project;**

(h) **Require the loading manager to monitor the timing of deliveries to the Project to determine whether any adjustments need to be made in order to minimize any conflicts with the retail and residential loading activities at the Project;**

(i) **Prohibit trucks using the Project's loading area from idling and require all such trucks to follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 - Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight); and require the loading manager also (i) to distribute flyer materials, such as the MWCOG "Turn Your Engine Off" brochure and others from DDOT and goDCgo, to drivers accessing the Project's loading areas as needed to encourage compliance with idling laws; and (ii) post such materials and other relevant notices in a prominent location within the Project's loading area; and**

(j) **Require the loading manager to disseminate suggested truck routing maps to the Project's tenants and to drivers from delivery services that frequently**

utilize the Project's loading area as well as notifying all such drivers of any access or egress restrictions.

5. **Prior to the issuance of a certificate of occupancy for the ~~office~~ building on Parcel 9A**, the Applicant shall fund the installation of a new 19-dock Capital Bikeshare station and one year of maintenance. The location of the station shall be finalized with DDOT during the public space process, and it must include an additional 20 feet of space to be left available to accommodate eight additional docks if expanded in the future.

6. **Prior to issuance of a building permit for the Project**[11], the Applicant shall fund and install the hardware necessary to implement the proposed traffic signal changes at the intersection of Kenilworth Terrace, N.E. and Nannie Helen Burroughs, N.E., subject to DDOT approval, with a maximum cost to the Applicant of $25,000, if not already completed at the time such building permit is issued.

D. MISCELLANEOUS

1. The Zoning ~~**Regulations**~~ **Administration** Division of ~~**DCRA**~~ **DOB** shall not issue any building permits for the PUD until the Applicant has recorded a Covenant (the "PUD Covenant") in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of **Zoning Legal Division** ~~**the Attorney General**~~ and the Zoning **Administration** Division, ~~**DCRA**~~ **DOB**. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The change of zoning to the C-3-A Zone District shall be effective upon the recordation of the PUD Covenant.

3. The PUD shall be valid for a period of two years from the effective date of this Order within which time an application shall be filed for a building permit. Construction must begin within three years of the effective date of this Order.

4. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

[11] This same requirement was stated in Condition B.2.g of Z.C. Order 05-28P effective September 1, 2017. It is the Commission's intent that this funding requirement be satisfied prior to whichever project's certificate of occupancy is issued first. **Note that this requirement has been satisfied as evidenced by the issuance of a certificate of occupancy for the project approved in Z.C. Case No. 05-28P.**

VOTE (July 10, 2023): 4-0-1 (Robert E. Miller, Peter G. May, Anthony J. Hood, and Joseph S. Imamura to **APPROVE**; 3rd Mayoral Appointee seat vacant)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 05-28AC shall become final and effective upon publication in the *District of Columbia Register*; that is, on October 6, 2023.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28W
Z.C. Case No. 05-28W
Parkside Residential, LLC
(Two-Year Time Extension for Second-Stage PUD @ Square 5056, Lots 865-869)
April 27, 2020

Pursuant to notice, at its November 18, 2019 and December 9, 2019 public meetings, the Zoning Commission for the District of Columbia (the "Commission") considered the application (the "Application") of Parkside Residential, LLC (the "Applicant") concerning Lots 865-869 in Square 5056[1] ("Parcel 9") for a two-year time extension, pursuant to Subtitle Z § 705.2 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified), of the validity of the second-stage PUD (the "Second-Stage PUD") approved by Z.C. Order No. 05-28Q (the "Second-Stage Order"), pursuant to the first-stage PUD (the "First-Stage PUD") approved by Z.C. Order No. 05-28.

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

PRIOR APPROVALS

1. Pursuant to the Original Order, effective, April 13, 2007 (the "Original Order Effective Date"), the Commission approved a first-stage PUD, together with a related Zoning Map amendment rezoning from the R-5-A and C-2-B to the C-3-A and CR Zone Districts, to construct approximately 3.1 million square feet of mixed-use development (the "First-Stage PUD") on the 15 vacant acres east of the Anacostia River in Ward 7 (the "First-Stage PUD Site").

[1] The second-stage Order covered Lot 806 in Square 5041 and Lots 809 and 813 in Square 5056, both lots created for assessment and taxation purposes ("A&T Lots"). These two A&T Lots were consolidated into Record Lot 43 in Square 5056 by the plat recorded on September 24, 2018, in Subdivision Book 214, Page 129; in turn subdivided into A&T Lots 835-863 by the plat recorded on January 23, 2019, in A&T Book 3880-W; with A&T Lot 850 subdivided into A&T Lots 864-870 on August 6, 2019, in A&T Book 3882-U; all references to the records of the D.C. Office of the Surveyor.

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2. Condition No. 13 of the Original Order required the Applicant to file a second-stage PUD application under the First-Stage PUD within one year of the Original Order Effective Date, with all remaining second-stage PUD applications required to be filed within three years of the effective date of the order approving the first second-stage PUD application.

3. The Applicant timely filed its first second-stage application in Z.C. Case No. 05-28A on November 16, 2007, within the one-year deadline imposed by Condition No. 13 of the Original Order.

4. Pursuant to Z.C. Order No. 05-28A, effective October 3, 2008, the Commission approved the first second-stage PUD application, thereby establishing the deadline for the Applicant to file all remaining second-stage PUD applications under the First-Stage PUD, including Parcel 9, as October 3, 2011.

5. Pursuant to Z.C. Order No. 05-28H,[2] effective February 3, 2012, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including Parcel 9, to October 3, 2013.

6. Pursuant to Z.C. Order No. 05-28L,[3] effective February 7, 2014, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including Parcel 9, until October 3, 2015.

7. Pursuant to Z.C. Order No. 05-28O,[4] effective February 12, 2016, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including Parcel 9, to October 3, 2017.

8. Pursuant to the Second-Stage Order,[5] effective March 23, 2018, the Commission approved the Second-Stage PUD, with a modification of the First-Stage PUD, for Parcel 9, with requirements to file a building permit application to construct the Second-Stage PUD within two years of the Second-Stage Order's effective date and to start construction within three years of that effective date.

9. Pursuant to Z.C. Order Nos. 05-28R through 05-28V,[6] the Commission approved applications that did not apply to Parcel 9.

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[2] Pursuant to Z.C. Order Nos. 05-28B through 05-28G, the Commission approved second-stage PUDs (B, C, and F), denied a time extension request as premature (D), and approved modifications of the First-Stage PUD (E) and of a second-stage PUD (G).

[3] Pursuant to Z.C. Order Nos. 05-28I through 05-28K, the Commission approved second-stage PUDs.

[4] Pursuant to Z.C. Order Nos. 05-28M and 05-28N, the Commission approved modifications to second-stage PUDs.

[5] Pursuant to Z.C. Order No. 05-28P, the Commission approved a second-stage PUD.

[6] Pursuant to Z.C. Order Nos. 05-28R through 05-28V, the Commission approved second-stage PUDs (R through T) and additional extensions of the deadline to file all remaining second-stage PUD applications under the First-Stage PUD (U and V).

PARTIES AND NOTICE

10. In addition to the Applicant, the only parties to Z.C. Case No. 05-28Q were Advisory Neighborhood Commissions ("ANC") 7D and 7F, the "affected" ANCs pursuant to Subtitle Z § 101.8.[7]

11. On May 20, 2020, as attested by the Certificate of Service submitted with the Application, the Applicant served the Application on:
    - ANCs 7D and 7F; and
    - The Office of Planning ("OP"). (Exhibit ["Ex."] 2.)

II. THE APPLICATION

12. On March 20, 2020, the Applicant timely filed the Application requesting a two-year time extension of the validity of the Second-Stage Order, specifically the deadlines:
    - To file a building permit application to construct the Second-Stage PUD by March 23, 2020; and
    - To start construction of the Second-Stage PUD by March 23, 2021.

13. The Application asserted that it met the requirements for the proposed two-year time extension because:
    - There has been no substantial change in any material facts upon which the Commission based its approval of the Original Order, although beneficial improvements affecting the area around Parcel 9 and the Second-Stage PUD have occurred, including the inclusion of the First-Stage PUD Site in the District's Central Employment Area and in an Opportunity Zone, and the Applicant has completed many of the community benefits required as part of the First-Stage PUD and associated second-stage PUDs; and
    - Good cause justifies the Commission's granting the time extension because the PUD has been affected by events that have slowed the development timetable, including:
        - The state of residential, retail, and office market east of the Anacostia River;
        - The timing of construction of previously approved projects; and
        - Challenges in obtaining financing and tenants for office development.

14. OP submitted an April 15, 2020, report (the "OP Report") concluding that no substantial changes to the material facts on which the Commission had based its approval of the Second-Stage PUD, and therefore recommended approval of the Application. (Ex. 4.)

15. Neither ANC 7D nor ANC 7F filed a response to the Application.

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order approving a PUD upon determining that the time extension request demonstrated

[7] ANC 7F is an "affected ANC" per Subtitle Z § 101.8 as it is located directly across the street from Parcel 9.

satisfaction of the requirements of Subtitle Z § 705.2 and compliance with the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6.

2. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that parties are allowed 30 days to respond.

3. The Commission concludes that the Applicant has satisfied Subtitle Z § 705.2(a) by demonstrating that it had served the Application on all parties to the Second-Stage Order – ANCs 7D and 7F – and that all were given 30 days to respond from the October 2, 2019, date of service.

4. Subtitle Z § 705.2(b) requires that the Commission find that no substantial changes had occurred to any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the PUD.

5. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) because no substantial changes had occurred in material facts upon which the Commission based its approval of the Second-Stage PUD.

6. Subtitle Z § 705.2(c) requires that an application demonstrate with substantial evidence one or more of the following criteria:

   (1) An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control;

   (2) An inability to secure all required governmental agency approvals for a development by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or

   (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.

7. The Commission concludes that the Application met the standard of Subtitle Z § 705.2(c)(1) because the Applicant has demonstrated that it has diligently pursued the financing of the development of Parcel 9 and has not been able to move forward due to market conditions outside of its control, including challenges obtaining financing for mixed use development east of the Anacostia River and the potential oversaturation of residential and office market without phasing the delivery of the remaining parcels in the First-Stage PUD.

"Great Weight" to the Recommendations of OP

8. The Commission must give "great weight" to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

9. The Commission finds persuasive OP's recommendation that the Commission approve the Application and therefore concurs in that judgment.

"Great Weight" to the Written Report of the ANC

10. The Commission must give "great weight" to the issues and concerns of the affected ANC expressed in a written report of an affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(2012 Repl.)) and Subtitle Z § 406.2. To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. 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).)

11. Since ANCs 7D and 7F did not file any responses to the Application, there is nothing to which the Commission can give great weight.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application's request for a two-year time extension of Z.C. Order No. 05-28Q, with the requirement that the Applicant:

- File a building permit application to construct the Second-Stage PUD approved by Z.C. Order No. 05-28Q by **March 23, 2022**; and
- Begin construction of the Second-Stage PUD approved by Z.C. Order No. 05-28Q by **March 23, 2023**.

The conditions in Z.C. Order No. 05-28, as modified by Z.C. Order No. 05-28Q, remain unchanged and in effect.

VOTE (April 27, 2020): **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 7, 2020.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

OFFICE OF ZONING
ZONING COMMISSION
ZC Order No. 05-28W(1)
ZC Case No. 05-28W
Parkside Residential, LLC
Subtitle Z § 705.9 Administrative Covid-19 One-Year Time Extension for 2nd-Stage PUD @ Lots 865-869, Square 5056 (Kenilworth Terrace, N.E.)
March 22, 2022

- Z.C. Order No. 05-28W (the "Order"), effective on August 7, 2020, required the Applicant to file a building permit application to construct the second-stage PUD approved by Z.C. Order No. 05-28Q by March 23, 2022.

- The applicant filed an application to extend the Order's validity per Subtitle Z § 705.9, as adopted by the Zoning Commission's emergency action in Z.C. Case 20-26 by one year.

- Pursuant to Subtitle Z § 705.9, the Director of the Office of Zoning extends the Order's validity to expire on March 23, 2023.

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on April 1, 2022.

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

ZONING COMMISSION
District of Columbia
CASE NO.05-28w
EXHIBIT NO.10