



2018126147-38

PLANNED UNIT DEVELOPMENT COVENANT

Z.C. CASE NO. 16-26

(Wisconsin Owner, LLC – Consolidated PUD and Related Map Amendment @ Square 1732, Lots 45 and 49)

THIS PLANNED UNIT DEVELOPMENT COVENANT (this “**Covenant**”), is made as of this 13 day of December, 2018, by and between **WISCONSIN OWNER, LLC**, a District of Columbia limited liability company, and **4624 OWNER, LLC**, a District of Columbia limited liability company (collectively, the “**Owner**”), and the **DISTRICT OF COLUMBIA**, a municipal corporation (the “**District**”).

WITNESSETH:

WHEREAS, Wisconsin Owner, LLC owns Lot 45 in Square 1732 and 4624 Owner, LLC owns Lot 49 in Square 1732 (Lots 45 and 49 in Square 1732 collectively, the “**PUD Site**”) in the District of Columbia. The PUD Site is known as premises address 4620 Wisconsin Avenue, N.W., Washington, D.C., as is more particularly described in Zoning Commission Case No. 16-26 and in Exhibit A attached hereto and incorporated herein;

WHEREAS, pursuant to Chapter 3 of the Subtitle X of the Zoning Regulations of 2016 (Title 11 DCMR), the Zoning Commission for the District of Columbia (the “**Zoning Commission**”) approved an application for a consolidated planned unit development (the “**PUD**”), and related Zoning Map amendment at the PUD Site by Order No. 16-26, dated January 29, 2017¹, which became final and effective on March 30, 2018 (the “**Order**”);

WHEREAS, Subtitle X § 311.3 requires that Owner enter into this Covenant with the District of Columbia assuring Owner’s (and its successors in title) development and use of the

¹ Note, the order in IZIS mistakenly lists the year as 2017, but the Zoning Commission took final action to approve in 2018.

LTO/MD

PUD Site as approved by the Zoning Commission in the Order and all modifications, alterations or amendments thereto.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed between the parties hereto as follows:

1. Approved Plans, Terms and Conditions. The terms and conditions of the Zoning Commission's approval of the PUD for the PUD Site in the Order (as the same may be amended and/or modified from time to time), are incorporated herein by reference and made a part hereof as Exhibit B and shall be considered a part of this Covenant. The PUD Site shall be developed and used in accordance with the plans approved by the Order and in accordance with the conditions and restrictions contained in the Order, subject to such changes thereto as the Zoning Administrator of the District of Columbia may authorize pursuant to Subtitle A § 304.5, or changes made by the Zoning Commission pursuant to Subtitle Z §§ 703 or 704. Owner covenants that it shall use the PUD Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time, subject to the terms and conditions contained herein and the provisions of Subtitle X, Chapter 3 of the Zoning Regulations of 2016.

2. Additional Time to Construct PUD. If Owner should fail to file for a building permit for and/or to commence construction of the approved PUD within the time specified in Subtitle Z §§ 702.2 or 702.3 and the Order, the Zoning Commission may duly consider an application for an extension of time for good cause in accordance with and subject to the limitations of Subtitle Z § 705.

3. Default. In the event that Owner fails to file for a building permit for and/or to commence construction of the approved PUD within the time specified in Subtitle Z §§ 702.2

and 702.3 and in the Order, or within any extension of time granted by the Zoning Commission for good cause shown pursuant to Subtitle Z § 705, the benefits granted by the Order shall terminate pursuant to Subtitle Z § 702.6 and this Covenant shall be deemed null and void.

4. Future Conveyance. Owner covenants that if any conveyance of all or any part of the PUD Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns, to develop and use the PUD Site in accordance with the terms and conditions of this Covenant and the grantee, its successors and assigns shall be considered a declarant to this covenant.

5. Covenants to Run with the Land. The covenants and restrictions contained herein shall be deemed real covenants running with the land and shall bind the parties hereto, their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the PUD Site. The District shall have the right to enforce all covenants, conditions, and restrictions contained herein.

6. Recordation. Owner shall record this Covenant, as fully executed by the parties hereto, among the land records of the District of Columbia (the “**Land Records**”), and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. Rescission/Alteration of Covenant. If the Order is modified or amended by the Zoning Commission, no formal amendment of this Covenant shall be required, provided that Owner, or its successors or assigns, records a notice of modification in the Land Records

together with a copy of the written order authorizing the modification or amendment. No other amendment of the obligations created by this Covenant is permitted without the written consent of the District and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Zoning Commission.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, WISCONSIN OWNER, LLC, a District of Columbia limited liability company has as of the day and year first above written, caused this Covenant to be signed by Steven F. Schwat of WISCONSIN OWNER, LLC, a District of Columbia limited liability company and attested by Daniel Cseplo of WISCONSIN OWNER, LLC, a District of Columbia limited liability company and does hereby appoint the said Steven F. Schwat to be its attorney-in-fact, and in its name to acknowledge and deliver this Covenant according to law.

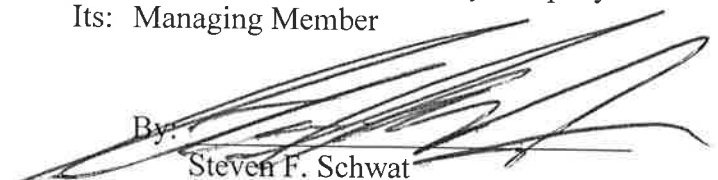
WISCONSIN OWNER, LLC
a District of Columbia limited liability company

By: WISCONSIN JV LLC
a Delaware limited liability company
Its: Managing Member

By: WISCONSIN MANAGER L.L.C.
a District of Columbia limited liability company
Its: Managing Member

By: UIP MARYLAND RESIDENTIAL III, LLC,
a Maryland limited liability company
Its: Managing Member

By: SCHWAT REALTY LLC
a Maryland limited liability company
Its: Managing Member

By: 
Steven F. Schwat
Its: Manager and Sole Member

DISTRICT OF COLUMBIA, to wit:

This Covenant was acknowledged before me on the 26 day of November, 2018, by Steven F Schwat, the duly appointed attorney-in-fact of Wisconsin Owner, LLC, a District of Columbia limited liability company.

WITNESS my hand and official seal this 26 day of November, 2018.

Daniel Cseplo
Notary Public, District of Columbia
My Commission Expires 9/14/2020


Notary Public



My Commission Expires: _____

IN WITNESS WHEREOF, 4624 OWNER, LLC, a District of Columbia limited liability company has as of the day and year first above written, caused this Covenant to be signed by Steven F. Schwat of 4624 OWNER, LLC, a District of Columbia limited liability company and attested by Daniel Cseplo of 4624 OWNER, LLC, a District of Columbia limited liability company and does hereby appoint the said Steven F. Schwat to be its attorney-in-fact, and in its name to acknowledge and deliver this Covenant according to law.

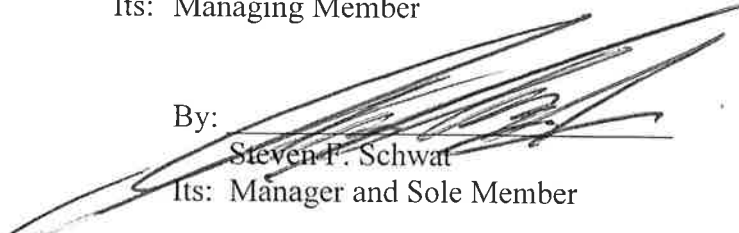
4624 OWNER, LLC
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a Delaware limited liability company
Its: Managing Member

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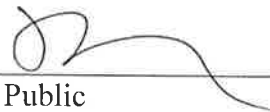
By: 
Steven F. Schwat
Its: Manager and Sole Member

DISTRICT OF COLUMBIA, to wit:

This Covenant was acknowledged before me on the 26 day of November, 2018, by Steven F. Schwat, the duly appointed Attorney in fact of 4624 Owner, LLC, a District of Columbia limited liability company.

WITNESS my hand and official seal this 26 day of November, 2018.




Notary Public

Daniel Cseplo
Notary Public, District of Columbia
My Commission Expires 9/14/2020

My Commission Expires: _____

IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D.C., who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

DISTRICT:

DISTRICT OF COLUMBIA,
a municipal corporation

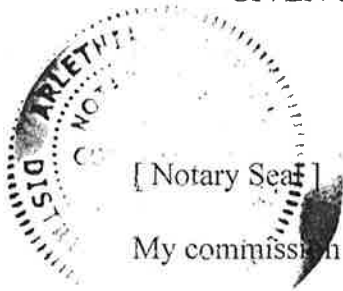
By: 
Secretary of the District of Columbia

[CORPORATE SEAL]


DISTRICT OF COLUMBIA, ss:

I, Arlethia Thompson a Notary Public in and for the District of Columbia, do hereby certify that Lauren C. Vaughan, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant, and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

GIVEN under my hand and seal this 12 day of December, 2018.



[Notary Seal]


Notary Public, D.C.

My commission expires: 09/14/2021.

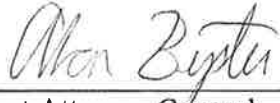
APPROVED:

Matthew E. Galt

12-5-18

Zoning Division, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:



Assistant Attorney General
Office of the Attorney General
for the District of Columbia

EXHIBIT A

LEGAL DESCRIPTION OF THE PUD SITE

All that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as follows:

Lot numbered forty-five (45) in Square numbered 1732 as recorded on Page 29 in Book 178 in the Records of the Office of the Surveyor of the District of Columbia and Lot numbered forty-nine (49) in Square numbered 1732 as recorded on Page 64 in Book 185 in the Records of the Office of the Surveyor of the District of Columbia.

EXHIBIT B

ZONING COMMISSION ORDER NO. 16-26

[appended]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-26
Z.C. Case No. 16-26
Wisconsin Owner, LLC
(Consolidated PUD and Related Map Amendment @ Square 1732, Lots 45 and 49)
January 29, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on September 28, 2017 to consider an application from Wisconsin Owner, LLC (“Applicant”) for review and approval of a consolidated planned unit development (“PUD”) and related amendment to the Zoning Map from the MU-4 zone to the MU-7 zone (together, “Application”). The Commission considered the Application pursuant to Title 11 of the District of Columbia Municipal Regulations (“Zoning Regulations”), Subtitles X and Z. The public hearing was conducted in accordance with the provisions of Chapter 4 of Subtitle Z of the Zoning Regulations. For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The property that is the subject of the Application consists of Lots 45 and 49 in Square 1732 (“Property”) and is located at 4620-4624 Wisconsin Avenue, N.W. (Exhibit [“Ex.”] 2.)
2. On November 21, 2016, the Applicant filed an application for consolidated review and approval of a PUD and related Zoning Map amendment from the MU-4 zone to the MU-7 zone. (Ex. 2)
3. During its public meeting on March 13, 2017, the Commission unanimously voted to set down the Application for a public hearing. Notice of the public hearing was published in the *D.C. Register* on August 11, 2017, in Volume 64, Issue 32, and was mailed to Advisory Neighborhood Commission (“ANC”) 3E, the ANC district in which the property is located, and to owners of property within 200 feet of the Property. (Ex. 20, 22,)
4. On August 15, 2017, the Applicant caused notice of the Public Hearing to be posted at the Property and on September 25, 2017, the Applicant filed an affidavit describing the maintenance of such posted notice. (Ex. 25, 36.)

5. The Application was further updated by pre-hearing submissions filed on June 27, 2017, August 21, 2017, and September 8, 2017. (Ex. 17, 28, 29, 30).
6. A public hearing was conducted on September 28, 2017. The Applicant provided testimony from Laurence Caudle of Hickok Cole Architects, Jami Milanovich of Wells + Associates, and Brook Katzen of Urban Investment Partners.
7. In addition to the Applicant, ANC 3E was automatically a party in this proceeding and submitted a report and testimony in support of the Application. (Ex. 34, 35, 48.) The following party status requests were received:
 - a. Revive 3E and Ward 3 Vision submitted requests for party status in support of the application. (Ex. 9, 12.) At the public hearing, the Commission approved Ward 3 Vision as a party in support, but denied Revive 3E's request because it had failed to appear at the public hearing. Ward 3 Vision provided testimony in support of the project at the public hearing along with other organizations and persons in support of the application (collectively "Proponents"). (Ex. 37, 38, 39, 41, 44, 45, 46.) The Proponents included two neighbors who live within the same block as the Project; and (Ex. 39, 45.)
 - b. Tenleytown Neighborhood Association ("TNA") and Bruce Lowrey ("Lowrey") submitted requests for party status in opposition. (Ex. 10, 13, 27 (TNA); Ex. 14, 15, 19, 24 (Lowrey).) TNA, established in 1995, is a group of approximately 80 residents, primarily owners of single family and semi-detached homes in Tenleytown, with some members working within a block and some living within two blocks of the Project site. At its public meeting on July 24, 2017, the Commission approved TNA as a party in opposition. At its public meeting on September 11, 2017, the Commission approved Lowrey as a party in opposition. Lowrey later withdrew his party status in opposition and indicated that he had no objections to the Project. (Ex. 40.) TNA provided testimony in opposition to the project at the public hearing along with other persons in opposition to the application (collectively "Opponents"). (Ex. 49, 50 (TNA); Ex. 32, 51, 54.) The Opponents raised concerns regarding the consistency of the application with the Comprehensive Plan, the sufficiency of the amenities package, and the transportation impacts of the Project. These concerns are enumerated and addressed in detail throughout this Order.
8. At the close of the hearing, the Commission asked the Applicant to address certain aspects of the north façade design and design flexibility conditions related to exterior design. The Applicant addressed those issues and concerns in a post-hearing submission dated October 12, 2017. (Ex. 55).
9. At its October 30, 2017 public meeting, the Commission took proposed action to approve the Applicant's proposed project. The Commission also requested that the Applicant provide additional information for the record summarizing and supporting information presented at the public hearing by the Applicant, the Office of Planning ("OP"), and the

parties in support that related to the Future Land Use Map and provisions of the Rock Creek West Area Element, specifically regarding development along the Wisconsin Avenue corridor. (Transcript of Commission Meeting of October 30, 2017 at 39-40.)

10. On November 13, 2017, the Applicant submitted its supplemental posthearing submission, which further argued how the height and density of the proposed project was not inconsistent with the guidance, goals, and policies of the Comprehensive Plan – including, in particular, the Future Land Use Map and the Rock Creek West Area Element. (Ex. 58, 58A.)
11. On November 20, 2017, TNA submitted its supplemental posthearing submission in response to the Commission’s request that the Applicant further address the proposed project’s consistency with the Comprehensive Plan and the Rock Creek West Area Element, and to counter the Applicant’s supplemental posthearing submission discussed above. (Ex. 61.)
12. On November 27, 2017, the Commission referred Applicant’s proposed project to the National Capital Planning Commission (“NCPC”) for review and comment, pursuant to the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Section 1-201 et seq. (Ex. 62.)
13. By letter dated December 27, 2017, NCPC’s Director of Urban Design and Plan Review stated that NCPC staff had determined that the project is exempt from NCPC review, pursuant to NCPC’s submission guidelines. (Ex. 63.)
14. On January 29, 2018, the Commission took final action to approve the Applicant’s proposed project.

Overview of the PUD Site

15. The Property consists of approximately 23,741 square feet of land area and consists of properties known as 4620-4624 Wisconsin Avenue, N.W., located mid-block on the 4600 block of Wisconsin Avenue in Ward 3. (Ex. 2)
16. The Property is located in the MU-4 zone. Property to the north, south, and east is also located in the MU-4 zone, although the parcel immediately to the south was rezoned to the MU-7 zone through a PUD approved in Z.C. Order No. 10-23. (Ex. 2)
17. Property further to the south is located in the MU-7 zone. Property to the west, across the alley, is located in the R-2 zone. (Ex. 2.)
18. The Property is located approximately two blocks north of the Tenleytown-American University Metrorail station. (Ex. 2.)
19. The Future Land Use Map of the Comprehensive Plan designates the Property in the Mixed-Use Medium-Density Residential/Moderate-Density Commercial Land Use

category. The Generalized Policy Map of the Plan designates the Property as a Main Street Mixed-Use Corridor. (Ex. 2.)

Project Description

20. The Applicant will adaptively reuse and expand an existing building on the Property into a new mixed-use development with ground-floor retail uses and approximately 146 residential units (“Project”). (Ex. 2, 17, 30.)

21. The architectural design, height, and mass of the eight-story Project is consistent with and sensitive to the surrounding context.
 - a. Overall, the Project uses a combination of high-quality materials and architectural design details and features to adaptively reuse and expand the existing building at 4620 Wisconsin Avenue into an attractive, exemplary new building;

 - b. Along Wisconsin Avenue, the architectural design includes a more pedestrian-friendly streetscape as well as a deliberate stepping of the façade to match the change in grade from south to north;

 - c. Along the rear of the Property, the Applicant has set back and stepped down the mass and scale of the building to appropriately transition the Project’s mass into the neighborhood properties to the rear. The overall mass is set back from the public alley, and then steps further back at the second and again at the fifth floor. In addition, the northern wing maintains an alignment along Wisconsin Avenue and is therefore set further back from the alley and residential neighborhood to the west;

 - d. Overall, the Project meets or exceeds the rear yard and lot occupancy limitations for the proposed MU-7 Zone except at the ground floor, where the Applicant has proposed a minor encroachment, based on the footprint of the existing structure to be retained, in order to create additional residential units along the rear of the Project that will incorporate windows to articulate and soften the building appearance. The Project will occupy approximately 90% of the lot on the ground level, but will step back to occupy 66% at the second floor, 62% at the fifth floor, and 57% at the 8th floor; and

 - e. The initial application included a 20-foot-tall occupiable penthouse above the roof of the Project. In response to community comments, the Applicant later removed the penthouse story from the Project to lower the building height.

(Ex. 2, 17, 30.)

22. All parking and loading for the Project will be accessed from the public alley adjacent to the west side of the Property. The Project will include approximately 58 vehicular parking spaces and approximately 82¹ long-term bicycle parking spaces within the garage, as well as 10 short term bicycle parking spaces located in the streetscape along Wisconsin Avenue. (Ex. 2, 17, 30.)
23. In total, the Project will feature approximately 135,942 square feet of total gross floor area, with 10,984 square feet for retail use and 146 residential units with a total residential gross floor area of approximately 117,527 square feet. The residential units include a mix of studio, one-bedroom, and two-bedroom apartments. (Ex. 30A.)
24. The Applicant will set aside 10% of the residential gross floor area, or approximately 11,753 square feet of gross floor area, as affordable housing at 60% of Median Family Income (“MFI”). (Ex. 30A.)
25. The Project will be constructed to a FAR of approximately 5.73 and a height of approximately 88-feet, four inches. (Ex. 30A.)

Zoning Map Amendment

26. The MU-4 zone permits a maximum height of 50 feet as a matter of right, a maximum density of 2.5 floor area ratio (“FAR”) as a matter of right (3.0 FAR for residential developments that trigger inclusionary zoning), and a maximum lot occupancy for the residential portions of the development of 60% as a matter of right (75% for residential developments that trigger inclusionary zoning).
27. The Applicant requested a PUD-related amendment to the Zoning Map to the MU-7 zone to permit the Project to achieve the requested mix of uses, height, and density. For a residential development that triggers inclusionary zoning, the maximum height permitted in the MU-7 zone under the PUD guidelines is 90 feet, the maximum density under the PUD guidelines is 5.76 FAR, and the maximum lot occupancy for the residential portions of the Project is 80%.

PUD Flexibility

28. The Applicant requested approval to construct a building to a maximum height of 88-feet, four inches and density of 5.73 FAR, which are within the PUD standards set forth in Subtitle X, Chapter 3 for a PUD in the MU-7 zone. The Applicant also requested flexibility from the rear yard and lot occupancy requirements to accommodate the ground-floor level of residential units within the Project, and flexibility from the penthouse structure uniform height requirements, as outlined in the OP Final Report and

¹ The number of long-term bicycle spaces was increased to 82; however, the zoning data sheet included in Ex. 30A1 does not reflect this increase since it was not updated after the increase in spaces was made.

detailed in the Applicant's written submissions and testimony at the public hearing. (Ex. 30, 30A, 33.)

Project Amenities, Public Benefits, and Sufficiency of the Amenities Package

29. As detailed in the Applicant's testimony and written submissions, the proposed Project will implement the following project amenities and public benefits:
- a. Superior Urban Design and Architecture. The Project exhibits many characteristics of exemplary urban design. Specific features include the use of a variety of public spaces, well-designed sidewalks with street trees and active storefronts along Wisconsin Avenue, massing that is shaped to flow within the existing density of the surrounding properties, and well-located and carefully designed parking garages and loading zones for the Project;
 - b. Creation and Preservation of Open Spaces. The Applicant will close a one-way street segment of Brandywine Street between 42nd Street and River Road, located one block from the Project, and construct a new park on this closed section. The Applicant will ensure the maintenance of the new park for the life of the Project;
 - c. Site Planning and Efficient and Economical Land Utilization. The Property is currently underutilized and fails to fully capitalize on its prominent Wisconsin Avenue location. The Property currently contains commercial office buildings and accessory parking in a design that discourages pedestrian activity. The proposed Project has been designed to provide residents, customers, employees, and visitors with open and inviting public and private spaces for entertainment and relaxation. The proposed Project will transform an underutilized and dated site into an attractive 21st-century mixed-use development;
 - d. Housing. The Project will create approximately 146 new residential units in a zone where no residential use is required. The proposed Project will provide 117,527 square feet of gross floor area of residential use, which is over 50,000 more square feet of housing than would be provided as a matter of right at the Property;
 - e. Affordable Housing. The Applicant will provide 10% of the gross residential area in the proposed building for affordable dwelling units at 60% of the MFI. This will result in approximately 11,753 square feet of affordable housing, which is a significant commitment in itself and exceeds the baseline requirement by over 2,000 square feet. Also, at least one affordable unit will be a two-bedroom unit. The commitment is particularly significant because a matter-of-right redevelopment of the property under the existing MU-4 zoning would yield only 2,500 square feet of affordable housing. This is because the bulk of the

development would be a conversion of an existing office building, which is exempt from inclusionary zoning;

- f. Environmental and Sustainable Benefits. The Applicant shall achieve a minimum of Gold certification under the LEED-2009 rating system. The Project shall also integrate other sustainable design features, including solar panels as a renewable energy source on the roof of the Project. The Project shall also include five electric vehicle charging stations in the parking garage, with conduit to accommodate an additional five future charging stations;
- g. Streetscape Plans. The existing streetscape lacks pedestrian activity and attractive landscaping that would otherwise enliven the sidewalks. The Applicant proposes streetscape improvements that will better integrate the retail spaces with the adjacent public space, therefore enhancing the pedestrian experience. Specific improvements include new street trees and other plantings to create more defined, attractive pedestrian access. As part of the streetscape enhancement, the Applicant will underground the utility lines along Wisconsin Avenue in front of the Property; and
- h. Uses of Special Value
 - i. Chesapeake House. The Applicant will renovate the Chesapeake House, a historic but vacant structure owned by the National Park Service (“NPS”) and located across the street from the Property, to a “warm, lit shell” condition. The renovated structure will then be used as a community-serving space and provide a historic, attractive addition to the neighborhood. To facilitate the proposed use, the Applicant has also and will continue to facilitate discussions with ANC 3E, NPS, and other stakeholders regarding the use of Chesapeake House; and
 - ii. Restaurant and Other Retail Commitments. In response to community feedback, the Applicant has committed to reserving a minimum of 3,500 square feet of retail space for a full-service restaurant. Additionally, the Applicant has committed to restricting certain retail and service uses from the Project even though these uses are permitted in the MU-7 zone, unless ANC 3E specifically approves the proposed use.

(Ex. 2, 17, 30.)

Government Agency Reports

- 30. By report dated September 18, 2017 and by testimony at the public hearing, OP recommended approval of the application and concluded that the Applicant had addressed previous concerns raised by OP and the Commission, including traffic impacts, building height, affordable housing, sustainable design features, architectural design, and additional renderings. OP concluded that the proposed PUD and related rezoning was not

inconsistent with the Comprehensive Plan as a whole, including the Future Land Use Map, the Generalized Policy Map, and the Citywide and Area Elements. OP evaluated the PUD and related rezoning under the evaluation standards set forth in Subtitle X, Chapter 3 of the Zoning Regulations and concluded that the Project's benefits and amenities were appropriate given the size and nature of the PUD and related requests for rezoning and flexibility. (Ex. 33.)

31. By report dated September 13, 2017 and by testimony at the public hearing, DDOT expressed no objection to the PUD. DDOT found that the Project would have minimal impact on the existing roadway network and concluded that the proposed amount of vehicle and bicycle parking was sufficient given the Project's location and other features. DDOT expressed support for the proposed closure of Brandywine Street, subject to further design revisions that would be coordinated during the public space permitting process. DDOT also noted that it would work with the Applicant on other streetscape design details through the public space permitting process. (Ex. 31.)
32. In a resolution submitted on September 21, 2017, ANC 3E stated that at a regularly-scheduled and duly-noted public meeting on September 19, 2017, with a quorum present, ANC 3E voted to support the proposed PUD and related rezoning, in reliance on a comprehensive Memorandum of Understanding ("MOU") between the Applicant and ANC 3E regarding the proposed public benefits and project mitigation measures offered by the Applicant, and requested inclusion of the terms of the MOU as conditions of this Order. The substantive terms of the MOU are incorporated as conditions of this Order. The resolution stated that the height and density sought were appropriate given that the Project included sufficient amenities and mitigations. The resolution further stated that the ANC was concerned about the potential for traffic increases and parking shortages as a result of the Project, but that the Project would result in a decrease in traffic relative to the existing buildings it would replace, that the Project included more parking spaces than is required, and that the Applicant's proposed traffic, parking and loading mitigations were, taken together with the project's amenities, were "exemplary." (Ex. 34, 35.)

Compliance with the PUD Regulations and Contested Issues

33. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case." (11 DCMR X § 304.3.) The Commission finds that the development incentives for height, density, flexibility, and related rezoning to the MU-7 zone are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines as set forth in the Applicant's statements and the OP report.

34. The Commission finds that the character, scale, mix of uses, and design of the Project are appropriate, and finds that the site plan is not inconsistent with the Comprehensive Plan and does not result in unacceptable project impacts on the surrounding area.

Sufficiency of the Amenities Package

35. The Commission credits the testimony of the Applicant and its architectural expert as well as OP, DDOT, ANC 3E, and the Proponents regarding the proposed benefits and amenities, and finds that the superior architectural design, site planning, housing and affordable housing, sustainable design, and uses of special value of the Project all constitute acceptable project amenities and public benefits.
36. The Opponents alleged generally that the proposed public benefits were insufficient. Contrary to the assertion of the Opponents, the Commission is persuaded that the proposed public benefits are meaningful commitments that will satisfy District and neighborhood desires and priorities, as evidenced by the OP Report, ANC 3E Report, the letter from the Coalition for Smarter Growth regarding the dearth of affordable housing west of Rock Creek Park, the DDOT Report regarding the proposed closure of Brandywine Street, and the letter from NPS regarding the proposed improvements to the Chesapeake House. The opponents made the following allegations about the public benefits: (Ex. 2H, 30, 31, 33, 34, 41.)
- a. The Opponents alleged that the proposed housing was not a significant public benefit because of the predominant unit types within the Project. The Opponents conceded that the proposed amount of housing exceeded the matter-of-right amount of housing that could be constructed, which by definition meets the test under the Zoning Regulations for housing to qualify as a benefit. Contrary to the Opponents' assertion that the Project's emphasis on studios and one-bedroom units was somehow less of a benefit than other unit types, the Zoning Regulations do not discredit or undervalue certain types of housing;
 - b. The Opponents alleged that the architectural design of the Project did not constitute superior design. The Commission disagrees. For the reasons set forth elsewhere in this Order, the Commission finds that the Project utilized a number of well-recognized architectural design approaches to mitigate the apparent height and scale of the Project to fit within its context;
 - c. The Opponents allege that the recognition of the proposed Chesapeake House benefit is unwarranted because of a lack of binding agreement or plan. To the contrary, the Commission credits not only the letter from NPS acknowledging the benefit but also the testimony of the Applicant as well as ANC 3E that substantial discussions have occurred regarding the proffer. Furthermore, the Applicant testified that it has already invested substantial time and resources in moving forward with the renovation through existing agreements with NPS, meaning that the proposed benefit is more than just "wishful thinking." (*See Foggy Bottom Association v. D.C. Zoning Comm'n*, 979 A.2d 1160, 1171-73 (2009) (concluding

that proffered historic district, streetscape plans, and retail corridor were properly valued as amenities based on evidence of negotiations and discussions with affected agencies)); and

- d. The Opponents claimed that the proposed Brandywine Street closure should not count as a public benefit because it was proximate to and would enhance the value of another property owned by an affiliate of the Applicant. The Commission concludes that the proposed Brandywine Street closure, which was identified in a DDOT planning study, recommended by ANC 3E, and supported by the Proponents, constitutes substantial evidence that the closure is considered to be a public benefit. For similar reasons, the Commission concludes that the proffered restaurant use is a public benefit, since it was provided in response to a direct request by ANC 3E and is supported by the Proponents.
37. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities relating to exemplary design, site planning, housing and affordable housing, sustainable design, and uses of special value. The Commission credits the testimony of OP, ANC 3E, and the Proponents that the benefits and amenities are of substantial value to the community and the District commensurate with the additional density and height sought through the PUD.

Consistency with the Comprehensive Plan

38. The Commission credits the testimony of the Applicant, OP, ANC 3E, and the Proponents regarding the consistency of the Project with the Comprehensive Plan, and concludes that the PUD and related rezoning is not inconsistent with the Plan. The Opponents challenged the consistency of the proposed PUD and Zoning Map Amendment with the Future Land Use Map and certain goals and policies of Comprehensive Plan. The Applicant, OP, ANC 3E, and the Proponents provided testimony and evidence rebutting each allegation of inconsistency. Based on the substantial evidence in the record, the Commission concludes that the proposed PUD and Map Amendment is not inconsistent with the Comprehensive Plan, for the reasons described in detail below.
39. Broadly, the Commission finds that the proposed Map Amendment to the MU-7 zone is not inconsistent with the Comprehensive Plan or the character of the surrounding area. The proposed MU-7 zoning is consistent with the Property's transit-oriented location on the Wisconsin Avenue corridor proximate to the Tenleytown Metrorail Station. The rezoning will also facilitate the redevelopment of a strategic but underutilized commercial site with a pedestrian-oriented development with substantial amounts of housing. Finally, the rezoning is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public benefits and amenities against the requested zoning flexibility.

40. The proposed PUD and related rezoning to the MU-7 zone is not inconsistent with the Property's designation as Mixed-Use Medium-Density Residential/Moderate-Density Commercial land use category on the Future Land Use Map given the language in the Plan as well as the description of the MU-7 zone in the Zoning Regulations as follows: (Ex. 2, 30, 33.)
- a. The C-3-A Zone District, which is the predecessor to the MU-7 zone, is expressly listed as a zone that is consistent with the Moderate-Density Commercial land use designation of the Property on the Future Land Use Map in the Plan's Framework Element; (10A DCMR § 225.9.)
 - b. The MU-7 zone is described in the Zoning Regulations as a zone intended for medium-density mixed-use development located on arterial streets, in uptown centers, and at rapid transit stops, and it is therefore entirely appropriate for the Property given its land use designation in the Plan; and (11-G DCMR § 400.6.)
 - c. The Mixed-Use designation of the Property indicates a desire to encourage the development of "substantial amounts of housing," which further supports rezoning to the MU-7 zone. (10A DCMR 225.18). So, too, do other elements of the Plan, including in particular provisions of the Rock Creek West Element that identify the Property as an opportunity area for new housing. (10A DCMR §§ 2312.4, 2314.5; RCW-1.1.4; RCW-1.1.6).

(See Wisconsin-Newark Neighborhood Coalition v. D.C. Zoning Comm'n, 33 A.3d 382, 395-396 (2011) (concluding that rezoning was not inconsistent given language in the Plan and description of the proposed zone).)

41. The proposed PUD and rezoning is not inconsistent with the Property's designation as a Main Street Mixed-Use Corridor on the Generalized Policy Map. Specifically, the Project will support transit use and enhance the pedestrian experience along Wisconsin Avenue, which furthers the goals for Main Street Mixed-Use Corridors. (Ex. 2, 30, 33.)
42. The proposed PUD and rezoning is not inconsistent with the Land Use Element of the Plan. The Land Use Element calls for denser development on commercially-zoned properties along transit-oriented corridors and near Metrorail stations. The Land Use Element notes that height, mass, and scale of development should be appropriate and compatible with surrounding areas and not unreasonably impact surrounding residential areas. The Project is also consistent with many of the Plan's major elements, including the Housing, Transportation, Urban Design, and Economic Development element. It will deliver housing and affordable housing as well as improved neighborhood-serving retail within an enhanced pedestrian-focused environment. (Ex. 2, 30, 33.)
43. The Project will not conflict with the policies of the Rock Creek West Area Element. The PUD will promote provisions of the RCW Element that call for infill development of underutilized commercially zoned sites along Wisconsin Avenue. The Project has also

been sensitively designed to incorporate setbacks, materials, and architectural design features that transition from the Wisconsin Avenue corridor to the nearby residential neighborhoods. (Ex. 2, 30, 33, 58, 58A.)

44. The Opponents alleged that the proposed eight-story Project was inconsistent with the designation of the Property for Mixed-Use Medium-Density Residential/Moderate-Density Commercial use on the Future Land Use Map, based on language in the Framework Element of the Comprehensive Plan that describes the Medium-Density Residential category as primarily four to seven stories and describes the Moderate-Density Commercial category as up to five stories. The Opponents also alleged that the proposed height and density of the Project is inappropriate and inconsistent with the nearby low-density residential neighborhoods. The Commission finds as follows:
- a. The Framework Element of the Plan describes the Medium-Density Residential category as primarily four- to seven-story buildings and describes the Moderate-Density Commercial category as up to five-story buildings. However, the Framework Element also lays out “interpretation guidelines” for the Future Land Use Map that convey that the typical building heights and densities discussed above describe the “general character” of the area and state that the “granting of density bonuses [through PUDs] may result in heights that exceed the typical ranges cited” in those descriptions. Therefore, these descriptions are general parameters for the overall area and do not require that each building, or even each block, rigidly adhere to their limitations. Rather, heights and densities beyond the ranges may be appropriate when secured through the PUD process. (*See Wisconsin-Newark* at 395-96 (concluding that the Plan does not require each block to “strictly correspond with the general description” and concluding that property is “appropriate for denser development because it was along the Wisconsin Avenue corridor”));
 - b. Here, the proposed eight-story Project will exceed the cited range by just one story, which is appropriate given the use of the PUD process. Moreover, as in *Wisconsin-Newark*, the remainder of the Mixed-Use Medium-Density Residential/Moderate-Density Commercial area will continue to be primarily commercial buildings below five stories in height and mixed-use residential buildings below seven stories in height and therefore consistent with the overall description of the Mixed-Use Medium-Density Residential/Moderate-Density Commercial category;
 - c. Through elevations and contextual drawings, the Applicant also demonstrated that, given changes in topography within the area, the proposed height of the Project was comparable in absolute height to other nearby buildings. (Ex. 30A at A10.) Similarly, the Applicant demonstrated that the height of the Project was mitigated by its relative scale and distance from the nearby residential neighborhoods; (Ex. 30A at A38-A40.)

- d. For similar reasons, the Commission also concludes that the Project is not inconsistent with the provision in the Rock Creek West Element (10A DCMR § 2312.6) that calls for an “emphasis” on low- to mid-rise buildings rather than high-rise towers; and
 - e. This application is distinct from *Durant v. D.C. Zoning Comm’n*, 139 A.3d 880 (2016) (“Durant III”). In *Durant III*, the Court concluded that a proposed rezoning was inconsistent with the Property’s land use designation on the Future Land Use Map. However, in that case the proposed zone, height, and density was not specifically listed as one consistent with the applicable land use designations; rather, the Commission had relied heavily on the suggestion that certain zoning “may also apply.” (*Id.* at 884.) Here, the Project is within the height and density parameters for a PUD in the MU-7 zone, and that zone is specifically listed as consistent with the Moderate-Density Commercial land use category.
45. The Opponents alleged that the proposed Map Amendment to the MU-7 zone was inconsistent with the Comprehensive Plan, based on the Commission’s 1988 order (Z.C. Order No. 530), which downzoned the Property from the C-3-A Zone District to the C-2-A Zone District after finding that the C-3-A Zone District (now the MU-7 zone) was inconsistent with the Comprehensive Plan. The Commission is not persuaded by Opponents’ argument. The 1989 downzoning was based on the provisions of the Comprehensive Plan that were in effect at that time. The Comprehensive Plan has since been amended and supplemented many times, culminating in the adoption of a new Comprehensive Plan in 2006. The changes to and language within the 2006 Comprehensive Plan individually and collectively provide ample basis to conclude that the proposed Map Amendment is appropriate. (*See Wisconsin-Newark* at 394-395 (concluding similarly that the 2006 Comprehensive Plan provided “sound reason” for the Commission to change its position from the earlier 1989 downzoning along Wisconsin Avenue).) For these reasons, the Commission is not persuaded by TNA’s assertion articulated in its supplemental post-hearing submission that the Applicant need demonstrate “significant changed circumstances.” (Ex. 61.) The Applicant has satisfied its burden and the Commission finds that the proposed Map Amendment to the MU-7 zone is justified.
46. The Opponents alleged that the proposed Project was inconsistent with provisions of the Rock Creek West Element that call for the conservation of and transition to low density neighborhoods. (10A DCMR §§ 2308.2, 2312.6, and 2312.12; RCW-2.2.5.) The Opponents also alleged that the proposed Project does not qualify as “‘sensitive architecture’ as envisioned in the Comprehensive Plan.” (Ex. 61.) The Commission disagrees, and finds as follows that the Project respects and furthers these provisions of the RCW Element, including the provisions cited by the Opponents:
- a. Policy RCW-2.2.5 envisions a number of means to ensure compatibility between the Wisconsin Avenue commercial corridor and the nearby residential neighborhood, including architectural design, stepping down of building heights,

landscaping, and other improvements. As the Applicant's architectural expert testified at the hearing, the Project uses a combination of architectural design elements (such as a simple, compatible design, articulation through windows, and a lack of exterior features such as balconies) combined with setbacks and stepdowns to achieve the goals of this Policy for architectural sensitivity. Accordingly, the Project is appropriately scaled given its separation from nearby residential structures due to the public alley and lot depths of the residences themselves; and

- b. The Project also specifically furthers many provisions and policies of the RCW Element that call for the adaptive reuse and redevelopment of underutilized commercially-zoned sites along this stretch of Wisconsin Avenue with new retail and housing. (10A DCMR §§ 2312.4, 2312.5, 2312.6; RCW-1.1.4; RCW-1.1.6; Action RCW-2.2C.) The Project will also further other goals of these policies, such as upgraded streetscape, improved walkability, and reduced traffic and parking impacts. Many of these provisions also call for scale, height, buffering, and transition to the adjacent neighborhoods. For the reasons articulated above, the Project achieves these goals, both in themselves and on balance with the other provisions of the Plan, including the RCW Element, that specifically advocate for the development of the Property as proposed by the Applicant.

47. Finally, the proposed housing provided by the Project does further the goals and policies of the Plan regarding housing, and it is not inconsistent with Section H-1.3.1, as Opponents alleged, which promotes housing for families as a goal of the Plan. Both the Applicant and Proponents testified that the surrounding neighborhoods around the Project have an abundance of family-style housing, but lack rental apartment housing for smaller households. The Commission finds that the Project will deliver a housing type that is currently undersupplied in the neighborhood – studios and one-bedroom units – and therefore meets the overall goal of Section H-1.3 of the Plan, which is to ensure a diversity of housing type that meets the “wide spectrum” of housing needs. (10A DCMR §§ 505.3, 505.4.)

Project Impacts

48. The Commission credits testimony from OP, DDOT, ANC 3E, and the Proponents that the impact of the PUD on the surrounding neighborhood, infrastructure, and levels of service will not be unacceptable.
49. The Commission credits the testimony of the Applicant's traffic consultant and DDOT and finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of public benefits of the PUD as follows:
 - a. The Project is located proximate to the Tenleytown Metrorail Station as well as multiple bus lines that serve the Wisconsin Avenue corridor, a well-connected

urban network of pedestrian sidewalks and paths, and a connected network of arterial, collector, and local streets; (Ex. 2, 17B, 28A.)

- b. The Applicant's traffic expert submitted a detailed comprehensive transportation review ("CTR") that concluded that the proposed Project, including the proposed closure of Brandywine Street, would not generate an adverse traffic impact on the surrounding roadway network or cause objectionable impacts to the surrounding neighborhood due to traffic or parking impacts. The Applicant's traffic expert also concluded that the number of parking and loading spaces, as well as the location of parking and loading access from the public alley, would accommodate the needs of the Project and not generate adverse or objectionable impacts on neighborhood property; and (Ex. 17B, 28A.)
 - c. DDOT submitted a report recommending approval of the Project. DDOT concurred with the scope, methodology, and findings of the Applicant's CTR and agreed that the Project would have minimal impact on the surrounding roadway network. DDOT supported the Project's proposed vehicle parking, bicycle parking, and loading, as well as the Applicant's proposed transportation demand management ("TDM") and loading management plan ("LMP") measures. (Ex. 31.)
50. The Opponents alleged that the use of the public alley for parking and loading access was inappropriate. DDOT and the Applicant's traffic expert both testified that public alleys are intended to be used for vehicular access; District policy mandates the use of public alleys for parking and loading access when available, and DDOT and the Applicant demonstrated that the Project's parking and loading access was otherwise appropriate.
51. The Opponents alleged that the Project would burden area parking and in particular residents who use the residential permit parking ("RPP") program. The Applicant's traffic expert and DDOT both testified that the amount of parking within the Project exceeded the minimum requirements and was otherwise appropriate given the Property's transit-oriented location. The Property is excluded from the RPP program because it is located on a block that is commercially-zoned and specifically listed as not eligible for RPP.² Furthermore, since the Property is a mid-block lot, it is unable to claim an address or frontage on a side street that could be eligible for RPP. Finally, at the request of ANC 3E, the Applicant agreed to restrict residents of the Project from participating in the RPP program and enforce this prohibition through a lease provision or similar mechanism.
52. The Opponents alleged that the Project's LMP would be insufficient to address adverse impacts from truck traffic. The Applicant's traffic expert demonstrated, however, that the LMP would actually improve and enhance existing protections for the surrounding residential neighborhoods. While truck traffic is only prohibited on some surrounding residential streets, the Applicant would direct service and delivery traffic to avoid all residential streets and instead enter and exit the block via Wisconsin Avenue. The

² This distinguishes the Property from the other examples cited by the Opponents. (*See* Ex. 51.)

Applicant's proposed dock manager would also be responsible for enforcing compliance with the LMP, including designated truck routes.

53. The Opponents alleged that the proposed streetscape improvements on Wisconsin Avenue in front of the Project could impede accessibility to the Project. To the contrary, the Applicant's architectural expert demonstrated that the streetscape improvements would ensure and improve accessibility to both the residential and retail entrances.
54. The Opponents alleged that the Applicant's proposed implementation of the Brandywine Street closure would cause adverse and unsafe conditions. On rebuttal, the Applicant's traffic expert demonstrated that, to the contrary, the existing street creates unsafe conditions and the proposed changes would improve pedestrian and vehicular safety.
55. Based on the foregoing, the Commission concludes that the Project will not cause unacceptable impacts on vehicular or pedestrian traffic, as demonstrated by the testimony and reports provided by the Applicant's traffic expert and DDOT. The traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD.
56. The Opponents alleged that the Project would generate shadows and otherwise "loom" over the surrounding residential neighborhood. The Applicant's architectural expert submitted shadow studies that demonstrated the proposed Project would cast minimal additional shadow compared to a matter of right project and, further, the shadow impact would be limited to the immediate block on the west and street and open space on the east. (Ex. 30A at A27-A28.) None of the individuals impacted by this shadow spoke in opposition to the Project and in fact one such resident submitted a letter in support. Similarly, the Applicant's architectural expert submitted view studies that demonstrated the Project would not visually intrude into the surrounding neighborhood and would in fact appear no taller than other nearby buildings along Wisconsin Avenue. (Ex. 30A at A10, A38-A40.)
57. The Opponents alleged that the Project's lot occupancy would further weaken opportunities for transition from commercial to residential land uses by reducing space for landscaping and screening and other green space improvements. For the reasons discussed above in Factual Finding No. 46, the Commission is not persuaded that the Project's lot occupancy will have such an adverse impact.
58. Based on the foregoing evidence, the Commission concludes that the Project will not impose unacceptable adverse shadow or visual impacts on the surrounding neighborhood.

Other Alleged Errors and Inconsistencies

59. The Opponents raised allegations of error regarding the compliance of the Project with the inclusionary zoning requirements. The Applicant's initial commitment exceeded the

minimum inclusionary zoning requirement in effect at the time of the application.³ After the inclusionary zoning requirements changed, the Applicant revised its proffer to align with and exceed the new minimum requirements, with a commitment to set aside 10% of the residential gross floor area, or 11,753 square feet of gross floor area, which clearly exceeds the minimum requirement of 9,496 square feet.⁴ The Applicant's commitment is clearly stated, and the proffered 11,753 square feet as shown on the Plans corresponds to this commitment. (Ex. 30A at A25-A26.) Moreover, the Applicant conveyed that the proffer would result in 15 affordable housing units, which similarly represents 10% of the 146 units in the Project.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the purpose of the PUD process is "to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) Results in a project superior to what would result from the matter-of-right standards; (b) Offers a commendable number or quality of meaningful public benefits; and (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan." (11-X DCMR § 300.1.) The PUD process is intended to "provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan." (11-X DCMR § 300.2.)
2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. (11-X DCMR § 302.1.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking loading, yards, and courts. (11-X DCMR §§ 300.6, 303.1, 303.11.)
3. The Commission concludes (i) the application satisfies the PUD application requirements and (ii) the Applicant, Office of Zoning, OP, and the Commission have satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations.
4. The minimum area included within a proposed PUD must be no less than 15,000 square feet and all such area must be contiguous. (11-X DCMR § 301.) The Application satisfies these minimum area and contiguity requirements.

³ The Applicant's initial proffer was eight percent of the residential gross floor area, with 50% of the units at 80% MFI and 50% of the units at 50%, which represented a lower MFI than otherwise required. The number stated in the initial application represented the net, rather than gross, area of affordable housing, but the Applicant's initial submission clearly demonstrates consistency with the eight percent requirement. (Ex. 2 at 14.)

⁴ Contrary to the assertion of the Opponents, the Applicant did correctly state the requirement in its Supplemental Submission. (Ex. 30 at page 2.)

5. The development of the Project will implement the purposes of Subtitle X, Chapter 3 of the Zoning Regulations to encourage higher quality development through flexibility in building controls, including height and density, for superior projects that exceed matter-of-right standards. Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate, and the proposed construction results in an attractive mixed-use building that capitalizes on the Property's transit-oriented location and exceeds the quality of what would be developed as a matter of right.
6. The Applicant seeks a PUD-related zoning map amendment to the MU-7 zone, height and density bonuses permitted for the MU-7 zone under a PUD, and flexibility from the rear yard, lot occupancy, and penthouse height requirements, which is permitted under the Zoning Regulations. (11-X DCMR §§ 300.4, 303.1.) The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested (including the proposed map amendment), and any potential adverse effects, and concludes the approval of the PUD is warranted for the reasons detailed herein.
7. The PUD is within the applicable height and bulk standards of the Zoning Regulations. The proposed height, density, and other PUD-related flexibility will not cause an adverse effect on nearby properties, is consistent with the height and bulk of surrounding and nearby properties, and will create a more appropriate and efficient utilization of land at a significant transit-oriented location. The mix of residential and retail uses are also appropriate for the site's location.
8. The impact of the Project on the surrounding area and the operation of city services is not unacceptable. The Commission concludes that the Project will not create adverse traffic, parking, or pedestrian impacts on the surrounding community. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area for the Project will be mitigated.
9. The project provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property. The Project also offers a commendable number and quality of public benefits, including the urban design and architecture, open spaces, site planning, housing, affordable housing, environmental benefits, streetscape plans, and uses of special value, which are all significant public benefits. The impact of the Project is acceptable given the quality of the public benefits of the Project, and the proposed public benefits are not inconsistent with the Comprehensive Plan.
10. Approval of the PUD and rezoning is not inconsistent with the Comprehensive Plan. The Commission finds that the proposed Project, including its proposed height and density, is consistent with the Property's Mixed-Use Medium-Density Residential/Moderate-Density Commercial designation on the Future Land Use Map and furthers numerous goals and policies in the Land Use, Housing, Economic Development, and other citywide elements and policies as well as policies in the Rock Creek West Area Element.

11. The Commission concludes that the proposed PUD-related Zoning Map amendment for the Property from the MU-4 to the MU-7 zone is not inconsistent with the Comprehensive Plan, including the Property's designation as Mixed-Use Medium-Density Residential/Moderate-Density Commercial on the Future Land Use Map, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
12. The PUD and rezoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
13. The Commission is also required to give great weight to the recommendations of OP. (D.C. Code § 6-623.04; 11-Z DCMR § 405.8.) The Commission has reviewed the OP reports and heard testimony from OP. The Commission gives OP's recommendation to approve the Application great weight, and concurs with OP's conclusions.
14. 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 issues and concerns raised in the affected ANC's written recommendation. Great weight requires the acknowledgement of the ANC as the source of the recommendations and explicit reference to each of the ANC's concerns. The written rationale for the decision must articulate with precision why the ANC does or does not offer persuasive evidence under the circumstances. In this case, ANC 3E submitted a resolution stating that the ANC supported the Project in reliance on the promises the Applicant made to the ANC a signed MOU. The Commission reviewed the MOU and believes the substantive provisions contained therein are appropriate to incorporate as conditions of this Order. The Commission therefore found this advice persuasive, and has incorporated the provisions of the MOU as conditions of this Order. ANC 3E stated concerns about the height and density of the Project, but concluded that the Applicant provided benefits and mitigation sufficient to justify the increased height and density. The Commission agrees with the ANC that the Project benefits were sufficient to justify the increased height and density, and finds the ANC's advice persuasive. ANC 3E also stated concerns about traffic increases and parking shortages, but concluded that the Project would result in a decrease in traffic relative to the existing buildings it would replace, that the Project included more parking spaces than is required, and that the Applicant's proposed traffic, parking and loading mitigations were, taken together with the project's amenities, were "exemplary." The Commission agrees with ANC 3E that the proposed mitigations are sufficient to offset any potential adverse effects of the Project related to traffic, parking and loading, and finds the ANC's advice persuasive.
15. The Application is subject to compliance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the Application for consolidated approval of a PUD and related rezoning from the MU-4 zone to the MU-7 zone for the property consisting of Lots 45 and 49 in Square 1732 (“Property”). This approval is subject to the following guidelines, conditions, and standards of this Order.

A. Project Development

1. The project shall be developed in accordance with the plans marked as Exhibit 30A1-30A5, Exhibit 55A, and Exhibit 58A of the record, as modified by the guidelines, conditions, and standards herein (collectively, “Plans”).
2. The Property shall be rezoned from MU-4 to MU-7. Pursuant to 11-X DCMR § 311.4, the change in zoning shall be effective upon the recordation of the covenant discussed in Condition No. D.1.
3. The Project shall include a mixed-use building containing approximately 146 residential units; approximately 10,984 square feet of use devoted to one or more of the following uses: retail; general service; eating and drinking establishments; or entertainment, assembling, and performing arts (“Ground-Floor Uses”); and approximately 58 parking spaces, as shown on the Plans, provided:
 - a. Any kitchen exhaust venting for the Ground-Floor Uses shall be run to the roof of the Project; and
 - b. As agreed to by the Applicant, the following uses shall not be permitted unless approved by ANC 3E through a formal resolution: a sexually-oriented business establishment, a check-cashing establishment, a pawnbroker, a bank, a nightclub, a mattress store, a convenience store such as a 7-Eleven, a professional office, a drug store such as CVS, and any “chain” retail, service, or eating and drinking establishment (a “chain” being defined as a business with either at least 10 stores within the District of Columbia or at least 50 stores nationwide). For the avoidance of doubt, if the approval of one of the foregoing uses otherwise requires a special exception, approval by ANC 3E shall not waive the special exception requirement.
4. The Applicant shall be permitted to construct the Project to a maximum height of 88-feet, four inches and a maximum density of 5.73 FAR and shall have

flexibility from the rear yard, lot occupancy, and penthouse uniform height requirements of the Zoning Regulations, as shown on the approved Plans.

5. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the building;
 - b. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Plans without making changes to the exterior materials;
 - c. To make minor refinements to exterior details and dimensions, including without limitation to sills, bases, mullions, coping, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems that otherwise do not significantly alter the exterior design as shown on the Plans;
 - d. To vary the final number of residential units plus or minus five percent, and accordingly adjust the number and location of affordable units to reflect the final unit mix of the Project, provided that the distribution of affordable units by floor shall remain consistent with the Plans;
 - e. To vary the final streetscape design and materials in the public right-of-way, in response to direction received from District public space permitting authorities;
 - f. To vary the final landscaping materials of the Project based on availability and suitability at the time of construction or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, Department of Energy and Environment, Department of Consumer and Regulatory Affairs, or other applicable regulatory bodies;
 - g. To vary the final design of the ground-floor retail space frontage as shown on the Plans, including the number, size, design, and location of retail windows and entrances, signage, awnings, canopies, and similar features, to accommodate the needs of the specific retail tenants and storefront design within the parameters set forth in the plans marked as Exhibit 30B of the Record; and

- h. To vary the design of the north façade as shown on the Plans in the event that a structure is built adjacent to the Property that requires windows to be blocked.

B. Public Benefits

1. Sustainable Design.

- a. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with evidence that the Project is on track to secure LEED-Gold certification or higher from the U.S. Green Building Council under the LEED-2009 rating system. Within 12 months after the issuance of the first certificate of occupancy for the Project, the Applicant shall submit evidence to the Zoning Administrator that it has secured such LEED-Gold certification;
- b. **For the life of the Project**, the Applicant shall provide solar panels as shown on the Plans; and
- c. **For the life of the Project**, the Applicant shall provide a minimum of five electric car charging stations within the garage as shown on the Plans.

2. Affordable Housing.

- a. **For the life of the Project**, the Applicant shall set aside a minimum of 10% of the residential gross floor area of the Project (approximately 11,753 square feet of gross floor area) as Inclusionary Zoning Units in accordance with Subtitle C of the Zoning Regulations for households earning up to 60% of the Median Family Income.
- b. At least one Inclusionary Zoning Unit shall be a two-bedroom unit.
- c. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this Condition.

3. Chesapeake House.

- a. **Prior to the issuance of the first certificate of occupancy of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has renovated the Chesapeake House to a “warm, lit shell” condition with a minimally finished interior, ceilings, lighting, plumbing, heating and cooling, electrical outlets, restrooms, and an unfinished floor for use as a community-serving space for residents of ANC 3E (“Work”); and
- b. **Prior to commencing the Work**, the Applicant shall facilitate discussions among ANC 3E, the National Park Service, and other stakeholders,

regarding the use of the Chesapeake House, with the goal of reaching agreement on a use of the House. If a community-serving use acceptable to ANC 3E cannot be agreed upon, then the Applicant shall consult with ANC 3E regarding a substitute amenity, and shall seek modification of the PUD to substitute said amenity, which shall be of equivalent or better value to the community.

4. Restaurant Use. **For the life of the Project**, the Applicant shall set aside a minimum of 3,500 square feet on the ground floor of the Project for a restaurant, as that term is defined at 11-B DCMR § 100.2.⁵

5. Streetscape Improvements. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has:
 - a. Constructed the streetscape improvements along the perimeter of the Project as shown on pages L1 to L3 of the Plans. The final design of such improvements shall be subject to the approval of the appropriate District public space permitting authorities;

 - b. Undergrounded the existing above-ground utility lines along Wisconsin Avenue in front of the Property. Undergrounding means the construction of underground vaults; installation of the utility lines presently located above ground on existing utility poles and other appurtenant equipment in those vaults; reconnection of said lines to the Project; and removal of all utility poles, in cooperation with PEPCO and other utility providers using the poles, such as Comcast or RCN; and

 - c. Reached out to the owners of the remaining three lots on the block extending north to Chesapeake Street to seek permission for the Applicant to underground the utility lines in front of those lots, and has undergrounded said lines if such permission has been received. The Applicant shall document the form and substance of communication used to reach out to each owner and shall reach out by a second form of communication if the Applicant is unable to connect with the owner by the

⁵ Restaurant: A place of business that does not meet the definition of a “fast food establishment” or “prepared food shop,” where food, drinks, or refreshments are prepared on the premises and sold to customers primarily for consumption on the premises. This term shall include, but not be limited to, an establishment known as a café, lunch counter, cafeteria, or other similar business, but shall not include a fast food restaurant. In a restaurant, any facilities for carry out shall be clearly subordinate to the principal use of providing prepared foods for consumption on the premises. A restaurant may include ancillary carry out sales, provided that there is no designated carry out counter or window, no drive through facility, and the carry out service is not an advertised element of the business.

first form of communication. As part of such efforts, the Applicant shall share with ANC 3E all communications it has had with representatives of the owners of the remaining three lots. If the owner of the property immediately adjacent to the Project permits such undergrounding, the Applicant shall underground such utility lines regardless of whether the owner of the next adjacent property has permitted such undergrounding.

6. Brandywine Street and Park.

- a. Prior to the issuance of the first certificate of occupancy of the Project, the Applicant shall demonstrate to the Zoning Administrator: that the District Department of Transportation has agreed to close⁶ the segment of Brandywine Street NW between 42nd Street and River Road to vehicular traffic; and that the Applicant has: (i) sought approval to turn the new three-way “T” intersection of Brandywine Street into an all-stop intersection, and constructed and installed signage and striping as required; and (ii) designed and constructed a new park on the closed street segment and adjacent triangular park;
- b. The design and use of the park shall be developed based on input from ANC 3E, but the design and construction of the park and related streetscape improvements shall be subject to review and approval by the appropriate District public space permitting authorities. As a part of the improvements, the Applicant shall design and construct modifications to safely and effectively route pedestrians, bicyclists, and vehicles around and through the new park (such as modifications to crosswalks and curb extensions) as approved by the appropriate District public space permitting authorities;
- c. The Applicant shall maintain the park in a manner comparable to the maintenance of public parks and spaces in the surrounding area or fund such maintenance for the life of the Project; and
- d. If the Applicant cannot complete the improvements described above prior to the issuance of the first certificate of occupancy for the Project, the Applicant shall consult with ANC 3E regarding a substitute amenity, and shall seek modification of the PUD to substitute said amenity, which shall be equivalent or better value to the community.

⁶ The closed street segment may remain open as a paper street in the records of the Surveyor of the District of Columbia.

C. **Mitigation Measures**

1. **RPP Restrictions.** **For the life of the Project,** the Applicant shall prohibit residents of the Project from participating in the District's RPP program through a clause in emphasized type in all leases for residents that prohibits residents from applying for obtaining RPPs, or using an RPP guest pass within one mile of the Property, upon pain of mandatory lease termination, to the full extent permitted by law. Furthermore, Applicant shall oppose any effort by residents of the Project or others to add the Property to the list of properties eligible for RPP. Finally, should the Applicant sell any units in the Property, the Applicant shall incorporate a covenant that runs with the land into the deed for the units that prohibits residents from applying for or obtaining RPP.

2. **Transportation Demand Management Measures.** **For the life of the Project,** the Applicant shall provide the following TDM measures:
 - a. Designate a member of the property management team as the Transportation Management Coordinator, who shall be responsible for ensuring that transportation information is disseminated to the tenants of the Project;
 - b. Include information on transportation programs and services on the property management website;
 - c. Include a real-time electronic transportation information display in a common, shared space in the Project; and
 - d. Provide at least 82 convenient and covered bicycle parking spaces within the Project as shown on the Plans.

3. **Loading Management Measures.** **For the life of the Project,** the Applicant shall designate a loading dock manager to:
 - a. Coordinate with vendors and tenants in order to make sure that deliveries occur from 9:00 a.m. to 5:00 p.m.;
 - b. Ensure that all deliveries take place at the loading dock and that the dock's capacity is not exceeded;
 - c. Redirect drivers to return at a later time if the dock is full;
 - d. Monitor inbound and outbound maneuvers;

- e. Notify truck drivers of any access or egress restrictions;
 - f. Provide DDOT's Freight Management and Commercial Vehicle Operation document to drivers; and
 - g. Direct all truck drivers to utilize the Truck Routing Plan shown on Exhibit 30C of the record.
4. Limitations on Adjacent Development. **For the life of the Project**, to the extent that the Applicant or its affiliates acquire the rights to and redevelop any or all of the adjacent properties at 4626, 4632, and 4652-4654 Wisconsin Avenue N.W., the Applicant shall limit the height of any development to no more than six stories plus a penthouse level. Should the Applicant or its affiliates undertake such redevelopment, Applicant shall underground the utilities along the remainder of the 4600 block of Wisconsin Avenue, to Chesapeake Street, in connection with such redevelopment.

D. Miscellaneous

- 1. No building permit shall be issued for this project until the owner of the Property has recorded a covenant among the land records of the District of Columbia between the owner and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the owner of the Property and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Commission.
- 2. The Application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for the building permit as specified in 11-Z DCMR § 702.2. Construction must begin within three years after the effective date of this Order for the PUD to remain valid.
- 3. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.
- 4. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01, *et seq.* ("Act") and this Order is conditioned on full compliance with those provisions. In accordance with 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, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

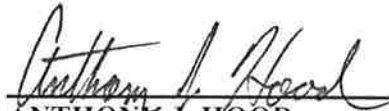
On October 30, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the Application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull).

On January 29, 2018, upon the motion of Commissioner Shapiro, as seconded by Commissioner May, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull).

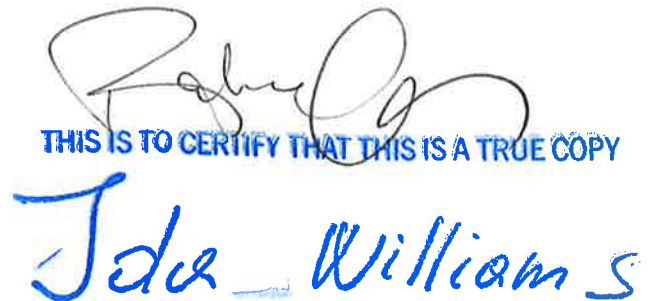
In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on March 30, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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


ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION


SARA A. RARDIN
DIRECTOR
OFFICE OF ZONING


THIS IS TO CERTIFY THAT THIS IS A TRUE COPY
Ida Williams
Recorder of Deeds, D.C.

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DEC 18 2018

RECORDING FEES \$25.00
SURCHARGE \$6.50

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