

PLANNED UNIT DEVELOPMENT COVENANT

**Z.C. Order No. 17-21
As You Like It LLC
(Consolidated PUD and Related Map Amendment @ Square 498, Lot
52)**

THIS PLANNED UNIT DEVELOPMENT (“PUD”) COVENANT (“**Covenant**”), is made as of this 26th day of February 2020, by **As You Like It LLC**, a Delaware limited liability company (the “**Declarant**”), for the benefit of the District of Columbia, a municipal corporation (the “**District**”).

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of certain real property and improvements located in the District of Columbia known for assessment and taxation purposes as Lot 52 in Square 498, with an address of 501 I Street SW (the “**PUD Site**”). The PUD Site is generally bounded by 6th Street SW to the west, I Street SW to the south, and separately-owned properties to the north and to the east, all in the Southwest quadrant of Washington, D.C., and as is more particularly described in Exhibit A;

WHEREAS, the Zoning Commission for the District of Columbia (the “**Zoning Commission**”) approved an application for a Consolidated Planned Unit Development (the “**PUD**”), and a related Zoning Map Amendment, at the PUD Site by Z.C. Order No. 17-21, dated June 10, 2019, that became final and effective on November 29, 2019 (the “**Order**”);

WHEREAS, Subtitles X § 311.3 and Z § 702.10 of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “**Zoning Regulations**,” to which all references herein are made unless otherwise specified), require the Declarant to enter into this Covenant for the PUD Site binding the Declarant, and its successors and assigns, to construct on

and use the PUD Site in accordance with the Order, including all modifications, alterations, or amendments thereto approved by the Commission;

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 Commission's approval of the Consolidated PUD and Related Map Amendment 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 constructed on and used in accordance with the plans approved by the Order and its conditions and restrictions, subject to such changes as the Zoning Administrator of the District of Columbia may authorize pursuant to Subtitle A § 304.5, or as the Commission may authorize pursuant to Subtitle Z §§ 703 or 704. The Declarant 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 by the Commission, subject to the terms and conditions contained herein and the provisions of Subtitle X, Chapter 3.

2. Additional Time to Construct PUD. The Commission may consider an application filed by the Declarant for good cause to extend the validity period of the Order and the time period requirements for filing a building permit application and commencing construction in accordance with Decision No. E(2) of the Order, in accordance with and subject to the limitations of Subtitle Z § 705.

3. Default. In the event that the Declarant fails to file a building permit application to construct, or fails to commence construction of, the PUD approved in the Order within the time specified in Decision No. E(2) of the Order, as modified by any extension of time granted by the

Commission for good cause shown pursuant to Subtitle Z § 705, the benefits granted under the Order shall terminate pursuant to Subtitle Z § 702.6 and this Covenant shall be deemed null and void.

4. Future Conveyance. The Declarant 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, or a conveyed portion thereof, in accordance with the terms and conditions of this Covenant, and that the grantee, its successors and assigns, shall be considered a declarant to this Covenant. Should the District convey all of its ownership interest in the PUD Site, the District, as the regulating authority, shall continue to be deemed a party to the Covenant for the purposes of enforcing all covenants, conditions, and restrictions contained herein.

5. Covenants to Run with the Land. The covenants and restrictions contained herein shall be deemed real covenants running with PUD Site and shall bind the Declarant, its successors and assigns, and shall inure to the benefit of the Declarant, its successors and assigns. Such covenants are not binding upon the Declarant should it no longer have a property interest in the PUD Site. The District, as the regulating authority, shall have the right to enforce all covenants, conditions, and restrictions contained herein.

6. Recordation. The Declarant 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 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 this Covenant. If the Commission modifies or amends the Order, no formal amendment of this Covenant shall be required, provided that the Declarant, or its successors or assigns, record 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 prior written consent of the District and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Commission.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, As You Like It LLC, a Delaware limited liability company, intending to be legally bound, has caused this Covenant to be executed by Stefanie Erkiletian its

Manager

DECLARANT:

AS YOU LIKE IT LLC,
A Delaware limited liability company,

By: [Signature]
Name: Stefanie S. Erkiletian
Title: Manager

ARLINGTON, VIRGINIA
DISTRICT OF COLUMBIA, ss:

I, Kathryn Egbert, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Stefanie Erkiletian, the manager of As You Like It LLC, a Delaware limited liability company, personally appeared before me and, being personally well known to me, acknowledged said Covenant to be the act and deed of As You Like It LLC and delivered the same as such.

GIVEN under my hand and seal this 6 day of February, 2020.

[Signature]
Notary Public, D.C.



[Notary Seal]

My commission expires: 01/31/2021

APPROVED AS TO TECHNICAL SUFFICIENCY:

Matthew Le Grant

2-6-2020

Matthew LeGrant
Zoning Administrator
Department of Consumer and Regulatory Affairs

Date

(PUD Covenant pursuant to Subtitles X § 311.3 and Z § 702.10 for Lot 52 in Square 498 for Consolidated PUD approved by Z.C. Order No. 17-21)

APPROVED AS TO LEGAL SUFFICIENCY:



Maximilian L.S. Tondro

Assistant Attorney General

Office of the Attorney General for the District of Columbia

2/19/20
Date

(PUD Covenant pursuant to Subtitles X § 311.3 and Z § 702.10 for Lot 52 in Square 498 for Consolidated PUD approved by Z.C. Order No. 17-21)

EXHIBIT A

LEGAL DESCRIPTION OF THE SUBJECT 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 Fifty-Two (52) in Square Four Hundred Ninety-Eight (498) in the Subdivision made by District of Columbia Redevelopment Land Agency, as per Plat recorded in Liber No. 141 at folio 118 among the Records of the Office of the Surveyor for the District of Columbia.

EXHIBIT B

ZONING COMMISSION ORDER NO. 17-21

[Appended behind]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 17-21
Z.C. Case No. 17-21
As You Like It, LLC
(Consolidated PUD and Related Map Amendment
@ Square 498, Lot 52 [501 I Street, S.W.]
June 10, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on March 28, 2019 to consider an application from As You Like It, LLC (the “Applicant”), on behalf of Erkiletian Development Company (“Developer”) and Shakespeare Theatre Company (“STC”), for review and approval of a consolidated planned unit development (“PUD”) and related amendment to the Zoning Map from the R-3 zone to the MU-4 zone (together, the “Application”) for Lot 52 in Square 498, with an address of 501 I Street, S.W. (the “PUD Site”). The Commission considered the Application pursuant to Subtitles X and Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations,” to which all references are made unless otherwise specified). For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

BACKGROUND

Setdown

1. On November 7, 2017, the Applicant filed the Application for consolidated review and approval of a PUD and related Zoning Map amendment from the R-3 zone to the MU-4 zone and requested the Commission set down the Application for a public hearing. (Exhibit [“Ex.”] 2.)
2. On December 13, 2017, Advisory Neighborhood Commission (“ANC”) 6D, the “affected ANC” per Subtitle Z § 101.8, filed a report opposing setdown of the Application due to outstanding questions and issues regarding the Comprehensive Plan (Title 10A of the DCMR) (“CP”), the Small Area Plan (“SAP”) for the neighborhood that includes PUD site, the project design, and community negotiations. (Ex. 11.)
3. At a public meeting on January 29, 2018, the Commission considered setdown and deferred a decision to allow the Applicant and the ANC to negotiate further. (Transcript of January 29, 2018 Meeting at 64-77.)

4. On February 26, 2018, the ANC filed a letter reiterating its concerns and opposing setdown, although the ANC letter acknowledged that the Applicant had begun conversations with the ANC regarding its concerns. (Ex. 18.)
5. At its February 26, 2018, public meeting, the Commission unanimously voted to set down the Application for a public hearing.
6. On December 18, 2018, the Applicant requested a postponement of the public hearing, originally scheduled for January 24, 2019.

Notice

7. Notice of the public hearing rescheduled to March 24, 2019, was published in the *D.C. Register* on January 11, 2019, in Volume 66, Issue 2, and was mailed to ANC 6D and to owners of property within 200 feet of the PUD Site. (Ex. 25, 27-30.)
8. The Applicant posted notice of the public hearing at the PUD Site on February 13, 2019 and filed an affidavit describing the maintenance of that notice on March 25, 2019. (Ex. 35, 45.)

Parties

9. In addition to the Applicant, ANC 6D was automatically a party in this proceeding and submitted a report and testimony in support of the Application. (Ex. 49, 53.)
10. United Neighbors of Southwest (“UNSW”) submitted a request for party status in opposition. (Ex. 16, 21, 44.) At its public meeting on December 17, 2018, the Commission approved UNSW as a party in opposition. UNSW later updated its list of members and withdrew its party status in opposition at the public hearing based on the current plan, compromises, and commitments agreed to by the Applicant. (Ex. 44; March 28, 2019 Hearing Transcript (“Mar. Tr.”) at 107-108.)
11. Martin Welles (“Welles”) also submitted a request for party status in opposition. (Ex. 40.) At the public hearing on March 28, 2019, the Commission denied Mr. Welles’ application for party status, noting that Welles was not uniquely affected by the application.

PUD Site

12. The PUD Site consists of approximately 36,476 square feet of land area and is located at the corner of 6th Street, S.W. and I Street, S.W. in Ward 6. (Ex. 2.)
13. The PUD Site is located approximately four blocks away from the Waterfront Metrorail station. (Ex. 2.)
14. The PUD Site is adjacent to and across the street from a series of mostly two- and three-story townhouses, including one four-story townhouse, as well as a three- to four-story mid-block apartment building.

15. The PUD Site is located in the R-3 zone. Much of the nearby property is also located in the R-3 zone, although the parcel immediately to the north is located in the RA-2 zone and the property to the southwest of the PUD Site is located in the RA-4 zone. (Ex. 2.)
16. The CP's Future Land Use Map ("FLUM") designates the PUD Site in the Institutional Land Use category. The CP's Generalized Policy Map ("GPM") designates the majority of the PUD Site as "Institutional," while a small portion at the northeast corner of the site is designated as a Neighborhood Conservation Area. (Ex. 2.)

THE APPLICATION

The Project

17. The Application proposes to construct a four-story main building (the "Main Building") connected below grade to a four-and-a-half story annex (the "Annex," and collectively with the Main Building, the "Project") that is separate above grade.
18. The Project will be constructed to a height of approximately 48 feet¹ and density of 2.87 floor area ratio ("FAR"), composed of approximately 104,660 square feet of total gross floor area ("GFA"), divided between 13,860 square feet of office and arts, design, and creation uses and 90,800 square feet of residential uses that feature a mix of studio, one-bedroom, two-bedroom, and three-bedroom units. (Ex. 39E1-39E9, 52E.)
19. The Project will house 64 for-sale residential units (the "Residential Component") and space for STC devoted to office, rehearsal, education, costume-shop uses, approximately 18 actor housing units, and approximately 18 beds for fellows (the "STC Component"). The below-grade level includes STC rehearsal and costume shop spaces. The ground floor of the building will include both STC office uses and residential uses. The second, third, and fourth floors are all for residential uses. (Ex. 2, 20, 38, 51.)
20. The Applicant will set aside eight percent of the residential GFA, or approximately 6,831 square feet of GFA, as affordable housing at 80% of Median Family Income ("MFI"). The affordable housing set-aside includes a commitment to three three-bedroom units, one two-bedroom unit, and one studio unit. (Ex. 52E.)
21. All parking and loading for the Project will be accessed from the private driveway (the "Private Driveway") located along 6th Street, S.W. at the west side of the PUD Site. The Project will include approximately 40 vehicular parking spaces on site, two on the surface and 38 spaces below grade in the garage, and STC will make an additional 15 parking spaces available off-site. Additionally, approximately 67 long-term bicycle parking spaces are located within the garage, as well as 16 short-term bicycle parking spaces located in the streetscape along I Street, S.W. (Ex. 2, 20, 38, 51.)

¹ The Annex has a height of 48 feet, 2 inches.

22. Overall, the Project uses a combination of high-quality materials and architectural design details to create a new building on a vacant lot that provides an attractive, context-appropriate design:
- (a) Along I Street, S.W., the architectural design includes a more institutional façade with a sweeping, gently curved glass façade. The I Street, S.W. design also incorporates the kind of art envisioned for this arts corridor with a bas-relief quill along the building façade and art panels in public space along I Street. The main entrances to both the STC Component and Residential Component complete the interactive, pedestrian-focused nature of the I Street, S.W. façade; and
 - (b) Along 6th Street, S.W., the architectural design transitions to a lower-density residential feel with a primary brick façade with punched windows and a series of ground-floor walk-out residential units and bays that create a townhouse rhythm. The 6th Street, S.W. streetscape design also includes a streetscape similar to the nearby 6th Street, S.W. townhouses that creates a “front yard” to complete the townhouse rhythm.

(Ex. 2, 20, 39, 51, 52.)

23. In response to concerns raised by the ANC and UNSW, the Applicant revised the Project to render its height and mass consistent with and sensitive to the surrounding context by: (Ex. 2, 20, 39, 51, 52.)
- (a) Setting back the fourth floor of the Project along 6th Street, S.W. and removing the habitable penthouse units, so that the Project reads as similar to the three-story townhouse rhythm along 6th Street, S.W; and
 - (b) Reducing the footprint of the Annex and relocating it to the south, away from the apartment building and townhouses to its north. The first floor of the Annex is partially below grade, so the four- and one-half-story Annex is not inconsistent with its closest neighbor, the three- and four-story apartment building immediately north.

Requested Zoning Map Amendment

24. The Applicant requested a PUD-related amendment to the Zoning Map from the R-3 zone to the MU-4 zone to permit the Project to achieve the requested mix of uses, height, and density.
25. The R-3 zone permits the following as a matter of right:
- Minimum lot width of 20 feet and a minimum lot area of 1,600 square feet;
 - Maximum height of 40 feet and three stories; and
 - Maximum lot occupancy of 60% for residential dwellings.

26. For a residential development that triggers inclusionary zoning, the MU-4 zone permits:
- Maximum density (instead of lot dimension standards) of 3.0 FAR as a matter of right, and 3.6 FAR as a PUD;
 - Maximum height of 50 feet as a matter of right, or 65 feet as a PUD; and
 - Maximum lot occupancy is 75% for residential uses.

Requested PUD Flexibility

27. The Applicant requested flexibility from the following development standards of the MU-4 zone:

- The lot occupancy requirements of Subtitle G § 404 – only for the ground floor, where the Project will slightly exceed the lot occupancy requirement to accommodate STC’s operational needs, while all other floors are compliant with the lot occupancy requirements;
- The court requirements of Subtitle G § 202 for a substandard closed court on the ground floor that provides protected windows along the Project’s eastern façade;
- The rear yard requirements Subtitle G § 405 for a substandard rear yard for the Annex due to the narrowness of the lot. The overall area of the rear yard provided by the Project exceeds the minimum required; and
- The single uniform penthouse requirements of Subtitle G § 203 and Subtitle C § 1500 to accommodate a separate roof stair and elevator override of uneven height on the north side of the Main Building in order to remove the habitable units in the penthouse in response to concerns of the ANC and UNSW, as outlined in the Office of Planning’s (“OP”) Final Report and detailed in the Applicant’s written submissions and testimony at the public hearing. (Ex. 39, 39E1-39E9, 42.)

PROJECT’S PROPOSED AMENITIES AND PUBLIC BENEFITS

28. As detailed in the Applicant’s testimony and written submissions, the Project will implement the following project amenities and public benefits: (Ex. 2, 39, 52, 63.)
- (a) Superior Urban Design and Architecture. The Project exhibits many characteristics of exemplary urban design. Specific features include contextually-appropriate building materials and design, modulations in scale through setbacks and bays to integrate the building design into the community context, and a public space design that reflects the different frontages of the project and matches existing context;
 - (b) Site Planning and Efficient and Economical Land Utilization. The PUD Site is currently vacant and fails to capitalize on its prominent location near the Waterfront Metrorail station. The PUD Site currently contains no active use, which discourages pedestrian activity. The Project transforms a vacant and underutilized site into an

attractive mixed-use development, with well-located and carefully designed parking and loading locations for the Project that are separated from the primary pedestrian entrances;

- (c) Housing. The Project will create approximately 64 new residential for-sale units in a zone where approximately only 12 residential townhouses could be constructed. The Project also includes three-bedroom units, which are specifically called out as a public benefit. The Project will also include 18 apartments for actors and 18 beds for STC fellows, providing housing for arts populations who might otherwise not be able to live in the District;
- (d) Affordable Housing. The Applicant will provide eight percent of the gross residential area in the proposed building for affordable dwelling units at 80% of the MFI. This will result in approximately 8,631 square feet of affordable housing within five units. Of note, three of the five affordable units are three-bedroom units, which would not otherwise be required under the inclusionary zoning proportionality requirements. A matter-of-right project in the existing R-3 zone would yield approximately 12 rowhouses, including one affordable townhouse, factoring in frontage and site access requirements (assuming that the total number of rowhouses is not reduced to 9 rowhouses to avoid an IZ requirement altogether). (Ex. 21). Accordingly, the amount of housing and affordable housing that exceeds matter-of-right development is considered a public benefit of the PUD;
- (e) Environmental and Sustainable Benefits. The Applicant will achieve a minimum of Gold certification under the LEED-2009 rating system. The Project will also integrate other sustainable design features, including solar panels as a renewable energy source on the roof of the Project. The Project will also include two electric vehicle charging stations in the parking garage;
- (f) Streetscape Plans. The existing streetscape lacks pedestrian activity and attractive landscaping that would otherwise enliven the sidewalks. Further, the 6th Street, S.W. streetscape is the only block on this stretch of 6th Street, S.W. that does not match the existing streetscape design. The Applicant proposes streetscape improvements that will better integrate the Project into the community. Along 6th Street, S.W., the Applicant will construct the “flipped” streetscape to match the existing streetscape in this two-block stretch, bringing the PUD Site into its surrounding context. Along the I Street, S.W. frontage, the Applicant will include art panels in the streetscape to enhance this arts corridor;
- (g) Uses of Special Value
 - i. Public Art. The Applicant will create public art components along the I Street, S.W. frontage of the Project. First, there will be brick relief art on the I Street pillar of the Project. Second, there will be transparent etched art panels showing Shakespeare’s themes in the public space along I Street,

S.W. Third, the Project will include a rotating costume display in the residential lobby at the corner of 6th and I Streets, S.W. The public art will enhance the character of I Street, S.W. as an “arts” corridor and evoke the relationship of the Project to William Shakespeare;

- ii. Bumpouts. In response to community feedback and requests, the Applicant will construct “bumpouts” along the intersections of 6th Street, S.W. with G, H, and I Streets, S.W. The bumpouts will improve pedestrian safety, discourage cut-through traffic, and strengthen the appearance of 6th Street, S.W. north of I Street, S.W. as a true neighborhood street;
- iii. Waterfront Village Performances. The Applicant has committed to partnering with Waterfront Village to support their mission of helping residents age in place at their homes by providing ongoing access to theatre performances. Twice a year, STC will provide the Village with a minimum of 30 tickets to an STC performance, make available transportation to and from the performance, and provide pre- and/or post-show discussions with STC education staff, artistic staff, or actors;
- iv. Southwest Night Performances. Based on discussions with UNSW and the ANC, the Applicant will arrange a “Southwest Neighbors” performance for each STC production, for which Southwest residents will be able to purchase deeply discounted tickets; and
- v. Educational Benefits. The Applicant has also committed to providing \$50,000 to the Amidon-Bowen Elementary Parent Teacher Association (“PTA”) for after-school programs and related facility improvements. The Project will also include space and fasteners for a mural on the east side of the Annex facing the Elementary School, which the PTA will design and create.

Southwest Neighborhood Association (“SWNA”) Agreement Benefits

29. The Applicant recommitted to previous benefits discussed with the community related to the Project based on the 2014 SWNA Agreement, including: (Ex. 61.)
 - (a) Support for the SW Arts Fest, the Duck Pond, and the Southwester paper; free tickets to the Ward 6 Free for All performance; discounted access to STC educational programs such as its Master Acting Classes and Camp Shakespeare; and access to the new STC facilities for community meetings; and
 - (b) Invitations to STC children’s performances of The Tiny Tempest and A Mini-Midsummer Night’s Dream for Amidon-Bowen Elementary School and Jefferson Middle School, tours of the STC facilities for students and teachers, and access to the District Shakespeare program for Jefferson Middle School.

PUBLIC HEARING – March 28, 2019

30. A public hearing was conducted on March 28, 2019 (the “Public Hearing”). The Applicant provided testimony from Shalom Baranes and Patrick Burkhart of Shalom Baranes Associates, Maris Fry of Gorove/Slade, and Craig McClure of Parker Rodriguez, Inc., all of whom were admitted as experts in their respective fields.

RESPONSES TO THE APPLICATION

OP Report

31. OP submitted a hearing report on March 18, 2019 that recommended approval of the Application based on the following analysis: (Ex. 42.)
- (a) OP noted that the Applicant had addressed previous concerns raised at setdown by OP and the Commission, including community consultation, more contextual design, transportation issues, impact of rear yard relief, Public Space Committee concept approval of art panels, and increasing affordable housing proffer;
 - (b) OP concluded that the proposed PUD and related rezoning was not inconsistent with the CP as a whole, including the FLUM, the GPM, and the Citywide and Area Elements, as well as the SAP;
 - (c) OP evaluated the proposed PUD and related rezoning under the evaluation standards set forth in Subtitle X, Chapter 3, 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;
 - (d) OP requested the following:
 - i. Information on the proposed off-site parking site;
 - ii. A final curbside management plan for the north side of the 400 block of I Street, S.W.;
 - iii. A response to OP’s recommendation to provide training/employment opportunities for Southwest residents;
 - iv. Final agreements with the ANC or other groups; and
 - v. A revised benefits and proffers list.
32. The Applicant confirmed its satisfaction of these requests for information as follows:
- (a) The Applicant testified at the Public Hearing about the off-street parking site at Arena Stage, and a representative of Arena Stage confirmed its commitment to providing parking for the Applicant; (Mar. Tr. at 34, 117.)
 - (b) The Applicant submitted a final curbside management plan, final agreements with UNSW and the PTA, and a benefits and proffers list; (Ex. 52A, 52C, 63.)

- (c) The Applicant did not commit to specific training and employment opportunities for the Project as part of its benefits and amenities, although as one of the Proponents noted, the Project will help improve the local talent pool for actors through its acting classes and its fellows program; and (Mar. Tr. at 120-21.)
- (d) On May 6, 2019, the Applicant submitted its preliminary list of its proffered public benefits and draft conditions, and on May 20, 2019, the Applicant submitted its final list. (Ex. 61, 63,)

33. OP confirmed its recommendation of approval in testimony at the Public Hearing.

DDOT Report

34. The District Department of Transportation (“DDOT”) submitted a report on March 18, 2019 report that stated no objection to the PUD, as confirmed by testimony at the Public Hearing, based on the following analysis: (Ex. 49.)
- (a) DDOT found that the Applicant’s Comprehensive Transportation Review (“CTR”) utilized sound methodology and assumptions to perform the analysis. DDOT concluded that the Project’s loading and parking were adequate for the needs of the Project. DDOT further found that the Project would generate a moderate number of vehicle trips and transit trips from the nearby Waterfront Metrorail station; and
 - (b) DDOT found that the Project would have an impact on the existing roadway network, but that such impacts could be mitigated by the Transportation Demand Management Plan (“TDMP”), Parking Management Plan (“PMP”), and Loading Management Plan (“LMP”) proposed by the Applicant, with certain additions which the Applicant agreed to. DDOT also concluded that the proposed amount of vehicle and bicycle parking was sufficient given the Project’s location and other features. DDOT also noted that it would work with the Applicant on other streetscape design details through the public space permitting process.

ANC 6D Reports

35. ANC 6D submitted a report on March 27, 2019 (the “1st ANC Report”), stating that at a regularly-scheduled and duly-noted public meeting on March 11, 2019, with a quorum present, ANC 6D voted to support the proposed PUD and related rezoning, with the following conditions: (Ex. 49.)
- (a) The Public Space Committee’s approval of a 6th Street, S.W. streetscape plan;
 - (b) The execution of Memorandum of Understanding (“MOU”) with UNSW; and
 - (c) The execution of a MOU with the PTA to “include public and school benefits, building design and proposed uses, curbside and construction management plans and additional benefits from the 2014 SWNA agreement.”

36. The Applicant confirmed its satisfaction of these conditions as follows:
- (a) The Applicant testified that the Public Space Committee approved the 6th Street Streetscape on March 28, 2019; (Mar. Tr. at 12-13.)
 - (b) The Applicant submitted the executed MOU with UNSW on March 28, 2019; and (Ex. 52C.)
 - (c) The Applicant submitted the executed MOU with the PTA on April 15, 2019. (Ex. 58.)
37. The First ANC Report also listed several additional issues and concerns that the ANC stated had been resolved by the Applicant:
- (a) The Applicant's "redesign" of the building that changed the massing and organization of the building to incorporate a "three story townhouse rhythm," eliminated the residential units in the penthouse, and a setback of the fourth floor;
 - (b) The redesign of the streetscape to "flip" it to match the urban renewal design of the surrounding townhouses, but approval of the revised streetscape design would not happen until the morning of the scheduled zoning hearing, and if this approval was not obtained the ANC would withdraw its support of the application;
 - (c) The ANC expressed support for homeownership units and was supportive of the Applicant's assurance that it would include a provision in the condominium by-laws requiring a certain percentage of the units to be owner occupied;
 - (d) The ANC expressed support for the Applicant's proposal to set aside as affordable units three family-sized three-bedroom units;
 - (e) Support for the Applicant's proposal to include the STC institutional uses in the Project with no retail component;
 - (f) Support for the Applicant's proposed curbside management plan; and
 - (g) Support for the Applicants proposed construction management plan.
38. The First ANC Report authorized Commissioner Gail Fast to testify on behalf of the ANC at the Public Hearing.
39. Commissioner Fast testified at the Public Hearing and submitted a written copy of her testimony into the record. (Ex. 53.)

40. ANC 6D did not submit a written report stating that the ANC had voted to adopt Commissioner Fast's testimony, as required to qualify for "great weight" by the ANC Act.
41. ANC 6D submitted a second report on April 21, 2019 (the "Second ANC Report"), that stated its support of the Application and commented favorably on the MOU signed with the PTA, the building design, the location of the affordable units in the Project, the public benefits of the Project, the MOU with the Applicant and UNSW, and the construction management plan. (Ex. 60.) The 2nd ANC Report stated that the ANC expected DDOT will take the Applicant's construction management plan and coordinate it with other projects, and to continue dialogue with DDOT's Safe Routes on the best placement of the school speed limit signs. (*Id.*)
42. The Second ANC Report did not include a statement that the ANC had voted to adopt Commissioner Fast's testimony, as required to qualify for "great weight" by the ANC Act.

PUBLIC TESTIMONY

Persons in Support

43. Four individuals submitted letters in support of the Application and three individuals testified in support (together, the "Proponents") of the Application at the public hearing. The Proponents noted the Application's contextual fit within the Southwest community, the cultural use through the STC use, and the benefits for the community. (Ex. 10, 46, 47, 48; Mar. Tr. at 115-125.)

Persons - Undeclared

44. The PTA testified as undeclared, expressing concerns about traffic and pedestrian safety, impacts of the Project on the school's play areas, and lack of affordable three-bedroom units within the Project, but also indicating the Applicant had been willing to work with the PTA to address its concerns. (Mar. Tr. at 110-115)

Persons in Opposition

45. Mr. Welles testified as a person in opposition to the project at the public hearing. Mr. Welles raised concerns regarding the proposed rezoning to a commercial zone as well as the introduction of commercial activity along I Street. Mr. Welles also expressed concern regarding the impact of the Project on a light pole located on the PUD Site.
46. Donna and Andy Gomer (the "Gomers") testified in opposition to the Application at the public hearing, expressing concerns about the height, design, and proximity of the Project to their residence, as well as the impact of the project on parking. In his testimony, Mr. Gomer also indicated that he was happy that the height of the project was reduced, he felt the design was much better, and he confirmed that the height of the Project would not impact their rooftop solar panels. (Mar. Tr. at 108-110, 125-128, 157.)

47. Chris Otten filed a letter in opposition to the Project, expressing generalized concerns that the Application should not be approved due to the lack of agency review and the impacts of the project. (Ex. 55.) Although Mr. Otten claimed to “adopt all opposition positions and contested issues,” his letter failed to note any specific detail about the Application or particular injury to any person in Southwest or otherwise. Mr. Otten claimed that his letter was on behalf of the “DC for Reasonable Development: Ward 6 Study Group” and supported by the “Southwest Accountability Group.” However, the letter provided no evidence that the letter was co-signed by, supported by, or authorized by either organization, so the Commission will treat the letter as testimony in opposition by Mr. Otten as an individual. The Ward 6 Study Group/Southwest Accountability Group have participated directly in other zoning cases through testimony and evidence by their members. (See, for example, the record in Z.C. Cases 02-38J, 02-38I, 07-13G, and 11-03J.)

POST-HEARING SUBMISSIONS

48. At the close of the Public Hearing, the Commission asked the Applicant to address certain aspects of the penthouse design and affordable unit location, as well as to continue coordinating with the PTA, Mr. Welles, and the Gomers regarding the application.
49. The Applicant addressed those issues and concerns in a post-hearing submission dated April 15, 2019, which included:
- (a) A signed MOU between the Applicant and the PTA, and a letter from the PTA in support of the Application indicating that the PTA’s concerns had been addressed; (Ex. 58A, 59)
 - (b) A statement that the Applicant indicated that it met with Mr. Welles and incorporated additional commitments regarding the light pole and other improvements to the School property in its MOU with the PTA to address Welles’ concerns; and (Ex. 58.)
 - (c) A summary of discussions with the Gomers. (Ex. 58.)

National Capital Planning Commission (“NCPC”)

50. At its April 29, 2019 public meeting, the Commission took proposed action to approve the application. The proposed action was referred to NCPC on May 3, 2019, pursuant to § 492 of the Home Rule Act. (Ex. 62.)
51. The Executive Director of NCPC, by delegated action dated May 31, 2019, found that the proposed PUD and related map amendment would not be inconsistent with the Comprehensive Plan for the National Capitol, nor would it adversely affect any other identified federal interests. (Ex. 64.)

CONCLUSIONS OF LAW

Compliance with the PUD Regulations and Contested Issues

1. The Commission is authorized under the Zoning Act to approve a planned unit development and Zoning Map amendment consistent with the requirements set forth in Subtitle X §§ 304, 500.
2. The Applicant shall have the burden of proof to justify the granting of the application according to the standards of Subtitle X § 304 of the Zoning Regulations.
3. The Applicant requested approval, pursuant to Subtitle X, Chapter 3; Subtitle X, Chapter 5; and Subtitle Z, Chapter 3, of a consolidated PUD and related Zoning Map amendment from the R-3 zone to the MU-4 zone, and flexibility from the rear yard, court, lot occupancy, and penthouse uniform height requirements, as is permitted under the Zoning Regulations. (Subtitle X §§ 300.4, 303.1.)
4. The Commission concludes that proper notice of the proposed PUD and Zoning Map amendment was provided in accordance with the requirements in Subtitle Z § 402.
5. The Commission concludes that the Application satisfied the minimum 15,000 square feet of area and the contiguity requirements for PUDs established by Subtitle X § 301.
6. 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.”
7. As further elaborated below, the Commission concludes that:
 - (a) 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;
 - (b) The requested development incentives for height, density, flexibility, and related rezoning to the MU-4 zone are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant;
 - (c) The character, scale, mix of uses, and design of the Project are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high-quality developments that provide public benefits; and
 - (d) The development of this PUD will carry out the purposes stated in Subtitle X § 300 to encourage higher quality developments that will result in a project “superior to what would result from the matter-of-right standards,” offering “a commendable

number or quality of public benefits” and by protecting and advancing “the public health, safety, welfare, and convenience.” 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 PUD Site’s transit-oriented location and exceeds the quality of what would be developed as a matter of right.

8. *In deciding a PUD application, the Commission shall judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the standards of the case. (Subtitle X § 304.3.)*

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 that it is not inconsistent with the CP and concludes the approval of the PUD is warranted for the reasons detailed below.

9. *The Commission shall find that the proposed development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site. (Subtitle X § 304.4(a).)*

The Commission concludes that approval of the PUD is not inconsistent with the CP and other relevant planning guidance documents. The Commission concludes that the proposed Project, including its proposed use, height, and density, is consistent with the PUD Site’s Institutional designation on the CP’s FLUM and furthers numerous goals and policies in the CP’s Land Use, Housing, Arts and Cultural, and other citywide elements and policies, as well as policies in the Lower Anacostia/Near Southwest Area Element and the Southwest Neighborhood SAP.

10. As a threshold matter, the Commission addresses UNSW’s contention that the Commission does not have the authority to rezone the PUD Site given its Institutional Use designation on the FLUM. UNSW alleged (prior to withdrawing its opposition) that the Commission does not have authority to approve the Project because, prior to any action by the Commission, the D.C. Council must first change the FLUM designation from Institutional to another designation. The Commission disagrees with this interpretation of the CP as explained below:

- (a) The FLUM includes the PUD Site entirely within the “Institutional” land use category, in recognition of its previous ownership and use by a university and other educational or similar institutional uses;
- (b) The CP states that a change to any land use designation on the FLUM—including a change from Institutional Use to another use—requires approval by the D.C. Council. This is true, but it does not mean that all changes in use require approval

by the D.C. Council, as each FLUM category can permit a range of uses, heights, and densities. The purpose of the FLUM is to guide land use decisions by the Commission and other bodies, with the understanding that the Commission—not the Council—makes the final determination on the particular uses, heights, and densities that are appropriate within each FLUM category;

- (c) This is particularly true on Institutional sites, which lack specific guidance on use, height, and density. The CP specifically recognizes that changes to Institutional sites are expected over the life of the CP. Since the CP does not show density or intensity on Institutional sites, the Plan states that when “a change in use occurs on [Institutional] sites in the future . . ., the new designations should be comparable in density or intensity to those in the vicinity.”; (CP §226.1(h).)
- (d) This provides the Commission with sufficient guidance on land use decisions regarding Institutional sites—provided the proposed zoning change is consistent with density or intensity to surrounding property, no FLUM change is required. Indeed, the history of this Project highlights the application of this approach. The previous version of the Project submitted in a prior PUD proposed a height, density, and rezoning that was not “comparable in density or intensity” to the surrounding neighborhood, and OP therefore rejected it in its setdown report in that case. (Similarly, the Southwest SAP also noted that the prior version of the Project would have required a FLUM land use change, and expressly chose to withhold recommendation of that change) By contrast, the current version of the Project is of a density and intensity that is comparable to the surrounding properties, and so the Commission is able to approve the PUD and rezoning as consistent with the current Institutional Land Use designation on the FLUM;
- (e) Accordingly, the CP is clear that action by the D.C. Council is unnecessary for changes of use on an Institutionally-designated property when the changes are consistent with surrounding property. Furthermore, the Commission is empowered to take actions to facilitate such reuse, including amendments to the Zoning Map, so long as the new use is “comparable in density and intensity to those in the vicinity.”; and
- (f) PUD-related map amendments, in particular, are conditional and allow the Commission to adopt limits on height, density, and use that ensure the reuse of the Institutional site is consistent with surrounding sites. The Commission has repeatedly re-zoned properties designated as Institutional through PUDs and authorized non-institutional uses on such properties, deeming these PUDs as not inconsistent with the Comprehensive Plan.² In each of these cases, the Commission determined the PUD and related rezoning was consistent with the FLUM because

² An exhaustive list of prior approvals are included in the Applicant’s March 8, 2019 supplemental filing. (Ex. 39A at 3-4.)

it was consistent with the surrounding area's use and density. The Commission's approval of PUDs that included a rezoning for properties designated for Institutional Uses in the FLUM has been upheld on appeal. (*See, e.g., Foggy Bottom Association v. District of Columbia Zoning Comm'n*, 07-AA-1197, Memorandum Opinion at 2.)

11. *The Commission shall find that the proposed development does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project. (Subtitle X § 304.4(b).)*

The Commission finds that the Project will not result in unacceptable impacts on the surrounding area or on the operation of city services and facilities. The Commission concludes there will be several impacts that are not favorable, but are either capable of being mitigated, or acceptable given the quality of the benefits in the Project:

- (a) The introduction of non-residential uses and multi-family residential uses in the Project will result in impacts that are acceptable given the quality of the benefits of the Project;
- (b) The height and density of the project, along with the rear yard and lot occupancy flexibility, will result in a denser and taller building than would be permitted as a matter of right generating shadow, proximity, and privacy impacts. The Applicant mitigated these impacts somewhat by redesigning its building while its Application was pending. The impacts of the redesigned building are acceptable given the quality of the benefits in the Project;
- (c) The Project will have adverse impacts on vehicular traffic, parking, and pedestrian safety related to the increased number of trips generated by the Project as well as through parking and loading access. This Order contains conditions requiring the Applicant to implement an extensive series of parking, loading, and transportation demand management measures that will adequately mitigate these impacts. To the extent that these measures do not completely mitigate these impacts, they are acceptable given the quality of the benefits of the Project; and
- (d) The Project will generate construction-related impacts. The Commission notes that matter-of-right development of the PUD Site would generate similar impacts. The Commission further notes that impacts related to construction are regulated by the Construction Code and have traditionally been understood to be therefore outside the scope of the Commission's jurisdiction. Nonetheless, the Commission finds that to the extent the Applicant has any obligation to mitigate construction-related impacts in a PUD, the Applicant has adequately mitigated those impacts through its Construction Management Plan. This Order includes a condition requiring the Applicant to abide by the Construction Management Plan. To the extent that these

measures do not completely mitigate the impacts, they are acceptable given the quality of the benefits of the Project;

12. *The Commission shall find that the proposed development includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site. (Subtitle X § 304.4(c).)*

The Project provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the PUD Site. The Project also offers a commendable number and quality of public benefits, including the urban design and architecture, site planning, housing, affordable housing, environmental benefits, streetscape plans, and uses of special value, which are all significant public benefits. The proposed public benefits are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.

Responses to Opponents' Contested Issues

13. The Commission has fully analyzed the contested issues from the case raised by the ANC, UNSW, the PTA, Mr. Welles, and the Gomers (collectively, the "Opponents"). As the record of the case shows, the ANC, UNSW, and PTA all came to withdraw their opposition and support the Project based on the Applicant's revisions to the Project and commitments to use restrictions, public benefits, and mitigation measures that the Commission has adopted as conditions of approvals. Collectively, then, the issues raised in the record and at the hearing are substantially resolved as evidenced by the testimony of the Opponents themselves. Nonetheless, the Commission has included these issues in its analysis of the "contested issues" raised in this case.

Consistency with the Comprehensive Plan ("CP")

14. The Opponents challenged the consistency of the proposed PUD and Zoning Map Amendment with the FLUM and certain CP goals and policies and the Southwest Neighborhood SAP, as well as the Commission's authority to approve the Project under the CP. The Commission's authority to approve the Project without D.C. Council action is addressed herein above; other allegations of inconsistency are addressed below.
15. The Opponents alleged that the proposed rezoning to the MU-4 zone was inconsistent with the CP. The Commission finds, however, that the proposed MU-4 zone is not inconsistent with the CP or the character of the surrounding area. Broadly:
 - (a) The proposed MU-4 zoning is consistent with the PUD Site's transitional location between the residential neighborhood consisting of two- to three-story rowhouses and three- to four-story apartment buildings to the north and west and the institutional uses to the east and southeast, including the school, churches, and a public library;

- (b) The proposed MU-4 zoning is also not inconsistent with the general character of I Street, which is not a “residential” street but rather a diverse street with a mix of residential and non-residential uses including not only the above institutional uses but also tall apartment buildings, townhouses, a hotel, and a proposed museum. The rezoning will also facilitate the redevelopment of a strategic but underutilized institutional site with a pedestrian-oriented development with housing and cultural uses that are consistent with this context; and
 - (c) 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. Importantly, the proposed rezoning through the PUD process is a conditional rezoning that is tied to the Project; it does not allow for general “commercial” use of the PUD Site but rather only those uses specifically authorized as a part of the PUD. The Commission finds that the Applicant’s proposed uses are not “general commercial uses” and furthermore notes the Applicant’s commitment to prohibit general commercial uses, such as general office and retail uses.
16. Specifically, the Opponents also alleged that the proposed PUD and rezoning was inconsistent with the PUD Site’s Institutional Land Use designation and the surrounding Moderate Density Residential designation on the FLUM. The Commission disagrees as follows:
- (a) The Commission looks to the density and intensity of use of surrounding property when considering a land use change on a site designated as “Institutional” on the FLUM. Here, those are the surrounding properties, which are in the Moderate Density Residential land use category. Broadly, the moderate-density residential zones are defined as a mix of three- to four-story townhouses and apartment buildings. (CP § 225.4.) Here, the surrounding moderate-density residential designation includes both two- to four-story townhouses and three- to four-story apartment buildings;
 - (b) The Project, as revised, is not inconsistent with the surrounding density and intensity of uses. The Project incorporates design features such as primary brick façade and three-story primary “townhouse rhythm” and fourth-story setback, which specifically align with the context of the surrounding rowhouses, particularly across 6th Street, S.W. The Annex is similarly positioned and at a height of four and one-half stories is of a comparable height to the adjacent apartment building. Finally, the proposed multi-family dwelling uses in the project (including the condominiums, actor housing, and fellows housing) are all uses that would be allowed by right in apartment buildings that are otherwise anticipated in the Moderate Density Residential land use category. To this end, the instant case is distinguishable from *Durant vs. District of Columbia Zoning Commission*. In *Durant*, the court concluded that a six-story apartment building on property that was designated for low- and moderate density uses and surrounded by a low-density

designation, could not be considered as a “moderate-density” building. (*See Durant v. District of Columbia Zoning Comm’n*, 139 A.3d 880, 883-884 (D.C. 2006).) Here, however, the Project itself, at four to four and one-half stories, is shorter than the building proffered in *Durant*, and therefore more in alignment with the Plan’s guidance on the Moderate Density Residential land use category. Furthermore, the surrounding context here is moderate density rather than low density and contains townhouses and apartments, which means that the Project’s use and form is consistent with its surroundings;

- (c) Furthermore, the specific story descriptions associated with each land use category are not intended to serve as absolute, proscriptive limits akin to zoning limitations on height. Rather, as the Comprehensive Plan notes, they are guidelines and cases like PUDs may result in heights that exceed the typical ranges cited in the Comprehensive Plan. (CP §226.1(c).) Indeed, the Court has affirmed, “the FLUM definitions themselves recognize their flexibility” and “that in appropriate circumstances the PUD process may permit greater height or density.”; (*Union Market Neighbors v. District of Columbia Zoning Comm’n*, 197 A.3d 1063, 1070 (D.C. 2018) (internal quotations omitted).)
- (d) The Commission also finds that the uses proposed for the Project are consistent with the Moderate Density Residential designation taken together with the full Plan. Although neither the PUD Site nor the surrounding properties are designated as “Mixed Use” under the Comprehensive Plan, this does not preclude a mix of uses on the PUD Site or the application of a “mixed use” zone under the Zoning Regulations. Many zones permit a mix of uses, and these zones are applied throughout the District, even though the Comprehensive Plan designates many if not most of these properties with a solitary “residential” or “commercial” designation rather than the Comprehensive Plan’s “Mixed Use” striping. As the court noted in affirming the rezoning of the Wisconsin Avenue Giant site now known as Cathedral Commons, mixed uses are not strictly limited to striped areas on the FLUM because the FLUM “does not require that each block strictly correspond with the general description” and the FLUM is not parcel-specific; (*Wisconsin-Newark Neighborhood Coalition v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 395-396 (2011) (approving the Commission’s approval of a mixed-use Project on a site without a FLUM mixed-use designation).)
- (e) Further, the Commission finds that the Project provides some institutional uses, which is consistent with the PUD Site’s Institutional designation on the Comprehensive Plan as well as the Southwest Small Area Plan’s specific preference for cultural uses on the PUD Site (discussed below). The PUD-related rezoning of the PUD Site facilitates the institutional / cultural uses contemplated by these plans. As with “Mixed Use,” the zoning definition of “Institutional” as a use category is not intended to align with the Comprehensive Plan’s concept of “Institutional”; rather, the Comprehensive Plan has a broader definition of Institutional Uses that includes educational and arts uses. Therefore, the STC Component of the Project is

not inconsistent with the FLUM designation and the broader context of the Comprehensive Plan;

- (f) The Commission finds that the map amendment, in connection with the PUD process, is not inconsistent with the FLUM designation. The proposed MU-4 zone is a zone that permits “moderate-density mixed use development.” (Subtitle G § 400.3(a).) Accordingly, the proposed MU-4 rezoning accomplishes the twin goals of allowing for comparable overall density to the surrounding area yet also accommodating the cultural use called for in the Small Area Plan (discussed below). When OP rejected a taller, denser PUD for the PUD Site in 2016 that involved a rezoning to a higher-density zone district as inconsistent with the Comprehensive Plan, OP explicitly recommended the MU-4 zone as one zoning category that would be consistent with the Comprehensive Plan;
- (g) Finally, the Main Building is four stories in height and is therefore entirely consistent with the surrounding Moderate Density Residential designation in the Comprehensive Plan. Even if the Annex, with its four- and a half-story height is inconsistent on its face with the four-story height description for Moderate Density Residential land in the Comprehensive Plan, the Commission finds that there are other policies that justify outweighing this particular line of the Comprehensive Plan. Specifically, because the Annex provides free housing for actors and STC fellows, the additional height is justified by other provisions that call for promoting institutional uses, housing, and artist housing, as follows:

Policy LU 2.3.5 Institutional Uses – Recognize the importance of institutional uses, such as private schools, child care facilities, and similar uses, to the economy, character, history, and future of the District of Columbia. Ensure that when such uses are permitted in residential neighborhoods, they are designed and operated in a manner that is sensitive to neighborhood issues and that maintains quality of life. Encourage institutions and neighborhoods to work proactively to address issues such as traffic and parking, hours of operation, outside use of facilities, and facility expansion;

Policy H 1.1.2 Production Incentives – Provide suitable regulatory, tax, and financing incentives to meet housing production goals. These incentives should continue to include zoning regulations that permit greater building area for commercial projects that include housing than for commercial projects that do not include housing; and

Policy AC 3.1.1 Affordable Artist Housing – Include provisions for arts professionals in the District's affordable housing programs. (See also the Housing Element for additional policies and actions on affordable and workforce housing.) The Mather Building in downtown DC is an example of an affordable live/work space for artists. The building had been vacant for over a decade before the Cultural Development Corporation of DC and a private developer renovated it as condos,

with the units on the building's second two floors designated for artist live/work space. This development gave artists an opportunity to own their space at a very low cost and enabled them to remain in the District.

Moreover, the benefits associated with the STC Component of the Project and the actors/fellows that will live and work within the Project further Comprehensive Plan policies focused on the impact of arts uses through an increase in arts-oriented education and in a transit-oriented location. This outweighs any inconsistency with the FLUM designation. In addition to LU-2.3.5 cited above, the Project furthers the following policies:

Policy AC 1.1.5 Siting of Facilities – Support the siting of arts facilities in locations where impacts upon nearby uses can be most easily managed. Give preference to locations near public transit, or sites where shared parking facilities are available. Conversely, ensure that appropriate parking and transit access improvements are made when arts and cultural venues are developed;

Policy AC 4.4.1 Arts Education Programs – Build a stronger constituency for the arts in the District through arts education in K-12 schools including attendance at arts performances and art exhibitions, and support of adult art programs for persons of all ages and backgrounds. City resources should be used to help promote the strong and diverse arts programs offered by our public schools; and

Policy AC 4.4.4 Participation of Artists – Support and increase the participation of artists in the District's arts education programs.

(Ex. 2, 20, 39, 39A, 39D, 42, 61.)

17. The Opponents also alleged that the Project was inconsistent with the PUD Site's designation as Institutional and Neighborhood Conservation Area on the CP's GPM. The Commission disagrees and finds that the proposed PUD and related rezoning to the MU-4 zone is not inconsistent with the PUD Site's designations on the GPM as discussed below:
 - (a) Similar to the FLUM, when uses change on Institutionally-designated property, the new zoning designation should be comparable in density or intensity to the surrounding uses. As the Commission concluded above, the Project is not inconsistent with the surrounding uses and densities; and
 - (b) Additionally, the Commission concludes that the Project is not inconsistent with the Neighborhood Conservation Area designation that applies to a small portion of the PUD Site as well as the surrounding properties. As OP discussed at the public hearing, the "neighborhood" in this case is all of Southwest, which includes a range of residential uses from townhouses to ten-story apartments as well as a mix of institutional and commercial uses. The Project fits well within not only its immediate context but also the broader neighborhood context of Southwest, which

is characterized by a diversity of densities and uses. More broadly, the Comprehensive Plan notes that infill development can be expected in Neighborhood Conservation Areas. Therefore, the Project is not inconsistent with the Generalized Policy Map.

(Ex. 2, 20, 39, 39A, 39D, 42.)

18. The Opponents also alleged that the Project was inconsistent with certain provisions of the Land Use Element, including policies that call for protection of rowhouse neighborhoods, neighborhoods adjacent to the Central Employment Area, and similar buffering requirements. The Commission finds that the Project is also not inconsistent with these policies and goals given the character of the Project in itself as well as other policies and goals in the Land Use Element that promote development of transit-oriented infill sites such as the PUD Site as discussed further below:

- (a) The Project is not inconsistent with the provisions in the Land Use Element that focus on promoting neighborhood conservation. First, the Project does not remove any existing housing, as the PUD Site is currently vacant and was previously used for non-residential uses. Instead, it will add owner-occupied housing units, which will help strengthen and reinforce the existing residential neighborhood. Second, the Project has been designed to appropriately transition to the rowhouses to the north and west of the PUD Site. The 6th Street façade has been designed to read as a series of three-story townhouses with ground-entry units and a fourth story set back on a 1:1 basis from the third floor. The Project also uses residential materials, including brick and punched windows, to fit within the neighborhood. While the Project includes some cultural, non-residential uses, such uses are concentrated along the I Street entrance and away from the 6th Street façade and neighbors to the north of the PUD Site. Finally, the Commission notes again that the introduction of multifamily and non-residential uses to the PUD Site are not inconsistent with neighborhood character, given the historical use of the PUD Site as a university and presence of multifamily housing and institutional/cultural uses up and down I Street;
- (b) In addition, the Land Use Element does not only focus on neighborhood conservation. The Element also identifies “directing growth and new development to achieve economic vitality” and “balancing competing demands for finite land resources” as critical land use issues. (CP § 300.2.) The Project also directly promotes these critical issues. The Land Use Element encourages greater infill development at sites located near Metrorail stations, as these areas provide pedestrian-oriented nodes and transit-oriented development opportunities. The Project also contributes to the variety of residential housing opportunities in the immediate area as well as in the broader Southwest community;
- (c) Opponents argued that any development on site would be an infill development and transit-oriented, and therefore these provisions should not be interpreted to allow

for multifamily apartment or other development that diverges from the predominant rowhouse form adjacent to much of the PUD Site. The Commission disagrees with this interpretation. The provisions regarding infill and transit-oriented development recognize the strategic value of these properties and specifically encourage denser development for sites that are proximate to Metrorail stations and along major pedestrian corridors. When properties are ideal for infill and near Metrorail stations, these provisions of the Land Use element challenge the premise that the site must remain exactly as it is, as adjacent property is used, or as existing zoning might allow. Consistent development does not mean identical development but rather contextual development, and that is what the Applicant proposes here; and

- (d) The Commission finds that the Project provides a transitional design on the buffer area surrounding the Central Employment Area moving toward residential neighborhoods. The PUD Site is not surrounded on all sides by rowhouse neighborhoods. Instead, the Project serves as an appropriate transition from the higher-density uses to the south (including high-density projects at the Waterfront Metrorail Station and the Wharf) to the rowhouse neighborhoods to the north. The buffering requirements in the Comprehensive Plan exist to prevent a “sharp visual distinction” between extremely tall buildings, like those across and further down I Street, and two- to three-story rowhouses, like those north and west of the PUD Site. A four- and five-story Project provides the precise transitional design called for by the Land Use Element. Therefore, the Commission finds that the Project is not inconsistent with the Land Use Element of the Comprehensive Plan.

(Ex. 2, 20, 39, 39A, 39D, 42.)

- 19. The Opponents also alleged the Project is inconsistent with the Lower Anacostia/Near Southwest Area Element, but the Commission disagrees as follows:

- (a) The Area Element focuses on new development along key corridors and “near the Waterfront/SEU and Navy Yard metrorail stations,” focusing on projects with “mixed use development” including “cultural uses” in the Waterfront area. (CP § 1908.4.) The Area Element also focuses on the conservation of established waterfront neighborhoods like the residential neighborhood to the west and north of the PUD Site. This immediate part of the neighborhood is characterized by primarily two- and three-story rowhouses and three- and four-story apartment buildings, though the Southwest neighborhood as a whole is marked by a mix of taller and shorter buildings that define its character; and
- (b) The Project focuses development along I Street as a key corridor and respects the character of these neighborhoods by serving as an appropriate transition into the lower-density residential area from the higher-density mixed uses further along I Street and closer to the high-density areas around the Metrorail Station and at the Wharf. The Project concentrates the non-residential uses along I Street, S.W., while transitioning to residential uses and residential architecture along 6th Street, S.W.

and to the rear of the PUD Site. The 6th Street townhouse-style façade which reads as three stories in height, coupled with the residential character of the Annex, respects and conserves the residential neighborhood to the north and west of the vacant Property.

(Ex. 2, 20, 39, 39A, 39D, 42.)

20. The Opponents argued that the Project was inconsistent with the Southwest SAP, which did not recommend a change to the FLUM for the PUD Site. The Commission concludes, however, that the Project—which is smaller than the version contemplated at the time of the SAP—is not inconsistent with the SAP, and in fact furthers the SAP’s call for a cultural use at the PUD Site as explained below:
- (a) The SAP specifically addresses the PUD Site. It notes that the “Shakespeare Theater Company (STC), proposed a plan to convert the PUD Site into its new headquarters with artist space by tearing the existing building down and erecting a larger building in its place. STC planned to partner with a private developer to include additional market rate housing as well as housing specifically for visiting actors.” The SAP notes community objection to a “6-9 story building” that was initially proposed for the PUD Site. However, the SAP also notes that “a cultural use at this site would be a preferred use going forward.”;
 - (b) While the SAP acknowledges that “to facilitate the full building program” a land use designation change to the FLUM would be required, the Project as proposed has been significantly reduced from the “6-9 story building” and associated rezoning under consideration at the time of the SAP. The Project does not require a land use designation change to the FLUM because the Project and related rezoning are not inconsistent with either the PUD Site’s Institutional designation or the Moderate Density Residential designation of surrounding properties, as detailed above; and
 - (c) The Project is also consistent with the Design Guidelines of the SAP because it furthers the mix of building heights that define Southwest. With the removal of the penthouse and fourth-story setback, the Project consistent with the “shorter” townhouses and apartment buildings in the immediate neighborhood, which contrast with the taller apartment buildings such as the ones located across I Street and west of the townhouses along 7th Street. The Project is a high-quality design with a variation in building frontages, with a curved glass façade along I Street and a townhouse-style façade along 6th Street. The Project also includes landscaping along the PUD Site’s perimeter and sustainable features at the Project, all furthering guidelines and priorities in the SAP. In sum, the Project is not inconsistent with the SAP.

(Ex. 2, 20, 39, 39A, 39D, 42.)

21. The Commission credits the testimony of the Applicant, OP, ANC 6D, and the Proponents regarding the consistency of the Project with the Comprehensive Plan in concluding that the PUD and related rezoning is not inconsistent with the Comprehensive Plan. The Applicant included an exhaustive review of the Project's consistency with the Comprehensive Plan, evaluating not only broad consistency but also over 200 individual provisions of the Plan, including those cited by the Opponents. (Ex. 39A, 39D.) OP provided its own independent analysis concluding consistency. (Ex. 42.) Finally, ANC 6D, UNSW, and the PTA all came to withdraw opposition to and support the Project based on its reduced height and scale, more consistent architectural design, and constraints on use, all of which were at the heart of their earlier concerns about consistency with the Comprehensive Plan. 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. (Ex. 2, 39A, 39D.)

Project Impacts

22. The Opponents alleged that the Project would have adverse impacts on surrounding property due to a number of factors, including use, height, density, traffic, parking, and safety. The Commission finds that the Project has the potential to create adverse effects on the neighborhood as outlined below. However, the Commission also finds that in most cases the Applicant has proposed design changes and measures that will mitigate these adverse impacts, and in the remaining cases the impacts are acceptable given the public benefits from the Project. On balance, the Project does not have unacceptable adverse impacts when considering the Project as a whole.
23. Opponents raised the introduction of non-residential uses and multi-family residential uses that would be allowed as a matter of right under the Zoning Regulations as an adverse impact of the Project. Even though the previous use of the PUD Site was a non-residential use, Opponents argue that uses not consistent with the existing zoning represent an adverse impact on the community. In particular, Opponents raised concerns regarding the MU-4 zone, which would allow a variety of non-residential uses at the PUD Site. The Commission addresses this below: (Ex. 32, 33, 36; Mar. Tr. at 130-133.)
 - (a) The Commission finds that the non-residential component of the Project will not have the level of adverse impacts feared by the Opponents. Broadly, the non-residential component of the Project is limited to the STC Component of the Project proposed by the Applicant, which will not have the same level of impact as the broader range of general commercial uses speculated by the Opponents. Also, the non-residential uses such as the garment shop and rehearsal space are smaller-scale efforts tied directly to STC's mission, not broader commercial enterprises. The PUD itself, along with the Applicant's long-term commitment to not include more general commercial uses like retail, will regulate the use of the PUD Site and sufficiently mitigate the concern about potential adverse impacts from the "commercial use" of the PUD Site;

- (b) The Commission also finds that the residential components of the Project will not result in unacceptable adverse impacts. Indeed, with the commitment to for-sale, owner-occupied housing, housing for STC fellows and actors, and affordable three-bedroom units, the PUD will provide positive impacts for the surrounding residential neighborhood that were acknowledged by the ANC, among others; and
 - (c) The Commission further finds that the benefits associated with the non-residential uses and greater density of residential uses, including increased affordable housing and educational benefits, outweigh the potential adverse impact of the introduction of these non-residential uses.
24. The Opponents suggested that the height and density of the Project along with its rear yard and lot occupancy flexibility will have an adverse impact on the neighborhood through construction of a denser and taller building than would be allowed as a matter of right. Among other issues, the Opponents expressed concern with the proximity of the Project, shadows generated by the Project, and impact on privacy of nearby townhouses. (Ex. 33, 36, 40; Mar. Tr. at 130-132.) The Commission finds that the height and scale of the Project will have impacts on the surrounding properties, but these impacts are mitigated by the Project's design changes or are acceptable given the quality of the public benefits. Such mitigations are discussed below:
- (a) The Applicant reduced the massing and scale to better fit within the community context. From the initial Application filing to the Commission's approved design, the Applicant removed the habitable penthouse space on the Main Building, shifted the Annex, and set the fourth floor of the Main Building back on a 1:1 basis from the 6th Street façade. (Ex. 2, 39E1-39E9.) The Applicant also introduced more residential materials to the building, including brick facades and punched windows. Finally, the Applicant introduced the townhouse rhythm along 6th Street to better situate the building into the neighborhood context. (Ex. 39E1-39E9, 52H.) The Applicant's architectural expert submitted views and renderings that demonstrated the Project would not visually intrude into the surrounding neighborhood and would in fact appear of similar height to other properties near the Project. The ANC and UNSW agreed that the Applicant's changes addressed their concerns;
 - (b) The Applicant's architectural expert submitted shadow studies that demonstrated the proposed Project would cast some additional shadow compared to a matter of right project on the adjacent townhouses and school property. (Ex. 39E1-39E9, 52F.) However, the Commission finds that these impacts are not unacceptable given that UNSW and the PTA both indicated they were acceptable in light of the Applicant's other commitments, and the Gomers indicated at the hearing that the reduced height of the Project would not adversely impact their solar panels, and the limited amount of additional shadow;
 - (c) With respect to concerns about the proximity of the Project to adjacent residential uses to the north, the Applicant's architectural expert submitted plans and drawings

illustrating the separation between the Main Building and the townhouses to the north was over 50 feet, which was not only significantly greater than the distance required by right for the Project, but also significantly greater than the distance from a theoretical matter-of-right townhouse. Similarly, at the hearing the Applicant's architectural expert submitted drawings illustrating how the location and position of the Annex would not have adverse impacts on the adjacent apartment house;

- (d) With respect to concerns expressed by the Gomers regarding the privacy of their fourth-floor terrace due to penthouse units looking down on it, the Commission finds that the removal of the habitable penthouse units eliminates this concern;
 - (e) The Commission credits the testimony and design of the Applicant's expert in architectural design and finds that with the revisions to the Project design create a Project that fits within the neighborhood context and minimizes adverse impacts of the Project's building design. Additionally, based on the foregoing evidence, the Commission concludes that the Project will not impose unacceptable adverse shadow or visual impacts on the surrounding neighborhood; and (Ex. 39, 39E1-39E9.)
 - (f) The Commission further finds that the minor areas of lot occupancy relief and rear yard relief do not create an adverse impact beyond the impact of the Project generally. The minor increase in lot occupancy over what is allowed as a matter of right does not create an additional impact of the Project. Further, the rear yard flexibility behind the Annex does not create an adverse impact to the properties to the north given that the area behind the Annex is the large yard adjacent to the apartment building in the RA-2 zone to the north. (Ex. 39E1-39E9.)
25. Opponents alleged that the Project could have potentially adverse impacts on vehicular traffic, parking, and pedestrian safety. (Ex. 37, 40; Mar. Tr. at 109, 135.). As acknowledged by the Applicant and by DDOT, the Project will create potentially adverse effects on the transportation network through an increase in trips to the PUD Site as well as through the location of parking and loading access. However, the Applicant's transportation report and supplemental materials concludes that many of the alleged impacts are minimal and also details an extensive series of parking, loading, and transportation demand management measures that will adequately mitigate these impacts. (Ex. 2, 22A, 39C, 41, 52A.) Again, these measures were all found acceptable by ANC, UNSW, and the PTA as addressing their concerns. Based on the foregoing, the Commission concludes that the transportation impacts of the Project are not acceptable, subject to the conditions detailed in this Order and discussed as follows:
- (a) The Project is located less than a half-mile from the Waterfront Metrorail Station as well as multiple bus lines that serve the Southwest area, a well-connected urban network of pedestrian sidewalks and paths, and a connected network of streets; (Ex. 2, 22A, 39C, 52A.)

- (b) The Applicant's traffic expert's CTR concluded that the proposed Project, based on the proposed uses, 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 6th Street curb cut, would accommodate the needs of the Project and not generate adverse or objectionable impacts on neighborhood property; (Ex. 22A, 39C, 52A.)
- (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 TDMP, PMP, and LMP measures, with certain enhancements, which the Applicant agreed to; (Ex. 41, 52A.)
- (d) Opponents challenged the adequacy of the parking given the significant demand for on-street parking in the neighborhood as well as the accuracy of the on-street parking analysis given the street sweeping schedule in the neighborhood on the date of the analysis. The Applicant's expert submitted a revised analysis of on-street parking demand addressing the latter concern and otherwise affirmed that the amount of parking within the Project would accommodate the demand of its users. (Ex. 52.) In particular, the expert noted the fact that vehicle trips forecasted in the analysis included not only self-parked cars but also ridesharing trips from taxis or Uber/Lyft, meaning that not all vehicle trips to the Project result in a parked car. The expert also found that the relatively high supply of other public parking in the neighborhood, combined with STC's commitment to off-site parking for its office workers, would adequately address demand for STC employees and visitors. The Applicant noted that the Project would not feature significant on-site performances that would otherwise draw high numbers of patrons and guests. Finally, co-locating the actor and fellow housing with the rehearsal and office space also helps to reduce the number of trips and associated parking demand;
- (e) Opponents challenged the location of the driveway access on 6th Street as well as the impact of delivery and service activity along that driveway on adjacent residential uses. Broadly, the Applicant's expert and DDOT both agreed that 6th Street was the best location for vehicular access given the higher levels of vehicular, bicycle, and pedestrian activity along I Street. Furthermore, the Applicant agreed to a number of measures to reduce the impact of service and delivery activity in the driveway, including limits on the hours and frequency of trash service, limits on the hours of other loading activity, commitments to an on-site loading manager, and location of some loading activity within the project's garage. UNSW later provided evidence these measures were acceptable;

- (f) Opponents further challenged the impact of increased vehicular traffic on curbside drop-off activity and pedestrian safety, particularly related to the School. As a threshold matter, the Commission notes that many of the issues raised by the PTA were existing conditions unrelated to the Project. Nevertheless, the Commission finds that the Applicant's proposed curbside management plan, agreed to by DDOT, the ANC, UNSW, and the PTA, will provide for the effective and safe use of curbside space along I Street, S.W. for pickup and drop-off activity. The Commission also finds that the Project will improve pedestrian safety through, among other measures, the closure of the I Street, S.W. curb cut and the proposed bumpouts;
 - (g) Opponents challenged the amount and location of bike parking for the Project. The Commission finds that the Applicant has met or exceeded all of the bike parking requirements of the Regulations and that the location of the bike parking will not impose adverse impacts on surrounding properties;
 - (h) Opponents challenged other general assertions of the CTR. 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;
 - (i) 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; and
 - (j) The Commission further finds that the bumpouts benefit provided by the Applicant, while not necessary as a mitigation, creates a benefit of the Project that will increase safety in the neighborhood by reducing crosswalk distances and serving as a visual cue for drivers to slow down. (Ex. 39, 39E1-39E9, 52D.)
26. The Opponents also raised concerns regarding construction impacts from the Project. First, the Commission acknowledges that any development at the PUD Site would create construction impacts on the neighborhood. Further, the Commission finds that the Applicant has adequately mitigated construction impacts through the implementation of the Construction Management Plan agreed to with UNSW and the PTA. (Ex. 52C, 58.)
27. The Commission credits testimony from OP, DDOT, ANC 6D, and the Proponents that the impact of the PUD on the surrounding neighborhood, infrastructure, and levels of service will not be unacceptable.

28. The Commission finds that while the Project will result in the impacts outlined above, on balance and considering the Project as a whole, any adverse impacts are addressed through mitigation or will be outweighed by the benefits and amenities delivered with the Project. Therefore, the Project does not have unacceptable adverse impacts.

Sufficiency of the Amenities Package

29. The Opponents initially alleged that the proposed public benefits were insufficient given the height, density, and rezoning sought for the Project. However, as demonstrated by the UNSW and PTA MOUs as well as the ANC and OP Reports, the Applicant committed to additional public benefits that are meaningful commitments that will satisfy District and neighborhood desires and priorities. The STC-related improvements and bumpouts alone are valued at approximately \$2.5 million, and the affordable housing, sustainable design features, and public art and streetscape will provide additional benefit to the neighborhood and District. Moreover, over the course of the proceeding, the Applicant reduced the height and scale of the Project. On balance, the Commission finds that the public benefits and project amenities are adequate given the development incentives and flexibility sought through the PUD process. (Ex. 42, 49, 52C, 63.)
30. The Opponents initially alleged that the proposed housing was not a significant public benefit because it lacked “family” housing. However, the Applicant revised the affordable housing proffer by introducing three-bedroom units to the Project where they did not otherwise exist and set aside all of the three-bedroom units as affordable units, which addresses this concern as evidenced by the ANC Report and PTA MOU, among other evidence. (Ex. 52E.)
31. The Opponents initially alleged that the architectural design of the Project did not constitute superior design. In response, the Applicant completely revised the design and scale of the Project to better fit with the surrounding context, to the satisfaction of the Opponents, who stated that the revised design was a “substantial improvement.” (Mar. Tr. at 107.) 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.
32. The Opponents initially alleged that the initial streetscape design for the Project was “inconsistent” and lacked contribution to the I Street arts corridor concept. In response, the Applicant revised the design of the 6th Street streetscape to match the adjacent and surrounding streetscape rhythm along 6th Street and integrated public art into the streetscape and building design along I Street, which satisfied the ANC and UNSW. The Commission finds that the Applicant has proffered a streetscape design and public art that will be a public benefit.
33. The Opponents alleged that the Project would not further sustainable design goals and lacked a commitment to plant trees. The Applicant is proffering a commitment to LEED-Gold certification, solar panels, and electric vehicle charging stations, none of which are required and therefore all of which represent public benefits. Further, the

Applicant's plans show extensive streetscape improvements including new street trees. Therefore, the Commission finds the Applicant has addressed these concerns.

34. The Opponents initially alleged that the benefits from the SWNA Agreement could not be counted as benefits of the Project, since they were already agreed to as consideration in that Agreement. Moreover, the Opponents alleged that the Applicant had failed to deliver on commitments in that Agreement, suggesting that future commitments could also be empty promises. (Ex. 11, 34, 36.) However, the Commission finds that the SWNA Agreement clearly linked the proffered benefits to the approval of the PUD and it is therefore appropriate to count these as benefits of the Project. Indeed, the SWNA benefits are clearly of value to the community, given that both the UNSW and PTA MOUs incorporated the benefits by reference. The Commission also finds that the Applicant's commitment to incorporate these benefits as conditions of approval of the PUD itself – meaning they may be enforced not only through the SWNA Agreement and the MOUs but also through the zoning enforcement process – provides additional assurance that they will be delivered. Finally, even if the SWNA benefits were not included, the Commission finds that the other public benefits associated with the Project are still sufficient to satisfy the PUD approval standards.
35. The Commission credits the testimony of the Applicant and its architectural expert as well as OP, DDOT, ANC 6D, 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 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 related to exemplary design, site planning, housing and affordable housing, sustainable design, and uses of special value. The Commission credits the testimony of OP, ANC 6D, 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.

Other Alleged Issues

37. The Opponents raised allegations of non-profit tax violation issues related to the Applicant's relationship between STC and the Developer. The Opponents filed numerous materials alleging improper tax actions by the Applicant. (Ex. 16, 21.) In this case, such issues are beyond the scope of this proceeding because they do not bear on the standards for review and approval of the PUD and related rezoning. Therefore, the Commission takes no action and does not opine on the Applicant's consistency with the United States and District tax laws. Furthermore, these issues were raised by UNSW, who later withdrew its opposition on this and other grounds.
38. The Opponents alleged that the Applicant had misstated the width of the 6th Street right-of-way as 100 feet rather than 80 feet. The Applicant admitted its error, noting that

while 6th Street is 100 feet wide south of I Street, it narrows to 80 feet north of I Street, adjacent to the Project. (Ex. 39.)

39. The Opponents raised concerns regarding the Project's impact on the fence and field light at the Amidon-Bowen Elementary School. (Ex. 43; Mar. Tr. at 133-135.) The Commission finds that the Applicant has addressed this issue by agreeing to move the field light to a new location acceptable to the Opponents and to move the fence near the Annex and re-sod the reclaimed area, thus increasing the School's usable space. (Ex. 58.)
40. Mr. Welles also argued that the presence of the light pole on the PUD Site gave rise to a claim for adverse possession given the length of time the light pole had been located on the PUD Site. (Mar. Tr. at 133-135.) Determinations regarding adverse possession arguments are an issue of property rights beyond the scope of this proceeding because they do not bear on the standards for review and approval of the PUD and related rezoning. The Applicant has adequately addressed the impact of the Project on the light pole by agreeing to relocate it to Mr. Welles' satisfaction. Therefore, the Commission does not opine on the adverse possession claim.
41. Opponents initially alleged that the Applicant had not engaged in sufficient or meaningful efforts to engage the community regarding the Project. The Commission finds that there was ample and extensive awareness of the Project over its long history as evidenced by the number of people participating directly or indirectly in the hearing through one of the parties as well as other measures ranging from community and ANC meetings to lawn signs. Ultimately, the Applicant came to agreement with the ANC, UNSW, and the PTA through detailed agreements memorializing extensive discussions regarding the Project, resulting in an overwhelming expression of satisfaction with the compromises that were reached at the public hearing. Even the two households who did not sign on to the UNSW agreement (Mr. Welles and the Gomers) acknowledged the outreach and indicated that many of their concerns had been addressed. The Commission is satisfied that the Applicant met its burden of engagement.
42. Opponents alleged that the Applicant's "matter of right" townhouse scheme, used for comparing the Project for amount of housing provided as well as shadow and other impacts, provided less housing than a scheme developed by them purporting to show upwards of 20 townhouses on the Project. This detail is immaterial to the standards for review and approval of the PUD; either way, the Project provides substantially more housing and affordable housing than a matter of right option. Furthermore, even if a denser development of the PUD Site were achievable as a matter of right, that would likely result in greater traffic, parking, proximity, and shadow impacts and therefore reduce the degree to which the Project generates additional impact compared to what could be constructed as a matter of right.
43. As described above, Mr. Otten raised generalized concerns in his letter regarding compliance with the zoning "review process" and PUD "impacts," without specific reference to any alleged deficiency in the review process or analysis of impacts in this case.

Mr. Otten also referenced a list of few Comprehensive Plan policies by number, without any explanation of what those policies state much less how the Project is inconsistent with those provisions. (Ex. 54.) For the reasons described below, the Commission is unpersuaded by these concerns and finds that Mr. Otten’s allegations are without merit. Broadly, the issues raised by Mr. Otten are unsubstantiated, generalized grievances. Mr. Otten cites no specific aspects of the Project or any evidence about the harms it alleges. As the Commission has previously found, an applicant is not obligated to respond to such generalized and unsupported assertions. (*See, e.g., Z.C. Order No. 11-03J(1) (2018).*) For a party or witness to raise issues for which a response is required, the party or witness must present some factual basis for the claim and/or draw a nexus between the claimed deficiency and the current application. Mr. Otten’s letter did not do so with respect to these issues; it simply presented a list of blanket complaints about the PUD process, without any explanation of how those complaints applied to this Project or how those complaints resulted in injury or adverse impact to Mr. Otten or any other person.

44. Therefore, based on the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that:
- (a) The proposed PUD-related Zoning Map amendment for the PUD Site from the R-3 to the MU-4 zone is not inconsistent with the CP, including the PUD Site’s designation as Institutional on the FLUM;
 - (b) Is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the CP, and other District of Columbia policies and objectives; and
 - (c) The PUD and rezoning for the PUD Site will promote orderly development of the PUD Site in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

“Great Weight” to the Recommendations of OP

45. The Commission is required to give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990. ((D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Y § 405.8); *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
46. The Commission finds OP’s recommendation to approve the Application, based on OP’s analysis of the Application’s met the PUD and map amendment standards, persuasive and concurs in the judgment.

“Great Weight” to the Written Issues and Concerns of an ANC

47. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood

Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Y § 406.2) To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

48. The First ANC Report reported that the Applicant had resolved several issues and concerns that the ANC had identified, but conditioned its support for the Project as follows, which the Commission interprets as “issues and concerns”:
 - (a) The Public Space Committee’s approval of the revised streetscape design; and
 - (b) The Applicant reaching agreements with the UNSW and the PTA “that include public and school benefits, building design and proposed uses, curbside and construction management plans and additional benefits from the 2014 SWNA agreement.”
49. The Commission notes that both of these conditions were satisfied – the Public Space Committee did approve the revised streetscape design and the Applicant reached agreements with the UNSW and PTA on the issues raised by the ANC Report (FF 36). The Commission therefore concludes that it has given “great weight” to the issues and concerns raised by the First ANC Report.
50. The Commission notes that the written hearing testimony submitted by Commissioner Fast and the Second ANC Report are not eligible for “great weight” as the full ANC did not vote to adopt them at a properly noticed public meeting of the ANC. However, the Commission recognizes these efforts of Commissioner Fast and the ANC and finds their support for the Application persuasive.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a consolidated PUD and related Zoning Map amendment from the R-3 to MU-4 zone, subject to the following guidelines, conditions, and standards:

A. Project Development

1. The Project shall be developed in accordance with the architectural plans and drawings submitted on March 8, 2019, marked as Exhibits 39E1-39E9 of the

record, and as modified by Exhibits 52D – 52H and 58B1-58B3 of the record (collectively the “Approved Plans”).

2. The Project shall have a FAR of no greater than 2.87 and a height of no greater than 48 feet, 2 inches.
3. The PUD Site shall be subject to a PUD-related map amendment from the R-3 zone to the MU-4 zone. Pursuant to Subtitle X § 311.4, the change in zoning shall be effective upon the recordation of the covenant discussed in Condition No. E.1.
4. The Applicant shall have flexibility from the following development standards:
 - (a) The closed court width and area requirements to allow a portion of the building on the ground floor that is set back from the eastern Property line to accommodate windows;
 - (b) Lot occupancy requirements at the ground floor, to allow a ground floor lot occupancy of 79%;
 - (c) Rear yard requirements at the Annex building, to allow a setback of 8 feet 4 inches from the northern property line; and
 - (d) Single uniform penthouse requirements to accommodate the second roof stair and elevator override at the Project.
5. The Applicant shall have flexibility from the Approved Plans with regards to the design of the PUD in the following areas:
 - (a) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the Approved Plans;
 - (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 shown on the Approved Plans;
 - (c) To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the Approved Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
 - (d) To provide a range in the approved number of residential dwelling units of plus or minus ten percent, except that the number of affordable housing

units and the square footage reserved for affordable housing shall not be reduced;

- (e) To make refinements to the approved parking configuration, including layout and percentage of compact spaces, except that the number of parking spaces shall not be reduced;
- (f) To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of and the approval by the DDOT Public Space Division;
- (g) To vary the streetscaping and landscaping materials on private property within 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, DOEE, DCRA, or other applicable regulatory bodies;
- (h) To vary the amount, location, and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the Project achieves a minimum GAR of 0.3 and install solar panels on a minimum of 830 square feet of roof area;
- (i) To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Approved Plans and remain compliant with all applicable penthouse setback requirements;
- (j) To vary the final design of the outdoor residential amenity spaces to reflect their final programming, provided that the use of space, character, and quality of the features and plantings remain in substantial conformance with the concept design shown on the Approved Plans;
- (k) To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the Approved Plans and are compliant with the DC signage regulations; and
- (l) To install a potential mural on the Annex building in the location shown on the drawing dated April 15, 2019 and marked as Exhibit 58A of the Record.

6. **For the life of the Project**, the Applicant will reserve the Residential Component as for-sale units as follows:

- (a) During the initial unit sales effort, and to the extent that it is economically feasible at currently projected average sales prices of \$720,000 per unit, the Applicant shall impose leasing and resale restrictions to ensure that a minimum of 90% of the Residential Component units of the Project are sold to purchasers who intend to occupy the units as their primary residence(s). The future condominium documents and bylaws shall include a provision that no less than 80% of condominium units in the Residential Component of the Project shall be owner-occupied at any time;
- (b) Rentals through Airbnb or other such short-term rentals shall be prohibited in the condominium documents and bylaws; and
- (c) Compliance with the above restrictions shall be demonstrated through evidence submitted by the Applicant prior to the issuance of a certificate of occupancy.

7. **For a minimum period of 20 years beginning from the date of the issuance of the first certificate of occupancy for the Project**, the Applicant shall cause the non-residential portion of the STC Component to be reserved for use by STC as office, rehearsal, and education uses as well as a costume shop as follows:

- (a) The Applicant shall not cause or permit the STC Component to be used for retail activity, other than customary and incidental sales related to the mission of STC or another institutional user;
- (b) The Applicant shall not cause or permit the STC Component to be used for set fabrication activity; and
- (c) The Applicant shall not cause or permit the STC Component to include a black-box theatre or similar dedicated performance space, though the rehearsal and educational spaces may be used for occasional performances related to STC's other programs.

8. **For a minimum period of 20 years beginning from the date of the issuance of the first certificate of occupancy for the Project**, the Applicant shall cause the housing portion of the STC Component ("STC Housing Component") to be reserved as housing for STC actors, fellows, and other staff. STC shall be permitted to also make available the STC Housing Component as housing for other arts organizations. The STC Housing Component may be used for short-term housing for the above persons and organizations; notwithstanding the foregoing, STC shall not cause or permit the STC Housing Component to include rentals through Airbnb or other such short-term rentals. Further:

- (a) During the initial 20-year period described above, the Applicant shall be permitted to sell all or a portion of the STC Housing Component, but in the

event that the Applicant sells such component during this period, the STC Housing Component shall only be sold for use as for-sale housing consistent with Condition A6 of this Order and such units and any related condominium association shall be subject in all respects to the terms and conditions of this Order; and

(b) In the event that the Applicant sells or leases all or a portion of the STC Component of the Project after the expiration of the 20-year period, the Applicant shall first cause the purchaser(s) and/or lessee(s) to enter into a written agreement whereby the purchaser(s) and/or lessee(s) acknowledges and agrees that the STC Component will remain as a mix of office, arts/design/creation, educational, housing, or similar institutional uses

B. Public Benefits

1. Affordable Housing:

(a) **For the life of the Project**, the Applicant shall set aside a minimum of 8% of the residential GFA of the Project (approximately 6,831 square feet of GFA) as Inclusionary Zoning Units in accordance with Subtitle C for households earning up to 80% of the Median Family Income, as set forth in the chart below;

Residential Unit Type	Gross Floor Area / % of Total*	# of Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	85,387/100%	82	Mixed	--	--
Market Rate Units	78,556/92%	77	Market Rate	--	--
Inclusionary Zoning Units	6,831/8%	5	Up to 80% of MFI	Life of the Project	Ownership

(b) At least three Inclusionary Zoning Unit shall be three-bedroom units and 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; and

(d) The Applicant will work with the D.C. Department of Housing and Community Development to include the Amidon-Bowen Parent Teacher Association as well as teachers and other staff at public schools within ANC 6D as a part of the marketing efforts for the Project’s affordable housing.

2. Environmental and sustainable benefits:

- (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) **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall demonstrate that it has designed and constructed solar arrays located on a minimum of 830 square feet of the roof area of the Project.; and
- (c) **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall demonstrate that it installed at least two electric vehicle charging stations in the garage.

3. Streetscape improvements:

Prior to the issuance of a Certificate of Occupancy for the Project and subject to approval by DDOT, the Applicant shall provide evidence to the Zoning Administrator that it has constructed the streetscape and public space improvements shown on pages 4.1 to 4.5 of the Approved Plans.

4. Bumpouts:

Prior to the issuance of a Certificate of Occupancy for the Project and subject to approval by DDOT, the Applicant agrees to design and install “bumpouts” along 6th Street between G Street and I Street as shown in Exhibit 52D, to slow vehicular traffic, discourage “cut-through” traffic, and improve pedestrian safety crossing 6th Street.

5. Public Art:

Prior to the issuance of a Certificate of Occupancy for the Project and for so long as STC is located within the Project, the Applicant shall develop and install the “art panels” along I Street as shown on the Approved Plans subject to approval by the Public Space Committee.

6. Waterfront Village:

Following the issuance of this Order and the adjudication of any appeals or expiration of the appeals period and for a minimum of 20 years, the Applicant will partner with the Waterfront Village to provide access to STC performances.

Twice a year, the Applicant will provide the Village with a minimum of 30 tickets to an STC performance, make available transportation to and from the performance, and provide pre- and/or post-show discussions with STC education staff, artistic staff, or actors.

7. Southwest Night STC Performances:

Following the issuance of this Order and the adjudication of any appeals or expiration of the appeals period and for a minimum of 20 years, the Applicant will create a “Southwest Neighbors” performance for each STC show (i.e., a minimum of six times per year), for which all Southwest residents will be able to purchase deeply discounted tickets (no greater than 33% of regular price). the Applicant shall designate a staff person to be responsible for working with ANC 6D and the Amidon-Bowen and Jefferson Academy PTAs to publicize the event.

8. Amidon-Bowen Parent Teacher Association:

Not more than 90 days after the issuance of the final order approving the Development and the adjudication of any appeals or expiration of the appeals period, the Applicant shall contribute \$50,000 via check to the Amidon-Bowen Parent-Teacher Association to fund after-school programs and related facility improvements at Amidon-Bowen Elementary School. **Compliance with this condition shall be demonstrated through evidence submitted by the Applicant prior to the issuance of a Certificate of Occupancy** that (1) Applicant has completed the contribution to the PTA and (2) the after-school programs and improvements have been or are being provided.

C. **Benefits Outlined in Southwest Neighborhood Assembly (SWNA) Agreement**

1. **Following the issuance of this Order and the adjudication of any appeals or expiration of the appeals period, and for a minimum period of 20 years**, the Applicant shall provide the following benefits:

- (a) Make available “District Shakespeare” events and activities to Jefferson Academy Middle School, including at least 100 tickets for one performance annually, transportation to and from the performance, pre-show workshops, and professional development for teachers;
- (b) Provide invitations to Jefferson Academy and Amidon-Bowen Elementary School to STC’s performances of *A Mini Midsummer Night’s Dream* and *The Tiny Tempest.*;
- (c) Invite classes from Amidon-Bowen and Jefferson, as well as community associations, for annual tours of the Lansburgh Theatre, Sidney Harman Hall, and the Project (once completed);

- (d) Reserve four gift certificates for tickets, adult Master Acting Classes, or Camp Shakespeare annually for the Amidon-Bowen PTA and the Jefferson Academy PTA, for PTA special events and raffles, which will be provided upon appropriate request made by organizers of such events to STC and subject to availability (i.e. two gift certificates for each program per PTA, annually);
- (e) Coordinate with the Ward 6 Councilmember's office to distribute free tickets to Ward 6 Night Free for All performances at Sidney Harman Hall. Provide tickets for up to 200 residents of Ward 6 annually;
- (f) Provide Southwest Community educators priority invitations to Teacher Appreciation Night at Sidney Harman Hall;
- (g) Make available at least 10 discounted tuition/scholarship spots for Adult Master Acting Classes and Camp Shakespeare for members of the Southwest Community who apply for such discounted tuition by the advertised deadline for same;
- (h) Reserve free tickets, annually, to the Academy of Classical Acting Night showcase performances for the Southwest Community;
- (i) An STC representative will serve on the Duck Pond Advisory Group and, based on the direction of the Advisory Group, STC shall assist and participate in programming of arts events at the Duck Pond;
- (j) Advertise in the Southwester newspaper with at least four one-half page advertisements per year (or the equivalent thereof) for a minimum period of four years;
- (k) Provide an annual monetary contribution of \$2,500 to the SW ArtsFest for a minimum period of five years. In the event that the SW ArtsFest is not held, the contribution shall be reallocated to the Southwest Business Improvement District (SW BID) for improvements to or programming at the Greater Duck Pond/Arts Walk; and
- (l) Compliance with the above requirements shall be demonstrated through the report set forth in Condition D.9(b).

2. **Following the issuance of a Certificate of Occupancy for the Project**, the Applicant shall provide the following benefits:

- (a) Provide an Open House at the Project for the Southwest community (including evening tours of the costume shop and rehearsal spaces, with activities for families);

- (b) When such spaces are not in use by STC, STC shall make available assembly spaces and/or conference rooms, education space, or rehearsal space in the Project to organizations of the Southwest community during reasonable weekday evening and weekend daytime hours for community meetings with no room rental charges, provided STC staff is available to open and close the space during the requested meeting time; and
- (c) Compliance with the above requirements shall be demonstrated through the report set forth in Condition D.9(b).

D. Mitigations

1. Trash:

- (a) The Applicant shall ensure that the Project will utilize a vendor that undertakes all trash and recycling pickup no more than twice a week;
- (b) The Applicant shall ensure that trash and recycling collection hours will be limited to 10:00 a.m. to 4:00 p.m., Monday through Friday. There will be no trash or recycling collection on weekends; and
- (c) The Applicant shall ensure that trash and recycling collection will take place within the Private Driveway rather than in the building's loading dock.

2. Deliveries and Loading

- (a) The Applicant shall ensure that the Project will reserve one space within the garage to accommodate the van used for costume shop deliveries;
- (b) The Applicant shall ensure that all other deliveries and moving activity will occur within the loading dock. Deliveries will be limited to 9:00 a.m. to 5:00 p.m. Except in case of an emergency, service vehicles shall be limited to 7:00 a.m. to 8:00 p.m.; and
- (c) The Condo Association and STC shall ensure that all service, delivery, and moving trucks utilizing the loading dock will be limited to 30-foot box trucks or smaller vehicles.

3. Noise:

- (a) The Applicant shall ensure that access to the rooftop terrace of the Project will be limited to 7:00 a.m. to 10:00 p.m. on Sunday through Thursday and 7:00 a.m. to 11:00 p.m. on Friday and Saturday; and

- (b) No amplified music through a loudspeaker will be permitted on the rooftop at any time.

4. Parking:

- (a) The Applicant shall ensure that the Project will include 40 on-site parking spaces, including 25 parking spaces for the condominium units and 15 spaces for STC;
- (b) The Applicant will ensure that STC staff will also have access to a minimum of 15 off-site parking spaces for daytime parking use by STC, either at Arena Stage or at a similar nearby garage;
- (c) The Applicant will notify all guests attending classes, workshops, or events at the site that street parking is extremely limited, and STC will provide information on transit alternatives as well as on nearby parking garages; and
- (d) The Applicant will include a provision in all condominium documents advising potential purchasers that the properties will not be eligible for participation in the Residential Parking Permit ("RPP") program.

5. Curbside Management:

The Applicant will work with DDOT to implement the curbside management plan included in Exhibit 52C, which will accommodate STC's building entrance and summer camp pickup/drop off needs without reducing the number of RPP spaces on 6th Street and without reducing the number of RPP spaces on I Street by more than two spaces.

6. Pets:

- (a) The Applicant shall incorporate a "pet relief area" into the Project to be located on the roof of the Project; and
- (b) The Applicant shall ensure that the condominium documents and by-laws require maintenance of the "pet relief area" in the Project.

7. Litter and Maintenance:

Prior to the commencement of construction of the Project, the Applicant shall:

- (a) Conduct patrols and site visits three times a week;
- (b) Ensure that the sidewalks adjacent to the PUD Site are shoveled and/or treated the morning after any snow or ice event; and

- (c) Provide the name and contact number of its property management person responsible for the PUD Site to UNSW and to ANC 6D.

8. Construction Management:

The Applicant will adhere to the Construction Management Plan included in Exhibit 52C as supplemented by the CMP Addendum included in Exhibit 58A of the Record.

9. Reporting:

- (a) Report Point for Neighborhood Comment:

The Applicant shall ensure that STC and the Condo Association each will establish and maintain a point of contact to ANC 6D, UNSW, Amidon-Bowen, and Jefferson Academy; and

- (b) **For a minimum of 20 years and for so long as STC is located within the Project**, the Applicant shall ensure that STC provides ANC 6D with a written, publicly available annual report with respect to the Public Benefits outlined in Conditions B(5) – B(8) and C(1) and C(2) above. STC shall continue to evaluate and develop meaningful ways to enhance or supplement these programs based on suggestions and feedback received from ANC 6D, UNSW, the Amidon-Bowen and Jefferson Academy PTAs, and other stakeholders, and STC shall be permitted to modify these programs only as necessary or appropriate to increase efficacy.

10. Transportation Conditions from DDOT:

- (a) **For the life of the Project**, the Applicant shall provide the following transportation demand management (“TDM”) measures:

- i. The Applicant will identify a TDM Leader (for planning, construction, and operations). The TDM Leader will work with residents and tenants of the building to distribute and market various transportation alternatives and options. This includes providing TDM materials to new residents and tenants in a welcome package. At a minimum, the Welcome Package will include the Metrorail pocket guide, Capital Bikeshare coupon or rack brochure, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map;
- ii. The Applicant will provide TDM leader contact information to DDOT and goDCgo (info@godcgo.com), for both residential and

Shakespeare uses, and report TDM efforts and amenities to goDCgo staff once per year;

- iii. TDM Leaders will receive TDM training from goDCgo to learn about the TDM conditions for this project and nearby available options;
- iv. The Applicant will post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised;
- v. The Applicant will provide website links to CommuterConnections.com and goDCgo.com on property websites;
- vi. The Applicant will exceed the Zoning Regulations' requirements for bicycle parking. This includes secure 67 long-term bicycle parking spaces and 16 short-term exterior bicycle parking spaces around the perimeter of the site;
- vii. The long-term bicycle storage room will accommodate non-traditional sized bikes including cargo, tandem, and kids' bikes;
- viii. The Applicant will install a bicycle repair station within the long-term bicycle storage room;
- ix. The Applicant will install Transportation Information Center Displays (electronic screens) within the residential and Shakespeare Theater Company lobbies;
- x. The Applicant will host a transportation event for residents, employees, and members of the community once per year for the first three years after the opening of the building. These could include a walking tour of local transportation options, transportation fair, WABA Everyday Bicycling Seminars, etc.;

The following TDM components apply to the Residential Component:

- xi. The Applicant will unbundle all parking from the cost of the lease or purchase of residential units. Parking costs will be set at the average market rate within a quarter mile, at a minimum;
- xii. The Applicant will provide five shopping carts for resident use to run errands and for grocery shopping;

The following TDM components apply to the STC Component:

- xiii. The Applicant will install a minimum of two showers and four lockers for use by employees and actors;
- xiv. The Applicant will provide a ride-matching program for employees and actors; and
- xv. The Applicant will post “getting here” information on the arts/culture tenant website for attendees/visitors that includes information about how to travel to the site via Metro, biking, and walking. A printable map should also be available and goDCgo can assist with this effort. “Getting here” information will also be disseminated during registration for Shakespeare classes and educational events.

(b) For the life of the Project, the Applicant shall provide the following parking management plan:

- i. Residents shall purchase parking spaces in the garage. These spaces will be numbered such that residents have a designated space within the garage;
- ii. Employees must purchase parking passes in the garage or within the designated off-site parking garage;
- iii. Adults attending classes and actors attending rehearsals will be encouraged to use non-auto modes of transportation and given information on the available options;
- iv. For those that choose to drive, a list of nearby garages will be distributed, noting that on-street parking is limited and should not be used;
- v. Special events such as Academy of Classical Acting performances will require off-site parking. For such events, STC will identify nearby parking lots and/or garages that may be used for event parking; and
- vi. STC will distribute information about special events parking to attendees of Academy of Classical Acting performances and encourage non-auto modes of transportation.

b. For the life of the Project, the Applicant shall provide the following Loading Management Plan measures:

- i. A loading facility manager will be designated by property management;
- ii. The loading facility manager will schedule deliveries such that the loading facility's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the facility is full, that driver will be directed to return at a later time when the loading facility will be available;
- iii. STC deliveries and residential condo owners will be provided with information regarding loading dock restrictions, rules, and suggested truck routes upon purchase;
- iv. All residential condo owners will be required to schedule move ins and move outs;
- v. Trucks using the loading facility will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including, but not limited to, Title 20 DCMR, Chapter 9, Section 900 (Engine Idling); the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document; and the primary access routes listed in the DDOT Truck and Bus Route System; and
- vi. The loading facility manager will be responsible for disseminating suggested truck routing maps to drivers from delivery services that frequently utilize the loading facility. The facility manager will also distribute materials such as DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws.

E. Miscellaneous

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The PUD shall be valid for a period of two years from the effective date of this Order within which time an application shall be filed for a building permit. Construction must begin within three years of the effective date of this Order.

3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended (D.C. Official Code § 2-1401.01 *et seq.*, (“Act”)), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

PROPOSED ACTION


VOTE (April 29, 2019): **5-0-0** (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**).

FINAL ACTION

VOTE (June 10, 2019): **5-0-0** (Peter A. Shapiro, Robert E. Miller, Anthony J. Hood, Peter G. May, and Michael G. Turnbull to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on November 29, 2019.


 ANTHONY J. HOOD
 CHAIRMAN
 ZONING COMMISSION


 SARA A. BARDIN
 DIRECTOR
 OFFICE OF ZONING

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02/27/2020 08:11 AM
IDA WILLIAMS
RECORDER OF DEEDS
WASH DC RECORDER OF DEEDS
RECORDING FEES \$25.00
SURCHARGE \$6.50
TOTAL: \$31.50