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June 1, 2017

VIA IZIS AND HAND DELIVERY

Zoning Commission
of the District of Columbia
441 4th Street, NW, Suite 210
Washington, DC 20001

Re: Z.C. Case No. 16-24 Application for Consolidated Review and Approval of a Planned Unit Development And Zoning Map Amendment at 1336 8th Street, N.W.
Square 399 Lot 68 (Subject Property)
Response to Comments from DC for Reasonable Development and OneDC

Dear Members of the Commission:

This letter is submitted on behalf of 1336 8th Street SPE, LLC, the Applicant in the above-referenced application (the “Project”), in response to the comments in opposition (the “Comments”) submitted on May 25, 2017, by DC for Reasonable Development (“DC4RD”) and OneDC, collectively referred to herein as the “Opposition.” As discussed below, the Comments, which were submitted only a short time before the start of the public hearing, contain conclusory and unsubstantiated statements raise issues that have nothing to do with the Commission’s review of the application under the Zoning Regulations of the District of Columbia, 11 DCMR *et seq*, and/or inaccurately convey the Applicant’s Project, particularly the amount and make-up of the affordable housing that will be provided, and the extent of analysis that has been conducted by the Applicant, District agencies, and the Commission. The Applicant submits this response pursuant to 11-Z DCMR § 602.3, which provides all parties to a case an opportunity to file written responses to any exhibit, information, or legal briefs within seven days after the close of the public hearing.

As stated above, the Comments solely contain statements that are conclusory and unsubstantiated. Generally, the Comments, which overall merely amount to alleged grievances that are generalized and not specific to any one person or party, contain statements that express disagreement with the following:

- The terms and conditions of the land disposition agreement established between the Applicant and the D.C. Council regarding the disposition and redevelopment of the Project site;
- The amount and make-up of the affordable housing provided as part of the proposed Project;
- Consistency of the proposed density with the Comprehensive Plan and related policies;

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- Compliance of the proposed Project with the Fair Housing Act and the D.C. Human Rights Act;
- The potential for the Project to cause displacement and gentrification; and
- The extent of analysis conducted regarding the potential impacts of the Project.

Land disposition agreement established between the Applicant and the D.C. Council

Pursuant to D.C. Council Resolution R21-0374 (the “Resolution”), dated February 2, 2016, the District selected the Applicant to redevelop the Subject Property. A copy of the Resolution is included in the case record as Exhibit 5G. According to the findings contained within Section 3 of the Resolution:

- The intended use of the Subject Property includes, among other things, approximately 76 dwelling units, including approximately 23 affordable dwelling units; and approximately 5,400 square feet of ground-floor retail space, including approximately 1,500 square feet allocated as community or parish-hall space for the Immaculate Conception Church (Resolution, Sec. 3(b)(1) and (2)).
- The Applicant is required to dedicate approximately 30% of all multi-family units as affordable-housing units with half of the affordable housing units devoted to low-income households earning more than 30% and less than or equal to 50% of the area median income (“AMI”), and half of the affordable housing units devoted to moderate-income households earning more than 50% and less than or equal to 80% of the AMI (Resolution, Sec. 3(c)).
- The Applicant is required to “enter into an agreement that requires [the Applicant] to, at minimum, contract with Certified Business Enterprises [(“CBE”)] for at least 35% of the contract-dollar volume of the Project, and requires, ...at least 20% equity participation and 20% in development of [CBEs]” (Resolution, Sec. 3(d)).
- The Applicant is required to enter into a First Source Agreement with the District that governs certain obligations of the Applicant regarding job creation and employment as a result of the construction on the Subject Property

The Comments submitted by the Opposition relating to the terms and conditions of the land disposition agreement between the Applicant and the Council have no bearing on the Commission’s review of the Project under the Zoning Regulations. The terms under which the District will dispose of the Subject Property to the Applicant, and the requirements the Applicant must satisfy as part of the District’s disposal, are matters that were handled by the D.C. Council through the legislative process that involved public hearing(s) and opportunities for public comment. Thus, if the Opposition wished to express its views regarding the terms of the District’s disposal of the Subject Property it should have expressed those views during the D.C. Council’s legislative process, which apparently it failed to do.

Notwithstanding, as is demonstrated in the case record, the Applicant will meet or exceed all of the conditions required under the land disposition agreement with the District, including the condition pertaining to the percentage of affordable multi-family units. With respect to the amount of affordable housing provided, the Applicant will devote 30% of all multi-family units as affordable units. Specifically, the Project will contain approximately 85 dwelling units (79 multi-family and 6 townhomes), of which 26 dwelling units (approximately 30%) will be devoted to affordable units. Thus, while the Resolution requires 30% of all multi-family units to be devoted to affordable housing, the Applicant will exceed this requirement by devoting approximately 33% of all multi-family units to affordable housing. Finally, as

demonstrated by the executed copies of the Applicant's First Source and CBE Agreements that have been entered into the case record (Exhibit 5I and Exhibit 5J), the Applicant has satisfied those particular requirements of the Resolution.

Amount and make-up of affordable housing provided as part of the Project

In its Comments, the Opposition states “[s]ince the PUD site is public land, a “substantial” amount of affordable housing, particularly affordable for low-income DC families, is required through zoning development review via the directives of the Comprehensive Plan.” *See* Comments, Page 1. As clearly demonstrated in the case record, and particularly in the Office of Planning's (“OP”) final report (Exhibit 27), the Project will contain a substantial amount of affordable housing, including housing for low-income District residents, including families. Pursuant to the land disposition agreement established between the Applicant and the District, the Project will substantially exceed the amount of affordable housing that would be required under Inclusionary Zoning (“IZ”), and that would typically be proffered as part of a PUD of similar size.

Specifically, as shown in OP's final report, under IZ the Applicant would be required to set aside 8% of the total residential gross floor area (“GFA”), or approximately 8,754 square feet, to affordable housing for low- and moderate-income households. Per the requirements of the land disposition agreement, the Applicant is devoting 30% of all multi-family units as affordable-housing for low- and moderate-income households, which equates to approximately 26 affordable dwelling units that comprise substantially more affordable GFA than required under IZ. Finally, contrary to the Opposition's claims that under the land disposition agreement the Applicant and/or the District “can cancel the affordability covenant at any time upon their own discretion and without public review or provision of rationale,” the affordable dwelling units provided in the Project will remain affordable (at the required levels of affordability) for the life of the Project.

Consistency of the proposed density with the Comprehensive Plan and related policies

According to the Opposition, the density of the Project exceeds what is permitted by the Comprehensive Plan policies, “especially as these policies relate to protecting the low-rise building environment of the surrounding area (citations omitted). *See* Comments, Page 2. This statement is plainly erroneous. First, as is discussed in the Applicant's initial application (Exhibit 5), and in the Applicant's Comprehensive Plan analysis (Exhibit 34), the Project is overwhelmingly consistent with the density considered appropriate for the Subject Property under the Mixed Use: Medium Density Commercial / Medium Density Residential designation on the Comprehensive Plan Future Land Use Map (“FLUM”). Specifically, the application includes a related map amendment to rezone the Subject Property from MU-4 (formerly C-2-A under the 1958 Zoning Regulations (“ZR58”)) to MU-6 (formerly C-2-C under ZR58). According to FLUM category definitions contained in the Framework Element of the Comprehensive Plan, the MU-6 (C-2-C (ZR58)) zone is considered a Medium Density Commercial zone (10-A DCMR § 225.10). Furthermore, as is clearly shown in Exhibit 34, Sheet 23, the proposed density of the Project does not utilize any of the additional density that is permitted under a PUD in the MU-6 zone. Rather, notwithstanding the substantial public benefits and project amenities being provided by the Applicant as

part of the Project, the proposed density remains within the matter-of-right density permitted in the MU-6 zone for developments that are subject to IZ regulations.

Furthermore, contrary to the Opposition's Comments that the Project is inconsistent with Comprehensive Plan policies relating to the protection of the scale of the "low-rise building environment of the surrounding area," the specific policies cited by the Opposition do not describe the existing building environment of the surrounding area as being "low-rise." Rather, the policies cited by the Opposition encourage the exact type of development proposed by the Applicant. Specifically, the Opposition refers to the following two policies contained within the Near Northwest Element – Shaw/Convention Center Policy Focus Area, within which the Subject Property is located:

Policy NNW-2.1.2: Reinforce Existing Development Patterns - Stabilize and maintain existing moderate-density row house areas within the Shaw/Convention Center Area. Locate multi-unit buildings in areas already zoned for greater density, including areas near the Mount Vernon Square and Shaw/Howard University Metrorail stations, and on publicly owned land with the potential for housing. Ensure that development on infill sites scattered throughout the row house portions of the Shaw/Convention Center area is consistent with the neighborhood's character. 10-A DCMR § 2111.6

Policy NNW-2.1.3: Shaw/Howard University and Mount Vernon Square Metro Stations - Encourage mixed-income residential development with underground parking adjacent to the Shaw/Howard and Mount Vernon Square Metro stations, particularly on existing surface parking lots. 10-A DCMR § 2111.7

First, with respect to Policy NNW-2.1.2 the Project consists of a multi-unit building and townhomes that are located in an area in close proximity to the Mount Vernon Square Metrorail station and can accommodate additional density consistent with the Subject Property's Comprehensive Plan FLUM designation of Mixed Use: Medium Density Commercial / Medium Density Residential. Also, as explicitly encouraged by this policy, the Project will replace what is currently underutilized publically owned land used as surface parking with a new, mixed-use development that consists of additional housing, including a substantial amount of affordable housing that greatly exceeds the amount of affordable housing that would otherwise be required as a matter-of-right under the IZ requirements. The Project is also consistent with Policy NNW-2.1.3 as it provides mixed-income residential development with underground parking on a site that is in close proximity to the Mount Vernon Square Metrorail station. Based upon the Project's consistency with the FLUM, consistency with the policies of the Near Northwest Element, including those discussed above; and the Project's consistency with numerous other Comprehensive Plan policies contained within the Land Use, Economic Development, Housing, Urban Design, Environmental Protection, and Parks, Recreation, and Open Space Elements, as discussed in the Applicant's Comprehensive Plan analysis (Exhibits 5 and 34) and the reports submitted by the Office of Planning (Exhibit 13 and 27), the Project density, and the Project overall, is clearly not inconsistent with the Comprehensive Plan.

Compliance of the Project with the Fair Housing Act and the Human Rights Act

In its Comments submitted to the Commission, the Opposition claims that the proposed PUD penthouse is discriminatory and does not comply with the Fair Housing Act and D.C. Human Right Act. However, the Opposition does not offer any evidence to substantiate its claim. Rather, the Opposition simply assumes that the Project's habitable penthouse will not be accessible to low-income residents, which is completely incorrect. As shown in the plans included in the case record as Exhibit 59, the proposed penthouse contains two market-rate dwelling units as well as common amenity space that will be accessible to all building residents, including low-income residents. Hence, there is nothing related to the design and programming of the proposed penthouse that is discriminatory or fails to satisfy the requirements of the Fair Housing Act or Human Rights Act. Furthermore, there is nothing in the Fair Housing Act or Human Rights Act that requires the affordable housing units within the Project to be located in all portions of the building, including the penthouse, and the Zoning Regulations state that affordable housing units "shall not be overly concentrated on any floor of a project" (11-C DCMR § 1005.5). As shown in the plans included in Exhibit 59, consistent with the requirements of the land disposition agreement and the Zoning Regulations the affordable housing units provided within the Project are evenly distributed throughout the floors of the multi-family building. Thus, the Project is consistent with the Zoning Regulations and there is nothing related to the design and programming of the entire Project that is discriminatory or fails to satisfy the requirements of the Fair Housing Act or Human Rights Act.

Potential for the Project to cause displacement and gentrification

The Opposition makes several unsubstantiated claims that the Project will cause displacement of existing residents, exacerbate gentrification, adversely impact vulnerable and at-risk existing affordable housing in the surrounding area, and continue to destabilize existing family homes in the surrounding area. Not only does the Opposition fail to provide any information or analysis of its own to verify these claims, as discussed below, several studies show that developments such as that proposed by the Applicant help mitigate the effects of gentrification, displacement of existing residents, and destabilization of land values.

While the Opposition suggests that the District is failing to address the issue of affordable housing, it is clear based on consistent statements by the Mayor and the D.C. Council, and the stated missions of several District agencies, that affordable housing is at the forefront of issues being addressed by the District. For example, in her first budget Mayor Muriel Bowser devoted an historic \$100 million to the Housing Production Trust Fund, putting an unprecedented number of affordable housing units into the pipeline, and in 2016 assigned the DC Housing Preservation Strike Force the task of coming up with recommendations for preserving affordable housing within the District. In addition, the Department of Housing and Community Development ("DHCD") identifies the production and preservation of quality affordable housing as its top priority, and offers several programs that are specifically focused on addressing issues of displacement. Finally, the Deputy Mayor for Planning and Economic Development ("DMPED") has demonstrated its dedication to addressing the challenges of gentrification and displacement through its New Communities Initiative. Thus, it is clear the District, in partnership with the

private sector, is dedicated to addressing the affordable housing crisis in the District through a multi-pronged strategy that includes several programs across multiple departments and agencies.

With respect to displacement, the Project will not directly displace any existing residents, including residents living in existing affordable housing, since the Subject Property is currently improved with a surface parking lot. Therefore, construction of the Project will only result in an increase in the amount of market-rate and affordable housing in the surrounding area and the District. With respect to the potential for indirect displacement, the Opposition states that “[t]he vast majority of market-rate and luxury penthouse units as proposed in this PUD application can and will continue to destabilize the existing family homes in the surrounding area, specifically in the context of the cumulative large projects in the areas.” *See* Comments, Page 2. In contrast to this unsubstantiated statement, actual analysis conducted by the District has shown that increases in market rate housing has not impacted lower income residents. According to a report entitled *Bridges to Opportunity, A New Housing Strategy for D.C.* (March 2013), prepared by the 2013 Comprehensive Housing Strategy Task Force “the recent increase in market rate housing does not appear to have led to significant gentrification, by which we mean the displacement of lower income residents. In fact, over the past two years of the city’s population growth, the number of people filing income taxes has increased across all income levels citywide. Market rate housing starts are essential to improving the city’s continuum of housing as are public-private investments in affordable housing development.” (*Bridges to Opportunity, A New Housing Strategy for D.C.* (2013), Pages 7 and 41).

Consistent with the above statement, many academic studies and articles have found that construction of new housing in all price ranges, and specifically new affordable housing, is one of the best ways to mitigate increasing prices and rents as it helps address the imbalance between housing demand and housing supply. One such example is research conducted by the Legislative Analyst’s Office of the California Legislature which concluded that “[a]s market-rate housing construction tends to slow the growth in prices and rents, it can make it easier for low-income households to afford their existing homes. This can help to lessen the displacement of low-income households.”¹ This approach to addressing the issue of affordable housing through increasing the supply of new market-rate and affordable housing is also consistent with the priorities recently adopted by a diverse group of D.C. business groups, tenants’ groups, developers, affordable housing advocates, faith groups, and over 250 residents regarding revisions to the Comprehensive Plan.² Specifically, the first of these adopted priorities states that the District should meet housing demand by forecasting, planning for, and encouraging the creation and preservation of a supply of housing (market-rate and subsidized affordable) to meet the demand at all income levels. The supply of housing should be sufficient to slow rising costs of rental and for-sale housing. To that end, the Project will not cause or exacerbate gentrification or displacement of existing residents in the surrounding area. Rather, the Project is a perfect example of the type of development that can help mitigate the effects of gentrification and increasing housing costs as it will introduce 85 new housing units into the District’s supply of housing, 26 of which will be devoted to affordable housing for the life of the Project, without directly displacing any existing residents or tearing down any existing housing.

¹ Legislative Analyst’s Office (2016). *Perspectives on Helping Low-Income Californians Afford Housing*

² <http://dchousingpriorities.org/>

Extent of analysis conducted regarding the potential impacts of the Project

In its comments, the Opposition claims that the application has not been adequately analyzed with respect to its potential impacts on public services, public transit, infrastructure, environment, noise and air quality, pollution and refuse, light and air, utility capacity, emergency response time, and community facilities (schools, recreation centers, libraries, police stations, fire stations, hospitals, clinics, etc.). See Comments, Page 3. However, as the record clearly reflects, the application has in fact undergone a thorough analysis as to its potential impacts both by the Applicant, OP, and several other District agencies.

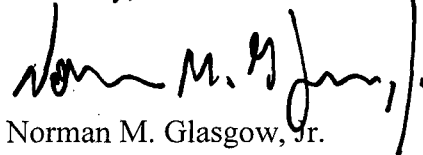
As stated in the Applicant's supplemental prehearing statement (Exhibit 26), OP referred the application for review and comment to the District Department of Transportation ("DDOT"), including the Public Space Committee; the Office of the State Superintendent of Education ("OSSE"), DHCD, the Department of Energy and the Environment ("DOEE"), DC Fire and Emergency Management ("FEMS"), and DC Water. In addition, on March 9, 2017, OP conducted an interagency meeting on the application. As summary of all comments received from these agencies, as well as the Applicant's response, is provided in the Applicant's supplemental prehearing statement (*Id*) and OP's final report (Exhibit 27). In addition, based upon the thorough transportation analysis prepared by the Applicant, DDOT submitted a detailed report that analyzes the potential impacts on the District's transportation network (Exhibit 28). Overall, the analysis and comments provided by the District agencies assess the potential impacts of the Project on the specific areas identified by the Opposition including, but not limited to, transportation and public space, environment, utilities and public services, schools, and housing.

With respect to noise-related impacts, the Land Use and Environmental Protection Elements of the Comprehensive Plan contain specific policies relating to avoiding, minimizing, and mitigating noise impacts through land use compatibility, proper regulation of certain commercial and industrial uses, and reducing exposure to excessive noise through enforcement of the District's noise control regulations which are administered by DCRA. With respect to land use compatibility, the Project consists of a mixed-use building containing residential, retail, and a modest amount of office space for the Immaculate Conception Church. None of these uses inherently cause adverse noise-related impacts and are commonly found throughout the area surrounding the Subject Property. Furthermore, these uses are constructed and operated all over the city in neighborhoods with similar contexts without causing adverse noise impacts. The Comprehensive Plan also contains policies that address the potential impacts of noise on the environment and on the general health and well-being of District residents. Specifically, the Comprehensive Plan states "[a]void locating new land uses that generate excessive noise adjacent to sensitive uses such as housing, hospitals, and schools..." No such uses are proposed as part of the Project.

In addition to the analysis of potential impacts that has already been conducted, it is noteworthy that the Project will be required to undergo several other District agency reviews prior to, and during construction, including additional detailed reviews of potential environmental impacts on a wide range of topic areas, including air and water quality, as required under the DC Environmental Policy Act. In addition, consistent with the policies of the Comprehensive Plan, construction-related noise, and post-construction noise generated by the residents, employees, and visitors to the Subject Property, will be

regulated through enforcement of the District's existing regulations that govern day and nighttime levels of commercial, industrial, and residential land uses, motor vehicle operation, solid waste collection and hauling equipment, and the operation of construction equipment and other noise-generating activities, which can only be regulated during and after construction of the Project.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman M. Glasgow, Jr.", with a vertical line extending downwards from the end of the signature.

Norman M. Glasgow, Jr.

cc: Advisory Neighborhood Commission 6E (via email)
Commissioner Wiggins, Single Member District ANC 6E03 (via email)
Jennifer Steingasser, D.C. Office of Planning (via email)
Joel Lawson, D.C. Office of Planning (via email)
Karen Thomas, D.C. Office of Planning (via email)
Anna Chamberlin, District Department of Transportation (via email)
Evelyn Israel, District Department of Transportation (via email)