GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 20-27
Z.C. Case No. 20-27
High Street District Development, Inc.
(Consolidated Planned Unit Development and Related Map Amendment @ Square 445, Lots 191, 192, 193, 194, 800, 821, and 822)
June 24, 2021

Pursuant to notice, at its June 24, 2021[1] public meeting, the Zoning Commission for the District of Columbia (the "Commission") considered the application (the "Application") of High Street District Development, Inc. (the "Applicant") requesting the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified):

- A consolidated planned unit development ("PUD"), pursuant to Subtitle X, Chapter 3, and Subtitle Z, Chapter 3;
- A PUD-related map amendment from the MU-4 to the MU-6 Zone District;
- A special exception to allow lot occupancy in excess of 80%; and
- A special exception to allow two separate penthouse enclosures of differing heights.

The Applicant proposes to construct a new mixed-use building on Lots 191, 192, 193, 194, 800, 821, and 822 in Square 445 located at the corner of 7th and P Streets, N.W. through the block east to Marion Street, N.W. (the "Property") in the MU-4 zone. 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
BACKGROUND

PARTIES

1. High Street District Development, Inc. is a related entity of High Street Residential, a residential subsidiary of Trammell Crow Company, which is a diversified real estate development firm (Exhibit ["Ex."] 3).

2. ANC 6E is automatically a party (Ex. 3).

3. There were no requests for party status.

[1] At its February 25, 2021 public meeting, the Commission setdown the case for a public hearing, after initially deferring this decision at its January 28, 2021 public meeting to allow the Applicant to address the Commission's concerns about the project's consistency with the Comprehensive Plan and relationship with neighboring properties on Marion Street. The Commission held the hearing on May 20, 2021. At the end of the hearing, the Commission approved proposed action. The Commission approved final action at its June 24, 2021, public meeting.

ZONING COMMISSION
District of Columbia
CASE NO.20-27
EXHIBIT NO.64

NOTICE

4. The Office of Zoning ("OZ") sent notice of the May 20, 2021, public hearing on or before March 31, 2021, to:
   - The affected ANC 6E;
   - The ANC 6E02 Single Member District Commissioner, whose district includes the Property;
   - The Office of the ANCs;
   - The Office of Planning ("OP");
   - The District Department of Transportation ("DDOT");
   - The Department of Consumer and Regulatory Affairs ("DCRA");
   - The Office of the Attorney General;
   - The District Department of the Environment ("DOEE");
   - The District of Columbia Housing Authority ("DCHA") Relocation Committee;
   - The Ward 6 Councilmember, in whose district the Property is located;
   - The Chair and At-Large Members of the D.C. Council; and
   - The owners owning property within 200 feet of the Property (Exhibit ["Ex."] 19-21).

5. OZ published notice of the public hearing in the April 9, 2021, *D.C. Register* (68 DCR 3774) as well as on the calendar on OZ's website (Ex. 19-21).

6. The Applicant submitted evidence that it had posted notice of the public hearing on the Property as required by Subtitle Z § 402.3 (Ex. 22A). The Commission granted the Applicant's request for relief from the requirement that it submit a notarized affidavit as evidence at the public hearing.

THE PROPERTY

7. The Property consists of approximately 22,824 square feet of land area located along 7th, P, and Marion Streets, N.W., approximately two blocks south of the Shaw Metrorail Station. The site runs the length of P Street between 7th and Marion Streets and borders the Bread for the City building to the north along 7th Street and rowhomes to the north along Marion Street. It has a rectangular shape. It consists of seven lots in Square 445 (Ex. 3).

8. The Property is located in the Northwest quadrant of the District within Ward 6 and ANC 6E02, in the Shaw neighborhood (Ex. 3).

9. The Property currently is devoted to a mix of uses including a surface parking lot on the eastern half and a vacant and unimproved lot on the western half. Lot 194 is currently improved with a one-story building in which the Ordinary People barber shop is located (Ex. 3, 3H1- 3H2).

10. The Property is bounded:
    - On the north along 7th Street are a mix of commercial, retail, and residential uses, zoned MU-4;
    - On the east across Marion Street are rowhomes zoned RF-1;

- On the west across 7th Street is a mixed use building rezoned through a PUD to the C-2-C Zone District, which is the equivalent of the current MU-6 Zone; and
- On the south across P Street, N.W. – the Kennedy Recreation Center (Ex. 3).

11. The Property is located within three blocks of two Metrorail stations and is served by Metrobus along 7th Street, N.W. (Ex. 3, 3H1-3H2).

12. The Property is subject to affordable covenants (the "Affordable Covenants"), which require the following:
    - The greater of 30% of the units built on Lot 191 or three units be set aside as affordable;
    - The greater of 20% of the units built on Lot 821 or seven units be set aside as affordable; and
    - For rental projects, 25% of these affordable units must be reserved for households with an annual income no greater than 30% Median Family Income ("MFI"), and the remaining affordable units must be set aside for households with an annual income at or above 30% MFI and no more than 50% MFI (Ex. 11).

Current Zoning

13. The Property is located in the MU-4 Zone, for which Subtitle G § 400.2 establish that the purposes and intent are to:
    - Permit moderate-density mixed-use development;
    - Provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and
    - Be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers.

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

14. The CP's Generalized Policy Map ("GPM") designates the western portion of the Property as a "Main Street Mixed Use Corridor," and the eastern portion as a "Neighborhood Enhancement Area" (Ex. 11).
    - The CP's Framework Element states the Main Street Mixed Use Corridors "are traditional commercial business corridors." (§ 223.14) These areas' "common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper story residential or office uses. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment." (§ 223.14); and
    - The Framework Element states and the "Neighborhood Enhancement Area" as for areas that are "primarily residential in character" and are "characterized by a patchwork of existing homes and individual vacant lots." (§ 223.6) These areas are open to infill development that "'fits in' and responds to the existing character of the neighborhood." (§ 223.7)

15. The Future Land Use Map ("FLUM") designates the western portion of the Property for mixed use with Medium Density Commercial/Medium Density Residential. The eastern portion of the Property is designated for Moderate Density Residential (Ex. 11):
    - The Medium Density Commercial "designation is used to define shopping and service areas that are somewhat more intense in scale and character . . . . Retail, office, and service businesses are the predominant uses." (§ 225.9) The Plan notes that the C-2-C Zone District under the 1958 Zoning Regulations, now the MU-6 Zone District, is appropriate for the Medium Density Commercial Designation;
    - The Medium Density Residential "designation is used to define neighborhoods or areas where mid-rise (four to seven stories) apartment buildings are the predominant use. Pockets of low and moderate density housing may exist within these areas. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space." (§ 225.5); and
    - "Moderate Density Residential" uses, which the CP's Framework Element defines as for neighborhoods that are generally, but not exclusively, suited for rowhouses as well as low-rise garden apartment complexes, with density typically calculated to a 1.8 Floor Area Ratio ("FAR"), although greater density may be possible when complying with Inclusionary Zoning ("IZ") or if approved as a PUD (§ 227.6).

16. The CP's Near Northwest Area Element, which applies to the Property, includes the following development priorities:
    - The Element encourages "direct growth within the Near Northwest Planning Area to the eastern side of the Planning Area (Logan Circle and Shaw)" (NNW- 1.1.2 Directing Growth), which is the location of the Property;
    - The Element also sets the goal to "improve the neighborhood shopping areas along 7th [. . .] Streets, N.W." (NNW – 1.1.4: Neighborhood Commercial Revitalization);
    - The Near Northwest Area Element also "encourage[s] the use of green building practices within Near Northwest, with a particular emphasis on green roofs. Rooftop gardens should be encouraged in new construction and major rehabilitation Buildings as a way to create additional green space, reduce stormwater runoff, and provide an amenity for residents." (NNW- 1.2.10: Sustainable Development);
    - The Near Northwest Area Element "encourage[s] mixed-income residential development with underground parking adjacent to the Shaw/Howard and Mount Vernon Square Metro stations, particularly on existing surface parking lots" (NNW-2.1.3 Shaw/Howard University and Mount Vernon Square Metro Stations); and
    - Additionally, the Building will create new affordable housing on an underutilized site, through both its proffer of inclusionary zoning units in excess of the number required by the IZ regulations, and the construction of additional affordable units that will comply with the existing affordable housing covenants that apply to the Property (NNW – 2.1.1: Affordable Housing).

    (Ex. 3)

II. THE APPLICATION

THE PROJECT

17. The Application, as amended, proposes to construct a mixed-use building with:
    - A height of 90 feet, consisting of nine stories, a penthouse, a cellar and underground parking;
    - A lot occupancy of approximately 89.3% proposed for the first floor and 85.8% proposed for floors two to four;
    - Approximately 163,595 square feet of gross floor area ("GFA");
    - An overall FAR of 7.17 with a retail FAR of 0.33 and a residential FAR of 6.84;
    - Approximately 223 units;
    - 19 units will be Inclusionary Zoning units, with 18 units reserved for households with a maximum MFI not exceeding 60% and one unit reserved for households not exceeding 50%;
    - Three affordable units reserved for households with an income not exceeding 30% and seven affordable units reserved for households with income not exceeding 50% of MFI;
    - Approximately 56 below grade vehicle parking spaces;
    - Seventy-two long term and 14 short term bicycle parking spaces;
    - Approximately 7,442 square feet of net retail area; and
    - Rooftop amenities including pool, outdoor deck and residential amenity space.

    (Ex. 3, 28A1- 28A2)

18. The Project will also include streetscape and landscaping improvements along 7th and P Streets as well as widening of the public alley to the north of the Property (Ex. 3, 28A1-28A2).

RELIEF REQUESTED

19. The Application requested the Commission approve a Consolidated PUD with a related Map Amendment to the MU-6 Zone District pursuant to 11-X DCMR § 303.12. As a result of this map amendment, the Building can achieve the additional height and density shown on the chart below.

Development Standards	MU-4	MU-6	Proposed Building
Height	50 feet	110	90 feet
Density (FAR)	2.5 or 3.0 IZ	8.64 (if approved as a PUD)	7.17

20. The Application further requested[2] additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1 to allow:
    - A lot occupancy of 89.3% for the first floor and 85.8% for floors two to four (which both exceed the maximum lot occupancy of 80% permitted in the requested MU-6 Zone

[2] The Application also requested relief from the minimum court width requirement to allow an 11-foot court width (15 foot court width is required) (Ex. 3). The Applicant withdrew its request for this relief when it revised the design of the Project (Ex. 18).

District), this relief is authorized as a special exception pursuant to 11-G § 409.1 and 1200.4; and

- Penthouse structures of differing heights and multiple enclosures (Ex. 3), this relief is authorized as a special exception by Subtitle C, § 1504.1

21. The Applicant provided evidence that the Application met the special exception standards for the requested lot occupancy and penthouse relief (Ex. 3, 28). The Commission therefore considered and granted this relief as special exceptions pursuant to 11-X DCMR § 303.13.

22. The Application also requested the Commission approve design flexibility to vary certain elements in the Application's final plans as approved by the Commission and still comply with the requirement of Subtitle X § 311.2 and Subtitle Z § 702.8 to construct the Project in complete compliance with the final plans.

APPLICANT'S REVISIONS/SUBMISSIONS

23. The Commission considered whether to schedule a hearing on the Application at its January 28, 2021 public meeting. The Commission stated that it would not schedule the hearing, because the height and scale of the Building was inappropriate for the portion of the Property that faced Marion Street because of the lower scale of development on that street, and the guidance in the Comprehensive Plan's GPM and FLUM that call for less intensive development there. The Zoning Commission also expressed concern about the solar installation and the LEED certification level, building design and signage issues, location of IZ units, flexibility requests, and other concerns. The Commission requested that the Applicant reconsider the design of the Building as it relates to Marion Street, and that if the Applicant presented a revised design, it should address in its supplemental statement how the revised design relates to the FLUM of the Comprehensive Plan.

24. The Applicant filed revised plans and a statement in Exhibits 15 and 16:

- The Applicant revised the massing of the Project along Marion Street in response to the Commission's concerns expressed at setdown, by reducing the portion of the building that is built up to the eastern property line by a full story (a reduction from 54 feet in height to 43 feet, 8 inches in height), and doubling the width of the setback above the 7th floor of the building, from 15 feet to 30 feet;
- In response to the Commission's concern regarding the Project's consistency with the Moderate Density Residential designation that applies to a portion of the Property, the Applicant provided additional information regarding the flexibility of the FLUM to allow for increased density in a PUD, and the Project's consistency with other elements of the Comprehensive Plan, most notably, affordable housing, which would outweigh any potential inconsistency with the FLUM;
- In response to the Commission's concern that affordable units were originally located in the cellar, the Applicant modified the Project such that only market rate units will be located in the cellar;
- In response to the Commission's concern regarding the size of vertical residential signage along P Street, the Applicant revised the Project to remove such signage;

- The revisions also included a commitment to LEED Gold certification, and that no affordable housing units would be located in the cellar level; and
- The Applicant stated it would address the other issues that were raised prior to the public hearing if the project is set down.

25. The Commission considered the revised design at its February 25, 2021 public meeting and decided to set the Application down for a public hearing. At the meeting, the Commission asked the Applicant to further address the Building's compliance with the CP in light of the CP's GPM and FLUM designations for the site with its pre-hearing submission.

26. Following the Commission's February 25, 2021 public meeting, the Applicant filed a prehearing submission on March 19, 2021, that responded to the Commission's questions and included Project updates as follows:
- Updated architectural plans;
- Removal of the request for court relief;
- Further details on the Project's benefits and amenities, including:
  - A 12% Inclusionary Zoning proffer, including a commitment to include a larger proportion of two-bedroom IZ units relative to the proportion of market rate units that are two-bedroom;
  - Confirmation that the Project will achieve LEED Gold certification;
  - Additional information regarding the Applicant's investigation of a utility credit tied to the solar energy generated by the Project;
  - Additional information regarding the offer of retail space at a reduced rent for the current operator of the barber shop located on the Property;
- Additional information regarding the Applicant's discussions with community groups; and
- An analysis of the Project's consistency with the CP and weighing of proposed public benefits and amenities against a potential inconsistency with the Moderate Density Residential FLUM designation.

(Ex. 18-18D)

27. On April 20, 2021, the Applicant submitted the Comprehensive Transportation Review ("CTR") prepared by Gorove/Slade regarding the project at the Property referenced above, along with the resume of Daniel B. VanPelt, the traffic consultant responsible for preparing the CTR, pursuant to 11-Z DCMR § 401.8 (Ex. 25-25B).

28. On April 30, 2021, the Applicant submitted a supplemental statement that included:
- Updated architectural plans, which include a darker shade for the penthouse;
- Information of the Project's consistency with the Convention Center Area Strategic Development Plan, specifically with the design and signage guidance;
- An update list of the Project's benefits and amenities; and
- Information regarding the Applicant's coordination with community groups and grants to the following groups:
  - Grant of $30,000 to Shaw Main Streets to support the Clean & Safe Team;

- Grant of $50,000 to Shaw Main Streets to support public art along P Street;
- Grant of $15,000 to City Blossoms to fund a new youth-led community art installation at the Marion Street Intergenerational Garden;
- Grant of $20,000 to Friends of Kennedy Playground, Inc. dedicated to expanded senior programming and service enhancement for a full year;
- Grant of $20,000 to New Endeavors by Women to replace the outdoor decks and interior hallway tile in common areas in their transitional housing; and
- Grant of $10,000 to Citizens Organized Patrol Efforts to purchase computers and audio/visual equipment to assist with crime prevention activities.

(Ex. 28).

Testimony

29. At the May 20, 2021, public hearing, the Applicant presented the Application, including the testimony of four witnesses:
    - Rich McPhillips, Applicant's representative, High Street District Development Inc.;
    - Eric Colbert, Project Architect;
    - J.B. Lallement, Project Architect; and
    - Daniel VanPelt, Traffic Engineer (Transcript of May 20, 2021 Public Hearing Meeting).

Post Hearing Submissions

30. The Applicant submitted a May 27, 2021 list (Ex. 54) of its draft proffers and conditions that included:
    - Further details of the operation of the Building's initial affordability period and subsequent reversion to IZ; and
    - The commitment to provide two electrical vehicle charging stations in response to feedback from the Zoning Commission.

31. The Applicant submitted a June 10, 2021 post-hearing submission (Ex. 56-56A) that included the following items to address the Commission's requests for additional information:
    - Proposed designs for balcony railings;
    - Additional detail showing north building elevation;
    - Additional detail showing proposed location and maximum dimensions of retail and residential signage;
    - Solar Credit: The Applicant proposed that if the tenants of the Inclusionary Zoning Units and the units subject to the Affordable Covenants are responsible for their own utility bills, the Applicant shall provide a $50.00 discount to such tenants' annual rent.
32. The Applicant submitted a June 10, 2021 list (Ex. 57-58) of revised draft proffers and conditions that included:
    - Further details regarding the Project's minimum Inclusionary Zoning proffer;
    - The commitment to prohibit residents of the Project from participating in the District's Residential Permit Parking ("RPP") Program; and

- The commitment to provide a $50.00 discount to the annual rent of tenants of the Inclusionary Zoning and Affordable Covenant units if such tenants are responsible for their own utility bills.

JUSTIFICATION FOR RELIEF

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

33. The Application asserted it complied with Subtitle X §304.4 and is not inconsistent with the CP as a whole, including its maps and policies, and other public policies, as follows:
    - The Project is not inconsistent with the Property's Neighborhood Enhancement Area designation on the GPM since the Project is a residential infill development that transforms a vacant and underutilized site. The Project's stepdown along Marion Street responds to the existing character of the neighborhood (Ex. 15, 16, 31);
    - The Project is not inconsistent with the Property's Main Street Mixed Use Corridors designation on the GPM since the Project provides pedestrian-oriented ground floor retail with upper story housing at a location near two Metrorail stations that is also served by Metrobus routes (Ex. 3, 15, 16, 31);
    - The Project is overall not inconsistent with the FLUM's Moderate Density Residential designation, which applies to the eastern portion of the Property along Marion Street:
        - The Moderate Density Residential designation applies to areas that include row houses, and low-rise apartment buildings and acknowledges that while the R-3, R-4, AND R-5-A zone districts are generally consistent with this designation, other zones may apply in some locations. The 4-story portion of the Project that is located in the Moderate Density Residential designation is similar to a low-rise apartment building;
        - The Framework Element of the Comprehensive Plan notes that is not intended to be a "parcel-specific" map and makes clear that "greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development." (Ex. 15, 16, 31);
        - The Framework Element does explicitly allow an increase in density above the base cited in the Moderate Density Residential description when a site is developed through the PUD process and particularly if it is a residential PUD that includes IZ units. In other words, a density of more than 1.8 FAR in an area designated for Moderate Density Residential can be exceeded when the development is a PUD that includes IZ units (Ex. 18); and
        - Any potentially limited inconsistency with a portion of the FLUM is offset and outweighed by the Project's satisfaction of multiple other Comprehensive Plan policies as set forth below (Ex. 15, 16, 18, 31);
    - The MU-6 zone is consistent with the Medium Density Commercial description of FAR of 4.0 and 6.0, with greater density possible when complying with Inclusionary Zoning or when approved through a PUD (Ex. 15, 16, 18, 31);
    - The Project is consistent with the Medium Density Residential description of mid-rise apartment buildings, as well as taller residential buildings surrounded by large areas of permanent open space, since the bulk of the Project is concentrated on the 1st through 4th floors, and the Project is significantly set back above the 4th floor. Furthermore, the

Project is located across from the Kennedy Recreation Center, which includes significant open space (Ex. 3, 15, 16, 31);

- The Project is not inconsistent with the CP's Near Northwest Area Element because the Project is a "mixed income residential development with underground parking adjacent to the Shaw/Howard and Mount Vernon Square Metro station" on a site that is currently an existing surface parking lot, which precisely matches the goal of the Near Northwest Area Element. Furthermore, the Project includes ground floor retail along 7th Street, N.W., green building practices, and affordable housing, all of which advance the policies of the Near Northwest Area Element (Ex. 3, 15, 16, 31);
- The Project is not inconsistent with the CP's Land Use Element because the Project is a pedestrian-oriented infill development in proximity to transit with ground floor retail use and develops a vacant and underutilized site into a multifamily residential use (Ex. 3);
- The Project is not inconsistent with the CP's Transportation Element because it is a pedestrian-oriented development around a transit station (Ex. 3);
- The Project is not inconsistent with the CP's Housing Element because it creates a mixed-use development with high-quality mixed income housing, including a substantial affordable housing component, comprised of 12% Inclusionary Zoning and 10 affordable units pursuant to the Affordable Covenants, which include units at 30% MFI. The Project will include a larger proportion of two-bedroom IZ units relative to the proportion of market rate units that are two-bedroom (Ex. 3, 18);
- The Project is not inconsistent with the CP's Environmental Protection Element by achieving LEED Gold certification and including solar panels, green roof, landscaping improvements and street trees (Ex. 31);
- The Project is not inconsistent with the CP's Economic Development Element because it will introduce ground floor retail along the 7th Street, N.W. commercial district (Ex. 3);
- The Project is not inconsistent with the CP's Urban Design Element because it will include high-quality design and create an attractive and pedestrian-oriented streetscape in an area that was formerly a vacant lot (Ex. 3); and
- The Project advances the Mayor's Order 2019-036 on affordable housing which sets a goal of creating 36,000 new housing units by 2025, including 12,000 affordable housing units, by introducing approximately 223 residential units, including 19 Inclusionary Zoning Units and 10 affordable units, some of which are affordable at 30% of MFI (Ex. 15, 18).

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

34. The Application asserted that it complied with Subtitle X §304.4's requirement to not create any potential adverse impacts that could not be mitigated or balanced out by public benefits because the Project:
    - Would have a positive land use impact by:
        - Replacing an existing vacant, underutilized and dilapidated lot with attractive and well-designed multi-family development; and
        - Improving the streetscape along 7th and P Streets, N.W.;

    (Ex. 3)

- Would not have an adverse zoning impact, as the Property's proposed 90' height and 7.17 FAR are at or below what would be permitted in an MU-6 PUD or Inclusionary Zoning development and the Project's step back from Marion Street is designed to fit in with the scale of the surrounding buildings (Ex. 15, 16, 18, 31);
- Would not have an adverse environmental impact, as the Project will achieve LEED-Gold certification, and will meet the green area ratio and stormwater management requirements (Ex. 3); and
- Would not have an adverse facilities or transportation impact because the Property is located nearby to public transit (two Metrorail stations and two Metrobus routes) and contains on-site parking spaces to accommodate the parking demand generated by the Project. The Applicant will also implement the TDM plan as approved by DDOT, which will mitigate any transportation impacts of the Project (Ex. 3).

Requested Zoning Flexibility (To Be Balanced Against Public Benefits (Subtitle X §304.4(C))
Map Amendment

35. The Application asserted that it complied with Subtitle X § 304.4's requirement to balance out the zoning flexibility requested and any potential adverse impacts incapable of being mitigated.

36. The requested Map Amendment to the MU-6 Zone is necessary because the proposed MU-6 zoning will allow for the Property to be developed at a density that will allow for the provision of substantial housing, including affordable housing (Ex. 3, 28).

37. It is only through the PUD process that the Applicant can create a financially viable project that is large enough to unlock and support the provision of deeply affordable units as required by the Affordable Covenants. (Ex. 28)

Public Benefits

38. The Application asserted that it complied with Subtitle X § 304.4's requirement to balance the zoning flexibility requested and any potential adverse impacts incapable of being mitigated by providing the following categories of public benefits as defined by Subtitle X § 305:
    - **Superior Urban Design, Architecture, and Landscaping (11-X DCMR § 305.5(a) and (b)).** The proposed height and massing of the Project have been carefully designed to relate to the surrounding context. Along the eastern side of the Property, the building is set back 15 feet from the property line above the 4th floor and set back a full 30 feet above the 7th floor. Through these setbacks, the building is compatible with the scale of the buildings along Marion Street. The Project includes high-quality private outdoor spaces, superior architecture, and high-quality materials. A clearly defined retail base and streetscape will enhance the pedestrian scale and environment. The building is articulated with projecting and interior balconies, bay windows and carefully selected materials to add warmth along Marion Street and an open and more modern atmosphere along 7th Street. The Project will feature high-quality design and materials and transform a surface parking lot to a lively and dynamic residential development with

ground floor retail. The Project shall include a well-designed rooftop and street-level landscaping, including new street trees;

- **Site Planning and Efficient Land Utilization (*id.* § 305.5(c)).** The Project makes efficient use of a deteriorating site that is near two Metrorail stations and well-served by Metrobus, places all parking underground, and transforms an underutilized and inactive area into an attractive 21st century mixed-use development;
- **Commemorative Works or Public Art (*id.* § 305.5(d)).** The Applicant will purchase and install a piece of public art in the public space along P Street (subject to approval by DDOT);
- **Housing in Excess of Matter-of-Right Development (*id.* § 305.5(f)(1)).** The Project includes a greater number of housing units than could be developed on the Property as a matter-of-right under the existing MU-4 zoning. The Project will create approximately 223 new residential units in furtherance of the Mayor's Housing Order and the goals of the CP. There is currently no housing at the Property, and given the Property's current zoning, no residential use is required. Additionally, portions of the Property are subject to the Affordable Covenants. These covenants require that a minimum of 10 units (for Lot 821 the greater of 20% or 7 units and for Lot 191, the greater of 30% or 3 units) be affordable. Pursuant to the covenants, at least 25% of the units must be reserved at 30% MFI, the remaining units must be reserved between 30% and 50% MFI. It is only through the PUD process that the Applicant can create a financially viable project that is large enough to unlock and support the provision of such deeply affordable units as required by the Affordable Covenants. The Project will create all new housing in an underutilized location;
- **Affordable Housing in Excess of Inclusionary Zoning Requirements (*id.* § 305.5(g))**
  - The Project reserves twelve percent (12%) of its residential gross floor area that is not already subject to the Affordable Covenants (excluding penthouse habitable space) for households with incomes not exceeding 60% of MFI;
  - The Project reserves an area equal to 12% of the penthouse habitable space for households with incomes not exceeding 50% of MFI; and
  - The Project will include a larger proportion of two-bedroom IZ units relative to the proportion of market rate units that are two-bedroom;
- **Building Spaces for Special Uses: Retail Uses (*id.* § 305.5(j))**
  - The Project commits to providing approximately 7,442 square feet of retail uses on the ground floor; and
  - The Applicant will provide relocation assistance to the operator of the Ordinary People Barber Shop during construction of the Project and will provide the Ordinary People Barber Shop with an option to relocate to the retail space within the Project at a reduced rent for up to 20 years.
- **Environmental and Sustainable Benefits: LEED Gold (*id.* § 305.5(k))** The Applicant proposes to construct the Project to LEED Gold v4 certification. The Project will also integrate other sustainable design features, including solar panels as a renewable energy source on the roof of the Project and 2 electric vehicle charging stations in the parking garage; and
- **Other Public Benefits - Solar Utility Credit (*id.* § 305.5(r))** The Project's solar panels are anticipated to generate approximately 13,000 kWh/year and roughly $1,500 in

avoided electrical costs in a year. If the tenants of the Inclusionary Zoning Units and the units subject to the Affordable Covenants are responsible for their own utility bills, the Applicant will provide a $50.00 discount to such tenants' annual rent. (Ex. 3, 15, 18, 28, 57).

Special Exception

39. The Applicant submitted evidence showing that the Building met the criteria for the requested special exceptions for the lot occupancy and penthouse enclosure because:
    - The requested lot occupancy in excess of the 80% maximum permitted in the MU-6 zone is limited to only 4 floors of the building and allows the Project to accommodate both a 12% Inclusionary Zoning component and 10 affordable units required by existing Affordable Covenants, which is in harmony with the general purpose and intent of the MU zone, the zoning regulations, and the zoning maps. Given the thoughtfully designed setbacks of the Project, the limited excess lot occupancy will not significantly or materially add to the density of the Project that would have an adverse impact of the use of neighboring property (Ex. 3, 28A1-28A2); and
    - The penthouse relief to allow a penthouse staircase enclosure that includes a "pool room" and is of a non-uniform height with the main penthouse enclosure is necessary and appropriate because the height of the staircase enclosure is dictated by building and safety codes. Additionally, for safe and efficient operation, the equipment serving the pool should be located in close proximity to the pool, and it would be unreasonable to locate such mechanical and storage areas in a different location. Locating the "pool room" in the staircase enclosure allows for a better design of the roof structure as it consolidates several uses in an already necessary separate penthouse enclosure. It also enables the pool equipment, chemicals, and machinery to be located in close proximity to the pool and avoids having pool-related items scattered throughout the penthouse level of the Project. The staircase enclosure complies with the required penthouse setbacks (Ex. 3, 28A1-28A2).

RESPONSES TO THE APPLICATION

OP

40. OP submitted a January 18, 2021 report (Ex. 11, the "First OP Setdown Report") recommending that the Commission set the Application down for a public hearing based on OP's conclusion that the Project would not be inconsistent with the CP, but requested the Applicant to continue to provide additional information on the building's proposed energy performance, solar installation, and storm water retention, and the proffered benefits and amenities, including the public art installation.

41. OP submitted a February 15, 2021 report (Ex. 16, the "Second OP Setdown Report"), recommending that the Commission set down the Application for public hearing based on OP's conclusion that the Project, as modified from the time of the First OP Setdown Report, would be generally not inconsistent with the CP. The Second OP Setdown Report concluded that the Project was not inconsistent with the CP because:
    - The proposed MU-6 zoning would not be inconsistent with the FLUM's Medium Density Commercial/Medium Density Residential designations for the majority of the site; the MU-6 zone was formerly the C-2-C zone under the 1958 regulations and the abutting

property directly across 7th Street is zoned C-2-C. As intended by the MU-6 zone, the Project is a mixed-use development with a focus on residential use;

- Greater density would be possible through a PUD and would be furthering a critical goal of the District by providing a significant amount of affordable housing through both the required covenants and more Inclusionary Zoning than required on a site that currently provides no housing;
- While there may be a potential inconsistency in the proposed density for the small eastern portion of the site at the corner of P and Marion Streets that is designated for Moderate Density Residential use, the proposed four-story section of the Project would qualify as a "low-rise apartment building";
- The overall project would further other Comprehensive Plan policies that would outweigh any potential inconsistencies with the FLUM designation including most significantly the critical need for new affordable housing units; and
- The Project is not inconsistent with the Property's GPM designations because the Main Street Mixed Use Corridor designation envisions a pedestrian-oriented street with ground floor retail and upper-story residential, like the proposed mixed-use development. For the eastern part of the site, which is currently a surface parking lot, the Project is consistent with the Neighborhood Enhancement Area designation since it presents an opportunity for infill development, including residential use and mixed-use buildings as proposed.

42. OP submitted a May 10, 2021 report (Ex. 31, the "OP Hearing Report" and, together with the First OP Setdown Report and the Second OP Setdown Report, the "OP Reports") which recommended that the Commission approve the Application. The OP Hearing Report concluded that:

- The Project, on balance, is not inconsistent with the CP and would further a number of important goals of the District, including the provision of affordable housing;
- Project is consistent with the Convention Center Area Strategic Development Plan, since the Property is labeled as a "potential site for high and medium density residential development" and as "a preferred location of ground floor retail";
- The requested lot occupancy and penthouse relief meets the required special exception standards; and
- The requested flexibility is warranted.

43. At the May 20, 2021 public hearing, OP testified in support of the Application and reiterated that OP finds, on balance, that the PUD would not be inconsistent with the CP (Tr. 65-68).

DDOT

44. DDOT filed a May 7, 2021 report (Ex. 30) that assessed the potential safety and capacity impacts of the proposed Project on the District's transportation network (the "DDOT Report"). The DDOT Report concluded that DDOT had no objection to the Application provided that the Applicant implement the TDM plan as proposed in the Applicant's March 26, 2021 Transportation Statement (Ex. 25A), for the life of the project, unless otherwise noted.

45. At the May 20, 2021 public hearing, DDOT testified in support of the Application and confirmed that DDOT found the proposed TDM plan to be sufficiently robust for the Project (Tr. 68-69).

ANC

46. ANC 6E submitted a January 5, 2021 report stating that at its virtual public meeting on December 1, 2020, the ANC voted 4-0-0 to support the Application. The report listed no issues or concerns with the Application (Ex. 10).

47. At the May 20, 2021 public hearing, Rachelle Nigro, chair of ANC 6E testified in support of the Application and noted the ANC's support for the Project's affordable housing component, and the manner in which the Project will transform the Property from a run-down parcel into a vibrant development (Tr. 70-71).

CONCLUSIONS OF LAW

AUTHORITY

1. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a Consolidated PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 300, a PUD-related map amendment pursuant to Subtitle X, § 303.12, and special exception relief pursuant to Subtitle X §§ 303.1 and 303.13.

PUD and PUD-related Map Amendment Approval

2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
   a. *Results in a Building superior to what would result from the matter-of-right standards;*
   b. *Offers a commendable number or quality of meaningful public benefits; and*
   c. *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*

3. Pursuant to Subtitle X §303.11:
   "The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission."

4. Pursuant to Subtitle X § 303.12:
   "A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD."

5. Pursuant to Subtitle X §§ 303.1 and 303.13:
   "As 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. Any such flexibility shall be considered the type of development flexibility against which the Zoning Commission shall weigh the benefits of the PUD."

6. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application, the Commission must:
"Judge, balance, and reconcile the relative value of the public benefits and Building amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case;"
and must find that the proposed development:
(a) Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;
(b) Does not result in unacceptable Building 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 Building; and
(c) Includes specific public benefits and Building amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.

7. A PUD's proposed public benefits must comply with Subtitle X § 305.12:
"*A Building 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*.

8. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP's purposes as:
(1) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;
(2) to guide executive and legislative decisions on matters affecting the District and its citizens;
(3) to promote economic growth and jobs for District residents;
(4) to guide private and public development in order to achieve District and community goals;
(5) to maintain and enhance the natural and architectural assets of the District; and
(6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.

9. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)) (the "McMillan PUD"). In its decision affirming the Commission's approval of the McMillan PUD, the Court stated the following:
"The Comprehensive Plan is a 'broad framework intended to guide the future land use planning decisions for the District. *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm'n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). '[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission

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

Special Exception Relief

10. Pursuant to Subtitle X § 303.13:
"As 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."

11. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception:
    - *will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,*
    - *will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and*
    - *complies with the special conditions specified in the Zoning Regulations.*

12. The special exception for lot occupancy relief under Subtitle G § 409.1 does not impose any additional "specific conditions."

13. The special exception for penthouse relief under Subtitle C, § 1504.1 must also meet the following conditions:
    - *The strict application of the requirements of this chapter would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes;*
    - *The relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall;*
    - *The relief requested would result in a roof structure that is visually less intrusive;*
    - *Operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of Subtitle C-118 building lot; or*

other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable;

- *Every effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and*
- *The intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.*

14. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." (*First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973).)

CONSISTENCY WITH THE PUD ELIGIBILITY STANDARDS

15. The Commission concludes that the Application meets Subtitle X § 301.1's minimum 15,000 square feet of land area for a PUD in the MU-6 zone because the Property consists of approximately 22,824 square feet of land area (Findings of Fact, "FF" 7).

CONSISTENCY WITH THE CP AND PUBLIC POLICIES (SUBTITLE X § 304.4(A))

16. Based on the case record and the Findings of Fact above, the Commission concludes that the Project, including the PUD and related map amendment, is not inconsistent with the CP and with other public policies and active programs, when the CP is considered in its entirety (FF 14-16, 33, 40-43).

17. The Commission concludes that the Project is consistent with the Property's "Neighborhood Enhancement Area" designation on the CP's GPM because the Project is residential infill development that transforms a partially vacant and underutilized site into a vibrant mixed-use development (FF 9, 14, 17, 33).

18. The Commission concludes that the Project is consistent with the Property's "Main Street Mixed Use Corridor" designation on the CP's GPM because the Project introduces pedestrian-oriented ground floor retail with upper story housing in a location nearby to mass transit (FF 14, 17).

19. The Commission concludes that the Project is consistent with the Property's Medium Density Commercial/Medium Density Residential designation on the FLUM because the Property's proposed FAR and height are in line with that envisioned under this designation, as increased through a PUD. Additionally, the Project is located across the street from a large area of open space, as envisioned by the Medium Density Residential Designation (FF 10, 15, 17).

20. The Commission concludes that the Project is in some ways inconsistent with the Property's Moderate Density Residential designation on the FLUM. The Project's overall

height and density is greater than what is called for, and a portion of the building that is within the area mapped with the Moderate Density Residential designation is taller and bulkier than what is called for on the FLUM. However, this inconsistency is mitigated because it includes a "face" on Marion Street that is reduced to a height comparable to a four-story building, with a 30-foot setback before the Project gets significantly taller and bulkier. This reduces the impact of the height and bulk of the Project on the Marion Street side (FF 15, 17, 24, 33).

21. The Commission concludes that to the extent the Project is inconsistent with the Moderate Density Residential designation, the Project's advancement of other Comprehensive Plan policies, such as affordable housing, transit-oriented development, green building practices, and high-quality design outweigh the inconsistency with the Moderate Density FLUM designation (FF 15, 17, 33).

22. The Commission concludes that the Project is consistent with the Near Northwest Area Element which applies to the Property because the Project is precisely the type of pedestrian oriented mixed-use development located on an underutilized site that this Element promotes (FF 16, 17, 33).

23. The Commission concludes that the Project will further the housing goals of Mayor's Order 2019-036 by introducing approximately 223 residential units, of which approximately 29 are affordable, including affordable units at 30% MFI[3] (FF 17, 33).

24. The Commission concludes that the Project furthers the CP's Land Use, Transportation, Housing, Environmental Protection, Economic Development, and Urban Design Elements because the Project will develop an underutilized and dilapidated parcel into a pedestrian oriented, LEED Gold certified mixed-use development in close proximity to transit, which includes ground floor retail use, high quality materials and design, green roof, and solar panels (FF 9, 17-18, 33).

25. Based on the evidence provided in the Record, the Commission agrees that the Project is not inconsistent with the Comprehensive Plan or other adopted and applicable public policies.

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

26. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts that are not capable of being mitigated or outweighed by the Project's proffered public benefits and therefore protects and advances the public health, safety, welfare and convenience as detailed below.

[3] The Commission does not consider these units to be a public benefit of the Project because they are required by covenants that predated Applicant acquiring the Property. However, they are a part of the Project and the Commission therefore considers them from purposes of assessing its consistency with the CP.

27. The Commission concludes that the Project will not create any unacceptable land use impacts because the Project will replace existing partially vacant, underutilized and dilapidated lot with attractive and well-designed multi-family development (FF 9, 17).

28. The Commission concludes that the Project will not create any unacceptable zoning impacts because the Project's proposed density and height are below that permitted for a PUD in the MU-6 Zone and the Project is designed to fit in with the scale of surrounding buildings, both on 7th and Marion Streets. The impact of the Project's height and density on Marion Street is mitigated by the reduced height "face" of the building that fronts on the lower density Marion Street, with the taller and bulkier portion of the building set back from that street. The impact of the height and bulk of the Project is acceptable given the quality of public benefits of the Project, namely the additional housing, the affordable housing, the retention of the barbershop, and the other public benefits of the Project (FF 17, 24, 38).

29. The Commission finds that the Project will not create any unacceptable transportation impacts because the Applicant's proposed TDM plan, as approved by DDOT will mitigate any potential adverse impacts on the transportation network of the Project's increased traffic and because the Project is located in close proximity to multiple mass transit offerings (FF 34, 44).

30. The Commission finds that the Project will not create any unacceptable environmental impacts because the Project will be built to LEED Gold standard and will include green roof and solar panels (FF 33-34, 38).

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

31. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies Subtitle X § 304.3's balancing test because the Application's public benefits outweigh the requested zoning flexibility, as well as any potential adverse impacts that are not capable of being mitigated, as discussed below.

32. The Commission concludes that the Application's proposed amendment of the Zoning Map to rezone the Property from the current MU-4 zone to the MU-6 zone is appropriate because:
    - The Map Amendment is not inconsistent with the CP when taken as a whole; and
    - The Property is currently underutilized given its poor condition and location at the corner of two major streets and the Map Amendment will allow the Property to be developed as a mixed-use Project at a density and height that will allow for a financially viable project that is large enough to unlock and support the provision of deeply affordable units as required by the Affordable Covenants.

    (FF 9-11, 17, 36-37)

33. The Commission concludes that the flexibility is balanced by the proffered benefits and amenities resulting from the Project, including, superior urban design, architecture, and landscaping, site planning, and efficient land utilization, commemorative works or public

art, housing and affordable housing, building spaces for special retail uses, environmental and sustainable benefits, and other public benefits (FF 38).

34. The Commission concludes that these benefits more than outweigh the relief requested, and the potential adverse effects of the Project that are not otherwise favorable or adequately mitigated.

NON-PUD SPECIAL EXCEPTION/VARIANCE - SPECIFIC TESTS

35. The Application was somewhat ambiguous as to whether the Applicant was requesting that the Commission review the lot occupancy and penthouse relief as special exception relief pursuant to 11-X DCMR § 303.13, or as additional PUD flexibility to be balanced against the public benefits of the Project pursuant to 11-X DCMR § 303.11. The Application stated on one hand that it was seeking approval pursuant to 11-X DCMR 303.11, but then went on to discuss how it believed it met the specific special exception standards, which would be consistent with a request for review pursuant to 11-X DCMR § 303.13 (See Ex. 3, pg. 6-13[4]).

36. The Commission did not raise this issue at the hearing or decision meetings, because the Zoning Regulations provide that the amount of flexibility from the development standards not explicitly addressed in 11-X DCMR § 303 is at the discretion of the Zoning Commission, (*See* 11-X DCMR § 303.11) and because the Commission concludes the Application qualifies for approval under both standards.

37. The Commission concludes that the public benefits of the Project are sufficient to justify the relief, even if the lot occupancy and penthouse relief are not treated as separate special exceptions and instead balanced against the public benefits of the PUD along with the additional density and height granted as part of the PUD and the related map amendment pursuant to 11-X DCMR § 303.11.

38. The Commission further concludes that the Application met the special exception standards for the lot occupancy and penthouse relief for the following reasons:
    a. The lot occupancy relief is limited to only four stories of the building and the building has been designed to minimize impacts to neighboring properties along Marion Street and therefore, will not tend to have an adverse effect on the use of the neighboring property. Additionally, the Project as a mixed-use building with ground floor retail is in harmony with the general purpose and intent of the MU-6 zone; and
    b. The penthouse relief is necessary for the efficient functioning of the penthouse and in order to comply with building code requirements. The relief will result in a better design of the roof structure that is visually less intrusive. The penthouse will comply with required setbacks and will not be visually intrusive, or have an adverse effect on neighboring properties, will comply with the intent of the Zoning Regulations, and will not impact the light and air of adjacent buildings.

[4] The Commission does not intend this to be a criticism of the Applicant. The Zoning Regulations could be clearer on this point and the Commission appreciates the clear and succinct briefing that the Applicant provided regarding the Project's compliance with the special exception standards.

GREAT WEIGHT TO RECOMMENDATIONS OF OP

39. 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).)

40. The Commission finds OP's analysis of the Application, its conclusion that the Application satisfied the PUD and special exception requirements, and its recommendation to approve the Application persuasive and concurs with this judgement (FF 40-43).

GREAT WEIGHT TO WRITTEN REPORT OF THE ANC

41. 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 articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016.) The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

42. ANC 6E's report stated its reasons for supporting the Application, and did not list any issues or concerns with the Project, so there is nothing for the Commission to give "great weight" to. The Commission found the explanation for the ANC's support to be persuasive (FF 46-47).

DECISION

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

- A Consolidated PUD;
- An amendment of the Zoning Map to rezone the Property from the MU-4 zone to the MU-6 zone;
- A special exception to allow lot occupancy in excess of 80%; and
- A special exception to allow two separate penthouse enclosures of differing heights.

A. PROJECT DEVELOPMENT

1. The Project shall be constructed in accordance with the plans, as modified by the guidelines, conditions, and standards herein, prepared by Eric Colbert & Associates, submitted April 30, 2021 as Exhibit 28A1-28A2, as modified in the

post-hearing submission dated June 10, 2021 and included in the record as Exhibit 56A (the "Approved Plans").

2. The Project shall have the following special exception relief from the requirements of the Zoning Regulations:
   - A maximum lot occupancy of 89.3% for the first floor and 85.8% for floors 2-4, where a maximum lot occupancy of 80% is required; and
   - A separate penthouse stairway enclosure containing a "pool room" with a height of 15 feet, where a penthouse enclosure exclusively for stairway at a uniform height of 12' with the main penthouse enclosure is required.

3. In accordance with the Approved Plans, as modified by the guidelines, conditions, standards, and flexibility herein, the Approved PUD shall have:
   - A maximum building height of approximately 90 feet;
   - Approximately 163,595 square feet of GFA;
   - A FAR of 7.17 for the Property, with a retail FAR of 0.33 and a residential FAR of 6.84;
   - 7,442 square feet of net retail area;
   - 223 residential units;
   - 56 on-site parking spaces; and
   - 72 long term and 14 short term bicycle parking spaces.

4. The Project shall have the following flexibility from the Approved Plans in the following areas:
   - To vary the proposed residential unit range by 5-10%;
   - To vary the number of proposed parking spaces by 5-10%; and to make refinements to parking and loading configurations, so long as the required parking and loading complies with the size, location, access, maintenance and operation requirements of the Zoning Regulations;
   - To vary the amount of retail square footage by 25%;
   - To vary the design of the retail space per the specifications of the retailer. Actual retail bay elevations will be developed by individual retail tenants, approved by the building owner and may change over time to accommodate leasing cycles;
   - To vary the selection of public art;
   - To vary the final selection of exterior materials within the color ranges and general material types proposed, based on availability at time of construction; and
   - To vary floor to floor heights as design is refined.

B. CERTIFICATE OF OCCUPANCY REQUIREMENTS

1. **Prior to the issuance of the Certificate of Occupancy for the Project**, the Applicant shall purchase and install a piece of public art in the public space along P Street (subject to approval by DDOT). In coordination with Shaw Main Streets, the Applicant will determine the ideal type and configuration for such art, subject

to review and approval of such proposal through the public space permitting process.

2. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with evidence that the Project has or will achieve the requisite number of prerequisites and points necessary to secure LEED Gold v4 certification or higher from the U.S. Green Building Council.

3. **For up to 20 years after the date of issuance of the first certificate of occupancy for the Project**, the Applicant shall reserve a minimum of 750 rentable square feet of the non-residential gross floor area of the ground floor of the Project for the Ordinary People Barber Shop.

4. **Following the issuance of a certificate of occupancy for the Project**, the Project's Transportation Coordinator shall submit to the Office of Zoning for inclusion in the IZIS case record of the case documentation summarizing compliance with the transportation and following TDM conditions of this Order.

5. **Five years after the issuance of the final certificate of occupancy for the Project**, if the Transportation Coordinator has not established a relationship with DDOT or goDCgo, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo summarizing continued substantial compliance with the transportation and following TDM conditions in the Order, unless no longer applicable as confirmed by DDOT; provided, that if such letter is not submitted on a timely basis, the Applicant shall have sixty (60) days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter.

C. REQUIREMENTS FOR THE LIFE OF THE PROJECT

1. **For the life of the Project**, the Project shall dedicate approximately 145,736 square feet of GFA to residential use.

2. **For the life of the Project**, the Applicant shall reserve no less than 12% of the Project's residential gross floor area (excluding the area subject to the existing Affordable Covenants and the penthouse habitable space) for households with incomes not exceeding 60% of MFI.

3. **For the life of the Project**, the Applicant shall reserve an area equal to no less than 12% of the penthouse habitable space for households with incomes not exceeding 50% of MFI.

4. The Inclusionary Zoning and Affordable Covenant units shall be generally in accordance with the following chart, subject to the flexibility noted below:

Residential Unit Type	Total Residential Gross Floor Area	Units	Reserved for households earning equal to or less than:	Affordability Control Period	Tenure (rental or sale)
IZ	12,736 sf of GFA	18	60% MFI	Life of Project	Rental
IZ	429 sf of GFA	1	50% MFI	Life of Project	Rental
Affordable Covenants	1,568 sf of GFA	3	30% MFI	Life of Project	Rental
	5,469 sf of GFA	7	50% MFI	Life of Project	Rental

Ultimate unit count, unit mix and unit locations are subject to change based on final interior layout, total unit mix, and as necessary to comply with any applicable DC laws and regulations including the Inclusionary Zoning Implementation Regulations, DCMR Title 14, Chapter 22.

Ultimate residential GFA is also subject to change based on unit count; however, Applicant shall provide a minimum of 12,500 sf of residential GFA at 60% MFI and 400 sf of residential GFA at 50% MFI **for the life of the project**.

5. **For the life of the Project**, the Applicant will provide 6 Inclusionary Zoning units of the two-bedroom type (at 60% MFI) and 1 affordable covenant unit of the two-bedroom type (at 50% MFI).

6. **For the life of the Project**, the Applicant shall set aside a minimum of 7,442 square feet on the ground floor (subject to the flexibility requested herein) of the Project for retail uses.

7. **For the life of the Project**, if the tenants of the Inclusionary Zoning Units and the units subject to the Affordable Covenants are responsible for their own utility bills, the Applicant shall provide a $50.00 discount to such tenants' annual rent.

8. **For the life of the Project**, the Applicant shall prohibit residents of the Project from participating in the District's Residential Permit Parking ("RPP") Program through a clause in all leases for residents that prohibits residents from applying for or obtaining RPPs or using an RPP guest pass within one mile of the Property.

9. **For the life of the Project,** the Applicant shall provide the following TDM measures for the Project:
   a. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential or retail unit and charge a minimum rate based on the average market rate within a quarter mile;
   b. Identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement;
   c. Will provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year;

d. Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to residents and employees, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications;
e. Transportation Coordinators will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;
f. Provide residents and retail employees who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future;
g. Will not lease unused parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home residents, or sporting events);
h. Will meet or exceed Zoning Regulations of 2016 short- and long-term bicycle parking requirements. Long-term bicycle space will be provided free of charge to residents and employees. There are 65 long-term spaces required; 72 long-term spaces provided. Fourteen short-term spaces required; 14 short-term spaces provided;
i. Long-term bicycle storage room will accommodate non-traditional sized bikes including cargo, tandem, and kids bikes;
j. Provide a bicycle repair station in each long-term bicycle parking storage room;
k. Provide a free SmarTrip card or a complimentary Capital Bikeshare coupon good for one ride to every new resident and employee;
l. Electrical outlets will be provided within the long-term bicycle storage room for the charging of electric bikes; and
m. Offer an annual Capital Bikeshare (CaBi) membership to each resident and employee for the first year after the building opens.

10. **For the life of the Project,** for the residential component of the Project, the Applicant shall provide the following TDM measures:
a. Provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing info@godcgo.com;
b. Transportation Coordinator will subscribe to goDCgo's residential newsletter;
c. Post all TDM commitments on website, publicize availability, and allow the public to see what commitments have been promised;
d. Install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation

alternatives. At a minimum, the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles; and

e. Provide one collapsible shopping cart (utility cart) for every 50 residential units, for a total of four to encourage residents to walk to the grocery shopping and run errands.

11. **For the life of the Project,** for the retail component of the Project, the Applicant shall provide the following TDM measures:

a. Will post "getting here" information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for patrons and employees discouraging parking on-street in Residential Permit Parking (RPP) zones;

b. Transportation Coordinator will demonstrate to goDCgo that tenants with 20 or more employees who work on-site are in compliance with the DC Commuter Benefits Law and participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future; and

c. Ownership of building will offer discounted annual memberships to on-site retail employees via the Capital Bikeshare Corporate Membership program.

D. VALIDITY

1. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of Zoning Legal Division and the Zoning Division, DCRA (the "PUD Covenant"). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of OZ.

2. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.

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

In accordance with the provisions of 11-Z DCMR § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on December 17, 2021.

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

ANTHONY HOOD
CHAIRMAN
ZONING COMMISSION

SARA B. BARDIN
DIRECTOR
OFFICE OF ZONING

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 20-27A
Z.C. Case No. 20-27A
High Street District Development, Inc.
(Two-Year Time Extension of an Approved Consolidated PUD and Zoning Map Amendment @ Square 445, Lot 222)
September 26, 2024

Pursuant to notice, at its public meeting on September 26, 2024, the Zoning Commission for the District of Columbia ("Commission") considered the application ("Application") of High Street District Development, Inc. (the "Applicant") for a two-year time extension of the approved consolidated Planned Unit Development ("PUD") and Zoning Map amendment approved in Z.C. Order No. 20-27 (the "Order") for the development a mixed-use building with approximately 223 residential units and approximately 7,400 square feet of ground-floor retail space (the "Project") located at Lot 222 in Square 445 (the "Property"). The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedure, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the "Zoning Regulations", to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Prior Approvals

1. The Order, effective December 17, 2021, granted a consolidated PUD and related Zoning Map amendment from the MU-4 zone to the MU-6 zone to allow the development of a mixed-use building with approximately 223 residential units and approximately 7,400 square feet of ground-floor retail space along 7th and P Streets, N.W. The Order required a building permit application for the Project to be filed by December 17, 2023, and construction to commence by December 17, 2024.

Parties and Notice

2. Advisory Neighborhood Commission ("ANC") 2G, in which the Property is located, is the "affected ANC" and automatically party to the Application.[1] Aside from the affected ANC, there were no other parties to the original proceeding for Z.C. Case No. 20-27.

[1] When the original application was approved, the Property was located within ANC 6E. The Property is now located within ANC 2G.

3. On July 16, 2024, the Applicant served the Application on ANC 2G, as well as the Office of Planning ("OP") and District Department of Transportation ("DDOT"), as attested by the Certificate of Service submitted with the Application. (Exhibit ["Ex."] 2)

The Application

4. On July 16, 2024, prior to the December 17, 2024, expiration of validity, the Applicant filed the Application requesting a two-year time extension of the period to commence construction and validity of the Order to December 17, 2026. The Application stated that it met the standards for a time extension enumerated in Subtitle Z § 705.2. (Ex. 2)

5. The Applicant stated there has been no substantial change of material facts since the Commission's approval in the Order and that the Project remains consistent with the design and program approved by the Commission. (Ex. 2)

6. The Applicant asserted that there is good cause to grant the requested extension in this case. Specifically, while the Applicant has made progress towards construction, including preparing permit plans and filing a building permit application within the time deadline of the Order, the Applicant continues to face the ongoing adverse market conditions affecting the commercial real estate sector, including elevated construction costs and the significant shift in the interest rate environment in the financing market. (Ex. 2)

Responses to the Application

7. On September 11, 2024, OP submitted a report stating that the Application met the standards for the requested two-year extension and recommending approval of the Application. OP agreed with the Application that there has been no substantial change in any of the material facts upon which the Commission based its original approval and that the Applicant had demonstrated good cause for the extension. (Ex. 4)

8. ANC 2G did not submit a written report commenting on the Application.

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time periods of an order upon determining that the time extension request demonstrates satisfaction of the requirements of Subtitle Z § 705.2 and compliance with the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6.

2. The Commission concludes that the Applicant timely filed the Application prior to the expiration of the validity period for the Order on December 17, 2024, which deadline the Application seeks to extend.

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

4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 705.2(a) by demonstrating that it had served ANC 2G, the only other party to the

Application, and that the ANC was given 30 days to respond from the July 16, 2024, date of service. As noted above, ANC 2G did not file a written response to the Application.

5. Subtitle Z § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the Order that would undermine the Commission's justification for approving the original application.

6. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the Application and OP Report, which stated that no substantial change has occurred to the material facts upon which the Commission had relied in issuing the Order.

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

> *(1) An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;*
> *(2) An inability to secure all required governmental agency approvals for a development by the expiration date of the order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or*
> *(3) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.*

8. The Commission concludes that the Application met the standards of Subtitle Z § 705.2(c)(1) due to the significant adverse conditions beyond the Applicant's reasonable control affecting the financing market for commercial real estate development. The Commission agrees that these matters resulted in the Applicant's inability to commence construction by the time deadline of the Order and constitute good cause for the requested two-year extension of the Order.

"Great Weight" to the Recommendations of OP

9. The Commission is required to give "great weight" to the recommendations of OP stated in the OP Report pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990, (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
10. The Commission notes OP's conclusion that there has been no substantial change to the material facts upon which the Commission's original approval was based and finds persuasive OP's recommendation to approve the requested two-year extension.

"Great Weight" to the Written Report of the ANCs

11. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Spring Valley-Wesley Heights Citizens Ass'n v. District of Columbia Zoning Comm'n*, 856 A.2d 1174, 1180 (D.C. 2004).) The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. District of Columbia Bd. of Zoning Adjustment,* 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).)

12. ANC 2G did not submit a written report to which the Commission can give great weight.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application's request for a Two-Year Time Extension of Z.C. Order No. 20-27, to extend the validity period and deadline to commence construction until December 17, 2026.

Final Action
VOTE (September 26, 2024): 4-0-1 (Tammy Stidham, Joseph S. Imamura, Anthony J. Hood, and Robert E. Miller to approve; 3rd Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 20-27A shall become final and effective upon publication in the *District of Columbia Register*; that is, on April 4, 2025.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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