

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-18A
Z.C. Case No. 14-18A
Mid-City Financial Corporation
(Second-Stage Approval for a PUD and Modification of an
Approved First-Stage PUD @ Square 3953, Lots 1-3)
May 22, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held public hearings on February 23 and March 16, 2017 to consider an application from Mid-City Financial Corporation (“Applicant”) for second-stage approval of a planned unit development and modification of an approved first-stage planned unit development (collectively, the “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 Subtitle Z of the Zoning Regulations. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

PUD History, Application, and Hearings

1. The property that is the subject of this PUD includes Lots 1-3 in Square 3953 (“Property” or “Block 7”) of the Brookland Manor apartment complex in the Brentwood neighborhood of Ward 5. (Exhibit [“Ex.”] 1H.) The Property is a contiguous block bounded by Saratoga Avenue, N.E. to the north, 14th Street, N.E. to the east, a 16-foot-wide public alley to the south, and Brentwood Road, N.E. to the west. (*Id.*) The Property is approximately 111,807 square feet (2.62 acres) in area. (Ex. 24E at G07.) The Applicant proposes to redevelop Block 7 with: (i) a four-story apartment building containing approximately 131 units with associated ground-floor level amenity space and 68 below-grade parking spaces (“Building A”), and (ii) a four-story residential building containing approximately 200 seniors-only independent living units with associated ground-floor level amenity space and 48 below-grade parking spaces (“Building B” and together with Building A, the “Project”). (*Id.*)
2. In an order effective as of November 6, 2015, the Commission approved the first-stage PUD application in Z.C. Order No. 14-18 (“First-Stage Order”). The First-Stage Order also granted a PUD-related map amendment for the property to the R-5-A zone, which became the RA-1 Zone District effective September 6, 2016.¹

¹ Because the First-Stage Order became effective prior to that date, the R-5-A designation remains for the Property.

3. On August 4, 2016, the Applicant delivered a notice of its intent 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 Commissions (“ANC”) 5B and 5C. (Ex. 1C.) The Applicant filed the Application for this PUD on September 22, 2016, and the Application was accepted as complete by the Office of Zoning on September 28, 2016. (Ex. 2, 4.) The Applicant certified the Application satisfied the PUD filing requirements. (Ex. 1D, 12C.) The Office of Zoning referred the Application to the ANCs, the Councilmember for Ward 5, and the District Office of Planning (“OP”), and notice of the filing of the Application was published in the *D.C. Register*. (Ex. 5-9.) The notice mailed to ANC 5C was returned as undeliverable. (Ex. 11.)
4. On November 4, 2016, OP delivered a report (“OP Setdown Report”) on the Application recommending that the Commission set it down for public hearing and requesting additional information from the Applicant. (Ex. 10.)
5. At a public meeting on November 14, 2016 (“Setdown”), OP presented the OP Setdown Report. (November 14, 2016 Transcript [“Tr. 1”] of the Commission’s Regular Public Meeting at 39-41.) At that time, the Commission requested additional information from the Applicant. The Commission confirmed that ANC 5C received actual notice of the Application. (*Id.* at 45.)
6. On December 8, 2016, 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. 12.) On January 24, 2017, the Applicant filed an initial comprehensive transportation review for the Project, which review was supplemented by that certain technical memorandum dated February 10, 2017 (collectively, the “CTR”). (Ex. 19-20, 40 at 15.)
7. Notice of the public hearing for Z.C. Case No. 14-18A was published in the *D.C. Register* on December 30, 2016 (64 *D.C. Reg.* 65395) and was mailed to the ANC and to owners of property within 200 feet of the Property. (Ex. 14-16.) On January 13, 2017, the Applicant posted notice of the public hearing at the Property. (Ex. 17.) On February 17, 2017, the Applicant filed an affidavit describing the maintenance of such posted notice. (Ex. 62.)
8. OP requested comments on the Project from District agencies and received comments from the District Department of Energy and the Environment (“DOEE”), the District Department of Transportation (“DDOT”), DC Water, the Department of Housing and Community Development (“DHCD”), and the Fire and Emergency Medical Services Department (“FEMS”). (Ex. 34 at 16.) DOEE and DDOT provided written comments separately. (*Id.*)
9. On February 3, 2017, the Applicant filed a supplemental statement (“20-Day Statement”) providing additional information requested from OP, attaching letters in support, and providing an updated set of architectural plans, drawings, and renderings. (Ex. 24.)

10. Prior to the public hearing, OP, DOEE, DDOT, and the Urban Forestry Administration (“UFA”) each submitted a final report (respectively, the “OP Final Report,” “DOEE Report,” “DDOT Report,” and “UFA Report”). (Ex. 33-35, 40-41.) DDOT requested, and the Commission granted, a waiver from the requirement that DDOT file its report 10 days before the public hearing. (Ex. 35.)
11. The ANC’s are automatically a party to this proceeding. (11-Z DCMR § 403.5(b).) Neither ANC filed a report on this Application.
12. On February 9, 2017, the Brookland Manor/Brentwood Village Residents Association (“Association”) filed a request for party status in opposition to the Application. (Ex. 30.) No other requests for party status were filed.
13. On February 16, 2017, the Applicant filed a response to the Association’s request for party status and objected to the scope of the Association’s proposed testimony. (Ex. 38.)
14. On February 23, 2017, the Commission conducted a public hearing on the Application, which was held in accordance with Subtitle Z of the Zoning Regulations. (February 23, 2017 Transcript [“Tr. 2”] of the Commission’s Public Hearing of Case No. 14-18A at 3.) On behalf of the Applicant, the Commission accepted Sarah Alexander, a Ward 5 resident, as an expert in architecture and Robert Schiesel as an expert in traffic engineering. (Tr. 2 at 5-6, 20.)
15. As a preliminary matter prior to the Applicant’s testimony, the Commission voted to grant the Association party status and discussed the appropriate scope for the Association’s testimony. (*Id.* at 7-12.) The Commission requested that the Association’s presentation focus on the Application, but the Commission noted that persons or organizations providing testimony in opposition to the Project would not have their testimony limited. (*Id.* at 11.) The Commission denied the Applicant’s request to limit the Association’s testimony. (*Id.* at 12.)
16. At the hearing, the Applicant provided testimony from Ms. Alexander and Mr. Schiesel. (Tr. 2 at 20-35.) ANC 5C and the Association each cross-examined the Applicant’s testimony. (Tr. 2 at 58-89.)
17. OP presented its report at the hearing. (Tr. 2 at 90-92.) DDOT rested on the record. (*Id.* at 93.) The Association cross-examined OP. (*Id.* at 93-98.)
18. At the hearing, 12 persons or organizations spoke in support of the Application. (Tr. 2 at 100-26.) Neither the ANC nor the Association cross-examined those speaking in support of the Application. (*Id.* at 126.)
19. At the February 23 hearing, the Association presented its testimony. (Tr. 2 at 129-64.) The Applicant did not cross-examine the Association. (*Id.* at 164.) The ANC did cross-examine the Association. (*Id.* at 164-66.)

20. One person spoke in opposition to the Application at the February 23, 2017 hearing, which was continued to March 16, 2017. (*Id.* at 166-75.) On March 16, 2017, the Commission resumed the public hearing on the Application to hear opposition testimony. (March 16, 2017 Transcript [“Tr. 3”] of the Commission’s Public Hearing of Case No. 14-18A at 3.) Neither the Applicant nor the ANC cross-examined any persons or organizations speaking in opposition to the Application. (*Id.*) Commissioner Shapiro confirmed he had reviewed the entire record prior to his involvement in the March 16, 2017 hearing. (May 22, 2017 Transcript [“Tr. 4”] of the Commission’s Regular Public Meeting at 17.) Opposition testimony was heard at the March 16, 2017 hearing. (Tr. 3 at 3.) At the conclusion of the opposition testimony on March 16, 2017, the Applicant provided closing remarks. (*Id.* at 134.) Upon conclusion of the Applicant’s closing statement, the Commission closed the record, with the exception pursuant to 11-Z DCMR § 602.1, of items requested from the Applicant, the ANC, and the Association, including information about possible displacement caused by the Project. (Tr. 3 at 135-144.).

Post-hearing Submissions and Actions

21. On April 10, 2017, the Applicant filed a written post-hearing submission (“Post-Hearing Submission”) in response to items requested by the Commission (also included were several attachments) and a draft order. (Ex. 179-179F4, 180-181.) One of the attachments to the Post-Hearing Submission was a report entitled “Analysis of Potential Impact of the RIA Development on Gentrification, Destabilization of Property Values, Displacement, and Employment” prepared by Leonard Bogorad (“Bogorad Report”). (Ex. 179D.)
22. On April 18, 2017, the Association filed a draft order, and a response to the Applicant’s Post-Hearing Submission. (Ex. 182, 183.)
23. On April 18, 2017, the Association filed a motion to strike the Bogorad report. (Ex. 184.) As basis for the motion, the Association stated that it had a right to cross-examine and question the Applicant on the contents of the report. The Association did not address the substance of the Bogorad report in its response to the Post-Hearing Submission. Instead, the response repeated the arguments the Association made in its motion to strike. (Ex. 183.)
24. On April 21, 2017, the Applicant filed an opposition to the Association’s motion to strike the Bogorad report. (Ex.185.)
25. At a public meeting on April 24, 2017, the Commission denied the Association’s motion to strike the Bogorad Report. The Commission denied the motion because it left the record open for the report pursuant to 11-Z DCMR § 602, which explicitly authorizes the Commission to leave the record open for specific information and reports, does not permit cross-examination, but provides instead that the other parties are allowed to respond to the information submitted after the hearing. (11-Z DCMR § 602.3.) The Association had an opportunity to respond to the report, and did in fact respond to the report, but did not to address the substance contained within the report. At the April 24,

2017 public meeting, the Commission also requested further information from the Applicant, and directed the Applicant to submit its list of final proffers and draft conditions pursuant to 11-X DCMR § 308, with the submission deadlines beginning from the date of that meeting.

26. On April 26, 2017, the Applicant provided its list of final proffers and draft conditions pursuant to 11-X DCMR § 308.8. (Ex. 186.)
27. On May 3, 2017, the Association filed a response to the Applicant's list of final proffers and draft conditions pursuant to 11-X DCMR § 308.8. (Ex. 187.)
28. On May 5, 2017, the Applicant filed a motion to strike the Association's response to the Applicant's list of final proffers and draft conditions because it was prematurely filed and because it contained irrelevant information. (Ex. 188.)
29. On May 8, 2017, the Applicant submitted a supplemental post-hearing submission responding to the Commission's request for further information. (Ex. 189.)
30. On May 10, 2017, the Applicant filed its revised list of proffers and conditions pursuant to § 308.12. (Ex. 190.)
31. On May 15, 2017, the Association filed its response to the Applicant's supplemental post-hearing submission. (Ex. 191.)
32. Because the First-Stage Order also granted the PUD-Related Map amendments, this application involved no zoning map amendments and therefore there was no need for a proposed action vote or referral to the National Capital Planning Commission. (11-Z DCMR § 603.4.)
33. At its public meeting on May 22, 2017, the Commission considered the Applicant's motion to strike the Association's response to the Applicant's list of final proffers and draft conditions, and denied the Applicant's motion to strike because it believed it could adequately discern between relevant and irrelevant information. The Commission then considered the entire record, and approved the Application. (Tr. 4 at 37-38.)

First-Stage Order and the RIA² Development

34. This Application is the first of what the Applicant anticipates will be at least four second-stage PUD applications arising out of the First-Stage Order. (Ex. 1 at 6.) The First-Stage Order established the framework for the comprehensive redevelopment of the Brookland Manor apartment complex and the adjacent Brentwood Village Shopping Center (collectively, the "RIA Site"). (*Id.*)

² The Applicant stated that it worked with a consultant and Brookland Manor residents to develop the new RIA name for Brookland Manor to signal a shift away from problems that have plagued Brookland Manor and the Brentwood Village Shopping Center in the past and towards a new and better future for residents and the community. (Ex. 179 at 11.)

35. The RIA Site is located at the intersection of Rhode Island Avenue, N.E. and Montana Avenue, N.E. and is generally bounded by Rhode Island Avenue, N.E. to the north, Montana Avenue, N.E. to the east, Downing Street, N.E./14th Street, N.E./Saratoga Avenue, N.E. to the south, and Brentwood Road, N.E. to the west.³ (Ex. 1F; Findings of Fact [“FF”] ¶ 1.) The RIA Site was previously zoned C-2-A and R-5-A. (*Id.*)
36. The RIA Site consists of approximately 20 acres and includes the Brookland Manor apartment complex and the recently demolished Brentwood Village Shopping Center. (*Id.*; Ex. 179 at 12.) The sprawling Brookland Manor apartment complex currently includes nineteen garden apartment buildings, ranging in height from two-four stories, and is spread over approximately 18 acres of land. (Ex. 1 at 6.) The 535-unit apartment complex was built as a planned community as part of the Garden City movement of the 1930-1940’s. (*Id.*)
37. The First-Stage Order approved a total of approximately 1,760 residential units and approximately 181,000 square feet of new retail and commercial development for the RIA Site. (Ex. 1F; FF ¶ 10.) For context, Blocks 1, 2, and 3 of the RIA Site will be improved with mixed-use buildings with retail and apartment uses. (*Id.* at 29-40.) The maximum height of these buildings will be 65 feet, and each block is proposed to have a maximum floor area ratio (“FAR”) of 3.0. (*Id.*) Blocks 5 and 6 of the RIA Site do not include ground-floor retail uses. (*Id.*) Blocks 5 and 6 will include 60-foot-tall multi-family residential buildings, with a maximum FAR of 3.0. (*Id.*) Blocks 4 and 7 will include a mix of apartments, row houses, and flats with maximum heights of 60 feet and a maximum FAR of 3.0. (*Id.*) Block 8 will include 48 16-foot-wide townhouses. (*Id.*) The total FAR of the redevelopment will be 2.8. (*Id.*)
38. The existing apartment buildings and adjacent former strip shopping center lot suffer from three broad sets of problems that necessitate demolishing the entire complex and redeveloping the entire RIA Site anew: (Ex. 1 at 6.)
 - (a) The existing apartment buildings are now approximately 80 years old and have significant engineering and design features that cannot be easily addressed or fixed. (*Id.*) The low-quality buildings comprising the shopping center similarly came to the end of their useful existence and were demolished in early 2017; (*Id.*; Ex. 179 at 12.)
 - (b) The urban design of the apartment buildings and adjacent public streets and public spaces is obsolete and exacerbate problems of crime and loitering that plague the neighborhood. That is, although ample green space surrounds the nineteen apartment buildings, this green space is highly undefined, creates numerous blind corners and darkened recesses in the buildings, and lacks clear understanding as to ownership or utility. Consequently, these open spaces do not provide the existing residents or their guests with a sense of safety, and there is no readily identifiable “defensible space” in the complex. Furthermore, the existing street

³ The RIA Site includes Square 3953, Lots 1-3; Square 3954, Lots 1-5 and Parcel 143/45; Square 4024, Lots 1-4; and Square 4025, Lots 1-7.

configuration does not allow for safe and efficient pedestrian and vehicular access through the property. Internal streets lead to dead ends and do not connect with the surrounding neighborhood. From a contemporary urban design perspective, these buildings do not provide strong edges along the adjacent streets. Likewise, the adjacent Brentwood Village Shopping Center had become obsolete. It was designed for automobiles rather than pedestrians and no longer provided quality retail or services that support the needs of the nearby residents; and (Ex. 1 at 6-7.)

- (c) The apartment complex includes an intense concentration of low-income residents with only a small number of market rate tenants amongst the existing residential units. Such concentration of poverty is widely regarded as perpetuating cycles of poverty. Other projects that have deconcentrated low-income housing in the District and elsewhere have been celebrated successes for interrupting the self-reinforcing nature of poverty and crime. (*Id.*)
39. The First-Stage Order identified six interrelated objectives to address the three problems identified above. The initial application sought to (i) preserve on a greater than one-for-one basis the number of affordable units currently in the Brookland Manor apartment complex, (ii) create a truly mixed-income community with a wide variety of housing types and sizes, (iii) rectify decades-old urban design mistakes by creating a safer, more inviting and more attractive project that better connects to the surrounding community, (iv) prioritize pedestrian activity and communal and usable green spaces, (v) introduce enhanced retail opportunities including a full-service grocery store, and (vi) be a project representative of community and tenant input and dialogue. (*Id.* at 7.)
40. The instant Application represents the first phase in what will be a multi-year effort to implement these goals and realize the vision of redeveloping the RIA Site. (*Id.* at 8.)

Block 7

41. The Property is located in Ward 5 in the Northeast quadrant of DC, and consists of an elongated block located along the southern border of the RIA Site. The Property is bounded by Saratoga Avenue, N.E. to the north, 14th Street, N.E. to the east, Brentwood Road, N.E. to the west, and a public alley to the south. (Ex. 1G.) Immediately north and east of the Property opposite Saratoga Avenue, N.E. and 14th Street, N.E., respectively, are other apartment buildings that are part of Brookland Manor and that will be redeveloped during later phases pursuant to subsequent second-stage PUD applications under the First-Stage Order. (Ex. 1 at 8.) West of the Property across Brentwood Road, N.E. is the Israel Baptist Church. (*Id.*) South of the Property are two- and three-story apartment buildings fronting on Bryant Street, N.E. and Downing Street, N.E. and separated from the Property by an existing 16-foot-wide public alley (to be expanded to 20 feet as part of the Project). (*Id.*)
42. Three apartment buildings owned by the Applicant and containing 64 total units occupied the Property on the date this Application was filed. (*Id.*) The buildings are generally vacant, and all but one of the residents of these three existing buildings have already been

relocated to appropriate and comparable units elsewhere in Brookland Manor. (Ex. 179A.) The one remaining resident will be relocated, at the Applicant's expense, prior to commencement of construction of the Project. (*Id.*)

43. Residential uses, including the other apartments comprising Brookland Manor and lower density apartment buildings and single-family rowhouses, make up the neighborhoods immediately to the north, south, and east of the Property. (Ex. 1 at 15.)
44. The Property has excellent transit and vehicular access, with a Metrorail station and nearly a dozen Metrobus routes in operation nearby. (*Id.*) Rhode Island and New York Avenues, N.E. are both just a couple of blocks from the RIA Site and afford easy access to downtown DC and regional highways. (*Id.*)
45. A future phase of redevelopment of the RIA Site will entail developing the proposed green space at the heart of the RIA Site (the "Community Green") immediately adjacent to the Property; no work on the Green is proposed in the instant Application. (*Id.*)
46. Pursuant to the First-Stage Order, the Property was approved to be rezoned to the R-5-B Zone District, which is now the RA-2 zone under the Zoning Regulations. (*Id.* at 9.)

The Project

47. The Project includes (i) Building A, a four-story apartment building containing approximately 131 mixed-income units with associated ground-floor level amenity space and 68 below-grade parking spaces, and (ii) Building B, a four-story residential building containing approximately 200 senior-only independent living units with associated ground-floor level amenity space and 48 below-grade parking spaces. (Ex. 24E at G07.) Building A has 169,342 square feet of gross floor area ("GFA"), a maximum height of 49 feet, four inches, and an FAR of 2.97. (*Id.*) Building B has 172,266 square feet of GFA, a maximum height of 51 feet, and an FAR of 3.0. (*Id.*) Block 7 has a total FAR of 2.98 and contains 341,608 square feet of GFA, all of which is devoted to residential uses. (Ex. 1 at 9, 17.) Building A has a lot occupancy of 70% and Building B has a lot occupancy of 73%. (*Id.* at 20.) The lot occupancy of each building exceeds the maximum allowed occupancy under the approved zoning for the Property. (*Id.*) The Applicant therefore seeks relief from the lot occupancy requirements.
48. The rationale for the Project, as the first phase of the overall redevelopment under the First-Stage Order, is to construct (i) a mixed-income multi-family building that can accommodate residents relocated during future phases and the overall redevelopment, and (ii) a senior independent living building, which was a top priority of tenants, community members, the ANCs, and OP as part of the approval of the First-Stage Order. (*Id.* at 16.)
49. A significant objective of the Project is the preservation of existing affordable housing units. As a result, the Project readily achieves—and greatly exceeds—the minimum number of affordable units that would be required under the Zoning Regulations. The Applicant intends to maintain its contract with the HUD through the Section 8 program,

and will accordingly comply with the requirements thereunder and in the First-Stage Order with respect to the provision of affordable housing as part of the Project. Of the Project's 331 units, the Applicant expects that approximately 265 (80.3% of the total) will be affordable upon completion of Block 7. (*Id.* at 23-24.)

50. The Project is anticipated to initially include a minimum of approximately 265 units (80% of the total units delivered as part of this phase) that will be deeply affordable and reserved for occupants eligible to receive assistance through the project based Section 8 contract with the Department of Housing and Urban Development ("HUD") or through a District of Columbia Housing Authority ("DCHA") Housing Choice Voucher ("HCV"). (*Id.*) All of the units (200) in Building B (the senior independent-living building) will be reserved for residents that will be assisted by the project based Section 8 and HCV programs⁴. Approximately 65 of the units in Building A will initially be reserved for other current residents of Brookland Manor. The 65 replacement units in Building A will consist of 25 units that will be reserved as permanently affordable units and at least 40 "temporary" replacement units that will be used to house existing Brookland Manor residents. These temporary replacement units will be used to support the goals of the Applicant's Tenant Relocation Plan, which includes keeping Brookland Manor residents on-site and minimizing the number of times that residents are required to move. (Ex. 12.) As the Applicant undertakes future phases of the overall redevelopment approved pursuant to the First-Stage Order, some affordable units in Building A may be reallocated to other buildings in the RIA development so that the ultimate affordability mix on Block 7 is less than it will be upon initial lease-up. (*Id.*) The Applicant noted that based on timing and phasing considerations for the entire project, it may be necessary to utilize all of Building A (131 units) as replacement housing for the first 8-13 years of occupancy of the building. Therefore, the Applicant requires flexibility as to the total number of temporary replacement units that will be included in the initial lease-up of Building A.
51. Building A contains a mix of studios and 1-, 2-, and 3-bedroom units. (*Id.* at 20.) The Building is proposed to include three studio units of approximately 500 square feet each; 60 one-bedroom/one-bath units ranging in size from 700 to 900 square feet; 50 two-bedroom/two-bath units ranging from 980 to 1,370 square feet; and 18 three-bedroom/two-bath units ranging from 1,180 to 1,400 square feet. Building B contains primarily one-bedroom/one-bath units (192 total, ranging from 570 to 700 square feet) with eight two-bedroom/two-bath units of approximately 850 square feet. The two Buildings have dedicated amenity space for resident and community events. (*Id.* at 21.)

⁴ Condition B.1.a.(2) of the First-Stage Order stated that "[o]f all the Section 8 units, 150 to 200 of such units shall be in the Senior Building." This led to considerable confusion in this case, because the Association understood that to mean that 200 out of 373 project based Section 8 units were required to be in the senior building. As the Applicant clarified in this case, all of the units in the senior building will be permanently affordable units, with assistance provided through a combination the project based Section 8 contract and the HCV programs. The HCV program is also commonly referred to as "Section 8" leading to the confusion. There is no requirement that senior building contain 200 of the 373 project based Section 8 units. The Commission is amending Condition B.1.a. of the First-Stage Order to prevent any further confusion.

52. Building B has 265 one-bedroom units and many programmatic features characteristic of a seniors-only independent living building and meets or exceeds the requirements of HUD's Section 231 Mortgage Insurance for Rental Housing for the Elderly. Among these features, Building B contains: (i) a minimum of five percent fully accessible units, (ii) two percent hearing and vision accessible units, (iii) common areas, all of which are ADA-compliant; (iv) multiple elevators, major entrances, and communal laundry facilities on each floor, all designed to reduce walking distance for seniors; (v) first-floor amenity space for health and wellbeing social service programming designed for seniors. (*Id.*)
53. Both Buildings contain segregated garage parking and separate at-grade loading. All vehicular entrances to parking and loading facilities are provided from the rear of the Property along the existing 16-foot-wide public alley that will be improved as part of the Project to become 20 feet wide. Building A contains 68 parking spaces (in excess of the 44 required under the Zoning Regulations), and Building B contains 48 (in excess of the 33 required). Both Buildings contain a single loading berth and a single delivery berth, as required under the Zoning Regulations. (*Id.* at 24.)
54. Building A provides the requisite number of bicycle parking spaces (44 long-term and 7 short-term), but Building B provides only 22 long-term (plus the requisite 10 short-term spaces) bicycle parking spaces. Thus, Building B complies with the short-term bicycle parking requirements—spaces that are most likely to be used by employees or visitors to the Building—but not with the long-term parking requirements (58 such parking spaces are required), which are spaces most likely to be used by residents. The Applicant does not expect that demand for bicycle parking will arise to the level of requiring full build-out of the requisite number of spaces for Building B's senior residents, and accordingly requests relief from these requirements. (*Id.* at 24-25; Ex. 24.)
55. In response to comments from the District of Columbia Metropolitan Police Department raised during the first-stage PUD process regarding public safety along the walkways and interior courtyards of the future RIA Site, the Project will include the installation of fencing in the courtyard area between the two Buildings to limit access to residents only. (Ex. 1 at 23.) From a broader urban design perspective, the two Buildings exemplify the "eyes on the street" philosophy with windows looking directly onto the public way. The design eliminates the currently existing "pockets" where individuals are not visible from the street and walkways. (*Id.*)
56. The Applicant intends to begin construction of the Project in the first quarter of 2018 and anticipates the Project will take approximately 18-20 months to build. (*Id.* at 15.)

Modifications to the First-Stage Order

57. The Project is consistent with the general parameters established for Block 7 in the First-Stage Order, but differs with respect to height, lot occupancy, building type, gross floor area, the location of the senior building, and the alley configuration. (*Id.* at 25-26.) In addition, the Project requires relief from the Zoning Regulations that was not

contemplated in the First-Stage Order. (*Id.* at 27.) Therefore, this Application includes a modification of the First-Stage Order.

58. The First-Stage Order described the approved plans for Block 7 as follows: “Block 7 is proposed to be rezoned to the R-5-A Zone District. Twenty-eight two-over-two residential units are proposed along Brentwood Road, N.E. and Saratoga Avenue, N.E. A five-story building, with a height of approximately 60 feet, and approximately 217,332 square feet of space is also proposed along Saratoga Avenue, N.E. and will have frontage on the [Community Green]. This building is expected to include up to 286 units of housing, with a senior housing component that will consist of approximately 150-200 units. The total amount of density proposed on this Block is 3.0 FAR.” (Ex. 1F; FF ¶ 39.)
59. The elements of the Project that differ from the First-Stage Order include:
- (a) Height. The Project is one story shorter than the maximum approved for Block 7 in the First-Stage Order. The Commission finds that this change accommodates a more harmonious transition between the Project and the existing multi-family buildings to the south of Block 7 and improves the Project’s consistency with the Plan (as hereinafter defined) and reduces its impacts on the surrounding area;
 - (b) Lot Occupancy. To compensate for the reduced height, the Project’s lot occupancy is slightly greater than contemplated under the First-Stage Order. In light of the benefits created by reducing the Project’s height, the Commission finds that the increase in lot area relative to the First-Stage Order is appropriate and necessary and does not create unacceptable impacts on the surrounding area or impair the purposes or intent of the Zoning Regulations. The new Community Green will be located immediately north of Block 7, and as such will offset any concerns about the lot occupancy of the Property. In addition, the Applicant intends to comply with the stormwater and green area ratio requirements, so the change in lot occupancy does not create unacceptable environmental impacts;
 - (c) Building Type and Gross Floor Area. The Project replaces with a single multi-family building the two-over-two building proposed in the First-Stage Order, and the number of units proposed for this Project and the total GFA exceeds the number of units and GFA contemplated for Phase I under the First-Stage Order.⁵ The Commission finds that this modification reduces the impacts of the overall PUD by allowing the Applicant to construct a greater amount of replacement housing in this first phase of the overall redevelopment of the RIA Site in order to

⁵ The Applicant noted that one or more future phases of the RIA development will have fewer units and less GFA than previously contemplated in order to remain within the overall parameters approved under the First-Stage Order. (Ex. 1 at 25.)

reduce resident inconvenience and provide the Applicant with greater flexibility in undertaking future relocation of existing tenants;⁶

- (d) Location of Senior Building. The location of the senior building and the two-over-two (now multi-family) building have been swapped to improve the relationship of the building massing to the Community Green while allowing for access to said Green from both buildings. The Commission finds that this modification is beneficial from an overall site design, has no unacceptable impacts, and is not inconsistent with the Plan; and
 - (e) Alley and Parking Modifications. The Project includes minor deviations from the previously proposed configuration of the alley separating the Project from its neighbors to the south and from the proposed parking on the block. A north-south alley through Block 7 shown in the plans for the First-Stage Order has been removed. These changes are a result of replacing the two-over-twos (which contemplated above-grade parking under the First-Stage Order) with a more traditional apartment building with below-grade parking. The Commission finds that these modifications have favorable impacts and render the Project more consistent with the Plan.
60. The Commission finds that these proposed modifications, though significant, are consistent with the overall massing, development envelope, policy objectives, character and appropriateness of the First-Stage Order. The Commission further finds that these design and program alterations improve the overall quality of the community in this first phase of RIA as well as the relocation process for existing tenants. Indeed, the modifications will allow the overall redevelopment of the RIA Site to proceed in a more orderly way, will better advance the objectives of the Project approved by the First-Stage Order, and will better protect the interests of residents and neighbors. These modifications are not inconsistent with the Plan, have favorable impacts or impacts that are capable of being mitigated, and do not result in unacceptable impacts on the surrounding area or on the operation of District services and facilities.
61. The Applicant provided detailed information describing the Project's consistency with the Conditions of the First-Stage Order. (Ex. 1 at 26-27.) The Commission finds that the Project satisfies the applicable conditions of the First-Stage Order and is consistent with the specific proposal for Block 7 that the Commission approved in the First-Stage Order, as well as with the Findings and Conclusions of that Order more generally⁷. The

⁶ In addition, because this first phase of RIA includes neither two-over-two units nor townhouses, the Project does not include any of the 11 townhouse or two-over-two "inclusionary units" (as such term is defined in the Zoning Regulations) contemplated pursuant to Decision Subparagraph B.1.a. of the First-Stage Order. This modification does not relieve the Applicant from ensuring that the overall RIA Site provides, at all times including during and after construction of Block 7, the requisite aggregate number of affordable units to satisfy the other conditions of said Subparagraph B.1.

⁷ In addition to the modifications requested by the Applicant the Commission is amending Condition A.1 of the First-Stage Order to reflect that the Project shall be developed in accordance with the plans as they were amended in supplemented in this case. The Commission is amending Condition B.1.a to clarify that the Applicant is not

Applicant has submitted revised plans that replace those approved in the First-Stage Order for Block 7. (Ex. 24E, 101A, 179F.)

Relief and Flexibility Requested

62. The PUD process was created to allow greater flexibility in planning and design than is possible under strict application of the Zoning Regulations. Under 11-X DCMR §§ 303.1, 303.11, and 303.13, the Commission retains discretion to grant flexibility with respect to development standards. As part of this Application, the Applicant requested the Zoning Commission grant flexibility with respect to the lot occupancy requirements for both Buildings A and B and the bicycle parking requirements for Building B (the senior independent living building). The Applicant initially requested, but subsequently withdrew, relief from the penthouse setback requirements on Building B: (Ex. 1 at 28; Ex. 24.)
- (a) Lot Occupancy. Under Subtitle F, § 304.1 of the Zoning Regulations, the maximum lot occupancy is 60% for lots in the RA-2 zone, and the Project proposes to exceed that amount by 11% in the aggregate. (Ex. 24E at G09b.) Therefore, the Project requires flexibility from Subtitle F, § 304.1. The requirement for this lot occupancy relief arises from the reduction in height relative to the maximum approved under the First-Stage Order. The Applicant submitted information demonstrating that the Project satisfied the variance standard with respect to the requested flexibility. (Ex. 24A.) The Applicant also demonstrated that the Project could proceed without relief at the permitted height of 60 feet, but that the lot occupancy relief became necessary at the lower proposed height. (Ex. 24, 24E at G09b.) The Commission's findings above in FF ¶ 59(b) are applicable with respect to this request for relief; and
- (b) Long-Term Bicycle Parking Flexibility (Building B). Pursuant to Subtitle C, § 802.1, long-term bicycle parking spaces must be provided at the rate of one space for each three dwelling units in a residential apartment, except that the rate is reduced to one space for each six units after the first 50 such spaces. The Zoning Regulations do not distinguish age-restricted units from unrestricted units for the bicycle parking requirements. As the Applicant notes, the Zoning Regulations have a vehicle parking requirement that acknowledges that residents of seniors-only buildings are less likely to require car parking, but the bicycle parking requirement does not make this concession. (*Id.* at 30.) The Project includes a slightly higher number of vehicle parking spaces than bicycle parking spaces in Building B in anticipation of its senior residents being less likely than a general population of apartment-dwellers to require bicycle parking. For the 200 units in Building B, the Zoning Regulations would require 58 long-term parking spaces, but the Project proposes 22 such spaces. (Ten additional short-term

required to provide 150-200 of the project based Section 8 contract units in the senior building. The Commission is also amending Condition B.2. to include an additional commitment the Applicant made in this case that all tenant relocations will occur on the Property.

bicycle parking spaces are provided at Building B.) As a result, Building B requires flexibility from the long-term bicycle parking requirements. The Commission finds that this relief is reasonable and warranted in this circumstance. The relief is not inconsistent with the Plan, given the amount of bicycle parking provided, and the relief will have no unacceptable impacts on surrounding areas or District services and facilities.

63. The Project requires minor flexibility from the lot occupancy requirements and reasonable relief from the long-term bicycle parking requirements in a seniors-only building. In return, the Project provides superior design, efficient usage of the Property, a substantial amount of affordable housing, and robust a package of additional benefits.
64. The requested flexibility with respect to the bicycle parking is mitigated by the transit options proximate to the RIA Site, the expectation that Capital Bikeshare stations will be installed nearby as part of future phases of the redevelopment of the RIA Site, and the age-constrained demographics of the occupants of the building requiring such flexibility.
65. The Commission finds that, overall, the Project conforms to the Zoning Regulations, except for the few items of articulated relief set forth in the immediately foregoing paragraph. Where the Project requires zoning relief, the Commission finds that such relief is either minimal in nature or reasonable in light of the proposed uses and otherwise does not derogate or impair, but rather is in accordance with, the purposes or intent of the Zoning Regulations or Zoning Map.
66. The Applicant also requested flexibility to rebalance affordable units initially provided in Building A to other portions of the RIA Site upon completion of subsequent phases, with the objective of avoiding a permanent disproportional concentration of low income residents in particular buildings. The Commission finds that this requested flexibility is warranted in this instance because of the Project's public benefits and compliance with the PUD evaluation standards.

PUD Evaluation Standards

67. As set forth in Subtitle Z § 304 of the Zoning Regulations, the Commission must evaluate and grant or deny a PUD application according to the standards of such section. The Applicant has the burden of proof to justify the granting of the Application according to such standards. In deciding this PUD Application, the Commission has judged, balanced, and reconciled 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 set forth in the immediately succeeding paragraphs, the Commission hereby issues findings that, subject to the Conditions of this Order, the Project:
 - (a) Is not inconsistent with the Comprehensive Plan for the District of Columbia, 10-A DCMR § 100, *et seq.* ("Comprehensive Plan"), and with other adopted public policies and active programs (collectively, the "Plan") related to the

Property and the RIA Site as a whole nor with the Zoning Regulations (including the PUD process set forth therein);

- (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 and the RIA Site as a whole.

Consistency with the Plan, the Zoning Regulations, and the PUD Process

68. For the following reasons, the Commission finds that, subject to the Conditions of this Order, the Project is not inconsistent with the Comprehensive Plan:

- (a) Future Land Use Map. The Future Land Use Map of the Comprehensive Plan designates the Property as appropriate for Moderate-Density Residential use. The Moderate-Density Residential designation defines neighborhoods where low-rise apartment buildings and other residential uses are to predominate. (10-A DCMR § 225.4.) The Project includes residential uses only with a maximum of four floors. The Commission therefore finds that the Project is not inconsistent with the Future Land Use Map of the Comprehensive Plan;
- (b) Generalized Policy Map. The Generalized Policy Map of the Comprehensive Plan categorizes how different parts of the District may change between 2005 and 2025. The Project is located in the “Neighborhood Conservation Area.” The Commission takes notice that the Comprehensive Plan defines such Areas as generally having little amounts of vacant land but that some new development and reuse opportunities are anticipated. (10-A DCMR § 223.4.) Moreover, “[t]he diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area.” (*Id.* § 223.5.) The Project is to be developed on what is effectively a vacant lot, so it is an infill project that avoids any displacement and that redevelops the lot in a manner and scale compatible with prior and surrounding uses and the architectural character of the surrounding area. The Commission therefore finds that the Project is not inconsistent with the Generalized Policy Map of the Comprehensive Plan; and
- (c) District-Wide and Area Elements. As part of the First-Stage Order, the Commission found “that the testimony of the Applicant and OP that the proposed PUD project and rezoning of the [RIA Site] are not inconsistent with the Comprehensive Plan. The Commission has spent considerable time considering how its decisions are to be guided by the various maps, guidelines, policies, and elements that make up the Comprehensive Plan. The Commission has appropriately determined that the Comprehensive Plan provides it with a series of

tools that help guide decisions regarding consistency with the Comprehensive Plan. The [Future Land Use Map], the [Generalized Policy Map], or specific elements and policies are not in and of themselves determinative of whether a project or proposed zone district is consistent with the Comprehensive Plan. Rather, the Commission looks at the Comprehensive Plan in its entirety. In this case, the Commission finds that the proposed PUD and related map amendment of the [RIA Site] to the C-2-A and R-5-B Zone Districts is appropriate given the [Future Land Use Map] designation of the [RIA Site] and the project's satisfaction of numerous policies enumerated in the Comprehensive Plan. [This finding] is consistent with OP's recommendations to approve the project and the PUD-related Zoning Map amendment." (Ex. 1F at FF ¶ 106.) The Commission devoted twelve pages of the First-Stage Order to enumerating the myriad ways in which the first-stage application was consistent with the Comprehensive Plan. (*See id. at* FF ¶¶ 53-62.) Given the extensive findings in the record, and the clear conclusions of law in the First-Stage Order, and the consistency between the instant Project and the First-Stage Order, the Commission sees no reason to disturb its original findings. The Project is not inconsistent with the Comprehensive Plan.

69. The Commission separately makes findings regarding the Project's consistency with the Plan based on comments from the Association and persons and organizations in opposition. (*See infra* FF ¶ 104.) Other than those specific policies of the Plan addressed below, neither the Applicant, the Association nor any person who provided testimony with respect to this Application presented any evidence of other adopted public policies or active programs related to the Property nor any claims of inconsistency therewith, and the Commission takes no notice thereof. Therefore, for the reasons set forth more fully below the Commission finds that the Project is not inconsistent with the Plan. (*See id.*)
70. This Application is also in compliance with and not inconsistent with the general intent and purpose of the Zoning Regulations. The general intent and purpose of the Zoning Regulations is, *inter alia*, to promote the "public health, safety, morals, convenience, order, prosperity, and general welfare." (11-A DCMR § 101.1.) 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 expressly contemplated as part of the PUD process.
71. 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." (11-X § 300.1.) The Project achieves substantial public benefits in a manner far superior to a matter-of-right project. (Ex. 1 at 48.) These benefits simply would not occur but for this PUD, and there is a very real

likelihood that none of the deeply affordable housing preserved by this Project would be so-preserved by a matter-of-right development. (Tr. 2 at 111.) For all of the reasons set forth herein, the Project advances these general purposes of the Zoning Regulations and the PUD process.

Project Impacts

72. For the following reasons, the Commission finds that, subject to the Conditions of this Order, the Project 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:
- (a) Development Period Impacts on Residents and Neighbors.⁸ The Commission finds that the development period impacts for Block 7 on residents and neighbors and more generally are not unacceptable and are capable of being mitigated or acceptable given the quality of public benefits in the Project. The Applicant prepared a tenant relocation plan (“Relocation Plan”) and a construction management plan. (Ex. 1G; Ex. 179 at 2.) The construction management plan was referenced in the First-Stage Order as Exhibit 23E and is replaced with an updated Block 7-specific version in Exhibit B of the Post-Hearing Statement. The Relocation Plan and construction management plan are thorough and reasonable plans to mitigate the Project’s development period impacts. The Commission finds that quality of public benefits in the Project are high and on balance outweigh the impacts on residents and the surrounding area;
 - (b) Housing Impacts. The Commission finds that the Project’s housing impacts are not unacceptable but are instead favorable for the surrounding neighborhoods and the District as a whole because the Project helps address a housing shortage in a manner sympathetic to Brookland Manor residents. The Project delivers 200 units of much needed affordable senior independent-living housing, which is a housing type of particular policy focus in the District. (Ex. 1 at 32.) The provision of such senior housing as part of the Project allows many existing residents of Brookland Manor to remain in the neighborhood and “age in place” in a community with a robust set of social programs, community activities, and strong public transit access. (Ex. 1 at 33.) In addition, the Project will provide approximately 131 additional units of mixed-income housing that facilitate future phases of development of the RIA Site. The immediate impact of the mixed-income units is that they will accommodate the relocation of existing Brookland Manor residents as future phases of the overall RIA Site redevelopment proceed. In the longer term, these units will help mitigate the overall housing shortage in the District as well as the need for affordable units and three-bedroom units. Aside from facilitating future phases of RIA’s development, perhaps the most significant

⁸ Additional findings on the Project’s impact on existing residents of Brookland Manor are provided *infra* at FF ¶¶ 98-108.

favorable housing impact of Building A over time is the development of a truly mixed-income building where residents of market-rate and affordable units share common spaces and amenities in the spirit of reversing some of the negative impacts of the concentrated poverty affecting Brookland Manor today. As a result, the Project has an overall favorable impact on the surrounding area and the District as a whole from a housing perspective;

- (c) Land Use Impacts. The Commission finds that the Project's land use does not result in unacceptable impacts on surrounding neighborhoods. The Project's mix of senior and multi-family uses are entirely appropriate in context given the existing uses on the Property and the nearby multi-family and commercial uses. Block 7 is surrounded exclusively by other multi-family or institutional uses. The nearest single-family uses are more than a block away, and the intervening, existing multi-family uses gently step down in density and height from Block 7 to those single-family streets. (*Id.* at 33.) Given the Project's proximity to Metrorail transit and the busy bus services along Rhode Island Avenue, NE, and given the overall approvals in the First-Stage Order for additional commercial activities on the RIA Site, the density on the Property has positive impacts on the surrounding neighborhoods. The Project helps transform the RIA community, and Brentwood generally, into more of a mixed-use, mixed-income, transit-oriented neighborhood. Accordingly, the overall land use impacts of the Project are not unacceptable and are either favorable or acceptable given the quality of public benefits in the Project;
- (d) Design Impacts. The Project favorably improves upon the existing conditions with respect to the relationship between the buildings, open spaces, and the public realm. The current relationship between the Brookland Manor buildings and the surrounding open spaces and public realm is a source of considerable concern from a public safety perspective. The existing buildings and open spaces form partially-enclosed and semi-observed areas that create uncomfortable conditions for pedestrians and facilitate illicit outdoor activities. The existing buildings are not strongly oriented toward the street, and as a result, create irregularly shaped open spaces and numerous blind corners and darkened recesses. There is no clear understanding as to the ownership or utility of these open spaces. The Project greatly improves upon these conditions by being oriented along the surrounding streets with definite edges and an unambiguous expression of control over green spaces. The Project's edges are highly designed and integrated into the Buildings' overall function. The proposed courtyards fall into a clear taxonomy, courtyards to the rear of the Buildings are generally private and function as "outdoor rooms." Courtyards to the front of the Buildings serve practical purposes rather than as amorphous in-between spaces. In addition, the Project facilitates the development of future phases of RIA, including the development of the Community Green (which, unlike Brookland Manor's existing green spaces, will become the type of inviting passive recreation area needed in the Brentwood neighborhood), so the Project will have a significantly favorable impact on open space in the neighborhood. The Commission finds that the Project's impact from an open

space, urban design, and massing perspective is entirely favorable and not at all unacceptable;

- (e) Land Value Impact. The Applicant commissioned a report to analyze whether the development of Block 7 would result in the destabilization of land values near the Property. (Ex.179 D-1 and D-2 (“RCLCO Report”).) The Commission finds the RCLCO Report uses a sound methodology provides substantial evidence that the Project will not result in any unacceptable impacts on surrounding land values or economic conditions but instead will have largely favorable impacts. The RCLCO Report concludes that “Overall, not only will RIA not add in any significant way to the gentrification that has already been occurring in the surrounding neighborhoods, it will in fact mitigate many of the negative impacts of gentrification and deliver many positive impacts. The [overall RIA] project will provide a significant increase in the total number of housing units, which will help to correct the imbalance between housing demand and supply; support a significant number of jobs at all income levels; provide neighborhood-serving grocery and other retail; and retain very deeply subsidized affordable housing on a significant scale that would otherwise likely be lost if the site were redeveloped by another owner. These are exactly the types of benefits that are vital to offsetting the negative impacts of gentrification.” (*Id.*) The initiation of development activities at Brookland Manor coincide with a reduction in crime within 1000 feet of the community. (Ex. 179E.) The Commission credits the Applicant’s removal of the Brentwood Village Shopping Center, increased neighborhood and property social programming, increased security presence, and greater partnership between the Applicant and MPD to improve safety in and around the property as having a favorable impact on the surrounding area, an impact that is highly likely to continue as the Project proceeds;
- (f) Environmental Impact. The Commission finds the Project’s environmental impacts either acceptable or capable of being mitigated. The Project is designed so as to minimize any adverse environmental impacts that would otherwise result from the construction of this Project. The Project has been designed to achieve high levels of on-site stormwater retention. (*Id.* at 38.) The proposed bio-retention basin planters, green roofs, and permeable pavement are designed to meet or exceed DOEE stormwater management retention and detention requirements, and the requisite inlets and closed pipe system will be designed and constructed in compliance with the standards set by DOEE, DC Water, and DDOT. (*Id.*) The Project will be constructed in full compliance with the District’s Building Code. (*Id.* at 39.) 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. *Id.* The Project will achieve an environmentally sustainable design as evidenced by its compliance with the Green Communities program. (Ex. 12A at G13.) The RIA Site overall will achieve a LEED-ND (Leadership in Energy and Environmental Design for Neighborhood Developments) level of Silver; (Ex. 12.)

- (g) Services and Facilities Impact. The Commission finds that the Project will have an acceptable impact on the District's services and facilities given the quality of the Project's and the RIA Site's overall public benefits. The Project's increased demand on water and sanitary services can be met by the existing District water system. (Ex. 1 at 38.) Solid waste and recycling materials generated by the Project will be collected regularly by a private trash collection contractor. (*Id.*) 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 because the Project is expected to be occupied primarily by seniors and existing residents of Brookland Manor. (*Id.* at 39.) As a result, there is unlikely to be a material net new impact on the District's school system; and
- (h) Transportation Impact. The Commission finds that this Project's transportation impacts are not unacceptable and are capable of being mitigated subject to the Conditions of this Order. The Applicant has prepared a robust transportation demand management ("TDM") in concert with review and analysis by DDOT. (Ex. 20.) The proposed Project will not have an adverse impact on the public transportation facilities or roadways that it will rely on for service. The Project's vehicular traffic impacts are strongly 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. The Project contains adequate vehicular and bicycle parking, and such parking has been well-integrated into the design of the Project. The Project makes reasonable accommodations for those who choose to or must drive without interfering with the parking supply of neighboring residents. The Project provides sufficient new off-street parking to serve new residents, but not so much parking as to induce unnecessary driving. The Project's physical form—no new curb cuts, new construction facing the street, on-street parallel parking, a tree-lined streetscape—mitigates traffic impacts by promoting and encouraging active mobility over driving. Improvements to the alley as part of the Project allow the Project to prioritize pedestrian access along each of the main streets surrounding Block 7 and to create a permeable boundary between the Project and the Community Green. The Project has a robust TDM package. Taken together, the Project's transportation elements are sufficient mitigation for the Project's impacts.

73. The Commission finds that the Project's impacts will improve upon, and not injure, the public health, safety, welfare and convenience, especially in light of the Project's public benefits address herein.

Public Benefits

74. 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. The Project achieves the goals of the PUD

process by creating a high-quality residential project with significant housing opportunities and furthering the objectives of the First-Stage Order, with its many benefits and amenities. The Commission finds that, subject to the Conditions of this Order, the Project includes the following specific public benefits and amenities, which are not inconsistent with the Plan with respect to the Property and the RIA Site as a whole:

- (a) Urban Design, Architecture, and Landscaping. The Commission finds that the Project's urban design, architecture, and landscaping are superior public benefits. The Project incorporates numerous urban design precepts that guide attractive urban design in the District and that represent significant improvements over the existing aesthetic and functional conditions of the existing buildings on the Property. The Commission judges the following elements indicative of superior design and architecture: the two Buildings' strong orientation to the surrounding streets, the prioritization of pedestrians over vehicles, the thoughtful site planning as part of the integrated redevelopment of the RIA Site, the use of open courtyards along the alley to the south, and the high quality of design, materials, and finishes. The Project's superior architecture establishes a baseline for future phases of the RIA Site's redevelopment and helps re-calibrate expectations about the quality of design and architecture for future development nearby;
- (b) Site Planning. The Project's site plan is another superior benefit of the Project. The benefits of the Project's site plan and efficient land utilization are captured in the Project's overall density and absolute number of new residential units provided. At an FAR of just under 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 RIA Site. Given the considerable economic development opportunities emerging along Rhode Island Avenue, N.E. and in Northeast DC generally, the transportation options, and the services and stores to become available as a result of the redevelopment of the RIA Site, preserving and replacing a significant number of deeply affordable residential units at this location is a benefit of the Project. (Ex. 1 at 42.) Moreover, the Project represents efficient and thoughtful site planning in the context of the Applicant's plans for the RIA Site generally. The Project is an opportunity to establish a dedicated building for Brookland Manor's senior residents and to provide flexibility to allow other Brookland Manor residents to be relocated to a new building on site during future phases of construction. The Commission finds that taken together these attributes of the Project are reflective of superior site planning and economical and efficient land use;
- (c) Housing and Affordable Housing. The Commission finds that the Project provides housing and affordable housing in excess of the amount possible under a matter-of-right development. The Project provides approximately 331 new residential units (a net of 267 new units), a minimum of 265 of which will be affordable immediately upon completion. The Project's housing and affordable housing are a superior public benefit for the following reasons:

- The District faces a shortage of virtually every kind of housing product, but the need for additional affordable housing in established neighborhoods, affordable senior housing, and affordable housing near transit is particularly severe. The Project makes a significant contribution of new affordable units on a site that is transit-accessible and well-positioned to take advantage of economic opportunities that emerge in the Brentwood neighborhood in the future;
- 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 RA-1 zone) by approximately 217,965 square feet;
- The affordable housing proposed substantially exceeds the amount that would be required under the Inclusionary Zoning provisions of the Zoning Regulations. A matter-of-right project on Block 7 constructed pursuant to the Inclusionary Zoning requirements of the Zoning Regulations would be required to provide at most 15,455 square feet of affordable housing if constructed to a theoretical maximum density. (Ex. 1 at 44.) Building B alone will provide 172,266 square feet of affordable housing. (*Id.*) Building A will provide a variable amount of affordable housing, but is anticipated to provide up to 65,192 square feet of affordable housing upon construction; (*Id.*)
- The Project will simultaneously modernize and preserve a significant amount of affordable housing reserved for households eligible to participate in HUD's Section 8 program;
- The Project's proffer of affordable housing is at a deeper level of affordability than is ordinarily required. That is, by reserving a majority of the Project's units for families eligible to participate in the Section 8 program (which generally involves residents earning less than 30% of the area median income), the Project provides housing at a deeper level of affordability than is currently required under the Inclusionary Zoning regulations; and
- The Project includes two types of housing—senior housing, and three bedroom units—that the Zoning Regulations specifically identify as constituting public benefits. The Project includes 200 units of senior housing (with all such units being affordable, and most anticipated to house existing residents of Brookland Manor, allowing them to remain on site as RIA is introduced) and 18 units of three-bedroom housing (with all such three-bedroom units being either affordable or market-rate units).

The Project's housing and affordable housing are superior public benefits and vastly exceed what would be possible through a matter-of-right development;

- (d) Employment Benefits. The Applicant has entered into a First Source Agreement with the District Office of Employment Services (“DOES”) to promote and encourage the hiring of District residents. (Ex. 121.) The Commission finds that such an Agreement constitutes a public benefit. The Commission also finds that the Applicant has a long history of providing job-training and career development opportunities for Brookland Manor residents and that it has committed to providing additional employment and education programs at its expense in an attempt to ensure its residents and Ward 5 residents have job opportunities; (Ex. 179 at 8.)
- (e) Social Service Programs. The Applicant currently provides, and will continue to provide, a number of programs that are designed for all residents, including the children and seniors who live in the community. Existing programs for children living in Brookland Manor include a variety of enrichment activities, such as after school care, tutoring, arts and crafts, community gardening, summer camp, meal programs to ensure that no child goes home hungry, girls’ self-esteem workshops, reading and math tutoring, school supply drives, holiday gifts and a food pantry for families. (Ex. 1 at 45; Ex. 12.) Existing programs for Brookland Manor’s senior residents include brown-bag lunches and other events designed to bring Brookland Manor’s senior community together. (*Id.*) The Applicant has undertaken a survey of the residents to program the amenity space in the new buildings. The Commission adjudges these programs to be a public benefit of this Project. The Commission finds that the Applicant’s long history of providing such programs justifies determining these programs to be a public benefit notwithstanding their ongoing status after the issuance of a certificate of occupancy for the Project;
- (f) Building Space for Special Uses. The Project provides for residents of Block 7 amenity spaces in each of the two Buildings. (*Id.* at 46.) Such resident spaces (“Amenity Spaces”) are depicted in the Approved Plans (as hereinafter defined) and include no less than approximately 4,000 square feet in Building A and no less than approximately 7,000 square feet in Building B. Buildings A and B each provide amenity spaces for special uses including, but not limited to, community educational or social development, promotion of the arts or similar programs. These amenity spaces support the Applicant’s strong commitment to providing services for children and seniors and give residents of the two Buildings safe indoor and outdoor places to gather in community, recreate, and relax. The Commission finds that these amenity spaces are public benefits given the supporting role such spaces play in facilitating the social services and programs described herein;
- (g) Environmental and Sustainable Benefits. The Project complies with the requirements of the Enterprise Green Communities checklist and is part of a master development that will achieve LEED-ND level of Silver. (Ex. 12, 12A.) The Commission finds that these programs constitute public benefits; and

- (h) Uses of Special Value to the Neighborhood or the District of Columbia as a Whole. As part of the First-Stage Order, the Applicant agreed: (i) to ensure that existing qualified Brookland Manor residents, at the time that the redevelopment commences, will have the ability to remain at the new RIA redevelopment; (ii) to manage the onsite relocation of residents to minimize the impact on educational, social, emotional, and employment needs of individuals and families and phase the overall redevelopment (including building out its infrastructure) in a manner that is most efficient; and (iii) and to implement a robust construction management for each phase of the redevelopment, including for this Project.
75. The Commission also finds that the Project's public benefits and amenities enumerated herein: (i) are commendable in number and quality for the foregoing reasons, (ii) are not inconsistent with the Plan because each is an integral part of the Project, which itself is not inconsistent with the Plan, (iii) are tangible, quantifiable, measurable, and, except as noted, generally capable of being completed or arranged prior to the issuance of a certificate of occupancy for the Project, and (iv) benefit the Brookland Manor, Brentwood and Ward 5 neighborhoods, and primarily benefit the areas within the geographic boundaries of ANCs. Moreover, the Commission finds that the foregoing benefits and amenities are possible only through the PUD process and would not be achievable as part of a project developed as a matter of right.

Commission Comments and Questions

76. At Setdown, the Commission requested additional information from the Applicant regarding: (i) the requested zoning relief; (ii) perspective views down the alley to the south of the Project; (iii) improvements along blank walls of Building B; and (iv) proposed materials, including the proposed brick color. (*Id.* at 41-46.)
77. In response to the Commission's questions and comments at Setdown, the Applicant provided: (i) a discussion of the requested zoning relief; (ii) drawings and renderings of the proposed improvements to the alley immediately south of the Property were provided; (iii) revisions to the south elevation of Building B to continue the rusticated texture of the red brick masonry along the entire base of the building including the previously blank courtyard walls; and (iv) a discussion of the rationale for the Project's color palette and the various brick colors that reflects the quality of the new buildings and creates an environment for the enhanced architectural treatment of the buildings that will be constructed in the future as part of this PUD. (Ex. 24A; Ex. 24E at A14b and A14c; Ex. 12.)
78. The Applicant also provided the following changes to the Project: (i) Juliet balconies were added to the third floor of Building B's north and west elevations; (ii) minor bay projections were added to the fourth floor of Building B's north and west elevations to correspond with bay projections below; (iii) cornice was added to the top of bays on Building A's north and east elevations; and (iv) Building A's east elevation was revised with additional balconies to create repetition of bays along the east façade. (Ex. 24.)

79. At the public hearing, the Commission asked questions regarding: (a) the requested long-term bicycle parking relief; (b) the layout of the units in Building A that will be affordable on a temporary basis upon completion of construction; (c) the color of the red brick on Building B; (d) the dimensions of the siding at the rear of the Project; (e) precedential images for the RFP concrete; (f) whether the cornice could be extended to the rear of Building A; (g) whether horn beams are an appropriate planting choice; (h) the monitoring procedures for the Applicant's proposed First Source Employment Agreement; (i) whether the Applicant had anyone on its team with a strong connection to the neighborhood; (j) renderings showing the Project in context with the existing houses on Bryant Street, N.E.; (k) the proposed "RIA" name; and (l) an updated Relocation Plan. (Tr. 2 at 36-57.)
80. Following opposition testimony, the Commission asked for information regarding: (m) allegations from residents regarding the private security service at Brookland Manor; (n) information regarding displacement and a "one-pager" on the details of the Relocation Plan; (o) the on-site relocation process for existing residents of Brookland Manor; (p) a construction mitigation plan; (q) changes to the Relocation Plan to accommodate resident families that contain one or more seniors with adult children or with grandchildren; (r) whether any seniors have been evicted from Brookland Manor; (s) the Applicant's proposal for accommodating families that cannot be accommodated in a three-bedroom or smaller unit; and (t) the Applicant's commitment to voucher holder residents. The Commission also requested that (u) the Applicant meet with the Association. (Tr. 2 at 173; Tr. 3 at 29, 90, 132-142, 143.)
81. The Applicant has responded completely to the Commission's questions, comments, and concerns raised at the public hearings as filed in the Post-Hearing Submission. In sum, the Commission finds that the Applicant has thoroughly addressed its comments and provided, in response to the Commission's questions, answers that are supported by substantial evidence. Moreover, the Commission finds that the Applicant's changes to the Project resulting from the Commission's comments improve the Project:
- (a) Bicycle Parking. In response to questions from Commissioner May, the Applicant analyzed its ability to provide additional long-term bicycle parking spaces in the garage of the seniors building. It managed to reconfigure the bicycle parking to accommodate 22 bicycles, which is still fewer than the 58 required, but more than the 10 initially provided. The Applicant noted that if there is sufficient demand for such bicycle parking spaces, it could convert a vehicular parking space to bicycle parking spaces because Building B already exceeds the vehicular parking space requirements of the Zoning Regulations; (Ex. 179 at 8.)
 - (b) Layout of Temporarily Affordable Units. The Applicant committed to allocate such units as is necessary to accommodate on-site relocation from other Brookland Manor blocks during future phases of construction, without overly distinguishing between market rate and affordable units in any area of the building; (*Id.* at 4.)

- (c) Brick Color on Building B. In response to questions raised from ANC 5C as well as from the Commissioners regarding the texture of the brick of Building B, the Applicant has refined the color of the proposed brick to a warmer shade of red (which remains in the same general color range) with a crisper finish; (*Id.* at 7.)
- (d) Siding Dimensions. The Applicant also provided greater detail on the cementitious siding that will be used on the rear façades of the Project; (*Id.*)
- (e) Precedential Images. The Applicant provided precedential images of the proposed FRP treatment; (*Id.*)
- (f) Cornice Extension. The Applicant extended the cornice of Building A around the rear of the Project; (*Id.*)
- (g) Planting Choices. The Applicant removed hornbeams from the landscape plan in favor of a bosque of ornamental trees such as honey locust; (*Id.* at 7.)
- (h) First Source Employment Agreement. The Applicant provided additional information regarding its extensive history of supporting job training among the residents of Brookland Manor. (*Id.* at 8.) In addition, as a condition of approval for this Application, the Applicant agreed that all future second-stage PUD applications must include information as to the Applicant’s satisfaction of the terms of the First Source Agreement associated with prior approved second-stage PUD applications; (*Id.* at 8.)
- (i) Neighborhood Connections. The Applicant stated that it had extended an employment offer to a Senior Vice President of Community Development who is a native of the District and who has significant experience in communities such as Brookland Manor; (*Id.* at 9.)
- (j) Context Renderings. In response to a question from Chairman Hood regarding the context of the existing neighborhood, the Applicant provided images showing the Project in relation to the surrounding existing buildings on Downing Street, N.E. (*Id.* at 7.) The Commission finds the Project is seamlessly integrated into the existing neighborhood from a massing, size, and architectural context; (*Id.*)
- (k) The “RIA” Name. The Applicant provided information that it worked with a consultant and Brookland Manor residents to develop a new name for Brookland Manor to signal a shift away from problems that have plagued Brookland Manor and the Brentwood Village Shopping Center in the past and towards a new and better future for residents and the community. (*Id.* at 11.) The Applicant notes that it will continue to work with residents to solicit feedback on naming individual buildings at the RIA Site; (*Id.*; Ex. 179C at 12.)
- (l) Relocation Plan. The Applicant provided an update to the Relocation Plan. The Applicant does not anticipate any development related tenant relocation activity will occur prior to the occupancy of the Block 7 buildings, which is expected to

occur in late 2019 or early 2020. All resident relocations have been completed on site and at the Applicant's expense. (*Id.* at 3.) Brookland Manor resident demographics indicate that upon the anticipated completion of Building B, at least 167 Brookland Manor residents will be 62 and older and therefore eligible to live in Building B. To the extent that the 200-unit senior building is not entirely occupied by eligible Brookland Manor residents, the Applicant will lease units to outside seniors utilizing DCHA vouchers supported by the Section 8 program. The Applicant has anticipated all along that non-Brookland Manor residents might occupy the senior building. Flexibility as to the overall number of senior affordable units to be occupied by Brookland Manor residents is contemplated in the First-Stage Order and the Applicant's initial statement, both of which note that the units in the senior building will likely not all be occupied by Brookland Manor seniors. (Ex. 1F at FF ¶ 96; Ex. 1 at 45.) The Applicant has occasionally described the 200-unit Building B as being designated for Brookland Manor's senior residents to assure residents that long-standing members of the community will have the first opportunity to move into a brand new building before that opportunity is offered to those from outside of Brookland Manor; (Ex. 179 at 2.)

- (m) Security Force Concerns. The Applicant provided extensive information regarding the Brookland Manor security force and noted that it had retained a new security company in response to resident concerns. (*Id.* at 10.) The Applicant also provided an explanation that fences newly installed at Brookland Manor were intended to protect residents from ongoing construction sites and, in one instance, as a public safety measure where a number of murders had previously occurred; (*Id.*)
- (n) "One-Pager". The Applicant provided a summary document that outlines the information requested by the Commission; (Ex. 179A.)
- (o) Relocation Process. The Applicant engaged a not-for-profit organization to survey current residents to ascertain their housing preferences and to assist the Applicant with the design of enrichment programs that will maximize professional, educational, and life opportunities for existing residents in the future redevelopment. (Ex. 179 at 5.) The Applicant has committed to providing various services and amenities, including a fitness center and computer lab, as requested by residents; (*Id.*)
- (p) Construction Mitigation Plan. The Applicant submitted a Development and Construction Management Plan to guide construction activity on Block 7; (*Id.* at 9; Ex. 179B.)
- (q) Residents with Extended Families. The Applicant's Post-Hearing Submission clarified that current Brookland Manor residents will have the opportunity to make an election about which building they will reside in. The Applicant will not require any multi-generational households to change household formation. For example, those existing households with seniors and grandchildren, or with

seniors and adult children who have special needs will have the opportunity to choose which housing option best suits their circumstances; (*Id.* at 5.)

- (r) Senior Evictions. The Applicant noted that it had sought and obtained a court-ordered eviction against only one senior citizen resident of Brookland Manor in the past three years (i.e., since the commencement of development activities); (*Id.* at 6.)
- (s) Family Accommodations. The Applicant also reiterated its commitment to allow all households in good standing that reside at Brookland Manor at the time that redevelopment starts the opportunity to remain in the redeveloped RIA community. This includes households that currently have more than six residents in their apartment unit and may need a four-bedroom accommodation (based upon the HUD occupancy standard of two people per bedroom). As indicated previously, the preponderance of large units on site are in Blocks 1 and 4 and these are in the final phase of the project, where construction is not expected to commence until 2023 at the earliest. The Applicant will continue to work with these households in the future to ascertain their needs and preferences, and will house them appropriately according to Section 8 program requirements. The Applicant agreed to provide updates to the Commission on the status of these households in each subsequent second-stage PUD application. With respect to large bedroom households, the Applicant noted that the townhome component of the overall RIA project will contain only three and four-bedroom style housing and will be subject to the District's Inclusionary Zoning requirements. The Applicant has begun an effort to identify resources to support first-time homeownership opportunities for current residents and has received positive feedback from residents regarding this housing option. The Association has indicated that this is an area of agreement they have with the Applicant and provides an opportunity to work collaboratively in the future to support residents who desire home ownership opportunities; (*Id.* at 3.)
- (t) Voucher Holder Residents. The Applicant committed to retain voucher-holding residents on site through the build-out of the RIA Site and to work with the Association, DCHA and other DC public officials to ensure that the future voucher payment standard for the Brentwood neighborhood is sufficient to cover the future market rate rent levels for voucher-holding residents. (*Id.* at 5.) The Applicant noted that it has refined its "good standing criteria" to (1) whether the resident is in compliance with its lease agreement; and (2) if subsidized the resident must be compliance with HUD and DCHA program requirements; and (*Id.* at 6.)
- (u) Community Meeting. The Applicant provided updates on its numerous and ongoing meetings with the residents of Brookland Manor. (*Id.* at 9.)

82. At the public hearing the Commission requested a post-hearing submission from the Association that responds to the Applicant’s “one-pager.” (Tr. 3 at 148.) The Commission also repeated its request for a report from the ANC. (*Id.* at 134.)

Agency and ANC Reports and Testimony

Office of Planning

83. In the OP Setdown Report, OP recommended that the application be set down for public hearing, stated that it would continue to work with the applicant to address and provide a full analysis of the proposal prior to the public hearing. OP also requested the following information: (a) the unit sizes and location of the units in Building A that would remain affordable indefinitely; (b) provision of an executed First Source Employment Agreement with DOES; (c) the services and programs being offered existing and future residents; (d) how the Project achieves high levels of sustainability; and (e) a transportation plan for the Project. (Ex. 10.)

84. In the OP Final Report, OP recommended approval of the requested modification to the First Stage PUD and the Second Stage PUD, provided the Applicant submit additional information with respect to the requested lot occupancy relief in order to detail the exceptional situation of the Property that results in a practical difficulty. (Ex. 34 at 10.)

85. The OP Final Report included comments from District agencies that did not separately submit reports. DC Water noted that additional review of the Project’s water infrastructure would be undertaken at permitting. (*Id.*) DHCD requested a formal commitment from the Applicant that the Section 8 project remain in effect in perpetuity or at least 40 years. (*Id.*) FEMS recommended that fire access to the Project not be compromised and that the Project be developed in accordance with fire codes. (*Id.*)

86. The Commission finds that the Applicant satisfactorily addressed all of OP’s comments and questions by providing information as follows in the PHS and 20-Day Statement:

(a) Unit Sizes and Location of Permanently Affordable Units. The Applicant committed that a minimum of 265 units in this project will be deeply affordable and reserved for existing residents. All of the units (200) in Building B (the senior-only building) are reserved at deeply affordable rates, and at least approximately 65 of the units in Building A are initially to be reserved for other current residents of Brookland Manor. The initially affordable units in Building A consist of 25 units to be reserved as permanently affordable units and at least 40 “temporary” replacement units that will be used to house existing Brookland Manor residents. These temporary replacement units are to be used to support the goals of the Applicant’s Relocation Plan, which includes keeping Brookland Manor residents on-site and minimizing the number of times that residents are required to move. The chart below details the size of the temporarily and permanently affordable units; (Ex. 12-13.)

Unit	Unit Mix	Percentage	Permanently Affordable Units
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	(of 131 total units)		(of 25 total units)
Studio	3	2%	1
1-Bed	60	46%	12
2-Bed	50	38%	9
3-Bed	18	14%	3

A plan shows the location of the permanently affordable units. (Ex. 12A at G14.) Given the nature of the temporarily affordable units, the Applicant requested flexibility to locate these units throughout Building A as needs may dictate, provided such units are not overly concentrated on one floor. (*Id.*) Initially, Building A will include 66 market-rate units.⁹ Over time, as the 40 temporary affordable units are no longer needed to meet the Relocation Plan requirements, those 40 units will transition to market-rate units. Ultimately, Building A will include 81% market-rate units and 19% deeply affordable units. As a result of the removal of the two-over-two units that were initially approved for Block 7, the Applicant does not propose to include any IZ units in Block 7. Subsequent second-stage PUD applications will incorporate the IZ units required under the First-Stage Order; (*Id.*)

- (b) First Source Agreement. The Applicant and DOES entered into a First Source Agreement, a copy of which was entered into the record prior to the public hearing; (Ex. 121.)
- (c) Services and Programs for Residents. The Applicant currently provides, and will continue to provide, a number of programs that are designed for the children and seniors that live in the community; (*See* FF ¶ 74(e).)
- (d) Sustainability. The Applicant provided information detailing how the Project achieves environmentally sustainable design objectives by complying with the requirements of the Enterprise Green Communities checklist; (Ex. 12, 12A.)
- (e) CTR. The Applicant entered a complete CTR into the record; (Ex. 19-20.)
- (f) Zoning Relief. The Applicant provided information regarding the requested zoning relief; and (Ex. 24A.)
- (g) Section 8 Contract Period. The Commission takes notice that the Project is subject to obligations under the First-Stage Order with respect to the period of effectiveness of the Section 8 contract or alternative affordable housing obligations. (Ex. 1F, Decision ¶ B.1.) The Applicant provided an update on the

⁹ Based on timing and phasing considerations for the entire project, it may be necessary to utilize all of Building A (131 units) as replacement housing. Therefore, the Applicant requested flexibility as to the total number of “Temporary Replacement Units” that will be included in the initial lease-up of Building A. This building is not anticipated to be completed until the Summer of 2019, at which time the Applicant will have already made progress on Phases 2a and 2b of the project and will have greater insight as to how many units in Building A will be used as Temporary Replacement Units.

status of its Section 8 contract in its Post-Hearing Submission and reiterated its commitment to extend that contract. (Ex. 179 at 6.)

87. At the public hearing, OP recommended approval of the Project. The Commission finds that OP's reports and testimony were thorough and credible and helpful in considering this Application. (Tr. 2 at 90-92.)

Department of Energy and the Environment

88. DOEE supported the Project and recommended approval subject to considerations provided regarding design and environmental performance. (Ex. 33.)
89. In response to the comments raised in the DOEE Report, at the public hearing the Applicant agreed to utilize the considerations in the DOEE Report in future development of the RIA Site. (Tr. 2 at 19, 45.) DOEE did not attend the public hearing and did not testify on its report.

District Department of Transportation

90. The DDOT Report noted no objection to the Project presuming the TDM program is effectively implemented. (Ex. 40 at 2.) The DDOT Report found that the Applicant used sound methodology to perform the transportation impact analysis in the CTR. The DDOT Report includes findings and analysis regarding the Project's impact on District transportation services and facilities and concludes there is no unacceptable impact that is not mitigated by the TDM. (*Id.*)
91. The DDOT Report includes analysis that Building B does not satisfy the long-term bicycle parking requirements of the Zoning Regulations, but that lesser amounts of such parking are anticipated in Building B. (*Id.*) The UFA Report provides information on the removal and planting of trees but is neutral with respect to the Project. (Ex. 41.)
92. At the public hearing, DDOT confirmed it had nothing beyond the DDOT Report to add with respect to the instant Application. (Tr. 2 at 93.)

Advisory Neighborhood Commissions 5B and 5C

93. Neither ANC 5B nor ANC 5C provided a report on the Application. (Tr. 2 at 57, 98.)

Applicant Community Outreach

94. As part of the First-Stage Order, the Applicant engaged in significant community outreach to the ANCs, its neighbors, and its tenants as part of the PUD process. As a result, dozens of tenants, neighbors and neighboring institutions and organizations submitted letters in support of the First-Stage Order. Prior to filing the instant Application, the Applicant met with officials from OP, DDOT, DC Housing Authority, and Office of the Deputy Mayor for Planning and Economic Development, as well as the Ward 5 Councilmember, and officials from HUD. (Ex. 1 at 11.)

95. The Applicant kept its residents aware of the status of the re-development plans by hosting an all-resident meeting January 23, 2017 to provide a project update and obtain additional resident input. In addition to the meeting with the residents of Brookland Manor, the Applicant has participated (or will participate) in a number of community meetings since the Application was filed, including the ANC 5B meeting on September 28, 2016. The Applicant presented the Application at an ANC 5C05 Single Member District Commissioner meeting on February 13, 2017. All of the ANC 5C commissioners attended that meeting. Other outreach by the Applicant included meetings with the Brookland Neighborhood Civic Association on October 18, 2016, Woodridge Civic Association on January 3, 2017, and Brentwood Civic Association meeting scheduled for February 7, 2017. (Ex. 12 at 4.) The Applicant meets regularly with smaller neighborhood groups to exchange information and to make sure that community feedback is considered and incorporated into the project. (*Id.*; Ex. 179 at 9.) The Applicant has also hosted multiple events for residents to discuss the Project and the overall development of the RIA Site as well as for social events. (*Id.* at 9-10.)

Persons in Support

96. More than 180 residents of Brookland Manor signed onto a “Letter of Support” of the Application. (Ex. 24B.) Prior to the closing of the record, more than 100 letters were submitted into the record expressing support for the Project. (Ex. 21-22, 24C, 24D, 25-26, 29, 31-32, 36-37, 39, 42, 45-61, 63-67, 69-72, 74-84, 86-93, 95-97, 102, 106, 108-113, 115, 117-120, 122-123, 126-131.) The letters of support addressed the following categories of issues that the Commission finds material to the Application:
- (a) Resident Support for the Project. In addition to the resident signatures on the Letter of Support, the Commission counts nearly three dozen letters of support from Brookland Manor residents. (Ex. 75-82, 88, 113, 122.) The Commission reviewed letters from residents who have already relocated from Block 7 and who had positive comments about their relocation experience. (Ex. 76, 88 at 10-11.) The Commission also reviewed letters from residents who have had positive experiences with Brookland Manor management staff. (Ex. 78, 81.) Finally, the Commission notes written testimony remarking on improvements in crime reduction and positively anticipating a “more gentrified culture”; (Ex. 82 at 8.)
 - (b) Abutter Support for the Project. Numerous residents of Downing Street, N.E., and 14th Street, N.E. the residential streets south and west of the Project, wrote in support of the Project. (Ex. 49-61, 64, 66-67, 90-92.) The Commission notes that many of these letters are form in nature but appreciates the feedback from those living closest to Block 7;
 - (c) Community Support for the Project (Economic Development). Numerous residents and property owners from surrounding neighborhoods wrote in support of the Project. (Ex. 21, 31, 32, 36-37, 39, 48, 69-71, 130, 131, 156.) Many letters indicated excitement regarding change and development in the neighborhood.

One supporter, Ms. Jarrai Stephens, expressed hope that the Project would increase the value of her property in the neighborhood; (Ex. 110.)

- (d) Community Support for the Project (Community Safety). Ms. Shaina Ward, of Langdon Park, wrote in support of the Project in the hopes that it would continue a trend of crime reduction and safety improvements; (Ex. 22.)
 - (e) Community Support for the Project (Urban Design and Architecture). Two neighborhood residents wrote in support of the Project, noting among other things, approval of the Project's urban design and architecture; (Ex. 25, 126.)
 - (f) Applicant-Supported Community Services. Numerous community and service organizations wrote in support of the Project and the Applicant's work to provide social and community programs at Brookland Manor. (Ex. 24D, 26, 27, 42, 47, 63, 65, 93, 102, 123.) These organizations universally thanked the Applicant for its support for their missions and for financial contributions or other donations; and
 - (g) Broader District Resident Support for the Project. Numerous residents of the broader District community wrote in support of the Project and in particular the retention of the Section 8 contract. (Ex. 72, 74, 83-84, 86-87, 89, 95-97, 106, 108, 109, 111, 118-120.)
97. At the public hearing, 12 persons or organizations spoke in support of the Project: (Tr. 2 at 98-129.)
- (a) Resident Support for the Project. Ms. Wilma Carter, Ms. Cheryl Brunson,¹⁰ Ms. Evelyn Hudgeson, Mr. Guillermo Gutierrez, and Mr. Hector Gutierrez, all residents of Brookland Manor spoke in favor of the Project; (*Id.* at 104, 108, 113, 125-126.)
 - (b) Community Support for the Project. Ms. Earline Frazier, a resident of Downing Street, N.E. testified as to the improvements in the neighborhood surrounding Brookland Manor as a result of the Applicant's improved security at Brookland Manor. (*Id.* at 112.) Ms. Betty Mugrow, a Brentwood resident also spoke in support of: the Project's improvements to the neighborhood generally, the Applicant's proposal to allow residents in good standing to remain at or return to the new RIA redevelopment, and the continued presence of security at Brookland Manor; (*Id.* at 121-122.)
 - (c) Security Staff/Security Concerns. Ms. Debbie Steiner testified as to the public safety and crime concerns historically associated with Brookland Manor and the Applicant's recent role in reducing those concerns. Ms. Steiner noted that DC Police requested the Applicant provide security staff at Brookland Manor

¹⁰ The Commission notes that Ms. Brunson spoke in opposition to the Project as well. (Tr. 3 at 27-29.) The Commission takes the entirety of Ms. Brunson's testimony into consideration.

following an assessment of public safety concerns. (*Id.* at 102.) Ms. Steiner also testified that HUD specifically asked the Applicant to hold its residents accountable under their leases; (*Id.* at 103.)

- (d) Preservation of Affordable Housing. Mr. Stillman Knight, a former HUD Assistant Secretary testified in support of the Applicant's preservation of affordable housing. (*Id.* at 109.) Mr. Knight testified that the concentration of subsidized housing promotes cycles of poverty and noted that the Project provided the benefit of retaining deeply affordable residential units while expanding housing opportunities and bringing services to the neighborhood. (*Id.*) Mr. Knight testified to the maturation of Section 8 contracts around the country and the end of affordability restrictions associated with those projects. Mr. Knight noted that the Applicant was free to let the affordable housing restrictions lapse at Brookland Manor, at which point the affordable units would be lost along with the HUD support for such units. The Applicant's election to retain the Section 8 contract is unique; the majority of landlord's in the Applicant's position choose not to renew their contracts; (*Id.* at 111; *see also* Ex. 128.)
- (e) Applicant-Supported Community Services. Mr. Dwayne Dawson spoke in support of the Project to discuss the many social programs offered at Brookland Manor to its residents at no charge with the support of the Applicant. (*Id.* at 105-108; *see also* Ex. 63.) Mr. Charles Brown testified in support of the Project on behalf of Healthy Families Grow. (Tr. 2 at 119.) Mr. Brown identified the community and support programs his organization offers at Brookland Manor in partnership with the Applicant; and (*Id.* at 119-20; *see also* Ex. 63.)
- (f) Applicant Community Outreach. Mr. Kyle Todd spoke in support of the Applicant and the Application on behalf of the Rhode Island Avenue Main Street program. (*Id.* at 114.) Mr. Todd praised the Applicant's outreach and commitment to community programs and support. (*Id.* at 115-116.) Mr. Todd testified that the Project will improve conditions in the neighborhood more broadly. (*Id.*; *see also* Ex. 129.)

Contested Issues Raised by the Association, and Persons in Opposition

- 98. Prior to the closing of the record, more than 60 letters or items of written testimony were submitted in this matter. At the hearing, numerous persons and organizations provided testimony in opposition to the Project. The Association also presented direct testimony in opposition to the Application at the public hearing, submitted several written filings stating its opposition, and submitted draft findings and conclusions of law. The concerns related to the following items with respect to the Project.
- 99. The Association, Justice First ("JF"), and other opponents raised a number of inter-related issues concerning the affordable housing provided in Project. The issues fall into the following categories:

- (a) The Project has an insufficient number of subsidized replacement units to house the likely number of existing residents because of the number of affordable units in the Project and because additional units will be needed as a result of some existing residents moving to the senior building;
- (b) The Project will result in displacement as a result of splitting families and housing seniors in the senior building;
- (c) The Project does not include a subsidy for current residents who are DCHA Section 8 voucher holders; and
- (d) The Applicant is responsible for displacing tenants as evidenced by the fact there are fewer occupied units than when the First-Stage Order was approved, eviction lawsuits were filed against existing residents, the private security force hired by the Applicant issued notices of infraction for frivolous reasons, the Applicant improperly issuing barring notices after evictions, and the private security force hired by the Applicant was guilty of sexual harassment, illegal searches, and violence toward residents.

The Commission addresses each of these issues as follows.

100. Number of Subsidized Replacement Units. The Association, residents in opposition to the Project, and community organizations alleged the Project has an insufficient number of subsidized replacement units to house the likely number of existing residents who are likely to want to remain at the RIA Site. The opponents assert that because the senior building will contain 200 “Section 8 units,” and the Applicant is obligated to provide no more than 373 project based Section 8 units in the RIA Site, the senior building will take up so many of the available project-based Section 8 slots that there will not be enough left for households with non-seniors to meet the need of the existing residents, and that as a result some existing residents will be divested of their project-based Section 8 slot, and will be displaced. The opponents state that as a result of this alleged deficiency: (a) the affordable housing provided in the Project should not count as a public benefit; (b) that it should count as adverse effect of the PUD, (c) that as a result, the Applicant has failed to meet its commitment in the First-Stage Order that all households in good standing that reside at Brookland Manor at the commencement of the redevelopment will be provided the opportunity to remain at the property through and following the redevelopment process, and (d) that the Project is inconsistent with the Comprehensive Plan.

Before the Commission address each of these points, it will address an overarching issue that underlies all of these allegations. The Commission finds that the opponent’s position is based on a misunderstanding of the way the project based Section 8 slots will be allocated to the senior building. The senior building units will be comprised of “permanently affordable units reserved for residents that who will be assisted by the project based and/or HCV Section 8 programs, and will be used to house existing Brookland Manor residents as demand dictates, with the balance (if any) open to income qualified tenants, subject in all instances to Condition B.1 of the First Stage Order.” (Ex.

190 at 4; Condition B.1.e of this Order.) This means there will be two kinds of “Section 8 units” in the senior building: (1) project based Section 8 units; and (2) HCV Section 8 units. The project based Section 8 slots will only be assigned to the senior building at the election of the leaseholders. If an eligible senior lives with a family that includes non-seniors, that senior may elect to continue to reside with their current family members in another multi-family building at their preference. (Ex. 179 at 3.) If a senior makes this choice, the project based Section 8 slot remains with the leaseholder(s), and the available slot in the senior building will be filled with an eligible senior utilizing HCV vouchers. (Ex. 189 at 2.) As a result, there will be more than 373 “Section 8” units in the redevelopment. (Ex. 189A at 3.) The opponents’ position seems reasonable because the First-Stage Order provides in Condition B.1.a.(2) that if the Section 8 contract remains (as is the case), the Applicant’s affordable housing obligation shall be to provide 373 Section 8 units, and “[o]f the 373 Section 8 units, 150 to 200 of such units shall be in the Senior Building, which shall contain no other units.” This implies that all of the Section 8 units in the senior building will be project based Section 8 units. However, this is not the case. Accordingly, the Commission is deleting this language from Condition B.1.a. in the First-Stage Order to prevent any further confusion and addresses the housing replacement issues as follows:

- (a) The affordable housing is a public benefit. The Association and JF alleged that the affordable housing provided in this Project should not qualify as a public benefit because the Project reduces the number of affordable units on the site and because many of the affordable units will be reserved for seniors. The Commission disagrees for several reasons:
- (1) This issue has no relationship to the modifications to the First-Stage Order or the second-stage PUD approval sought through this Application, and is therefore outside the scope of the Commission’s review;
 - (2) The Commission conclusively decided that the affordable housing provided in the project was a valuable public benefit when it approved the First-Stage Order. (Ex. 1F at Conclusions of Law [“COL”] ¶ 8.) The First-Stage Order also established the overall number of affordable units and the bedroom counts of the various units in the overall RIA Site redevelopment. (Ex. 1F at COL ¶ 8-9.) The First-Stage Order also established that the Project would include a senior building with up to 200 units. (Ex. 1F at FF ¶ 39.) Thus the number of affordable units, their bedroom counts, and the number of units in the senior building are unchanged as a result of this Application; and
 - (3) The Commission continues to find that the affordable housing provided by the Project is a valuable public benefit. If the Project was developed as a matter of right, the Applicant would be required to provide only the amount of affordable housing required by the Zoning Regulations. This Project far exceeds that amount;

- (b) Potential displacement as an adverse effect of the PUD. The Association and other opponents allege that because of the alleged deficiency in the number of affordable units, the Project displaces existing residents, and this should be considered an adverse effect of the Project. The Commission disagrees with this for several reasons:
- (1) This issue has no relationship to the modifications to the First-Stage Order or the second-stage PUD approval sought through this Application, and is therefore outside the scope of the Commission's review. The First-Stage Order also established the overall number of affordable units and the bedroom counts of the various units in the overall RIA Site redevelopment. (Ex. 1F at COL ¶ 8-9.) The First-Stage Order also established that the Project would include a senior building with up to 200 units. (Ex. 1F at FF ¶ 39.) Thus the number of affordable units, their bedroom counts, and the number of units in the senior building are unchanged as a result of this Application;
 - (2) The Commission concluded in the First-Stage Order that Brookland Manor contains 373 Section 8 units and 117 market-rate units with individual tenants paying their rents with supplemental financial assistance in the form of DC Housing Choice Vouchers. (Ex. 1F at COL ¶ 8.) The Commission further concluded that the Applicant's decision to retain the project based Section 8 contract and provide 373 units for residents who make significantly less than 50% of AMI is a significant project amenity. (*Id.*) The Commission finds that absent the First-Stage Order, the use restrictions on the project based Section 8 contract for the site would expire this year, and thereafter the Applicant would have the right to revert all 373 of those units to market rate. (Ex. 189A.) The Commission therefore finds that the impact of the Project as it relates to potential displacement is favorable, rather than an adverse effect of the PUD;
 - (3) The Commission conclusively decided that the Applicant's tenant relocation and construction phasing plan was a commendable public benefit, and not a potential adverse effect, when it approved the First-Stage Order.; (Ex. 1F; COL ¶ 10.)
 - (4) The Commission also concluded in the First-Stage Order that the Applicant's tenant relocation and construction phasing plan, which includes an obligation to allow all households that reside at Brookland Manor at the commencement of the redevelopment a right to return to the new community is a public benefit of the project. (*Id.*) The Applicant strengthened its tenant relocation commitment in this proceeding by stating that all relocations will occur on the property. (Tr. 5 at 29.) The Commission therefore finds that the Applicant has sufficiently mitigated this potential adverse effect through the Project, its relocation plan, and the

Applicant's commitment in the First-Stage Order to provide an opportunity to remain at the Property; and

- (5) The Commission does not believe that any displacement will occur, but if it does, the Commission finds that it is acceptable given the quality of the public benefits of the Project;

(c) Applicant's commitment in the First-Stage Order that all households in good standing that reside at Brookland Manor at the commencement of the redevelopment will be provided the opportunity to remain. The Association and other opponents allege that because of the alleged deficiency in the number of units, the Applicant cannot satisfy the commitment of the First-Stage Order that "all households in good standing that reside at Brookland Manor at the commencement of the redevelopment will be provided the opportunity to remain at the property through and following the redevelopment process."¹¹ The Commission disagrees for two reasons:

- (1) The Applicant has convincingly demonstrated that at this phase of the redevelopment there are a sufficient number of units to meet this commitment. The Applicant has provided substantial evidence that upon completion of Block 7, there will be at least 800 units on the entire property, a more than adequate amount of housing to accommodate current residents; and (Ex. 1G.)
- (2) The number and size of the units needed to satisfy this commitment cannot be ascertained at present because the needs of current residents will not be known until the time of their relocation. The Commission finds that large households will be able to continue to live in one of Brookland Manor's existing 80-year-old buildings (containing four- and five-bedroom count units) until at least 2023, and that the Applicant will continue to house these households after that in accordance with Section 8 program requirements and may need a four-bedroom accommodation (based upon the HUD occupancy standard of two people per bedroom). (Ex. 179.)

¹¹ Condition B.2. of the First-Stage Order states "[t]he Applicant shall abide by the terms of the tenant relocation and construction phasing plan as detailed at Exhibit 104B of the record in this case." The Applicant articulated its affordable housing commitment as follows:

1. The Applicant will retain the project based Section 8 Housing Assistance payment contracts on the property, which provide deep rental assistance to 373 extremely low income families (incomes below 30% of AMI); and
2. All households in good standing that reside at Brookland Manor at the commencement of the redevelopment in early 2018 will be provided the opportunity to remain at the property through and following the redevelopment process.

(Ex. 179 at 1.)

The Commission has included a condition in this Order that the Applicant is required to provide an update on the allocation of the affordable housing units throughout the redevelopment site and the remaining Brookland Manor buildings with any subsequent second-stage PUD application. (Condition B.1.f.) The Commission finds that these provide sufficient assurance that the Project complies with the condition of the First-Stage Order; and

- (d) Comprehensive Plan. The Commission addresses all of the opponents Comprehensive Plan issues below in FF ¶ 104.

101. Family accommodations and treatment of families with senior residents. Opponents alleged that the Project would displace large families and families with senior residents.

- (a) Accommodations for large families. With respect to large families, the Commission finds as follows:

- (1) This issue has no relationship to the modifications to the First-Stage Order or the second-stage PUD approval sought through this Application, and is therefore outside the scope of the Commission’s review. The First-Stage Order established the overall number of affordable units and the bedroom counts of the various units in the overall RIA Site redevelopment. (Ex. 1F at COL ¶ 8-9.) The number of affordable units sized for large families is unchanged as a result of this Application;
- (2) The number and size of the units needed to house the existing large families cannot be ascertained at present because the needs of current residents will not be known until the time of their relocation. It is speculative at this point to conclude what unit sizes individual families will need when they are relocated. The preponderance of large units on site are in Blocks 1 and 4 and these are in the final phase of the project, where construction is not expected to commence until 2023 at the earliest, so large households will be able to continue to live in one of Brookland Manor’s existing 80-year-old buildings (containing four- and five-bedroom count units) until at least 2023. (Ex. 179.) After that, the Applicant will continue to house these households after that in accordance with Section 8 program requirements and may need a four-bedroom accommodation (based upon the HUD occupancy standard of two people per bedroom). (*Id.*) The Applicant noted that the townhome component of the overall RIA project will contain only three- and four-bedroom style housing and will be subject to the District’s Inclusionary Zoning requirements. The Applicant has begun an effort to identify resources to support first-time homeownership opportunities for current residents and has received positive feedback from residents regarding this housing option. The Association has indicated that this is an area of agreement they have with the Applicant and provides an opportunity to work

collaboratively in the future to support residents who desire home ownership opportunities. (*Id.* at 3.) The Commission has included a condition in this Order that the Applicant is required to provide an update on the allocation of the affordable housing units throughout the redevelopment site and the remaining Brookland Manor buildings with any subsequent second-stage PUD application. (Condition B.1.f.) The Commission finds that these measures provide sufficient assurance that the Project will not displace large families; and

- (3) The Commission does not believe that any displacement will occur, but if it does, the Commission finds that it is acceptable given the quality of the public benefits of the Project; and

(b) Families with senior residents. With respect to families with senior residents, the Commission finds as follows:

- (1) This issue has no relationship to the modifications to the First-Stage Order or the second-stage PUD approval sought through this Application, and is therefore outside the scope of the Commission's review. The First-Stage Order established the overall number of affordable units and the bedroom counts of the various units in the overall RIA Site redevelopment. (Ex. 1F at COL at ¶ 8-9.) The First-Stage Order also established that the Project would include a senior building with up to 200 units. (Ex. 1F at FF ¶ 39; Condition B.1(a)(2).) Thus the number of affordable units, their bedroom counts, and the number of units in the senior building are unchanged as a result of this Application;
- (2) The number and size of the units needed to house the existing families with a senior, or seniors who opt to live in the senior building cannot be ascertained at present because the needs of current residents will not be known until the time of their relocation. It is speculative at this point to conclude how many additional units and what unit sizes individual families will need when they are relocated. The Applicant will give the senior residents the chance to either opt into the senior building, or to occupy an unrestricted unit. (Ex. 179 at 4-5.) If an eligible senior lives with a family that includes non-seniors, that senior may elect to continue to reside with their current family members in another multi-family building at their preference. (Ex. 179 at 3.) If a senior makes this choice, the project-based Section 8 slot remains with the leaseholder(s), and the available slot in the senior building will be filled with an eligible senior utilizing HCV vouchers. (Ex. 189 at 2.) The Commission finds that these measures provide sufficient assurance that the Project will not displace families that include a senior resident; and

- (3) The Commission does not believe that any displacement will occur, but if it does, the Commission finds that it is acceptable given the quality of the public benefits of the Project.

102. Subsidy for DCHA HCV Holders on site. The Association alleges that because there are current residents who receive financial assistance through the DCHA HCV program, a different program from the Project based Section 8 program, and the Applicant has not provided an assurance that future voucher payment standard will be sufficient to cover the future market-rate rent level for the Project, the Applicant cannot meet its commitment to house all residents in good standing at the commencement of redevelopment through and following the redevelopment process. The Commission finds that the Applicant does not have an obligation to ensure that the subsidy provided through the DCHA HCV program is sufficient to cover the future market rate level for the Project. The number of affordable units in the overall RIA Site redevelopment was established in the First-Stage Order, and is not properly before the Commission as part of this Application. (Ex. 1F at COL ¶ 8.) The First-Stage Order stated that “Brookland Manor includes 373 [project-based] Section 8 units, and 117 “market”-rate units with individual tenants paying their rents with supplemental financial assistance in the form of the [DCHA HCV]”. (*Id.*) The Commission finds that the Applicant’s obligation to provide an opportunity for all residents to remain does not include a responsibility to provide subsidized below market rate rents beyond its obligation to retain the project based Section 8 Assistance Payment contracts, or a responsibility to guarantee that future HCV payments will be sufficient to cover the future market rent level for the Project. The Applicant stated that all residents who participate in the DCHA Section 8 HCV program will have an opportunity to remain, and has provided evidence there is sufficient space to accommodate them. (Ex. 189, 1G.) The Commission therefore finds that the Project complies with this condition of the First-Stage Order. To the extent that any displacement occurs as a result of a funding gap between the voucher standard and market rents, the Commission finds that it is acceptable given the quality of the public benefits of the Project.
103. Fewer occupied units than when the First-Stage Order was approved, eviction lawsuits were filed against existing residents; the private security force hired by the Applicant issued notices of infraction for frivolous reasons; the Applicant improperly issuing barring notices after evictions; the private security force hired by the Applicant was guilty of sexual harassment, illegal searches, and violence toward residents. Several community organizations and neighbors spoke in support of the existing tenants, in opposition to alleged aggressive eviction practices, and the conduct of the private security force hired by the Applicant. The Association made a number of allegations of what it stated was displacement and that it implied amounted to a deliberate campaign by the Applicant to reduce the number of residents who remained on the Property and could qualify as residents in “good standing” and qualify for a replacement unit under the terms of the condition in the First-Stage Order. The Association stated that the number of residents at Brookland Manor had declined from 503 occupied units to 438 between the inception of the application that gave rise to the First-Stage Order and the Applicant’s filing of the instant Application. (*Id.* at 135.) The Association’s lawyer referred to a newspaper report

regarding evictions at Brookland Manor that described increased rates of eviction and eviction practices at Brookland Manor. (Tr. 2 at 136; Ex. 132 at 5.) The Association further alleged that the private security force hired by the Applicant issued notices of infraction against residents for frivolous reasons, that the Applicant improperly issued barring notices after evictions, and that the private security force hired by the Applicant was guilty of sexual harassment, illegal searches, and violence toward residents. (Ex. 182 at 8, 9.) Association requested a specific condition removing any infraction notices by the security company. (Ex. 191.) All of these allegations turn on a number of facts that are not before the Commission, such as the truth of the allegations themselves, the obligations of the residents and Applicant under their tenant and landlord relationship as determined by their leases, and the other rights and obligations of the respective parties under other regulations and laws. As a result, the Commission cannot determine whether these allegations have merit. In addition, adjudicating these claims is not within the Commission's jurisdiction, which is limited to its statutory authority established by D.C. Official Code § 6-641.01, and does not include authority to adjudicate landlord and tenant disputes.

104. Consistency with the Comprehensive Plan policies cited by the Association and other parties and persons in opposition. The Association and other opponents allege that the Project is inconsistent with the Comprehensive Plan. This issue was conclusively decided in the First-Stage Order, and the issues raised now by the opponents have no relationship to modifications sought through this Application or the second-stage PUD approval sought through this Application. Nonetheless, out of an abundance of caution the Commission analyzed the specific allegations of inconsistency as follows:

(a) Upper Northeast Area Element policies. The Association and JF allege the Project is inconsistent with the Upper Northeast Area Elements of the Comprehensive Plan. The only relevant policy the Commission could identify¹² is "Policy UNE-1.1.4: Reinvestment in Assisted Housing," which provides as follows:

Continue to reinvest in Upper Northeast's publicly-assisted housing stock. As public housing complexes are modernized or reconstructed, actions should be taken to minimize displacement and to create homeownership opportunities for current residents.

¹² The Association alleges in its draft order that "the current PUD is inconsistent with the Upper Northeast Area Elements of the Comprehensive Plan where the integrity and stability of the neighborhoods as well as preventing displacement are key factors." (Ex. 182.) The Association's draft order does not explicitly mention which policies in the Upper Northeast Element it is referring to, but the Commission surmises that it is referring to the policies in the Housing Element of the Comprehensive Plan that the Association cited in its written submission of February 23, 2017. (Ex. 136.) JF separately alleges that the Project is inconsistent with the Upper Northeast Element of the Comprehensive Plan "where the integrity and stability of the neighborhood as well as preventing displacement are key factors." (Ex. 162 at 2; Tr. 3 at 47-52.) JF cited these policies as "Comprehensive Plan for the National Capital, Chapter 24, Upper Northeast Area Elements 24-9 to 24-11" but the cited provisions do not directly correspond to the numbering system found in the DCMR or the online version of the Comprehensive Plan found on OP's website. The Commission conducted its own review of the Upper Northeast Element for policies that could be related to the issues stated by the Association and JF.

(10A DCMR § 2408.5.)

The Commission previously found that the Project is consistent with this policy with respect to the overall redevelopment approved under the First-Stage Order. (Ex. 1F at FF ¶ 62.) The Commission continues to find that the Project is consistent with this policy. This Project is an undertaking to replace a privately owned apartment complex that currently receives public subsidies. The subsidies include a project based Section 8 contract that is ending this year, and individual tenants using DCHA Housing Choice vouchers. (Ex. 189A at 3.) The Applicant could have waited until the project based contract ended, and constructed a market rate project. (*Id.*) Instead, the Project includes a commitment to retain the project based Section 8 contracts, and to provide an opportunity for all households in good standing that reside at the property at the commencement of the redevelopment to remain on the property through and following the redevelopment process. The Commission finds these commitments made by the Applicant will minimize any displacement that occurs as a result of the Project such that it is consistent with this policy; and

(b) Housing Element policies. The Commission further finds that the Project is consistent with the Housing Element policies of the Comprehensive Plan cited by the Association as follows:

(1) *Policy H-1.2.3 Mixed Income Housing*, which seeks to “Focus investment strategies and affordable housing programs to distribute mixed income housing more equitably across the entire city, taking steps to avoid further concentration of poverty within areas of the city that already have substantial affordable housing.”¹³ (10-A DCMR § 504.8.) The Association’s lawyer asserted that the “[A]pplicant’s proposed elimination of deeply affordable units proposed both in Block 7 and the overall redevelopment will drive families out of an intensely gentrifying neighborhood, into hyper-segregated and impoverished areas of the city, thus furthering segregation and concentrating poverty” (Tr. 2 at 139.) The Commission found in the First-Stage Order that the overall RIA Site redevelopment was consistent with Policy H-1.2.3. (Ex. 1F ¶ 56.) The OP Final Report arrives at a similar conclusion for this Application. (Ex. 34 at 18.) In light of the Applicant’s failure to provide any evidence or justification for its assertion, the Commission sees no reason to disturb its previous finding. The Project provides 225 new, high-quality, permanently and deeply affordable units where currently there are 64 units more than approximately 80 years old. The overall RIA Site will create a mixed-

¹³ Although the text of this and the succeeding policy excerpts are not reproduced directly in the Association’s testimony, the entirety of the Comprehensive Plan’s text is incorporated into the record by reference pursuant to the Zoning Regulations, so these policies are provided here for context. (*See* 11-Z DCMR § 203.7; Ex. 1 at the Appendix.)

income community where currently there is a community of concentrated poverty;

- (2) *Policy H-1.2.1 Affordable Housing Production*, which seeks to “Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout the city.” (10-A DCMR § 504.6.) The Association stated that the Project does not promote affordable housing. (Tr. 2 at 139.) The Commission disagrees. The Applicant is constructing brand new affordable housing to replace housing with an expiring affordability restriction. OP reaches a similar conclusion, and the Commission is directed to give great weight to its analysis. (Ex. 34 at 18.) The Applicant’s commitment to and promotion of affordable housing is evidenced by its election to deliver new affordable housing as part of its first phase of construction before proceeding to blocks that will have higher concentrations of market-rate units;
- (3) *Policy H-1.3.1 Housing for Families*, which seeks to “Provide a larger number of housing units for families with children by encouraging new and retaining existing single family homes, duplexes, row houses, and three- and four-bedroom apartments.” (10-A DCMR § 505.6.) The Association stated that the Project as well as the overall RIA Site redevelopment eliminates existing four-bedroom units and reduces the number of three-bedroom units. (Tr. 2 at 139.) The Commission does not disagree with the factual statement, but disagrees that the Project is inconsistent with this objective of the Comprehensive Plan. The OP Final Report finds the Application consistent with this policy objective and again the Commission gives such finding great weight. (Ex. 34 at 18.) The Applicant is making a significant commitment to retaining family-sized units. The Project includes three-bedroom units. The First-Stage Order also provides for rowhouses, where currently none exist. The Applicant reiterated its commitment to provide rowhouses as part of future phases of development and to identify resources to support first-time homeownership opportunities for current residents. (Ex. 179 at 3.) This section of the Comprehensive Plan calls for the *provision* of housing units for families and not necessarily the *retention* of existing three- and four-bedroom apartment units, especially existing three- and four-bedroom apartment units that were constructed many decades ago and no longer conform to market standards. Overall, the Project is not inconsistent with this policy objective;
- (4) *Policy H-2.1.1, Protecting Affordable Rental Housing*, which has the objective of “Recogniz[ing] the importance of preserving rental housing affordability to the well-being of the District of Columbia and the diversity of its neighborhoods [and] [u]ndertak[ing] programs to protect

the supply of subsidized rental units and low-cost market rate units.” 10-A DCMR § 509.5. The Association stated that the plan for Block 7 shows that affordable housing will be greatly reduced. (Tr. 2 at 140.) Again, the Commission disagrees. The Project is an express effort to extend and retain an expiring Section 8 affordable housing contract. The Applicant is under no obligation to retain the existing affordability restriction at the RIA Site as a former HUD official testified. (Ex. 128.) Its election to do so on a one-for-one basis is a significant public benefit for the District and the existing residents who benefit from the Section 8 program; and

- (5) *Policy H-2.1.3, Avoiding Displacement*, which seeks, in relevant part, to “Maintain programs to minimize displacement resulting from the conversion or renovation of affordable rental housing to more costly forms of housing.” (10-A DCMR § 509.8.) The Association’s lawyer alleged that Brookland Manor had already experienced “mass displacement” resulting from the reduction in occupancy at Brookland Manor. (Tr. 2 at 140.) The Commission cannot agree with the Association. The Applicant has repeatedly committed to allowing existing tenants who wish to remain and who maintain good standing the opportunity to do so. (Ex. 1F at FF ¶ 56; Ex. 179 at 1-5.) The Commission finds that the Applicant has agreed to do far more than “minimize” displacement; it has developed a plan to avoid Brookland Manor resident displacement altogether. The Association seems to equate, without credible evidence, turnover in Brookland Manor residents with “displacement.” The Commission is not convinced. The Applicant credibly notes that residential turnover in apartment buildings is common and gives a number of reasons why residents leave Brookland Manor regularly of their own accord (listing moving out of the District, purchasing homes, getting married, moving for employment reasons or passing away as instances of natural attrition at Brookland Manor similar to apartment buildings generally). (Ex. 179 at 6.) A change on the order suggested by the Association is in keeping with the Applicant’s analysis of ordinary background conditions of resident turnover. (*Id.*) The Commission previously found redevelopment of Brookland Manor is not inconsistent with this policy objective and sees no reason to reverse that finding now. (Ex. 1F; FF ¶ 56.)

105. DC for Reasonable Development (“DCRD”) also alleged that the Project is inconsistent with the Comprehensive Plan. (Ex. 133 at 2.) In support of this allegation, DCRD cites a list of Comprehensive Plan directives and policies but does not provide even the merest of allegation or offer any explanation as to why the Project would be inconsistent with these particular directives and policies. Moreover, the DCRD letter does not assert that the Project is inconsistent with the provisions cited therein; it merely asserts that such policies are “relevant” without justification or explanation as to how such policies are relevant. Accordingly, these policies and directives are not material contested issues about which the Commission can make a finding or draw conclusions.

106. JF claims that the Project fails to comply with the intent and purposes of the Zoning Regulations, but offers no justification for this claim. (Ex. 162 at 1.) The Commission disagrees with JF and notes its extensive findings herein with respect to the Project's consistency with the Zoning Regulations. Finally, JF alleges an unspecified adverse impact on the surrounding area arising from the Project's creation of affordable housing. (*Id.*) For the reasons set forth above, the Commission finds that the Project will create no unacceptable impact on land values in the surrounding area. (*See* FF ¶ 72.)
107. Opponents raised the following additional issues about the Project:
- (a) Senior and Accessible Units. Ms. Davis further noted that the Association has a preference for housing that is accessible to seniors and those with disabilities. (Tr. 2 at 143; Ex. 142.) The Commission finds that the Applicant has provided evidence that the senior housing will be accessible for seniors and those with disabilities;
 - (b) Isolation of Seniors. Ms. Davis noted that the Project isolates seniors in a senior building that does not meet their needs or allow them to remain an active part of the community. (Tr. 2 at 144.) Community members noted a concern that a senior-only building might separate seniors from other family members. (Tr. 3 at 55, 103, 109; Ex. 144.) The Commission credits the Applicant's testimony that senior residents of Brookland Manor will have the choice as to whether to relocate to the senior building; (Ex. 179 at 5.)
 - (c) Definition of Good Standing as a Criteria for Eligibility to Remain. Ms. El-Amin and others asked for clarification about the standards required for residents to be able to remain at Brookland Manor. (Tr. 2 at 149, 171; *see also* Tr. 3 at 66; Ex. 140.) The Application has provided this information; (Ex. 179 at 6.)
 - (d) Younger/Youth Residents' Concerns of Displacement. Ms. Yvonne Johnson noted that she had observed youth residents of Brookland Manor showing signs of depression and concern regarding displacement; (Tr. 2 at 144-145, 167-169; *see also* Tr. 3 at 66, 103; Ex. 138, 141.)
 - (e) Preservation of Family Housing. Ms. Johnson also expressed support for retaining affordable housing that accommodates families. (Tr. 2 at 144-145.) Community members and advocates expressed similar concerns. (Tr. 3 at 31-36, 42-44, 62-63, 74-76; Ex. 98, 121, 125, 134, 141, 143, 145, 147, 160, 165.) The First-Stage Order established the overall number of affordable units and the bedroom counts of the various units in the overall RIA Site redevelopment; (Ex. 1F at COL ¶ 8-9.)
 - (f) Vacant Units at the RIA Site Could Be Used to House Others. Ms. El-Amin and Ms. Valerie Scott noted a concern about some units in Brookland Manor being vacant when other families need housing. (Tr. 2 at 144-145, 162; *see also* Tr. 3 at 52-53; Ex. 144.) The Commission finds that a certain percentage of vacant units are necessary for the Applicant to undertake relocations on site during

construction so that Brookland Manor residents are not displaced during construction. (Ex. 179 at 6-7.) The Commission notes that the Applicant is voluntarily foregoing rental income by doing so; (*Id.*)

- (g) Security Staff Harassment/Infraction Notices. Ms. El-Amin, Ms. Neeka Sullivan, Ms. Scott, and others raised concerns regarding unprofessional behavior and harassment by the Brookland Manor private security staff. (Tr. 2 at 146-147, 155-158, 160-161, 170; Tr. 3 at 24-25, 28-29, 45, 55, 68-69, 82, 111-112, 125-128, 131; Ex. 94, 115, 116, 137, 144-146, 148, 157.) The Applicant provided extensive information regarding the Brookland Manor security force and noted that it had retained a new security company in response to resident concerns. (*Id.* at 10.) As noted, the Applicant has terminated its relationship with the existing security service in light of these concerns; (Ex. 179 at 10.)
- (h) Park Space. Ms. El-Amin noted that the residents of Brookland Manor would like a new park in their neighborhood and was disappointed that one was not proposed as part of the Project. (Tr. 2 at 148. *see also* Tr. 3 at 107; Ex. 144.) The Commission notes that the Community Green will be constructed in a subsequent second-stage PUD;
- (i) Community Development/Non-housing Related Resident Needs. Rev. Houston expressed a desire for support programs for residents. (Tr. 2 at 151.) The Commission notes that the Applicant provides extensive support programs for residents; (*See supra*, FF ¶¶ 91(f) and 97(e); Ex. 179.)
- (j) Job Placement/Training. Rev. Houston expressed a desire for additional job training so that residents are prepared to participate in the actual construction efforts of the Project; (Tr. 2 at 152; Ex. 85, 143.)
- (k) Fences. Ms. El-Amin and Ms. Scott also raised concerns about fences having been installed at Brookland Manor. (Tr. 2 at 147, 162.) Multiple community members raised concerns regarding the fences as well. (Tr. 3 at 24, 54, 68; Ex. 144, 148.) The Commission finds that the Applicant's installation of fences as a safety measure around construction sites and as a public safety measure in light of criminal activity in and around Brookland Manor is entirely warranted. (Ex. 179 at 10-11.)
- (l) Design and Density. One interested community member spoke in favor of the existing garden apartment style design and noted that the density of the Project was inappropriately high; (Tr. 3 at 105; *see also* Ex. 124, 163, 168.) The Commission uniformly disagrees with this criticism and finds that the urban design and architecture is exemplary. The Commission notes that this commenter's assessment of the FAR for the Project appears to be incorrect. The Project has an overall FAR of 2.8, not 5.95;

- (p) Affirmative fair housing obligations under the Fair Housing Act. The Washington Lawyers' Committee for Civil Rights and Urban Affairs ("WLC") provided testimony regarding the Commission's role in implementing the District's fair housing obligations. (Tr. 3 at 122; Ex. 167.) WLC asserted that the Project did not advance the District's affirmative fair housing obligations under the Fair Housing Act. However, the issue of Fair Housing Act compliance is not within the Zoning Commission's jurisdiction in this case, which is limited to its statutory authority established by D.C. Official Code § 6-641.01, and does not include an assessment of the Applicant's compliance with fair housing obligations under the Fair Housing Act. Only a court with the jurisdiction to so can find Fair Housing Act violations and impose the appropriate penalties and/or enjoin further development of this Project. Unless and until that happens, the Commission may review this PUD for compliance with the PUD standard set forth in Chapter 3 of Subtitle X of the Zoning Regulations.

WLC acknowledges this in its submission, stating "[t]his Commission should note that the District's obligations to further fair housing do not require it to determine as a matter of law, whether a particular redevelopment unlawfully violates the federal civil rights afforded to members of a protected class nor to adjudicate claims under the federal Fair Housing Act and/or District of Columbia Human Rights Act frameworks, which are properly considered by courts of competent jurisdiction." (Ex. 167 at 2.) WLC goes on to claim that the Commission can consider the fair housing implications of specific PUDs under the Commission's review and whether such redevelopments pose barriers to fair housing choice, as previously explained, when it considers the public benefits and adverse impacts of each redevelopment." However, the PUD regulations do not require that housing or affordable housing be provided at all. Housing is but one of many types of benefits that may be proffered, and so an applicant's decision to provide little no affordable (other than what is required by IZ) is of absolutely no relevance to a PUD application; and

- (q) New Communities Initiative and Fair Housing Act compliance. Law for Black Lives Matter D.C. ("LBLM") alleged that the Project violates various public policies, including the federal Fair Housing Act and regulations thereunder and the District's New Communities Initiative. (Tr. 3 at 82; Ex. 169.) As stated above, the issue of Fair Housing Act is not within the Commission's jurisdiction in this case. Likewise, the Commission finds that the issue of compliance with the District's New Communities Initiative is not within the Commission's jurisdiction in this case, which is limited to its statutory authority established by D.C. Official Code § 6-641.01. In addition, according to NCI information cited in LBLM's filing, NCI applies only to four specific communities in the District and does not apply to the Project.

108. The Commission therefore resolves these contested questions in favor of the Applicant and finds that the Project is consistent with the First-Stage Order, the Zoning Regulations, and the PUD evaluation standards.

109. The Commission notes that the Brookland Neighborhood Civic Association (“BNCA”) filed a letter declining to take a formal position on the Project. (Ex. 127.) BNCA noted its support for the residents of Brookland Manor and its lack of opposition to the Project itself. (*Id.*) BNCA noted a lack of support for the Project’s architecture. (*Id.*)
110. On balance, the Commission finds that there is comparatively little opposition to the Project itself. Even the Association conceded that it is not opposed to this Project. (Tr. 2 at 88-89; Tr. 3 at 88.) At its core, the Project replaces 64, now-vacant, 80-year-old apartment units subject to a maturing affordability restriction with 331 brand new mixed-income units of the highest-caliber design with modern amenities and subject to a new affordability restriction.

CONCLUSIONS OF LAW

Procedural and Jurisdictional Conclusions

1. Any PUD application must meet the requirements of Subtitle Z, Chapter 3, 11-X DCMR § 307.1, and the Commission must hear any PUD case in accordance with the contested case procedures of Subtitle Z, Chapter 4. (11-X DCMR § 300.3.) The Commission concludes that the Application satisfies the PUD application requirements, and that the Commission has satisfied the procedural requirements of the Zoning Regulations, including the applicable notice thereof, necessary to issue this Order. The Commission concludes that this Application complies with the Zoning Regulation’s procedural requirements and notice provisions.
2. The minimum area included within a proposed PUD must be no less than 15,000 square feet and all such area must be contiguous. (11-X DCMR § 301.) The Application satisfies these minimum area and contiguity requirements.

Evaluation Standards

3. The Applicant has requested approval of: (1) a modification of the First-Stage PUD order, and (2) approval of a second stage PUD. The Applicant has the burden of proof to justify the granting of the Application. (11-X DCMR § 304.2.)

First-Stage PUD Modification

4. The scope of the Commission’s decision in judging the Applicant’s modification to the first stage order is “limited to the impact of the modification on the subject of the original application.” (11-Z DCMR § 704.4.) The Commission is not permitted to revisit the decisions it made in its original decision. (*Id.*) The Commission interprets this to mean that unless an issue is related to the impact of the modification, or the detailed site plan review to determine compliance with the first-stage approval, it is outside of the scope of the Commission’s review of the Application. In this case, the Applicant’s requested modifications to the First-Stage Order are limited to changes to the buildings on Block 7

of the site. The First Stage PUD approved a PUD-related rezoning of Block 7 to the R-5-B (now RA-2) Zone District, and development of the Block with a multi-family building and 28 structures described as “two-over-two residential units.” The Applicant’s requested modifications are quite limited, and include replacing the two-over-two residential units with a second multi-family building, swapping the locations of the senior building and the multi-family building on the site, changes to the building envelopes for these two buildings, and changes to the alley configuration and parking for these two buildings. The Applicant seeks additional relief from the lot occupancy (with respect to both Buildings) and long-term bicycle parking requirements (with respect to Building B only) of the Zoning Regulations. The Applicant also requested flexibility to rebalance affordable units initially provided in Building A to other portions of the RIA Site upon completion of subsequent phases, with the objective of avoiding a permanent disproportional concentration of low income residents in particular buildings. (FF ¶¶ 57-66.) The Applicant did not request any changes to the development proposed for Block 1, the Pedestrian Walk between Blocks 1 and 2, Blocks 2 through 6, Block, or the PUD-related map amendment. Likewise, the Applicant did not request any changes to the Project’s benefits and amenities package, including its proffered affordable housing commitments. The issues raised by opponents related to the sufficiency of the Project’s affordable housing benefits, potential displacement as a potential adverse effect of the PUD, family accommodations and treatment of families with senior residents, subsidy for residents who are DCHA Section 8 HCV holders, and the Project’s consistency with the Comprehensive Plan, are not related to the impact of the modifications and/or additional relief sought by the Application. The issues were decided in the First-Stage Order, and the Commission by rule is not permitted to revisit them.

5. The Commission is required to apply in judging the requested modification to the First Stage Order are set forth in 11-X § 304. The relevant standards are:
 - (a) 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 benefits of the case; (11-X DCMR § 304.3.)
 - (b) The Commission shall find the proposed development is not inconsistent with the Comprehensive Plan and with other public policies an active programs related to the subject site; (11-X DCMR § 304.4(a).)
 - (c) The Commission shall find the proposed development does not result in unacceptable project impacts on the surrounding area but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits of the project; and (11-X DCMR § 304.4(b).)
 - (d) The Commission shall find the proposed development includes specific public benefits and project amenities that are not inconsistent with the Comprehensive Plan and with other public policies an active programs related to the subject site. (11-X DCMR § 304.4(c).)

The Commission applied these standards and concludes as follows:

- (a) 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 benefits of the case.” (11-X DCMR § 304.3.)

For the reasons discussed in FF 57-75, 98-108, the Commission concludes the Project warrants the requested modifications to the approved First-Stage Order PUD, including the additional requested zoning flexibility and relief, in light of the extensive public benefits offered by the Project. The relief, flexibility and modifications are comparatively minor and largely offset by mitigation plans and superior design. Moreover, the benefits of the Project and the First-Stage Order more generally are extensive. The Applicant is in the midst of constructing a new mixed-use, mixed-income, transit-oriented neighborhood, replete with amenities such as the Community Green, and introduction of commercial uses, all while preserving a significant quantity of deeply affordable housing that will be indistinguishable from market rate units. The individual elements of the Applicant’s undertaking are benefits to the existing residents and the neighborhood locally; the Applicant’s preservation of affordable housing and creation of new housing is a benefit to the District as a whole. The Applicant’s additional provision of service, employment, and special use benefits is accretive to the Project’s design and programmatic benefits;

- (b) The Commission shall find the proposed development is not inconsistent with the Comprehensive Plan and with other public policies and active programs related to the subject site. (11-X DCMR § 304.4(a).)

For the reasons discussed in FF 68-71, 104, the Commission concludes the Project is not inconsistent with the Comprehensive Plan and with other public policies and active programs related to the subject site;

- (c) The Commission shall find the proposed development does not result in unacceptable project impacts on the surrounding area but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits of the project. (11-X DCMR § 304.4(b).)

For the reasons discussed above in Finding of Fact 72-73, 99-103, 105-107, the Commission finds that the proposed development does not result in unacceptable impacts on the surrounding area. Instead, the Commission concludes the impacts are either favorable, capable of being mitigated, or acceptable given the quality of the public benefits of the project; and

- (d) The Commission shall find the proposed development includes specific public benefits and project amenities that are not inconsistent with the Comprehensive

Plan and with other public policies an active programs related to the subject site. (11-X DCMR § 304.4(c).)

The public benefits of the Project are unchanged from when the Commission approved the First-Stage PUD. The Commission continues to believe the Project includes public benefits and project amenities that are not inconsistent with the Comprehensive Plan and with other public policies an active programs related to the subject site.

6. 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) referenced in the zone reference table. (X §§ 303.1, 303.11.) The Applicant seeks relief from the lot occupancy (with respect to both Buildings) and long-term bicycle parking requirements (with respect to Building B only) of the Zoning Regulations. (FF ¶¶ 62-66.) The Commission has found that these items of relief do not impair the purposes or intent of the Zoning Regulations and are not inconsistent with the Comprehensive Plan. (*Id.*) Therefore, the Commission concludes it may authorize its discretion to grant such items of relief subject to the Conditions hereof.

Approval of Second Stage PUD

7. The Commission’s review of the second-stage application is comprised of “a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and this title.” (11-X DCMR §302.2(b).) For the reasons discussed above in FF ¶¶ 60-61 and ¶¶ 99-103, the Commission conducted a detailed site plan review and concludes that the second–stage application complies with the intent and purposes of the first stage approval and the Zoning Regulations, including its commitment to provide an opportunity for all households in good standing that reside at Brookland Manor at the commencement of the redevelopment in early 2018 to remain at the property through and following the redevelopment process.
8. The Commission must undertake a “comprehensive public review” of any PUD application “in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits,” and 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.” (X §§ 300.5, 304.3.) A PUD-related zoning map amendment is flexibility against which the Commission must weigh the benefits of the PUD as explained below: (*Id.* § 303.12.)
 - (a) The Commission heard the Application in a public hearing and followed the contested case procedures of the Zoning Regulations. (FF ¶¶ 3-33.) The Commission therefore concludes that it has satisfied the procedural requirements in order to review the Application and evaluate the flexibility and incentives requested against the proposed public benefits;

- (b) The Project warrants the requested relief, modifications to the approved First-Stage Order PUD, flexibility afforded by the Zoning Map amendment in light of the extensive public benefits offered by the Project. The relief, flexibility and modifications are comparatively minor and largely offset by mitigation plans and superior design. Moreover, the benefits of the Project and the First-Stage Order more generally are extensive. The Applicant is in the midst of constructing a new mixed-use, mixed-income, transit-oriented neighborhood, replete with amenities such as the Community Green, and introduction of commercial uses, all while preserving a significant quantity of deeply affordable housing that will be indistinguishable from market rate units. The individual elements of the Applicant's undertaking are benefits to the existing residents and the neighborhood locally; the Applicant's preservation of affordable housing and creation of new housing is a benefit to the District as a whole. The Applicant's additional provision of service, employment, and special use benefits is accretive to the Project's design and programmatic benefits; and
 - (c) The Project and its incentives and benefits must be evaluated also against the special circumstances in this case, which include Brookland Manor resident and Association concerns regarding the availability of units and the displacement of residents. The Commission has found that this Project, by itself, does not create unacceptable concerns regarding the availability of units to meet the need of Brookland Manor residents. At the conclusion of the construction of the Project, there will be more than 800 units available to house Brookland Manor residents. The Commission has also found that the strong support for the Applicant among the community for this Project and the Applicant's good will from decades of laudable service to the Brentwood neighborhood and Brookland Manor residents outweigh the concerns alleged. The Commission recognizes the Applicant's challenge in recreating Brookland Manor into a new mixed-use, mixed-income neighborhood and concludes that the benefits it is providing outweigh any special circumstances before the Commission at this time.
9. Accordingly, the Project's benefits and amenities outweigh the relief, flexibility and modifications requested even in light of the background concerns in the community, which concerns the Commission will reevaluate in future second-stage applications under the First-Stage Order.
10. Nothing in the record leads the Commission to disturb its conclusion from the First-Stage Order regarding the Zoning Map amendment applicable to the Property. ("The Commission finds that rezoning the site is consistent with the Comprehensive Plan. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan."). (Ex. 1F at COL ¶ 10.) Therefore, the Commission concludes that the Zoning Map amendment for the Project is consistent with the Plan.

Consistency with the PUD Process, Zoning Regulations, and Plan

11. Pursuant to the Zoning Regulations, the purposes of the PUD process are “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.” (11-X DCMR § 300.1 (the “PUD Process”).) 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 Project provides public benefits that are commendable both in number and quality. Finally, the Commission has found that the Project will not injure the public health, safety, welfare or convenience, and is not inconsistent with the Comprehensive Plan.
12. 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 two 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.

Great Weight to ANC Reports and OP Recommendations

13. 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. Neither affected ANC submitted a written report in this case, thus there are no issues or concerns. Because the ANCs 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).
14. The Commission is also required to give great weight to the recommendations of OP. D.C. Code § 6-623.04. The Commission has reviewed the OP Setdown Report, the OP Final Report and heard testimony from OP. The Commission gives OP’s recommendation to approve the application great weight, and concurs with OP’s conclusions.

Human Rights Act compliance

15. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

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 second-stage review of a Planned Unit Development and related modification of an approved first-stage PUD for the Subject Property (Square 3953, Lots 1-3). The approval of this PUD is subject to the following guidelines, conditions and standards (“Conditions”).

I. Modifications to conditions in the First-Stage Order.

Condition A.1 of Z.C. Order No. 14-18 is amended to read as follows:

The PUD project shall be developed in accordance with the plans prepared by Perkins Eastman marked as Exhibits 76-76M and supplemented by drawing submitted June 8, 2015 as Exhibit 104A of the record in Z.C. Case No. 14-18, as amended and supplemented by the plans prepared by Torti Gallas Urban, marked as Exhibits 24E1-24E5, 101A1-102A2, and supplemented by drawings submitted on April 10, 2017 as Exhibit 179F1-179F4 of the record in Z.C. Case No. 14-18A (“Approved Plans”).

Condition B.1.a. of Z.C. Order No. 14-18 is amended to read as follows:

- a. If the Section 8 contract remains, the Applicant’s affordable housing obligations shall be as follows:
 - (1) There shall be at least 373 units covered by the Section 8 contract and eleven “inclusionary units” within the meaning of 11 DCMR § 2602;
 - (2) The final location and composition of these units shall be determined by the Applicant no later than the date that the first certificate of occupancy is issued for the final rental building; except that:
 - (i) At least 10% of each multi-family building’s units shall be the Section 8 contract units;
 - (ii) The eleven inclusionary units shall be either Townhouses or Two-Over-Two Units collectively constituting at least 10% of the residential GFA of the Townhouses and Two-Over-Two Units;
 - (iii) Six of the inclusionary units shall be reserved for households earning no more than the 50% of the AMI and five of the inclusionary units shall be reserved for households earning no more than 80% of the AMI; and
 - (iv) The units in the Senior Building shall, as demand dictates, be reserved initially for existing eligible Brookland Manor residents who wish to move to the Senior Building either (x) with a Housing Choice Voucher or (y) who lease a Section 8 contract unit, with the balance (if any) open to other income qualified tenants.

Condition B.2. of Z.C. Order No. 14-18 is amended to read as follows:

B.2. The Applicant shall abide by the terms of the tenant relocation and construction phasing plan as detailed at Exhibits 1G and 179 of the record in case 14-18A. All tenant relocations will occur on the RIA Site. In addition to the information required under the Zoning Regulations and this Order, in connection with any subsequent second stage application arising out of this Order, the Applicant shall provide an update on the allocation of affordable housing units throughout the redevelopment site and the remaining Brookland Manor buildings, as applicable.

II. Conditions of approval of the Application.

A. PROJECT DEVELOPMENT

1. The second-stage PUD project shall be developed in accordance with the plans prepared by Torti Gallas Urban marked as Exhibits 24E1-24E5, 101A1-101A2, and supplemented by drawings submitted on April 10, 2017 as Exhibit 179F1-179F4 of the record (“Approved Plans”), as modified by the guidelines, conditions, and standards herein.
2. The second-stage PUD project consists of: (i) Building A, a four-story apartment building containing approximately 131 mixed-income units with associated ground-floor level amenity space, 68 below-grade vehicular parking spaces, and 54 bicycle parking spaces (44 long-term and seven short-term); and (ii) Building B, a four-story residential building containing approximately 200 seniors-only independent living units with associated ground-floor level amenity space, 48 below-grade vehicular parking spaces, and 32 bicycle parking spaces (22 long-term and 10 short-term). Building A has 169,342 square feet of gross floor area, a maximum height of 49 feet four inches, and an FAR of 2.97. Building B has 172,266 square feet of GFA, a maximum height of 51 feet, and an FAR of 3.0. Block 7 has a total FAR of 2.98 and contains 341,608 square feet of GFA, all of which is devoted to residential uses.
3. Flexibility. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - b. To vary final selection of the exterior materials within the color ranges of the materials types as proposed based on availability at the time of construction;

- c. To vary the final selection of landscaping materials utilized, based on availability and suitability at the time of construction;
- d. To vary the final streetscape design and materials in response to direction received from District public space permitting authorities;
- e. To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings, trim, and outdoor assembly space or any other changes to comply with Construction Codes;
- f. To increase the number of units by up to 10% (except as provided below in Condition B.1.d) and to adjust the location of affordable units to reflect the final unit mix of the Project, provided that the Applicant complies with Condition B.1 of this Order and that the number of permanently affordable residential units in this second-stage PUD application will increase by the same percentage as the number of additional units (while maintaining the overall number of permanently affordable housing units approved in Z.C. Order No. 14-18) and provided further that the allocation of such units does not overly distinguish between market-rate and affordable units in any area of Building A; and
- g. To vary the number of parking spaces plus or minus five percent.

B. PUBLIC BENEFITS

- 1. Housing and Affordable Housing. The Applicant shall include in the second-stage PUD Project 331 residential units. The Applicant shall provide a minimum of 265 units (80% of the total units delivered as part of this phase) that shall be deeply affordable and reserved for occupants eligible to receive Section 8 assistance through the project based contract with HUD or through a DCHA Housing Choice Voucher as described below:
 - a. **For the life of the Project,** the Applicant shall reserve a minimum of 25 units in Building A as permanently affordable units reserved for residents that who will be assisted by the project based and/or HCV Section 8 programs, and will be used to house existing Brookland Manor residents as demand dictates, subject in all instances to Condition B.1 of the First-Stage Order. To the extent the Section 8 and/or HCV are inapplicable to the Project, the Applicant shall instead comply with the applicable requirements of Condition B.1.b or Condition B.1.c of the First-Stage Order;

- b. **For the life of the Project**, the Applicant shall include in Building A no fewer than 18 three-bedroom units, of which no fewer than three units shall be reserved as partial satisfaction of the requirements of Condition B.1.a.;
 - c. A minimum of 40 units shall be initially reserved in Building A as temporary replacement units to house existing Brookland Manor residents as demand dictates, subject in all instances to Condition B.1 of the First-Stage Order;
 - d. The Applicant shall have the flexibility to utilize up to all of the units in Building A (i.e. up to all 131 units contained therein) as affordable housing and to reallocate to other buildings in the RIA development any affordable units provided in Building A, subject to the 25-unit minimum set forth in Condition B.1.a. and the three-unit three-bedroom minimum set forth in Condition B.1.b.;
 - e. The units in Building B shall, as demand dictates, be reserved initially for existing eligible Brookland Manor residents who wish to move to Building B either (x) with a Housing Choice Voucher or (y) who lease a Section 8 contract unit, with the balance (if any) open to other income qualified tenants; and
 - f. In addition to the information required under the Zoning Regulations and the First-Stage Order, **in connection with any subsequent second stage application arising out of the First-Stage Order, the Applicant shall provide** an update on the allocation of affordable housing units throughout the redevelopment site and the remaining Brookland Manor buildings, as applicable.
2. **Employment Benefits:** The Applicant has entered into a First Source Agreement with DOES to promote and encourage the hiring of District residents. **The Applicant shall provide updates in all future second-stage applications** as to the Applicant's satisfaction of the terms of the First Source Agreement associated with approved second-stage PUD applications.

3. Relocation and Construction Management Plans.

- a. The Applicant shall abide by the terms of the tenant relocation and construction phasing plan as detailed at Exhibits 1G and 179¹⁴ of the record in this case. All tenant relocations will occur on the property; and
- b. The Applicant shall abide by the terms of the Construction Management Plan as detailed in Exhibit 179B.

4. Social Services and Facilities:

- a. **For the life of the Project**, the Applicant shall continue to provide programs that are designed for the children and seniors that live in the community. Such programs for children may include a variety of enrichment activities, such as after school care, tutoring, arts and crafts, community gardening, summer camp, meal programs to ensure that no child goes home hungry, girls' self-esteem workshops, reading and math tutoring, school supply drives, holiday gifts and a food pantry for families. Such programs for senior residents may include brown-bag lunches and other events designed to bring Brookland Manor's senior community together; and
- b. **Prior to the issuance of the Certificate of Occupancy for the Project**, the Applicant shall submit a memorandum to the Zoning Administrator, with a simultaneous copy to the Office of Zoning, certifying that the social services required hereunder have been arranged as set forth herein, provided the Applicant shall have the flexibility to reallocate such social services from time to time in accordance with the preferences and demands of the target communities.

5. Building Space for Special Uses:

¹⁴ The relevant portion of Exhibit 179 reads as follows:

1. The Applicant will retain the project based Section 8 Housing Assistance Payment contracts on the property, which provide deep rental assistance to 373 extremely low income families (incomes below 30% of AMI); and
2. All households in good standing that reside at Brookland Manor at the commencement of the redevelopment in early 2018 will be provided the opportunity to remain at the property through and following the redevelopment process.

- a. **For the life of the Project**, the Applicant shall include the Amenity Spaces in each of the two Buildings. Buildings A and B shall each include Amenity Spaces for special uses including, but not limited to, community, educational or social development, promotion of the arts or similar programs; and
 - b. **Prior to the issuance of the final certificate of occupancy for the Project**, the Applicant shall submit a memorandum to the Zoning Administrator, with a simultaneous copy to the Office of Zoning, describing the availability of such space and the guidelines for use by residents and community groups, which availability and guidelines the Applicant shall have the flexibility to amend from time to time in accordance with usage patterns for such space.
6. **LEED-ND Update. Prior to the issuance of the certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with written evidence that the Project advances the First-Stage Order's requirement that the overall area subject to the First-Stage Order is on track to satisfy the requirements of the LEED-ND program at the Silver level. Compliance with the LEED-ND program will be established on the basis of the build-out of the entire PUD area and cannot be accomplished prior to issuance of a Certificate of Occupancy for this phase, but the Applicant shall provide an update on its progress towards satisfaction of such requirement of the First-Stage Order.

C. **TRANSPORTATION MITIGATION**

1. **For the life of the Project**, the Applicant shall provide the following traffic demand management ("TDM") measures:
 - a. The Applicant shall designate a TDM coordinator for each building, who is responsible for organizing and marketing the TDM plan and who will act as a point of contact with DDOT;
 - b. 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, and unbundled from the costs of leasing apartments;
 - c. The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials;
 - d. The Applicant shall supply long-term and short-term bicycle parking at both Building A and Building B;
 - e. The Applicant shall install a Transportation Information Center Display (electronic screen) within each residential lobby (one for

each building) containing information related to local transportation alternatives; and

- f. The Applicant shall dedicate two parking spaces within the garage for car-sharing services to use with right of first refusal.
2. The Applicant shall continue to work with DDOT on the following matters: (i) for each subsequent second-stage PUD submission the Applicant will provide an updated CTR for the specific second-stage application which will also include an updated analysis for the entire first-stage PUD, as appropriate; (ii) further coordination to determine the appropriateness of curb bulb outs, the proposed curbside management, and the exact width dimensions for the Saratoga Street layout for Block 7; and (iii) design of the public realm for Block 7, including utility vault location and treatment, and bike rack locations.

D. MISCELLANEOUS

1. The Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (“DCRA”) shall not issue any building permits for the PUD until the Applicant has recorded a Covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of 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 RA-2 Zone District shall be effective upon the recordation of the covenant discussed in Condition No. D.1.
3. The second-stage PUD approval for the development of Block 7 shall remain valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for the building permit as specified under the Zoning Regulations. Construction of the project shall start within three years from the effective date of this Order.
4. 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 also prohibited by the Act. In addition, harassment based on any of the above protected

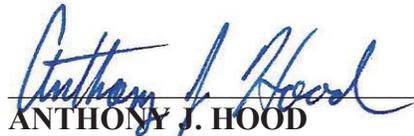
categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On May 22, 3017, upon the motion of Commissioner Shapiro, as seconded by Chairman Hood, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application by a vote of **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 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on April 13, 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