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February 21, 2019

VIA IZIS

Zoning Commission of the District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

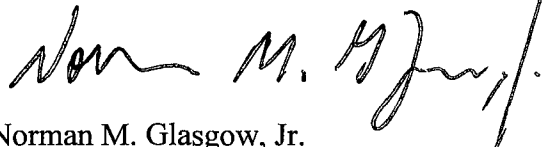
Re: Z.C. Case No. 16-23
Valor Development, LLC – Voluntary Design Review
Applicant's Revised Draft Findings of Fact and Conclusions of Law

Dear Members of the Zoning Commission:

On behalf of Valor Development, LLC (the "Applicant"), we hereby submit the attached revised draft finding of fact and conclusions of law.

Respectfully Submitted,

HOLLAND & KNIGHT LLP



Norman M. Glasgow, Jr.

Enclosures

cc: Jennifer Steingasser, Office of Planning (via email)
Joel Lawson, Office of Planning (via email)
Elisa Vitale, Office of Planning (via email)
Anna Chamberlin, District Department of Transportation (via email)
Aaron Zimmerman, District Department of Transportation (via email)
Advisory Neighborhood Commission 3E (via USPS Priority Mail and email)
Advisory Neighborhood Commission 3D (via USPS Priority Mail and email)
Edward L. Donohue, Donohue & Stearns, PLC, representing Citizens for
Responsible Development (via email)
Barbara & Sheldon Repp, Citizens for Responsible Development
(via USPS Priority Mail and email)
Jeff Kraskin, Spring Valley Opponents (via USPS Priority Mail and email)
William Clarkson, Spring Valley Neighborhood Association
(via USPS Priority Mail and email)
John H. Wheeler, Ward 3 Vision (via USPS Priority Mail and email)

CERTIFICATE OF SERVICE
Z.C. Case No. 16-23

I HEREBY CERTIFY that on February 21, 2019, a copy of the Applicant's revised draft findings of fact and conclusions of law was served by email on the following:

Advisory Neighborhood Commission 3E

Advisory Neighborhood Commission 3D

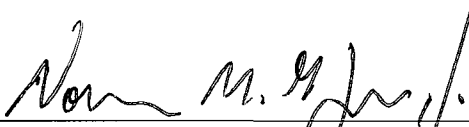
Edward L. Donohue, Donohue & Stearns, PLC,
representative for Citizens for Responsible Development

Barbara & Sheldon Repp, Citizens for Responsible Development

Jeff Kraskin, Spring Valley Opponents

William Clarkson, Spring Valley Neighborhood Association

John H. Wheeler, Ward 3 Vision


Norman M. Glasgow, Jr.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-23
Z.C. Case No. 16-23
Valor Development, LLC
(Voluntary Design Review @ Square 1499, Lots 802, 803, 806, and 807)¹
[DATE]

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held public hearings on January 11 and 25, 2018, January 7 and 24, 2019, and February 6, 2019, to consider an application for voluntary design review of a proposed mixed-use development project in the MU-4 zone district filed by Valor Development, LLC ("Applicant"), on behalf of FW DC-Spring Valley Shopping Center LLC, Apex Real Estate Company, and American University. The Commission considered the application pursuant to Subtitle X § 601.2 of the 2016 Zoning Regulations of the District of Columbia ("ZR16"), Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11-Z DCMR, Chapter 4. For the reasons stated below, the Commission hereby **APPROVES** the application.

FINDINGS OF FACT

The Application, Parties, Motions, and Hearings

1. On October 26, 2016, the Applicant, on behalf of FW DC-Spring Valley Shopping Center LLC, owner of Lots 802 and 803 in Square 1499, and Apex Real Estate Company, owner of Lot 807 in Square 1499, filed an application for voluntary design review pursuant to Subtitle X, Chapter 6 of ZR16 (11-X DCMR Chapter 6,) and specifically pursuant to 11-X DCMR § 601.2, which permits property owners to voluntarily apply for design review of a proposed development (Exhibit [Ex.] 1 – 3) ("Application"). On September 8, 2017, the Applicant revised the Application to include Lot 806 in Square 1499 in the project boundary, which is owned by American University (Ex. 67). The Applicant was duly authorized in writing by the respective owners of Lots 802, 803, 806, and 807, to submit the Application on their behalf (Ex. 3J and 67D). As such, the project boundary for the Application encompasses Lots 802, 803, 806, and 807 in Square 1499 ("Project Site").
2. The Application included a request for flexibility from the rear yard requirement of 11-G DCMR § 405.2, which can be requested as part of a [voluntary] design review application pursuant to 11-X DCMR § 603.1, which allows the Commission to grant relief from development standards for height, setbacks, lot occupancy, courts, and building transitions;

¹ The initial application filed by the Applicant in this case only included Lots 802, 803, and 807 in the project boundary. The Applicant, Valor Development, LLC, is the contract purchaser of Lot 807, which is currently owned by Apex Real Estate Company. Lots 802 and 803 are owned by FW DC-Spring Valley Shopping Center LLC. The Applicant was duly authorized in writing by both Apex Real Estate Company and FW DC-Spring Valley Shopping Center LLC to submit the application on their behalf. Subsequent to the initial filing, the Applicant modified the application to include Lot 806 in the project boundary, which is owned by American University. As part of its request to modify the project boundary the Applicant submitted a letter from American University duly authorizing the Applicant to act on its behalf with respect to the application.

as well as any specific design standards of a specific zone.² Except for height, the amount of relief is at the discretion of the Commission, provided the relief is required to enable the applicant to meet all of the standards of 11-X DCMR § 604. *See* 11-X DCMR 603.1 and 603.2.³

3. The notice of public hearing for the Application, as initially filed, was published in the *D.C. Register* on December 16, 2016 (Ex. 7). On December 2, 2016, the notice of public hearing was mailed to all owners of property located within 200 feet of the initial project boundary (Lots 802, 803, and 807), and to Advisory Neighborhood Commission (“ANC”) 3E and 3D, collectively the Affected ANC (Ex. 14)
4. On December 14, 2016, at the request of ANC 3E, the Applicant submitted a request to postpone the public hearing (Ex. 11). The Commission granted the request for postponement. On December 30, 2016, the notice of rescheduled public hearing was published in the *D.C. Register* (Ex. 12). On December 21, 2016, the notice of rescheduled public hearing was mailed to all owners of property located within 200 feet of the initial project boundary (Lots 802, 803, and 807) and to the Affected ANC (Ex. 15).
5. On February 16, 2017, the Applicant submitted a second request to postpone the public hearing (Ex. 22). The Commission granted the second request for postponement. On March 10, 2017, the notice of rescheduled public hearing was published in the *D.C. Register* (Ex. 23). On March 1, 2017, the notice of rescheduled public hearing was mailed to all owners of property located within 200 feet of the initial project boundary (Lots 802, 803, and 807) and to the Affected ANC (Ex. 26).
6. On August 17, 2017, the Applicant submitted a third request to postpone the public hearing (Ex. 65). The Commission granted the third request for postponement. On September 29, 2017, the notice of rescheduled public hearing was published in the *D.C. Register* (Ex. 71).
7. On September 8, 2017, the Applicant filed a request to revise the Application boundary to include Lot 807 in Square 1499 (Ex. 67).
8. On November 24, 2017, a notice of corrected public hearing was published in the *D.C.*

² When the current versions of Subtitles G and X were first proposed, the applicable minimum rear yard requirement was referred to as a “rear setback.” This terminology was later replaced with the traditional reference to a “minimum rear yard” in current Subtitle G, but the reference to “setbacks” in 11-X DCMR § 603.1 was not similarly revised.

³ While 11-X DCMR §§ 603.1 and 603.2 contain the term “relief” in describing the Commission’s authority to grant “flexibility” under Subtitle X, Section 603 (Design Review Flexibility), the Commission is not required to apply any special exception and/or variance criteria that would otherwise be applicable in order to grant flexibility for those development standards specifically enumerated in 11-X DCMR §§ 603.1 and 603.2. However, pursuant to 11-X DCMR § 603.3, the Commission can hear requests for relief from other development standards not listed under 11-X DCMR § 603.1, and that would otherwise require approval from the Board of Zoning Adjustment (“BZA”), simultaneously with a design review application. Such requests are subject to all applicable special exception criteria and variance standards.

Register to accurately reflect the properties within the Project Site (Ex. 84). On November 13, 2017, the notice of corrected public hearing was mailed to all owners of property located within 200 feet of the Project Site (Lots 802, 803, 806 and 807) and to the Affected ANC (Ex. 86).

9. On December 5, 2016, Revive 3E submitted a request for party status in support of the Application (Ex. 8). On January 7, 2017, Revive 3E withdrew its request for party status and instead submitted comments in support of the Application (Exs. 141 and 142).
10. On September 7, 2017, Citizens for Responsible Development (“CRD”) submitted a request for advanced party status in opposition to the Application (Exs. 66, 66A, and 79). The Applicant did not object to CRD’s party status request in advance of the public hearing pursuant to 11-Z DCMR § 404.9. The Commission considered and granted CRD’s party status request at its public meeting on November 13, 2017. During its consideration of CRD’s party status request, the Commission requested CRD to submit a list of its members to the record, which CRD submitted as part of its January 9, 2018, supplemental submission (Ex. 149)
11. On December 22, 2017, Spring Valley-Wesley Heights Citizens Association, Neighbors for a Livable Community, and Spring Valley West Homes Corporation submitted a joint request for party status in opposition (Ex. 115).
12. On December 24, 2017, Ward 3 Vision (“W3V”) submitted a request for party status in support (Ex. 118).
13. On December 26, 2017, Milton Buchler II, owner of the property at 4713 Windom Place, NW, submitted a request for party status in opposition (Ex. 119).
14. On December 28, 2017, Spring Valley Neighborhood Association (“SVNA”) submitted a request for party status in support (Ex. 125).
15. On January 2, 2018, the Applicant submitted its opposition to the joint party status request submitted by Spring Valley-Wesley Heights Citizens Association, Neighbors for a Livable Community, and Spring Valley West Homes Corporation, and to the party status request submitted by Milton Buchler II (Exs. 131 and 132).
16. On December 11, 2017, the Applicant submitted its Comprehensive Transportation Review (“CTR”). The CTR includes an evaluation of the project’s potential transportation impacts, as well as a proposed Loading Management Plan (“LMP”) and Transportation Demand Management (“TDM”) Plan containing measures to mitigate potential transportation impacts (Ex. 107).
17. On December 21, 2017, the Applicant submitted its prehearing submission, which included a revised set of architectural plans and drawings (the “Plans and Drawings”), a revised

Comprehensive Plan analysis, and a list of agency and community meetings participated in by the Applicant dating back to September 2015 (Ex. 114).

18. On January 2, 2018, the Office of Planning (“OP”) submitted a report to the Commission recommending approval of the Application, subject to the Applicant providing additional information (“OP Report”) (Ex. 130). The Applicant submitted the additional information on January 10, 2018 (Ex. 152). *See* OP Report section beginning at Finding of Fact ###.
19. On January 2, 2018, the District Department of Transportation (“DDOT”) submitted a report expressing no objection to the Application subject to certain conditions, and provided certain revisions are made to the Applicant’s LMP and TDM Plan (“DDOT Report”) (Ex. 133). *See* DDOT Report section beginning at Finding of Fact ###.
20. At a meeting held on January 3, 2018, which was duly noticed and at which a quorum was present, ANC 3E voted 4-1-0 to support the Application. *See* ANC 3E Report section beginning at Finding of Fact ###.
21. At its December 7, 2016, regularly scheduled meeting, which was duly noticed and at which a quorum was present, ANC 3D voted 6-1 to oppose the Application for a variety of reasons, which are set forth in its report dated December 12, 2016 (Ex. 9). At its December 6, 2017, regularly scheduled meeting, which was duly noticed and at which a quorum was present, ANC 3D voted 5-4-0 to rescind its previous report in opposition to the Application (Ex. 108). At the same public meeting on December 6, 2017, ANC 3D voted 8-1-0 in support of the Application (Ex. 109). *See* ANC 3D Report section beginning at Finding of Fact ###.
22. At the January 11, 2018, public hearing, the Commission considered the joint party status request submitted by Spring Valley-Wesley Heights Citizens Association, Neighbors for a Livable Community, and Spring Valley West Homes Corporation, as well as the party status requests submitted by SVNA, W3V, and Milton Buchler II. The Commission granted party status to Spring Valley-Wesley Heights Citizens Association, Neighbors for a Livable Community, and Spring Valley West Homes Corporation (“Spring Valley Opponents”); SVNA; and W3V. The Commission denied party status to Milton Buchler II.
23. The Commission held public hearings on the Application on January 11 and 25, 2018. The focus of those hearings were the Plans and Drawings submitted by the Applicant on December 21, 2017. The parties in support of the Application were the Applicant, ANC 3E, ANC 3D, SVNA, and W3V. The parties in opposition to the Application were CRD and Spring Valley Opponents.

24. At the public hearing on January 11, 2018, the Applicant presented four witnesses in support of the Application as part of its direct presentation: Will Lansing, on behalf of Valor Development, LLC; Sarah Alexander, Torti Gallas Urban; Erwin Andres, Gorove/Slade Associates, Inc.; and Shane Dettman, Holland & Knight LLP. Based upon their professional experience and qualifications, the Commission recognized Ms. Alexander as an expert in architecture; Mr. Andres as an expert in transportation engineering and planning; and Mr. Dettman as an expert in land use planning and zoning.
25. At the public hearing on January 11, 2018, SVNA and Ward 3 Vision presented testimony in support of the Application.
26. At the January 11, 2018, public hearing, Elisa Vitale, Development Review Specialist at OP, and Aaron Zimmerman of DDOT testified in support of the Application.
27. At the public hearing on January 25, 2018, CRD presented 4 witnesses in opposition of the Application as part of its direct presentation: Sheldon Repp; Sandra Mills; Laura Ivers; and Michael Stover. In addition, in response to follow-up questions from the Commission, CRD presented 1 additional witness, Curt Westergard, Digital Design & Imaging Service. The testimony provided in opposition to the Application by CRD expressed concerns primarily relating to: (i) the accuracy of the Applicant's computer-generated renderings; (ii) the proposed height and density of the project; (iii) the proposed aggregation of density from Lots 802 and 803 to Lot 807 within the Project Site; (iv) consistency with the design review standards of Subtitle X § 604, including consistency with the Comprehensive Plan; (v) impacts on traffic congestion, street parking, and pedestrian safety; (vi) impacts on light and privacy; (vii) impacts on the historic Spring Valley Shopping Center (the "SVSC"); and (viii) compliance with the 1910 Height of Buildings Act and the Rules of Measurement for Building Height under Subtitle B § 307 of ZR16. *See* Contested Issues section beginning at Finding of Fact ###.
28. At the public hearing on January 25, 2018, Spring Valley Opponents, presented testimony in opposition to the Application. The testimony provided in opposition to the Application by SVO expressed concerns primarily relating to: (i) the size of the proposed grocery store and the specific grocer; (ii) impacts on traffic congestion, street parking, and pedestrian safety; (iii) the size and tenure type (rental / ownership) of the proposed residential units; (iv) adequacy of the Applicant's outreach and coordination with the community; (v) adequacy of the Applicant's CTR; and (vi) the Applicant's failure to provide the community with copies of its agreements with American University, owner of Lot 806, and FW DC-Spring Valley Shopping Center LLC, owner of Lots 802 and 803. *See* Contested Issues section beginning at Finding of Fact ###.
29. At the public hearings on January 11 and 25, 2018, several individuals provided testimony on the Application. Of the individuals testifying in opposition to the Application, the majority of the concerns expressed were similar to those expressed by CRD and SVO. The Commission notes the testimony of one individual in particular, Ms. Marilyn Simon, who

limited her testimony to the affordable housing component of the project (Ex. 166). According to Ms. Simon's testimony, the amount of affordable housing proposed by the Applicant did not meet the minimum amount required under the Inclusionary Zoning ("IZ") regulations of Subtitle C, Chapter 10 of ZR16. *See* Contested Issues section beginning at Finding of Fact #####.

30. At the public hearing on January 25, 2018, the Applicant presented its rebuttal testimony. For its rebuttal, the Applicant's witnesses included Mr. Lansing, Mrs. Alexander, Mr. Andres, and Mr. Dettman. In addition, Mrs. Emily Eig, EHT Traceries, provided testimony on matters relating to historic preservation, and Mr. Brad Glatfelter, Bowman Consulting, provided testimony on matters relating to the curb grade elevation of 48th Street, NW adjacent to the Project Site and the history of the location and channelization of Murdock Mill Creek. Based on their professional experience and qualifications, Mrs. Eig was recognized as an expert in historic preservation, and Mr. Glatfelter was recognized as an expert in civil engineering.
31. The record was closed at the conclusion of the January 25, 2018, public hearing, except to receive additional specified information from the Applicant and other parties, as requested by the Commission, and responses thereto. Among other things, the Commission requested the Applicant to submit a response to the IZ issue raised by Ms. Marilyn Simon. The Commission scheduled the Application for deliberation on February 26, 2018.
32. On February 22, 2018, the Applicant submitted a motion requesting the Commission to defer its deliberations on the Application until April 30, 2018 (Ex. 226). The basis of the Applicant's motion was to allow additional time for further discussion with OP regarding the IZ interpretation issue and to prepare and submit any information to the Commission that may result from the discussions with OP. In response to the Applicant's motion for deferral, CRD submitted a request for additional time to respond to any submissions made to the Commission by the Applicant (Ex. 228). At its public meeting on March 12, 2018, granted CRD's request for additional time and rescheduled its deliberation on the Application for May 14, 2018.
33. On April 16, 2018, the Applicant submitted a second motion requesting the Commission to defer its deliberation on the Application to allow time to submit additional information, including revised project plans (Ex. 234). As part of its motion, the Applicant stated that the need to submit additional information and revised plans was in order to address the outcome of its discussions with OP regarding the IZ interpretation issue that arose during the January 24, 2018, public hearing, and to better address the concerns expressed by the community regarding the overall height and density of the project. CRD did not object to the Applicant's request for deferral (Ex. 235). At its public meeting on April 30, 2018, the Commission granted the Applicant's second motion for deferral and, in accordance with CRD's request for additional time, rescheduled its deliberation and decision on the Application for July 20, 2018.

34. On June 15, 2018, the Applicant submitted a third motion requesting the Commission to defer its deliberation on the Application to allow time to resolve outstanding questions raised by the current owner of Lot 807, and to submit a revised set of plans (Ex. 236). The Applicant requested until October 16, 2018, to submit the revised set of plans. The Applicant also requested the Commission to schedule another public hearing rather than simply schedule a deliberation on the revised plans. CRD did not object to the Applicant's request for deferral, but did request at least eight weeks to complete its review and submit its response to the Applicant's revised plans (Ex. 237). ANC 3D also did not object to the Applicant's request for deferral (Ex. 238). At its public meeting on June 25, 2018, the Commission granted the Applicant's third motion for deferral, as well as CRD's request for at least eight weeks to complete its review and submit its response to the Applicant's revised plans. The Commission set a deadline of October 16, 2018, for the applicant to submit its revised set of plans, and a deadline of December 11, 2018, for parties to submit responses to the Applicant's revised plans. The Commission scheduled a public hearing on the Applicant's revised plans for January 7, 2019.
35. On October 16, 2018, the Applicant submitted a revised set of plans for the project (Exs. 240A1 – 240A12)(the "Revised Plans and Drawings"). The Applicant also submitted revised Comprehensive Plan analysis, a revised Design Review Standard analysis, and an updated allocation of density summary that are based upon the Revised Plans and Drawings (Exs. 240B – 240D). As part of its submission of the Revised Plans and Drawings, the Applicant included a request for special exception relief to allow a penthouse on four of five townhomes included in the Revised Plan and Drawings.
36. On November 29, 2018, as a supplement to the CTR, the Applicant submitted a transportation memorandum and supporting documentation that included an evaluation of the transportation aspects of the Revised Plans and Drawings, including trip generation, circulation, parking, loading, and Transportation Demand Management (Ex. 244).
37. On November 30, 2018, the notice of further public hearing was published in the *D.C. Register* (Ex. 241).
38. At a meeting held on December 5, 2018, which was duly noticed and at which a quorum was present, ANC 3D voted 6-2-0 to support the Application, as proposed in the Revised Plans and Drawings (Ex. 245 and 245A). *See* ANC 3D Report section beginning at Finding of Fact ###.
39. On December 11, 2018, CRD submitted its response to the Revised Plans and Drawings (Ex. 247). CRD also submitted a request for the Commission to recognize Mr. Stephen Hansen of Preservation Matters, LLC, to be recognized as an expert in historic preservation, and Messrs. Curt Westergard and Mr. Ryan Shuler of Digital Design and Imaging Services Inc., to be recognized as experts in visual impact analysis. At the public hearing held on January 24, 2019, the Commission recognized Mr. Hansen as an expert in

historic preservation. The Commission denied CRD's request for Mr. Westergard and Mr. Shuler to be recognized as experts in visual impact analysis.

40. On December 18, 2018, the Applicant submitted its response to CRD's response to the Revised Plans and Drawings (Ex. 252).
41. At a meeting held on December 13, 2018, which was duly noticed and at which a quorum was present, ANC 3E voted 4-1-0 to support the Application, as proposed in the Revised Plans and Drawings (Ex. 270). *See* ANC 3E Report section beginning at Finding of Fact ###.
42. On December 20, 2018, SVO submitted its response to the Revised Plans and Drawings (Ex. 247). On December 31, 2018, the Applicant submitted a motion to strike SVO's response to the Revised Plans and Drawings as it was untimely submitted nine days after the deadline established by the Commission for parties to submit responses to the Applicant's Revised Plans and Drawings. At the public hearing on January 7, 2019, the Commission granted the Applicant's motion to strike SVO's response to the Revised Plans and Drawings on the basis that the response was untimely filed.
43. On January 4, 2019, CRD submitted its response to the supplemental transportation memorandum submitted by the Applicant on November 29, 2018.
44. At the public hearing on January 7, 2019, the Applicant presented the following four witnesses in support of the Application, as proposed in the Revised Plans and Drawings: Will Lansing, on behalf of Valor Development, LLC; Sarah Alexander, Torti Gallas Urban; Erwin Andres, Gorove/Slade Associates, Inc.; and Shane Dettman, Holland & Knight LLP.
45. At the public hearing on January 24, 2019, ANC 3E, ANC 3D, SNVA, and W3V testified in support of the Application, as proposed in the Revised Plans and Drawings.
46. At the public hearing on January 24, 2019, CRD presented 4 witnesses in opposition to the Application as part of its direct presentation: Sheldon Repp; Ryan Shuler, Digital Design and Imaging Services; Barbara Repp; and Michael Stover. The testimony provided by CRD expressed concerns primarily relating to: (i) the accuracy of the Applicant's computer-generated renderings; (ii) impacts of the Revised Plans and Drawings on views and light; (iii) the Applicant's compliance with IZ; (iv) the project's consistency with the Comprehensive Plan; (v) the project consistency with the design review standards of Subtitle X, § 604; (vi) the Applicant's use of unused density from the SVSC on Lot 807; (vii) the potential impacts of the project on traffic and parking; (viii) the potential impacts of the project on pedestrian safety in the alley system that services the Project Site; and (ix) the Applicant's ability to measure the height of Building 1 from 48th Street, NW, under Subtitle B § 307.7 of the Rules of Measurement for Building Height: Non-Residential Zones.

47. At the public hearing on January 24, 2019, CRD presented testimony in opposition to the Application as part of its direct presentation. The testimony provided in opposition to the Application by SVO expressed concerns primarily relating to: (i) the proposed scale and density of the project; (ii) the potential impacts of the project on traffic, parking, and pedestrian safety; (iii) the adequacy of the project's loading facilities; (iv) and traffic circulation in the alley system that services the Project Site.
48. At the public hearing on January 24, 2019, several individuals provided testimony on the Application. Similar to the individual testimony provided at previous hearings, the majority of the concerns expressed were similar to those expressed by CRD and SVO. The Commission again notes the testimony of Ms. Marilyn Simon, who continued to limit her testimony to the affordable housing component of the project (Exs. 374 and 403). According to Ms. Simon's testimony, the amount of affordable housing proposed by the Applicant in the Revised Plans and Drawings still did not meet the minimum amount required under the Inclusionary Zoning ("IZ") regulations of Subtitle C, Chapter 10 of ZR16. *See* Contested Issues section beginning at Finding of Fact #####.
49. At the public hearing on February 6, 2019, the Applicant presented its rebuttal to the testimony provided by CRD, SVO, and individuals in opposition to the Revised Plans and Drawings. For its rebuttal, the Applicant's witnesses included Mr. Lansing, Mrs. Alexander, Mr. Andres, Mr. Dettman, Mrs. Eig, and Mr. Glatfelter.
50. The record was closed at the conclusion of the February 6, 2019, public hearing, except to receive additional specified information from the Applicant, as requested by the Commission, and responses thereto. The Commission scheduled the Application, as proposed in the Revised Plans and Drawings, for deliberation on March 11, 2019.
51. Throughout the course of proceedings in this case, approximately ### letters were submitted to the record for the Application, of which approximately ### were in support and ### were in opposition. The Commission has taken the comments provided in these letters into consideration as part of its review of the Application.

Post-hearing Submissions and Actions

52. On January 31 and February 12, 2018, CRD submitted its post-hearing submissions which included a transfer of density summary and updated visual impact study (Exs. 208 and 213).
53. On February 12, 2018, Spring Valley Opponents submitted information regarding membership within their respective organizations that was requested by the Commission at the January 25, 2018, public hearing (Ex. 210).
54. On February 12, 2018, the Applicant submitted its post-hearing submission which included: a transfer of density summary; an evaluation of adding solar panels; additional

renderings; and information related to the project's LEED rating, Inclusionary Zoning ("IZ"), and retail signage (Ex. 211).

55. On February 12, 2018, CRD submitted its post-hearing submission (Ex. 213).
56. On February 20, 2018, SVO submitted its response to the Applicant's post-hearing submission (Ex. 217)
57. On February 13, 2019, the Applicant submitted its post-hearing submission which included visual simulations of the proposed project inserted into existing conditions photographs from four different vantage point around the Project Site.
58. On February 21, 2019, CRD submitted its response to the Applicant's post-hearing submission.
59. At its public meeting on March 11, 2019, the Commission deliberated on the Application.

Description of the Project Site and Surrounding Area

60. The Project Site is located in the AU Park/Spring Valley neighborhood of Upper Northwest, Washington, DC, and consists of Assessment and Taxation ("A&T") Lots 802, 803, 806, and 807 in Square 1499. Collectively, the Project Site consists of approximately 160,788 square feet of land area, and is generally bounded by Yuma Street on the north; Massachusetts Avenue on the south; 48th Street on the east; and the Spring Valley Exxon station on the west.
61. The Project Site is a transitional site that is bordered by two-story single-family residential dwellings to the north and east, and 1 to 5 story institutional and retail buildings located to the south and west along Massachusetts Avenue, including the AU Building and SVSC, which form a neighborhood-serving commercial center. The surrounding context, with the exception of the AU Building, is generally characterized by Colonial Revival style architecture.
62. The Project Site is currently improved with the historic Spring Valley Shopping Center (Lots 802 and 803) ("SVSC"), which consists of approximately 16,922 square feet of gross floor area ("GFA") of retail and service uses; the former American University Law School building (Lot 806) ("AU Building"), which has a height of approximately 60 feet, not including the penthouse, and contains approximately 179,302 GFA of commercial uses; and a vacant grocery store building, retail uses (restaurant and salon), and surface and below-grade parking (Lot 807) ("Valor Lot").⁴ Lot 807 has a substantial grade change that

⁴ The formal historic name of the Spring Valley Shopping Center is actually the Massachusetts Avenue Parking Shops. The historic name of the shopping center located on the opposite side of Massachusetts Avenue is actually

slopes down from east to west approximately 26 feet. Collectively, Lots 806 and 807 make up Record Lot 9.

63. The SVSC (Lots 802 and 803) is separated from Record Lot 9 (Valor Lot and AU Building) by a 20-foot public alley that runs north-south through Square 1499 connecting Yuma Street to Massachusetts Avenue, NW. The existing condition of the alley is characterized by several scattered trash dumpsters and receptacles, most of which are located within the public alley right-of-way, unscreened HVAC equipment, and other utilities/equipment associated with the SVSC.

Background

64. The portion of the Project Site consisting of Lots 806 and 807 has a unique zoning history. Lots 806 and 807, which as stated above are located within Record Lot 9, were created in the 1970s for purposes of allocating the nonresidential density needed to construct the AU Building on Lot 806. The zoning in effect at the time allowed a maximum density of 2.0 FAR, all of which could be devoted to nonresidential use. Based upon the land area of Record Lot 9, this amounted to approximately 242,544 GFA that was available to allocate between Lots 806 and 807. Through a recorded Declaration of Easement and Agreement that remains in effect (the "Allocation Agreement"), 179,302 GFA was allocated to Lot 806 for purposes of constructing the AU Building, and 63,242 GFA was allocated to Lot 807. In addition, the Allocation Agreement grants an easement to the owner of Lot 806 (currently American University) non-exclusive access to not less than 236 parking spaces located on Lot 807.
65. Subsequent to the development of Lots 806 and 807, the zoning regulations were amended and the maximum permitted density on Record Lot 9 increased from 2.0 to 2.5 FAR; however, the maximum permitted nonresidential density decreased from 2.0 to 1.5 FAR. Consequently, as a result of the zoning amendment, while the overall amount of density permitted on Record Lot 9 increased from 242,544 to 303,180 GFA, the permitted amount of nonresidential density decreased from 242,544 to 181,908 GFA, or by 60,636 GFA. Thus, as a result of the zoning amendment and the prior allocation of GFA under the Allocation Agreement, the total matter-of-right density available to Lot 807 increased to 123,878 GFA, but due to the reduction in permitted nonresidential density only 2,606 GFA could be devoted to nonresidential uses.
66. Currently under ZR16, all of Square 1499, including all of the lots included in the Project Site, is zoned MU-4 (formerly C-2-A). As a matter-of-right, the maximum permitted density in the MU-4 zone continues to be 2.5 FAR overall, of which no more than 1.5 FAR can be devoted to nonresidential uses. However, pursuant to Subtitle C § 1002.3 of the IZ

the Spring Valley Shopping Center. However, over time it appears both of these shopping centers have generally become known as the Spring Valley Shopping Center. For the purposes of this Order, and only this Order, any reference to the "Spring Valley Shopping Center," "historic Spring Valley Shopping Center," "SVSC," or "historic SVSC" shall only be a reference to the historic shopping center located on Lots 802 and 803 in Square 1499.

regulations, an “Inclusionary Development,” defined under Subtitle B of ZR16 as “[a] residential development subject to the provisions of Subtitle C, Chapter 10, Inclusionary Zoning,” “may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right (bonus density), subject to all other zoning requirements (as may be modified by the zone) and the limitations established by the Height Act.” As such, the maximum permitted overall density in the MU-4 zone is increased to 3.0 FAR for developments that are subject to IZ, an increase of 20% above the matter-of-right density of 2.5 FAR, with the maximum permitted nonresidential density remaining at 1.5 FAR. Accordingly, under the current MU-4 zoning, including the above-described bonus density, a total of 363,816 GFA can be constructed on Record Lot 9, of which no more than 1.5 FAR, or 181,908 GFA, can be devoted to nonresidential uses. After taking into account the nonresidential GFA of the AU Building, there is currently 184,514 GFA available as a matter-of-right to Lot 807, of which only 2,606 GFA can be devoted to nonresidential uses.

Description of the [Revised] Project⁵

67. As shown in the Revised Plans and Drawings, the Applicant proposes to construct a new mixed-use development on Lot 807, and aesthetic and circulation improvements along the 20-foot north-south public alley separating Lot 807 from the SVSC (Lot 802 and 803) and along the 20-foot east-west alley (a portion of which is a private alley on Lot 806).
68. On Lot 807, the proposed development includes six new buildings consisting of a mixed-use residential building (“Building 1”) and five townhomes located along 48th Street, NW at the southern end of the lot (the “Townhomes”).

Building 1

69. Building 1 will contain a full-service grocery store of approximately 16,500 GFA, and approximately 214 residential dwelling units. The maximum height of the building will be approximately 43’-6”, not including the penthouse, as measured from the level of the curb opposite the middle of the front of the building on 48th Street to top of the parapet. Building 1 will have a penthouse containing one-story of enclosed habitable (residential and communal) and mechanical space, with unenclosed screened mechanical equipment on top. As permitted under ZR16, the portion of the penthouse containing habitable space will have a maximum height of 12’-0” above the roof above which it is located, and the overall height of the penthouse, including the unenclosed screened mechanical equipment on top of the enclosed portion of the penthouse, will have a maximum height of 15’-0” above the roof upon which it is located. The penthouse will meet all setbacks required under ZR16.
70. The main pedestrian entrance to the grocery store will be located at the northwest corner of the building along Yuma Street, set back approximately 17 feet from the adjacent sidewalk. Due to the grade along Yuma Street the grocery store entrance is also

⁵ The description of the project included in this order reflects the revised project as depicted in the Revised Plans and Drawings submitted by the Applicant on October 16, 2018.

approximately two feet lower than the adjacent sidewalk. The main residential lobby will also be located along Yuma Street closer to 48th Street. The entrance to the additional retail/amenity space will be located at the southwest corner of Building 1 in close proximity to Massachusetts Avenue. and the SVSC retail and service uses.

71. Building 1 is designed in two distinctive architectural styles and contains substantial step downs in height and reductions in massing along 48th and Yuma Streets. In response to the lower-density residential uses to the north and east of the Project Site, the massing of the building has been substantially reduced through lower initial heights; substantial upper-level setbacks; large courtyards, terraces, and public plazas; and context-sensitive articulation and architectural styles.
72. Along 48th Street, the massing of the building is substantially reduced at the property line through the use of pavilions that are separated by 40-foot deep, 43-foot wide landscaped courtyards that open onto 48th Street. The height of the pavilions is further reduced in scale through the use of bay projections that are similar in scale to the height of the residential dwellings across 48th Street, which has a right-of-way width of approximately 90 feet. The distance between Building 1 and the lower-height residential dwellings to the east along 48th Street ranges between approximately 96 – 136 feet, with the penthouse further separated by meeting or exceeding the required 1:1 setback.
73. Along Yuma Street, where there is a substantial drop in grade from east to west, the massing of Building 1 is substantially reduced to ensure the building relates to the residential dwellings to the north.
74. The eastern portion of the Yuma Street façade has a three-part composition, is composed of two lower-height pavilions separated by the main residential entry courtyard, and shares the same architectural style as along 48th Street. The western portion of the façade along Yuma Street possesses a similar three-part composition, but has a distinct architectural style established through the use of a different material palette and window pattern. The western portion of the façade is also set back from the property line approximately 17'-0" to create an open public plaza outside the entry to the grocery store, and the fourth floor is further set back another 14 feet. The distance between Building 1 and the lower-height residential dwellings to the north along Yuma Street ranges between approximately 96 – 137 feet, with the penthouse further separated by meeting or exceeding the required 1:1 setback.
75. The west and south facades of Building 1 are designed in the same architectural style as the street-facing facades, and will be treated with the same high-quality materials. Along the west, adjacent to the north-south public alley between Lot 807 and the SVSC, Building 1 will be set back from the property line approximately 10 feet at the lower level to ensure adequate and safe vehicular and pedestrian circulation in the alley (Ex. 114A2, Sheet A34). The setback will increase another 20 feet, for a total of approximately 30 feet from the property line, above the lower level along the majority of the west façade.

Townhomes

76. The Townhomes are proposed at the southern end of the Lot 807 along 48th Street, NW. Townhomes 1 – 4 are set back from the property line along 48th Street in order to preserve an existing heritage tree that is located within the adjacent public space. Due to the angle southern boundary of Lot 807, Townhome 5 is located at the property line along 48th Street in order to meet the minimum rear yard requirement.
77. The Townhomes, not including penthouses, will contain three stories and have heights that range from 36'-8" – 37'-0". Townhomes 1 – 4 will also contain a 10-foot penthouse that will be solely devoted to providing access to a roof deck and contain a limited amount of storage space that is ancillary to the roof deck. The penthouses on Townhomes 1 – 4 will meet all applicable penthouse regulations, including the 1:1 setback requirement.
78. Parking for each Townhome will be provided in a lower-level "tuck-in" garage that is accessed from the existing alley system that services the Project Site.
79. The architectural style of the Townhomes relates to the prevailing colonial style of the surrounding context, and utilizes similarly compatible materials.

Landscape Plan / Alley Improvements

80. The project incorporates several landscape improvements including publicly accessible open spaces and plazas, and several private courtyards and terraces. Along 48th Street, NW, the Applicant proposes Windom Park, a new publicly accessible open space framed by Building 1 and Townhouse 1. Windom Park will contain substantial plantings, seating, and other decorative site features.
81. At the northwest corner of Building 1, an open public plaza is proposed that provides a forecourt to the grocery store, and provides opportunities for outdoor seating and small gatherings ("Northwest Plaza"). The plaza will be approximately 1700 square feet in area, and located approximately two feet lower than the adjacent sidewalk due to the grade along Yuma Street. The plaza will be paved in a pattern that relates to the architectural detail of Building 1, and is designed to provide a variety of social settings for people to interact through the use of both fixed and movable seating. To accommodate the grade difference between the sidewalk and the plaza, a series of steps and planted slopes are proposed along the sidewalk.
82. Several private landscaped courtyards and terraces are proposed as amenities to the residential dwelling units in Building 1 and the Townhomes. Building 1 will contain a large, central courtyard with substantial landscaping, a paved plaza, and a swimming pool. The central courtyard will also contain a number of private outdoor terraces belonging to specific residential units. Around the exterior of Building 1, large open courtyards are

proposed facing 48th and Yuma Streets. Specifically, there will be two large courtyards separating the pavilions along 48th Street which will be landscaped and contain residential terrace space. In addition, the residential entry courtyard along Yuma Street will contain landscaping and seating. Building 1 will also contain a modest-sized, fourth floor outdoor terrace at the northwest corner of the building that will contain flexible seating areas and other amenities. Finally, each of the Townhomes will contain a private landscaped front yard area, rear main floor balcony, and a small roof deck.

83. Along the existing north-south public alley between Lot 807 and the SVSC, the Applicant proposes to reduce the number of trash containers and place them in enclosures that will be designed in coordination with SVSC ownership. To accommodate the trash enclosures and ensure adequate vehicular and pedestrian circulation along the alley, Building 1 will be set back approximately 10 feet from the west property line of Lot 807. This will result in a full 20 feet of circulation space for vehicles, the same width as the existing public alley, plus an additional three feet for a new pedestrian sidewalk along the length of Building 1.
84. The Applicant also proposes upgrades to the intersection of east-west and north-south public alleys, and the intersection of north-south public alley and Massachusetts Avenue. These upgrades include visibility mirrors, textured/differentiated pavement, crosswalk striping, and stop signs and/or other signage.

Parking and Loading Facilities

85. The Building 1 loading facilities and access to the below-grade garage will be located along the south side of Building 1 adjacent to the east-west public alley. This location was chosen by the Applicant in order to minimize views and the potential for noise-related impacts on residential uses to the north and east of the Project Site, and improve circulation by locating these facilities closer to the Massachusetts Avenue corridor and away from the trash enclosures and other SVSC-related mechanical equipment located along the north-south alley.
86. Building 1 will contain a three-level below-grade garage that contains approximately 370 vehicle parking spaces, inclusive of the 236 spaces mandated by the recorded Allocation Agreement. The G-1 level will be located directly off of the east-west public alley and will contain approximately 86 parking spaces. The G-2 level will contain approximately 179 vehicle parking spaces and, at minimum, the required number of bicycle parking spaces for the proposed residential, grocery store, and other retail use. The G-3 level will contain approximately 105 vehicle spaces.
87. In compliance with the loading requirements of Subtitle C, Chapter 9, Building 1 will contain a 55-foot loading berth, a 30-foot loading berth, and a 20-foot delivery space.

Office of Planning Report

88. By report dated January 2, 2018, OP recommended approval of the Application provided the Applicant submit the following: (i) information regarding the nature of grocery tenant based on the proposed square footage, (ii) street level rendered perspective of the retail at the southwest corner of Building 1, (iii) elevation of green wall on the south façade of Building 1, (iv) additional details on how/whether building amenities would be shared between Building 1 and Building 2, (v) revised garage and loading façade to ensure pedestrian comfort and safety, (vi) breakdown of unit mix, (vii) complete Inclusionary Zoning (“IZ”) summary table, and (viii) full analysis of requested rear yard relief against the criteria of G § 1201.1 (Ex. 133.).
89. In its report, OP found the proposed project to be not inconsistent with the Comprehensive Plan, and that the proposed project would result in a development that would be superior to any matter-of-right development on the site.
90. On January 10, 2018, the Applicant provided responses to each of the requests in the OP Report (Ex. 152).
91. At the public hearing on January 11, 2018, OP testified that it had reviewed the Applicant’s response, and still would like to receive an alley level perspective of the retail at the southwest corner of Building 1. OP also stated it needed additional information on the design of Building 1 along the alley relative to pedestrian experience and safety, and additional detail on retail signage. Finally, OP requested additional clarification on IZ relative to tenure type and penthouse generated requirements. The Applicant provided this additional information as part of its February 12, 2018, posthearing submission.
92. On February 12, 2018, OP submitted a supplemental report addressing whether the ability to aggregate density was permitted under the design review process (“OP Supplemental Report”) (Ex. 215). This issue is further address under the “Contested Issues” section of this order.
93. By report dated December 28, 2018, OP recommended approval of the Application based upon the Revised Plans and Drawings, subject to the Applicant providing the following: (i) provision of rooftop solar photovoltaic in combination with green roof above the penthouse, (ii) provision of electric vehicle charging stations in the parking garage, (iii) improved screening of transformers along alley at AU Building, (iv) relocation of IZ units from cellar area to above-grade levels, (v) refined flexibility language, and (vi) clarification of why TDM measures would not extend to townhouses (Ex. 266).
94. At the beginning of the public hearing on January 7, 2019, the Applicant addressed each of the six items listed in the December 28, 2018, OP report.
95. At the public hearing on January 7, 2019, OP testified that it continued to recommend approval of the Application, stating that with the exception of the requested rear yard flexibility for Building 1 and the special exception to allow a penthouse on four or the five

proposed townhomes the project would comply with the zoning regulations, including IZ requirements.

DDOT Report

96. DDOT submitted a report dated January 2, 2018 (Ex. 133), noting that it had no objection to the Application subject to certain conditions, and provided certain revisions are made to the Applicant's LMP and TDM Plan.
97. At the public hearing on January 11, 2018, Mr. Andres, the Applicant's expert in transportation engineering and planning, testified that the Applicant was in agreement with all of DDOT's recommended conditions with one clarification regarding the proposed LMP. Mr. Andres clarified that the Applicant committed to coordinate with DDOT and the SVSC to achieve a consolidated loading management plan (tr. p. 43-44).
98. Mr. Aaron Zimmerman, DDOT, testified in support of the Application at the January 11, 2018, public hearing. Mr. Zimmerman reiterated the Applicant's commitment to all of DDOT's conditions, and stated that DDOT was satisfied with the Applicant's clarification regarding the proposed LMP as it related to coordination with the SVSC (tr. p. 144).
99. On December 27, 2018, DDOT submitted a supplemental report stating that it had reviewed the Applicant's Revised Plans and Drawings and supplemental transportation memorandum and continues to have no objection to the Application, subject to the conditions previously agreed to by the Applicant and documented in DDOT's report dated January 2, 2018 (Ex. 265). At the public hearing held on January 7, 2019, DDOT reiterated its support for the project, as proposed in the Revised Plans and Drawings.

ANC 3E Report

100. At a meeting held on January 3, 2018, which was duly noticed and at which a quorum was present, ANC 3E voted 4-1-0 to support the Application, as depicted in the Plans and Drawings submitted by the Applicant on December 21, 2017. On January 4, 2018, the ANC 3E submitted a resolution documenting its vote (the "ANC 3E Report") (Ex. 138).
101. At a meeting held on December 13, 2018, which was duly noticed and at which a quorum was present, ANC 3E again voted 4-1-0 to support the Application, as depicted in the Revised Plans and Drawings. On December 28, 2018, the ANC 3E submitted a second resolution documenting its vote on the Revised Plans and Drawings (the "Revised ANC 3E Report") (Ex. 270).
102. The Revised ANC 3E Report notes that the Applicant is not requesting additional height or density, but is requesting flexibility for rear yard.
103. The Revised ANC 3E Report states that the community believes that returning a portion of

the site to a grocery store use is a net benefit to the community, and that the project includes significant improvements to the currently unattractive and pedestrian-unfriendly alley, and improvements to Massachusetts Avenue in the form of a HAWK signal that will improve pedestrian safety and connectivity in the Spring Valley area. The Revised ANC 3E Report also acknowledges the Applicant's commitments to improve the alley between Lot 807 and the SVSC, and to achieving LEED Gold certification.

104. The Revised ANC 3E Report acknowledges the concerns raised by the community regarding the size of the proposed buildings and the transitions to the residential homes on 48th Street and Yuma Street and how the Applicant modified the project in response to these concerns by reducing the height of Building 1 and replacing the previously proposed Building 2 with townhomes.
105. The Revised ANC 3E Report was accompanied by a Memorandum of Understanding ("MOU") that has been executed with the Applicant, which describes various commitments/conditions that have been negotiated between the Applicant and ANC 3E regarding the proposed grocery store, restaurant venting, waste management, affordable housing, transportation improvements and mitigations, alley improvements, LEED, landscaping, and construction management (Ex. 270A).
106. The Revised ANC 3E Report requests the Commission to embody the terms of the MOU into any order issued in connection with the Application. The Commission notes that the MOU constitutes a private agreement between the Applicant and ANC 3E, and that the Commission's jurisdiction is limited to the powers enumerated in the Zoning Act, see D.C. Code § 6-641.01 et seq., which does not confer upon the Commission the authority to enforce a private document among parties. Notwithstanding, upon review of the MOU the Commission finds that many of its provisions relate to zoning or other issues that are typically part of the Commission's review of a project, such as transportation impacts. As such, as part its review the Commission has given great weight to the provisions of the MOU, and, where appropriate and within the Commission's jurisdiction, has incorporated certain provisions from the MOU as conditions to this order. The Commission notes that its decision to include, or not include, provisions of the MOU as conditions in this order does not in any way reduce, eliminate, or modify any legal obligation that the Applicant has under the terms of the MOU with ANC 3E, or the enforceability of the MOU under other District laws.
107. At the January 7, 2019, public hearing, Commissioner Jonathan McHugh, Single Member District 3E05, testified on behalf of ANC 3E in support of the Application, as proposed in the Revised Plans and Drawings.

ANC 3D Report

108. At a regularly scheduled meeting held on December 7, 2016, which was duly noticed and at which a quorum was present, ANC 3D voted 6-1 to oppose the Application. The ANC

3D submitted a resolution documenting its vote on December 12, 2016 (the “ANC 3D Opposition Resolution”) (Ex. 9).

109. The ANC 3D Opposition Resolution was based upon the Applicant’s initial plans and drawings submitted on October 26, 2016, which, as stated in the ANC 3D Opposition Resolution, “proposes to build two new buildings on the site: one a mixed use residential building and the second an all-residential building – combined consisting of 230 new residential units (rental apartments and condos); 60,000 gsf of retail, including a 55,000 gsf grocery store; and three levels of underground parking containing approximately 460 parking spaces – only 77 of which will be reserved for residential parking and another 147 for retail parking (the remainder being set-aside for American University under a prior agreement).”
110. The ANC 3D Opposition Resolution states that the project is inconsistent with the Comprehensive Plan and the low density character of the surrounding neighborhood, and raises concerns regarding the project’s density, amount of parking, impacts to neighborhood on-street parking, access to loading, traffic, impacts to the historic SVSC, and the architectural style of the project.
111. By letter dated December 7, 2017, ANC 3D informed the Commission that at a regularly scheduled meeting held on December 6, 2017, which was duly noticed and at which a quorum was present, ANC 3D voted 5-4 to rescind its December 7, 2016, resolution in opposition to the project (Ex. 108). According to its letter, the basis for ANC’s vote to rescind its opposition to the project was that the Applicant has substantially changed the project to reduce the number of residential units and the amount of non-residential space, provide more dedicated parking to residents, expand and improve the existing public alley behind the SVSC, and provide additional community amenities and mitigation efforts. The ANC’s letter states that “[t]he current proposal in ZC 16-23 is substantially different enough, with substantially different enough implications, as to render our previous report inapplicable. Moreover, updated data on several of the arguments buttressing the ANC’s original opposition suggest our previous conclusions are no longer supported by the facts.”
112. At the same December 6, 2017, duly noticed public meeting that ANC 3D voted to rescind its opposition to the Application, ANC 3D also voted 8-1 in support of the Application, based upon the Plans and Drawings submitted by the Applicant on December 21, 2017. On December 12, 2017, The ANC 3D submitted a resolution documenting its vote in support of the Application, as depicted in the Plans and Drawings (the “ANC 3D Support Resolution”) (Ex. 109).
113. At a meeting held on December 5, 2018, which was duly noticed and at which a quorum was present, ANC 3D again voted 6-2-0 to support the Application, as proposed in the Revised Plans and Drawings. On December 6, 2018, the ANC 3D submitted a second resolution documenting its vote on the Revised Plans and Drawings (the “Revised ANC 3D Support Resolution”) (Exs. 245 and 245A).

114. The Revised ANC 3D Support Resolution states that the changes made to the project by the Applicant, as reflected in the Revised Plans and Drawings, “represent clear improvements to the project for the community with the exception of replacing Windom Walk with a pocket park. In addition to the reduced massing that accompanies the conversion of what was previously the smaller, second building (Building 2) into five townhomes, these changes were achieved largely by increasing the below-grade residential square footage into an area that was previously devoted to parking while keeping the overall number of parking spaces unchanged. We additionally state our expectation, implicit in this resolution, that the applicant will reach a binding agreement with American University regarding the existing parking easement to provide no less than 80 percent of the 180 easement spaces provided to the applicant as presented before ANC 3D on December 5, 2018 (so that at least 144 spaces of the 236-space easement are provided to the applicant). Notwithstanding slight modifications to our parking and traffic analyses in Exhibit 109, our rightly-adopted position embodied in that resolution remains the same.”
115. At the January 7, 2019, public hearing, Commissioner Troy Kravitz, Single Member District 3D05, testified on behalf of ANC 3D in support of the Application, as proposed in the Revised Plans and Drawings.
116. At the February 6, 2019, public hearing, Commissioner Kravitz inquired whether the Applicant would join ANC 3D in requesting the Commission to include conditions in the final order for the Application requiring that: (i) a minimum of 13,000 GFA be reserved solely for use by a full service grocer for at least ten years from the date a certificate of occupancy is issue for the project, and (ii) a binding agreement be reached with American University so that at least 144 of the 236 parking spaces required under the Allocation Agreement are made available to the Applicant. The Applicant consented to both of these conditions being included in the final order should the Application be approved by the Commission.

Citizens for Responsible Development

117. On January 4, 2018, Citizens for Responsible Development submitted its prehearing statement in opposition (“CRD Statement”) (Ex. 137). On January 9, 2018, CRD submitted a supplemental prehearing statement (“CRD Supplemental Statement”) (Ex. 149). The January 4 and 9, 2018, submissions by CRD we based upon the Plans and Drawings submitted by the Applicant on December 21, 2017. On December 11, 2018, CRD submitted its response to the Applicant’s Revised Plans and Drawings (“CRD Second Supplemental Statement”) (Ex. 247). Collectively, the aforementioned submissions by CRD are collectively referred to herein as the “CRD Statements.”
118. The CRD Statements claim that the Application fails to meet the requirements for design review. First, CRD argues that the project calls for an impermissible increase in density, which is not permitted under the express language of the provision of the design review

regulations that states “[t]he purpose of the design review process is to...(e) provide for flexibility in building bulk control, design, and site placement without an increase in density or a map amendment” (11-X DCMR § 600.1). According to CRD “it is uncontested that the matter-of-right density allowed on the SuperFresh site (Lot 807) is 184,514 GFA. According to the Applicant, the GFA of the Project is 234,629. It is obvious and undeniable that a density increase is being proposed. This is not permissible under the Design Review Regulations.” (Ex. 247)

119. The CRD Second Supplemental Statement further asserts that “[t]he proposed transfer of density from the historically protected [SVSC] is contrary to District law” because: (i) the Project Site is not located within a downtown credit trade area (formerly TDR and CLD zones under ZR58); and therefore, credits cannot be utilized to transfer density from the SVSC to Lot 807; (ii) the Applicant seeks to consolidate Lots 806 and 807 with the historic SVSC (Lots 802 and 803) which constitutes a subdivision that is subject to review by the Mayor’s Agent (“MA”) and the Historic Preservation Review Board (“HPRB”), which must precede the Commission’s review; (iii) the SVSC has no available density to transfer since the SVSC parking lot is as much an integral part of the landmark as the shopping center building itself; and therefore, all of the unused density on Lot 802 and 803 is accounted for because no new development is permitted on the historic SVSC site; and (iv) that Z.C. Order No. 101 (the Heurich Mansion case) and related D.C. Court of Appeals decision in Dupont Circle Citizens Association v. Zoning Commission is not relevant to the Application because the Heurich Mansion case was a PUD and it predated the 1978 Historic Landmark and Historic District Protection Act.
120. CRD also states in the CRD Statements that the project fails to meet the design review standard at 11-X DCMR § 604.7(c) as it undermines the historic character of Spring Valley Shopping Centers and surrounding neighborhood. In support of this statement, CRD submitted a report prepared by Mr. Stephen Hansen, architectural historian, regarding the historic preservation of the Spring Valley shopping area and the impact of the proposed development on these landmarked properties and the surrounding neighborhood (“Hansen Report”).
121. CRD argues that as a result of the project the community will be adversely affected by additional traffic congestion and neighborhood parking overload. CRD also expressed concerns regarding the ability of the alley system that services the Project Site to accommodate the expected increases in vehicles and trucks, and the potential impacts of the project on pedestrian safety in the alley.
122. The CRD Statements state that the project fails to meet the requirements for design review because it would result in action that is inconsistent with the Comprehensive Plan, including the Future Land Use Map (“FLUM”). The CRD Statements identify various Comprehensive Plan policies within the Land Use, Urban Design, Historic Preservation, and Rock Creek West Elements that it asserts the project is inconsistent. In its initial CRD Statement, CRD argues that neither the Zoning Regulations or the FLUM permit the

Applicant to erect a building with the height, number of stories, and density that is being proposed by the Applicant.

123. CRD also challenges the manner in which the Applicant's is measuring the height of Building 1. According to CRD, the Applicant's use of 48th Street as the Building Height Measuring Point ("BHMP") runs afoul of Subtitle B § 307.7, as it believes the elevation of 48th Street has been artificially elevated by an embankment.
124. The CRD Second Supplemental Statement also asserts that the Application continues to fall short on IZ. Following along with the arguments presented by Ms. Marilyn Simon, CRD states that the Applicant's IZ calculations rely upon a proposed amendment to the IZ regulations that is currently pending before the Commission and not yet in effect, and that the IZ regulations currently in effect require the Applicant to base its bonus density set aside calculation on the full 20% bonus density that is provided under the IZ regulations regardless of the actual amount of bonus density used. Further, CRD states that the current IZ regulations require residential space located in cellar space and enclosed projections to be included in the calculation of the bonus density set aside.
125. CRD asserts that the project fails to meet the requirements for design review because it is not superior to any matter of right development possible. CRD challenges the Applicant's claim that a 50 foot building without setbacks at the property line with a penthouse containing up to 0.4 FAR could be constructed as a matter-of-right on Lot 807. CRD states that a 50-foot tall building could only take up roughly half Lot 807, leaving plenty of room for other amenities, and expresses confidence that a responsible developer would not construct an unattractive building as this would not be in its economic interest.

Design Review Process

126. The Applicant submitted the project for design review by the Commission pursuant to the design review provisions of Subtitle X, Chapter 6, and specifically pursuant to 11-X DCMR § 601.2, which permits property owners to voluntarily apply for design review of a proposed development.
127. The purpose of the design review process is to, among other purposes, permit some projects to voluntarily submit themselves for design review under this chapter in exchange for flexibility because the project is superior in design but does not need extra density; promote high-quality, contextual design; and provide for flexibility in building bulk control, design, and site placement (11-X DCMR § 600.1).
128. The design review process is intended to be shorter and less intensive than the Planned Unit Development ("PUD") process and allow less deviation from matter-of-right zone standards (11-X DCMR 600.2).
129. A map amendment or an increase in density shall not be permitted as part of a design review application (11-X DCMR § 600.5).

130. Requests for voluntary design review must satisfy the minimum area requirements prescribed in 11-X DCMR §§ 601.3 and 601.4. The minimum area required for voluntary design review, including the area of public streets or alleys proposed to be closed, is two acres for proposals located in any R, RF, or RA zone. There is no minimum area requirement for any other zone (11-X DCMR § 601.3). Further, all property included in a design review shall be contiguous, except that the property may be separated by a public street, alley, or right-of-way (11-X DCMR § 601.4)
131. Pursuant to the design review flexibility provisions of 11-X DCMR § 603, as part of the design review process the Commission may grant relief from the development standards for height, setbacks, lot occupancy, courts, and building transitions, as well as any specific design standards of a specific zone. The design review process shall not be used to vary other building development standards including FAR, Inclusionary Zoning, or green area ratio (11-X DCMR § 603.1). Except for height, the amount of relief is at the discretion of the Commission, provided that the relief is required to enable the applicant to meet all of the standards of Subtitle X § 604. The Commission may grant no greater height than that permitted if the application were a PUD (11-X DCMR § 603.2).
132. In addition to the areas of flexibility that can be granted by the Commission as part of the design review process, the Commission may also simultaneously hear requests for special exception and/or variance relief that would otherwise require approval by the Board of Zoning Adjustment. In contrast to requests for flexibility, requests for special exception and variance relief are subject to all applicable special exception criteria and variance standards (11-X DCMR 603.3).
133. The Commission finds that the Application can be properly reviewed pursuant to the design review process of Subtitle X, Chapter 6. Pursuant to 11-X DCMR § 601.3, there is no minimum land area requirement since all of the property within the Project Site is zoned MU-4. Further, as permitted under 11-X DCMR § 601.4, all of the property within the Project site is contiguous with the exception of the existing 20-foot public alley between the SVSC (Lots 802 and 803) and Record Lot 9 (Lots 806 and 807). Finally, the Commission finds that the Applicant's request for flexibility from the minimum rear yard requirement for Building 1 is a type of flexibility that can be granted pursuant to 11-X DCMR § 603.1, and that the Applicant's request for special exception relief to allow a penthouse on Townhomes 1 - 4 is the type of relief that can be granted by the Commission pursuant to 11-X DCMR § 603.3

Design Review Standards (11-X DCMR § 604)

134. The Commission must evaluate the project according to the design review standards of 11-X DCMR § 604, which require the Commission to find that the proposed project is not inconsistent with the Comprehensive Plan (11-X DCMR § 604.5), will not tend to affect adversely the use of neighboring property and meets the general special exception criteria

of Subtitle X, Chapter 9 (11-X DCMR § 604.6), and that the project meets the urban design criteria of Subtitle X § 604.7 in a way that is superior to any matter-of-right development possible on the Project Site (11-X DCMR § 604.8). Based on the following, the Commission finds that the project meets each of these standards.

Consistency with the Comprehensive Plan (11-X DCMR § 604.5)

135. Based on the following set of findings, and in reliance upon the analyses provided by OP (Exs. 133 and 266) and the Applicant (Ex. 240B), the Commission finds that overall the project is not inconsistent with the Comprehensive Plan.
136. The substantive policies of the Comprehensive Plan are organized into 12 Citywide Elements that each address a specific topic that is citywide in scope, and ten Area Elements that focus on issues that are unique to a particular part of the District, and are intended to provide a sense of local priorities and to recognize the different dynamics at work in each part of the city. Although they focus on a specific area of the District, the policies contained within the Area Elements are still general in nature and do not prescribe specific uses or design details (10-A DCMR 104.4 – 104.6). The Area Elements also do not repeat policies that already appear in the Citywide Elements; however, this does not mean all Comprehensive Plan policies are mutually exclusive from each other. On the contrary, the Comprehensive Plan specifically recognizes the overlapping nature among and between the Comprehensive Plan elements, and that an element may be tempered by one or more of the other elements where there may be a need to balance competing policies (10-A DCMR § 2504.6).
137. Due to the wide range of topics addressed in the Comprehensive Plan, some Citywide Elements oftentimes are not necessarily applicable to a project, or are applicable to only a minor degree. Such is the case for this project where the Commission finds the Parks, Open Space, and Recreation; Community Services and Facilities; Infrastructure; and the Arts and Culture Elements to have little to no applicability to the project; and therefore, do not necessitate a detailed set of findings in support of the Commission’s determination that the project overall is not inconsistent with the Comprehensive Plan.
138. Generalized Policy Map: The Commission finds that the project is not inconsistent with the Project Site’s “Neighborhood Commercial Center” designation on the Generalized Policy Map (“GPM”). A “Neighborhood Commercial Center” is described in the Framework Element as an area that meets the day-to-day needs of residents and workers in adjacent neighborhoods with a service area of approximately one mile. Typical uses within a Neighborhood Commercial Center include, among others, convenience stores, supermarkets, branch banks, restaurants, basic services, and office space for small businesses (10-A DCMR § 223.15). New development and redevelopment within Neighborhood Commercial Centers must be managed to conserve the economic viability of these areas while allowing additional development that complements existing uses (10-A DCMR § 223.16). The project is not inconsistent with the GPM as it will provide a new

mixed-use development, including a new full-service grocery store, that will make it easier for existing and new residents and workers to meet their day-to-day needs, and that is designed in a manner that is context-sensitive and effectively manages and mitigates vehicle trips to the Project Site. The project will complement and expand upon nearby neighborhood-serving commercial offerings by providing a new full service grocery store, and will contribute to the economic viability of nearby commercial uses on both sides of Massachusetts Avenue by adding additional residential within close proximity.

139. Future Land Use Map: The Commission finds that the project is not inconsistent with the Future Land Use Map (“FLUM”). The FLUM depicts future land uses across the District and is intended to represent the land use policies set forth in the Land Use Element. It is well established, and is specifically stated in the Framework Element, that the FLUM is not a zoning map, and does not specify allowable uses or dimensional standards. By definition, the FLUM is to be interpreted broadly (10-A DCMR 226(a)). Further, the densities within any given area on the FLUM are intended to reflect all contiguous properties on a block, there may be individual buildings that are higher or lower than these ranges within each area, and the land use category definitions are intended to describe the general character of development in each area (10-A DCMR § 226(c)). In addition, because of the scale of the FLUM, many of the areas shown purely as “Commercial” may also contain other uses, including housing, while other areas shown as purely “Residential” may contain existing incidental commercial uses (10-A DCMR § 225.20).
140. The FLUM designates the Project Site as Low Density Commercial. According to the Framework Element, the Low Density Commercial land use designation is used to define shopping and service areas that are generally low in scale and character, with retail, office, and service businesses being the predominate uses. Areas that have the low-density commercial designation can range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts that draw from a broader market area, and are commonly comprised primarily of one- to three-story commercial buildings (10-A DCMR § 225.8).
141. The Project Site is zoned MU-4 (formerly C-2-A under the 1958 Zoning Regulations), which is expressly stated in the Framework Element as corresponding to the Low Density Commercial land use category on the FLUM. Under ZR16, the C-2-A zone was renamed to MU-4. Other than the change in name, no changes were made to the primary development standards that controlled matter-of-right development on the Project Site, including height and density. Thus, by definition the Project Site’s existing MU-4 zoning is not inconsistent with the Comprehensive Plan.
142. The project is not inconsistent with the portion of the FLUM definition for Low Density Commercial areas that states a common feature of these areas “is that they are comprised primarily of one- to three-story commercial buildings.” First, the Applicant is not proposing to construct any commercial buildings, but rather is proposing a mixed-use residential building containing ground level retail and services uses (Building 1) and five

residential townhomes. Secondly, the “Guidelines for Using the Generalized Policy Map and the Future Land Use Map” contained within the Framework Element specifically contemplate that densities and heights within any given area on the FLUM reflect all contiguous properties on the a block, and there could be individual buildings that are higher or lower than the ranges stated for each area (10-A DCMR § 226). Thus when viewed within the context of the Guidelines, it is apparent that Building 1 is not inconsistent with the FLUM as it will sit within a block (Square 1499) that is comprised of commercial buildings that range in height and density from one- to two-stories (SVSC, PNC Bank, Spring Valley Exxon) to six stories (AU Building). Perhaps most notably, the Commission has previously found the MU-4 (formerly C-2-A) zone, as well as developments proposed in accordance with the development standards of the MU-4 (formerly C-2-A) zone, to be not inconsistent with the Low Density Commercial land use designation of the FLUM (*See* Z.C. Order No. 08-15), and the D.C. Court of Appeals has upheld the Commission’s findings in this regard (*See* Wisconsin-Newark Neighborhood Coalition, et al v. District of Columbia Zoning Commission, DCCA 33 A.3d 382).

143. Land Use Element: The Commission finds that the project is not inconsistent with the objectives and policies of the Land Use Element. The Land Use Element of the Comprehensive Plan establishes the basic policies guiding the physical form of the city, and provides direction on a range of development, conservation, and land use compatibility issues (10-A DCMR § 300.1). The goal of the Land Use Element is to: “[e]nsure the efficient use of land resources to meet long-term neighborhood, citywide, and regional needs; to help foster other District goals; to protect the health, safety, and welfare of District residents and businesses; to sustain, restore or improve the character and stability of neighborhoods in all parts of the city; and to effectively balance the competing demands for land to support the many activities that take place within District boundaries” (10-A DCMR § 302.1). The Project will redevelop a long underutilized and vacant property with a mixed-use infill project that will not result in a sharp change in the physical development pattern around the Project Site, but rather will complement the established character of the surroundings and provide an appropriate transition between the lower-scale residential neighborhood to the north and east and the larger-scale AU Building. Further, the flexibility in building bulk control provided through the voluntary design review process will allow for the return of a full-service grocery store to the neighborhood which currently is not possible due to the lack of available nonresidential density on Record Lot 9 (Policy LU-1.4.1, LU-1.4.2, LU-2.2.4). The project design, together with the separation provided by Yuma and 48th Streets (both 90 foot wide rights-of-way), successfully integrate the project into the surrounding context in a way that protects the character of the neighborhood to the north and east, while also establishing a transition to the commercial center and larger-scale AU Building to the south and west (Policy LU-2.1.5, LU-2.3.3). The project will also support the economic vitality and continued growth of the Spring Valley neighborhood commercial node, a designated Neighborhood Commercial Center located along the Massachusetts Avenue, NW corridor, through the new neighborhood-serving, full-service grocery store and the addition of new residences in close proximity, while at the same time respecting the integrity and character of the surrounding residential areas through a high-

quality design that is within the height and density permitted in the existing MU-4 zone (Policy LU-2.4.1, LU-2.4.2, LU-2.4.5).

144. Transportation Element: The Commission finds that the Project is not inconsistent with the objectives and policies of the Transportation Element. The overarching goal for transportation in the District is to create a safe, sustainable, efficient multi-modal transportation system that meets the access and mobility needs of District residents, the regional workforce, and visitors; supports local and regional economic prosperity; and enhances the quality of life for District residents (10-A DCMR § 401.1). The project will help achieve this goal. First, in analyzing the potential transportation impacts of the project that Applicant conducted a thorough CTR, that was based upon multi-modal standards to more accurately measure and more effectively mitigate impacts on the transportation network (Policy T-1.1.2). The results of the CTR were used to develop the Applicant's TDM Plan and LMP, which were coordinated with DDOT, and which will effectively mitigate potential impacts on the transportation network (Policy T-3.1.A, T-3.1.1, T-3.2.D). The analysis contained in the CTR was bolstered by additional analysis contained in the Applicant's supplemental transportation memorandums, and by rebuttal testimony provided on February 6, 2019, where the Applicant presented the results of an existing alley operations study. The alley operations study was conducted in direct response to concerns expressed by CRD and others in the community regarding potential impacts of the project on loading operations and pedestrian safety in the alleys that service the Project Site. The results of the alley operations study confirmed the results of the CTR analysis that, with the alley improvements proposed by the Applicant, the alley system can accommodate the increased number of trips (truck and passenger vehicle) expected to be generated by the project. The project will also provide several improvements that will increase pedestrian circulation and safety. In addition to the wide range of TDM strategies that will be implemented, the project will result in the removal of approximately 80 linear feet of curb cuts, the creation of new pedestrian connections through and around the Project Site, construction of pedestrian curb extensions at select intersections, the construction of a High-Intensity Activated Crosswalk ("HAWK") signal along Massachusetts Avenue, and numerous improvements along the existing alleys that do not currently exist including visibility mirrors, textured/differentiated pavement, crosswalk striping, and signage (T-1.1.B, T-1.2.3, T-2.2.2, T-2.4.1, T-2.4.2).
145. Housing Element: The Commission finds that the project is not inconsistent with the objectives and policies of the Housing Element. The overarching goal of the Housing Element is to "[d]evelop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia" (10 DCMR § 501.1). The Applicant will help the District achieve this goal by redeveloping a long underutilized property in a highly desirable area of the city with a mixed-use project containing approximately 219 new residential dwelling units, including a substantial number of larger-sized units that can accommodate the District's growing number of families. In addition, the project will bring a substantial number of affordable dwelling units to Ward 3, which, as testified at the January 11, 2018, public hearing by the Coalition for Smarter

Growth, substantially lags behind the rest of the city in terms of accommodating new housing, including affordable housing. Indeed, according to rebuttal testimony provided by Mr. Dettman, the Applicant's expert in land use planning and zoning, the project will increase the number of affordable dwelling units within Ward 3 by approximately 47%. (Policy H-1.1.1, H-1.1.3, 1.1.4, 1.2.3).

146. Environmental Protection Element: The Commission finds that the project is not inconsistent with the objectives and policies of the Environmental Protection Element. The overarching goal for environmental protection in the District is to protect, restore, and enhance the natural and man-made environment, taking steps to improve environmental quality, prevent and reduce pollution, and conserve the values and functions of the District's natural resources and ecosystems (10-A DCMR § 601.1). The project will help achieve this goal by replacing the vacant grocery store and vast surface parking lot on Lot 807, both of which are completely impervious and lack any form of sustainable storm water management, with a number of new landscaped areas, shade trees, and green roof areas that will provide numerous environmental benefits, including reductions in storm water runoff (Policy E-3.1.2). Furthermore, additional environmental benefits will be provided through the Applicant's commitment to achieve LEED Gold certification (Policy E-3.2.1).
147. Economic Development Element: The Commission finds that the project is not inconsistent with the objectives and policies of the Economic Development Element. The overarching goal of the Economic Development Element is to strengthen the District's economy through, among other things, revitalizing neighborhood commercial centers. The project will help achieve this goal by bringing additional shopping opportunities to an existing neighborhood shopping center, including the return of a full-service grocery store, a use that has long existed in this area and is highly desired by the community. The project will also promote the vitality of the existing neighborhood commercial center by expanding upon nearby neighborhood-serving commercial offerings, and increasing the number of residents living in close proximity to the commercial center (Policy ED-2.2.3, ED-2.2.6, ED-3.3.1)
148. Parks, Recreation, and Open Space Element: The Parks, Recreation, and Open Space Element addresses the future of parks, recreation, and open space in the District of Columbia. It recognizes the important role parks play in recreation, aesthetics, neighborhood character, and environmental quality. It includes policies on related topics such as recreational facility development, the use of private open space, and the creation of trails to better connect the city's open spaces and neighborhoods (10-A DCMR § 800.1). The overarching goal for parks, recreation and open space is to preserve and enhance parks and open spaces within the District of Columbia to meet active and passive recreational needs, improve environmental quality, enhance the identity and character of District neighborhoods, and provide visual beauty in all parts of the national capital. 10-A DCMR § 801.1. The Commission finds that the project is not inconsistent with the Parks, Recreation, and Open Space Element.

149. Urban Design Element: The Commission finds the project to be not inconsistent with the objectives and policies of the Urban Design Element. The goal of the Urban Design Elements is to enhance the beauty and livability of the city by protecting its historic design legacy, reinforcing the identity of its neighborhoods, harmoniously integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and security of streets and public spaces. The project will replace an unsightly and underutilized vacant grocery store and expansive surface parking lot with a new mixed-use development that is compatible with the surrounding context. The height, mass, architectural design, and access of Building 1 and the Townhomes are informed by the context that exists around the Project Site. The project successfully relates to the residential uses to the north and east through the use of lower initial building heights, upper-level setbacks, courtyards and terraces, multiple buildings, façade articulations, compatible materials, and architectural style (Policy UD-2.2.5, UD-2.2.8). The project also establishes an appropriate transition between the residential area to the north and east, and the AU Building and other commercial uses to the south and west (Policy UD-2.2.4). The Commission is not persuaded by the testimony of CRD that the project will result in an overpowering contrast in scale, height, and density (Policy UD-2.2.1). Rather, the Commission credits the testimony of Ms. Alexander and Mr. Dettman in demonstrating how through the project is made compatible with the surrounding neighborhood through use of lower initial and overall building heights, substantial upper-level setbacks, reductions in mass using courtyards and terraces, and architectural styles and materials that relate to the context. The design of the project respects the basic block characteristics of the surrounding context. For example, the height of the townhomes and initial heights and proportions of Building 1 relate to the heights of the residences along 48th and Yuma Streets. As a result, the Project will provide an appropriate transition between the residential area to the north and east, and the AU Building and other commercial uses to the south and west. In addition, the Project's exterior details and materials are also informed by the surrounding neighborhood, such that the project will contribute positively to the established architectural character of the surrounding neighborhood. Furthermore, the height of the project is 43'-6", which is below the MU-4 maximum permitted matter-of-right height of 50 feet.
150. Historic Preservation Element: The Commission finds that the project is not inconsistent with the objectives and policies of the Historic Preservation Element. The goal of the Historic Preservation Element is to preserve and enhance the unique cultural heritage, beauty, and identity of the District of Columbia by respecting the historic physical form of the city and the enduring value of its historic structures and places, recognizing their importance to citizens of the District and the nation, and sharing mutual responsibilities for their protection and stewardship. The project will help achieve this goal by redeveloping Lot 807 in a manner that is sensitive to the surrounding context. The project successfully relates to the scale of the single family neighborhood to the north and east, which is not historic, through the use of lower initial building heights, large upper-level setbacks, reductions in mass using courtyards and terraces, compatible materials, and architectural style. At the same time, the Project also respects and complements the scale and historic

context of the SVSC through façade articulation and compatibility in architectural style and materials (Policy HP-2.4.3). In addition, the Historic Preservation Element promotes the development of specialized incentives to support preservation of historic properties that have exceptional communal value through “a variety of tools to reduce development pressure on these resources and to help with unusually high costs of maintenance” (Policy HP-3.1.2). According to CRD, “Action HP-3.1.B was included as a Zoning Commission Action item, with Historic Preservation Office (HPO) and the Office of Zoning (OZ) designated as the responsible agencies. However, HP-3.1.B was not highlighted as a priority action and was not followed through on by either agency. As a result, the use of TDRs for preservation purposes was not evaluated. The zoning regulations were never changed either to allow the application of TDRs beyond the designated five downtown Receiving Zones or to allow TDR’s to be used as a tool for preservation purposes outside those Zones or city-wide” (Ex. 149). The Commission finds that the Applicant does not need to rely upon TDRs in order to effectuate the project. Rather, the Applicant is relying upon the flexibility in building bulk control that is afforded through the design review process in order to aggregate unused density on the SVSC (Lots 802 and 803) to Lot 807. The Commission also notes that HP-3.1.2 is not limited to only the action described by CRD. Rather, HP-3.1.2 promotes the use of “a variety of tools” to reduce development pressure on historic resources. The Commission considers the flexibility in building bulk control permitted under the design review process to be the type of tool that is promoted by the Comprehensive Plan. The Applicant will aggregate unused density from the SVSC (Lots 802 and 803) to Lot 807, which in turn will help protect the historic SVSC from future development pressure by substantially reducing the amount of unused density that is available under zoning on Lots 802 and 803.

151. Community Services and Facilities Element: The Community Services and Facilities Element provides policies and actions on health care facilities, child care and senior care facilities, libraries, police stations, fire stations, and other municipal facilities such as maintenance yards. A well-balanced and adequate public facility system is a key part of the city’s drive to sustain and enhance the quality of life for its residents. 10-A DCMR § 1100.1. The Comprehensive Plan goal for community services and facilities is to provide high-quality, accessible, efficiently managed, and properly funded community facilities to support the efficient delivery of municipal services, protect public health and safety, and enhance the well-being of current and future District residents (10-A DCMR § 1101.1). The Commission finds that the project is not inconsistent with the Community Services and Facilities Element.
152. Educational Facilities Element: The Educational Facilities Element addresses the location, planning, use and design of the District’s educational facilities and campuses. It includes policies and actions related to primary, secondary, and higher educational facilities. The Element focuses on the efficient use of school property, and the relationship between schools and the communities that surround them. For District public schools, it focuses on school modernization and the right-sizing of school facilities to meet existing and long-term educational needs (10-A DCMR § 1200.1). The overarching goal for educational

facilities in the District is to transform the educational environment in the District of Columbia, providing facilities that inspire excellence in learning, create a safe and healthy environment for students, and help each individual achieve his or her fullest potential (10-A DCMR § 1201.1). The Commission finds that the project is not inconsistent with the Educational Facilities Element.

153. Infrastructure Element: The Infrastructure Element provides policies and actions on the District's water, sanitary sewer, storm water, solid waste management, energy, and telecommunication systems. Investments in these systems are essential to our city's future, both to meet the demands of existing users and to accommodate future change and development (10-A DCMR § 1300.1). The overarching goal for infrastructure is to provide high-quality, efficiently managed and maintained, and properly funded infrastructure to serve existing development, as well as future change and growth (10-A DCMR § 1301.1). The Commission finds that the Project is not inconsistent with the Infrastructure Element.
154. Arts and Culture Element: The Arts and Culture Element provides policies and actions dedicated to the preservation and promotion of the arts in the District of Columbia. Its focus is on strengthening the role of the arts in shaping the physical form of our city (10-A DCMR § 1400.1). The overarching goal for arts and culture is to support and encourage arts and cultural venues, programs and learning experiences in the District of Columbia that inspire a vibrant cultural life for all segments of the population. Enhance the city's diverse artistic and cultural traditions through decisions affecting the physical environment (10-A DCMR § 1401.1). The Commission finds that the Project is not inconsistent with the Arts and Culture Element.
155. Rock Creek West Area Element: The project is not inconsistent with the objectives and policies of the Rock Creek West Area Element, and specifically those policies pertaining to infill development and promotion of neighborhood-serving retail. The Rock Creek West area encompasses 13 square miles in the northwest quadrant of the Washington, DC, area contains some of the District's most highly sought after neighborhoods, public schools, and most important natural and cultural resources. It also contains some of the most vibrant retail areas. Regarding infill development, the Rock Creek West Area Element recognizes the opportunity for infill development within the areas designated for commercial land use on the FLUM.
156. The project is exactly the type of mixed-use development that is promoted by policy RCW-1.1.4: Infill Development, which recognizes the opportunity for infill development within areas designated for commercial land use on the FLUM. The project involves mixed-use, infill development on an underutilized site that is designated for low-density commercial uses on the FLUM and a designated Neighborhood Commercial Center on the GPM. Further, infill development is encouraged at heights and densities that are informed by, and relate to, the scale and character of the surroundings. The project has been carefully designed, and extensively refined, in response to community input, such that the proposed buildings successfully relate in scale to the nearby single family neighborhood to the north

and east. The proposed design of the buildings, together with the substantial separation provided by Yuma and 48th Streets (both 90 foot wide rights-of-way), successfully integrate the project into the surrounding context in a manner that protects the character of the neighborhood while also establishing an appropriate transition to the larger-scale AU Building and commercial center to the south (Policy RCW-1.1.1, RCW-1.1.4). Finally, the policies of the Rock Creek West Element promote the protection of neighborhood commercial centers and compatible new uses such neighborhood-serving retail as multi-family housing “to meet affordable housing needs, sustain neighborhood-serving retail and small businesses, and bring families back to the District.” The project is not inconsistent with these policies as it will provide a new neighborhood-serving full-service grocery store and approximately 219 new residential dwelling units, including numerous larger-sized units, that will help families move into the neighborhood, allow long-term residents to remain in the neighborhood, and help address the growing demand for affordable housing in an area of the city that has very few affordable dwelling units (Policy RCW-1.1.3, RCW-1.1.5)

Special exception criteria of Subtitle X, Chapter 9 (11-X DCMR § 604.6)

157. The Commission finds that the project will not tend to affect adversely the use of neighboring property, and meets the general special exception criteria of Subtitle X, Chapter 9.
158. The project is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. The stated purpose and intent of the existing MU-4 zone, which covers the entire Project Site, is to permit mixed-use development; provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and be located in low- to moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers (11-G DCMR § 400.3). The project is consistent with these purposes as it will provide a new mixed-use (residential / retail) development, including a full-service grocery store, in close proximity to the existing retail and service uses along Massachusetts Avenue, including those at the SVSC. Furthermore, the project is well within the maximum height and density that is permitted as a matter-of-right in the MU-4 zone, as measured in accordance with 11-C DCMR § 302.4, and the flexibility in building bulk control provided in the design review process under 11-X DCMR, Chapter 6.
159. The project will not adversely affect the use of neighboring property. The height and massing of Building 1 have been substantially reduced, with substantial setbacks, in order to relate to the surrounding context. The scale of Building 1 has been significantly reduced at the street-level through the use of pavilions, projecting bays, and large courtyards. In addition, the upper-levels of Building 1 have been set back considerably along the north and east sides such that the building massing is pulled as far away as possible from the adjacent residential uses.

160. The substantial efforts made to reduce the scale and massing of the project are evident in the shadow study prepared by the Applicant for the Revised Plans and Drawings. The shadow study shows that for more than eight months of the year the project may have minimal solar effect on the surroundings compared to existing conditions. In the late-winter months, the project could affect the residential uses to the north for a relatively short period during the morning hours. During the late-afternoon / early-evening hours (beginning between 3:00 – 4:00 pm), the project may affect the residential uses to the east. Furthermore, as testified and shown by the Applicant’s expert in architecture at the January 11, 2018, public hearing, a matter-of-right development built to a height of 50 feet at the property line along Yuma and 48th Streets would have greater shadow patterns than the proposed project.

Design Review Criteria (11-X DCMR § 604.7)

161. Pursuant to 11-X DCMR § 604.7, the Commission must review the project according to the criteria set forth in 11-X DCMR § 604.7(a) – (f), and, pursuant to 11-X DCMR § 604.8, must find that these criteria are met in a way that is superior to any matter-of-right development possible on the Project Site. Based on the following set of findings, the Commission finds overall that the project is superior to any matter-of-right development on the Project Site. As testified by Mr. Lansing at the public hearing on February 6, 2019, with any matter-of-right development the Applicant would either not be able to, be required to, or have to commit or obligate itself to providing the following:
- i. A design with the same high level of façade articulation and detailing, and the same extensive massing reductions and setbacks as is being proposed in order to respond to the surrounding context and reinforce the pedestrian realm;
 - ii. Sidewalks and the several other improvements along the alleys that service the Project Site in order to clean up and organize the alleys, improve vehicular circulation, and accommodate pedestrian circulation in a manner that is far safer than what currently exists;
 - iii. Publicly accessible open spaces such as Northwest Plaza and Windom Park
 - iv. High-quality façade materials that are applied on all sides of the building in order to respect and respond to the historic and architectural character of the SVSC and the surrounding neighborhood;
 - v. LEED Gold (v4) certification;
 - vi. Additional pedestrian improvements at intersections along 48th and Yuma Streets, and a HAWK signal along Massachusetts Avenue.

The Applicant has committed to providing all of the foregoing as part of the Application.

- b. Street frontages are designed to be safe, comfortable, and encourage pedestrian activity (11-X DCMR § 604.7(a)) – The project will increase pedestrian access and safety through the use of multiple pedestrian access points both to the proposed buildings and

through the Project Site. Multiple pedestrian entrances for both the residential and retail components of the project are proposed, and all access to parking and loading facilities will be located off of existing alleys rather than from public streets. As a result of the project the streetscape along 48th and Yuma Streets will be reconstructed, including the elimination of two very wide curb cuts, thus improving the quality of adjacent public space and significantly improving pedestrian safety. The reconstructed streetscape along 48th and Yuma Streets will provide wide, uninterrupted sidewalks that meet or exceed DDOT standards. Further, while alleys are not typically intended to serve pedestrians, based on feedback from the community the Applicant is proposing improvements along the alleys that service the Project Site that will accommodate any pedestrian circulation that may occur in the alleys.

- c. The design of the project will also contribute to safe and comfortable pedestrian activity. The facades of the proposed buildings on all sides have been thoughtfully designed to relate to the surrounding context in massing and articulation, architectural character, and through the use of high-quality materials. Further, the commercial frontage of the project is limited to only the northwest and southwest corners of Building 1, which minimizes visual impact on the surrounding neighborhood, and is designed to be clear, inviting, and complementary to the neighborhood. To reduce the visual presence of the grocery store, the entrance is set back approximately 17 feet from the sidewalk and is located approximately two feet lower than the adjacent sidewalk. Further, the façade of the grocery store entrance has been kept simple so that it blends in with the residential portion of the building, and signage has been kept to a minimum and will be designed according to a set of design guidelines that require high quality materials and limit the types of illumination that can be used.
- d. Public gathering spaces and open spaces are encouraged (11-X DCMR § 604.7(b)) – The area surrounding the Project Site is not known to be lacking in open space given the proximity to several federal and District public parks, public and private school recreation facilities, and other institutional campus open spaces. Nonetheless, the project will provide two new public gathering spaces that will add to the variety of open spaces that are available to the public. Specifically, the project includes Windom Park, a new publicly accessible open space along 48th Street that is framed by Building 1 and Townhouse 1. Windom Park will contain substantial plantings, seating, and other decorative site features. In addition, the project includes Northwest Plaza, open public plaza along Yuma Street that provides a forecourt to the proposed grocery store, and provides opportunities for outdoor seating and small gatherings. The design of Northwest Plaza provides a variety of social settings for people to interact through the use of both fixed and movable seating. The project also incorporates substantial improvements to the public spaces surrounding the Project Site.
- e. New development respects the historic character of Washington’s neighborhoods (11-X DCMR § 604.7(c)) - The project respects the historic character of the SVSC and the historic Spring Valley Village shopping center across Massachusetts Avenue, as well

as the character of the residential neighborhood to the north and east. The height and massing of Building 1 has been significantly restrained from what is permitted as a matter-of-right under the MU-4 zone, and has been set back from the adjacent residential uses along Yuma and 48th Streets at both the property line and on upper levels. Specifically, while Building 1 could be constructed as a matter-of-right to the north and east property line to a maximum height of 50 feet, the proposed design breaks down the initial mass of the building through the use of lower-height pavilions, recessed facades that are separated by large open courtyards, and upper-level setbacks. The western portion of Building 1 along Yuma Street, where the grade elevation is lowest, has been set back approximately 17 feet from the property line to further reduce its massing. In addition, the fourth floor have been set back an additional 14 feet (31 feet total from the property line), and the penthouse footprint has been reduced such that it substantially exceeds the required 1:1 setback. Along 48th Street, the massing of the project is broken down through the use of large landscape courtyards within Building 1, Windom Park, and five lower-scale townhomes.

- f. The architectural styles of the project also respect the historic character of the surrounding neighborhood and the historic SVSC. The surrounding neighborhood predominately reflects colonial and colonial revival styles of architecture, and is characterized by rectangular massing; symmetrical compositions; and the use of brick, multi-paned windows, and bays and dormers. Each of these elements have successfully been incorporated into the design of the proposed buildings.
- g. Buildings strive for attractive and inspired façade design (11-X DCMR § 604.7(d)) - Buildings 1 and the Townhomes will have a high-quality, attractive design that takes cues from the surrounding context while establishing its own identity. The facades of the proposed buildings incorporate architectural elements that are commonly found throughout the surroundings. These elements include, among others, symmetrical façade design, multi-paned windows, and bay projections. The project will be constructed using a range of high-quality materials that are also common in the surrounding context. These materials include cast stone, brick, cementitious panel, metal awnings, and decorative railings. In addition, the three-part composition and multiple entrances and courtyards of Building 1, the individual entrances of the Townhomes, and the substantial improvements to the public space will greatly improve the aesthetic quality and pedestrian comfort of the public realm.
- h. Sites are designed with sustainable landscaping (11-X DCMR §604.7(e)) – The project includes several landscaped courtyards, Windom Park, and green roof areas that will provide sustainable storm water management, new habitat, and urban heat island reduction. The project will replace the vacant grocery store building and vast surface parking lot that currently exist on Lot 807, both of which are completely impervious and lack any form of sustainable storm water management, with an environmentally sustainable development that includes landscaped areas with a soil depth of 24-inches or more, several new shade trees, and both intensive and extensive green roof systems.

This substantial amount of sustainable landscaping on Lot 807 will greatly contribute to the Applicant's ability to achieve a LEED Gold (v4) certification for the proposed buildings.

- i. Sites are developed to promote connectivity both internally and with surrounding neighborhoods (11-X DCMR § 604.7(f)) – As a result of the project, pedestrian circulation through and around the Project Site will be vastly improved. The substantial improvements to the streetscape surrounding Lot 807, including the elimination of two large curb cuts, and along the alleys that service the Project Site will improve connectivity and pedestrian safety. The proposed HAWK signal will also provide additional pedestrian connectivity between the Project Site and the other retail and service uses located along Massachusetts Avenue. The project will also incorporate several transit and bicycle facilities that will further promote connectivity with surrounding neighborhood, and that would not be required under a matter-of-right development. These include the provision of Capital Bikeshare and car sharing incentives to new residents, and the installation of transit information display panels in residential lobbies
- j. As a matter-of-right, the Applicant could construct an all-residential project on the Valor Lot that could be taller at the property lines along 48th and Yuma Streets than the proposed project. However, as testified by Mr. Lansing at the public hearing on February 6, 2018, the Applicant would be unable to provide a new full-service grocery store within a matter-of-right project due to a lack nonresidential GFA available to Lot 807 resulting from the Allocation Agreement and changes to the zoning regulations that occurred after the Allocation Agreement was established. The existing grocery store building on Lot 807 had been in use for decades but has been vacant since ####. According to the Applicant, through extensive consultation with the community, including ANC 3E and 3D, at the outset of the project, the Applicant learned there is great interest in having a grocery store use that can serve the needs of the neighborhood be part of the project. Because this would not be possible without the voluntary design review process, the Commission finds the proposed grocery store use as contributing to making the project superior to any matter-of-right development.

Zoning Flexibility and Relief

162. Pursuant to 11-X DCMR § 603.1, as part of the design review process the Commission may grant flexibility from the development standards for height, setbacks, lot occupancy, courts, and building transitions; as well as any specific design standards of a specific zone. Except for height, the amount of relief granted is at the discretion of the Commission, provided the relief is required to enable an applicant to meet all of the design review standards. The only flexibility being requested by the Applicant is from the rear yard requirement for Building 1 to allow a ten foot rear yard where a minimum 15 feet is require.
163. The extent of the requested five feet of rear yard flexibility is limited to two small portions of the west façade of Building 1. Specifically, for the first 20-feet of building height the

15-foot required rear yard will be provided, and in fact exceeded, since the rear yard can be measured from the centerline of the north-south public alley. Above 20 feet, where the rear yard must be measured from the rear property line, the rear yard flexibility is only necessary along a small portion of the northwest and southwest corners of the building.

164. The need for rear yard flexibility is necessary due to the 10 foot setback along the public alley provided to accommodate the proposed trash enclosures and pedestrian sidewalk while maintaining 20 feet for vehicular circulation, as well as the numerous other setbacks provided along Yuma Street in response to the residential uses to the north.
165. The Commission finds the request for rear yard flexibility for Building 1 to be appropriate, and necessary to enable the Applicant to meet all of the standards of 11-X DCMR § 604. As testified by Ms. Alexander at the January 11, 2018, public hearing, without the requested rear yard flexibility the massing of Building 1 would either be pushed closer to Yuma or 48th Streets, thus reducing the plazas and courtyards that are proposed in part to reduce the massing and scale of the project in relation to the surrounding context, and specifically impacting the Applicant's ability to meet the standards of 11-X DCMR § 604. Further, the Commission finds the extent of the rear yard flexibility to be *de minimus*, and far outweighed by the positive improvements that result from granting the requested flexibility, and by the superior design and program of the project.
166. As shown in the Revised Plans and Drawings, the Applicant is proposing a 10-foot penthouse on the roof of Townhomes 1 – 4 that will provide access to a roof deck and include storage that is ancillary to the roof deck.
167. Pursuant to 11-C DCMR § 1500.4, a penthouse, other than screening for mechanical equipment or a guard-rail required by the D.C. Construction Code for a roof deck, is not permitted on the roof of detached dwelling, semi-detached dwelling, rowhouse or flat in any zone. However, the Board of Zoning Adjustment (“BZA”) may approve a penthouse as a special exception under Subtitle X, Chapter 9, subject to conditions.
168. Pursuant to 11-X DCMR § 603.3, the Commission can hear requests for relief from other development standards not listed under 11-X DCMR § 603.1, and that would otherwise require approval from the Board of Zoning Adjustment (“BZA”), simultaneously with a design review application. Such requests are subject to all applicable special exception criteria and variance standards.
169. The Commission finds that the proposed penthouses will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. Given their modest size and setbacks, and the orientation of the roof decks toward the rear of the townhomes, the proposed penthouses will not negatively impact the general welfare of the surrounding community. The penthouses will also not have an undue impact light and air; result in undue concentration of population and overcrowding of land; or create conditions that are unfavorable to transportation.

170. The properties/buildings that are immediately adjacent to the proposed penthouses include Building 1 and the AU Building, both of which will not be adversely affected by the modest-sized penthouses. As shown in the Revised Plans and Drawings, the closest existing residential uses are located over 110 feet away from the proposed penthouses. Given this substantial distance, the Commission finds the proposed penthouses will not adversely affect the use neighboring properties in accordance with the Zoning Regulations and Zoning Maps.
171. The Commission finds that the Applicant has met the criteria necessary for the special exception relief required for the penthouses proposed on Townhomes 1 – 4. As such, the Commission grants the requested special exception provided each of the proposed penthouses on Townhomes 1 – 4 is: (i) no more than 10 feet in height and contains no more than one story; and (ii) contains only stair or elevator access to the roof and a maximum of 30 square feet of storage space ancillary to a roof deck.

Minor Design Flexibility

172. As part of its prehearing submission, the Applicant requested minor flexibility for specific components of the project (Ex. 114)
173. In response to comments from OP regarding the flexibility relating to the number of residential dwelling units and vehicle parking spaces, the Applicant modified the language of these two areas of requested flexibility (Ex. 152). As part of its posthearing submission, the Applicant further refined its request for minor design flexibility as it relates to the project's LEED rating and retail signage (Ex. 211). Finally, in response to further refinements to the language of the requested flexibility recommended by OP, and comments from OP and the Commission regarding the location of IZ units within the project, the Applicant is requesting the following areas of minor design flexibility for the project:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and elevators, provided that the variations do not change the exterior configuration of the building; and
 - b. To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, venting, window mullions and spacing, and any other changes that otherwise do not substantially alter the exterior design to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit. Such refinements shall not substantially change the exterior configuration, appearance, proportions, or general design intent of the building; and

- c. To vary the final color of exterior building materials based on availability at the time of construction, provided such colors are within the color ranges shown in the Approved Plans. Any such variations shall not reduce the overall quality of materials, nor substantially change the exterior appearance, proportions, or general design intent of the building; and
- d. To vary the final selection of landscaping materials utilized based on availability at the time of construction; and
- e. To vary the number, size, extent, and type of sustainable design elements provided all applicable Green Area Ratio (“GAR”) and District storm water requirements are fully met, and the project achieves a LEED Gold (v4) certification with no less than 60 points; and
- f. To increase the final number of residential units on Lot 807 by no more than 10% above the total number shown in the Approved Plans to respond to program demand, or to decrease the final number of residential units within the approved residential gross floor area to accommodate demand for larger units, provided that the number of parking spaces that are solely devoted to the residential uses on Lot 807 is equal to the greater of the minimum required under the Zoning Regulations or 75 parking spaces; and
- g. To vary the number and location of affordable dwelling units provided the amount of affordable gross floor area contained within the project is, at minimum, equal to the amount shown in the Approved Plans, and further provided that:
 - i. No affordable dwelling unit shall be located within a cellar; and
 - ii. No more than two affordable dwelling units shall be located directly above and below each other on any immediately successive floor; and
- h. To vary the amount of floor area devoted to retail uses within the project provided the amount of floor area devoted to a full-service grocery store is, at minimum, equal to 13,000 square feet for the period of time prescribed under Condition 4 of this order; and
- i. To vary the types of uses designated as “retail” use in the Approved Plans to include the following use categories, provided the amount of floor area devoted to a full-service grocery store is, at minimum, equal to 13,000 square feet for the period of time prescribed under Condition 4 of this order: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j));

- j. To vary the garage layout and the number, location, and arrangement of vehicle and bicycle parking spaces provided the numbers of vehicle spaces that are solely devoted to residential and retail uses on Lot 807 are not reduced below 75 and 59 spaces, respectively. Any increase in the number of vehicle spaces solely devoted to residential or retail use on Lot 807 that exceeds two times the minimum required under the Zoning Regulations for that particular use shall require the Applicant to comply with the excess parking requirements of Subtitle C, Section 707. Further, the number of bicycle parking spaces solely devoted to residential and retail uses on Lot 807 shall meet or exceed the minimum bicycle parking requirements of Subtitle C, Section 802 at all times.
 - k. To vary the final design of retail frontages, including the design of entrances, show windows, and signage, in accordance with the needs of retail tenants. Such refinements shall not substantially change the exterior configuration, appearance, proportions, or general design intent of the building, and all signage shall be designed and located in accordance with the Signage Plan and Guidelines contained in the Approved Plans.
174. The Commission finds the range of minor design flexibility requested by the Applicant to be appropriate and consistent with what is commonly granted by the Commission to address unanticipated issues that may arise during permitting and construction of a project.

Contested Issues

Aggregation of Density

175. In its January 4, 2018, submission, CRD states that there are no provisions in Chapter 6 of Subtitle X that allow for the transfer of development rights or combined lots. CRD states that the only allowance for combined lots to allow for flexibility in distribution of residential/non-residential FAR applies only to MU-10 zones. In addition, CRD states that credit trade areas (formerly TDR or CLD zones under the 1958 Zoning Regulations) only exist under the 2016 Zoning Regulations in the downtown zones.
176. At the January 11, 2018, public hearing, the Commission requested the Applicant to submit a one-page report summarizing the Commission's authority to aggregate density across a project site as part of the design review process. The Commission also afforded an opportunity to the parties in the case to submit their own report on the same question.
177. On January 31, 2018, CRD submitted its one-page transfer of density summary ("CRD Density Summary") (Ex. 208). The CRD Density Summary provides background on the zoning history of the Record Lot 9, and specifically information regarding the allocation of density that occurred in the early 1970s within Record Lot 9 between Lots 806 and 807 to facilitate the construction of the AU Building. The CRD Density Summary also includes a set of calculations showing the amount of density that currently remains on Record Lot

9 and available to Lot 807 (184,514 GFA). Based on these calculations, CRD states that “the Application calls for an increase in density, which is not permitted under sections § 600.1(c) and (e) and sections 600.5 of the Design Review Regulations.”

178. As part of its posthearing submission filed on February 12, 2018, the Applicant submitted its report summarizing the Commission’s authority to aggregate density as part of the design review process (“Applicant Density Summary”)(Ex. 211C). As part of its submission of the Revised Plans and Drawings, the Applicant submitted an updated summary that reflects the current building program (“Applicant Updated Density Summary”)(Ex. 240D). In its updated summary, the Applicant states that the Commission has the authority to aggregate density in a design review application pursuant to 11-X DCMR § 600.1(e) which provides “flexibility in building bulk control, design, and site placement without an increase in density or a map amendment .” Further, the Applicant states that pursuant to 11-X DCMR § 601.4, density can be aggregated across the public alley separating the SVSC from Record Lot 9 since the property in a design review application “may be separated...by a public street, alley or right of way.” This is essentially the same language as found in 11-X DCMR § 301.5 which for many years the Commission has used to allow aggregation of density across streets and alleys. The Commission finds the same language in the same Subtitle must be read to have the same meaning.
179. At the February 6, 2019, public hearing, Mr. Dettman testified that the flexibility in “building bulk control” that is afforded through the design review process includes flexibility in how density (FAR) is calculated and distributed across a site. As just one example contained in the zoning regulations, Mr. Dettman cited to Subtitle G, the subtitle governing properties in mixed-use (MU) zones such as the Project Site, to demonstrate that “building bulk” is inclusive of density. Specifically, Mr. Dettman cited to 11-G DCMR § 101.2 which states “[t]he development standards are intended to: (a) Control the bulk or volume of structures, including height, floor area ratio (FAR), and lot occupancy;” (emphasis added);
180. The Applicant Updated Density Summary states that the Commission can approve aggregation of density under its broad Zoning Act authority (See 11-Z DCMR § 100), which has been upheld by the D.C. Court of Appeals. *See Zoning Commission Order No. 101; Dupont Circle Citizens Association v. Zoning Commission*, 355 A.2d 550, 556-57 (DC 1976). Citing the Commission’s “broad general authority” under the Zoning Act, the Court upheld the Commission’s approval of a PUD which included a transfer of density from the site of a historic landmark, the Heurich Mansion, to an adjacent development site. the Court found that “there is no impediment to permitting payment for the transfer of such rights from one building owner to another within the same project when agreed to by the parties”.
181. Similar to the CRD Density Summary, the Applicant Updated Density Summary also includes calculations showing the amount of density that currently remains on Record Lot 9 and available to Lot 807 as a matter-of-right, which is the same amount stated in the CRD

Density Transfer. However, the Applicant Updated Density Summary also includes calculations that demonstrate how the distribution of density across the Project Site is effectuated through the flexibility in building bulk control that is permitted under the voluntary design review process, and that through this flexibility the overall project is consistent with the overall permitted density, and the maximum permitted nonresidential density in the MU-4 zone.

182. As stated above, OP submitted a supplemental report addressing aggregation of density relative to the voluntary design review process. According to the OP Supplemental Report, during the development of ZR16 a voluntary design review case was initially considered by the Commission as a “Type I PUD” with no density increase or map amendment, and that nowhere in the case record for Z.C. 08-06-12 or 08-06A is there any suggestion that FAR aggregation would be limited to one “type” of PUD. As such, OP states that “it is appropriate to conclude that FAR aggregation would be permitted in all types of PUDs.
183. Based on the information submitted to the record on this issue, the Commission finds that the flexibility in building bulk control afforded through the design review process includes flexibility in density (FAR), and that the Commission has the authority to grant said flexibility and permit aggregation of density under its broad Zoning Act authority. As discussed in the OP Supplemental Report, and as testified by Mr. Dettman, during the development of ZR16 the voluntary design review process was originally referred to as a “Type I PUD,” where no additional density would be permitted but the flexibility allowed under a PUD would be available. As the ZR16 process evolved, the Commission decided against having multiple types of PUDs, and instead moved the “Type I PUD” to a separate design review chapter within Subtitle X. Notwithstanding this organizational change to the zoning regulations, the Commission’s intent to allow aggregation of density through the design review process, and specifically through the flexibility in building bulk control permitted under 11-X DCMR §§ 600.1(e) and 603.1, continues to be available to the Applicant.
184. The primary basis of CRD’s argument on this issue is that the Applicant’s proposal is contrary to the express language of § 600.1(e) of the design review regulations stating that “[t]he purpose of the design review process is to: ... (e) provide for flexibility in building bulk control, design, and site placement without an increase in density or a map amendment.” (emphasis added). The CRD Second Supplemental Statement states “it is uncontested that the matter-of-right density allowed on the SuperFresh site (Lot 807) is 184,514 GFA. According to the Applicant, the GFA of the Project is 234,629. It is obvious and undeniable that a density increase is being proposed. This is not permissible under the Design Review Regulations.” (Ex. 247).
185. The Commission disagrees with CRD that the project involves an increase in density. While CRD’s argument is based upon a comparison between the project’s proposed GFA and the remaining amount of GFA that is available on Record Lot 9 as a matter-of-right, as Mr. Dettman testified, this is not a matter-of-right project. Rather, the project is a

voluntary design review project that is subject to discretionary review and approval by the Commission. Indeed, if this was a matter-of-right project, the Commission would not be reviewing the Application and the Applicant would be unable to aggregate density from the SVSC to Lot 807. The project, as proposed, is only possible through the voluntary design review process. The project does not involve an increase in density because the project density is rightfully calculated in accordance with the flexibility in building bulk control afforded by the design review process and the guidance provided in the OP Supplemental Report (Ex. 215). Specifically, the OP Supplemental Report states that “[w]hen reviewing this application, OP confirmed with the Office of Attorney General and the Office of the Zoning Administrator that the following procedure was consistent with the intent for processing a design review application:

- a. A “lot” used for the boundaries of a Planned Unit Development (PUD) or Design Review may be a tax lot or a record lot (hereinafter called the “Project-lot”);
- b. The zoning calculations for a PUD or Design Review application must be determined using the Project-lot.
- c. If an applicant uses a tax lot as the Project-lot, a request for multiple buildings on a single lot must be included if the following circumstances exist:
 - i. the application is to be zoned Residential;
 - ii. the record lot is zoned Residential; and
 - iii. there are existing buildings on the record lot, but outside the boundaries of the tax lot.
- d. An application for a PUD or Design Review cannot result in creating a non-conformity for a building or property outside the Project-lot (even if the non-conformity is within the record lot) unless relief from the non-conformity is obtained.
- e. If the full record lot is used as the Project-lot, then all the owners within the Project-lot must authorize the project.”

As testified by Mr. Dettman, the project is consistent with this guidance. The Project Site, or “Project-lot,” for the Application consists of Record Lot 9 (which contains Assessment and Taxation Lots 806 and 807) and Assessment and Taxation Lots 802 and 803 (SVSC). As shown in the tabulation of development data included in the Revised Plans and Drawings, the zoning calculations for the Application are based upon the Project-lot. The Applicant does not need to request multiple buildings on a single lot since the Project-lot is not zoned residential, but rather is zoned MU-4. Further, the Application will not create a non-conformity for a building or property outside of the Project-lot since, as a result of the Applicant revising the Project Site to include Lot 807 (AU Building), the lots that are

involved in the Application are fully contained within the Project-lot. Finally, all of the current owners of the lots within the Project-lot have authorized the Applicant to submit the Application.

Inclusionary Zoning

186. In her testimony on January 25, 2018, Ms. Simon asserted that the amount of affordable housing proposed by the Applicant did not meet the minimum amount required under the Inclusionary Zoning (“IZ”) regulations of Subtitle C, Chapter 10 of ZR16. The primary basis of Ms. Simon’s argument is that per §§ 1003.1 and 1003.2 of the IZ regulations, the Applicant’s bonus density set aside calculations must be based upon “achievable bonus density,” which she asserts is the full 20% of bonus density permitted under the IZ regulations regardless of the actual amount of IZ bonus density used by the Applicant. According to her submission at Ex. 166, Ms. Simon states “[t]he ‘achievable bonus density’ is the ‘amount of the permitted bonus density that potentially may be utilized within a particular inclusionary residential development.’ Thus, based on Valor’s own submission, the ‘achievable bonus density’ for this project is 80,394 SF.” The 80,394 square feet stated in Ms. Simon’s submission is equal to 0.5 FAR, which is 20% of the matter-of-right density of 2.5 FAR permitted in the MU-4 zone.
187. In her testimony on January 24, 2019, Ms. Simon reiterated her assertion that under the current IZ regulations the Applicant’s bonus density set aside calculations must be based upon the full 20% of bonus density permitted under the IZ regulations regardless of whether the Applicant uses the full amount of bonus density. Ms. Simon further states that § 1003.9 of the IZ regulations requires any area that is devoted to residential dwelling units located in a cellar or in enclosed projections must be included in the Applicant’s IZ set aside calculations, including the bonus density set aside calculation even though these areas are not, by definition, included in GFA.
188. The Commission is not persuaded by Ms. Simon’s testimony on this issue, and finds the IZ set aside calculations included in the Applicant’s Revised Plans and Drawings to be consistent with the current IZ regulations, and consistent with the Commission’s understanding with how the current IZ regulations are being applied by the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”). Furthermore, as stated by the OP at the January 7, 2019, public hearing, the issue of IZ compliance is not one that is before the Commission as part of this case. Section 603.1 of the design review regulations specifically state that “[t]he design review process shall not be used to vary other building development standards including FAR, Inclusionary Zoning, or green area ratio” (emphasis added), nor has the Applicant requested flexibility from IZ. Irrespective of whether the IZ calculations included in the Revised Plans and Drawings are accurate, the determination of whether the project complies with IZ will be made by DCRA at the time of permit. If at the time of permit it is deemed that the project does not meet the IZ regulations then the Applicant would need to make the adjustments necessary to come into compliance, which may or may not require further review by the Commission. However,

for clarity of the record the Commission will address the arguments raised by Ms. Simon.

189. The Commission disagrees that the current IZ regulations require the Applicant's bonus density set aside calculations must be based upon the full 20% of bonus density permitted regardless of whether the Applicant uses the full amount of bonus density. This is not how the IZ regulations have ever been intended to be interpreted or applied, and in fact the Commission is in the process of amending the IZ regulations in Z.C. Case No. 04-33I in order to clarify this issue, a case in which Ms. Simon has made similar arguments to which the Commission also disagreed. Under the language of the current IZ regulations, as well as the amended IZ regulations proposed in Z.C. Case No. 04-33I, the Applicant's bonus density set aside calculations are required to be based upon the amount of bonus density utilized in the project. As such, the Commission finds the Applicant's bonus density set aside calculations to be correctly based upon 0.18 FAR. This is the amount of IZ bonus density that is being utilized in the project as proposed in the Revised Plans and Drawings and, as stated by Mr. Dettman on February 6, 2019, this is the amount of bonus density that is achievable for the Applicant given the constraints of the Project Site.
190. The Commission also disagrees with Ms. Simon's argument that § 1003.9 of the IZ regulations requires any area that is devoted to residential dwelling units located in a cellar or in enclosed projections must be included in the Applicant's IZ bonus density set aside calculation even though these areas are not, by definition, included in GFA. As stated by Mr. Dettman on February 6, 2019, the term "bonus density" is already under § 1002.3 of the IZ regulations and, contrary to Ms. Simon's interpretation, that definition is not modified by §1003.9 in any way. Under § 1002.3, "[i]nclusionary developments, except those located in the SEFC, StE, and HE zones, may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right (bonus density), subject to all other zoning requirements (as may be modified by the zone) and the limitations established by the Height Act." (emphasis added). As such, under the IZ regulations "bonus density" is the "up to" 20% more GFA that is available above what is permitted as a matter of right.
191. Under § 1003.9 of the IZ regulations, "[a]n inclusionary development's entire residential floor area including dwelling units located in cellar space or enclosed building projections that extend into public space, shall be included for purposes of calculating the minimum set-aside requirements of Subtitle C §§ 1003.1 and 1003.2. The Commission agrees with the testimony of Mr. Dettman that the language of § 1003.9 does not redefine "bonus density," which is defined in § 1002.3, but rather § 1003.6 merely says that if you have residential floor area devoted to dwelling units in cellar space or in enclosed projections, that space also gets included in your set aside calculations that get carried out pursuant to §§ 1003.1 and 1003.2. As demonstrated by Mr. Dettman, the Applicant's IZ calculations correctly include all of the area within the project that is located in cellar area and enclosed projections and proposed to be devoted to residential dwelling units. Since by definition these areas are not included in GFA, they are not included in the Applicant's bonus density set aside calculations. Rather, these areas are added after the bonus density set aside amount is calculated at the appropriate percentage, which in this case is 10%.

Building Height Measurement

192. CRD argues that the Zoning Regulations do not permit the Applicant to take its maximum height measurement from 48th Street on the basis that it violates the 1910 Height of Buildings Act (Height Act”), that the front of the building site is on Yuma Street, and that the proposed measuring point is an artificial embankment that cannot be used to measure building height under the Zoning Regulations.
193. Regarding the measurement of building height under the Height Act, Mr. Dettman, the Applicant’s expert in land use planning and zoning, testified in rebuttal that the project’s building height is being measured in accordance with the Height Act. Specifically, Mr. Dettman stated that under Section 5 of the Height Act, the maximum building height permitted under the Height Act is equal 110 feet, which is derived by adding 20 feet to the width of either 48th Street or Yuma Street – both of which as 90-foot rights-of-way. As such, since the proposed height of the Buildings 1 is well below 110 feet, the proposed height of Building 1 complies with the Height Act.
194. Regarding the location of the building height measuring point (“BHMP”), Mr. Dettman also testified that the proposed BHMP is also in compliance with the Height Act, as well as the Zoning Regulations. Mr. Dettman stated that under Section 7 of the Height Act building height must be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof, and that where a building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit the greater height. Mr. Dettman stated that since Building 1 has more than one front, the Height Act states that the building shall be measured from the elevation of the front that will permit the greater height, which in this case is 48th Street.
195. Regarding the location of BHMP under the Zoning Regulations, Mr. Dettman testified that pursuant to Subtitle B § 307 (Rules of Measurement for Building Height: Non-Residential Zones), for a building that fronts on more than one street, the Zoning Regulations state that any front may be used to determine the maximum height of the building, but the basis for the height of the building shall be determined by the width of the street selected as the front of the building. As such, the Applicant may choose 48th Street to be the front of Building 1; and therefore, under the Zoning Regulations the BHMP for Building 1 shall be located along 48th Street.
196. Regarding the elevation of the proposed measuring point along 48th Street, CRD claims that the level of curb along 48th Street was artificially elevated at a point in time to accommodate the establishment of 48th Street. As such, CRD states that the Applicant is prevented from using 48th Street to measure building height. Rather, due to the alleged artificial elevation of 48th Street, the Applicant must measure building height in accordance with Subtitle B §307.7, which specifically addresses measurement of building height when

the curb grade has been artificially changed by a bridge, viaduct, embankment, ramp, abutment, excavation, tunnel, or other type of artificial elevation or depression.

197. Mr. Glatfelter, the Applicant's witness in civil engineering, presented testimony stating that based upon an analysis of United States Geological Survey topographic maps the elevation of the proposed BHMP along 48th Street has generally existed at its current elevation since the early 1900s. Based on his analysis of historical topographic data, Mr. Glatfelter stated that in his expert opinion the retaining wall on Lot 807 retains in situ soil; and therefore, the elevation has not been artificially changed along 48th Street.
198. The Commission is not persuaded by the arguments presented by CRD regarding the Applicant's ability to use 48th Street as the BHMP for Building 1. The Commission credits the testimony of Mr. Dettman regarding the meaning of the language in Subtitle B § 307.7 stating "[w]hen a curb grade has been artificially changed..." as pertaining to when the elevation of a curb at grade has been artificially changed, not whether the elevation of a curb at grade is at the same elevation as the grade prior to the curb's existence. The Commission credits the analysis of Mr. Glatfelter as demonstrating that the curb grade of 48th Street has generally existed at its current elevation since 48th Street was constructed in the 1940s, if not earlier. Based upon the analysis conducted by Mr. Glatfelter, the Commission finds that the retaining wall that was constructed in connection with the existing surface parking lot on Lot 807 is not an embankment that artificially elevated the curb grade along 48th Street. Rather, the retaining wall is likely holding the curb grade along 48th Street at the same general elevation that existed prior to the retaining wall. CRD did not present any evidence or testimony demonstrating that the testimony and analysis provided by Mr. Dettman and Mr. Glatfelter was inaccurate or incomplete. As such, the Commission finds that based upon the expert testimony provided by Mr. Dettman and Mr. Glatfelter, the manner in which the height of Building 1 is measured is in full compliance with the Height Act and the rules of measurement for building height in non-residential zones under Subtitle B § 307 of ZR16.

CONCLUSIONS OF LAW

1. The application was submitted pursuant to 11-X DCMR § 601.2 for voluntary design review and approval by the Commission. The Commission concludes that the Applicant has met its burden of proof.
2. The Commission provided proper and timely notice of the public hearing on the Application by publication in the D.C. Register and by mail to the Affected ANC, OP, and owners of property within 200 feet of the Project Site.
3. Pursuant to 11-X DCMR § 604.5, and in reliance upon Findings of Fact ### - ###, the Commission concludes that the project is not inconsistent with the Comprehensive Plan.
4. Pursuant to 11-X DCMR § 604.6, and in reliance upon Findings of Fact ### - ###, the

Commission concludes that the project will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of Subtitle X, Chapter 9.

5. Pursuant to 11-X DCMR § 604.8, and in reliance upon Findings of Fact ### - ###, the Commission concludes that the urban design of the site and buildings within the proposed project meet the criteria of 11-X DCMR § 604.7 in a way that is superior to any matter-of-right development that would be possible on the Project Site.
6. The Commission concludes that the Applicant's request for rear yard flexibility for Building 1 is appropriate, and required to enable the Applicant to meet all of the standards of Subtitle X § 604. As such, the Commission grants the requested rear yard flexibility.
7. The Commission concludes that the Applicant's request for special exception relief to allow a penthouse on Townhomes 1 – 4, satisfies the general special exception criteria of Subtitle Y, Chapter 9, and the specific criteria of Subtitle C § 1500.4(a) and (b). As such, pursuant to its authority under Subtitle X § 603.3, the Commission grants the requested special exception relief.
8. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1- 309.10(d)) to give great weight to the issues and concerns raised in the written report of the Affected ANC. The Affected ANC in this case includes ANC 3E and ANC 3D. The Commission carefully considered both ANC 3E and 3D recommendations for approval and concurs with these recommendations.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the reports submitted by OP and, as explained in this decision, finds the recommendation provided by OP in support of the Application to be persuasive.
10. Based upon the record before the Commission, including witness testimony, submissions from parties in support and opposition, the reports submitted by OP, DDOT, ANC 3E, ANC 3D, and the Applicant's submissions, the Commission concludes that the Applicant has met the burden of satisfying the applicable design review standards under 11-X DCMR §§ 604 of ZR16.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application consistent with this Order. Unless otherwise stated, the term "Applicant" shall mean the person or entity holding title to Lot 807 in Square 1499. If there is more than one owner, the obligations under the order shall be joint

and several. If a person or entity no longer holds title to Lot 807 in Square 1499, that person or entity shall have no further obligations under this Order; however, that person or entity shall remain liable for any violation of any condition of this Order that occurred while that person or entity was an owner. This approval is subject to the following guidelines, standards, and conditions:

1. The Commission's approval shall apply to all properties contained within the Project Site, currently Lots 802, 803, 806, and 807 in Square 1499, and shall continue to apply regardless of any subdivision, division of lots, or transfer of ownership.
2. The project shall be constructed in accordance with the architectural plans and drawings at Ex. 240A1 – 240A12 of the case record, dated October 16, 2018, as modified by the guidelines, conditions, and standards below.
3. The Project shall achieve LEED Gold (v4) certification, in accordance with the following:
 - *Prior to issuance of a building permit for the project*, the Applicant shall demonstrate to the Zoning Administrator that it has registered the project with the USGBC to commence the LEED certification process under the USGBC's LEED v. 4 rating system.
 - *Prior to the issuance of a Certificate of Occupancy for the Buildings 1*, the Applicant shall furnish a copy of its LEED certification application submitted to the USGBC to the Zoning Administrator. The application shall indicate that the project has been designed to include at least the minimum number of points necessary to achieve LEED Gold certification under the USGBC's LEED v. 4 standards.
 - The Applicant shall complete the USGBC's process for certifying the project at the LEED Gold level, and maintain the project as such.
4. *Prior to the issuance of a Certificate of Occupancy for Building 1*, the Applicant shall demonstrate to the Zoning Administrator that it has entered into a binding agreement with the owner of Lot 806 in Square 1499, that ensures, at minimum, 144 of the 236 parking spaces required under the Allocation Agreement, as defined herein, will be made available for exclusive access by the users of Lot 807 for a period of at least 20 years.
5. *Beginning on the date a certificate of occupancy is issued for Building 1*, the Applicant shall devote a minimum of 13,000 square feet of gross floor area of retail space to be used solely by a "Full-Service Grocer," as defined by the District of Columbia Alcoholic Beverage Regulation Administration (ABRA), for a period of at least ten (10) years.
6. The Applicant shall run any kitchen exhaust venting from any grocery store or eating and drinking establishments within Building 1 to the roof of Building 1.
7. *For the life of project*, the Applicant shall implement the following TDM measures for Building 1:
 - a. Exceed zoning requirements to provide bicycle parking/storage facilities at the

proposed development. This includes secure parking located on-site and short-term bicycle parking around the perimeter of the site;

- b. Unbundle the cost of residential parking from the cost of lease or purchase of each residential dwelling unit. The unbundled cost of parking will be based upon, at minimum, the average market rate within a quarter mile of the Project Site;
 - c. Identify TDM Leaders (for planning, construction, and operations). The TDM Leaders will work with residents and employees to distribute and market various transportation alternatives and options;
 - d. Provide TDM materials to new residents in the Residential Welcome Package materials;
 - e. Provide residents and grocery/retail employees that wish to carpool with detailed carpooling information and references to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG);
 - f. Install a Transportation Information Center Display (electronic screen) within the main residential lobby containing information related to local transportation alternatives;
 - g. Offer either a one-year membership to Capital Bikeshare or a one-year membership to a car-sharing service to each residential unit for the initial lease up of each unit;
 - h. Provide a bicycle repair station within each long-term bicycle storage room;
 - i. Dedicate four (4) parking spaces in the below-grade parking garage for car-sharing services to use with right of first refusal. If an agreement has not been reached with a car sharing service to occupy the four (4) dedicated car sharing spaces in the garage then the Applicant will provide an additional year of Capital Bikeshare memberships to new residents;
 - j. Restrict residents of the building from obtaining a Residential Parking Permit (“RPP”), with penalty of lease termination;
 - k. Prohibit free parking to any resident, employee, student, or otherwise. Only daily, weekly, and monthly rates shall be made available for purchase;
 - l. Provide one (1) shopping cart for every 30 residential dwelling units.
8. The Applicant shall fund and construct the following additional transportation mitigations, subject to DDOT approval:
- a. A new HAWK (High-Intensity Activated Crosswalk) signal on Massachusetts Avenue between 48th Street and 49th Street;
 - b. Upgrades to substandard curb ramps, missing crosswalk striping, and installation of curb extensions:

- 49th Street and Yuma Street NW;

- 48th Street and Yuma Street NW;
 - 48th Street and Windom Place NW;
 - 48th Street and Warren Street NW;
- c. Upgrades to intersection of east-west and north-south public alleys to include visibility mirrors, textured/differentiated pavement, crosswalk striping, and signage;
- d. Upgrades to intersection of north-south public alley and Massachusetts Avenue to include stop signs and/or other signage.
9. *For the life of project*, the Applicant shall implement the following Loading Management Plan for Building 1:
- a. A loading dock manager shall be designated by the building management. The loading dock manager shall coordinate with vendors and tenants to schedule deliveries and will be on duty during delivery hours;
 - b. The loading dock manager(s) shall schedule deliveries such that the loading dock capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while all loading facilities are occupied, the delivery driver shall be directed to return at a later time when a loading berth or delivery space is available so as not to impede the drive aisle passing in front of the loading dock;
 - c. The loading dock manager shall monitor inbound and outbound truck maneuvers and ensure that trucks accessing the loading dock do not block vehicular traffic except during those times when a truck is actively entering or exiting the alley;
 - d. The loading dock manager shall monitor the alley to keep the designated loading facilities clear for deliveries, keep the alley from being blocked due to vehicle loading/unloading activity, and enforce any applicable no parking restrictions;
 - e. All tenants shall be required to schedule deliveries that utilize the loading docks – defined here as any loading operation conducted using a truck 20 feet in length or larger;
 - f. Commercial deliveries shall be scheduled between 7 AM – 7 PM (7 days a week), and be discouraged after 4 PM on weekdays;
 - g. Waste collection (both commercial & residential) shall take place between 7 AM – 4 PM (7 days a week);
 - h. Residential move-ins/outs shall take place between 9 AM – 4 PM (7 days a week);
 - i. Trucks using the loading dock shall not be allowed to idle and must follow all District guidelines for heavy vehicle operation, including but not limited to, 20 DCMR § 900 (Engine Idling), the regulations set forth in DDOT’s Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System.

- j. Coordinate with DDOT and SVSC (Lot 802 and 803) to achieve a consolidated loading management plan. As part of this coordination, trucks traveling to the SVSC will be directed not to pick-up or drop-off on Yuma Street, and will be directed to use the public alley network whenever possible.
- 10. The Applicant shall relocate all trash bins and dumpsters belonging to the SVSC (Lots 802 and 803) located along Yuma Street to the alley and placed within the proposed trash enclosures.
- 11. The Applicant shall screen all sides of the transformers proposed along the east-west (public / private) alley using a combination of landscaping and fenced screening. Any fence screening used to provide access to the transformers for ordinary maintenance and replacement shall be designed in a manner that is consistent with the proposed trash enclosures.
- 12. Pursuant to Subtitle X § 603 of the design review regulations, the Commission grants the following areas of technical zoning flexibility and relief:
 - a. Flexibility from the rear yard requirement of 11-G DCMR § 405.2 for Building 1, as depicted in the Approved Plans; and
 - b. Special exception relief from 11-C DCMR 1500.4, to allow a penthouse on each of Townhouses 1 – 4, as depicted in the Approved Plans.
- 13. The Applicant shall have minor flexibility with the design of the project in the following areas:
 - l. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and elevators, provided that the variations do not change the exterior configuration of the building; and
 - m. To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, venting, window mullions and spacing, and any other changes that otherwise do not substantially alter the exterior design to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit. Such refinements shall not substantially change the exterior configuration, appearance, proportions, or general design intent of the building; and
 - n. To vary the final color of exterior building materials based on availability at the time of construction, provided such colors are within the color ranges shown in the Approved Plans. Any such variations shall not reduce the overall quality of materials,

nor substantially change the exterior appearance, proportions, or general design intent of the building; and

- o. To vary the final selection of landscaping materials utilized based on availability at the time of construction; and
- p. To vary the number, size, extent, and type of sustainable design elements provided all applicable Green Area Ratio (“GAR”) and District storm water requirements are fully met, and the project achieves a LEED Gold (v4) certification with no less than 60 points; and
- q. To increase the final number of residential units on Lot 807 by no more than 10% above the total number shown in the Approved Plans to respond to program demand, or to decrease the final number of residential units within the approved residential gross floor area to accommodate demand for larger units, provided that the number of parking spaces that are solely devoted to the residential uses on Lot 807 is equal to the greater of the minimum required under the Zoning Regulations or 75 parking spaces; and
- r. To vary the number and location of affordable dwelling units provided the amount of affordable gross floor area contained within the project is, at minimum, equal to the amount shown in the Approved Plans, and further provided that:
 - iii. No affordable dwelling unit shall be located within a cellar; and
 - iv. No more than two affordable dwelling units shall be located directly above and below each other on any immediately successive floor; and
- s. To vary the amount of floor area devoted to retail uses within the project provided the amount of floor area devoted to a full-service grocery store is, at minimum, equal to 13,000 square feet for the period of time prescribed under Condition 4 of this order; and
- t. To vary the types of uses designated as “retail” use in the Approved Plans to include the following use categories, provided the amount of floor area devoted to a full-service grocery store is, at minimum, equal to 13,000 square feet for the period of time prescribed under Condition 5 of this order: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j));
- u. To vary the garage layout and the number, location, and arrangement of vehicle and bicycle parking spaces provided the numbers of vehicle spaces that are solely devoted to residential and retail uses on Lot 807 are not reduced below 75 parking spaces and

59 parking spaces, respectively. Any increase in the number of vehicle spaces solely devoted to residential or retail use on Lot 807 that exceeds two times the minimum required under the Zoning Regulations for that particular use shall require the Applicant to comply with the excess parking requirements of Subtitle C, Section 707. Further, the number of bicycle parking spaces solely devoted to residential and retail uses on Lot 807 shall meet or exceed the minimum bicycle parking requirements of Subtitle C, Section 802 at all times.

- v. To vary the final design of retail frontages, including the design of entrances, show windows, and signage, in accordance with the needs of retail tenants. Such refinements shall not substantially change the exterior configuration, appearance, proportions, or general design intent of the building, and all signage shall be designed and located in accordance with the Signage Plan and Guidelines contained in the Approved Plans.
14. 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 § 2-1401.1 et seq. (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identification, 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. Violations will be subject to disciplinary action.

On March 11, 2019, upon the motion of [REDACTED], as seconded by [REDACTED], the Zoning Commission APPROVED the application and **ADOPTED** this Order at its public meeting by a vote of 5-0-0 (Anthony J. Hood, Robert E. Miller, Peter Shapiro, Peter G. May, and Michael G. Turnbull to approve and adopt).

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 [REDACTED].