

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-11(1)

Z.C. Case No. 16-11

Park View Community Partners & the District of Columbia
(Consolidated PUD and Related Map Amendment @ Square 2890, Part of Lot 849¹)
November 18, 2021

Order on Remand

The Zoning Commission for the District of Columbia (“Commission”), through the issuance of this Order, responds to the remand instructions of the District of Columbia Court of Appeals (“Court,” “Court of Appeals,” or “DCCA”) as set forth in *Cummins v. D.C. Zoning Comm’n*, 229 A.3d 768 D.C. 2020) (the “Opinion”). (Exhibit [“Ex.”] 253.) The Opinion, filed June 25, 2020, vacated and remanded Z.C. Order No. 16-11 (“Order 16-11”) (“Remanded Order”). (Ex. 251.)

The Remanded Order granted the application of Park View Community Partners and the District of Columbia (“Applicant”) for a consolidated planned unit development and a related Zoning Map Amendment (“Application,” “PUD,” “Bruce Monroe PUD”, or “Project”) for Part of Lot 849 in Square 2890 (“PUD Site” or “Site”). The Application was heard and decided pursuant to 1958 Zoning Regulations that were repealed as of September 6, 2016, and replaced with new text divided by subtitles. Existing Zoning Map designations were also renamed as of that date. Nevertheless, because this Application was filed prior to the repeal date, it remains subject to the substantive requirements applicable to it as of September 5, 2016.

The remand proceeding was conducted pursuant to the Commission’s current rules of procedure set forth in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (“DCMR”). Except for citations to Subtitle Z, all references to DCMR Title 11 refer to the text of that title in effect as of September 5, 2016.

The parties to the original proceeding, and therefore to this remand, were the Applicant, Advisory Neighborhood Commission (“ANC”) 1A, ANC 1B, the Park Morton Resident Council (“PMRC”), the resident council for the individuals currently living at the Park Morton public housing site, and the Bruce Monroe Park Neighbors (“BMPN”).²

On November 18, 2021, the Commission concluded its deliberations of the remanded issues by voting once again to grant the Application.

¹ Lot 849 was subsequently subdivided into Lots 119 and 120. This subdivision does not impact the merits of the Application.

² BMPN is also known as The Park Neighbors, a group of owner-residents located within 200 feet.

I. PRELIMINARY MATTERS.

A. THE COURT OF APPEALS OPINION AND THE REMAND ISSUES AS IDENTIFIED BY THE COURT.

The Opinion listed a number of deficiencies with the Remanded Order. The Opinion vacated and remanded the case to the Commission for further proceedings consistent with the Opinion, and concluded by listing a number of issues that the Commission was to address in its consideration of the case. What follows in this section is a discussion of those deficiencies, along with a listing of the issues the Court ordered the Commission to consider in this proceeding.

The Court of Appeals expressed considerable skepticism related to what it characterized as the Remanded Order's lack of acknowledgement that the PUD would have adverse effects or would be in any way contrary to any policy goal of the Comprehensive Plan ("CP" or "Comp Plan"). (Opinion at 17.)

The Court cited one example as placing the 90 Foot Apartment Building across the street from two-story row homes. (Opinion at 17.) The Court suggested that this "was clearly in tension with the policy reflected in 10-A DCMR § 309.10 (2020) ("Carefully manage the development of vacant land and the alteration of existing structures in and adjacent to single family neighborhoods in order to protect low density character, preserve open space, and maintain neighborhood scale.")

The Opinion concluded that the 90 Foot Apartment Building would protrude into a Neighborhood Conservation Area on the Generalized Policy Map ("GPM"). It stated that this is another potential inconsistency because the GPM states that new development in Neighborhood Conservation Areas "should be compatible with the existing scale and architectural character of each area." (10-A DCMR § 223.5 (2020).) The Opinion stated that the Remanded Order, "did not acknowledge that a substantial part of the [90 Foot Apartment Building] would be in a Neighborhood Conservation Area, nor did the Commission analyze the consequences of the fact." (Opinion at 18-19.)

The Opinion called out an error in the Remanded Order. The Remanded Order stated that the areas adjacent to the western portion of the site are designated on the Future Land Use Map ("FLUM") as medium-density residential, when in fact they are designated as moderate-density residential on the FLUM. (Opinion at 20.) The Opinion went on to explain that this is an important error because the two designations are significantly different. (*Compare, e.g.*, 10-A DCMR § 225.4 (2020) (moderate-density-residential designation is used to "define the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, 2-4-unit buildings, row houses, and low-rise apartment buildings."), *with e.g.*, 10-A DCMR § 225.5 (2020) (medium-density residential designation "is used to define neighborhoods or areas where mid-rise (4-7 stor[y] apartment buildings are the predominant use").) (Opinion at 21.)

The Opinion stated that the Remanded Order found that the 60 Foot Senior Building "mimics many other apartment houses that have been built as infill developments in the area." The Opinion stated that was not supported by evidence in the record. (Opinion at 23.) The Opinion took issue with the characterization of other apartment buildings on Georgia Avenue as evidence of the veracity of this statement, because those buildings are not directly adjacent to a moderate-density

residential area. (Opinion at 23.) The Opinion also took issue with this statement because of the use of the word “infill” elsewhere in the Comprehensive Plan, citing a statement that infill development should be “compatible in scale with its surroundings;” “infill development must be sensitive to the neighborhood context [D]ensity and scale should reflect the desired character of the surrounding area.” (10-A DCMR §§ 307.2, 307.3 (2020).)

The Opinion stated that it was error for the Commission to conclude that the 90 Foot Apartment Building and 60 Foot Senior Building were consistent with the moderate-density commercial FLUM designation of areas bordering the PUD Site, because of the provision in the Comprehensive Plan that states that the zoning districts that correspond to the moderate-density commercial designation include the C-2-B Zone District, and the C-2-B Zone district permits a building as tall as 90 feet. (10-A DCMR § 225.9 (2020); Opinion at 25-26.) The Court explained that there was an internal inconsistency in this provision, because it also states that buildings in areas designated as moderate-density commercial “generally do not exceed five stories in height.” (10-A DCMR § 225.9 (2020); Opinion at 25-26.) The Court therefore concluded that the Commission had an obligation to explain why it was found that the 90 feet high provision controlled over the five stories high provision and erred by not doing so in the Remanded Order.

The Opinion concluded its analysis by stating that the Court believed the remand was necessary so the Commission could consider the adverse impacts of the PUD and potential Comprehensive Plan inconsistencies and “recognize these conflicting policies and explain why they are outweighed by other competing considerations.” (Opinion at 27-29.)

Finally, the Opinion directed the Commission to do the following in its consideration of the case:

- 1) Take into account that the 90-Foot Apartment Building protrudes into a Neighborhood Conservation Area;
- 2) Take into account that the areas adjacent to the western portion of the PUD are designated moderate-density residential, not medium-density residential³;
- 3) Take into account that the 90-Foot Apartment Building and the 60-Foot Senior Building are not generally consistent with, respectively, the medium-density-commercial⁴ and moderate-density-residential designations in the FLUM;

³ The Remanded Order incorrectly stated that the areas adjacent to the western portion of the PUD were designated Medium-Density Residential on the FLUM when in fact the areas are designated moderate-density residential.

⁴ As explained below, the Commission believes the Opinion reference to the “Medium-Density Commercial” designation in the list is likely a scrivener’s error in the Opinion. The relevant designations on the FLUM for the areas bordering the PUD are “Moderate-Density Commercial” and “Medium-Density Residential.” The PUD Site borders an area on the FLUM striped as “Mixed Use Moderate-Density Commercial/Medium-Density Residential”. The project site does not border any “Medium-Density Commercial” areas on the FLUM. The text of the Opinion related to this issue initially discusses the Project’s consistency with the Moderate-Density Commercial designation, which is the correct designation for the area bordering the PUD Site; and then the Opinion makes a final reference to the Medium-Density Commercial designation, which is not the correct designation for the area bordering the PUD Site at the conclusion. (See Opinion at 24-28.)

- 4) Either identify record support for the statement that the senior building “mimics many other apartment houses that have been built as infill developments in the area” or forgo reliance on that consideration;
- 5) Independently analyze and discuss whether the PUD is inconsistent with specific policies, or would have adverse effects, timely identified before the Commission;
- 6) Determine whether, in light of the Commission’s conclusions on these issues, the Commission should grant or deny approval of the PUD; and
- 7) Explain the Commission’s reasoning in granting or denying approval.

(Opinion at 29-30.)

B. THE COMMISSION’S ACTIONS FOLLOWING ITS RECEIPT OF THE OPINION, THE COMMISSION’S PROCEDURAL ORDERS, AND THE PARTIES’ SUBMISSIONS IN RESPONSE.

The Commission heard and decided this remand in accordance with Chapter 9, Remand Procedures, of its Rules of Practice and Procedure, set forth in Title 11-Z DCMR.

In accordance with Subtitle Z § 901.1, the Office of the Attorney General (“OAG”) provided the Commission with a memorandum, after which the Commission met “to determine whether it should request the parties to submit briefs, provide additional oral or documentary evidence, present oral argument, or to augment the record by other means.” (11-Z DCMR § 901.2.)

At its public meeting held June 29, 2020, the Commission acknowledged that the Court had vacated the Remanded Order and remanded it to the Commission to reconsider the record of Z.C. Case No. 16-11, and decided by consensus to request that the parties submit written responses to the specific issues listed in the Court’s Opinion. (June 29, 2020 Transcript [“Tr.”] at pp. 6-13.)

On June 29, 2020, the Commission issued a procedural order (“First Procedural Order”) requesting that the parties submit written responses to the seven issues listed in the Remanded Order by July 31, 2020, so the Commission could consider them when responding to the Remanded Order. (Ex. 254.) On June 30, 2020, the Office of Zoning (“OZ”) served copies of the First Procedural Order, by email, to: (Ex. 255)

- The Applicant;
- ANC 1A;
- ANC 1B;
- OAG;
- PMRC; and
- BMPN.

On July 3, 2020, OZ resent a copy of the first procedural order, by email, to PMRC. (Ex. 255A)

In response to the First Procedural Order, the Commission received the following submissions from the parties:

- On July 12, 2020, ANC 1A provided a response; (Ex. 256)
- On July 27, ANC1B provided a response; (Ex. 257)
- On July 28, 2020, PMRC requested more time to respond and requested a public hearing;⁵ (Ex. 258)
- The Commission granted PMRC’s motion for more time to respond, giving all parties until August 6, 2020, to respond to the First Procedural Order, and stating that it would consider the request for a hearing when it deliberated on the responses at a public meeting; (Ex. 259A)
- On July 30, 2020, ANC 1B submitted a corrected resolution and response to the First Procedural Order; (Ex. 260, 261)
- On August 6, 2020, the Applicant submitted its response to the First Procedural Order; (Ex. 262)
- On August 6, 2020, the BMPN submitted its response to the First Procedural Order; and (Ex. 263)
- On August 6, 2020, the PMRC submitted its response to the First Procedural Order. (Ex. 264)

At a properly noticed meeting held on July 26, 2021, the Commission considered the responses from the parties.

The Commission discussed whether the Project was consistent with the Comprehensive Plan that was in effect at the time it made its original decision and issued the Remanded Order, and concluded generally that it was. The Commission noted that in the interim between the Court’s Opinion and its original decision, the District had amended the Comprehensive Plan in ways that could impact the Commission’s deliberations on the Remanded Order.⁶ The Commission decided to hold a limited scope hearing⁷ to develop the record on how the issues regarding the proposed PUD that were raised in the Court’s Opinion should be evaluated under the updated

⁵ After PMRC filed their motion, BMPN filed a “response in support” of the motion, which also requested that the Commission grant more time to all parties and to hold a public hearing. (Ex. 259) The Commission denied this motion as moot given it had granted more time to all parties and deferred the decision on whether to hold a hearing in granting the motion filed by PMRC. (Ex. 259A.)

⁶ The D.C. Council adopted two sets of amendments to the Comprehensive Plan. The Comprehensive Amendment Act of 2017 amended the framework element, and was effective August 27, 2020, as D.C. Law 23-217. The Comprehensive Plan Amendment Act of 2020 amended the text of the Comprehensive Plan and its Future Land Use Map, and was effective on August 21, 2021, as D.C. Law 24-20.

⁷ The Commission decided to allow the public to testify about the new issues raised by the Comprehensive Plan revisions because these were new issues that were being raised for the first time. Ordinarily, the scope of testimony at any remand proceedings would be limited to witnesses called by the parties. (See 11-Z DCMR § 901.6. (“Testimony at any further hearing shall be limited to witnesses called by the parties unless the procedural order states otherwise.”))

Comprehensive Plan. The Commission therefore requested that the parties and the Office of Planning (“OP”) submit written statements analyzing the proposed PUD under the updated Comprehensive Plan, particularly with regard to the issues raised in the Court’s Opinion. (“Limited Scope Hearing Notice” or “Second Procedural Order,” Ex. 266.) On August 10, 2021, OZ sent Notice of Limited Scope Virtual Public Hearing, by email or first-class mail to the following: (Ex. 267.)

- The Applicant;
- ANC 1A;
- ANC 1B;
- ANC Commissioner 1A10, whose District includes the Project;
- The Office of the ANCs;
- The Councilmember for Ward 1, whose ward includes the Project;
- OP;
- The Department of Energy and Environment (“DOEE”);
- The District Department of Transportation (“DDOT”);
- The Department of Consumer and Regulatory Affairs (“DCRA”);
- The Office of the Attorney General (“OAG”);
- The Chair and At-Large Members of the Council of the District of Columbia; and
- The owners of property within 200 feet of the Property.

On August 13, 2021, OZ sent Notice of Limited Scope Virtual Public Hearing, by email, to PMRC and BMPN. (Ex. 267A.)

On September 7, 2021, OZ resent Notice of Limited Scope Virtual Public Hearing, by email, to BMPN. (Ex. 267B.)

OZ also published notice of the October 19, 2021 public hearing, in the August 13, 2021 *D.C. Register* as well as on the calendar of the OZ website. (Ex. 265.)

In response to the Second Procedural Order, the Commission received the following submissions from the parties and government agencies:

- PMRC filed a motion requesting to have until October 11, 2021, to file its written response, and to have an hour to make its presentation at the hearing. (Ex. 269.) The Commission granted the motion for more time to all parties to file written responses, and stated that the time for hearing presentations would be as provided in the Zoning Regulations;
- The District of Columbia Housing Authority (“DCHA”) submitted a letter in support; (Ex. 270.)
- ANC 1A submitted a report; (Ex. 271.)
- The BMPN submitted a response; (Ex. 272, 299.)

- OP submitted a supplemental report and a correction to its supplemental report; (Ex. 273, 318.)
- The Applicant submitted a statement; (Ex. 274.)
- The PMRC submitted two statements; (Ex. 272A, 275.)
- ANC1B submitted a report; (Ex. 276.)
- The D.C. Councilmember for Ward 1 submitted a letter in support; (Ex. 345.)
- The District of Columbia Department of Housing and Community Development (“DHCD”) submitted a letter in support; and (Ex. 357.)
- The District of Columbia Office of the Deputy Mayor for Planning and Economic Development (“DMPED”) submitted a letter in support. (Ex. 361.)

In addition to the submissions by the parties, the Commission received a large number of written submissions from non-parties, i.e., the public.

The Commission held a Limited Scope Hearing on October 19, 2021, that was limited to the issue of the Project’s consistency with the Comprehensive Plan as it was recently amended.

At the Limited Scope Hearing, the Commission heard testimony from the parties and the public.

At the conclusion of the Limited Scope Hearing, the Commission closed the record except to allow PMRC to submit its “racial equity tool” consistent with the Comprehensive Plan policies referenced during its hearing testimony, and the Commission also requested that PMRC submit a copy of Park Morton Equity Plan (“PMEP”), that it referred to in its submissions prior to the Limited Scope Hearing (Ex. 264, 272A, 275.) and in its hearing testimony, and to allow any of the parties to respond to the submission:

- PMRC submitted its “racial equity tool;” (Ex. 363, 363A, a resubmission of PMRC’s initial response at Ex. 264 including the PMEPE.)
- ANC 1A submitted a response; (Ex. 363B.)
- The Applicant submitted a response; and (Ex. 364.)
- BMPN submitted a response. (Ex. 365.)

At its public meeting on November 18, 2021, the Commission considered the entire record of the case in its deliberations of the remanded issues and voted to again grant the Application.

C. THE COMMISSION’S RESPONSES TO THE PROCEDURAL OBJECTIONS RAISED BY BMPN AND PMRC, INCLUDING THE COMMISSION’S DECISION

TO LIMIT THE SCOPE OF THE REMAND PROCEEDINGS AND TO RELY ON THE EXISTING RECORD⁸.

BMPN and PMRC raised several objections to the process the Commission used to respond to the DCCA's Opinion.

First, the BMPN claimed it was not provided notice of the Commission's June 29, 2020 meeting when it decided to issue the First Procedural Order requesting responses from the parties, nor was it provided with the First Procedural Order.

The Commission did not find these objections persuasive. There is no requirement that the Commission provide notice of a meeting when a decision to issue a procedural order is made. The Commission sent the First Procedural Order to the email address provided by BMPN for purposes of receiving communications regarding this case. (Ex. 255.)

Second, BMPN and PMRC claimed the First Procedural Order's deadline of July 31, 2020, did not give them sufficient time to respond.

The Commission does not find this objection persuasive. The required responses were limited to the issues raised in the DCCA Opinion. The parties had ample time to consider the issues because they were raised in the appeal of the Commission's original decision approving the Application. The Commission granted the parties additional time to respond to the First Procedural Order and allowed even further responses after the stated deadline.

Third, BMPN objected asserting that the Commission proceeded prematurely because it issued the First Procedural Order before DCCA issued its official mandate remanding the case to the Commission.

The Commission acknowledges that BMPN is correct that the Commission issued its First Procedural Order before DCCA issued its mandate remanding the case in violation of the applicable procedural rule. (11-Z DCMR § 901.1.)

However, the Commission believes this was a harmless error because the Commission received DCCA's Opinion before it issued the First Procedural Order, considered it carefully, and the DCCA Opinion did not change before the mandate was issued.

Fourth, BMPN objected claiming there was no evidence in the case record of the OAG memorandum required by 11-Z DCMR § 901.1.

The Commission did not find this objection persuasive because this rule does not require the Commission to put the OAG memorandum in the public record. The Commission confirms that it received the memorandum in accordance with the rule, but it chose to keep the confidential attorney-client communication out of the public record.

⁸ The Commission made an exception for new evidence related to the PUD's compliance with the amendments to the Comprehensive Plan that took effect after it issued the Remanded Order.

Fifth, PMRC claimed the Commission must also reconsider its decision in Z.C. Case No. 16-12 when deciding this case, because it concerned the redevelopment of the Park Morton public housing site, and the two projects are related.

The Commission agrees with PMRC that this case and Z.C. Case No. 16-12 were intended to proceed in tandem, with this Project serving as the “build first” site that would allow redevelopment of Park Morton without displacing the residents from their neighborhood. Because this case was delayed by the appeal process and the Park Morton development proceeded, this Project could no longer serve as the “build first” site as it was intended.

However, the Commission decided the Park Morton case and this case in 2017, and the Park Morton case was not appealed. It is final and effective. The Commission therefore has no basis to revisit its decision in the Park Morton case.

Finally, BMPN asserted that the Commission could not rely on the existing case record to decide the remand. BMPN further asserted that because OP had not provided adequate reports from other government agencies prior to the original hearing, the record was incomplete with respect to alleged potential adverse effects of the Project, and the Commission had an obligation to re-open the record on this issue and compel District agencies to provide further information.

The Commission concludes that while the Opinion vacated the Remanded Order, it directed the Commission to take a list of steps to respond, and this list did not include re-opening the record to any issue that the parties may wish to raise. To the contrary, the Opinion assumed the Commission would rely on the existing case record to arrive at the conclusions the Opinion directs the Commission to make in response to its directives.

With respect to the issue of whether the existing record was flawed because of the inadequacy of government reports, the Commission concludes that this should not be revisited for several reasons.

First, the Opinion states that this issue was forfeited in the original proceeding, and therefore does not require the Commission to revisit this issue on remand. (Opinion at 31.)

Second, the Commission acknowledges that while the OP hearing report was technically deficient in some respects, the Commission believes that OP nonetheless did an adequate job of seeking relevant government agency reports regarding the potential adverse effects of the PUD under the circumstances. OP’s report stated that it sought input from many District agencies, but that no agency provided input to OP before it submitted its hearing report. DDOT submitted a separate report that the Commission considered. After the original December 2016 hearings, reports from DOEE, DC Water, FEMS, and DHCD were submitted into the record by the Applicant. None of these reports raised any objections to the Project.

Third, the Project itself is unchanged from what was originally approved.

Last, the parties should be entitled to a sense of finality, and it would be unfair to the Applicant to force it to revisit issues that were settled several years ago.

II. FINDINGS OF FACT

A. BACKGROUND

1. Application

- (1) On May 13, 2016, the Applicant filed its Application with the Commission for review and approval of the Bruce Monroe PUD. This Application is the subject of this remand.
- (2) Concurrent with filing the subject Application, the Applicant and DCHA together filed applications for a PUD and related Zoning Map amendment for the Park Morton public housing site, located at Lots 124-126 and 844 in Square 3040, Lots 128-134 and 846 in Square 3039, and Lots 18-20 in Square 3043. (“Park Morton,” “Park Morton site,” or “Park Morton public housing site”). This was assigned Z.C. Case No. 16-12, decided separately from this Application, and is not the subject of this remand.

2. Parties, Original Approval, and Remanded Order

- (3) The Applicant is Park View Community Partners⁹ and the District of Columbia.
- (4) The PUD Site is located within the boundaries of ANC 1A, which was automatically a party.
- (5) The PUD Site is adjacent to the boundary of ANC 1B, which was also automatically a party.
- (6) The Commission held a properly noticed public hearing on the application on December 5, 2016, which was continued on December 8, 2016. (Ex. 22, 23, 27.)
- (7) On November 21, 2016, PMRC, the resident council for the individuals currently living at the Park Morton public housing site, submitted a request for party status in support of the application. (Ex. 37-38.) The Commission granted party status to PMRC at the public hearing on December 5, 2016. PMRC stated that the redevelopment of Park Morton is long overdue, is necessary to improve the living conditions and long-term opportunities for existing Park Morton residents, and that redevelopment of the PUD Site is the way forward in order to make the redevelopment of Park Morton a reality. (Ex. 38, p. 1.) PMRC asserted that its residents need quality housing that is clean, safe, and a place to call home, and indicated that because the Project provides housing opportunities for both low- and moderate-income earners, it will ensure that existing Park Morton residents and others in the community will have an opportunity to live in a place that they can afford. (*Id.*)

⁹ The Park View Community Partners development team consists of The Community Builders and Dantes Partners.

- (8) On November 14, 2016, BMPN, a group of owner-residents located within 200 feet of the PUD Site, submitted a request for party status in opposition to the applications. (Ex. 36.) The Commission granted party status to BMPN at the public hearing on December 5, 2016.
- (9) On November 21, 2016, the Georgia Avenue Corridor Neighbors (“GAN”), a group of individuals that “live and work and play along the Georgia Avenue corridor” also submitted a request for party status in opposition to the applications. (Ex. 39.) The Commission denied party status for GAN at the public hearing on December 5, 2016, because there was no evidence in the record indicating that GAN was more uniquely affected by the Project than others in the surrounding neighborhood.
- (10) At its public meeting on January 30, 2017, the Commission took proposed action on the Application.
- (11) At its public meeting on March 13, 2017, the Commission took final action on the Application.
- (12) The Commission’s final order approving the application, Z.C. Order No. 16-11, was published in the *DC Register* on May 5, 2017. (Ex. 251.) Z.C. Order No. 16-11 was subsequently appealed to the DCCA.
- (13) The Opinion in the resulting DCCA case, *Cummins v. D.C. Zoning Comm’n*, 229 A.3d 768 D.C. 2020), was filed on June 25, 2020, and vacated and remanded Z.C. Order No. 16-11. (Ex. 253.)

3. The Property

- (14) The PUD Site has a land area of approximately 77,531 square feet and is bounded by Irving Street, N.W. to the north, Georgia Avenue, N.W. to the east, Columbia Road, N.W., and the southern portion of Lot 849¹⁰ to the south, and private property to the west.
- (15) The PUD Site is presently improved with a temporary park. The Applicant proposes to replace the existing facilities with the Project, a new mixed-income development that includes an apartment house, a senior building, and eight townhomes. Approximately 44,000 square feet of the temporary park will remain and not be developed as a part of this PUD, but instead will be developed by the District for park and recreation uses.

¹⁰ The Applicant testified that it had subdivided the lot, that the new lot containing the Project had been assigned a new number, and that the subdivision would have no effect on the Project. (October 19, 2021 Tr. at 162.) The BMPN submitted a Surveyor’s Plat showing that the new lot containing the Project was assigned lot number 119, and the future park site was assigned lot number 120. (Ex. 301.)

- (16) The PUD Site is surrounded by a variety of uses, including retail, service, and dining opportunities along Georgia Avenue; a variety of elementary, middle, and high schools; Howard University; and dense residential urban development that includes townhomes, low-rise multi-family buildings, and medium-density apartment homes.
- (17) The PUD Site is also well served by public transportation: the Columbia Heights Metrorail station is located approximately 0.5 miles to the west of the PUD Site, the Petworth Metrorail station is located approximately 0.5 mile to the north of the PUD Site, and there are a variety of Metrobus routes running along the surrounding corridors.
- (18) The PUD Site is located within a diverse mosaic of neighborhoods with strong identities and rich historic fabric. The PUD Site is also located adjacent to the dynamic Georgia Avenue corridor, which is one of the most rapidly changing areas of the city, but still includes significant pockets of concentrated poverty where residents lack quality housing, supportive services, and access to quality open space, healthcare, and recreation. (See Park Morton Plan, p. 6.)
- (19) The Park Morton Plan is a plan developed by DMPED and DCHA that seeks to create a healthy, mixed-income community with integrated services that offer families better housing, employment, and educational opportunities. The Park Morton Plan protects affordable housing, improves economic integration, engages residents in community decision making, decreases crime through proven crime reduction strategies, and creates opportunity through better jobs, education, training, human services, and other programs. (*Id.* at 2.)
- (20) The Project will serve as “off-site” replacement public housing for the Park Morton public housing site, in order to meet the Guiding Principles of the New Communities Initiative (NCI) and the Park Morton Plan. DMPED’s New Communities Initiative (NCI) has as a goal, the revitalization and redevelopment of areas developed solely as public housing through the development of mixed income and mixed-use communities into which the existing residents would be integrated.
- (21) As part of the District’s Great Street Initiative, the vision for the Georgia Avenue corridor is a revitalized, pedestrian friendly corridor anchored by mixed-use development at key sites. This vision for Georgia Avenue was conceived through the Georgia Avenue-Petworth Metro Station Area Plan, which was completed in 2004. A number of planned and under-construction private developments are leading to the revitalization of the broader neighborhood, and several public investments are being made on the Georgia Avenue corridor. (*Id.* at 7.)
- (22) The Georgia Avenue-Petworth Metro Station Area Plan provides a framework to guide growth and development on Georgia Avenue while preserving and enhancing the quality of life in the community. To ensure that neighborhood and city-wide

concerns were balanced, the Plan is designed to leverage the public investment of the Georgia Avenue-Petworth Metro Station and employ transit-oriented development principles; balance growth and development by identifying and guiding opportunities for redevelopment; identify strategies to encourage a better mix of uses, including quality neighborhood-serving retail and housing; maintain and enhance neighborhood character; and prioritize when and where public investment should occur. (See Overview of Georgia Avenue-Petworth Metro Station Area Plan at OP's website, available at <http://planning.dc.gov/page/georgia-avenue-petworth-metro-station-and-corridor-plan-ward-1-and-ward-4>.)

4. Existing and proposed zoning and the Project's consistency with the proposed zoning pursuant to the PUD-related map amendment

- (23) At the time of filing the application, the eastern portion of the PUD Site along Georgia Avenue was zoned C-2-A and the western portion of the PUD Site was zoned R-4.
- (24) As a matter of right, property in the C-2-A Zone District can be developed to a maximum building height of 50 feet, a maximum density of 2.5 FAR, and a maximum lot occupancy of 60%. (11 DCMR §§ 770.1, 771.2, 772.1.)¹¹ As a matter of right, property in the R-4 Zone District can be developed to a maximum building height of 40 feet and three stories. (11 DCMR § 400.1.) The maximum lot area and width for a row dwelling or flat in the R-4 Zone District is 1,800 square feet and 18 feet, respectively. (11 DCMR § 401.3.)
- (25) The Applicant requested a Zoning Map amendment to rezone the eastern portion of the PUD Site from the C-2-A Zone District to the C-2-B Zone District, and to rezone the western portion of the PUD Site from the R-4 Zone District to the R-5-B Zone District.
- (26) The 90 Foot Apartment Building will be located on the portion of the Site for which the Applicant requested a PUD-related rezoning to the C-2-B Zone District.
- (27) The C-2-B Zone District is designated to serve commercial and residential functions similar to the C-2-A Zone District, but with high-density residential and mixed uses. (11 DCMR § 720.6.) The C-2-B Zone Districts shall be compact and located on arterial streets, in uptown centers, and at rapid transit stops. (11 DCMR § 720.7.) In the C-2-B District, building use may be entirely residential or a mixture of commercial and residential uses. (11 DCMR § 720.8.)
- (28) The C-2-B Zone District permits, as a matter of right, a maximum building height of 65 feet, a maximum density of 3.5 FAR, and a maximum lot occupancy of 80%.

¹¹ As stated above, this Application is subject to the substantive Zoning Regulations in effect when the Application was filed, which are the 1958 Zoning Regulations. These regulations are archived at <https://dcregs.dc.gov/>.

(11 DCMR §§ 770.1, 771.2 and 772.1.) For projects subject to the Inclusionary Zoning (“IZ”) regulations, a maximum height of 70 feet and a maximum density of 4.2 FAR is permitted. (11 DCMR § 2604.1.) For a PUD in the C-2-B Zone District, a maximum building height of 90 feet and a maximum density of 6.0 FAR is permitted. (11 DCMR §§ 2405.1, 2405.2.)

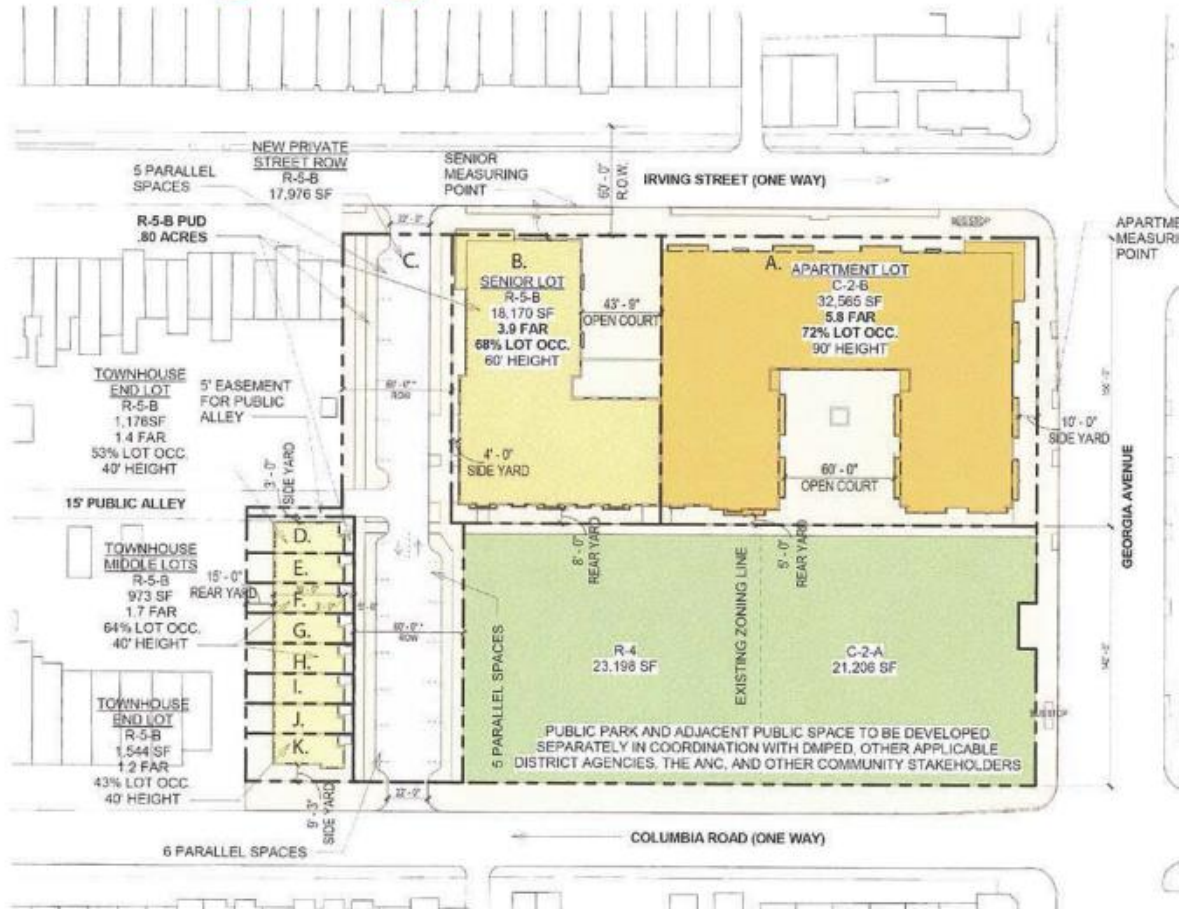
- (29) The Applicant proposes to construct the 90 Foot Apartment Building to a height of 90 feet and with a density of 5.9 FAR, which are consistent with a PUD in the C-2-B Zone District.
- (30) The 60 Foot Senior Building and townhomes will be constructed on the portion of the Site for which the Applicant has requested a PUD-related rezoning to the R-5-B Zone District.
- (31) The R-5-B Zone District permits, as a matter of right, a maximum building height of 50 feet with no limit on the number of stories, a maximum density of 1.8 FAR, and a maximum lot occupancy of 60%. (11 DCMR §§ 400.1, 402.4, 403.2.) For projects subject to the IZ regulations, a maximum density of 2.16 FAR is permitted. (11 DCMR § 2604.1.) For a PUD in the R-5-B Zone District, a maximum building height of 60 feet and a maximum density of 3.0 FAR is permitted. (11 DCMR §§ 2405.1, 2405.2.)
- (32) The Applicant proposes to construct townhomes to a maximum height of 40 feet and 1.7 FAR, which is consistent with a PUD in the R-5-B District. The Applicant proposed a Senior building with a height of 60 feet which is also consistent with the R-5-B District given that this is a PUD. The 60 Foot Senior Building would have a 3.9 FAR which exceeds the limits for the R-5-B District. However, when one considers the proposed FAR for the entire portion of the PUD Site that would be rezoned R-5-B, the resulting FAR is 1.9, which is significantly less than the maximum density of 3.0 FAR, which is permitted for a PUD in the R-5-B District.

B. THE PROPOSED PROJECT

- (33) The Applicant stated that it was making no changes to the Project that was originally approved by the Commission through the Remanded Order. (October 19, 2021 Tr. at 51.)
- (34) The Project will establish a mixed-income community with diverse housing options. The Project will include a total of approximately 273 residential units, with approximately 189 units in the apartment house, approximately 76 units in the senior building, and eight townhomes. Ninety units will be public housing replacement units, 109-113 units will be workforce affordable units, and 70-74 units will be market rate.
- (35) The Project will also include approximately 4,545 square feet of community service/retail space in the apartment building with frontage on Georgia Avenue.

- (36) The site plan is shown below. The 90-Foot-Tall Apartment Building is shown in orange in the upper right corner. The 60-Foot-Tall Senior Building is designated as “B. Senior Lot” in the upper left corner. The townhomes are in the lower left corner, designated as “D through K”.

Zoning Diagram



(Ex. 234, p. 3.)

- (37) The overall PUD Site will be developed with approximately 275,747 square feet of gross floor area with a density of 3.6 floor area ratio (“FAR”).
- (38) The 90 Foot Apartment Building will contain approximately 191,333 square feet of gross floor area and a maximum height of 90 feet.
- (39) The 60 Foot Senior Building will contain approximately 70,817 square feet of gross floor area and a maximum height of 60 feet.

- (40) Each townhome will contain approximately 1,685 square feet of gross floor area and a maximum height of 40 feet.
- (41) The total lot occupancy for the PUD Site will be approximately 53%.
- (42) Ninety-nine on-site parking spaces will be provided in a parking garage below the 90 Foot Apartment Building and 60 Foot Senior Building. Sixteen surface parking spaces will be provided on a new 22-foot-wide private street that will be created as part of the PUD, connecting Columbia Road to Irving Street. The new street will enhance circulation through and to the PUD Site, decrease traffic congestion in the surrounding neighborhood, and significantly improve the experience for pedestrians and bicyclists. Loading facilities for the 90 Foot Apartment Building and 60 Foot Senior Building will also be accessed from the new private street.
- (43) On November 4, 2016, the Applicant filed its Transportation Impact Study. (Ex. 33.) On November 15, 2016, the Applicant filed its supplemental prehearing submission. (Ex. 34-35.) The supplemental prehearing submission included: (i) revised architectural plans and elevations, and (ii) an analysis describing how the Project is not inconsistent with the Comprehensive Plan's designation for the PUD Site as a Local Public Facility.
- (44) On January 10, 2017, the Applicant filed its post-hearing submission, which included the following materials and information requested by the Commission at the public hearing on December 5, 2016: (i) updated architectural plans and elevations responding to comments raised at the public hearing; (ii) details and confirmation on development of the adjacent park and maintenance of the private street; (iii) updates regarding the residential use of the PUD Site; (iv) summary of the Applicant's discussions with BMPN following the public hearing; (v) confirmation of the Applicant's employment proffer; (vi) additional information regarding the Applicant's request for flexibility to provide compact parking spaces on the PUD Site; (vii) a commitment to withdraw the market-rate units from residential parking permit ("RPP") eligibility; and (viii) copies of approval letters from the District DHCD, DOEE, the District Fire and EMS Department ("FEMS") and DC Water. (Ex. 237-237H.)
- (45) At the public meeting of January 30, 2017, the Commission reviewed the additional materials submitted to the record and took proposed action to approve the applications. The Commission considered the letter submitted by the ANC 1A Chairman, and as described more fully below, agreed with his contention that the Commission should reject the proposed restriction on RPP-eligibility for the market-rate units. The Commission requested revised drawings showing views into and out of the courtyard and building elevations.
- (46) On February 16, 2017, the Applicant submitted updated drawings responding the requests made by the Commission when it took proposed action. (Ex. 245-246.)

- (47) A tabulation of the PUD’s development data is included on Sheets G11-G13 of the Architectural Plans and Elevations dated January 10, 2017 (the “Plans”). (Ex. 237A.)
- (48) The extensive amount of public and affordable housing proposed to be developed on the PUD Site is significantly greater than the requirements under the IZ Regulations, Chapter 26 of the 1958 Zoning Regulations. The public and affordable housing will be provided as set forth below:

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	275,747 sf of GFA (100%)	273			Rental
Market Rate	71,694 sf of GFA (26%)	70-74	Market Rate	NA	Rental
Public Housing Replacement Units	90,997 sf of GFA (33%)	90	HUD Requirements / LIHTC Rules	Life of the Project	Rental
Affordable Housing	113,056 sf of GFA (41%)	109-113	Up to 60% AMI	Life of the Project	Rental

- (49) The Project will serve as “off-site” replacement public housing for the Park Morton public housing site, in order to meet the Guiding Principles of the New Communities Initiative and the Park Morton Plan. Twenty-seven replacement public housing units have already been built for Park Morton residents at The Avenue, located at 3506 Georgia Avenue, N.W., which delivered in 2012. The Project will provide an additional 90 replacement public housing units. The remaining 57 replacement public housing units will be reconstructed at Park Morton. Development of the PUD Site and Park Morton will be implemented by the same master development team.
- (50) The 90 Foot Apartment Building and the 60 Foot Senior Building will each have a private courtyard for use by building residents. The apartment building’s courtyard will be bounded on three sides by the building itself, and will be open on the fourth side to adjacent property that will be developed as a park. The senior building’s courtyard will be bounded on two sides by the building, on one side by the apartment building, and on the fourth side by Irving Street to the north. Both courtyards will be extensively landscaped. The townhomes will each have a front yard, rear yard, and a path connecting the sidewalk to the front stoop. The townhomes will have frontage along the new north-south private street developed as part of the Project.

- (51) The 90 Foot Apartment Building’s residential lobby entrance will be located at the corner of Georgia Avenue and Irving Street, and the ground-floor community/retail space will be located along Georgia Avenue to activate the street and enhance the pedestrian experience. The 60 Foot Senior Building’s residential lobby entrance will be located on the corner of Irving Street and the new private street.
- (52) The landscape design for the Project will include significant public space enhancements and ample outdoor green space. The Applicant will improve the sidewalks along Georgia Avenue, Irving Street, and Columbia Road through new plantings, street trees, and sidewalk connections to the new public park. The new private street will provide a mid-block pedestrian connection with trees lining both sides.
- (53) The Project’s design contains various features to provide a superior quality of architecture and break up the buildings’ massings into distinct elements. The apartment building will include bay windows and a corner glass element to create an iconic presence on Georgia Avenue. The senior building will respond to its context by stepping down in height along Irving Street to respect the lower density of the adjacent rowhouses. The townhomes will relate in massing to the surrounding rowhouse context while also mimicking the character of the multi-family buildings to create a unified language of architecture on the PUD Site.
- (54) The Project will incorporate durable and time-tested materials in a contemporary language for a design that will endure and enhance the identity of the neighborhood. The distinct architectural styles of the apartment building and senior building will follow a consistent color scheme through the use of contrasting colors. Large display windows, corner entrances, varied materials, and balcony and bay elements will create a residential, human-scaled design and enhance the pedestrian experience.
- (55) In addition, the Project will integrate a host of sustainable, environmentally friendly features, such that the apartment building and senior building will be certified with a minimum of 57 points under the Enterprise Green Communities (“EGC”) standards, and the townhomes will be certified with a minimum of 50 points under the EGC standards. See Conceptual Enterprise Green Communities scorecards included with the Plans. Certification under the EGC standards only requires a minimum of 30 points.

C. PUBLIC BENEFITS AND PROJECT AMENITIES

- (56) The Commission finds that the Applicant has demonstrated the Project will have the following public benefits and project amenities.
- (57) Urban Design, Architecture, and Open Space (11 DCMR § 2403.9(a)). The Project will implement a number of best planning practices within a site that has not seen

significant improvement or redevelopment for decades. These practices include creating density to establish a renewed neighborhood, incorporating a variety of building heights and residential unit types, introducing a new private street that will enhance circulation, and establishing new open green spaces that are adequately lit and easily surveyed. The proposed architecture is appropriately scaled to match the diverse mixed-use character of the surrounding neighborhood, and the buildings will be made of high-quality materials that will blend well with the surrounding urban context. The landscape design includes large courtyards, significant public space enhancements, and ample outdoor green space. Improved sidewalks along Georgia Avenue, Irving Street, and Columbia Road will provide for a better pedestrian experience through the use of street trees, landscaping, and sidewalk connections to the park and the new private street will provide a pedestrian mid-block connection with trees lining both sides.

- (58) Housing and Affordable Housing (11 DCMR § 2403.9(f)). The Project's most significant benefit is the creation of new housing, including public housing replacement units and additional new affordable housing units, consistent with the goals of the Zoning Regulations, the Comprehensive Plan, the New Communities Initiative, and the Mayor's housing initiative. The Project will provide 90 off-site replacement public housing units for Park Morton. Coordinated redevelopment of the PUD Site and Park Morton will maximize opportunities for permanent moves, achieve a one-for-one replacement of public housing units, and mixed-income development.
- (59) For the sake of comparison, under the IZ requirements, pursuant to Chapter 26 of the Zoning Regulations, the Project is only required to dedicate 8% or 10% of its residential gross floor area to households earning up to 80% of the AMI. In the C-2-B Zone District, eight percent of residential gross floor area is required to be devoted to households earning up to 80% of the AMI. In the R-5-B Zone District, ten percent of residential gross floor area is required to be devoted to households earning up to 80% of the AMI. (11 DCMR §§ 2603.1, 2603.2.) In this case, the Project includes a significantly greater amount of affordable housing and at a much steeper subsidy level.
- (60) The Project includes a total of 273 residential units, of which 90 units will be public housing replacement units, 109-113 units will be workforce affordable units, and 70-74 units will be market rate. Thus, approximately 74% of the units in the Project will be devoted to affordable housing.
- (61) The Project also includes a variety of housing types to serve households of all sizes. The eight townhomes will each have three bedrooms; the apartment building will have studio, one-bedroom, two-bedroom, and three-bedroom units; and the senior building will have one-bedroom units. This housing mix is carefully designed to meet local demand and to contribute to a vibrant, diverse, safe, and functional neighborhood.

- (62) The breakdown of affordable housing by gross floor area and level of affordability is set forth below:

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	275,747 sf of GFA (100%)	273			Rental
Market Rate	71,694 sf of GFA (26%)	70-74	Market Rate	NA	Rental
Public Housing Replacement Units	90,997 sf of GFA (33%)	90	HUD Requirements/ LIHTC Rules	Life of the Project	Rental
Affordable Housing	113,056 sf of GFA (41%)	109-113	Up to 60% AMI	Life of the Project	Rental

- (63) Environmental Benefits (11 DCMR § 2403.9(h)). The Project promotes environmental sustainability by implementing a variety of sustainable design features. The proposed site plan opens the PUD Site to the surrounding community by creating a new private street, ensuring increased pedestrian access to public transportation options, and maximizing green park space. The Project also provides environmental benefits consistent with the recommendations of 11 DCMR § 2403.9(h), including new landscaping, street tree planting and maintenance, energy efficient and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices. The Project will be designed to integrate a host of sustainable features, such that the apartment building and senior building will be certified with a minimum of 57 points under the EGC standards, and the townhomes will be certified with a minimum of 50 points under the EGC standards. See Conceptual EGC scorecard included with the Plans. (Ex. 237A5.)
- (64) Employment and Training Opportunities (11 DCMR § 2403.9(e)). The Applicant has indicated that expanding employment opportunities for residents and local businesses is a priority. Therefore, the Applicant will: (i) enter into a Certified Business Enterprise (“CBE”) Agreement with the District Department of Small and Local Business Development (“DSLBD”); (ii) enter into a First Source Employment Agreement with the DOES, consistent with the First Source Employment Agreement Act of 1984; and (iii) meet the U.S. Department of Housing and Urban Development’s (“HUD”) Section 3 requirements by providing job training, employment, and contract opportunities for low- or very-low income residents in connection with development of the Project. The Commission finds that execution of these agreements constitutes a public benefit under 11 DCMR § 2403.9(e).

- (65) Transportation Benefits (11 DCMR §2403.9(c)). The Applicant incorporated a number of elements into the Project that will promote effective and safe access to the PUD Site, convenient connections to public transit services, and on-site amenities that encourage pedestrian and bicycle activity. The Project includes a new north-south private street that connects Irving Street to Columbia Road, thus creating new access points and enhanced circulation in the square. The new street will have sidewalks on both sides, incorporate pedestrian-oriented streetscape features, establish improved facilities for vehicles, bicyclists, and pedestrians, and increase community safety. The overall Project incorporates designs for enhanced sidewalks and streetscapes, which will encourage pedestrian activity and improve walkability.
- (66) Vehicle parking will primarily be provided below-grade to preserve green space and minimize spill-over parking onto the surrounding streets. Access to the parking and loading facilities will be made from the private street. Ample and secure long- and short-term bicycle parking will be provided.
- (67) The Applicant will also install the following infrastructure improvements, as requested by DDOT:
- (a) Install pavement marking enhancements to a stop bar on Georgia Avenue at Hobart Place to better delineate stopping locations as a means to manage queue lengths; and
 - (b) Install pavement markings (i.e., “puppy tracks”) at the study area intersections along Georgia Avenue, subject to DDOT approval.

D. RELIEF REQUESTED

- (68) The Applicant requested the areas of flexibility from the Zoning Regulations discussed below.
- (69) Multiple Buildings on a Single Record Lot. Pursuant to 11 DCMR § 2516, the Applicant requests flexibility to permit multiple buildings on a single record lot, with some buildings having no frontage on a public street. The eight townhomes, which consist of two semi-detached dwellings (the end units) and six row dwellings (the middle units) will be located on a single record lot fronting the new private street. Although the south side of the lot has frontage on Columbia Road, allowing the southernmost semi-detached dwelling to front a public street, the remaining seven units will front a private street. Thus, the Applicant proposes dividing the lots into theoretical building sites, thus necessitating relief pursuant to 11 DCMR § 2516.
- (70) The Applicant provided a thorough analysis of how the Project complies with the standards set forth in 11 DCMR §§ 2516.2-2516.11 and 3104.1. (Ex. 6D.) OP also reviewed the flexibility and found that the request was reasonable given that each

townhome would “face a street that would be open to vehicular and pedestrian traffic, allowing for vehicular and pedestrian access to those units.” (Ex. 43, p. 7.) Based upon the Applicant’s detailed analysis and OP’s review and support for the flexibility, the Commission finds that locating multiple townhomes on a single record lot, and permitting seven of the townhomes to have no street frontage, is appropriate in this case and will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring property.

- (71) Side and Rear Yards. The Applicant proposes to incorporate a new north-south private street through the PUD Site in order to create small, walkable blocks and an enhanced sense of community. Given these constraints, as well as the desire to have reasonable footprints and layouts for the proposed buildings, the Applicant requests side yard relief for the apartment building, senior building, and the two end townhomes, and rear yard relief for the apartment building and the senior building.
- (72) The apartment building has a side yard of 10 feet along Georgia Avenue; the senior building has a side yard of four feet along the new private street; and the two end townhomes have side yards of three feet (northern-most townhome) and nine feet, three inches (southern-most townhome). Although the Applicant is seeking flexibility, side yards are not required by the Zoning Regulations. However, the Applicant is providing the side yards to create additional open space, light, air, and ventilation for the occupants of the buildings.
- (73) Rear yard relief is necessary for the apartment building, which has a rear yard depth of five feet, and the senior building, which has a rear yard depth of eight feet, neither of which meet the rear yard required by the Zoning Regulations. Granting flexibility for the rear yards will not result in any adverse impacts because the rear yards are located adjacent to the proposed new public park, which will provide significant light and air to building residents, despite the substandard rear yard depth. Moreover, both the senior building and the apartment building have large courts at the ground level that can be accessed for exterior use and provide additional light and air.
- (74) Based on the foregoing, the Commission finds that the reduced side and rear yard dimensions will allow for an improved site layout over what is permitted as a matter of right, and will not result in any adverse impacts. Providing the minimum required side and rear yards would adversely impact the layout and design of the Project and would hinder the Applicant's ability to provide a reasonable footprint and layout for the proposed buildings. As noted by OP, reducing the width of the side yards will “allow for more continuity in the street walls, consistent with existing development,” and increasing the size of the new public park at the expense of the rear yard depth will “benefit the entire community as a whole, allowing additional open space not associated with the apartment buildings. As the two apartment buildings back onto the [] park the reduce[d] size of their rear yards would not be readily [apparent].” (Ex. 43, p. 7.) Thus, based on the Applicant’s submission to

the record and the support from OP, the Commission approves the requested side yard and rear yard relief.

- (75) Loading. Subsection 2201.1 of the Zoning Regulations requires one loading berth at 30 feet deep and one loading berth at 55 feet deep; one loading platform at 100 square feet and one loading platform at 200 square feet; and one service/delivery space at 20 feet deep for the Project. The Applicant proposes to provide two loading berths at 30 feet deep, one loading platform at 100 square feet, and one service/delivery space at 20 feet deep, thus necessitating flexibility.
- (76) The Commission finds that the proposed loading facilities are appropriate for the type of residential development provided, and that the requested flexibility is consistent with the Comprehensive Plan's recommendations to consolidate loading areas within new developments, minimize curb cuts to the greatest extent possible, and provide shared loading spaces. The Applicant proposes to provide shared loading facilities for the apartment building and senior building, which will limit the amount of space dedicated to loading and minimize the number and extent of curb cuts. Given the nature and size of the residential units, residents are not anticipated to need a 55-foot berth to move in and out of the buildings. Moreover, the Commission agrees with OP that because the buildings are designed to share one garage, "the sharing of the loading facilities is logical and in an amount sufficient to serve those buildings." (Ex. 43, p. 7.) Thus, the Commission concludes that the loading facilities as proposed will not create any adverse impacts and will adequately serve the proposed residential development on the PUD Site.
- (77) Lot Occupancy. The Applicant requests flexibility from the lot occupancy requirements for the senior building. Pursuant to 11 DCMR § 772.1, 60% lot occupancy is required, but the Applicant proposes to provide 68% lot occupancy.
- (78) The senior building is surrounded by Irving Street to the north, a large open court and the apartment house to the east, the community park to the south, and the newly created private street to the west. Thus, although the Applicant proposes to increase the lot occupancy to eight percent more than permitted, there is still significant open space surrounding the building. Together, the court, park, and surrounding streets will provide significant light, air, and ventilation to building residents, and the court and park will provide high-quality exterior amenity spaces. Moreover, the overall lot occupancy for the PUD Site is 53%, which is well within the 60% lot occupancy permitted. Therefore, the Commission finds that the non-compliant lot occupancy for the senior building will not result in any negative impacts to building residents or surrounding properties.
- (79) Compact Parking Spaces. Subsection 2116.1 of the Zoning Regulations requires parking spaces to be located on the same lot as the building that it serves. Subsection 2115.1 provides that all required parking spaces must be a minimum of nine feet width and 19 feet in length. Subsection 2115.2 provides that any accessory parking area containing 25 or more required parking spaces may designate up to 40% of the

parking spaces for compact cars. In this case, the Applicant proposes to provide 16 surface parking spaces located on the private street within the PUD Site, eight of which will be reserved for the eight townhome units, and all of which will be compact in size and measure 7'x 20'. Thus, flexibility from §§ 2116 and 2115 is required because the parking spaces are not located on the same lot as the townhomes that they serve, the parking area contains less than 25 spaces, and because all 16 spaces will be compact in size and measure 7'x 20'.

- (80) The Commission finds that flexibility is appropriate in this case. Locating an off-street parking space on each townhome lot is not practical because the townhomes do not have rear vehicular access. The Applicant designed the townhomes without a rear alley in order to minimize traffic adjacent to the existing row dwellings to the west of the PUD Site. Providing a parking space at the front of the townhomes is also not practical because doing so would create an unwanted physical and visual barrier between the townhomes, the public park, and the other buildings on the PUD Site, thus upsetting the PUD Site's continuity. Providing parking on the private street in front of the townhomes will be convenient to its occupants and will not have any adverse impacts on the neighborhood, and results in more spaces being provided than would be if all spaces were full size.
- (81) Moreover, the Commission finds that providing all 16 spaces as compact spaces will maximize efficiency of the private street. The compact spaces are only compact in terms of their width, not their length, which is necessary in order to meet the drive aisle width requirements for the new private street. Decreasing the street width in order to increase the width of the compact spaces would have the adverse effect of: (i) reducing the rear yard depths for the adjacent townhomes (to the west of the street), and/or (ii) reducing the width of the sidewalk adjacent to the park (to the east of the street). Therefore, the Commission finds that the requested flexibility allows for the most efficient use of the PUD Site, will not have any adverse effects, and will allow the Applicant to most effectively provide parking for the Project's residents.
- (82) Phasing. Pursuant to 11 DCMR § 2408.8, PUDs approved by the Commission are valid for a period of two years, within which time an applicant must file for a building permit. Pursuant to 11 DCMR § 2408.9, construction of a PUD must begin within three years of the date of final approval. The Applicant proposes that the final PUD should be valid for a period of six years, and that construction must begin within seven years of the date of final approval.
- (83) The Commission believes that the longer time frame is appropriate because of the complexity of the Project.
- (84) The Applicant also requests flexibility in the following additional areas:
 - (a) To be able to provide a range in the number of residential units of plus or minus 10%;

- (b) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;
 - (c) To vary or reduce the number, location, and arrangement of parking (vehicular and bicycle) spaces, provided that the total is not reduced below the number required under the Zoning Regulations;
 - (d) To vary the sustainable design features of the Project, provided the total number of points achievable for the apartment building and senior building is not below 57 points, and the points achievable for the townhomes is not below 50 points utilizing the EGC rating standards;
 - (e) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and any other changes in order to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit; and
 - (f) To vary the features, means and methods of achieving:
 - (i) The code-required Green Area Ratio (“GAR”) of 0.3 for the apartment house and 0.4 for the senior building; and
 - (ii) Stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control.
- (85) The Commission does not approve the requested flexibility to reduce the number, location, and arrangement of parking spaces (item c. above) for three reasons. First, the Applicant did not adequately explain why it needs the flexibility. Second, the flexibility requested contradicts several conditions the Applicant proposed to mitigate potential adverse effects of the project on neighborhood parking, made in response to testimony at the hearing. And third, the flexibility undermines the justification of the finding the Commission makes in this Order that the project would not result in increased demand for parking on existing public streets, which was based on the number of spaces included in the Project.
- (86) The Commission also only partially approves the Applicant’s request for flexibility in the final selection of the exterior materials (item e. above) because it believes the Applicant’s request was overly broad.

E. PROJECT IMPACTS AND POTENTIAL ADVERSE EFFECTS

(87) The Commission considered the potential impacts of the Project and its potential adverse effects that were raised by the opponents and other witnesses, and in written reports and submissions in the record. The following is the Commission's evaluation of the Project's impacts and potential adverse effects.

1. Project impacts and potential adverse effects that were raised before the remand

(88) Density, Scale, and Building Height. Opponents of the Project alleged that the apartment building and senior building would reduce light, air, and privacy to existing residences, and that the buildings' proposed heights would be out of character with the surrounding row house neighborhood.

(89) The Commission finds that the apartment building, which is referred to as the "90 Foot Building" in the Opinion, and the senior building, which is referred to as the "60 Foot Building" in the Opinion are directly to the north across Irving Street, and are larger than the existing development in close proximity on Georgia Avenue. They will cast shadows largely to the north. The record contains the following evidence of the impact on neighboring properties:

- The shadow studies showing the shadow impact on the adjacent properties, including those on Irving Street that would be most directly impacted; (Ex. 234, p. 4.)
- The plans showing what the north side of the 90 foot and 60 foot buildings would look like facing the rowhomes on Irving Street; (Ex. 237A4, Sheet A09.)
- Photos showing the existing neighborhood conditions are in the record at Sheet G06 (Ex. 237A1.) They include photos showing the existing rowhomes on the north side of Irving Street that would directly face the 90 foot and 60 foot buildings (Image 2 of Sheet G06) and the existing rowhomes on the south side of Irving Street that would abut the west side of the Project; (Image 4 of Sheet G06; Ex. 237A1.)
- At set down, the Commission specifically requested additional information from the Applicant and OP on the moderate-density residential designation and the local public facility designation to "understand a little better how the 90-foot height of the apartment building would be not inconsistent with the Comp Plan designation;" (July 25, 2016 Tr. at 101.)
- The additional information requested by the Commission was provided by the Applicant and OP; (Ex. 35B, 43, respectively.)
- The Applicant provided further analysis of the height and density of the project in its written submissions; (Ex. 35B, 196, 197.)

- The Applicant provided analysis included specific information regarding the separation between the apartment building and nearby row dwellings, as well as the results of a shadow study; and (See December 5 and 8, 2016 Tr.; Ex. 233, 244.)
 - The Commission specifically inquired at the public hearing about the proposed height of the project and its separation from existing row dwellings to the north and west. (See December 5, 2016 Tr. at 75-76.)
- (90) The Commission finds that the additional height and density of these buildings will create potential adverse effects on the neighborhood by diminishing light and air, casting shadows, changing the character of the neighborhood, and potentially diminishing privacy.
- (91) The effect of the height and density on light and air, privacy, and on the neighborhood character, will be partially mitigated by the setbacks and step-downs of these buildings, the separation caused by the Irving Street right-of-way, the new private street and the Project's townhouses, and the park to the south:
- To the north, the apartment building and senior building are separated approximately 90 feet from the closest residential dwellings across Irving Street as a result of (i) the 60-foot right-of-way created by Irving Street; (ii) a 20-foot setback established by the front setbacks for the existing row dwellings across Irving Street; and (iii) the eight-foot setback created by the Applicant at the front of the apartment building; (Applicant's testimony, December 8, 2016 Tr. at 4-5.)
 - To the west, the senior building is separated from the closest residential dwellings by the new private street, which has a right-of-way of 60 feet. Also, to the west, the townhomes, which are only 40 feet in height, are separated from the closest residential dwelling by their 15-foot rear yards, a proposed three-foot, six-inch tall privacy fence, and ornamental trees;
 - To the east of the PUD Site is the commercial corridor of Georgia Avenue; and
 - To the south is the 44,000-square-foot parcel to be used for park and recreation purposes.
- (92) Traffic. Individuals testified that the Project would exacerbate existing traffic issues on the surrounding streets and that the Project fails to adequately address parking challenges. BMPN also specifically asked the Applicant to block vehicular access to the alley from the new private street.
- (93) The Commission finds that the Project will increase traffic demand on surrounding streets which is an adverse effect of the Project.

(94) The Commission believes that this effect will be partially mitigated by virtue of the fact that the Project's location is on Georgia Avenue, which is a major arterial street that is served by a diverse and robust range of transportation options, because the Applicant has agreed to transportation demand management ("TDM") measures, and for the following reasons:

- As set forth in the Applicant's traffic impact study or ("TIS"), dated November 1, 2016, and prepared by Symmetra Design, the transportation network surrounding the PUD Site is diverse and robust and the Applicant has proposed significant TDM measures that will encourage use of non-automobile modes. (Ex. 33.) Thus, the combination of transportation options and the TDM program will help to reduce traffic and parking demand associated with the PUD. Moreover, the TIS found that: (i) with build-out of the Bruce Monroe PUD, there will be a "negligible increase in delay to motorists" at two intersections within the study area, (ii) all other intersections will "continue to operate at or above the LOS [level of service] threshold," and (iii) the intersections created by the new private street with Columbia Road and Irving Street will "both operate at LOS "A" during the AM and PM peak hours." (Ex. 33, p. 11.) In addition, the Project will "allow for improved pedestrian conditions with new sidewalks along both sides of the new private street. Pedestrian facilities adjacent to the site will adhere to DDOT standards;" (*Id.*)
- DDOT reviewed the TIS, confirmed that the Applicant utilized sound methodology to perform its analysis, and recommended approval of the application. In its review, DDOT found that the "site design has the potential to disperse site traffic in a way that minimizes the action's impact on the external road network and improve connectivity to adjacent neighborhoods." (Ex. 44, p. 2). DDOT also concluded that "future residents and retail visitors are likely to utilize transit, walking, and bicycling at high rates, thus auto use is likely to be low, resulting in the PUD generating a nominal number of new trips (40 AM trips and 57 PM trips); and (*Id.* at 2 and 8 (emphasis added).)
- The Applicant will implement the following TDM strategies to reduce travel demand:
 - a) Offer each apartment unit and townhome an annual carsharing membership or an annual Capital Bikeshare membership for a period of three years;
 - b) Provide, as a one-time incentive, 189 helmets for apartment building occupants and eight helmets for townhome occupants;
 - c) Offer a pre-loaded \$10 SmarTrip card for each residential unit in the apartment house, senior building, and townhome, at the initial sale or lease of each unit;

- d) Unbundle the cost of parking spaces from the cost of lease or purchase of the market-rate units;
 - e) Provide two on-street carsharing spaces on the new private street;
 - f) Provide a bicycle repair station in the apartment building;
 - g) Install a transit screen in the lobby of the apartment house and senior building (two total);
 - h) Post all TDM commitments online;
 - i) Designate a TDM leader;
 - j) Provide 90 long-term and 16 short-term bicycle parking spaces; and
 - k) Provide six shopping carts for multi-family residential tenants to run daily errands.
- (95) Parking. Opposition testimony asserted that the Project would result in reduced on-street parking and would create new parking challenges. Testimony was also presented that the District’s proposed dedicated bus lanes for Irving Street and Columbia Road would eliminate half of the currently available street parking.
- (96) The Project will add 16 new on-street parking spaces located on the new private street for residents and guests of the project, as well as 99 below-grade parking spaces within the proposed buildings. This total supply of 115 spaces exceeds the 79 spaces required by the Zoning Regulations and will adequately serve the needs of the PUD Site’s residents and guests so that they will not need to utilize existing public on-street parking spaces.
- (97) The Commission nonetheless finds that, given the size of the Project, it is likely that residents and visitors will use on-street parking spaces, that this is likely to reduce the inventory of on street spaces in the vicinity of the Project, and that this is a potential adverse effect of the Project. The Commission further finds that this will be partially mitigated by the Applicant’s proposed TDM measures, which are stated above in Findings of Fact (“FF”) 94.
- (98) Regarding BMPN’s request to block vehicular access to the alley from the new private street, the Commission notes that DDOT did not support this idea because doing so would hamper improved connectivity in the alley system. (Ex. 237, p. 6.) DDOT indicated its support for the alley connection because it will facilitate alley operations for the structures that currently use the existing dead-end alley, and because maintaining the alley/street connection is not anticipated to induce significant numbers of new trips in the alley, since all non-local traffic would be expected to use the streets not the alleys. (*Id.* at 5-6.) The Commission credits DDOT’s review of the alley/street connection, and concludes that blocking

vehicular access in this location would hamper improved connectivity in the alley system.

- (99) Noise and Air Pollution Caused by Construction. Opponents of the Project testified that the Project would result in increased noise and air pollution as a result of construction.
- (100) The Commission finds that the construction of the Project will create adverse impacts related to noise and air pollution.
- (101) The Commission is satisfied that these adverse impacts will be adequately mitigated for the following reasons:
- The Project was reviewed and approved by DC Water, DOEE, and FEMS, all of which asserted that the Project would not have any adverse effects on their utilities or facilities. The Commission credit's DOEE's findings that the Project "includes measures that address and mitigate potential environmental impacts with respect to air pollution... consistent with the regulatory requirements of the Agency. In addition, Certification under the Green Communities Criteria meets the minimum requirements of the Green Building Act for publicly financed developments of this scale;" (Ex. 237K.)
 - The Applicant will be required to comply with all applicable laws and regulations regarding construction noise and air pollution, and will address the mitigation of any construction-related impacts during the building permit process;
 - The Applicant also submitted a Construction Management Plan, with which it will abide during construction of the Project; and (Ex. 237F.)
 - The Commission also finds that the Project includes a variety of sustainable features and will be certified under the Enterprise Green Communities standards. Although only 35 points are required to be certified, the Applicant proposes to achieve 57 points for the apartment house and senior building each, and 50 points for the townhomes. Sustainable features that will be implemented as part of the Enterprise Green Communities certification include erosion and sediment control techniques, efficient irrigation and water reuse, advanced water conservation, surface water management, and high-quality water drainage. These features will ensure that the Project does not result in negative impacts to air pollution.
- (102) Water Runoff. Testimony in opposition to the Project claimed that the proposed high-density units along Georgia Avenue would increase the amount of paved and impervious surfaces in the area, and thus increase water runoff. More specifically, testimony asserted that reducing the size of the existing park would eliminate one

of the few remaining green spaces that helps mitigate water runoff issues in the area.

- (103) The Commission finds that the Project will not create adverse effects related to water runoff because the Applicant's mitigation measures will likely improve the current situation for the following reasons:
- Based on testimony provided by the Applicant at the public hearing, the Commission understands that the majority of the PUD Site drains to the southwest, that there is little existing storm drain infrastructure on the PUD Site, and that there are no existing stormwater controls;
 - Upon development of the PUD Site, stormwater runoff will be adequately mitigated because the PUD Site will be subject to the 2013 Stormwater Management Regulations, which are more stringent than the stormwater regulations that were previously applicable to the PUD Site. All runoff will be captured on-site and safely conveyed into the public combined sewer system not onto public streets or adjacent properties. The PUD Site's drainage characteristics will be vastly improved from existing conditions, which will alleviate existing off-site drainage concerns that may exist in the surrounding area. Moreover, stormwater in the public right-of-way, which is directed to public right-of-way storm drains, will also be reduced since the Project incorporates new planting areas along the public right-of-way; (See testimony of Marcelo Lopez, December 8, 2016 Tr.)
 - DC Water submitted a letter approving the Project, which noted that the "utility plans as presented adequately address water and sewer utility needs. The plan proposes water and sewer extensions which if placed in dedicated public space or acceptable easements would be considered adequate by DC Water." DC Water noted that it would "work with the Applicant during the building permit process to ensure that appropriate measures are taken to ensure that the project will not have any adverse impacts on existing or future DC Water capacity needs and will meet acceptance criteria;" and (Ex. 237M.)
 - DOEE also submitted a letter approving the Project, stating that the Project "includes measures that address and mitigate potential environmental impacts with respect to... stormwater runoff consistent with the regulatory requirements of the Agency. In addition, Certification under the Green Communities Criteria meets the minimum requirements of the Green Building Act for publicly financed developments of this scale." (Ex. 237K.)
- (104) The Commission also notes that evaluation of these types of environmental impacts are best conducted by DOEE, and accordingly will be part of the building permit process. (See *Foggy Bottom Association v. District of Columbia Zoning Comm'n*, 878 A.2d 1160 (D.C. 2009).)

- (105) Public Services. Testimony in the record claimed that the Project would create a stress on the public services serving the community (transit, water, electric, gas, environment, emergency response times, public safety services) and that cumulative densities of projects along Georgia Avenue are not being considered holistically so to determine a comprehensive impact analysis on public services.
- (106) The Commission finds that the Project will increase burdens on public services, owing to the number of people that will reside in the Project but that these burdens are acceptable, and that these impacts are justified given the benefits of the Project.
- (107) The Commission finds that there was an adequate investigation of these potential burdens for the following reasons:
- The civil sheets included in the Plans for utilities, grading, erosion and sediment control, and stormwater management, reflect that the details regarding all public services have been adequately reviewed and planned for in conjunction with the proposed Project; (Ex. 337A6-A9.)
 - The Applicant must coordinate with all applicable public utilities and District agencies during the permitting process to ensure that adequate public services will continue to be available for the existing and new uses; and
 - The Commission also notes that the Project was reviewed by DDOT, DC Water, DOEE, and FEMS:
 - a) DDOT evaluated the Project and indicated that it had no objection, provided that the Applicant agreed to an extensive set of mitigations, which the Applicant agreed to follow; (Ex. 44.)
 - b) As discussed above, DC Water submitted a letter stating that the utility plans adequately address water and sewer needs, and that it would work with the Applicant during the building permit process to ensure that appropriate measures are put in place to ensure there will be no adverse impacts; (Ex. 237M.)
 - c) DOEE submitted a letter stating that the Project includes measures that address and mitigate potential environmental impacts with respect to stormwater runoff, and that the Project meets the requirements of the Green Building Act; and (Ex. 237K.)
 - d) FEMS noted that the “Fire Marshal has no objection on the project moving forward and being approved. Fire department access needs appears to [be] on point at this stage.” (Ex. 237L.)
- (108) Impact on Property Values. Project opponents asserted that the Project would impact the value of property in the neighborhood surrounding the PUD Site, thus resulting in negative impacts to existing residents. Some opponents asserted that

the Project would have a negative effect on property values. Others asserted that the Project would contribute to gentrification.

(109) The Commission does not believe the Project will have a negative effect on property values for the following reasons:

- The Commission credits DHCD’s written testimony approving the Project, which specifically noted that “[g]iven the proposed income mix, we do not believe that the proposed developments will result in the destabilization of land values, the acceleration of gentrification, or the displacement of neighboring residents;” and (Ex. 237J.)
- The Project includes replacement public housing, affordable housing, and market-rate housing, with 90 public housing replacement units, 109-113 workforce affordable units, and 70-74 market-rate units. This diverse spread of housing options will not only create housing for the lowest-income households, but will also establish new units that are affordable for teachers, police officers, and other working professionals in the District. This type of mixed-income development and diverse housing stock will not adversely impact or lead to the destabilization of land values.

(110) Benefits and Amenities. Opponents of the Project testified that the proposed public benefits and project amenities were insufficient, inappropriate, undesirable, and would not benefit the entire public.

(111) The Commission finds that the record in this case demonstrates that the project amenities and public benefits associated with the Project, which includes the following items, are significant and support approval of the application:

- Significant new housing and affordable housing, including public housing replacement units and senior housing;
- Infrastructure improvements that include a new north-south public street through the site that will enhance circulation and reduce traffic congestion in the square;
- High quality urban design and architecture;
- Effective and safe vehicular, pedestrian, bicycle access, and a robust TDM plan;
- Environmental benefits, including certification of the project under the EGC standards;
- A new stormwater management system that will reduce runoff and improve site drainage conditions;

- Public space improvements; and
 - Employment and training opportunities, including entering into a Certified Business Enterprise Agreement with the District DSLBD, entering into a First Source Employment Agreement with DOES, and contracting with Section 3 businesses.
- (112) Together, the Commission finds that these proposed benefits holistically result in a significant value as they relate to the Commission’s balancing test between the benefits offered and the development incentives and flexibility requested.
- (113) Lack of Adequate Community Engagement. Opponents testified that the Applicant did not participate in any meaningful discussion with or consider input from the surrounding community, particularly residents living within 200 feet of the PUD Site.
- (114) The Commission finds that the Applicant engaged in extensive community outreach for the following reasons:
- As shown on the list of community outreach meetings (included in Ex. 197), the Applicant met with adjacent impacted neighbors and stakeholders; presented to ANC 1A and 1B on multiple occasions; hosted and/or participated in public meetings and charrettes during the master planning process; attended and engaged in discussions about the Project at meetings with local community groups such as the Georgia Avenue Community Development Task Force, Park View UNC, and the Luray Warder Neighborhood Association; actively participated in Steering Committee meetings; engaged with the Park Morton residents directly via their Resident Council and Relocation/Reentry Committee meetings; conducted one-on-one meetings with residents and neighbors upon request; and knocked on the doors of every dwelling that was accessible and located within 200 feet of the PUD Site.
- (115) The Applicant also submitted to the record the sign-in sheets from community engagement meetings, meeting flyers, and project fact sheets distributed to the public for over two years. (Ex. 23G.)
- (116) Density of New Residents. Opponents testified that the proposed 273 new residential units would add approximately 700 new residents to the block. BMNP also suggested the Applicant should revise the redevelopment plan for Park Morton to shift units (density) from the PUD Site to Park Morton by adding more apartment buildings to the Park Morton site and redesigning the Park Morton site plan to include more or a larger apartment building similar to the theoretical concept plan shown in the Park Morton Redevelopment Initiative Plan.
- (117) With respect to the number of new residents being added to the block, the Commission credits the Applicant’s testimony that the 273 units proposed for the

PUD Site includes 375 bedrooms, which will result in a range of 375 to 559 total new residents based on occupancy standards. The number of units at Park Morton will be 189 (not 126) and a total of 308 bedrooms, resulting in a range of 308 to 452 new residents at the Park Morton site based upon occupancy standards. Thus, the Commission finds that the number of actual new residents at the PUD Site, a range of 375 to 559, is much less than the 700 new residents claimed by BMPN, and the number of new residents at the two sites is comparable and does not result in an “unbalanced distribution” of units as suggested by BMPN.

- (118) The Commission finds that the proposed density and number of units proposed for the PUD Site is appropriate give the public benefits of the Project, and necessary to achieve the goals and policies set forth in the Comprehensive Plan, the Strategy Plan, and the New Communities Initiative. The Project includes increased density for the explicit purpose of providing new housing and affordable housing along Georgia Avenue.

2. Project impacts and potential adverse effects that were raised in the case record after the remand

- (119) School overcrowding. BMPN asserted that the Project would potentially overcrowd local schools.
- (120) The Commission finds that the additional residents will increase the potential number of students at local schools. The opponents did not present any evidence or analysis in support of their contention that the Project will cause school overcrowding. The Commission recognizes that there is a potential adverse impact on the school system in the immediate neighborhood. However, the Commission does not believe that the number of potential new students is so great that this potential impact is likely to occur given the capacity of the District’s school system and the scale of the Project.
- (121) Lack of an environmental impact study. Opponents asserted that the Applicant has not submitted an environmental impact study and that the Application was therefore incomplete.
- (122) The Commission finds that submission of an environmental impact statement is not a requirement of the Zoning Regulations.
- (123) Park Morton residents prefer to live in a low-rise building or townhome, and prefer to live in larger units than will be provided in this Project. The PMRC stated that one of the reasons it shifted its previous support of the Project to opposition was because Park Morton residents would prefer to reside in a lower density setting, with larger sized units than will be provided in the Project. The PMRC alleged the lack of lower density setting and larger sized units in the Project were adverse effects of the Project.

- (124) The Commission finds that the merits of a PUD application are to be judged against the requirements of the Zoning Regulations, which do not require a PUD application to propose the most preferred outcomes in order to merit approval.
- (125) Displacement of Park Morton residents during the pendency of this case. A large number of Park Morton residents have relocated from Park Morton because its redevelopment began during the pendency of this case, which delayed the Project. The opponents claimed that this displacement of Park Morton residents undermines one of the main justifications for the Project, and that “displacement” is an adverse effect of this Application.
- (126) The Commission finds that because many Park Morton residents relocated during the pendency of this case, the Project no longer serves as a “build-first” site for the Park Morton redevelopment. This was one of the major intended public benefits of the Project as it was originally conceived and approved by the Commission.
- (127) The Commission further finds that the displacement of Park Morton residents was caused by a number of factors, but the approval of this Application and future development of the Project was not the cause of the displacement of Park Morton residents. In fact, the Commission believes that fewer Park Morton residents would have been displaced had this Project been built in coordination with the redevelopment of the Park Morton site as originally planned, and approved by the Commission. Therefore, the Commission does not believe that the displacement is an adverse effect of this Project.

F. GOVERNMENT AGENCY RESPONSES TO THE APPLICATION AND PROCEDURAL ORDERS

1. Office of Planning

a. OP set down report

- (128) On July 15, 2016, OP submitted a report recommending set down of the application. (Ex. 14.) The OP set down report stated that the Project is “consistent with major policies from various elements of the Comprehensive Plan, including the Land Use, Transportation, Housing, Environmental Protection and Urban Design citywide elements, and the Mid-City Area Element” because the Project will: (Ex. 14, p. 5.)
- (a) “[R]euse this site, formerly a public elementary school and now a temporary park, as a mixed-income site, providing a range of housing from replacement housing for the Park Morton site, housing for senior citizens to market rate housing. Although not part of the application, a private park, open to the public, would be provided”; (*Id.*)
- (b) “[P]rovide a pedestrian-oriented development along Georgia Avenue, a major corridor. The proposed building heights would taper down from east to west,

from Georgia Avenue to the row house neighborhood to the west, with a row of townhouses adjacent to the row houses on Columbia Road”; (*Id.* at 6.)

- (c) Provide bicycle parking “within the parking garage for the two multi-family buildings”; (*Id.*)
 - (d) “[P]rovide for a mix of replacement public housing and a mixture of affordable and market rate housing. Housing types would include a mix of one-family homes and apartments in higher density multi-family buildings”; (*Id.* at 6.)
 - (e) “[P]rovide the planting of trees, including street trees, green roofs and would be Enterprise Green Communities certifiable”; (*Id.* at 7.)
 - (f) “[I]nclude a mixture of housing types, from family to senior citizen housing, and from replacement public housing to market rate, integrating them [] seamlessly together”; (*Id.* at 9.)
 - (g) Include buildings that are “Enterprise Green Communities certifiable, with a minimum score of 50, and would exceed the minimum GAR requirement of 0.30 with a score of 0.314 for the apartment building and 0.411 for the senior citizen building. Extensive green roofs, tree planting and bioretention areas with plantings are proposed”; and (*Id.*)
 - (h) “[I]mprove the aesthetics of Georgia Avenue. The building proposed to front on it has no blank walls, with the building designed to break the façade into segments. The overall site would be developed in three sections, with the largest building fronting on Georgia Avenue where other buildings of similar height have been constructed or are proposed to be built, and the smallest, the row houses, to be constructed adjacent to existing row houses.” (*Id.* at 10.)
- (129) The OP setdown report further explained that the Project is consistent with the PUD Site’s designations on the Future Land Use Map and the Generalized Policy Map; the FLUM designates the site Local Public Facilities with the westernmost portion designated Moderate-density Residential and the GPM designates the site Main Street Mixed Use Corridor with the western portion designated Neighborhood Conservation Area. OP stated that it supports the mix of housing types as proposed by the Applicant. (*Id.* at 11-12.) The OP report concluded that the proposed FAR and mix of housing types proposed for the PUD Site is not inconsistent with the Comprehensive Plan. The OP report also listed a number of recommendations included within the Strategy Plan for the Georgia Avenue corridor, such as market economics, transportation, urban design, and public realm, with which it found the Project to be consistent. (*Id.* at 12-13.)
- (130) The OP setdown report stated it would facilitate an interagency meeting with the following government agencies for comment:

- DOEE;
 - DDOT;
 - DHCD;
 - Department of Public Works (DPW);
 - Fire and Emergency Medical Services Department (FEMS);
 - Metropolitan Police Department (MPD);
 - District of Columbia Public Schools (DCPS);
 - District of Columbia Office on Aging (DCOA); and
 - District of Columbia Water and Sewer Authority (DC Water).
- (*Id.* at 17.)

b. OP hearing report

- (131) On November 28, 2016, OP submitted a hearing report. (Ex. 43.) The OP hearing report recommended approval of the application and reiterated that the application is not inconsistent with the Comprehensive Plan, would further many of the Comprehensive Plan’s policies from various elements, and would also realize the Council-approved Park Morton Redevelopment Initiative Plan by creating a “mixed income community of low-rise and mid-rise buildings, with units for sale and for rent.” (Ex. 43, p. 1, 10.) OP also found that the proposed zone districts “are comparable in density or intensity to those in the vicinity and not inconsistent with the predominate land use and the Comprehensive Plan.” (*Id.* at 10.)
- (132) The OP hearing report advised that, at the public hearing, the Applicant should: (i) document flexibility for the provision of eight non-garage compact parking spaces for the townhomes; (ii) provide additional enlarged details for the townhomes and apartment house demonstrating their residential character; and (iii) provide additional information on the proposed façade materials.
- (133) With respect to government agency referrals, the report stated that, “[n]o comments were received from other District agencies.” (*Id.* at 12.)

c. Supplemental OP report

- (134) On October 12, 2021, OP submitted a supplemental report, dated October 7, 2021, in response to the Commission’s Limited Scope Hearing Notice (Second Procedural Order) requesting that the parties and OP submit written statements analyzing the PUD under the updated Comprehensive Plan. (Ex. 273.) OP’s supplemental report noted that changes under the updated Comprehensive Plan directly impact the PUD Site. OP explained that notably, the Future Land Use Map designation has been changed to mixed-use Medium Density Residential/Medium Density Commercial along the northern portion of the site, and to mixed-use Moderate-density Residential/ Parks, Recreation and Open Space on the small southwestern portion of the site to be developed with townhouses. The Generalized Policy Map designations for the site were not changed under the updated

Comprehensive Plan from Main Street Mixed Use Corridor with the western portion of the site designated Neighborhood Conservation Area. (Ex. 273 at 1, 4-8.)

- (135) The OP supplemental report stated that OP, “continues to recommend the Commission approve the application” and that “the proposal would be not inconsistent with the 2020 Comprehensive Plan, including the updated Generalized Future Land Use Map.” (Ex. 273 at 1.)
- (136) With respect to the new requirement that the Commission evaluate all actions “through a racial equity lens”, the report stated:

The site currently has no housing. It was previously improved with the Bruce Monroe elementary school and has been used as a temporary park for the last decade in anticipation of this development proposal. The requested PUD and related map amendment would enable the provision of more residential units on the site than would the existing RF-1/MU-4 zoning, the 90 replacement units for previous Park Morton residents would clearly be affordable, and at the macro level, the production of more housing decreases the upward pressure on overall housing prices.

The PUD proposed in this case, ZC 16-11, would deliver several benefits that would promote racial equity:

- The Project will establish a mixed-income community with new and diverse housing options;
- The Project will include a total of 273 residential units, with 189 units in the apartment house, 76 units in the senior building, and eight townhomes; 90 units will be public housing replacement units, 109-113 units will be workforce affordable units, and 70-74 units will be market rate;
- The Applicant for the PUD is required to comply with the relocation and reentry requirements for public housing replacement units of Resolution No. 16-06 “To Adopt Relocation and Re-entry Policies for New Communities Initiative Developments;”
- The PUD will provide 90 new replacement units for the Park Morton public housing site, which is part of the District’s New Community’s Initiative. The New Communities Initiative is a District government program designed to revitalize severely distressed subsidized housing and redevelop neighborhoods into vibrant mixed-income communities;

- The PUD site would include almost an acre of space to be dedicated only for park and recreation for the benefit of the residents of the neighborhood;¹²
- The First Source Employment Agreement will require that 51% of all new job hires and 31% of apprenticeship hours be for District residents; and (Ex. 237 H.)
- The Small Business Enterprises requirement states that all construction and non-construction Government-assisted projects over \$250,000, shall require 35% subcontracting to Small Business Enterprises certified by DSLBD. (Ex. 237 I.)

Due to the socio-economic composition of the District in general, and the residents of the New Communities in particular, the 90 units of affordable replacement housing would help provide access to residential units for residents of color while the requirement to comply with the Reentry policies for returning residents will ensure that existing Park Morton residents who wish to return may do so.

The Applicant's commitment to providing economic opportunity as shown by the CBE Agreement with the District DSLBD and the First Source Employment Agreement with DOES, consistent with the First Source Employment Agreement Act of 1984; and the commitment to meet the U.S. Department of Housing and Urban Development's Section 3 requirements will result in the provision of job training, employment, and contract opportunities for low- or very-low income residents in connection with development of the Project.

(Id. at 2-4.)

- (137) With respect to revisions to the FLUM, the OP supplemental report analyzed the changes and concluded:

The PUD was approved under the 1958 regulations C-2-B zone (now the MU-5 zone) and the R-5-B zone (now the RA-2). The PUD is not inconsistent with the updated FLUM designations and is consistent with the FAR ranges represented in the Framework element. The development of row houses with a maximum height of 40 feet, and the Bruce Monroe park and recreation space are also consistent with the updated FLUM designations. The PUD related zone of R-5-B (now RA-2) is specifically identified in the Framework element as a zone consistent with the Moderate-density Residential category.

The zones identified as consistent with the Medium Density Commercial category are "MU-8 and MU-10, and other zones may also apply".

(Id. at 5-6.)

¹² OP submitted a correction report at Ex. 318 clarifying that the park is not a public benefit of the PUD Site.

The Project's aggregated 3.6 FAR is well within the density ranges the Framework element uses to illustrate the site's FLUM categories; greater density is permitted when complying with Inclusionary Zoning or when approved through a Planned Unit Development. Non-residential uses would not exceed 0.5 FAR, which would not be inconsistent with the Medium-Density Commercial category. The proposed 90 foot height of the apartment building is also consistent with the allowable height when approved as part of a PUD. OP recommends the 90-feet as an appropriate height for the apartment building to accommodate the necessary mixed-income housing units and provide for the permanent, large park and recreation space of approximately one acre. If the building were to be lower, it would also be more squat with a larger footprint which would impinge on the size of the park. It is not uncommon for there to be taller buildings along the corridors and the applicant provided an image that shows a building of 70 feet or more within a half mile of the proposed PUD. (Ex. 237A1). Although there is only one other building at 90-feet it was also approved as part of a PUD. On balance with the goal to provide permanent green recreation space, housing and affordable housing OP finds the height to be appropriate for the site.

(*Id.* at 7.)

- (138) With respect to the GPM, the OP supplemental report concluded:

The GPM identifies part of the site fronting Georgia Avenue as part of the Main Street Mixed-Use Corridor.

Within one-half mile of the site there are “*opportunities, services and amenities*” such as three full-service grocery stores, the Washington Hospital Center, Children’s Hospital, the Columbia Heights Metro station and several high-capacity bus lines, Columbia Heights retail center, and many local restaurants, schools, and shopping. But the area still includes significant pockets of concentrated poverty where residents lack quality housing, supportive services, and access to quality open space, healthcare, and recreation. (*See Park Morton Plan, p. 6.*)

The PUD will enhance the established neighborhood through the development of new housing, affordable housing, and a permanent park. The architecture does not replicate the early 20th century style of much of the rowhouse neighborhood, but it clearly reads as residential in character. Windows, corner entrances, varied materials, and balcony and bay elements will create a residential, human-scaled design and enhance the pedestrian experience.

The density is “*guided by the Future Land Use Map and Comprehensive Plan policies*” especially those relative to housing and parks and open space. The scale of the PUD transitions down from the 90 Foot Tall Apartment Building on Georgia Avenue to the 60 Foot Tall Senior Building. The new development is then separated from the existing rowhouse neighborhood to the west by a new private street that runs between Irving Street and Columbia Road and new rowhouses on the south portion of the site.

The PUD is not inconsistent with the Generalized Policy Map designation of a Neighborhood Conservation Area, for which the description in the Framework Element was changed in the updated Comprehensive Plan. Notably, the Neighborhood Conservation Area designation does not preclude development as explained in the following summary of the updates to the designation description in the Framework Element:

- The guiding philosophy is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs;
- New development should be compatible with the existing scale, natural features, and character of each area, but is not required to be at the existing scale;
- Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map and Comprehensive Plan policies;
- Approaches to growth in Neighborhood Conservation Areas may vary based on neighborhood socio-economic and development characteristics; and
- More levels of housing affordability should be accommodated in areas with access to opportunities, services, and amenities.

The PUD would provide housing and open space at a density consistent with the FLUM and the high priority policy of housing and affordable housing. The residents of the New Communities in particular are predominately African American or Black, the 90 units of affordable replacement housing would almost certainly provide access to residential units for residents of color while the requirement to comply with the reentry policies for returning residents will ensure that existing Park Morton residents who wish to return may do so. (*Id.* at 7-9.)

In particular, the OP supplemental report stated that the Project advanced the new language in the framework element, stating:

- The critical need for new affordable housing units is identified as high-priority public benefits in the evaluation of residential PUDs (10-A DCMR Section 224.9) and would be provided by the PUD through the addition of senior housing, market rate housing and replacement units for the Park Morton community. (*Id.* at 9.)

d. Correction to OP supplemental report

- (139) On October 18, 2021, OP filed a correction to its supplemental report. (Ex. 318.) The correction explained that OP's Supplement Report, dated October 7, 2021, incorrectly identified the public park as a part and a benefit of the Project. (Ex. 273.) The correction further stated that the park is part of the redevelopment of the Bruce Monroe school site but is not part of the Project; the park will be

approximately 44,000 square feet and will be developed by the District for park and recreation uses separate from the Project.

2. **DDOT**

a. **DDOT report**

(140) On November 25, 2016, DDOT submitted a hearing report. (Ex. 44.) The DDOT hearing report indicated no objection to the application subject to the following conditions:

- Enhance the TDM plan to include the following elements:
 - Offer each general apartment unit and townhome an annual carsharing membership or an annual Capital Bikeshare membership for a period of three years;
 - Provide six shopping carts for multi-family residential tenants to run daily errands and grocery shopping; and
 - Install a transit screen in each of the lobbies for the general and senior apartments;
- As proposed, install pavement marking enhancements to a stop bar on Georgia Avenue at Hobart Place to better delineate stopping locations as a means to manage queue lengths; and
- Commit to install pavement markings (i.e., "puppy tracks") at the study area intersections along Georgia Avenue, subject to DDOT approval at permitting.

(141) At the December 5, 2016 public hearing, the Applicant agreed to all of DDOT's conditions.

(142) In addition, the DDOT report found that the proposed new north-south private street would "provide multi-modal connectivity through the site," and that the PUD Site's design "has the potential to disperse site traffic in a way that minimizes the action's impact on the external road network and improve connectivity to the adjacent neighborhoods. (Ex. 44, p. 2.) DDOT also found that future residents and visitors would be "likely to utilize transit, walking, and bicycling at high rates, thus auto use is likely to be low" because the PUD Site "is well-served by rail and bus services, as well as a robust network of bicycle facilities." (*Id.*) Moreover, DDOT concluded that the Project would "minimally increase travel delay and queuing in the area." (*Id.*)

b. **DDOT email regarding alley closing**

(143) On January 5, 2017, DDOT provided an email stating that it did not support placing a barrier between the new private alley segment proposed by the Applicant and the public alley. DDOT explained that such a barrier would preclude the opportunity

to improve connectivity in the alley system. DDOT concluded that alley connection would facilitate alley operations for the structures that use the existing dead-end alley. Further, DDOT does not anticipate that the connection would create a significant number of new trips to the alley from non-local traffic. (Ex. 240B.)

3. Other District agencies

(144) After the original hearings held on December 5 and 8, 2016, and in response to an objection, the Applicant submitted copies of the following written reports from District agencies on January 10, 2017:

- A DHCD letter, dated December 8, 2016, recommended approval of the Project because the Project will help meet the goals of the District's New Communities Initiative to revitalize communities through the provision of affordable housing without destabilizing land value, accelerating gentrification, or displacing neighboring residents; (Ex. 237J.)
- A DOEE email, dated December 8, 2016, confirming that the Project adequately addresses and will mitigate potential environmental impacts with respect to air pollution and stormwater runoff, consistent with the regulatory requirements of DOEE; (Ex. 237K.)
- A DC Water email, dated December 8, 2016, stating that the Project's utility plans adequately address water and sewer utility needs, and that the proposed water and sewer facilities shown on the Project's Plans would be considered adequate by DC Water; and (Ex. 237M.)
- A FEMS email, dated December 8, 2016, indicating that the Fire Marshal has no objection to the Project moving forward and being approved. (Ex. 237L.)

(145) After the DCCA Remand of Z.C. Order No. 16-11, the Commission received the following written comments from government agencies.

(146) On October 5, 2021, the Executive Director of DCHA submitted a letter, dated September 27, 2021, in support of the Application. (Ex. 270.) The report indicated that Bruce Monroe is an NCI development, which result in a vibrant mixed-income and mixed-use community that includes one-for-one replacement for former Park Morton residents, and between the redevelopment of the Bruce Monroe and the Park Morton site will result in 147 replacement units for former Park Morton residents. The report noted:

Bruce Monroe is an integral piece to the overall Park Morton Redevelopment plan in that it provides the needed 90 replacement units for former Park Morton residents so that they will have the opportunity to return to their neighborhood. I appreciate your consideration of these comments and request that the Zoning Commission approve Bruce Monroe PUD to move forward as proposed. (*Id.*)

- (147) On October 19, 2021, DMPED submitted a letter, dated October 13, 2021, in support of the Application. (Ex. 361.) The letter stated that the Bruce Monroe site is located along Georgia Avenue where the Comprehensive Plan supports a higher density zoning designation. The letter also explained that Bruce Monroe is a critical component to the overall Park Morton redevelopment plan and is designed to fulfill key tenets of NCI—development of one-for-one replacement of public housing demolished with a new affordable housing unit, and development of a vibrant mixed income community with an appropriate integration of housing types, and price points so that replacement public housing, workforce, and market rate residents each have appropriate emphasis within the redeveloped community.

Finally, the letter concluded, stating:

The approval of the PUD will permit the maximized usage of the Bruce Monroe site while serving the community, furthering the public interests, and significantly contributing to the Mayor’s affordable housing goals. The redevelopment of the Bruce Monroe site will continue to expand the neighborhood revitalization, which will be transformative to both the surrounding community and Ward 2. Most importantly, the approval of the proposed PUD will assist with advancing this long-stalled development and put residents one step closer to returning home to the Park Morton community. (*Id.*)

- (148) On October 18, 2021, D.C. Councilmember Brianne Nadeau, submitted written hearing testimony for the Limited Scope Hearing scheduled on October 19, 2021, in support of the Application, and noting that the amendments to the Comprehensive Plan serve to make clearer the PUD’s consistency with the land use policy goals of the District of Columbia. (Ex. 345.) Her letter explained that the PUD:

[]is necessary to fulfill the replacement of public housing units at Park Morton and deliver much-needed additional affordable housing and community amenities, and that the density and site plan of the PUD are necessary to achieve these critical goals.

(Ex. 345 at 1-2.) The letter then listed the relevant sections in the amendments to the Framework Element, Land Use Element, Mid-City Element, and the Future Land Use Map of Comprehensive Plan that she believed support approval of the Project. (*Id.* at 2-6.)

- (149) On October 18, 2021, the Interim Director of the District of Columbia DHCD submitted a letter in support of the Application. (Ex. 357.) The letter noted that the Project would help further housing production and preservation goals in addition to equitable distribution of housing goals. (*Id.*)

G. ANC RESPONSES TO THE APPLICATION AND PROCEDURAL ORDERS

1. ANC 1A

(150) ANC 1A submitted five reports in support of the Application, including hearing testimony, one separate letter from ANC 1A Chairman Kent Boese stating concerns, and responses to the Commission’s procedural orders.

a. ANC 1A report one

(151) On October 27, 2016, ANC 1A submitted a resolution in support of the Project, indicating that at its regularly scheduled and duly noticed public meeting of September 14, 2016, at which a quorum of commissioners was present, ANC 1A voted 10-0-0 to support the application. (Ex. 32- 32A.) The resolution stated that ANC 1A “supports the request for flexibility from zoning regulations and the community benefits,” and that the PUD “has offered a number of project amenities and public benefits commensurate with the development incentives and flexibility requested.” (Ex. 32-32A, pp. 3, 5.)

b. ANC 1A report two

(152) On December 5, 2016, ANC 1A submitted hearing testimony in support of the application citing the Project’s amenities, its appropriateness within the context of the surrounding neighborhood, and consistency with other nearby PUDs on Georgia Avenue. (Ex. 198.) The ANC testimony stated that “the amenities that will result from this project are significant, meaningful, and critical to the long-term health and development of the lower Georgia Avenue corridor” and will include affordable housing and result in an acre public park adjacent to the development. The ANC testimony further stated that the “key zoning considerations to be addressed in determining the appropriateness of this application are density, height, and relationship of this building to its surroundings.” Particularly, the ANC noted “The scale of the apartment and senior buildings and their relationship to the surrounding residential is important . . . a 90 ft. building is much larger than the typical 35 ft. high rowhouse. Keeping this in mind, we do feel that the scale, massing, and locating of the buildings are appropriate. The separation of the 90 ft. apartment building from the surrounding rowhouses by Irving Street on the north and a new street and 60 ft. high senior building to the west shows a sensitivity to the need to scale the development back as it nears the existing residential neighborhood.” Finally, the ANC explained “Contextually, the requested height for the building on Georgia Avenue is consistent with planned new development on Georgia Avenue. Similar PUDs that the Zoning Commission has already approved in close proximity to this site include two notable examples- 3333 Georgia Avenue (ZC10-26). . .and 3212-326 Georgia Avenue (ZC13-10). The height...approved...for 3333 Georgia was for a 90 ft. building with an 18 ft. penthouse structure -for a total of 108 ft...3212-3216 Georgia

Avenue...approved...87 ft. which contains a penthouse that is 18 ft. 6 in. in height-for a total height of 105 ft. 6 in.”

c. ANC 1A report three

- (153) On January 16, 2017, ANC 1A Chairman Kent Boese submitted a letter stating a concern about the Project. (Ex. 238.) His letter stated that the ANC was concerned about the Applicant’s proposal to restrict RPP eligibility from the market rate-units. The ANC stated that it did not support the Applicant’s proposal to include a condition restricting RPP eligibility from the market-rate units for several reasons. First, the ANC noted that the Applicant is complying with zoning parking requirements, and therefore was not seeking any relief from parking requirements. Second, the ANC stated it was opposed to restricting RPP eligibility in general because: (a) doing so through a covenant seemed like a bad policy; (b) it was contrary to the intent of D.C. Law 18-240, which states that, “[a]ny resident owning a vehicle registered at an address on a Ward 1 residential block may be granted a Zone 1 residential parking sticker”; and (c) DDOT and the Department of Motor Vehicles has acknowledged that it has no self-exemption process under the current regulations, thus eligible residents applying for RPPs may receive them. Third, the ANC stated it was particularly concerned with the proposal in this case, insofar as it would deny RPP eligibility to the market-rate units only. The ANC’s concerns are that it would decrease the marketability of the market rate units and thus have a negative impact on the success of the whole project, and that a successful mixed income project should provide equal amenities to all residents regardless of income.
- (154) Chairman Boese’s letter did not indicate that the ANC had authorized its contents at a properly noticed meeting with a quorum present, so it does not meet the standard of an ANC report which must be accorded great weight. The Commission nonetheless considered the contents of the letter at its public meeting on January 30, 2017, and agreed with the Chairman Boese that the RPP restriction should not apply to the market-rate units. The Commission therefore struck all references to the RPP-restriction for market rate units from the conditions of this Order.

d. ANC 1A report four

- (155) On July 12, 2020, ANC 1A submitted a response to the Commission’s First Procedural Order. (Ex. 256.) The ANC responded to the seven areas of concern raised in the DCCA Opinion in its remand of Z.C. Order No. 16-11, reiterating some of the hearing testimony it provided in Ex. 198 and noting other hearing testimony in support of the Project’s proposed density and height that was presented on December 5, 2016, as well as providing a discussion to illustrate where the PUD is consistent with Comprehensive Plan policies, priorities, or actions. The response stated that at its July 8, 2020 meeting, after providing sufficient notice, with a quorum of 12 commissioners present, the ANC voted 11-0-1 to adopt a resolution to continue to support the Application.

e. ANC 1A report five

(156) On October 11, 2021, ANC 1A submitted a final report in response to the Commission’s Second Procedural Order. (Ex. 271.) The report stated that ANC 1A “reaffirms its strong support” for the Project, “the significant number of affordable and affordable senior housing units it will produce, and the development’s many positive impacts it will have on the surrounding community for years to come.” The report discussed the reasons ANC 1A supported the changes to the Comprehensive Plan that strengthened support for the Project, because “[w]e are of the opinion that parcels around the Georgia Avenue Metro Station, the Bruce-Monroe Site, and a Howard University must support denser, mixed-use development as a benefit to the overall community.”

The report further stated that “[i]ncreasing density along Georgia Avenue:

- Provides opportunities to increase housing, and affordable housing, in the Pleasant Plans and Park View communities that otherwise would not exist. The production of significant new affordable housing units can best be achieved with larger developments in transit rich commercial corridors;
- Creates a more respectful and balanced approach to increasing neighborhood housing through larger development rather than through the destruction of family-size rowhouses. Century-old rowhouses remain one of the most affordable resources for families needing more than two-bedrooms; and
- Takes advantage of lower Georgia Avenue’s excellent access to public transportation, walkability, and growing bike infrastructure.

Finally, the report stated that at its September 8, 2021 meeting, after providing sufficient notice, with a quorum of 8 commissioners present, the ANC voted 8-0-0 to adopt a resolution noting how the recent changes in the Comprehensive Plan provide stronger support for the Project.

2. ANC 1B

(157) ANC 1B, the ANC located adjacent to the PUD Site, submitted four reports.

a. ANC 1B report one

(158) On October 10, 2016, ANC 1B submitted a resolution in support of the Project, indicating that at its regularly scheduled and duly noticed public meeting of October 6, 2016, at which a quorum of commissioners was present, ANC 1B voted 7-0-0 to support the application. (Ex. 28.) ANC 1B noted its support for the requested zoning flexibility, and stated that the Applicant had offered a number of benefits and amenities commensurate with the development incentives and flexibility requested. ANC 1B also suggested that the Applicant give serious consideration to

adding resident and community amenities, which it listed in the resolution. (Ex. 28, pp. 2, 3, 4.) ANC 1B filed duplicates of the resolution filed at Ex. 28 at Ex. 260 and 261 of the case record.

b. ANC 1B reports two and three

- (159) On July 28, 2020 and July 30, 2020, ANC 1B submitted two reports in response to the Commission’s first procedural order requesting comment on the DCCA Opinion remanding Z.C. Order 16-11. (Ex. 257 and 261.) Both Ex. 257 and Ex. 261 include an identical first page and indicate that at a duly noticed public meeting on July 9, 2020, with a quorum of 11 commissioners present, the ANC voted to defer and concur with the response submitted by ANC 1A.
- (160) The reports also both state that “ANC 1B is committed to providing housing opportunities to rent and buy at all income levels and end programs that have demonstrated low-income warehousing in poorly maintained properties. We believe healthier communities and vibrant neighborhoods will develop with integrated low, moderate, and market income groups and with appropriate rental and ownership programs and opportunities.”
- (161) The report filed at Ex. 257 differs from the report at Ex. 261 because Ex. 257 includes the ANC 1B resolution originally filed at Ex. 28 as an attachment while Ex. 261 does not include the resolution.

c. ANC 1B report four

- (162) On October 13, 2021, ANC 1B submitted a fourth report in response to the Commission’s Second Procedural Order stating that at a regularly scheduled publicly noticed meeting on October 7, 2021, with a quorum of 9 commissioners present, the ANC voted 9-0-0 to defer to and participate in the process established by ANC 1A to gather input from the community and adjacent ANCs and issue recommendations. The report also stated that “ANC 1B supports and recommends rapid approval and redevelopment of this important program to provide senior, low, moderate, and market-based housing.” (Ex. 276.)

H. PARTY RESPONSES TO PROCEDURAL ORDERS

1. First Procedural Order

- (163) On August 6, 2020, the Applicant submitted its response to the Commission’s first procedural order, including detailed responses to the seven issues identified by the DCCA in its Opinion remanding Z.C. Order 16-11. (Ex. 262.) The Applicant explained that it met the standard of review necessary to obtain approval of the PUD and that the Commission should grant the PUD.

(164) Notably, the Applicant stated the following:

- The Commission has found substantial reasons for approving the PUD, including the need for sufficient housing for former Park Morton residents and the need for senior housing—both of which inform the heights and densities of these buildings. The Commission has before it the information regarding the development and the parameters needed to make this project feasible and sustainable. Thus, to the extent that there is a lingering "inconsistency" between the land use examples of densities and the designations here, the Commission has weighed that and has concluded to exercise its authority to approve the buildings; and (*Id.* at 8.)

- With respect to the Project's consistency with the Comprehensive Plan, the Applicant noted:
 - The case record overwhelmingly demonstrates that the Project is not inconsistent with the Comprehensive Plan when read as a whole;
 - The Project is not inconsistent with the policy guidance provided by the GPM regarding the need to transition from the Main Street Mixed Use Corridor along Georgia Avenue to the lower-scale Neighborhood Conservation Area to the west;
 - The project is also not inconsistent with the FLUM in the following ways: (i) the proposed C-2-B and R-5-B zones are expressly stated as being generally consistent with the FLUM designations of the areas that are adjacent to the PUD Site; (ii) the height and density of the Project are consistent with the land use definitions in the Framework Element, including the guidelines stating that building heights under a PUD may exceed the typical heights (stories) cited in the land use descriptions; and (iii) the proposed heights of the apartment building and senior building are generally consistent with the surrounding context; and
 - The project is also not inconsistent with the Citywide and Mid-City Elements of the Comprehensive Plan.

(*Id.* at 13.)

(165) On August 6, 2020, BMPN submitted its response to the First Procedural Order. (Ex. 263.) The response stated the following:

- The response raised several objections related to the Commission's remand procedures. These are discussed in Section I.C, The Commission's Responses to Procedural Objections, above.

- The response alleged that the Commission should hold a hearing to allow further testimony regarding public land, tax dollars, and housing, and the disruption and elimination of existing amenities such as recreation and green space before making its decision on remand.
- The response alleged the Project will have adverse impacts and effects. These are discussed in Section II.E, Project Impacts and Potential Adverse Effects, above; and
- The response also alleged that the Project was inconsistent with several Comprehensive Plan policies. These assertions are discussed in Section II.I.7, Potential inconsistencies with the Comp Plan and other public policies, below.

(166) On August 6, 2020, PMRC submitted its response to the Commission's First Procedural Order. (Ex. 264.) The response stated the following:

- The response stated that the Commission should hold a hearing to allow further testimony before making its decision on the remand. This is discussed in Section I.C, The Commission's Responses to Procedural Objections, above;
- The response alleged that the Commission's Z.C. Order No. 16-11 failed to adequately address the potential adverse impacts of the Project. These are discussed in section II.E, Project Impacts and Potential Adverse Effects, above;
- The response alleged the Project was inconsistent with several Comprehensive Plan policies. These assertions are discussed in Section II.I.7, Potential inconsistencies with the Comp Plan and other public policies, below; and
- The response also included a copy of the PMEP, which was created PMRC, as an alternative to NCI's (i.e., DMPEP in coordination with DCHA) development plan for the Park Morton site. The response explains that the PMEP was presented to the DCHA Board of Commissioners in January 2019 for consideration as an alternative to waiting for resolution of the Bruce Monroe court case and the delay of developing a build-first site. The PMEP seems to propose a couple of significant alternatives, but it is unclear if the entirety of the plan is included with Ex. 264. First, it appears to suggest designating The Wren (965 Florida Avenue), a city public-private project as the alternate build-first site to Bruce Monroe, leveraging 40-50 of that project's already designated affordable units. And second, the PMEP appears to propose granting the Park Morton residents a right to purchase a 30% equity share of the Park Morton under NCI, consistent with the DC Tenant Opportunity to Purchase (TOPA) Act and HUD Sec 18. Demolition and Disposition of Public Housing regulations. (Ex. 264 at 23-24.) Notably, the two alternatives suggested in the PMEP do not directly relate to or respond to the Commission's procedural order nor do they pertain directly to Bruce Monroe, the Project that is the subject of this Application, Z.C. Case No. 16-11. Rather, the PMEP pertains most directly

to the redevelopment of the Park Morton site, which is the subject of Z.C. Case No. 16-12, and is separate from this Application and not the subject of this remand proceeding.

2. Second Procedural Order

- (167) At its July 26, 2021 public meeting, the Commission considered the submissions in response to its First Procedural Order, and decided to hold a Limited Scope Hearing to develop the record on how the seven issues raised in the DCCA Opinion should be evaluated under the updated Comprehensive Plan.¹³ The Commission therefore requested that the parties and OP submit written statements analyzing the proposed PUD under the updated Comprehensive Plan, particularly with regard to the seven issues raised in the DCCA Opinion. (“Limited Scope Hearing Notice” or “Second Procedural Order”.) In response, the Commission received submissions from the parties as discussed below.
- (168) BMPN submitted a response stating that Marc Poe would represent it at the Limited Scope Hearing. (Ex. 272.) The response did not directly address the Commission’s Second Procedural Order, specifically the request to analyze the Project under the updated Comprehensive Plan.
- (169) The Applicant submitted a response analyzing the proposed PUD under the updated Comprehensive Plan. (Ex. 274.) The Applicant explained that the case record overwhelmingly demonstrates that the Project is not inconsistent with the updated Comp Plan when read as a whole. The Project fits squarely within the Mixed-Use, Medium-Density Residential and Medium-Density Commercial FLUM designation applicable to the Property through the updated FLUM; the 60- and 90-foot tall building heights are fully consistent with this new mixed-use FLUM designation. The Project is not inconsistent with the policy guidance provided by the GPM’s amended definition of the Neighborhood Conservation Area designation in the Framework Element; the amended definition states that the Neighborhood Conservation Areas designation does “not preclude development, particularly to address city-wide housing needs.” (*See* 10-A DCMR § 225.5 of the updated Comp Plan.) The Applicant further states that the Project promotes and furthers the goals of the updated Comp Plan, including racial equity, and the policies of the Citywide and Mid-City Area elements.
- (170) Particularly, with respect to evaluating the Project’s overall consistency with the Comp Plan through a “racial equity lens,” the Applicant cited the following ways that the Project advances racial equity:

¹³ The D.C. Council adopted two set of amendments to the Comprehensive Plan. The Comprehensive Amendment Act of 2017 amended the framework element, and was effective August 27, 2020, as D.C. Law 23-217. The Comprehensive Plan Amendment Act of 2020 amended the text of the Comprehensive Plan and its Future Land Use Map, and was effective on August 21, 2021, as D.C. Law 24-20.

- The provision of housing, affordable, workforce, and public housing replacement units, thus providing housing options for people of various financial means, with 70-74 market rate units, 90 public housing units, and 109-113 affordable housing units for households earning up to 60% of AMI;
- The provision of a variety of housing typologies (senior units, family units, and townhomes) and a mix of unit sizes (1, 2, and 3 bedroom), thus providing housing opportunities for a wider segment of the population;
- The provision of approximately 4,500 square feet of ground-floor retail/community serving space, thus providing space that will be used to serve the diverse needs of the residents and immediate community;
- The inclusion of community/amenity rooms that will provide space for resident meetings, services, and other opportunities for resident and community engagement and social interaction;
- The incorporation of sustainable design and environmentally friendly elements, and the provision of landscaped courtyards and exterior spaces, thus helping to improve the health of people living in the approved housing;
- The execution of a CBE Agreement with DSLBD, which agreement requires that 35% of the construction costs be spent on subcontracting to Small Business Enterprises (SBE) certified by DSLBD, thus improving economic and business development opportunities for underrepresented companies;
- The execution of a First Source Employment Agreement with DOES, which agreement requires that 51% of all new hires for the project be District residents, thus improving employment opportunities for District residents, including underemployed companies;
- The implementation of the U.S. Department of Housing and Urban Development's Section 3 requirements, thereby providing job training, employment, and contract opportunities for low-income and very-low-income district residents and businesses;
- The incorporation of a variety of TDM measures (such as providing residents either a car sharing or bike sharing membership and providing residents SmarTrip cards), thus assisting with making it easier for residents to access goods, services, and employment locations; and
- The Applicant has also agreed, in coordination with the impacted ANCs in this case, to provide youth programming and job training opportunities through The Community Builders' Community Life Division and to provide funding support for neighborhood initiatives to be identified in collaboration with ANC 1A, DMPED, DCHA, and other key stakeholders. These efforts and contributions

will help address livability, opportunity, and prosperity for underrepresented District residents. (Ex. 274 at 9-10.)

- (171) PMRC submitted two responses. The first was a letter authored by the organization’s President explaining that Park Morton residents have been displaced and mistreated in this process and stressing that residents must be afforded a right to return and the opportunity for homeownership. (Ex. 272A.) The second response reiterated that the Project’s delay has displaced numerous Park Morton residents. In addition, PMRC stated that in response to the delay it proposed an alternative development plan, the PMP, and requested that the Commission adopt the PMP as the equity tool in evaluating the Project. The PMRC also contended that the Project is inconsistent with several of the updated Comp Plan policies because of the Project’s numerous negative impacts on the low-income residents of the Park Morton. Specifically, the requirement that the Commission review “agreements for financing. . .including public and private responsibilities” because DMPED’s budget is insufficient for the redevelopment proposed (10-A DCMR §2502.11); the requirement that the Commission evaluate actions through a “racial equity lens” utilizing a racial equity tool (10-A DCMR §§ 2501.8, 310.1); and the requirement to avoid the permanent displacement of residents (10-A DCMR § 2011.14; Ex. 275.)
- (172) Marc Poe submitted a statement that comprised BMPN’s substantive response. The letter explained that the Project is inconsistent with the Comp Plan, noting that the 90 foot building remains inconsistent with the GPM because it protrudes into a Neighborhood Conservation Area; that the 60 foot building is inconsistent with the areas adjacent to the west designated moderate-density residential; that a building standing 90 feet is considered a high density project; that the Commission should forego its reliance on the argument that other nearby PUDs mimic the 60 foot building; that the Project will not provide enough three-four bedroom units to retain and attract families; that the Project will not serve as a build-first site because Park Morton has emptied; and that the District should be preserving greenspace and existing affordable housing rather than concentrating poverty with this Project. (Ex. 299.) The issues raised by the party opponents regarding the Project’s consistency with the revised Comprehensive Plan are discussed in Section II.I.7, Potential inconsistencies with the Comp Plan and other public policies, below.

3. Limited Scope Public Hearing and Post-Hearing Submissions

- (173) The Commission held a properly noticed limited scope public hearing on October 19, 2021. The scope of the public hearing was limited to how the seven issues raised in the DCCA Opinion should be evaluated under the updated Comprehensive Plan.¹⁴ At the public hearing, the parties testified, including the Applicant, ANC

¹⁴ The D.C. Council adopted two sets of amendments to the Comprehensive Plan. The Comprehensive Amendment Act of 2017 amended the framework element, and was effective August 27, 2020, as D.C. Law 23-217. The Comprehensive Plan Amendment Act of 2020 amended the text of the Comprehensive Plan and its Future Land Use Map, and was effective on August 21, 2021, as D.C. Law 24-20.

1A, BMPN, and PMRC; and OP testified. Much of the testimony presented reiterated the statements made in the respective responses to the Commission's second procedural order (as discussed above in Sections II.F.1.c, Supplemental OP Report; II.G, ANC Responses to the Application and Procedural Orders; and II.H.2., Party responses to Second Procedural Order.) In addition, organizations and individuals testified in support; and several individuals testified in opposition. (October 19, 2021 Tr. at 138-144, 196-225.)

- (174) The parties in opposition, PMRC and BMPN, testified and questioned how the Project meets the racial equity requirements of the updated Comp Plan, given the displacement of Park Morton residents and the Project's lack of homeownership opportunities, questioned whether there was an equity tool being utilized to evaluate the Project through a "racial equity lens", and suggested that the Commission should build a racial equity tool with elements to facilitate communication consistent with the updated Comp Plan Implementation Element Policy IM-1.1.6: Studies Informing Zoning Case Approval, and the Mid-City Area Element Action MC-2.1.E: Park Morton New Community. (10-A DCMR §§ 2502.11, 2011.14.) In addition, the parties in opposition questioned if the Project's overall density could result in school overcrowding and how it was in character with the neighborhood, as well as how the CP Mid-City Area Element policy for additional parks was furthered by the Project's elimination of an existing park on the Site. The parties in opposition also cited the need for more large size three- to four-bedroom units and the relatively small number of large size units proposed in the Project. (October 19, 2021 Tr. at 39-44, 55, 65, 73, 89-100, 155-163, 168-189.)
- (175) The individuals who testified in opposition stated that the Remanded Order approving the Application failed to fully address the adverse impacts associated with the Project. They also testified that the Project's overall density was out of character with the neighborhood, that the Project's size would place a strain on public services; and stated their overall objection to the elimination of the existing park on the Site to build such a large intrusive Project. (October 19, 2021 Tr. at 196-225.)
- (176) At the conclusion of the Limited Scope Hearing, the Commission closed the record except to allow PMRC to submit its "racial equity tool" consistent with the Comp Plan policies referenced during its hearing testimony, and the Commission also requested that the PMRC submit a copy of PMP, that it referred to in its submissions prior to the Limited Scope Hearing (Ex. 264, 272A, 275.) and in its hearing testimony, and to allow any of the parties to respond to the submission. The following post-hearing submissions were provided.
- (177) The PMRC submitted a PowerPoint presentation including its "racial equity tool." (Ex. 363, 363A, a resubmission of PMRC's initial response at Ex. 264, including the PMP and described above in Section II.H, Party Responses to Procedural Orders.) The racial equity tool included references to various CP policies, including

sections of the Mid-City Area Element and the Implementation Element, specifically § 2011.14, Action MC-2.1.E: Park Morton New Community, § 2501.8, Action: IM-1.B Equity Tools for District Agencies Including the Zoning Commission, and § 2502.11, IM-1.1.6: Studies Informing Zoning Case Approval, that PMRC suggested should guide the Commission in its evaluation of the Project through a “racial equity lens.” The tool also included a table with steps the Commission should follow in its evaluation and questions it should ask in its evaluation process. Finally, the tool included a list of guidelines describing what racial equity is and what racial equity is not. (Ex. 363.)

(178) ANC 1A submitted a resolution in support of the Project, indicating that at its regularly scheduled and duly noticed public meeting of October 14, 2021, at which a quorum of 10 commissioners was present, ANC 1A voted 6-1-3 in support. The resolution stated the following: (Ex. 363B.)

- That there must be 1:1 replacement of public housing units with three- and four-bedroom options;
- That residents must be given the full right to return as documented in DCHA Resolution 16-06 without exceptions;
- That Home Ownership and/or Cooperatives must be a part of the development plans; and
- That the PMEP was developed by The Council at Park Morton to address residents’ concerns about the redevelopment path forward and demonstrated a clear concern that residents and families do not have all of the appropriate options and Human Capital supports as described and committed to in NCI’s plans for housing during the redevelopment.

(179) The Applicant submitted a response noting that many of PMRC’s racial equity arguments attempt to use this proceeding, regarding Z.C. Case No. 16-11 (Bruce Monroe), to reevaluate the merits of Z.C. Case No. 16-12 (Park Morton). (Ex. 364.) The Applicant suggested that the Commission reject attempts to reopen Z.C. Case No. 16-12 and focus on the alleged impacts of this case on Park Morton residents.

(180) The Applicant also explained that the CP policies PMRC cites in its racial equity tool are not directly applicable to an evaluation of the Project through a “racial equity lens” as PMRC suggests. (*Id.*) Specifically, the CP policy PMRC cites in its racial equity tool, Mid-City Area Element Action MC-2.1.E: Park Morton New Community, is not applicable to the Project or the Applicant because the action pertains to the development of Park Morton not Bruce Monroe, and the Commission is not specifically stated as responsible for implementing the action. (10-A DCMR §2011.14.) Similarly, the CP policy PMRC cites, Implementation Element Action: IM-1.B Equity Tools for District Agencies Including the Zoning Commission, simply calls for the preparation and implementation of tools and

training to assist District agencies in evaluating and implementing CP policies and actions through a racial equity lens, but it does not pertain to Bruce Monroe nor does it place a moratorium on redevelopment in general while additional tools and training are created. (10-A DCMR § 2501.8.) Finally, the CP policy PMRC cites, IM-1.1.6: Studies Informing Zoning Case Approval, does not require the Commission to study/review agreements for financing as PMRC asserts. (10-A DCMR § 2502.11.) Such review is not a requirement under the PUD standards of review in the Zoning Regulations, and frequently a development project does not obtain full financing in advance of securing entitlements, particularly zoning entitlements. Finally, the Applicant restates the ways the Project advances racial equity, which are listed above in Section II.H.2, Party Responses to Second Procedural Order. (Ex. 274.)

(181) BMPN submitted a response stating that the Project circumvents planning and study by eliminating an existing park on the Site, introducing density that could negatively impact public services, and providing housing units that do not have enough large bedroom units to accommodate the Park Morton residents. (Ex. 365.)

I. CONSISTENCY WITH THE COMP PLAN AND OTHER PUBLIC POLICIES

1. Introduction

(182) The Commission primarily considered the PUD's consistency with the Comprehensive Plan and other relevant public policies effective when the Commission made its original decision. These policies are described in Sections II.I.2, Consistency with the Comp Plan in effect at the time of the original approval – II.I.5, Other relevant public policy goals outside of the Comp Plan that support approval of the Project, below. The Commission also considered the PUD's consistency with the updated CP, as it was amended by the D.C. Council after the Court of Appeals remanded the case to the Commission. The relevant policies are described in Section II.I.6, The Application's consistency with the updated Comp Plan as it was modified by the D.C. Council after the Court of Appeals remanded the case to the Commission, below.

(183) The Commission found the Project to have several potential inconsistencies with CP policies. They are listed in Section II.I.7, Potential inconsistencies with the Comprehensive Plan and other public policies, below.

2. Consistency with the Comp Plan in effect at the time of the original approval

(184) The Commission considered the CP and other policies that were in effect at the time of the original approval and finds as follows.

3. GPM and FLUM Maps for the Site

a. GPM

(185) The PUD Site is split, with two designations on the GPM.

- The eastern portion of the PUD Site along Georgia Avenue is designated “Mixed Use Main Street Corridor;” and
- The western portion of the PUD Site is designated “Neighborhood Conservation Area.”

The Mixed-Use Main Street Corridor designation extends along Georgia Avenue to encompass the properties fronting Georgia Avenue to the north and south of the PUD Site. The remaining areas surrounding the PUD Site to the north, south, and west are designated Neighborhood Conservation Area.

The PUD Site’s and surrounding area’s GPM designations are shown on the images below:
(Ex. 234, p. 14; Ex. 360, p. 6.)



(Ex. 234, p. 14.)



(Ex. 360, p. 6.)

(186) A portion of the 90 Foot Apartment Building extends into the Neighborhood Conservation Area. The entire 60 Foot Senior Building is located in the NCA. (Ex. 360, p. 6.)

(187) The depth of the boundary between the Main Street Mixed-Use Corridor and the Neighborhood Conservation Area along Georgia Avenue is uniform, regardless of the depth of the lots themselves. (Ex. 234, p. 14.) In the vicinity of the PUD Site, the boundary follows the typical lot depths for the lots facing Georgia Avenue. The lots that face Georgia Avenue are designated Mixed-Use Main Street, and those that face the cross streets are designated Neighborhood Conservation Area. (Ex. 234, p. 14.)

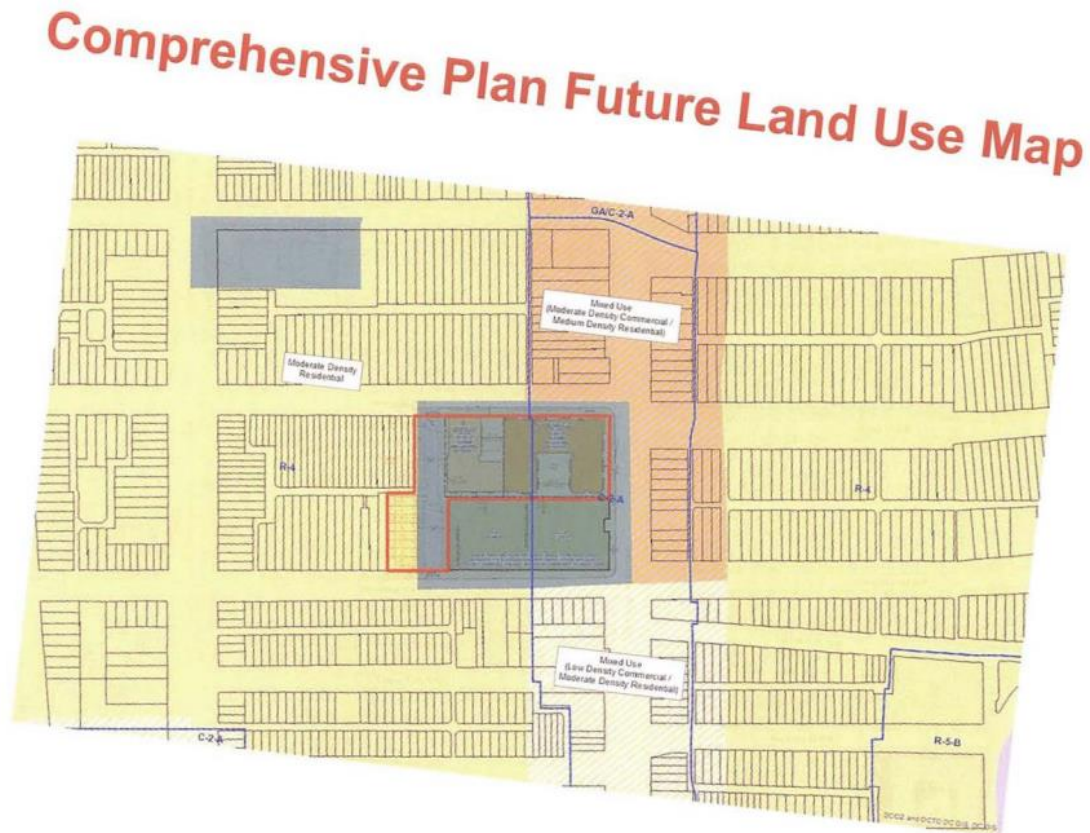
(188) The Site is an exception to this pattern. It is a much larger and deeper lot than the other lots in the vicinity. So, unlike the neighboring lots that front on Georgia Avenue that are completely within the Mixed-Use Main Street Corridor category, the Site is split between the two categories. (Ex. 234, p. 14.)

b. FLUM

(189) The PUD Site is split with two designations on the FLUM.

- The majority of the PUD Site is designated Local Public Facility; and
- A small section in the southwest corner of the PUD Site is designated Moderate-density Residential.

The PUD Site's and the surrounding area's FLUM designations are shown below (Ex. 234, p. 13; Ex. 43, p. 9.) The PUD Site's surrounding areas to the north and east are designated Mixed-Use Moderate-Density Commercial/Medium Density Residential; and to the west Moderate-Density Residential. (Ex. 234, p. 13.)



(Ex. 234, p. 13.)

- (190) The PUD Site is outlined in red in the image above and the majority of the PUD Site is designated Local Public Facilities, which is represented in a blue color. In the vicinity of the PUD Site, a Mixed-Use Moderate-Density Commercial/Medium-Density Residential corridor runs along Georgia Avenue. On the image above, the Mixed-Use Moderate-Density Commercial/Medium-Density Residential corridor is represented in a red/orange color. That color, and the corresponding corridor, begins to the north of the Site and runs south along both sides of Georgia Avenue, ending at Site on the west side of the Georgia Ave and continuing past the Site on the east side of Georgia Avenue to the south. (Ex. 234, p. 13.)
- (191) The depth of the corridor is fixed more or less uniformly, regardless of the depth of the lots themselves. (Ex. 234, p. 13.) The depth generally follows the typical lot depths for the lots facing Georgia Avenue. (Ex. 234, p. 13.)

(192) The areas adjacent to the western portion of the site (to the north, west and south) are designated as Moderate-Density Residential. (Ex. 234, p. 13.)

c. Framework Element guidance for interpreting the GPM and FLUM

1) General

(193) The Framework Element provides “several important parameters” to apply to the use and interpretation of the GPM and FLUM that are relevant here:

- They are not zoning maps, do not follow parcel boundaries, and do not specify allowable uses or dimensional standards. The maps represent a “generalized depiction” and that “[b]y definition, the Map is to be interpreted broadly;” (10-A DCMR § 226.1(a).)
- The densities within any given area reflect all contiguous properties on a block and there may be individual buildings that are higher or lower than these ranges within a given area. Similarly, the land use category definitions describe the general character of development within each area, citing typical building heights. “It should be noted that the granting of bonus densities for example through a Planned Unit Development may result in heights that exceed the typical ranges;” (10-A DCMR § 226.1(c).)
- The zoning of any given area should be guided by the maps, interpreted in conjunction with the text of the CP; (10-A DCMR § 226.1(d).)
- The designation of an area with a particular land use category does not necessarily mean that the most intense zoning district described in the definitions is automatically permitted; and (10-A DCMR § 226.1(e).)
- The maps do not show density or intensity on local public sites. If a change in use occurs on these sites the new designations should be comparable in density or intensity to those in the vicinity. (10-A DCMR § 226.1(h).)

2) GPM

(a) Mixed-Use Main Street Corridor

(194) The Framework Element defines the Mixed-Use Main Street Corridor as follows. “These are traditional commercial business corridors with a concentration of older storefronts along the street. The service area for Main Streets can vary from one neighborhood (e.g., 14th Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper story residential or office uses. Conservation and enhancement of these corridors is desired to foster economic and housing

opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment.” (10-A DCMR § 223.14.)

- (195) The Project is consistent with this designation. Georgia Avenue includes commercial properties, older storefronts, and sidewalks on both sides of the street. The PUD will conserve this existing character by bringing new developed frontage to Georgia Avenue, improving the pedestrian experience through streetscape enhancements and pedestrian-oriented amenities, and increasing safety by putting additional eyes and ears on the street. The PUD will bring significant new housing to the area, which will foster economic development for the existing businesses along Georgia Avenue and will attract new business and investment to the corridor. This new housing will also support transit usage. (FF 101 Z.C. Order No. 16-11; Ex. 251.)

(b) Neighborhood Conservation Area

- (196) The Framework Element’s description of the policy guidance for Neighborhood Conservation Areas is as follows. “Neighborhood Conservation areas have very little vacant or underutilized land. They are primarily residential in character. Maintenance of existing land uses, and community character is anticipated over the next 20 years. Where change occurs, it will be modest in scale and will consist primarily of scattered site infill housing, public facilities, and institutional uses. Major changes in density over current (2005) conditions are not expected but some new development and reuse opportunities are anticipated. Neighborhood Conservation Areas that are designated “PDR” on the Future Land Use Map are expected to be retained with the mix of industrial, office, and retail uses they have historically provided.” (10-A DCMR § 223.4.) “The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. Limited development and redevelopment opportunities do exist within these areas, but they are small in scale. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map. (10-A DCMR § 223.5.)

(c) Analysis of Project

- (197) The southwestern portion of the PUD Site will be developed with lower-scale residential uses that respect the neighborhood’s existing architectural character and scale. The southwestern-most portion of the PUD Site (closest to the existing row dwellings on the north side of Columbia Road) will be developed with corresponding new townhomes, built to a maximum height of 40 feet and set back from the existing dwellings. The new townhomes will front onto the new private street and will be sited along traditional sidewalks and landscaping.

(198) A portion of the 90-Foot-Tall Apartment Building and the entire 60-Foot-Tall Senior Building are located in Neighborhood Conservation Area on the GPM. These two buildings are larger in scale and of a different architectural character than the townhouses directly to the north across Irving Street, and are larger than the existing development in close proximity on Georgia Avenue. They will cast shadows to the north. The record contains the following evidence of the location of these buildings into the NCA and its impact on neighboring properties:

- A portion of the 90-Foot-Tall Apartment Building and all of the 60-Foot-Tall Senior Building “intrude” into the area shown as NCA on the GPM; (Ex. 360, pp. 5 and 6¹⁵.)
- Shadow studies showing the shadow impact on the adjacent properties, including those on Irving Street that would be most directly impacted; (Ex. 234, p. 4.)
- The plans show what the north side of the 90-Foot-Tall Apartment Building and 60-Foot-Tall Senior Building would look like that would face the rowhomes on Irving Street; (Ex. 237A4, Sheet A09.)
- Photos showing the existing neighborhood conditions at Sheet G06 (Ex. 237A1). They include photos showing the existing rowhomes on the north side of Irving Street that would directly face the 90-Foot-Tall Apartment Building and 60-Foot-Tall Senior Building (Image 2 of Sheet G06) and the existing rowhomes on the south side of Irving Street that would abut the west side of the Project; (Image 4 of Sheet G06; Ex. 237A1.)
- At set down, the Commission specifically requested additional information from the Applicant and the OP to “understand a little better how the 90-foot height of the apartment building would be not inconsistent with the Comp Plan designation.” Specifically, the Local Public Facilities and Moderate-Density Residential designations. (July 25, 2016 Tr. at 101.) The additional information requested by the Commission was provided by the Applicant and OP at Ex. 35B and 43, respectively;
- The Applicant provided further analysis of the height and density of the Project in its written submissions; (Ex. 35B, 196, 197.)
- The Applicant provided analysis including specific information regarding the separation between the apartment building and nearby row dwellings, as well

¹⁵ Other evidence in the record showing the relationship between the NCA and the 90 foot building is found on Sheet A07, which is included in record at Ex. 237A4. A similar drawing is also included as Sheet A07 in Ex. 35A2 and Ex. 6A4. The drawings in these earlier exhibits show small differences in the roof plan, but all drawings show the depth of the “intrusion” of the 90 foot building to be the same.

as the results of a shadow study; (See December 5 and 8, 2016 Tr.; Ex. 233, 244.)

- The Commission specifically inquired at the public hearing about the proposed height of the project and its separation from existing row dwellings to the north and west; and (See December 5, 2016 Tr. at 75-76.)
- In regard to the issue concerning the protrusion of the buildings into the NCA, the Commission commented on the extent to which the 90-Foot-Tall Apartment Building would be located directly across from the two-story row dwellings on the north side of Irving Street. Specifically, a Commission member stated “[i]n this particular case, especially on Irving Street, I personally feel the massing is fitting in ...Going up the alley there’s only about three homes past the alley that really face the 90-feet part of it. ...and then the senior housing at 60 feet, and you get another three homes facing that.” (See December 5, 2016 Tr. at 106.)

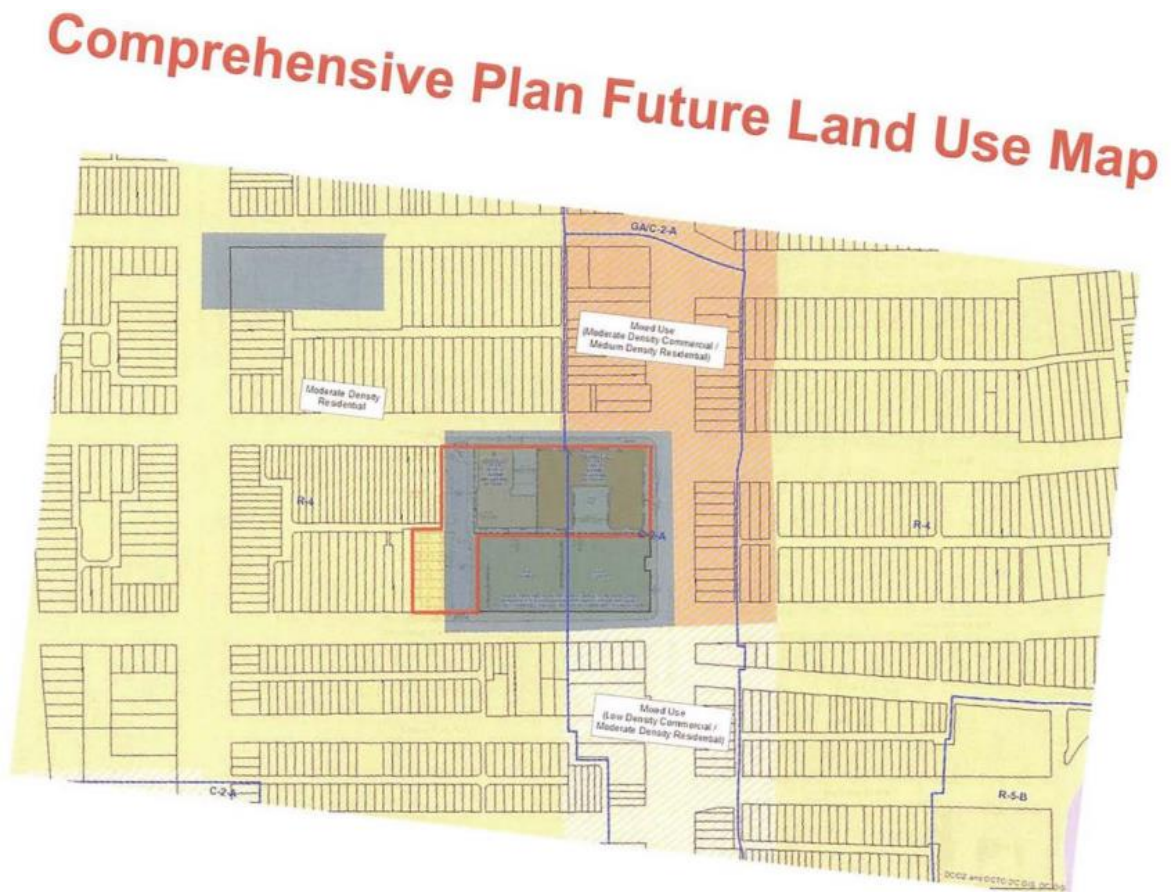
(199) The Commission finds the fact that a portion of the 90-Foot-Tall Apartment Building and the entire 60-Foot-Tall Senior Building are located in the NCA is inconsistent with the policy guidance of the NCA.

(200) However, the PUD Site is unique, and in several ways does not fit within the conditions and parameters of the NCA described in the Framework Element. The PUD Site is currently underutilized, serving as a temporary park awaiting this redevelopment. Before serving as a temporary park, the PUD Site was a school building and related facility. Because of the PUD Site’s large size, prominent location, and current state, any redevelopment will not be the kind of “small in scale” development contemplated by the NCA. Instead, the unique nature of the Site makes it better suited for larger scale redevelopment. The Commission therefore believes it is acceptable to allow the more intense development of the type contemplated by the Mixed-Use Main Street Corridor to extend into the area shown as an NCA on the GPM. This is consistent with the interpretive guidance that the map is to be interpreted broadly (10-A DCMR § 226.1(a)); that granting bonus densities through a PUD may result in heights that exceed typical ranges (10-A DCMR § 226.1(c)); and that the zoning of any given area should be guided by the maps, interpreted in conjunction with the text of the CP. (10-A DCMR § 226.1(d).) For these reasons, the Commission finds that the PUD is not inconsistent with the GPM, notwithstanding the NCA inconsistency, when all of the relevant GPM policy guidance is considered as a whole.

(201) Furthermore, the Commission finds that despite the inconsistency with the policy guidance of the NCA, there are many other policies in the CP that support approval of the PUD, discussed in Section II.I.4, Other relevant policy guidance in the Comp Plan that supports approval of the Project, below. The Commission finds that, taken as a whole, the weight of the policy guidance supporting approval of the PUD outweighs the PUD's inconsistency with some policy guidance. Therefore, the Commission concludes that the policy guidance decisively supports the conclusion that the PUD is not inconsistent with the GPM.

3) FLUM

(202) The FLUM guidance for the PUD Site can be seen on the image below which depicts the PUD Site and its immediate surroundings on the FLUM. The Commission interprets this FLUM guidance as telling a somewhat complicated story.



(Ex. 234, p. 13.)

(a) Local Public Facilities

- (203) The PUD Site itself is almost entirely within the “Local Public Facilities” designation, which is described in the Framework Element as:

Local Public Facilities: This designation includes land and facilities occupied and used by the District of Columbia government or other local government agencies (such as WMATA), excluding parks and open space. Uses include public schools including charter schools, public hospitals, government office complexes, and similar local government activities. Because of the map scale, local public facilities smaller than one acre-including some of the District’s libraries, police and fire stations, and similar uses-may not appear on the Map. Zoning designations vary depending on surrounding uses.

(10-A DCMR § 225.15.)

- (204) The placement of the PUD Site in the “Local Public Facilities” designation is because the PUD Site was previously the location of the now demolished Bruce Monroe School. (OP Hearing Report, Ex. 43, p. 3.) The PUD Site is now a temporary park awaiting this redevelopment project. (Ex. 6, p. 6; OP Setdown Report, Ex. 14, pp. 5, 17.)

- (205) The Framework element directs that the FLUM does not show density or intensity on these sites, and when these sites are redeveloped with other uses as is occurring here, “the new designations should be comparable in density or intensity to those in the vicinity, unless otherwise stated in the Comprehensive Plan Area Elements or an approved Campus Plan. (10-A DCMR § 226.1(h).) This obligates the Commission to look to “the vicinity” to see what the appropriate density and intensity FLUM guidance should be.

(i) Interpreting “the vicinity”

- (206) The Commission interprets the reference to in 10-A DCMR § 226.1(h) to “the vicinity” to mean the guidance on the FLUM in the vicinity of the Site as opposed to existing development in the vicinity of the Site. ^{16, 17}

¹⁶ The Commission recognizes that this is a departure from its decision in the Original Order to look to the existing development in the vicinity of the PUD Site. The Commission believes the better interpretation is to look to the FLUM guidance in the vicinity of the PUD Site for two reasons. One, the nearby FLUM designations are more directly applicable to deciding what the appropriate FLUM designation guidance should be for the PUD Site than the existing structures and uses in the vicinity. Two, the Framework Element directs that FLUM guidance is intended to be a “depiction of intended uses in the horizon year of the Comprehensive Plan, roughly 20 years in the future. It is not an ‘existing land use map.’” (10-A DCMR § 226.1(b).)

¹⁷ In the alternative, the Commission finds that the Project is denser and taller than the existing development in the immediate vicinity of the PUD Site. The Commission finds that this inconsistency is outweighed by the other policy guidance in the CP that favors approval of the Application.

The Commission interprets the FLUM guidance in the vicinity of the Site as indicating that the Mixed-Use Corridor (Medium-Density Residential/Moderate-Density Commercial) extends through the Site along Georgia Avenue when considering zoning for its redevelopment, with the remainder of the Site included within the Moderate-Density Residential category.

(ii) **Mixed Use Categories**

- (207) The Framework Element directs the Commission to interpret Mixed Use Categories as follows:

Mixed Use Categories: The Future Land Use Map indicates areas where the mixing of two or more land uses is encouraged. The particular combination of uses desired in a given area is depicted in striped patterns, with stripe colors corresponding to the categories defined on the previous pages. The Mixed-Use category generally applies in the following three circumstances:

- (a) Established, pedestrian-oriented commercial areas which also include substantial amounts of housing, typically on the upper stories of buildings with ground floor retail or office uses;
- (b) Commercial corridors or districts which may not contain substantial amounts of housing today, but where more housing is desired in the future. The pattern envisioned for such areas is typically one of pedestrian-oriented streets, with ground floor retail or office uses and upper story housing; and
- (c) Large sites (generally greater than 10 acres in size), where opportunities for multiple uses exist but a plan dictating the precise location of these uses has yet to be prepared.

(10-A DCMR § 225.18.)

- (208) The Commission considers this corridor to fit best into the circumstances described in item b. immediately above, a commercial corridor that does not contain a substantial amount of housing today, but where more housing is desired in the future, with pedestrian oriented streets, with ground floor retail or offices uses and upper story housing.
- (209) The Project is consistent with that guidance. It includes a substantial amount of housing. It provides a pedestrian oriented streetscape. It includes a pedestrian oriented lobby at the corner of Georgia and Irving Streets. It includes space reserved for retail or community uses on Georgia Avenue.

- (210) The Framework Element states the following with respect to how to interpret the density and intensity of uses in Mixed Use Categories:

The general density and intensity of development within a given Mixed Use area is determined by the specific mix of uses shown. If the desired outcome is to emphasize one use over the other (for example, ground floor retail with three stories of housing above), the Future Land Use Map may note the dominant use by showing it at a slightly higher density than the other use in the mix ... The Comprehensive Plan Area Elements may also provide detail on the specific mix of uses envisioned.

(10-A DCMR § 225.19.)

(iii) **Medium-Density Residential/Moderate-Density Commercial**

- (211) For the corridor, the FLUM shows the corridor is striped with both the Medium-Density Residential and Moderate-Density Commercial categories.

(a) Medium-Density Residential is: (10-A DCMR § 225.5.)

Used to define neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use. Pockets of low and moderate-density housing may exist within these areas. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone districts are generally consistent with the Medium Density designation, although other zones may apply.

(b) Moderate-Density Commercial is: (10-A DCMR § 225.9.)

Used to define shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height. The corresponding Zone districts are generally C-2-A, C-2-B, and C-3-A, although other districts may apply.

(iv) **Moderate-Density Residential**

- (212) The remainder of the Site to the west of the corridor is either designated as, or surrounded by property designated as, Moderate-Density Residential on the FLUM. Moderate-Density Residential is: (10-A DCMR § 225.4.)

Used to define the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings. In some of the older inner-city neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). The R-3, R-4, R-5-A Zone districts are generally consistent with the Moderate-Density Residential category; the R-5-B district and other zones may also apply in some locations.

(b) Analysis of the Project

(213) The neighborhood surrounding the PUD Site is mixed-use, with a variety of housing types and densities that include both apartment houses and townhomes. Commercial buildings are also located along Georgia Avenue with ground-floor retail uses. (FF 112 Z.C. Order No. 16-11; Ex. 251.)

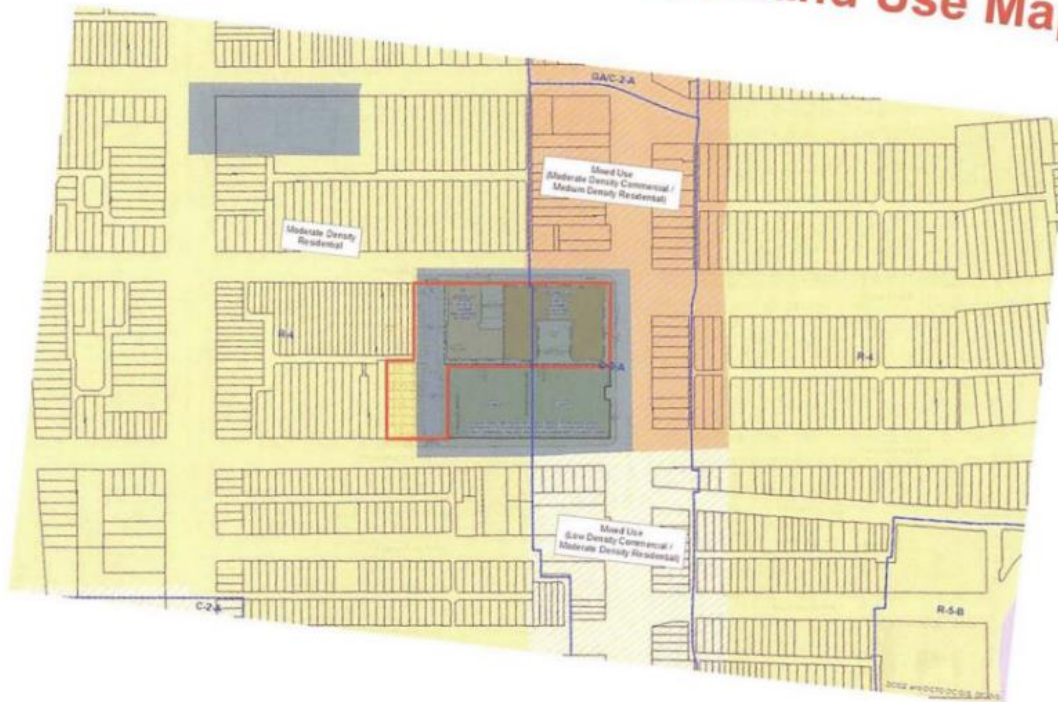
(214) It is within this context that the Applicant proposes to develop the PUD Site with:

- The 90-Foot-Tall Apartment Building, an apartment house with a 5.9 FAR that fronts on Georgia Avenue:
 - The 90-Foot-Tall Apartment Building is mostly within the area that the Commission considers a continuation of the Mixed-Use Medium-Density Residential/Moderate-Density Commercial corridor on the FLUM;¹⁸ and
 - A portion of the 90 Foot Apartment Building extends out of that corridor into the area the Commission considers the Moderate-Density Residential area on the FLUM;
- The 60-Foot-Tall Senior Building, a senior apartment house with a 3.9 FAR:
 - the 60-Foot-Tall Senior Building is entirely in the area the Commission considers the Moderate-Density Residential area on the FLUM; and
- Eight townhomes at 40 feet and FAR ranging from 1.2 FAR to 1.7 FAR:
 - The townhomes are in the Moderate-Density Residential area on the FLUM.

A diagram with an overhead view of the proposed PUD Site plan for the development with the FLUM overlaid on it is shown below.

¹⁸ The Commission's reasoning for this is explained above in FF 21-28.

Comprehensive Plan Future Land Use Map



(Ex. 234, p. 13.)

- (215) The Commission finds the overall site plan appropriate for the PUD Site due to the PUD Site's location along the Georgia Avenue corridor and its close proximity to Metrorail. The proposed design orients the higher height and density portion of the Project towards Georgia Avenue, and steps down to relate to the existing lower scale residential neighborhood to the west. In addition to the lower building heights proposed along the western portion of the PUD Site, the scale and density of the Project is further reduced through the massing and articulation of the proposed buildings, separation provided by existing and proposed streets, substantial streetscape improvements, and the future public park that will be developed adjacent to the PUD Site.
- (216) Nonetheless, there are several inconsistencies with the FLUM guidance for the PUD Site.
- The proposed 90-Foot-Tall Apartment Building is taller than the tallest buildings that are described as being typical for the relevant categories:
 - Medium-Density Residential;
 - Moderate-Density Commercial; or
 - Moderate-Density Residential Categories; and

- The proposed 60-Foot-Tall Senior Building is taller than the tallest buildings that are described as typical for the Moderate-Density Residential category.
- (217) In this case, the Applicant proposes increased height and density on the PUD Site for the specific purpose of providing new housing and affordable housing along the Georgia Avenue commercial corridor, while simultaneously preserving a large portion of the site as open space, and facilitating the redevelopment of the Park Morton. As described in more detail below, the Commission finds that the Project advances many related policies of the Comprehensive Plan and other important policy documents. The Commission therefore finds that any potential FLUM inconsistencies of the proposed development for the PUD Site are outweighed by other policies in the CP.
- (218) There are several policy guidelines related to interpreting the FLUM itself that suggest the Project’s height and density are not inconsistent with the FLUM. The interpretive guidelines state that “there may be individual buildings that are higher” and “the granting of density bonuses (for example, through Planned Unit Developments)” is a situation where greater heights and densities are expressly authorized and contemplated. (10-A DCMR § 226.1(c).) Moreover “the zoning of any given area should be guided by the [FLUM], interpreted in conjunction with the text of the [CP].” (10-A DCMR § 226.1(d).) Given this guidance, the Commission finds that the PUD is not inconsistent with the FLUM guidance for the Site when it is considered as a whole, and in conjunction with the text of the CP.

4. Other relevant policy guidance in the Comp Plan that supports approval of the Project

(219) The Commission finds that the Project advances the following policy guidance in the text of the CP.

(a) The primary way the Project advances the goals of the CP is new housing, affordable housing, and replacement public housing while simultaneously preserving open space on the Site

(220) The Comprehensive Plan includes many policies that encourage development of new housing and affordable housing, as well as policies that encourage the preservation of open space. The Commission finds that the Applicant’s proposal to develop the PUD Site primarily with housing, and thus reduce some of the open space that currently exists on the PUD Site, is consistent with the Comprehensive Plan.

(i) Housing and affordable housing

(221) The Land Use Element cites a number of policies that specifically aim to establish new housing and affordable housing. (Ex. 196, 197.) (See, e.g., Policy LU-1.2.1: Reuse of Large Publicly-Owned Sites; Policy LU-1.2.5: Public Benefit Uses on

Large Sites; and Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods.) Policy LU-1.4: Neighborhood Infill Development provides that “infill development on vacant lots is strongly supported by the District of Columbia, provided that such development is compatible in scale with its surroundings and consistent with environmental protection and public safety objectives. In residential areas, infill sites present some of the best opportunities in the city for “family” housing and low- to moderate-density development. In commercial areas, infill development can fill gaps in the street wall and create more cohesive and attractive neighborhood centers.” (10-A DCMR § 307.2.) The Project is consistent with these and other policies in the Land Use element because it involves the reuse and development of a large publicly owned infill site that will be developed with appropriately scaled housing that will fill gaps in the street wall and create a more attractive and cohesive neighborhood. The Commission finds that developing the PUD Site in this manner meets the Land Use element’s important goals of establishing new housing.

- (222) The Commission finds that the Project is also consistent with other elements of the Comprehensive Plan that encourage the production of quality affordable housing. (See, e.g., Policy H-1.2.1: Affordable Housing Production as a Civic Priority; Policy H-1.2.3: Mixed Income Housing; Policy H-1.2.5: Workforce Housing; Policy H-1.2.7: Density Bonuses for Affordable Housing; Policy H-1.3.1: Housing for Families; Policy H-1.4.4: Public Housing Renovation; and Action H-1.4.A: Renovation and Rehabilitation of Public Housing.) The Project is a direct response to these policies, which call for the development of low- and moderate-income housing through a variety of housing types and sizes, as well as the transformation of distressed public housing projects into viable, mixed-income neighborhoods. The Project is consistent with these goals because it proposes a large number of replacement public housing, workforce affordable housing, and market-rate housing units, and does so through development of one-, two-, and three-bedroom units that can accommodate a wide range of households. The Project also involves the one-for-one replacement of the Park Morton public housing units through private sector support, which fulfills the goals of the New Communities Initiative, which the Comprehensive Plan specifically highlights as a program that should be supported in order to rehabilitate and rebuild the city’s public housing units. (Action H-1.4.A: Renovation and Rehabilitation of Public Housing.) Moreover, the Project is consistent with policies in the Housing Element that specifically encourage development of housing for seniors (Policy H-4.2.2: Housing Choice for Seniors) because the Project includes an entire building devoted to affordable senior housing.
- (223) The Commission also finds that the Project is consistent with the Mid-City Element, which states a number of policies that encourage the development of affordable housing. Issues that are relevant to the Mid-City Area “must be addressed to protect the quality of life, balance growth and conservation, and provide economic opportunity and stability for all members of the community.” (10-A DCMR § 2000.10.)

- (224) The Mid-City Element highlights the dire need for new housing opportunities for all income levels. (See, e.g., 10-A DCMR § 2007.2, stating that “housing opportunities should be increased for people at all income levels so that Mid-City can remain a diverse neighborhood...” See also Policy MC-1.1.7: Protection of Affordable Housing: “[s]trive to retain the character of Mid-City as a mixed income community by protecting the area’s existing stock of affordable housing units and promoting the construction of new affordable units.”)
- (225) The Mid-City Element calls for Park Morton to be redeveloped as a “new community,” replacing the existing public housing development with an equivalent number of new public housing units, plus new market-rate and workforce housing units, to create a new mixed income community. The Mid-City Element also values the importance of ensuring that “every effort possible is made to avoid permanent displacement of residents if this action is followed.” (10-A DCMR § 2011.12.) The Commission finds that the Project embodies these and other policies of the Mid-City element by providing a large number of new replacement public housing units, workforce housing units, and market-rate units at the PUD Site. The original intent was for the Project to serve as a build-first site to entirely avoid the permanent displacement of existing Park Morton residents through careful phasing of the development of both the PUD Site and the Park Morton site. The Commission acknowledges that because of the litigation surrounding the proposed development of the PUD Site, the Project was not built on the timetable originally intended and unfortunately Park Morton residents have been displaced. However, the displacement that has occurred will more than likely not be permanent in all cases because former Park Morton residents do have a right to return. Nevertheless, the Commission readily acknowledges that displacement of former Park Morton residents has occurred while also acknowledging that the Commission’s original approval of this Project was not the cause for the displacement.
- (226) In addition to finding that development of the PUD Site is consistent with the Comprehensive Plan’s goals for housing, the Commission also finds that the amount of housing density proposed for the PUD Site is appropriate. The PUD Site is owned by the District government and, therefore the property value can be used to subsidize affordable housing in an area of the District facing rising housing costs and increased housing insecurity for lower income residents. The need for affordable housing is particularly acute in this neighborhood, so it is appropriate to leverage the use of the District owned property with greater housing density.
- (227) Moreover, the Commission credits language in the Mayor’s September 16, 2016 transmittal letter, of the Bruce Monroe Surplus Declaration and Approval Resolution of 2016 and the Bruce Monroe Disposition Approval Resolution of 2016, which states that the Project “will provide replacement public housing units, much needed additional affordable housing units, market-rate units, and commercial or community space,” and that “approval of the proposed resolutions will declare surplus and allow for the disposition of the Property to the Developer to redevelop the space into a vibrant mixed-use development where residents have

quality affordable housing options, economic opportunities, and access to appropriate human services in a manner consistent with the NCI guiding principles.” (Mayor’s transmittal letter (included in Ex. 197, p. 2).)

(ii) Open Space

- (228) The Commission acknowledges the many policies within the Comprehensive Plan that encourage the preservation of open space. (See, e.g., 10-A DCMR § 2000.8, stating that the Mid-City Area has a “severe shortage of parkland.) As the densest part of the city, and one with many young children, recreational needs are among the highest in the city. Most of the areas’ parks lack the land and amenities to meet these needs.” (See also 10-A DCMR §§ 2007.2(e), (j).)
- (229) The Commission finds that the Project is consistent with the goals of preserving open space, even though the PUD Site will be developed with housing and will result in the net reduction of open space currently on the PUD Site. This finding is based on the District’s commitment to develop approximately 44,000 square feet of land adjacent to the PUD Site as a public park, such that the Applicant’s proposal to develop the PUD Site with housing creates a balanced approach to development of Lot 849 that is consistent with the Comprehensive Plan.
- (230) The District, which will retain ownership of the 44,000 square foot parcel, is committed to the park’s development as evidenced by (i) the Mayor’s submission of the Bruce Monroe Surplus Declaration and Approval Resolution of 2016 and the Bruce Monroe Disposition Approval Resolution of 2016 to the Council (both included at Ex. 197); and (ii) DMPED’s November 23, 2015 Open Letter to Park Morton and Bruce Monroe Community Residents and Stakeholders (the “DMPED Open Letter”), which detailed the District’s commitment to maintaining park and recreation uses on the PUD Site. (DMPED Letter dated December 7, 2016; DMPED’s Open Letter, both included in Ex. 232.)
- (231) Following public outreach, DMPED recognized the desire for continued park and recreation space at the PUD Site. (See, e.g., Notice of Public Meeting Regarding Surplus Resolution Pursuant to D.C. Official Code § 10-801.) Prior to selecting the PUD Site as the build-first site for Park Morton, DMPED decided that a reprogrammed and reconfigured park would be established at the PUD Site, and that the remaining portion of the PUD Site was most suitable for mixed-use development, and primarily mixed-income residential development. (*Id.* at 3.) DMPED found that the size and location of the PUD Site presented an excellent opportunity to meet critical District priorities of developing new affordable housing and open space. Indeed, using public land for the creation of affordable housing “is one of the most effective strategies a municipality can use to leverage the creation and preservation of affordable housing.” (*Id.* at 4.)
- (232) As described in its Open Letter (included in Ex. 232), DMPED acknowledged the community’s priority to maintain park and recreation use on the PUD Site. DMPED stated that it is “supportive of a plan only if it includes park and recreational space

returning to the site. The current proposal preserves half of the site as a park, which would allow all of the site's current uses including courts, playground, and garden, to be brought back to the site. In addition, the proposal provides for some amount of park space to be open and operational for most of the construction period and for the permanent park space to be brought back to the site first. This plan will maximize the public and community value of the site by creating significant affordable housing capacity and improving on existing park space at the same time." (*Id.* at 2.)

- (233) DMPED testified regarding its work with partner agencies to determine the process for designing, building, and operating the proposed park, and its commitment to engaging the community to receive feedback on proposed park plans. The Applicant also testified at the public hearing that the design and programming of the park will occur during a public engagement process initiated in early 2017.
- (234) Moreover, DMPED's agreement to the development of the park is a condition of this Order, thus ensuring that the 44,000-square-foot parcel will be preserved as a park. Therefore, the Commission agrees with DMPED's findings that the PUD Site "allows for both the development of housing AND the opportunity to provide improved urban park land in perpetuity," and that the Project will include "a first-class urban park of approximately one acre." (DMPED's January 10, 2017 Letter; Ex. 237D.)
- (235) The Commission also accepts the testimony of the Applicant and that the PUD Site was never intended to remain a park in its entirety. The PUD Site previously housed the Bruce Monroe Public School, which was closed in 2008 and demolished in 2009. In response to community feedback, DMPED committed funds to improve the PUD Site as a temporary public park, with permanent improvements intended to be pursued in the future. (See Building Permit and solicitation/award for the "interim" use of Bruce Monroe included in Ex. 197.) The fact that the PUD Site has been slated for redevelopment since the Bruce Monroe School was demolished "has been reiterated publicly in the community discussions around this project that have taken place over the last year." (January 10, 2017 DMPED Letter; Ex. 237D, p. 1.) Thus, although the PUD Site is presently used as a public park, the Commission credits DMPED's testimony that the site was never intended to be preserved as a park in its entirety in perpetuity.
- (236) The Commission also accepts the District Council's intentions for the PUD Site, as set forth in the Bruce Monroe Surplus Declaration and Approval Resolution of 2016 and the Bruce Monroe Disposition Approval Resolution of 2016 (both included at Ex. 197). These resolutions provide evidence of the District's determination that the "intended use of the Property is a mixed-use development providing for affordable housing, residential market rate housing, commercial or community amenities space and any ancillary uses." (Bruce Monroe Disposition Approval Resolution of 2016, p. 2.) The resolutions also call for establishing "approximately

44,404 square feet of land area [to be] devoted to a park or other public uses.” (*Id.* at 2-3.)

(b) City-Wide Element policy guidance of the CP that supports approval

(237) The Commission finds the PUD advances CP policies related to:

- New Housing;
- Affordable Housing;
- Preservation of Open Space;
- Replacement public housing;
- Land use policies that support in-fill development;
- Transportation policies that support transit-oriented development, improvements to pedestrian facilities and bicycle facilities;
- Tree canopy enhancements;
- Sustainable stormwater management;
- Economic integration; and
- Redevelopment of human capital.

When all of the relevant CP policy guidance is considered, the Commission finds that there is an overwhelming case for approval of the PUD because it significantly advances numerous important CP policies, such that the potential inconsistent policies are greatly outweighed. Those CP policies that support approval include policies in the Land Use Element, the Transportation Element, the Housing Element, the Environmental Protection Element, the Economic Development Element, the Urban Design Element, the Mid-City Element and others as listed below.

(1) Land Use Element

(238) Interpretation guidelines. The Land Use Element is the cornerstone of the Comp Plan. It establishes the basic policies guiding the physical form of the District, and provides direction on a range of development, preservation, and land use compatibility issues. The element describes the range of considerations involved in accommodating an array of land uses within the District. (10-A DCMR § 300.1.)

Through its policies and actions, the Land Use Element addresses the numerous, challenging land use issues that are present in the District, including, among others:

- Providing adequate housing, particularly affordable housing;
- Conserving, creating, and maintaining inclusive neighborhoods, while allowing new growth that fosters equity, including racial equity, and accessibility;
- Enhancing neighborhood commercial districts and centers;
- Balancing competing demands for finite land resources;

- Directing growth and new development to achieve economic vitality and creating jobs while minimizing adverse impacts on residential areas and open spaces; and
- Promoting transit-accessible, sustainable development. (10-A DCMR § 300.2.)

More than any other part of the Comp Plan, the Land Use Element lays out the policies through which growth and change occur. The Land Use Element integrates and balances competing policies of all the other District Elements. (10-A DCMR § 300.3.)

The proposed Implementation Element further recognizes the “overlapping nature” of the Comp Plan elements, stating that “an element may be tempered by one or more of the other elements,” and further states that “because the Land Use Element integrates the policies of all other District Elements, it should be given greater weight than the other elements.” (10-A DCMR §§ 2504.6, 300.3.)

As related to the PUD, the policies and actions of the Land Use Element all aim to utilize land resources efficiently to achieve the following goals:

- Meet long-term neighborhood, District-wide, and regional needs;
- Protect the health, safety, and welfare of District residents and businesses;
- Address past and current inequalities disproportionately impacting communities of color;
- Sustain, restore, and improve the affordability and equity of all neighborhoods; and
- Provide for additional housing and employment opportunities. (10-A DCMR § 302.1.)

(239) The Project advances the following Land Use Element policies:

- LU-1.4: Transit-Oriented and Corridor Development:
 - LU-1.4.1: Station Areas as Neighborhood Centers;
 - LU-1.4.2: Development Around Metrorail Stations;
 - LU-1.4.3: Housing Around Metrorail Stations;
 - LU-1.4.4: Affordable Rental and For-Sale Multi-family Housing Near Metrorail Stations;
 - LU-1.4.6: Development Along Corridors; and
 - LU-1.4.B: Zoning Around Transit;
- LU-2.1: A District of Neighborhoods:
 - LU-2.1.1: Variety of Neighborhood Types;

- LU-2.1.2: Neighborhood Revitalization; and
- LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods; and
- LU-2.2: Maintaining Community Standards:
 - LU-2.2.4: Neighborhood Beautification.

(240) Ways in which the Project will advance Land Use Element policies:

The Project is located in close proximity to two Metrorail stations and along the major mixed-use corridor of Georgia Avenue, and will facilitate redevelopment of the PUD Site with new residential development, including significant new affordable and senior housing. The Project will be developed along a multi-modal corridor and will respect the character, scale, and integrity of the adjacent neighborhoods through appropriate building designs and transitions. The Project will also fulfill the District's broader need for housing by serving a mix of incomes and household types, including families and older adults, and is an excellent example of a development that specifically prioritizes affordable housing production. In addition, as described in more detail below, the Project will also improve the visual quality of the surrounding neighborhood by incorporating new landscaping, street tree planting, park improvements, and public realm enhancements and activations.

(2) Transportation Element

(241) Interpretation guidelines. The Transportation Element provides policies and actions that are devoted to maintaining and improving the District's transportation system and enhancing the travel choices available to District residents, visitors, and workers. These transportation-related policies are integrally related to other Comp Plan policies that address land use, urban design, and environmental protection. The close interplay between these policy areas is necessary to improve safety, mobility, and accessibility in the District. (10-A DCMR § 400.1.)

A well-balanced transportation system is integral to the District's efforts to sustain and enhance resident quality of life. Such a system requires integrating land use and transportation where concerted efforts are made to both provide an efficient, multi-modal transportation system and locate land uses in a way that maximizes the potential of said transportation system. The overarching goal for transportation in the District is to create a safe, sustainable, equitable, efficient, and multi-modal transportation system that meets the access and mobility needs of District residents, workers, and visitors. (10-A DCMR § 401.1.)

(242) The Project advances the following Transportation Element policies:

- T-1.1: Land Use - Transportation Coordination:
 - T-1.1.4: Transit-Oriented Development;
 - T-1.1.7: Equitable Transportation Access;

- T-1.1.B: Transportation Improvements; and
- T-1.2.3: Discouraging Auto-Oriented Uses;
- T-1.3 Regional Smart Growth Solutions:
 - T-1.3.A: Regional Jobs/Housing Balance;
- T-2.3 Bicycle Access, Facilities, and Safety:
 - T-2.3.B: Bicycle Facilities;
- T-2.4 Pedestrian Access, Facilities, and Safety:
 - T-2.4.1: Pedestrian Network;
 - T-2.4.2: Pedestrian Safety; and
 - T-2.4.B: Sidewalks;
- T-3.1 Transportation Demand Management:
 - T-3.1.1: TDM Programs; and
 - T-3.1.A: TDM Strategies; and
- T-3.2 Curbside Management and Parking:
 - T-3.2.B: Carshare Parking.

(243) Ways in which the Project advances Transportation Element policies:

The Project will help achieve the District’s overarching transportation goals. Consistent with policies within the Transportation Element, the Project supports transit-oriented development and enhances equitable transportation access by investing in new mixed-use development along a major bus corridor and in close proximity to two Metrorail stations. The Project includes a TDM plan that supports strategies aimed at reducing the number of car trips and miles driven. The Project has also been designed to minimize curb cuts and vehicular access points, and includes upgrades to the surrounding pedestrian infrastructure to prioritize pedestrian safety. As a new multi-family residential development, the Project has been designed with features such as secure bicycle parking, bicycle racks, and other amenities that accommodate cyclists.

(3) Housing Element

(244) Interpretation guidelines. The Housing Element describes the importance of housing to neighborhood quality in the District and the importance of providing housing opportunities for all segments of the population throughout the District. (10-A DCMR § 500.1.)

The District continues to face significant demand for more housing, and in particular affordable housing, across a range of income levels. Other critical housing issues that the District is facing include furthering fair housing opportunities, especially in high-cost areas; fostering housing production to

improve affordability; promoting more housing near transit; restoring or demolishing vacant or underused properties; and maintaining healthy homes for residents, among others. (10-A DCMR § 500.2.)

The overarching goal of the Housing Element is to provide safe, decent, healthy, and affordable housing supply for District residents in all neighborhoods by maintaining and developing housing for all incomes and household types. (10-A DCMR § 501.1.)

(245) The Project advances the following Housing Element policies:

- H-1.1: Expanding Housing Supply:
 - H-1.1.1: Private Sector Support;
 - H-1.1.2: Production Incentives;
 - H-1.1.3: Balanced Growth;
 - H-1.1.4: Mixed Use Development;
 - H-1.1.5: Housing Quality;
 - H-1.1.8: Production of Housing in High-Cost Areas; and
 - H-1.1.9: Housing for Families;

- H-1.2: Ensuring Housing Affordability:
 - H-1.2.1: Low- and Moderate-Income Housing Production as a Civic Priority;
 - H-1.2.2: Production Targets;
 - H-1.2.4: Housing Affordability on Publicly Owned Sites;
 - H-1.2.5: Moderate-Income Housing;
 - H-1.2.7: Density Bonuses for Affordable Housing;
 - H-1.2.10: Redevelopment of Existing Subsidized and Naturally Occurring Affordable Housing;
 - H-1.2.11: Inclusive Mixed-Income Neighborhoods; and
 - H-1.2.H: Priority of Affordable Housing Goals;

- H-1.3: Diversity of Housing Types:
 - H-1.3.1: Housing for Larger Households;

- H-1.4: Housing and Neighborhood Revitalization:
 - H-1.4.4: Public Housing Renovation;
 - H-1.4.A: Renovation and Rehabilitation of Public Affordable Housing; and
 - H-1.4.E: Additional Public Housing;

- H-2.1 Preservation of Affordable Housing:
 - H-2.1.2: Preserving Affordable Rental Housing;
 - H-2.1.4: Avoiding Displacement;
 - H-2.1.6: Long-Term Affordability Restrictions; and
 - H-2.1.9: Redevelopment of Affordable Housing; and

- H-4.3 Meeting the Needs of Specific Groups:
 - H-4.3.2: Housing Choice for Older Adults; and
 - H-4.3.3: Neighborhood-Based Housing for Older Adults.

(246) Ways in which the Project advances Housing Element policies:

The Project is not inconsistent with the policies of the Housing Element. Consistent with the Housing Element, the Project helps to promote the District’s goal of producing affordable housing for low- and moderate-income households, and targets such housing in a way that addresses racial income disparities. The Project helps to distribute mixed-income housing equitably throughout the District and results in the development of new housing on underutilized land that will help enable the District to meet its long-term housing needs. Through both public and private support, the Project includes affordable housing units, which meet high-quality architectural standards, and are indistinguishable from market-rate units. The Project also prioritizes the development of family-sized housing options in close proximity to transit, employment centers, schools, public facilities, and recreation.

The Project takes advantage of the Housing Element’s recommendation to provide zoning incentives, such as through the PUD process, to build affordable housing beyond the underlying requirements. In exceeding targets for affordable housing, the Project will provide affordable housing that “shall be considered a high priority public benefit for the purposes of granting density bonuses, especially when the proposal expands the inclusiveness of high-cost areas by adding affordable housing.” See 11-A DCMR § 504.15. Moreover, the affordable housing will be provided for the life of the Project to minimize future displacement and achieve a long-term balance of housing opportunities across the District. As it relates to public housing, the Project’s provision of replacement public housing units also comports with meeting the demand for affordable housing.

The Project will enhance the redevelopment of the existing Park Morton public housing site and create an equitable and mixed-income neighborhood at the PUD Site. The Project also utilizes the District-sponsored New Communities Initiative, which is specifically encouraged in the Housing Element.

(4) Environmental Protection Element

(247) Interpretation guidelines. The Environmental Protection Element addresses the protection, conservation, and management of the District’s land, air, water, energy, and biological resources. It provides policies and actions for addressing important issues such as climate change, drinking water safety, tree canopy restoration, energy conservation, air quality, watershed protection, pollution prevention, waste management, the remediation of contaminated sites, and environmental justice. (10-A DCMR § 600.1.)

Critical environmental issues facing the District include reducing greenhouse gas emissions and adapting to climate change, restoring the District's tree canopy and expanding green infrastructure, reducing erosion and stormwater run-off, and encouraging green building techniques, among others. (10-A DCMR § 600.2.)

The overarching goal for the Environmental Protection Element is to protect, restore, and enhance the natural and human-made environment in the District, taking steps to improve environmental quality and resilience, adapt to and mitigate climate change, prevent and reduce pollution, improve human health, increase access to clean and renewable energy, conserve the values and functions of the District's natural resources and ecosystems, and educate the public on ways to secure a sustainable future. (10-A DCMR § 601.1.)

(248) The Project advances the following Environmental Protection Element policies:

- E-1.1 Preparing for and Responding to Natural Hazards:
 - E-1.1.2: Urban Heat Island Mitigation;

- E-2.1 Conserving and Expanding Washington, DC's Urban Forests:
 - E-2.1.2: Tree Requirements in New Development; and
 - E-2.1.3: Sustainable Landscaping Practices;

- E-2.3 Conserving Soil and Reducing Erosion:
 - E-2.3.1: Preventing Erosion;

- E-3.2 Conserving Energy and Reducing GHG Emissions:
 - E-3.2.3: Renewable Energy; and
 - E-3.2.5: Reducing Home Heating and Cooling Costs;

- E-3.3 Reducing Solid Waste Disposal Needs:
 - E-3.3.1: Solid Waste Source Reduction and Recycling;

- E-4.1 Green Infrastructure:
 - E-4.1.2: Using Landscaping and Green Roofs to Reduce Runoff; and
 - E-4.1.3: GI and Engineering;

- E-4.4 Reducing the Environmental Impacts of Development:
 - E-4.4.1: Mitigating Development Impacts; and

- E-5.1 Reducing Air Pollution:
 - E-5.1.5: Improving Air Quality Through Transportation Efficiency.

(249) Ways in which the Project advances Environmental Protection Element policies:

The Project is not inconsistent with many policies of the Environmental Protection Element. The Project will help to reduce the urban heat island effect through tree planting, landscaping, and expanded green space, and will utilize sustainable landscaping practices to help beautify the District as well as enhance streets and public spaces, and create a stronger sense of character and identity for the Property and vicinity. The Project will utilize best practices to prevent soil erosion, will provide on-site recycling opportunities, and will implement comprehensive stormwater management measures. The Project will also promote energy efficiency by utilizing energy efficient systems for heating and cooling throughout. Specifically, the apartment building and senior building will be certified with a minimum of 57 points under the Enterprise Green Communities (“EGC”) standards, and the townhomes will be certified with a minimum of 50 points under the EGC standards. Furthermore, development at the Site will mitigate impacts on the natural environment generally by anticipating the impacts of climate change and utilizing construction practices that do not degrade natural resources without mitigation. Finally, due to the Site’s location in a highly walkable and transit-rich location, the Project overall will allow for residents to access convenient travel without an automobile.

(5) Economic Development Element

(250) Interpretation guidelines. The Economic Development Element addresses the future of the District’s economy and the creation of economic opportunity for current and future District residents. It includes strategies to sustain major industries, diversify the economy, accommodate job growth, and increase access to employment. (10-A DCMR § 700.1.)

The critical economic development issues facing the District are ensuring prosperity is equitably shared across race and geography, growing and diversifying the District’s economy, increasing job opportunities and workforce development, and expanding opportunities for small and local businesses, among others. (10-A DCMR § 700.2.)

The overarching goal of the Economic Development Element is to drive inclusive economic expansion and resilience by growing the economy and reducing employment disparities across race, geography, and educational attainment status. (10-A DCMR § 701.1.)

(251) The Project advances the following Economic Development Element policies:

- ED-2.2: The Retail Economy:
 - ED-2.2.1: Expanding the Retail Sector;
 - ED-2.2.3: Neighborhood Shopping;
 - ED-2.2.4: Support Local Entrepreneurs; and

- ED-2.2.5: Business Mix;
- ED-3.1: Strengthening Retail Districts:
 - ED-3.1.1: Neighborhood Commercial Vitality; and
- ED-4.3 Getting to Work:
 - ED-4.3.C: Housing a Thriving Workforce.

(252) Ways in which the Project advances Economic Development Element policies:

The Project will help the District achieve its economic development goals by expanding the retail sector, encouraging neighborhood shopping, and supporting local entrepreneurs. The Project will support a number of retail and service establishments that directly serve the surrounding community by providing new residential development in the neighborhood. The residential density proposed for the Site will significantly help in promoting the vitality and diversity of the surrounding commercial area, thus retaining existing businesses, attracting new businesses, and establishing a strong customer base. Moreover, the Project will incorporate both market rate and affordable housing to support the District's thriving workforce.

(6) Urban Design Element

(253) Interpretation guidelines. The Urban Design Element addresses the District's physical design and visual qualities. It describes ways in which different aspects of the District's landscape, especially its buildings, streets, and open spaces, work together to define impressions of the city and its neighborhoods. The defining urban design qualities of the District derive from the historic Plan of Washington, and the unique characteristics of the city's many neighborhoods. As the District continues to support growth to address housing and economic development needs, several important urban design challenges must be considered. These include strengthening neighborhood quality of life while accommodating growth and change, and providing compatible infill development and appropriate transitions between varying uses and densities. (10-A DCMR §§ 900.1, 900.2.)

As demonstrated throughout this Comp Plan evaluation, urban design objectives are interwoven through several proposed Comp Plan Elements. The overarching goal of the Urban Design Element is to enhance the beauty, equity, and livability of the District by reinforcing its historic design legacy and the identity of its neighborhoods and centers, integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and functions of streets and public spaces. (10-A DCMR § 901.1.)

(254) The Project advances the following Urban Design Element policies:

- UD-1.4 Enhancing Thoroughfares and Gateways:

- UD-1.4.1: Thoroughfares and Urban Form;
- UD-2.1 Streets For People:
 - UD-2.1.1: Streetscapes That Prioritize the Human Experience;
- UD-2.2: Designing for Vibrant Neighborhoods:
 - UD-2.2.1: Neighborhood Character and Identity;
 - UD-2.2.3: Neighborhood Mixed-Use Centers;
 - UD-2.2.4: Transitions in Building Intensity;
 - UD-2.2.5: Infill Development;
 - UD-2.2.7: Preservation of Neighborhood Open Space; and
 - UD-2.2.A: Scale Transition Study;
- UD-3.2 Designing the Active District:
 - UD-3.2.1: Buildings that Enable Social Interaction; and
 - UD-3.2.5: Safe and Active Public Spaces and Streets; and
- UD-4.2 Designing Architecture for People:
 - UD-4.2.1: Scale and Massing of Large Buildings;
 - UD-4.2.2: Engaging Ground Floors; and
 - UD-4.2.4: Creating Engaging Façades.

(255) Ways in which the Project advances Urban Design Element policies:

The Project will support many specific policies within the Urban Design Element designed to improve the District’s aesthetic and visual character by implementing context-sensitive landscaping, tree planting, and streetscape design. The Project’s streetscape has been designed to be comfortable, safe, and interesting to pedestrians, with clear walking paths that accommodate a range of pedestrian users. The Project’s vertical development will strengthen the visual quality of the surrounding neighborhood by utilizing high quality and high-performance architectural designs and materials. The Project has been designed to transition between large- and small-scale development by incorporating context-specific design strategies, taking into account the relationship between taller and shorter buildings both within the Property and adjacent to it. The infill nature of the Project further responds to and complements the qualities of the surrounding neighborhood and will ensure that it respects and improves the integrity of the surrounding area.

In addition, the Project has been designed to provide opportunities and spaces for interaction, with an emphasis on encouraging public activity through active building frontages, adequate lighting, and clear sight lines. The buildings are designed with varied roof heights, façade widths, and expressive massings to enhance the human scale and visual interest, and the ground floor storefront design incorporates architectural details and durable materials to improve the pedestrian experience and respond to the surrounding neighborhood fabric.

(7) Mid-City Area Element policy guidance of the CP that supports approval

(256) Interpretation guidelines. The Property is located within the Mid-City Area Element of the Comp Plan. Mid-City is one of the most diverse parts of Washington, D.C. Although it is one of the smallest of the 10 planning areas geographically, it is the most populous and most dense. (10-A DCMR § 2000.2.)

The area is well served by the District's transportation system, including the Metro Green and Yellow Lines, numerous bus lines, several cross-town arterials, and bikeshares. (10-A DCMR § 2000.3.)

Mid-City contains approximately 19% of the District's new housing units, and almost 14% of the area's housing units are affordable. Many of these affordable units are at risk of expiring; thus, Mid-City will be a target-rich area for investments by the administrators of the Housing Preservation Trust Fund, which is to be used to preserve affordable housing units when their covenants of affordability are expiring. (10-A DCMR § 2000.6.)

Mid-City also includes many public and lower cost units that are at risk of conversion to market rate rents or condominiums. The District has assisted tenants in their efforts to renovate and purchase apartment properties throughout the community, particularly in Columbia Heights. Millions of dollars have been invested to create new affordable housing opportunities for current and future Mid-City residents. Some Mid-City neighborhoods are still facing challenging economic and social conditions. Despite the real estate boom, buildings continue to lie vacant along commercial corridors such as lower Georgia Avenue N.W., Florida Avenue, N.W., and North Capitol Street, N.W. Mid-City also has a severe shortage of parkland. As the densest part of the District, and one with many young children, recreational needs are among the highest in the District. Most of Mid-City's parks lack the land and amenities to meet these needs. (10-A DCMR § 2000.8.) Three Comp Plan workshops took place in Mid-City during 2005 and 2006 to provide residents an opportunity to discuss both District-wide and neighborhood planning issues. There have also been several community meetings not directly related to the Comp Plan but related to other planning topics, including the public realm and transportation improvements in Columbia Heights and revitalization of Georgia Avenue, N.W. (10-A DCMR § 2007.2.)

During these community meetings/workshops, residents and stakeholders provided feedback on neighborhood-specific issues, including:

- Housing opportunities should be increased for people at all income levels so that Mid-City can remain a diverse neighborhood. The District-wide rise in housing prices has particularly impacted Mid-City, as costs have soared beyond what many local residents can afford. Moderate-income families and lower-income residents are being priced out of the area, and there are concerns that the community is becoming affordable only to persons with high-incomes.

Preserving the existing stock of affordable units is important, either through rehabilitation or replacement of existing units with new affordable units. The type of new housing being built in the area should be more varied. In particular, more three- and four-bedroom units are needed to attract and retain families; (10-A DCMR § 2007.3.)

- New condominiums, apartments, and commercial development should be directed to the areas that are best able to handle increased density, namely areas immediately adjacent to Metrorail stations or along high-volume transit corridors. These areas are generally located... along 7th Street, N.W. and Georgia Avenue, N.W.; (10-A DCMR § 2007.3.)
- The community is in need of additional parkland. Despite being the densest part of the District, Mid-City's ratio of park acreage per resident is among the lowest. Mid-City has a shortage of active play fields and recreational facilities, especially east of 16th Street NW. New development ... should set aside land for parks, while development along the area's commercial streets and around Metro stations should include pocket parks and plazas; and (10-A DCMR § 2007.3.)
- Mid-City needs greening. Tree planting is needed to reduce urban runoff, create shade, remove air pollutants, and create beauty in the neighborhoods. Future development should incorporate green roofs and other methods to reduce resource consumption, conserve energy and water, and be more environmentally friendly. (10-A DCMR § 2007.3.)

(257) The Project advances the following Mid-City Element policies:

- MC-1.1 Guiding Growth and Neighborhood Conservation:
 - MC-1.1.2: Directing Growth;
 - MC-1.1.3: Infill and Rehabilitation;
 - MC-1.1.7: Preservation of Affordable Housing; and
 - MC-1.1.12: Green Development Practices; and
- MC-2.1 Georgia Avenue NW Corridor:
 - MC-2.1.1: Revitalization of Lower Georgia Avenue, N.W.;
 - MC-2.1.2: Georgia Avenue NW Design Improvements;
 - MC-2.1.D: Great Streets Improvements; and
 - MC-2.1.E: Park Morton New Community.

(258) Ways in which the Project advances Mid-City Element policies:

The Project is not inconsistent with the goals and community priorities identified above, and implements a number of the specific policies listed below. For example, the Project is located along the Georgia Avenue corridor, which the Mid-City Element specifically identifies as a location for “new mixed-income housing

developments that provide a greater mix of affordability as a result of a rezoning effort.” (See 10-A DCMR § 2008.3.)

The Project has been designed to ensure that the infill development is comparable in scale and character with adjacent uses, provides more housing opportunities, and promotes the construction of new affordable units. The Project also includes large courtyards, rooftop terraces, public space enhancements, and ample outdoor green space. Specifically, the Project includes new landscaping, street tree planting and maintenance, energy efficient and alternative energy sources, green roofs, methods to reduce stormwater runoff, and green engineering practices. The Project has been designed to integrate a host of sustainable features, such that the apartment building and senior building will be certified with a minimum of 57 points under the EGC standards, and the townhomes will be certified with a minimum of 50 points under the EGC standards. The Project also includes sidewalks along Georgia Avenue, Irving Street, and Columbia Road, which will provide for a better pedestrian experience through the use of street trees, landscaping, and sidewalk connections. Overall, the Project will increase the District's tree cover, minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment.

The Project helps advance revitalization of the lower Georgia Avenue corridor specifically by incorporating mixed-income housing, well maintained public spaces, and increased density within a well-designed and safe pedestrian-oriented streetscape. It also helps to implement the Great Streets Initiative's recommendations for Georgia Avenue by establishing new housing along the mixed-use and transit-rich corridor. Moreover, the Project supports the District's goal of redeveloping Park Morton as a new community, replacing the existing public housing units with an equivalent number of new public housing units, and providing market-rate and moderate-income housing to create a true mixed-income community.

(8) Other relevant policy guidance of the CP that supports approval

- (259) The Commission finds that the PUD is consistent with the following other relevant CP policies.
- (260) The Project is Consistent with the Purposes of the Comprehensive Plan. The purposes of the Comprehensive Plan are six-fold: (1) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development; (2) to guide executive and legislative decisions on matters affecting the District and its citizens; (3) to promote economic growth and jobs for District residents; (4) to guide private and public development in order to achieve District and community goals; (5) to maintain and enhance the natural and architectural assets of the District; and (6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. D.C. Official Code §1-245(b) (§ 1-301.62).

- (261) The Commission finds that the Project advances these purposes by promoting the social, physical, and economic development of the District through the provision of a vibrant new mixed-income community that includes a variety of housing types for households of varying income levels. The Project will achieve District goals by providing new affordable housing that respects the character of the surrounding neighborhood, enhances the natural and architectural assets of the District, and improves the community.
- (262) The Project is Consistent with the Guiding Principles of the Comprehensive Plan. The Comprehensive Plan establishes guiding principles that express cross-cutting goals for the District's future that guide the Comprehensive Plan's policies and actions. (10-A DCMR § 200.4.) Based on evidence in the record, the Commission finds that the Project is consistent with many of the guiding principles for managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as discussed in the paragraphs below.
- (263) Managing Growth and Change. The Commission finds that the Project is consistent with the principles in this section. Specifically, the Project will help to attract a diverse population through the provision of a mix of housing types available for households of different incomes. (10-A DCMR §§ 217.2, 217.3.) The Project will help connect the PUD Site to the rest of the neighborhood and the overall urban fabric by creating a new street, and enhance the pedestrian experience with new streetscape improvements and facilities. (10-A DCMR § 217.6.)
- (264) Creating Successful Neighborhoods. One of the guiding principles for creating successful neighborhoods is improving the residential character of neighborhoods. (10-A DCMR § 218.1.) Moreover, the production of new affordable housing is essential to the success of neighborhoods. (10-A DCMR § 218.3.) Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. (10-A DCMR § 218.8.) The Commission finds that the Project furthers each of these guiding principles by constructing replacement public housing units, affordable housing units, and market-rate housing, all located within a single mixed income development. As part of the PUD process, the Applicant has worked closely with ANCs 1A and 1B, and a variety of other community stakeholders and organizations to ensure that the Project provides a positive impact to the surrounding neighborhood and is designed to be consistent with community goals.
- (265) Connecting the City. The Commission finds that the Project advances a number of the guiding principles stated within the Connecting the City Element. For example, the Project includes streetscape improvements that will improve mobility and circulation through the PUD Site, within the square, and throughout the neighborhood. (10-A DCMR § 220.2.) The access points for the required parking and loading facilities are designed to appropriately balance the needs of pedestrians,

bicyclists, transit users, vehicles and delivery trucks, as well as the needs of residents to move around and through the city. (*Id.*) Together, the Commission finds that these improvements will help to reinforce and improve the surrounding community. (10-A DCMR § 220.3.)

- (266) Building Green and Healthy Communities. The Commission finds that the Project is fully consistent with the guiding principles of the Building Green and Healthy Communities element, since the Project will increase the District's tree cover, minimize the use of nonrenewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (11 DCMR §§ 221.2 and 221.3.) The proposed streetscape improvements will help to facilitate pedestrian and bicycle travel, and new green roofs will reduce stormwater runoff and create a more sustainable environment on the PUD Site.

5. Other relevant public policy goals outside of the Comp Plan that support approval of the Project

- (267) The Comprehensive Plan requires zoning to be “interpreted in conjunction with... approved Small Area Plans.” (10-A DCMR § 266.1(d).) The Zoning Regulations further require consistency with “other adopted public policies and active programs related to the subject site.” (11 DCMR § 2403.4.) Small area policies appear in “separately bound Small Area Plans for particular neighborhoods and business districts. As specified in the city’s municipal code, Small Area Plans provide supplemental guidance to the Comprehensive Plan and are not part of the legislatively adopted document.” (10-A DCMR § 104.2.)

(a) The Project is Consistent with the Georgia Avenue – Petworth Metro Station Area and Corridor Plan Revitalization Strategy

- (268) As set forth below, the Commission finds that the Project is consistent with the goals and priorities of the Georgia Avenue – Petworth Metro Station Area and Corridor Plan Revitalization Strategy (the “Strategy Plan”), which is the Small Area Plan applicable to the PUD Site. Similar to the Comprehensive Plan, the Strategy Plan discusses the importance of balancing development priorities, which include “the critical need to preserve and create affordable housing.” (see Strategy Plan, p. 17.)

- (269) The Strategy Plan emphasizes the need for quality housing and affordable housing by encouraging “a mix of residential development along [the Georgia Avenue] corridor... [that] should be targeted in blocks that have high vacancies and/or underutilized properties.” (*Id.* at 23.) In order to ensure that existing residents receive opportunities to acquire affordable housing, the Strategy Plan aims to create a “vibrant, mixed income community, as well as potentially mak[ing] a significant contribution to providing housing for District of Columbia’s working families.” (*Id.* at 25.) The Strategy Plan strives to advance diversification of the housing stock by “encouraging redevelopment opportunities with multi-family buildings for families

[and] senior citizens,” and to increase affordability by “encouraging development opportunities with a variety of housing types.” (*Id.* at 27.)

- (270) The Strategy Plan also references a “lack of public land for new development” since the “majority of lots are small and privately held.” (*Id.* at 34 and 36.) The Commission notes that the Strategy Plan was created before the school was demolished on the Site, and therefore believes the Site is an excellent opportunity to facilitate the redevelopment.
- (271) The Commission finds that the Project is consistent with these and other policies set forth in the Strategy Plan because it will satisfy the great need for new housing and affordable housing in the District, particularly along the Georgia Avenue corridor. Through the District’s development of the 44,000 square foot parcel adjacent to the PUD Site as a park, the Project also advances the Strategy Plan’s priority of preserving and protecting public parks and green space. Therefore, the Commission finds that the Project is consistent with the Strategy Plan.

(b) The Project is Consistent with the Park Morton Plan

- (272) The Park Morton Plan is a plan developed by DMPED and DCHA that seeks to create a healthy, mixed-income community with integrated services that offer families better housing, employment, and educational opportunities. The Park Morton Plan protects affordable housing, improves economic integration, engages residents in community decision making, decreases crime through proven crime reduction strategies, and creates opportunity through better jobs, education, training, human services and other programs. (Park Morton Plan, p. 2.) The Park Morton Plan is relevant in this case because the PUD Site serves as replacement housing for Park Morton residents in a vibrant mixed-income community. (Ex. 270, 361.)
- (273) The Commission finds that the Project is consistent with many of the goals set forth in the Park Morton Plan. A key component of the Park Morton Plan is the one-for-one replacement of existing publicly subsidized housing at Park Morton. (Park Morton Plan at 4.) The Park Morton Plan also calls for the redevelopment of “a public housing site into a mixed-income community with an improved quality of life for families,” and for the reduction in economic segregation by “protecting existing affordable housing and building more units at workforce and market-rates.” (*Id.* at 4, 28.)
- (274) The Commission finds that the Project is consistent with these objectives because it incorporates 90 new replacement public housing units, 109-113 workforce affordable units, and 70-74 market rate units, such that a true mixed-income community will be created at the PUD Site. The housing units will range from one-, two-, and three-bedroom units in order to accommodate diverse household sizes and types that will be moving into the Project.

(275) Another hallmark of the Park Morton Plan is a focus on the redevelopment of human capital through linkages to job training, asset building training and other support services. The Commission finds that the Project helps to embody this vision through the Applicant's commitments to: (i) entering into a First Source Employment Agreement with DOES, to ensure that District residents are given priority for new jobs created by municipal financing and development programs; (ii) entering into a CBE Agreement with DSLBD to ensure that a preference is made to District-based firms pursuing District government issued procurement opportunities; and (iii) involving economically disadvantaged communities by meeting the HUD Section 3 requirements by providing job training, employment, and contract opportunities for low- or very-low income residents in connection with development of the Project.

c. The Project is consistent with the New Communities Initiative

(276) The New Communities Initiative is a District government program designed to revitalize severely distressed subsidized housing and redevelop communities plagued with concentrated poverty, high crime, and economic segregation. The vision for the New Communities Initiative is for vibrant mixed-income neighborhoods that address both the physical architecture and human capital needs, where residents have quality affordable housing options, economic opportunities and access to appropriate human services. Four guiding principles lay the framework for New Communities:

- a. One-for-One Replacement to ensure that there is no net loss of affordable housing units in the neighborhood;
- b. The Opportunity for Residents to Return/Stay in the Community to ensure that current residents will have a priority for new replacement units in an effort to remain in their neighborhood;
- c. Mixed-Income Housing to end the concentration of low-income housing and poverty; and
- d. Build First, which calls for the development of new housing to begin prior to the demolition of existing distressed housing to minimize displacement.

(277) The Commission finds that the proposed heights, densities, unit mix, and affordability levels advance the guiding principles and general goals of the New Communities Initiative.

(278) As set forth in DMPED's January 10, 2017 letter, the Project achieves 273 new housing units, split between public housing, workforce affordable, and market rate housing. This unit count is achieved under the proposed R-5-B and C-2-B rezoning, which "would be obtained via the PUD process and is permitted in the Comprehensive Plan." (Ex. 237D.) The Commission agrees with DMPED's testimony that the unit density proposed for the PUD Site allows the District to "preserve housing equity in the project and to meet the diverse household sizes of Park Morton families." (*Id.*) It also allows the District to "accommodate everyone

from single seniors to 2-person households and families with children who require 3-bedroom townhome units.” (*Id.*)

- (279) The availability of a proximate, off-site, at-scale development parcel for Park Morton replacement public housing units is “essential to fulfilling the [New Communities Initiative’s] principles and ensuring timely completion of Park Morton revitalization. As such, development of [the PUD Site] is THE KEY component to delivering on the District’s promise made to Park Morton residents a decade ago, by supporting the delivery of a critical mass of replacement units at [the PUD Site] within a mixed-income context consistent with overarching community development goals.” (*Id.*) The development program and phasing for the PUD Site and the Park Morton site were designed to “take into account the inter- connected relationship among 1:1 replacement, creating/maintaining true income integration, minimizing resident displacement, utilizing economies of scale, [] staying within a reasonable development timeline, complying with the Comprehensive Plan policies regarding the need for additional affordable housing, among many other factors.” (*Id.* at 2-3.)
- (280) The Commission also finds that none of the units proposed for the PUD Site can be shifted to Park Morton in order to achieve the desired number of replacement units overall. Unlike the PUD Site, Park Morton is located within a residential neighborhood and is situated off of Georgia Avenue. Accordingly, it is prescribed a lower-density zoning designation under a PUD than that of the PUD Site, and a lower zoning designation results in a lower unit yield. (*Id.*)
- (281) Therefore, the Commission finds that the proposed housing density and unit mix at the PUD Site allows for the important accommodation of a variety of household types and sizes at Park Morton, which would otherwise be frustrated by the need to develop more apartment buildings with smaller units at Park Morton. Reducing density at the PUD Site would result in lost opportunity to build replacement units at the PUD Site. (*Id.* at 4.) Therefore, the Commission finds that the Project is consistent with the New Communities Initiative.

d. Recognition that the Project will no longer serve as a “Build First” site as it was originally conceived

- (282) The Commission recognizes that a key part of its decision regarding the Project’s consistency with the Comprehensive Plan, the Park Morton Plan, and the New Communities Initiative when it originally approved this case was the Project’s provision as a build-first site for the redevelopment of the Park Morton site. As discussed immediately below and in Section II.F3., Other District agencies, of this Order, both DCHA and DMPED submitted letters indicating that this is no longer the case. PMRC also brought this issue to the attention of the Commission in its submissions where it discussed the displacement of Park Morton residents. (Ex. 264, 272A, 275.)

- (283) In a letter to the Commission dated September 27, 2021, DCHA Executive Director Brenda Donald, acknowledged that this Project could no longer serve as the “Build First” site, but stated that that it was still an integral piece of the overall Park Morton redevelopment plan because it provided 90 units of replacement public housing, and that this would allow former Park Morton residents with an opportunity to return to their neighborhood:

The original redevelopment plan for Park Morton includes Bruce Monroe as the Build-First/Phase 1 site and the existing Park Morton public housing site was planned as phases 2 and 3. The total program between both sites included the development of approximately 462 new units that included 147 replacement units for the former Park Morton residents as well as moderate/affordable, and market rates units. Bruce Monroe is proposed to be developed as a mixed-use community with a total of 273 residential units, comprised of 189 apartment units, 76 senior apartment units, and 8 townhomes with a total 90 replacement units for former Park Morton residents.

In order to continue to move the Park Morton redevelopment forward, planning has now shifted to begin onsite development at Park Morton prior to Bruce Monroe due to litigation over its approved PUD that began in May 2017. The onsite phased development of the Park Morton public housing property is anticipated to begin in FY 22. There will be 189 total units including 57 replacement units, 105 additional affordable units and 27 market and affordable homeownership opportunities. Additional features of the plan include new streets and alleys, and a new pocket park in two phases. Phase 1 at Park Morton will provide 142 units within a multifamily building along Park Road and six townhomes and stacked flat apartments. There will be a total of 43 replacement units built in Phase 1 at Park Morton when completed.

Bruce Monroe is an integral piece to the overall Park Morton Redevelopment plan in that it provides the needed 90 replacement units for former Park Morton residents so that they will have the opportunity to return to their neighborhood.

(Ex. 270).

- (284) Likewise, the DMPED submitted a letter dated October 13, 2021, stating that the Project Site will include replacement public housing units necessary to effectuate the plan to provide one for one replacement of the units at Park Morton. (Ex. 361.) The letter further stated that:

Bruce Monroe is a critical component to the overall Park Morton redevelopment plan and is designed to fulfill key tenets of NCI—development of a vibrant mixed income community and a one-for-one replacement of public housing demolished with a new affordable housing unit. Mixed income housing dictates an appropriate integration of housing types, and price points so that replacement public housing, workforce, and

market rate residents each have appropriate emphasis within the redeveloped community. The Bruce Monroe site remains an integral component to providing replacement units for Park Morton residents in a mixed-income community.

(*Id.*)

(285) The Commission found this evidence persuasive. Despite the fact the Project will no longer serve as a “Build First” site, it will still provide necessary replacement public housing units in a mixed income community. The Commission therefore finds that the Project still advances the policies of the Park Morton Plan and NCI.

6. The Application’s consistency with the updated Comp Plan as it was modified by the D.C. Council after the Court of Appeals remanded the case to the Commission

(286) The Commission also separately considered the amendments made to the Comprehensive Plan¹⁹ after the Court of Appeals remanded the case to the Commission and finds as follows.

a. New CP Framework Element guidance regarding the GPM

(287) After the Court remanded the Commission’s Order in this case and issued its Opinion, the D.C. Council amended the relevant GPM policy guidance regarding Neighborhood Conservation Area’s in the Framework Element. The amendments revised the description of the “guiding philosophy” for Neighborhood Conservation Areas to add that this specific designation does “not preclude development, **particularly to address city-wide housing needs**” and that “[a]pproaches to managing context-sensitive growth in Neighborhood Conservation Areas may vary based on neighborhood socio-economic and development characteristics. **In areas with access to opportunities, services, and amenities, more levels of housing affordability should be accommodated. Areas facing housing insecurity (see Section 206.4) and displacement should emphasize preserving affordable housing and enhancing neighborhood services, amenities, and access to opportunities.**” (See 10-A DCMR § 225.5 of the amended Comp Plan (emphasis added).)

(288) The Commission believes that the Project is in an area of the city facing housing insecurity and displacement, and that the Project addresses city-wide housing needs by both providing more levels of housing affordability in a neighborhood with access to opportunities, services, and amenities, and preserving housing affordability. The Commission therefore believes that the Project is consistent with

¹⁹ The D.C. Council adopted two set of amendments to the Comprehensive Plan. The Comprehensive Amendment Act of 2017 amended the framework element, and was effective August 27, 2020, as D.C. Law 23-217. The Comprehensive Plan Amendment Act of 2020 amended the text of the Comprehensive Plan and its Future Land Use Map, and was effective on August 21, 2021, as D.C. Law 24-20.

the GPM policy guidance in the Framework Element regarding Neighborhood Conservation Areas as it was amended.

b. CP FLUM amendments

(289) After the Court remanded the Commission’s Order in this case and issued its Opinion, the D.C. Council also amended the CP to change the FLUM designations for the Site.

(290) The amended FLUM designated the entire portion of the Site that contains the 90 Foot Apartment Building and the 60 Foot Senior Building to the Mixed-Use Medium Density Commercial/Medium Density Residential category. The area directly to the south of the Site was changed to the Mixed-Use Residential Moderate/Parks, Recreation, and Open Space designation. The small section in the southwest corner of the Site was also included in the Mixed-Use Residential Moderate/Parks, Recreation, and Open Space designation.

(291) A diagram showing the revised FLUM for the vicinity of the Site is shown below:



(Ex. 360, p. 11.)

c. FLUM Framework Element guidance

(292) The D.C. Council also amended the Framework Element provisions that define how the FLUM is to be interpreted.

- (293) The Medium-Density Commercial designation is defined by the amended Framework Element as:

This designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Moderate-Density Commercial areas. Retail, office, and service businesses are the predominant uses, although residential uses are common. Areas with this designation generally draw from a citywide market area. Buildings are larger and/or taller than those in Moderate-Density Commercial areas. Density typically ranges between a FAR of 4.0 and 6.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-8 and MU-10 Zone Districts are consistent with the Medium Density category, and other zones may also apply.

(10-A DCMR § 227.12 of the amended Comprehensive Plan.)

- (294) The Medium-Density Residential designation is defined by the amended Framework Element as:

This designation is used to define neighborhoods or areas generally, but not exclusively, suited for mid-rise apartment buildings. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. Pockets of low and moderate-density housing may exist within these areas. Density typically ranges from 1.8 to 4.0 FAR, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The RA-3 Zone District is consistent with the Medium Density Residential category, and other zones may also apply.

(10-A DCMR § 227.7 of the amended Comprehensive Plan.)

- (295) The amended Framework Element notes that “[s]pecific public benefits are determined through each PUD application and should respond to critical issues facing the District,” and that “[i]n light of the acute need to preserve and build affordable housing . . .the following should be considered as high-priority public benefits” in evaluating a residential PUD:

- The production of new affordable housing units above and beyond existing legal requirements or a net increase in the number of affordable units that exist on-site;
- The preservation of housing units made affordable through subsidy, covenant, or rent control, or replacement of such units at the same affordability level and similar household size;
- The minimizing of unnecessary off-site relocation through the construction of new units before the demolition of existing occupied units; and

- The right of existing residents of a redevelopment site to return to new on-site units at affordability levels similar to or greater than existing units.

(10-A DCMR § 224.9 of the amended Comprehensive Plan.)

(296) The Commission finds that the PUD is fully consistent with the FLUM as it was amended. The PUD has an FAR of 3.6 spread across the entire PUD Site. It incorporates taller residential buildings surrounded by large areas of permanent open space. It provides affordable housing far in excess of the IZ requirements and at deeper levels of affordability:

- Even when judged in isolation, the tallest and most dense building in the PUD, the 90-Foot-Tall Apartment Building, is within the density and height ranges contemplated by the Site’s FLUM designation, with a FAR of 5.9, the 90-Foot-Tall Apartment Building is within the range called for in Medium Density Commercial areas.

d. Racial equity analysis

(297) The Commission also considered the new policy included in the CP amendments “for the Zoning Commission to evaluate all actions through a racial equity lens as part of its Comprehensive Plan consistency analysis. (10-A DCMR § 2501.8.²⁰)

(298) The Commission was persuaded by OP’s supplemental report, discussed above in Section II.F.1.c., which clarified that the direction for the Zoning Commission to consider equity as a part of its Comprehensive Plan consistency analysis:

Indicates that the equity analysis is intended to be based on the policies of the Comprehensive Plan and whether a proposed zoning action is “not inconsistent” with that Plan, rather than on a separate determination about a zoning action’s equitable impact.

(Ex. 273 at 2-3.)

(299) Given that most Comprehensive Plan policies do not directly address race, the Commission readily acknowledges the difficulty in evaluating a zoning action through a “racial equity lens”. Therefore, the Commission greatly appreciates OP

²⁰ The full text of the regulation provides:

Prepare and implement tools, including training, to assist District agencies in evaluating and implementing the Comprehensive Plan’s policies and actions through an equity, particularly a racial equity lens. This includes tools to use as part of the development review process, preparation of plans, zoning code updates, and preparation of the capital improvement program, that considers how to apply an equity analysis in these processes, including any information needed. This shall specifically include a process for the Zoning Commission to evaluate all actions through a racial equity lens as part of its Comprehensive Plan consistency analysis. (10-A DCMR § 2501.8.)

pointing out that the evaluation is an overall Comprehensive Plan consistency analysis of a project that includes racial equity as opposed to a stand-alone racial equity analysis of a project.

- (300) The Commission is also mindful of the many data points referenced throughout the Comprehensive Plan Housing Element stating the significant disparities in housing need, access, and opportunity when Black and Hispanic District residents are compared to whites. (10-A DCMR § 500.1-518.19.)
- (301) The Commission agrees with OP’s conclusion that “[o]ne of the key ways the Comprehensive Plan seeks to address equity is by supporting additional housing development.” (Ex. 273 at 3.) And that, “without increased housing the imbalance between supply and demand will drive up housing prices in a way that will create challenges for many residents, particularly low-income residents.” (*Id.*).
- (302) Furthermore, the Commission agrees with OP’s conclusion that approval of the Project promotes racial equity because, “[t]he site currently has no housing. . .[t]he requested PUD and related map amendment would enable the provision of more residential units on the site. . .the 90 replacement units for previous Park Morton residents would clearly be affordable. . .and at a macro level, the production of more housing decreases the upward pressure on overall housing prices.” (Ex. 273 at 3.) Moreover, “[d]ue to the socio-economic composition of the District in general, and the residents of the New Communities in particular, the 90 units of affordable replacement housing would help provide access to residential units for residents of color. . .” (*Id.* at 4.)
- (303) Finally, the Commission agrees with OP’s that the Project would deliver several benefits that promote racial equity. Specifically:
- The Project will establish a mixed-income community with new and diverse housing options;
 - The Project will include a total of 273 residential units, with 189 units in the apartment house, 76 units in the senior building, and eight townhomes; 90 units will be public housing replacement units, 109-113 units will be workforce affordable units, and 70-74 units will be market rate;
 - The Applicant for the PUD is required to comply with the relocation and reentry requirements for public housing replacement units of Resolution No. 16-06 “To Adopt Relocation and Re-entry Policies for New Communities Initiative Developments;”
 - The PUD will provide 90 new replacement units for the Park Morton public housing site, which is part of the District’s New Community’s Initiative. The New Communities Initiative is a District government program designed to revitalize severely distressed subsidized housing and redevelop neighborhoods into vibrant mixed-income communities;

- The First Source Employment Agreement will require that 51% of all new job hires and 31% of apprenticeship hours be for District residents; and (Ex. 237H.)
 - The Small Business Enterprises requirement states that all construction and non-construction Government-assisted projects over \$250,000, shall require 35% subcontracting to Small Business Enterprises certified by DSLBD. (Ex. 237I.)
- (304) The Commission believes that approving the PUD will advance racial equity. Nevertheless, the Commission is sympathetic to the various racial equity issues PMRC and BMPN raised in its submissions responding to the Commission’s procedural orders.
- (305) PMRC asserted that 116 of 133 residents of Park Morton were displaced during the pendency of this case, and that therefore approval of the Project would be inconsistent with the updated CP requirement that “land use policies and actions must be viewed through a racial equity lens to provide equitable development that provides adequate access to these services and opportunities within neighborhoods of color and low-income communities.” (Ex. 275.) PMRC also cited the following CP policies - § 2502.11, Policy IM-1.1.6, § 2501.8, Action IM-1.B, § 310.1, Policy LU-2.1A, and § 2011.14, Action MC-2.1.E- as justification for how the Project is not consistent with the Comprehensive Plan, and in particular racial equity. (Ex. 275, 363.)
- (306) The Commission finds the displacement that has occurred of Park Morton residents tragic and understands the residents’ preference for a lower-density development with more larger bedroom units than the Project. However, the Commission believes denying the PUD will only worsen the issues and the displacement that has resulted from the Project’s delay while its appeal process has played out. The displacement of Park Morton residents, while tragic, did not occur as a result of the Commission’s original approval of this Application. The Commission believes that, had the Project been constructed as a build-first site for the Park Morton redevelopment, consistent with the timetable of the original approval of the Application, far less displacement of Park Morton residents would have occurred. The Commission acknowledges the CP policies cited by PMRC as justification for the Project’s inconsistency with the updated Comp Plan, but ultimately finds that when taken as a whole, the amendments to CP policies overwhelming support approval of the Project rather than denial. As discussed above and in Section II.I.6, The Application’s consistency with the updated Comp Plan as it was modified by D.C. Council after the Court of Appeals remanded the case to the Commission, subsections a.-d., the Commission finds the Project to be not inconsistent with the updated Comprehensive Plan, and not inconsistent with racial equity, in particular.
- (307) The PMRC claimed that the Commission should utilize a racial equity tool in its evaluation of the Project through “a racial equity lens.” As discussed in Section II.H.3., Limited Scope Public Hearing and Post-Hearing Submissions, above, the

PMRC submitted a racial equity tool following the October 19, 2021 hearing as a post-hearing submission, and cited CP policies that it suggested the Commission should apply in its evaluation of the Project through a racial equity lens. In addition, PMRC submitted the PMEP, which was developed by Park Morton residents, as an alternative to NCI's plan for development of the Park Morton site, and is discussed above in Section II.H.1, Party Responses to First Procedural Order, and II.H.2., Party Responses to Second Procedural Order. The PMRC originally suggested that the Commission adopt the PMEP as the equity tool in evaluating the Project (in Ex. 275.), but given its post-hearing submission, the Commission believes the PMRC is now suggesting that the Commission utilize both its racial equity tool and the PMEP in its evaluation of the Project. The Commission appreciates PMRC's post-hearing submission and its suggestions for how a racial equity tool should be developed and utilized. However, the Commission does not believe that it is required to utilize a racial equity tool to make a decision in this case, as PMRC suggests.

- (308) This case was first decided in March of 2017 and the final order was published on May 5, 2017, long before this requirement became effective.²¹ The Commission's obligation to decide this case pre-dates any amendments to the Comprehensive Plan that add any new requirements; therefore, the Commission's decision in this proceeding is not predicated on the Project's overall consistency with the amendments to the Comprehensive Plan. Quite the contrary, the Commission's decision in this proceeding is contingent on the Commission finding that the Project is not inconsistent with the Comprehensive Plan that was in effect at the time of its original approval of the Project. The extent to which the amendments to the Comprehensive Plan support approval or denial of the Project are primarily for informational and contextual purposes given the considerable time that has elapsed since the Commission's original approval of the Project and the significant change in policy that has occurred since that time.
- (309) Further, this case was remanded to the Commission for a limited number of reasons that are listed in the DCCA Opinion. They include "[i]ndependently analyze and discuss whether the PUD is inconsistent with specific [Comprehensive Plan] policies, **timely identified** before the Commission." (Opinion at 30 (emphasis added).) The Commission interprets this to mean that it has been ordered to reconsider and further explain its decision based on the facts and regulations in effect at the time it made its original decision. And for the reasons discussed above, the Commission concludes based on the Comprehensive Plan policies in effect when the Commission first approved the PUD, that the potentially inconsistent Comprehensive Plan policies are greatly outweighed by the policies that support approval.

²¹ The D.C. Council adopted two set of amendments to the Comprehensive Plan. The Comprehensive Amendment Act of 2017 amended the framework element, and was effective August 27, 2020, as D.C. Law 23-217. The Comprehensive Plan Amendment Act of 2020 amended the text of the Comprehensive Plan and its Future Land Use Map, and was effective on August 21, 2021, as D.C. Law 24-20.

(310) The PMRC is correct that the amended Comprehensive Plan requires preparation and implementation of tools and training to develop a process for the Commission to use to assist in evaluating “all actions through a racial equity lens as part of its Comprehensive Plan consistency analysis.” (10-A DCMR § 2501.8.) While the Commission acknowledges that it has not formally adopted a “racial equity tool” the Commission does not believe that the absence of a formal tool precludes the Commission from evaluating zoning actions through a racial equity lens as a part of its Comprehensive Plan consistency analysis at this time. In fact, the Commission finds the currently available data and tools that OP utilized in its evaluation of the Project “through a racial equity lens” persuasive as explained above, and more persuasive than it finds PMRC’s suggested “racial equity tool.” The Commission believes that creating additional tools and training to develop a more formal evaluation process is policy that will take time and collaboration among District agencies. The Commission also anticipates that once a more formal evaluation process materializes, it will evolve over time as new tools and training come into existence. Nevertheless, the Commission believes the currently available tools and training are facilitating an evaluation process of actions through “a racial equity lens.”

7. Potential inconsistencies with the Comp Plan and other public policies

(311) The following is a list of the potential inconsistencies with the Comprehensive Plan and other public policies that were raised in the record by the parties, the Court of Appeals, or that were raised by the Commission itself based on its own analysis of the record and relevant Comprehensive Plan policies that were cited in the record.

(312) For several of the listed potential inconsistencies, the Commission finds that the Project is not actually inconsistent with the cited policies. The Commission nonetheless includes them here because the Commission wants to be clear that it has considered them.

a. Height, density, and character of the 90-Foot-Tall Apartment Building and 60-Foot-Tall Senior Building

(313) The PUD includes the 90-Foot-Tall Apartment Building and a 60-Foot-Tall Senior Building. These two buildings are significantly larger than the townhouses directly to the north across Irving Street, and larger than the existing development in close proximity on Georgia Avenue. They will cast shadows to the north where there are existing townhouses. The buildings have a different architectural character than the townhouses along Irving Street, and the commercial buildings along Georgia Avenue. The height, density, and character of these two buildings is potentially inconsistent with several Comprehensive Plan policies, as described below.

1) Neighborhood Conservation Area of the Generalized Policy Map

(314) A portion of the 90-Foot-Tall Apartment Building and all of the 60-Foot-Tall Senior Building are located in Neighborhood Conservation Area on the GPM. The

Commission finds that the height, density, and character of the two buildings is inconsistent with the policy guidance that states new development in Neighborhood Conservation Areas, “should be compatible with the existing scale and architectural character of each area.” (10-A DCMR § 223.5 (2020); Opinion at 18.) Both the 90-Foot-Tall Apartment Building and 60-Foot-Tall Senior Building are larger and of a different character than the existing neighboring townhouses, and the relatively low-scale commercial development on Georgia Avenue.

- (315) However, the PUD Site is unique, and in several ways does not fit within the conditions and parameters of the NCA described in the Framework Element. The Site is currently underutilized, serving as a temporary park awaiting this redevelopment. Before serving as a temporary park, the Site was a school building and related facility. Because of the Site’s large size, prominent location, and current state, any redevelopment will not be the kind of “small in scale” development that is contemplated by the NCA. Instead, the unique nature of the Site makes it better suited for larger scale redevelopment.
- (316) The Commission therefore believes it is acceptable to allow the more intense development of the type contemplated by the Mixed-Use Main Street Corridor on the eastern side of the PUD Site along Georgia Avenue to extend into the NCA on the GPM. This kind of “line blurring” is explicitly contemplated by the Comprehensive Plan.²² It is for this reason that the Commission believes the PUD is not inconsistent with the policy guidance of the GPM when all of the advice is considered holistically, despite the PUD’s inconsistency with the NCA policy cited in the Opinion.

2) Future Land Use Map

- (317) There are several inconsistencies with the FLUM guidance for the Site²³ related to the height and density of the 90 Foot Apartment Building and the 60 Foot Senior Building:
- The 90-Foot-Tall Apartment Building is taller than the tallest buildings that are described as being typical for the relevant categories, which are the:
 - Medium Density Residential;²⁴

²² There are several references in the Framework Element that support the notion that the lines drawn on the GPM and FLUM are not intended to be interpreted as “bright lines” but instead are intended to be open to the Commission’s interpretation as to where to make appropriate transitions. (See 10-A DCMR § 223.2; 10-A DCMR § 226.1.)

²³ The guidance is rather complicated and is described in full in Section III.3, GPM and FLUM Maps for the PUD Site, above. The Commission finds that the relevant FLUM heights and densities are described in the Medium-Density Residential/Moderate-Density Commercial categories for the eastern portion of the Site along Georgia Avenue, and the Moderate-Density Residential category for the western portion of the Site that abuts the residential neighborhood to the west of the Georgia Avenue corridor.

²⁴ “This designation is used to define neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use. Pockets of low and moderate-density housing may exist within these areas. The Medium-

- Moderate-Density Commercial;²⁵ and
- Moderate-Density Residential²⁶ categories; and
- The 60-Foot-Tall Senior Building is taller and denser than the buildings that are described as typical for the relevant Moderate-Density Residential category.

3) Land use policy regarding vacant land adjacent to single family neighborhoods

(318) The DCCA Opinion found that:

The Project is inconsistent with the policy reflected in 10-A DCMR § 309.10 (2020) (“Carefully manage the development of vacant land and the alteration of existing structures in and adjacent to single family neighborhoods in order to protect low density character, preserve open space, and maintain neighborhood scale.”)

(Opinion at 17.)

(319) The Commission agrees that the Project is inconsistent with the portion of this policy that provides that the Project should “maintain neighborhood scale.” The 90-Foot-Tall Apartment Building and the 60-Foot-Tall Senior Building are larger in scale than the neighborhood.

(320) With respect to the portion of the policy that states the Project should “protect the low-density character”, the Project is mostly inconsistent with this policy. A portion of the 90-Foot-Tall Apartment Building and all of the 60-Foot-Tall Senior Building abut existing townhouses, which is inconsistent with this policy. However, there are some ways in which the overall site plan does protect the low-density character of the neighborhood. Most of the 90-Foot-Tall Building is constructed on the eastern edge of the Site. The Project’s overall density tapers down to the west, and includes surface parking and circulation spaces and townhouses on its western edge, which reduces the impact on the lower scale townhouses located to the west of the Site.

Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space.” (10-A DCMR § 225.5.)

²⁵ “Buildings [in this designation] are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height.” (10-A DCMR § 225.9.)

²⁶ “This designation is used to define the District’s row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, 2–4-unit buildings, row houses, and low-rise apartment buildings. In some of the older inner-city neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). The R-3, R-4, R-5-A Zone districts are generally consistent with the Moderate-Density Residential category; the R-5-B district and other zones may also apply in some locations.” (10-A DCMR § 225.4.)

4) The Project's density is too far from a Metro Station

- (321) BMPN asserted that the CP states that new development should be directed to areas immediately adjacent to Metrorail stations but did not reference any specific CP policies. BMPN claim the Project is inconsistent with this policy because it will be one half mile from two Metrorail stations. (Ex. 299.)
- (322) The Commission finds that the Project's distance of 0.5 miles from the Columbia Height's Metrorail station and 0.6 miles from the Georgia Avenue Petworth Station is close enough to support transit usage by the residents. In addition, the Project directly abuts Georgia Avenue, which is served by several high-frequency WMATA bus routes. The Commission therefore finds that this Project is fully consistent with the Comprehensive Plan's policies supporting more intensive development proximate to transit.

5) The Project is properly characterized as high-density and therefore inconsistent with the FLUM

- (323) BMPN asserted that the 90-Foot-Tall Apartment Building is more properly characterized as a "high density" building because it is nine stories tall, citing the definition of "high density 'commercial'" in the Framework Element. (10-A DCMR § 225.11; Ex. 299.) BMPN argued that it is therefore inconsistent with the Medium-Density Residential/Moderate-Density Commercial FLUM designation. (Ex. 299.)
- (324) The Commission's analysis of the height and density of this building in relation to the relevant FLUM guidance is above in Section II.I.3., GPM and FLUM Maps for the Site. As discussed in detail in that section, the PUD is inconsistent with the relevant FLUM guidance in several respects.

6) The Commission cannot conclude that the 90 Foot Building is consistent with the FLUM because of step downs

- (325) BMPN asserted that it is error for the Commission to conclude that the 90-Foot-Tall Apartment Building is consistent with the FLUM designation because of step downs in height, because that reasoning was rejected in the *Durant* case. (Ex. 299.)
- (326) The Commission's analysis of the height and density of this building in relation to the relevant FLUM guidance is above in Section II.I.3., GPM and FLUM Maps for the Site. As discussed in detail in that section, the PUD is inconsistent with the relevant FLUM guidance in several respects.

7) The density of the PUD Site relative to the Park Morton site

- (327) PMRC claimed that because the Project was to serve as a relocation site for many Park Morton residents, and the Project was of a higher density than the current and future Park Morton development, the Project was inconsistent with several CP policies. (Ex. 264.)

(328) The Commission does not find this persuasive because it believes that the more relevant guidance for the appropriate density for the Site is the FLUM guidance for the Project Site itself rather than existing buildings in the surrounding area. The relevant guidance related to the appropriate height and density for this Site is discussed above in Section II.I.3., GPM and FLUM Maps for the Site. As discussed in detail in that section, the PUD is inconsistent with the relevant FLUM guidance in several respects.

b. The Project reduces the amount of park space currently on the Site

(329) BMPN asserted that Project was inconsistent with the Comprehensive Plan because the Mid-City community needs additional park land, and the area has a shortage of active play fields and recreational facilities. BMPN cited 10-A DCMR § 2009.4²⁷. (Ex. 299.)

(330) The Commission does not find this argument persuasive because the PUD Site formerly housed a school and when the school was demolished, the intent was to develop the Site. Therefore, the current park use on the Site was intended to be temporary, not permanent. Also, the District will develop a 44,000 square foot park and recreation space adjacent to the Project.

c. The Project contains an insufficient number of three- and four- bedroom units

(331) The BMPN asserted that the Project was inconsistent with a policy stating that more three- and four-bedroom units are needed to attract and retain families. (Ex. 299.)

(332) The Commission finds that the Project includes four three-bedroom units and is therefore consistent with the premise that more family sized units are needed. While the Project could do more in terms of providing larger bedroom units, the Commission does not believe that this renders the Project inconsistent with the stated policy.

d. Tax credits for historic buildings

(333) BMPN asserted that the Project was inconsistent with the policy that states, “[e]ncourage the use of historic preservation tax credits to rehabilitate older buildings with affordable housing.” (10-A DCMR §2008.8; Ex. 299.)

²⁷ “Explore the possibility for new neighborhood parks within the Mid-City area, particularly in the area around the proposed Howard Town Center, and on the McMillan Reservoir site. Additionally, pocket parks and plazas such as those planned for the Columbia Heights Metro station area should be encouraged elsewhere in the Planning Area, particularly near higher density development. The dearth of parks in the Mid-City area is a serious problem that must be addressed as its population grows—all recreation areas must be retained and new recreation areas must be provided wherever possible.”

(334) The Commission finds that this policy is not relevant to its consideration of the Application because the Site does not contain older buildings eligible for the tax credits.

e. NCI program is delayed, Park Morton residents have been relocated, and Park Morton Residents would prefer to live in a lower density development

(335) PMRC and BMPN asserted that the Project was part of a larger redevelopment of the nearby Park Morton site (that is not a part of this Application), and that together this “creates adverse impacts for residents” because of the long delays associated with the overall redevelopment. They claimed that because the redevelopment of Park Morton began during the pendency of this appeal, and many existing Park Morton residents have relocated, this Application caused “displacement.” They expressed concern that the Park Morton residents would prefer to live in a lower density community than the Project. BMPN claimed that the Project is therefore inconsistent with the following policies: “MC-1.1.3: Infill and Rehabilitation, MC-1.1.5: Conservation of Row House Neighborhoods, MC-2.1.1.: Revitalization of Lower Georgia Avenue, MC-2.1.3: Georgia Avenue Design Improvements, MC-2.1.C Great Street Improvements, MC-2.1.D: Park Morton New Community;” and claimed this is inconsistent with the Park Morton Plan. (Ex. 263.) PMRC further claimed that the Project is therefore inconsistent with CP policy MC-2.1.E. (Ex. 275.)

(336) The Commission finds that the history of the Park Morton redevelopment includes long delays which have adversely impacted Park Morton residents. However, the Commission does not believe a decision to grant this Application is responsible for those delays and impacts. To the contrary, many of these adverse impacts would have been greatly reduced had this PUD been built in the timeframe contemplated when the Commission originally approved this Application so it could serve as the “build-first” component of the overall redevelopment plan, as was originally contemplated.

(337) The Commission understands that a majority of Park Morton residents would prefer to live in a lower density development than the Project for a variety of reasons. However, the Commission believes that the Application warrants approval because it contains many valuable public benefits. The policies cited by the parties do not state the appropriate density for the Site as the parties suggest in their submissions, nor is the Project inconsistent with policies cited.

f. Insufficient investigation by the Commission regarding potential utility issues and other public services

(338) BMPN claimed that approval of the Project is inconsistent with several CP policies related to utility capacity and public safety because the Commission had not adequately developed the record on these issues before making a decision to approve the original Application. (Ex. 363.)

- (339) The Commission finds that the reports submitted into the record from District agencies described in Section II.F.3., Other District Agencies, above were sufficient under the circumstances to approve the Application. The Commission therefore finds the Project is not inconsistent with the policies cited by BMPN.
- (340) This issue was contested in the appeal, and the DCCA did not require the Commission to revisit this issue in this remand decision by re-opening the record for additional evidence on this issue, or by compelling the Commission to seek out evidence which supports the BMPN contention that the Project will have adverse impacts that were not identified in the record previously.
- (341) The Commission nonetheless considered this issue to be a potential inconsistency because it is inevitable that the Project will increase the strain on utilities and other public services because the Site is currently developed with a temporary park and the Project is a much more intensive development scheme.

g. The Project is not fully funded

- (342) PMRC alleged that approval violates IM-1.1.6: Studies Informing Zoning Case Approvals²⁸ because the Project is not fully funded.
- (343) The Commission does not believe the Application is inconsistent with this policy because the policy does not require the Applicant to show it has “fully funded” a Project.

h. The approval violates the racial equity lens analysis requirement unless the ZC uses a racial equity tool to perform the analysis

- (344) PMRC claims the approval violates “2501.8 Action: IM-1.B: Equity Tools for District Agencies” unless the Commission uses “a racial equity tool” in its evaluation of the Project through a “racial equity lens” (Ex. 264, 275, 363.)
- (345) The Commission has provided a discussion of its racial equity analysis above in Section II.I.6.d., Racial equity analysis, of this Order.

²⁸ Ensure that zoning case approvals such as Planned Unit Developments (PUDs) utilize: (1) transportation and infrastructure studies and recommended conditions of approval to mitigate potential impacts; (2) agreements for financing any necessary improvements, including public and private responsibilities; (3) agreements to comply with “first source employment” requirements and other regulations that ensure public benefits to District residents. (10-A DCMR § 2502.10.)

III. CONCLUSIONS OF LAW

A. AUTHORITY

1. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2001.)), the Commission may approve a Consolidated PUD consistent with the requirements of Chapter 24 of the Zoning Regulations of 1958, a PUD-related map amendment pursuant to 11 DCMR § 102.3 (1958).

B. PURPOSE, BURDEN OF PROOF, AND STANDARDS FOR PUD AND PUD-RELATED MAP AMENDMENT APPROVAL

2. The purpose of the PUD process is to “is to permit flexibility of development and other incentives, such as increased building height and density; provided, that the project offers a commendable number or quality of public benefits and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.2.)
3. The Standards the Commission is to apply in deciding whether to approve or disapprove a PUD are set forth in 11 DCMR § 2403. (11 DCMR § 2403.1.) The applicant shall have the burden of proof to justify the granting of the application according to these standards. 11 DCMR § 2403.2.

C. CONSISTENCY WITH THE COMP PLAN

4. The Commission shall find that the proposed PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site. (11 DCMR § 2403.4.)
5. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)) (the “McMillan PUD”). In its decision affirming the Commission’s approval of the McMillan PUD, the Court stated the following:

“The Comprehensive Plan is a ‘broad framework intended to guide the future land use planning decisions for the District. *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). ‘[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.’ *Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous ‘occasionally competing policies and goals,’ and, ‘[e]xcept where specifically provided, the Plan is not binding.’ (*Id.* at 1167, 1168 (internal quotation marks omitted).) Thus ‘the Commission may balance

competing priorities’ in determining whether a PUD is consistent with the Comprehensive Plan as a whole.’ *D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013). ‘[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.’” *Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016).

6. Based on the case record and the Findings of Fact above, the Commission concludes that the Project, including the PUD and related map amendment, is not inconsistent with the Comprehensive Plan and with other public policies and active programs.

The Project is inconsistent with several CP policies, which are listed in Section II.I.7.²⁹, Potential inconsistencies with the CP and other public policies, of this Order. The Commission concludes that these inconsistencies are outweighed by the ways in which the Project advances the policies listed in Section II.I.4, Other relevant policy guidance in the Comp Plan that supports approval of the Project, of this Order.

This is primarily because the Project advances numerous policies related to providing replacement public housing, affordable housing, and market rate housing. These policies are described in Section II.I.4.a., The primary way the Project advances the goals of the Comp Plan is new housing, affordable housing, and replacement public housing while simultaneously preserving open space on the Site, of this Order.

As described in Section II.I.4.b., City-Wide Element policy guidance of the CP that supports approval, of this Order, the PUD also advances many other Comprehensive Plan policies.

The Commission concludes that when the potential Comprehensive Plan inconsistencies are balanced against the other competing Comprehensive Plan policy considerations that favor approval, the weighted policy guidance overwhelming supports approval of the PUD.

7. In reaching this conclusion, the Commission based its consideration on the Comprehensive Plan policies in effect at the time it made its original decision to approve the PUD.

It did so because the Opinion instructed to the Commission to “independently analyze and discuss whether the PUD is inconsistent with specific policies, or would have adverse effects, timely identified before the Commission.” (Opinion at 30.)

8. After the Commission approved the PUD in its original decision, and after the Court of Appeals issued the Opinion remanding the case to the Commission, the Comprehensive

²⁹ The Commission included potential inconsistencies with the amended Comprehensive Plan out of an abundance of caution. The Commission did so because the weight of the policies that support the approval of the PUD overwhelmingly supports approval.

Plan was amended. The Commission separately considered those amendments, which are described in section II.I.6, The Application's consistency with the updated Comp Plan as it was modified by D.C. Council after the Court of Appeals remanded the case to the Commission, of this Order, and concludes that the amendments only strengthen the Commission's conclusion that this Project warrants approval.

D. POTENTIAL ADVERSE IMPACTS – HOW MITIGATED OR OUTWEIGHED

9. The impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project. (11 DCMR § 2403.3.)
10. Based on the case record and the Findings of Fact in Section II.E., Project Impacts and Potential Adverse Effects, above, the Commission concludes that the impact of the Project on the surrounding area and operation of city services and facilities will not be unacceptable.
11. Based on the case record, and the Findings of Fact in Sections II.C., Public Benefits and Amenities, II.E., Project Impacts and Potential Adverse Effects, and II.F., Government Agency Responses to the Application and Procedural Orders, above, the Commission concludes the impact of the Project on the surrounding area and operation city services are all either favorable, capable of being mitigated, or acceptable given the quality of the public benefits of the Project, and therefore approval of the Project protects and advances the public health, safety, welfare and convenience.
12. The Commission acknowledges that the PUD permits construction of buildings that are taller and denser than the surrounding neighborhood. The Commission believes this will result in adverse impacts. However, the Commission believes this density and the related impacts are acceptable given the quality of the public benefits of the Project, which are substantial.

E. PUD FLEXIBILITY BALANCED AGAINST PUBLIC BENEFITS AND POTENTIAL ADVERSE EFFECTS

13. In deciding a PUD application, the Commission shall judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case. (11 DCMR § 2403.8). The public benefits and project amenities of a PUD may be exhibited in any of the categories listed in 11 DCMR § 2403.9. A project may qualify for approval by being particularly strong in only one or a few of the categories in § 2403.9, but must be acceptable in all proffered categories and superior in many. (11 DCMR § 2403.10.)
14. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies 11 DCMR § 2403.8's balancing test because the Application's

public benefits (listed in Section II.C., Public Benefits and Amenities) outweigh the requested zoning flexibility (listed in Section II.D., Relief Requested), as well as any potential adverse impacts that are not capable of being mitigated (listed in Section II.E., Project Impacts and Potential Adverse Effects).

15. The Commission concludes that the flexibility is balanced by the proffered benefits and amenities resulting from the Project, including the superior urban design, housing and affordable housing, environmental benefits, employment and training opportunities, transportation benefits, and the other public benefits listed in Sections II.B., The Proposed Project, and II.C, Public Benefits and Amenities.
16. The Commission concludes that these benefits more than outweigh the relief requested, and the potential adverse effects of the Project that are not otherwise favorable or adequately mitigated.
17. The Commission concludes that the public benefits of the Project are particularly strong in the categories of housing and affordable housing.

F. PUD-RELATED MAP AMENDMENT

18. The Commission concludes that the Application’s proposed PUD-related map amendment to rezone the Property from the R-4 and C-2-A Zone Districts to the R-5-B and C-2-B Zone Districts is appropriate for the reasons discussed above and because:
 - The PUD-related Map Amendments are not inconsistent with the Comprehensive Plan; and
 - The PUD-related Map Amendments will allow the Property to be developed with a project that includes replacement public housing, affordable housing and market rate housing, while also providing other valuable public benefits, in a manner that advances the purposes of the Zoning Act and the public good.

G. GREAT WEIGHT TO RECOMMENDATIONS OF OP

19. The Commission is required to give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
20. The Commission finds OP’s analysis of the Application, its conclusion that the Application satisfied the PUD requirements, and its recommendation to approve the Application (discussed in more detail in section II.F.1., Office of Planning, subsections a.-d. of this Order) persuasive and concurs with this judgment.

H. GREAT WEIGHT TO WRITTEN REPORTS OF THE AFFECTED ANCS

21. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016.) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).”)
22. In this case there are two affected ANC’s. ANC 1A which includes the PUD Site within its boundaries, and ANC 1B which has a boundary that begins across the street.

ANC 1A

23. As discussed in Section II.G.1., ANC 1A, subsections a.-e. of this Order, ANC 1A submitted five reports in support of the Application. All five reports discussed in detail why ANC 1A thought the Application should be approved.

The Commission carefully considered the reports, and found the analysis very persuasive. The Commission agreed with the positions stated in the reports.

The Commission found the analysis stated in ANC 1A’s final report particularly persuasive. (Ex. 271.)

It stated that ANC 1A “reaffirms its strong support” for the Project, “the significant number of affordable and affordable senior housing units it will produce, and the development’s many positive impacts it will have on the surrounding community for years to come.”

The report discussed the reasons ANC 1A supported the Project, because, “[w]e are of the opinion that parcels around the Georgia Avenue Metro Station, the Bruce-Monroe Site, and Howard University must support denser, mixed-use development as a benefit to the overall community.”

The report further stated that “[i]ncreasing density along Georgia Avenue:

- Provides opportunities to increase housing, and affordable housing, in the Pleasant Plans and Park View communities that otherwise would not exist. The production of significant new affordable housing units can best be achieved with larger developments in transit rich commercial corridors;
- Creates a more respectful and balanced approach to increasing neighborhood housing through larger development rather than through the destruction of

family-size rowhouses. Century-old rowhouses remain one of the most affordable resources for families needing more than two-bedrooms;

- Takes advantage of lower Georgia Avenue’s excellent access to public transportation, walkability, and growing bike infrastructure.

24. As discussed in Section II.G.1.c. of this Order, ANC 1A Chairman Kent Boese submitted a letter stating a concern related to the Applicant’s proposal to restrict eligibility of residents of the Project’s market rate units for RPP. The Commission carefully considered this request, agreed with the concern, and removed the restriction. The Commission did so even though the letter did not meet the requirements for “great weight” because the letter did not indicate it had been approved by the full ANC.

25. Finally, as discussed in Section II.H.3., Limited Scope Public Hearing and Post-Hearing Submissions, ANC 1A also submitted a resolution in response to PMRC’s post-hearing submission providing its “racial equity tool.” (Ex.363B.) The resolution stated the following issues and concerns:

- That there must be 1:1 replacement of public housing units with three- and four-bedroom options;
- That residents must be given the full right to return as documented in DCHA Resolution 16-06 without exceptions;
- That Home Ownership and/or Cooperatives must be a part of the development plans; and
- That the PMEP was developed by The Council at Park Morton to address residents’ concerns about the redevelopment path forward and demonstrated a clear concern that residents and families do not have all of the appropriate options and Human Capital supports as described and committed to in NCI’s plans for housing during the redevelopment.

The Commission carefully considered the ANC’s resolution in response to PMRC’s post-hearing submission. For the reasons stated above, the Commission finds the Project’s provision of 4 three-bedroom units adequate despite the desire for more larger bedroom units. The Commission agrees that homeownership options should be considered for the Project and notes the Applicant’s acknowledgment that the townhomes may be offered for ownership. (See October 19, 2021 Tr. at 43.) However, despite the large majority of units being offered as rental in the Project, the Commission still finds the Project to offer much needed affordable housing for a mixture of incomes and housing sizes. Finally, the Commission discussed its consideration of the PMEP above in Section II.H.1-2, Party responses to Procedural Orders, and Section II.I.6.d., Racial equity analysis, of this Order.

ANC 1B

26. As discussed in Section II.G.2., ANC 1B, subsections a.-c. of this Order, ANC 1B submitted four reports in support of the Application. In its first report, ANC 1B suggested that the Applicant give serious consideration to adding more resident and community amenities to the Project, which it listed. (Ex. 28.) In reports two and three, ANC 1B stated that it is “committed to providing housing opportunities to rent and buy at all income levels and end programs that have demonstrated low-income warehousing in poorly maintained properties. We believe healthier communities and vibrant neighborhoods will develop with integrated low, moderate, and market income groups and with appropriate rental and ownership programs and opportunities.” (Ex. 257, 261.) And in its final report, it stated that “ANC 1B supports and recommends rapid approval and redevelopment of this important program to provide senior, low, moderate, and market-based housing.” (Ex. 276.) The Commission carefully considered the reports, and concurs with the ANC’s recommendation that it approve the Project.

I. Commission’s Response to the Opinion’s Enumerated Considerations for this Order

1. Take into account that the 90-foot-high building protrudes into a Neighborhood Conservation Area

As shown on Exhibit 234, page 14, a portion of the 90-Foot-Tall Apartment Building is in the area shaded as Neighborhood Conservation Area on the GPM.

A full discussion of the Project’s consistency with the Comprehensive Plan, including the GPM, is at Sections II.I., Consistency with the Comp Plan and other public policies, and III.C., Consistency with the Comprehensive Plan, of this Order.

2. Take into account that the areas adjacent to the western portion of the PUD are designated moderate-density residential, not medium-density residential

As shown on Exhibit 234, page 13, the areas adjacent to the western portion of the PUD are designated moderate-density residential on the FLUM, not medium density residential.

A full discussion of the Project’s consistency with the Comprehensive Plan, including the FLUM, is at Sections II.I., Consistency with the Comp Plan) and other public policies, and III.C., Consistency with the Comp Plan , of this Order.

3. Take into account that the 90-foot-high building and the 60-foot-high building are not generally consistent with, respectively, the medium-density-commercial³⁰ and moderate-density-residential designations in the FLUM

³⁰ In its discussion of the FLUM issue, the Opinion discusses the Project’s consistency with the moderate-density commercial FLUM designation at length, which is the correct and relevant designation. At the end of this discussion, it makes one, apparently mistaken, reference to the “medium-density commercial” designation. (See

The Opinion states that it was an error for the Commission to conclude that the 90-Foot - Tall Apartment Building and 60-Foot-Tall Senior Building were consistent with the moderate-density commercial FLUM designation because, the Opinion explains, the same provision the Commission relied on that provides that C-2-B zones are consistent with the moderate-density commercial FLUM designation also states that buildings in areas designated as moderate-density commercial³¹ “generally do not exceed five stories in height.” (10-A DCMR § 225.9 (2020); Opinion at 25-28.) The Court therefore concluded that there was an inherent inconsistency in these two provisions, and the Commission had an obligation to explain why it was preferring one provision over the other. The Opinion also concludes that the Commission’s conclusion was inherently “unreasonable” (Opinion at 25.), because the FLUM designations of the surrounding areas weigh against the proposed PUD. (Opinion at 28.)

The Commission acknowledges that the moderate-density commercial FLUM description in the Framework Element includes the statement that, “[b]uildings are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height.” And the Commission acknowledges that a portion of the 90-Foot-Tall Apartment Building is located directly across the street from an area developed with two level townhomes and designated as “moderate-density residential” on the FLUM. The Project includes the 90-Foot-Tall Apartment Building, which is nine stories tall, and the 60-Foot-Tall Senior Building which is six stories tall. The presence of these buildings in the Project is inconsistent with the guidance in the FLUM that the buildings in the moderate-density commercial designation “generally do not exceed five stories in height.”

Similarly, there is a portion of the 90-Foot-Tall Apartment Building, and the entirety of the 60-Foot-Tall Senior Building that are directly across Irving Street from an area designated as moderate-density residential, which is another potential inconsistency because the moderate-density residential designation states it is “used to define the Districts row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, 2-4-unit buildings, row

Opinion at 27.) The Opinion then apparently repeats this error in its listing of remand issues. (See Opinion at 30.)

The Commission believes the references to “medium-density commercial” to be in error for several reasons. First, the reference to “medium-density commercial” in the Opinion comes at the end of a discussion of the Project’s consistency with the “moderate-density commercial” designation. Second, the discussion quotes from the description of “moderate-density commercial” designation. Third, the PUD Site is directly adjacent to the Georgia Avenue corridor which is striped for a Mixed Use containing both moderate-density commercial and medium-density residential designations, but there is no such adjacency to the “medium-density commercial” designation. (*Compare* the discussion of the moderate-density commercial designation in the Opinion at 25-27, *with* the reference to the medium-density commercial designation at 27 and 30, *and* the FLUM map at Ex. 234, page 13.)

The Commission considers this transposition of the moderate and medium to be a scrivener’s error and understood the larger point the Opinion was trying to make with respect to the Project’s potential inconsistency with the moderate-density commercial FLUM designation that is adjacent to the Site along the Georgia Avenue corridor. The Commission nonetheless must point out an irony. Earlier in the Opinion, the Court chastised the Commission for making a similar error in the Remanded Order and asserted it was one of several reasons for overturning the Commission’s decision.

³¹ See above footnote.

house, and low-rise apartment buildings.” (10-A DCMR § 225.4.) Both the 90-Foot-Tall Building and 60-Foot-Tall Building are taller and more intense forms of development than is contemplated by the moderate-density residential designation.

With respect to the “medium-density commercial” designation, the Commission does not think it is relevant to its analysis of the consistency of the Project with the FLUM because there is not area with this designation in proximity to the Site. And as previously stated, the Commission believes the DCCA Opinion’s reference to this designation to be a scrivener’s error. Nevertheless, if the Site were in proximity to the medium density commercial designation, this designation states that buildings in this area “generally do not exceed eight stories in height.” (10-A DCMR § 225.10.) The 90-Foot-Tall Apartment Building is nine stories tall, so it is taller than the description contemplates. The 60-Foot-Tall Senior Building is shorter than eight stories, so within the range contemplated by the designation.

A full discussion of the Project’s consistency with the Comprehensive Plan, including the FLUM, is at Section II.I., Consistency with the Comp Plan and other public policies, of this Order. As explained in Section II.I.7., Potential inconsistencies with the Comprehensive Plan and other public policies, although the Project is inconsistent with several policies, it advances numerous policies related to providing replacement public housing, affordable housing, and market rate housing, while also advancing many other policies of the Comprehensive Plan. The Commission considered the collective weight of all the relevant policy guidance, and concludes the policies advanced by the Project overwhelmingly outweigh the inconsistencies.

4. Either identify record support for the statement that the senior building “mimics many other apartment houses that have been built as infill developments in the area” or forgo reliance on that consideration

The Commission believes there is adequate support to conclude the Project is consistent with the Comprehensive Plan without this conclusion, so it forgoes reliance on that consideration.

5. Independently analyze and discuss whether the PUD is inconsistent with specific policies, or would have adverse effects, timely identified before the Commission;

6. Determine whether, in light of the Commission’s conclusions on these issues, the Commission should grant or deny approval of the PUD; and

7. Explain the Commission’s reasoning in granting or denying approval.

For these final three considerations, please see the discussion at Sections II, Findings of Fact, and III, Conclusions of Law, of this Order.

IV. DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a Consolidated PUD and a PUD-related amendment to rezone the Property from the R-4 and C-2-A Zone Districts to the R-5-B and C-2-B Zone Districts subject to the following guidelines, conditions, and standards.

A. PROJECT DEVELOPMENT

- 1) The Project shall be developed in accordance with the Architectural Plans and Elevations dated January 10, 2017 (Ex. 237A), as supplemented by the Architectural Sheets dated February 16, 2017 (Ex. 246) (the “Plans”) and as modified by the guidelines, conditions, and standards of this Order. The Project shall include new landscaping, street tree planting and maintenance, energy efficient and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices, in accordance with the landscape, park, open space, and streetscape designs included as Sheets G21, A11B, A11C, A21B, A21C, A27-A30, and L01-L11 of the Plans.
- 2) The overall PUD Site shall be developed with approximately 275,747 square feet of gross floor area (3.6 FAR). The apartment house shall contain approximately 191,333 square feet of gross floor area and a maximum height of 90-feet; the senior building shall contain approximately 70,817 square feet of gross floor area and a maximum height of 60 feet; and each townhome shall contain approximately 1,685 square feet of gross floor area and a maximum height of 40 feet. The total lot occupancy for the PUD Site shall be approximately 53%.
- 3) Ninety-nine on-site parking spaces shall be provided in a parking garage below the apartment house and senior building. Sixteen surface parking spaces shall be provided on the new private street.
- 4) The Project shall have approximately 273 residential units, with 189 units in the apartment house, 76 units in the senior building, and eight townhomes. Of the 273 total residential units, 90 units shall be public housing replacement units, 109-113 shall be workforce affordable units, and 70-74 units shall be market rate units.
- 5) The Applicant is granted flexibility from the side yard, rear yard, loading, lot occupancy, compact parking space, phasing, and single building on a record lot requirements of the Zoning Regulations, consistent with the Plans and as discussed in the Development Incentives and Flexibility section of this Order.
- 6) The Applicant shall also have flexibility with the design of the PUD in the following areas:
 - (a) To be able to provide a range in the number of residential units of plus or minus 10%;
 - (b) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;

- (c) To vary the sustainable design features of the Project, provided the total number of points achievable for the apartment house and senior building is not below 57 points and the points achievable for the townhomes is not below 50 points utilizing the Enterprise Green Communities rating standards;
- (d) To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and
- (e) To vary the features, means and methods of achieving: (i) the code required GAR of 0.3 for the apartment house and 0.4 for the senior building, and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control.

B. PUBLIC BENEFITS

1. **Prior to the issuance of a Building Permit for the apartment house**, the Applicant shall demonstrate to the Zoning Administrator that DMPED will convey the PUD Site to Park View Community Partners pursuant to a 99-year ground lease. The ground lease will contain a provision wherein DMPED agrees that a minimum of 44,000 square feet of land area of land in Square 2890 identified as a public park shown on Sheet G10 of the Architectural Plans and Elevations, dated January 10, 2017, and included as Exhibit 237A in the record, will only be used for park and recreation uses for the term of the ground lease. The Applicant shall have the right to use a portion of the park area as a temporary staging area during construction of the Project.³²
2. **Prior to the issuance of a Certificate of Occupancy for the apartment house**, the Applicant shall demonstrate to the Zoning Administrator that it has done the following:
 - (a) Dedicated a minimum of 54 units in the apartment house as replacement public housing units;
 - (b) Dedicated a minimum of 68 units in the apartment house as workforce affordable units;
 - (c) Established the proportion of unit sizes in the apartment house according to the unit mix shown on Sheet G15 of the Plans;
 - (d) Demonstrated that the affordable housing shall be provided in accordance with the table below; and

³² The Applicant agreed, at the Commission's request, to include this condition notwithstanding that the park was not proffered as a public benefit. See Ex. 237.

- (e) The covenant required by 11 DCMR § 2602.7(c) shall include a condition or conditions requiring compliance with this Condition.
5. **Prior to the issuance of a Certificate of Occupancy for the senior building**, the Applicant shall demonstrate to the Zoning Administrator that it has:
- (a) Dedicated a minimum of 33 units in the senior building as replacement public housing units;
 - (b) Dedicated a minimum of 43 units in the senior building as workforce affordable units;
 - (c) Designated all of the units within the senior building as one-bedroom units;
 - (d) Demonstrated that the affordable housing shall be provided in accordance with the table below; and
 - (e) The covenant required by 11 DCMR § 2602.7(c) shall include a condition or conditions requiring compliance with this Condition.
6. **Prior to entering into a contract for the lease or purchase of the first townhome completed as part of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has:
- (a) Dedicated a minimum of three of the townhomes as replacement public housing units;
 - (b) Designated all of the townhomes as three-bedroom units;
 - (c) Demonstrated that the affordable housing shall be provided in accordance with the table below; and
 - (d) The covenant required by 11 DCMR § 2602.7(c) shall include a condition or conditions requiring compliance with this Condition.

The public housing and workforce affordable units shall maintain affordability for the life of the Project. A breakdown of the public housing, workforce affordable, and market-rate units shall be established in accordance with the following table³³:

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	275,747 sf of GFA (100%)	273			Rental

³³ The Applicant has not requested flexibility from the Inclusionary Zoning Regulations, but instead will request the Zoning Administrator to grant an exemption pursuant to 11 DCMR § 2602.3(f). In the event the exemption is not granted, the Applicant must comply with the Inclusionary Zoning Regulations unless the requirements of these conditions are more stringent.

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Market Rate	71,694 sf of GFA (26%)	70-74	Market Rate	NA	Rental
Public Housing Replacement Units	90,997 sf of GFA (33%)	90	HUD Requirements/ LIHTC Rules	Life of the Project	Rental
Affordable Housing	113,056 sf of GFA (41%)	109-113	Up to 60% AMI	Life of the Project	Rental

7. **During development of the Project, and for the life of the Project**, the Applicant shall comply with the applicable relocation and reentry requirements for public housing replacement units set forth in Resolution No. 16-06 “To Adopt and Re-entry Policies for New Communities Initiative Developments,” as adopted and enforced by DCHA.
8. **Prior to the issuance of a Building Permit for the apartment house, senior building, and townhomes, respectively**, the Applicant shall register each building with Enterprise to commence the Enterprise Green Communities certification process.
9. **Prior to the issuance of a Certificate of Occupancy for the apartment house**, the Applicant shall furnish a copy of its Enterprise Green Communities certification application to the Zoning Administrator. The application shall indicate that the apartment house has been designed to include a minimum of 57 points under the Enterprise Green Communities standards.
10. **Prior to the issuance of a Certificate of Occupancy for the senior building**, the Applicant shall furnish a copy of its Enterprise Green Communities certification application to the Zoning Administrator that the senior building has been designed to include a minimum of 57 points under the Enterprise Green Communities standards.
11. **Prior to entering into a contract for the lease or purchase of the first townhome completed as part of the Project**, the Applicant shall furnish a copy of its Enterprise Green Communities certification application to the Zoning Administrator that the townhomes have been designed to include a minimum of 50 points under the Enterprise Green Communities standards.
12. **Prior to the issuance of a Building Permit for each of the apartment house, senior building, and townhomes**, respectively, the Applicant shall submit to the Zoning Administrator a copy of the executed CBE Agreement with DSLBD, included as Ex. 237I; and (ii) a copy of the executed First Source Employment Agreement with DOES, included as Ex. 237H.

13. **Prior to commencing construction of any building within the PUD Site**, the Applicant shall demonstrate to the Zoning Administrator that it has entered into a Section 3 Plan that benefits low-income and very low-income district residents and/or businesses.
14. **Prior to the issuance of a Certificate of Occupancy for the apartment house or senior building (whichever is first) and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has constructed a new north-south private street that connects Irving Street to Columbia Road, with a 22-foot travel lane, 16 on-street parking spaces in a seven-foot parking lane, canopy trees in a six-foot tree strip, and six-foot sidewalks, in accordance with Sheets G10-11, G17, G21, and L08 of the Plans.
15. **For the life of the Project**, the Applicant shall maintain the private street consistent with DDOT standards.
16. **Prior to the issuance of a Certificate of Occupancy for either the apartment house or senior building (whichever is first), and for the life of the Project**, Applicant shall demonstrate to the Zoning Administrator that it has:
 - (a) Installed pavement marking enhancements to a stop bar on Georgia Avenue at Hobart Place; and
 - (b) Installed pavement markings (i.e., “puppy tracks”) at the study area intersections along Georgia Avenue, subject to DDOT approval.

C. TDM MEASURES

1. The Applicant shall implement the TDM measures as follows:
 - (a) **For the first three years of operation of the apartment house**, the Applicant shall offer each apartment unit either one annual carsharing membership or one annual Capital Bikeshare membership;
 - (b) **For the first three years of operation of each townhome**, the Applicant shall offer to each townhome either one annual carsharing membership or one annual Capital Bikeshare membership;
 - (c) **Prior to the issuance of a Certificate of Occupancy for the apartment house**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased 189 bicycle helmets for use by apartment house occupants;
 - (d) **Prior to entering into a contract for lease or purchase of the first townhome completed as part of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased eight bicycle helmets for use by townhome occupants;

- (e) **Prior to the issuance of a Certificate of Occupancy for the apartment house**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased 189 pre-loaded SmarTrip cards to be offered at the initial sale or rental of each unit;
- (f) **Prior to the issuance of a Certificate of Occupancy for the senior building**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased 76 pre-loaded \$10.00 SmarTrip cards to be offered at the initial sale or rental of each unit;
- (g) **Prior to entering into a contract for lease or purchase of the first townhome completed as part of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased eight (8) pre-loaded \$10.00 SmarTrip cards to be offered at the initial sale or rental of each townhome;
- (h) **Prior to the issuance of a Certificate of Occupancy for the apartment house, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has included in the residential leases for the market-rate units a provision that the cost of residential parking is unbundled from the cost of lease or purchase of each market-rate residential unit;
- (i) **Prior to entering into a contract for lease or purchase of the first townhome completed as part of the Project**, and for the life of the Project, the Applicant shall demonstrate to the Zoning Administrator that it has included in the residential leases for the market-rate townhomes a provision that the cost of residential parking is unbundled from the cost of lease or purchase of each market-rate townhome;
- (j) **Prior to the issuance of a Certificate of Occupancy for either the apartment house or senior building (whichever is first)**, and for the life of the Project, the Applicant shall demonstrate to the Zoning Administrator that it has designated two-on street parking spaces along the new private street to a car-share company;
- (k) **Prior to the issuance of a Certificate of Occupancy for the apartment house, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a bicycle repair station within the apartment building;
- (l) **Prior to the issuance of a Certificate of Occupancy for the apartment house and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a transit screen in the lobby of the apartment house;
- (m) **Prior to the issuance of a Certificate of Occupancy for the senior building and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a transit screen in the lobby of the senior building;
- (n) **Prior to the issuance of a Certificate of Occupancy for either the apartment house or senior building (whichever is first)**, and for the life of the Project, the Applicant shall demonstrate to the Zoning Administrator that it has: (i) posted all of the Project's TDM commitments online, and (ii) designated a TDM leader for the Project;

- (o) **Prior to issuance of a Certificate of Occupancy for either the apartment house or senior building (whichever is first)**, the Applicant shall demonstrate to the Zoning Administrator that it has: (i) installed 90 long-term and 16 short-term bicycle parking spaces on the PUD Site, and (ii) purchased six total shopping carts for residents of the apartment house and senior building; and
- (p) **Prior to the issuance of a Certificate of Occupancy for the apartment house, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has established a Georgia Avenue address for the apartment house.

D. MISCELLANEOUS

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The PUD shall be valid for a period of six years from the effective date of Z.C. Order No. 16-11. Within such time, an application must be filed for a building permit, with construction to commence within seven years of the effective date of this Order.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.


VOTE FINAL ACTION: 4-0-1

(Chairman Anthony J. Hood, Vice Chairman Robert E. Miller, Peter G. May, and Peter A. Shapiro, to **APPROVE**, Joseph Imamura not voting having not participated).

In accordance with the provisions of 11-Z DCMR § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on May 6, 2022.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY HOOD
CHAIRMAN
ZONING COMMISSION



SARA B. Bardin
DIRECTOR
OFFICE OF ZONING