

July 31, 2017

VIA ELECTRONIC FILING

Mr. Anthony J. Hood, Chairperson
District of Columbia Zoning Commission
441 4th Street, NW, Suite 200-S
Washington, DC 20001

Re: Zoning Commission Case No. 16-20 – Application of 3443 Benning LLC (the “**Applicant**”) to the District of Columbia Zoning Commission for a Consolidated PUD and Zoning Map Amendment for 3540 Eads Street, NE (Square 5017, Lots 839, 840, 841, and 842, and a portion of the public alley abutting Lots 839 and 840) (the “**Property**”) – Final Proffer and Conditions

Dear Chairperson Hood and Members of the Commission:

Following the July 10, 2017, proposed action on the above-referenced Application and pursuant to the requirements of Section 308.8 of Subtitle X of Title 11 of the District Code of Municipal Regulations, the Applicant hereby submits its list of proffers and corresponding conditions of approval. Set forth below is a chart outlining the proffers for the above-referenced project and the corresponding draft condition that is both specific and enforceable. Capitalized terms not otherwise defined herein shall have the meaning first set forth in the Applicant’s draft Findings of Fact and Conclusions of Law at Exhibit 83A of the record in this Application.

<u>Benefits and Amenities</u>	<u>Proposed Condition</u>
<p><u>Site Planning.</u> The Project’s site plan is superior benefit of the Project. <i>See</i> X § 305.5(c). The benefits of the Project’s site plan and efficient land utilization are captured in the Project’s balance of density and respect for the surrounding single-family residential context. The following items indicative of superior site planning:</p>	<p>A.1. The Project shall be developed in accordance with plans and drawings filed in the record in this case as Exh. 80G (“Final Plans”), as modified by the guidelines, conditions, and standards herein.</p> <p>A.2. The Project shall consist of approximately 70 residential units, approximately 17 vehicular parking spaces in an enclosed garage, the Community Room, and the provision of exterior and streetscape improvements, all as</p>

<p>The proposed density of the Project is appropriate for the Property. The Project’s overall FAR (3.81) is within the density standards allowed in the MU-5-A zone.</p> <p>The Project makes efficient use of the Property, which is currently used for surface parking. The Project is laid out in the tradition of the surrounding neighborhoods, with a strong street front presence and a modest setback in keeping with the building restriction line applicable to the other structures on the block.</p> <p>The Project’s site plan improves adjacent sidewalks, adds street trees, and removes an existing curb cut.</p> <p>For these reasons, the Project’s site plan is commendable: it achieves a laudable balance of new housing and contextually appropriate design and massing.</p> <p><u>Streetscape Improvements.</u> Provision of streetscape improvements is a public benefit. <i>Id.</i> § 305.5(1). The Project includes new sidewalks and tree planting zones within the Eads Street, NE right-of-way and also a planting area and amenity zone located in the front setback area that enhances the residential character of the streetscape. The Project’s setback area is not required by the Zoning Regulations, a building restriction line, or any other regulations; it is provided solely as a benefit of the Project.</p>	<p>shown on the Final Plans and as further described herein. The Project shall comply with the height, yard, setback, and other dimensional requirements set forth in the Final Plans. The Project shall include an overall FAR of approximately 3.81 and a maximum lot occupancy of 80 percent.</p> <p>A.3. The Project shall have flexibility from the rear yard, side yard, penthouse, parking access, <u>and</u> loading, and IZ requirements of the Zoning Regulations all as set forth in the Final Plans.</p> <p>A.4. The Property shall be rezoned to the MU-5-A zone.</p> <p>A.5. The Applicant shall have flexibility in the following areas:</p> <ul style="list-style-type: none"> a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure; b. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Final Plans; c. To vary the final streetscape design and materials and the placement of any items in the public right-of-way, as required by District public space permitting authorities; d. To vary the final landscaping components of the Project in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, the Department of Consumer and Regulatory
---	---

	<p>Affairs (“DCRA”) or other applicable regulatory bodies; and</p> <p>e. To make minor refinements to exterior details and dimensions, including without limitation to belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems.</p>
<p><u>Housing and Affordable Housing.</u> Production of senior and affordable housing are public benefits that the PUD process is designed to encourage. For the following reasons, the Project’s housing and affordable housing benefits are commendable.</p> <p>Given the rapid appreciation in value of existing homes in the District, affordable housing is one of the most challenging issues today. Such housing is particularly valued when it is produced at a level above what would be required in a matter-of-right development or when it provides age-restricted senior housing. The Project is an all-affordable senior housing redevelopment of an existing vacant site that creates 70 new affordable housing units for seniors without any displacement of existing residents or businesses.</p> <p>The overall amount of housing exceeds what could be provided as a matter of right on the Property.</p> <p>The amount of affordable housing significantly exceeds the minimum inclusionary zoning requirements, both in terms of GFA devoted to affordable</p>	<p>B.1. <u>Housing and Affordable Housing.</u></p> <p>a. <u>For so long as the Project is subject to public financing-related affordability restrictions (“Initial Affordability Period”):</u></p> <p>i. No fewer than twenty percent (20%) of the Project’s residential units shall be reserved for residents earning no more than 30 percent AMI;</p> <p>ii. Up to eighty percent (80%) of the Project’s residential units shall be reserved for residents earning no more than 50 percent AMI;</p> <p>iii. One hundred percent (100%) of the Project’s residential units shall be reserved for residents aged 55 and over.</p> <p>Provided that the requirements of Subtitle C, Section 1001.7 of the Zoning Regulations are met, the Project shall be eligible for an exemption from the requirements of Subtitle C, Chapter 10 pursuant to Subtitle C, Section 1001.6(a).</p> <p><u>b. Following conclusion of the Initial Affordability Period and for so long thereafter as the Project exists, the Project shall reserve</u></p>

<p>housing uses and in terms of the levels of affordability. That is, the Project's affordability level is below that required pursuant to the IZ regulations.</p> <p>Twenty percent of the Project's units are set aside for households earning up to 30 percent of AMI.</p> <p>The remaining 80 percent of the Project's units are set aside for households earning up to 50 percent of AMI.</p> <p>All of the Project's units are reserved for seniors. Provision of such age-restricted housing is a specific benefit enumerated in the Zoning Regulations.</p> <p>Finally, the Applicant has agreed to include residents of River Terrace and the ANC in the marketing plan for the affordable housing selection for the Project.</p>	<p>no less than eight percent (8%) of the Project's GFA at 60 percent AMI.</p> <p><u>b.c. Prior to the issuance of a certificate of occupancy for the Project,</u> the Applicant or its property manager shall provide information to the ANC about the lease application process for the Project.</p> <p>[See IZ chart attached hereto as Exhibit A.]</p>
<p><u>Employment and Training Opportunities.</u> The Applicant has proffered two separate employment and training benefits that are Public Benefits.</p> <p>The Applicant will participate in a First Source Employment Agreement as a part of the construction of the Project. Because such First Source Agreement related to the Applicant's pursuit of public financing for the Project, the Applicant will negotiate and execute such Agreement in conjunction with the Applicant's closing on such public financing.</p> <p>In addition, the Applicant will host a job fair in coordination and partnership with the ANC and the appropriate District</p>	<p>B.2. <u>Employment and Training Opportunities.</u> <u>Prior to the issuance of a building permit for the Project,</u> the Applicant shall deliver to the Zoning Administrator, with a copy to the Office of Zoning, evidence that it has:</p> <ol style="list-style-type: none"> a. Entered into a First Source Agreement with the District Department of Employment Services with respect to the Project; and b. Hosted a job fair in coordination and partnership with the ANC and the appropriate District agencies to identify qualified candidates for construction job openings, provided the evidence required in satisfaction of this Condition B.2.b may be given by, without limitation, a memorandum accompanied by sworn affidavit.

<p>agencies to identify qualified candidates for construction job openings</p>	
<p><u>Building Space for Special Uses.</u> The Project includes the 1,250-square foot Community Room which is to be available to the ANC, RTCO and other community organizations for meetings and events. The Community Room is designed to be accessed directly by authorized users (such as officers from RTCO) without the need to pass into residential portions of the Project.</p>	<p>B.3. <u>Building Space for Special Uses. For the life of the Project,</u> the Applicant shall make available to the ANC, RTCO and other community organizations the 1,250-square foot Community Room for meetings and events, subject to the Community Room Guidelines at Exh. 80D, provided the Applicant shall have the right, from time to time, to amend such Guidelines in accordance with the reasonable needs of the community organizations that use the Community Room.</p>
<p><u>Transportation Infrastructure.</u> The Project provides transportation improvements to the immediately surrounding area, and those improvements are additional superior aspects of the Project: The Applicant agreed to restrict its residents from participating in the District’s RPP program through a lease provision or similar mechanism. The Applicant committed provide shuttle service for Project residents to and from typical convenience destinations. The shuttle will operate at least twice a week and carry a minimum of ten passengers.</p>	<p>B.4. <u>Transportation Infrastructure. For the life of the Project:</u></p> <ul style="list-style-type: none"> a. Residents of the Project shall be ineligible to participate in the District’s RPP program by notice given and enforced through a lease provision or similar mechanism;¹ and b. The Applicant shall provide <u>round-trip</u> shuttle service for Project residents to and from typical convenience destinations, provided such shuttle shall operate at least <u>two weekdays</u>ie a <u>per</u> week, <u>during daytime hours, for a minimum period of two hours</u> and carry a minimum of ten passengers.

¹ OAG suggested that this benefit be moved to the transportation mitigation items in Section C of the Conditions. The Applicant offered this item voluntarily and it was not a transportation mitigation item requested by DDOT. Accordingly, it is being proffered as a public benefit pursuant to Subtitle X, Section 305.

<p><u>Uses of Special Value and Other Public Benefits.</u> The Applicant has committed to provide RTCO with a contribution of \$47,000 to support ongoing community beautification and community gathering activities. This Public Benefit accrues primarily to River Terrace and therefore falls within the boundaries of the ANC.</p> <p>The Applicant has offered the two following additional benefits. These two security-related benefits substantially advance “safe streets” policy objectives of the Comprehensive Plan.</p> <p>The Project includes security camera equipment intended to help monitor the surrounding neighborhood and provide MPD with access to data from the cameras to assist in improving neighborhood safety.</p> <p>The Project also includes exterior lighting to support the effectiveness of the cameras and act as a general deterrent.</p>	<p>B.5. <u>Uses of Special Value to the Neighborhood. Prior to the issuance of a certificate of occupancy for the Project,</u> the Applicant shall:</p> <ol style="list-style-type: none"> a. Deliver to the RTCO a contribution of \$47,000 to support ongoing community beautification and community gathering activities;² b. Install security camera equipment to monitor the surrounding neighborhood, the recordings of which camera shall be capable of being delivered to MPD; and c. Install exterior lighting to support the effectiveness of the cameras and act as a general deterrent.
<p><u>Other Conditions</u></p>	<p><u>Transportation and Construction Mitigation</u></p> <p>C.1. <u>Transportation Demand Management. For the life of the Project (except as expressly set forth below),</u> the Applicant shall:</p> <ol style="list-style-type: none"> a. Unbundle the cost of residential parking from the cost of lease or purchase of the units; b. Install a transportation information center display (electronic screen) within the lobby of the Project, which screen must contain real-time information related to local transportation alternatives;

² [OAG raised a concern that this benefit does not satisfy the requirements of Subtitle X, Section 305.3 because it is not tangible. The Applicant has raised OAG’s concern about this item with the community and will revise as necessary prior to final action.](#)

	<ul style="list-style-type: none">c. Offer the initial occupant of each residential unit a one-time annual car sharing membership, a one-time annual Capital Bikeshare membership, or credits for use on private commuter shuttles to help alleviate the reliance on personal vehicles;d. Offer a one-time \$50 SmarTrip card to each initial residential tenant and employee in the Project to encourage non-auto mode usage;e. Identify a TDM coordinator to work with the Project's residents and employees to distribute and market transportation alternatives and provide TDM materials to new residents in the residential welcome package;f. Provide a bicycle repair station within the Project;g. <u>For the first three years after the Project's opening</u>, provide the equivalent value of an annual Capital Bikeshare membership (currently \$85) or credit for a shuttle service equal to the value of an annual bikeshare membership to all new residents; andh. Provide updated contact information for the TDM coordinator and report TDM efforts and amenities to goDCgo staff once per year. <p>C.2. <u>Construction Management Plan</u>. Throughout construction of the Project, the Applicant shall comply with the terms of the CMP as set forth in Exh. 80B, and prior to the issuance of certificate of occupancy for the Project, the Applicant shall deliver to the Zoning Administrator, with a copy to the Office of Zoning, evidence that it has complied with such CMP, provided such evidence may be given by, without limitation, a memorandum accompanied by sworn affidavit.</p>
--	---

The Applicant will continue to work with the Office of the Attorney General in finalizing the language of the proposed benefit and amenity conditions. Please feel free to contact the undersigned with any questions.

Respectfully submitted,



David M. Avitabile



David A. Lewis

Enclosures

cc: Michael Giuliani

CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of the foregoing document to the following addresses on or before July 31, 2017, by first class mail or e-mail:

Joel Lawson and Karen Thomas (2 copies)
District of Columbia Office of Planning
1100 4th Street, SW, Suite 650E
Washington, DC 20024

Evelyn Israel (2 copies)
Policy and Planning
District Department of Transportation
55 M Street SE, 5th Floor
Washington, DC 20009

Alan Bergstein (2 copies)
Land Use and Public Works
Office of the Attorney General for the District of Columbia
441 4th Street, NW, Suite 1010 South
Washington, DC 20001

Advisory Neighborhood Commission 7D (2 copies)
4058 Minnesota Avenue, NE
Suite 1400 (DOES Building)
Washington, DC 20019

Jo-Anne Prue, ANC 7D04 (1 copy)
313 34th Place, NE
Washington, DC 20019



Dave Lewis

Exhibit A

IZ Chart

<u>Residential Unit Type</u>	<u>GFA / Percentage of Total</u>	<u>Units</u>	<u>Income Type</u>	<u>Affordable control period</u>	<u>Affordable unit type</u>	<u>Notes</u>
<u>Total</u>	<u>67,477 sf (100%)</u>	<u>70</u>				
<u>Market Rate</u>	<u>0 (0%)</u>	<u>0</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	
<u>IZ</u>	<u>0 (0%)</u>	<u>0</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>IZ</u>
<u>Affordable/Non-IZ (30% AMI)</u>	<u>20% of units*</u>	<u>14</u>	<u>30% AMI</u>	<u>Initial Affordability Period**</u>	<u>Senior Housing</u>	<u>IZ Exemption for District-financing</u>
<u>Affordable/Non-IZ (50% AMI)</u>	<u>80% of units*</u>	<u>56</u>	<u>50% AMI</u>	<u>Initial Affordability Period</u>	<u>Senior Housing</u>	

* The location and GFA of the 30% AMI and 50% AMI units will be determined in accordance with the Project's financing.

** As such term is defined above.