

APPLICANT'S DRAFT ORDER

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 18-14**

Z.C. Case No. 18-14

**(Consolidated Planned Unit Development and Related Zoning Map Amendment
@ Square 6129, Lots 77 & 819)**

April 29, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 7, 2019 to consider an application of 3840 S Capitol LLC and 3848 S Capitol LLC (together, the "Applicant") for the review and approval of consolidated planned unit development ("PUD") and a related Zoning Map amendment (the "Application"). The Commission considered the Application pursuant to Chapters 3 and 5, Title 11-X of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11-Z DCMR Chapter 4. The Commission approves the Application, subject to the conditions below.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The property that is the subject of the Application is located in Square 6129, Lots 77 & 819, with an address of 3840-3848 South Capitol Street SE (the "Property").
2. On August 17, 2018, the Applicant filed the Application. With the Application, the Applicant sought approval to develop a new four story all-affordable residential building. (Exhibits ("Ex.") 1, 2, 2A-2I).
3. On October 12, 2018, the Office of Planning filed a report recommending that the Application be set down for a public hearing. (Ex. 10).
4. During its public meeting on October 22, 2018, the Commission voted to set down the Application for a public hearing. At the public meeting, the Commission requested that the Applicant provide the following: more detail about the relocation plan for existing residents; an outdoor play area; refinements/more attention to the exterior brick design and cornice; commitment to a First Source Employment Agreement; and additional information about sustainability and energy efficient systems in the building. (10/22/18 Transcript ("Tr.") at 40-45.)
5. On November 21, 2018, the Applicant filed its pre-hearing submission responding to the issues raised by the Commission at its public meeting and by OP in its report and requested the scheduling of a public hearing. The Applicant updated its Application with a supplemental submission filed on February 15, 2019. (Ex. 12, 12A – 12D, 19A, 20, 20A – 20D.)

APPLICANT'S DRAFT ORDER

6. Notice of the public hearing was mailed to Advisory Neighborhood Commission (“ANC”) 8C and 8D and to owners of property within 200 feet of the Property on December 10, 2018 and was published in the *D.C. Register* on December 21, 2018. (Ex. 13, 14.)
7. The Commission held a public hearing on the Application on March 7, 2019. On behalf of the Applicant, the Commission accepted Stephanie Farrell as an expert in architecture and Erwin Andres as an expert in traffic engineering. The Applicant provided testimony from these experts as well as from others from the development team.
8. In addition to the Applicant, ANCs 8C and 8D were automatically a parties in this proceeding. There were no other parties in the proceeding.
9. At the hearing, the Commission heard testimony from the Office of Planning (“OP”) and the District Department of Transportation (“DDOT”) regarding the Application.
10. One person testified in support of the Application, and no one testified in opposition to the Application at the public hearing. (3/7/19 Tr. at [REDACTED].)
11. At the close of the public hearing, the Commission took proposed action by a vote of 4-0-1 to approve the Application. Also, the Commission requested that the Applicant provide more information about or respond to the following: offering additional Inclusionary Zoning (“IZ”) exempt affordable units after the affordability period of the building expires; breakdown of current unit sizes and rental levels; monetary compensation to relocated tenants who chose not to return to the new building; additional brick treatment on the side elevations of the building; and lighting for the building rear. The Commission also asked for the Department of Housing and Community Development (“DHCD”) to review the Applicant’s proposed relocation plan.
12. On March 21, 2019, the Applicant filed its post-hearing submission addressing the Commission’s requests described above. (Ex. 30, 30A.)
13. On _____, 2019, OP filed responses to the Applicant’s post-hearing submission. (Ex. _____).
14. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the Home Rule Act. NCPC, by action dated March 25, 2019, found that the proposed PUD was exempt from NCPC review because the Application is consistent with the Height Act, causes no adverse impact on federal property or interests, and the Property is located outside the boundary of the L’Enfant City. (Ex. 32).
15. At its public meeting on April 29, 2019, the Commission took final action to approve the Application by a vote of _____.

APPLICANT'S DRAFT ORDER

Overview of the Property

16. The Property is located near the Bellevue, Washington Highlands, and Congress Heights neighborhoods in Ward 8. The Property is currently zoned RA-1.
17. South Capitol Street bounds the Property on its west side. The eastern boundary of the Property is a “paper” public alley that is unimproved. At approximately the midpoint of the Property, South Capitol Street, Xenia Street, and Martin Luther King Junior Avenue intersect.
18. The Property contains a total of approximately 39,318 square feet of land area. (Ex. 1, 2I).
19. The grade of the property slopes downward from north to south so that the southern end of the Property is approximately eight feet lower in elevation than the north end. (Ex. 2, 2I.)
20. The surrounding area features a variety of uses and zone categories. Immediately to the south along South Capitol Street are a mix of retail and residential uses located in the MU-4 Zone District. To the west across South Capitol Street is a church. To the north along South Capitol are other multi-family residential uses located in the RA-1 Zone District. To the east are primarily single-family residential uses located in the R-3 Zone District, but there is a significant upward grade change – approximately 20 feet – from west to east such that these houses are located at a much higher elevation than the Property. To the southwest are more single-family residential uses located in the R-2 Zone District. (Ex. 2, 2I.)
21. The Property currently contains surface parking and two residential buildings with a total of 30 units that range in sizes. Within the existing two buildings there are three one-bedroom units, 17 two-bedroom units, nine three-bedroom units, and one five-bedroom unit. All of the existing units are market-rate, but approximately 85% of the existing tenants receive subsidies and/or housing vouchers. The two existing buildings were built in the 1940s and are nearing the end of their useful life. The proposed project will replace these buildings. (Ex. 30.)

The Project

22. The proposed project will be a four-story all-affordable residential building with resident amenity space, below-grade parking, and below-grade loading (the “Project”). The Project will be achieved by rezoning the Property to RA-2, as requested in this Application. (Ex. 2, 12, 20.)
23. The Project will contain 106 residential units, of which approximately 20 will be studios, 34 will be one-bedrooms, 20 will be two-bedrooms, and 32 will be three-bedrooms. The average size of each unit type in the Project will be larger than the same unit type in the existing buildings, thereby offering tenants larger apartments with the same number of bedrooms. (Ex. 1.)

APPLICANT'S DRAFT ORDER

24. All of the units in the Project will be affordable. Twenty-one percent (21%) of the units will be reserved for families earning up to 30% of the Median Family Income (“**MFI**”); 68% of the units will be reserved for families earning up to 50% of the MFI; and 11% of the units will be reserved for families earning up to 60% of the MFI. Because of Low Income Housing Tax Credit (“**LIHTC**”) financing, the Project will be exempt from Inclusionary Zoning pursuant to Subtitle C § 1001.6(a) of the Zoning Regulations. The 30% MFI and 50% MFI units will be affordable for 60 years. The 60% MFI units will be affordable for the life of the Project. (Ex. 20, 30.)
25. The Project will conform to the development standards for a PUD in the RA-2 zone. The Project will have a floor area ratio (“**FAR**”) of 2.55, a height of 50.6 feet, and a lot occupancy of 60%. Seventeen automobile parking spaces, the loading berth and service/delivery space, and 36 long-term bicycle parking spaces will be provided below grade, which will be accessed via a curb cut on South Capitol Street. All yards and courts will provide the minimum required dimensions. (Ex. 20D.)
26. The Project’s massing is broken into three distinct sections separated by two courtyards. The northern courtyard provides the residential entrance with natural play areas on either side. The southern courtyard provides access to the below-grade parking and loading facilities. The Project will be constructed to the western property line, but the significant amount of public parking along South Capitol Street will convey the appearance of a large setback from the sidewalk. (Ex. 20D.)
27. The Project’s materials are largely brick and fiber cement along the front and side façades, with mostly fiber cement along the rear façade. (Ex. 20D, 30A.)
28. The Project will include myriad streetscape improvements, including sidewalk enhancements and extensive landscaping along the South Capitol Street façade. (Ex. 20D, 30A.)
29. The Project will incorporate multiple sustainable features that will reduce the environmental impact of the redevelopment, including an extensive green roof, approximately 10,500 square feet of solar panels on the roof, and an electric vehicle charging station. Also, the Project will attain Enterprise Green Communities certification. (Ex. 2, 20D, 29.)
30. The Applicant will implement mitigation measures to offset the Project’s impacts on the surrounding transportation network. These mitigation measures will include a comprehensive transportation demand management (“**TDM**”) plan, a loading management plan, the installation of signage on the northbound South Capitol Street SE approach to the Property, pedestrian improvements adjacent to the Property, and others. (Ex. 19A, 29.)
31. As part of the Project, the Applicant will implement a robust relocation plan for existing tenants designed to create a smooth and easily navigable transition from the existing buildings to nearby properties and a return to the new building (the “**Relocation Plan**”).

APPLICANT'S DRAFT ORDER

The Relocation Plan includes commitments to a process of informing residents of all plans and rights during construction, assistance for moving away from and back to the Project, and a commitment for monetary compensation in the event a resident chooses not to return to the Project. (Ex. 12A, 30.)

PUD Flexibility

32. The Applicant requested flexibility from the minimum land area required for a PUD in the RA-2 Zone District. The minimum land area for a PUD in the RA-2 Zone District is one (1) acre, while the Property is just short of this requirement at 0.9 acre. Pursuant to 11-X DCMR § 301.2, the Zoning Commission may waive up to 50% of the minimum land area if (i) the project is of exceptional merit and in the best interests of the District, and (ii) for a property outside of the Central Employment Area, the project is devoting more than 80% of the gross floor area for residential uses. The Commission finds that the Property is outside of the Central Employment Area; the Project devotes its entire gross floor area to residential use; and the Project is of exceptional merit in the best interests of the District. Accordingly, the Commission grants this flexibility.
33. The Applicant also requested flexibility with respect to the design of the Project, which is incorporated into the conditions of approval below.

Project Amenities and Public Benefits

34. As detailed in the Applicant's testimony and written submissions, the proposed Project will include the following specific public benefits and project amenities commensurate with and proportional to the additional density and height gained through the PUD and Zoning Map amendment:
 - a. Superior urban design and architecture, and landscaping, including use of high-quality materials, building articulation and modulation, courtyard-centered design, balconies for residents, and context-specific design features that will distinguish this building from typical residential development. The Project will deliver an attractive, contextually-appropriate residential building with below-grade parking and loading, and outdoor play areas for children.
 - b. Site planning, and efficient land utilization, through the creation of a new residential development on an underutilized site in a transit-oriented location specifically targeted for such uses. The Project will capitalize on its location as a large site along South Capitol Street SE to provide many new affordable residential units. Thus, the Project will efficiently use the land for an open and inviting building with modern amenities.
 - c. Streetscape and public realm improvements along South Capitol Street SE including increased trees, enhanced sidewalks, and attractive landscaping.
 - d. The provision of at least 32 three-bedroom units all at affordable rental levels for at least 60 years.

APPLICANT'S DRAFT ORDER

- e. A completely affordable housing project, with 21% of the units set aside at 30% MFI for a minimum of 60 years, 68% of the units set aside at 50% MFI for a minimum of 60 years, and 11% of the units set aside at 60% MFI for the life of the Project.
- f. Environmental and sustainable features, including certification of the Project through Enterprise Green Communities. Also, the Project will include environmentally-sustainable features such as a green roof, an electric vehicle charging station, and 10,500 square feet of solar panels.
- g. Employment and training opportunities through commitment to a First Source Agreement with the Department of Employment Services.
- h. Uses of special value to the neighborhood as effectuated through the Relocation Plan. The Applicant will implement the Relocation Plan to provide meaningful communication with, a streamlined process for, and effective assistance for existing residents to move into nearby properties during construction and return to the Project once completed. Additionally, for residents who choose not to return to the Project, the Relocation Plan includes monetary compensation.

(Ex. 2, 12, 20, 29, 30.)

APPLICANT'S DRAFT ORDER

Compliance with the Comprehensive Plan and Other Planning Guidance

35. The Project will be not inconsistent with the Comprehensive Plan (“Plan”), including the Future Land Use Map (“FLUM”), Generalized Policy Map (“GPM”), and multiple written policies as further described below.
36. The majority of the Property is located in the Moderate Density Residential land use category, and a small portion is located in the Mixed-Use Moderate Density Residential / Low Density Commercial Repair land use category on the FLUM. The RA-2 zone and the Project are not inconsistent with this FLUM designation. The RA-2 zone is identified in the Framework Element of the Plan as appropriate for Moderate Density Residential in some locations. The Property is such a location because of its apartment building context and location along a major thoroughfare (South Capitol Street). Further, at four stories with generous surrounding open space (courtyards, side yard, and rear yard), the Project is not inconsistent with Moderate Density Residential development.
37. The Property is located in the Neighborhood Enhancement Area category on the GPM, which encourages compatible small-scale infill development that reflect the historical mixture and diversity of each community. The construction of a new four-story 106-unit affordable residential building where there currently are only 30 market-rate residential units is consistent with this category on the GPM.
38. As found by OP, the Project will advance the following policies from the Land Use Element of the Plan:
 - a. **Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods** – Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to “create successful neighborhoods” in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others.
 - b. **Policy LU-2.1.4: Rehabilitation Before Demolition** – In redeveloping areas characterized by vacant, abandoned, and underutilized older buildings, generally encourage rehabilitation and adaptive reuse of existing buildings rather than demolition.
 - c. **Policy LU-2.1.11: Residential Parking Requirements** – Ensure that parking requirements for residential buildings are responsive to the varying levels of demand associated with different unit types, unit sizes, and unit locations (including proximity to transit). Parking should be accommodated in a manner that maintains an attractive environment at the street level and minimizes interference with traffic flow. Reductions in parking may be considered where transportation demand management measures are implemented and a reduction in demand can be clearly demonstrated.

APPLICANT'S DRAFT ORDER

- d. **Policy LU-2.2.4: Neighborhood Beautification** – Encourage projects which improve the visual quality of the District's neighborhoods, including landscaping and tree planting, façade improvement, anti-litter campaigns, graffiti removal, improvement or removal of abandoned buildings, street and sidewalk repair, and park improvements.
39. As found by OP, the Project will advance the following policies of the Transportation Element of the Plan:
- a. **Policy T-2.3.1: Better Integration of Bicycle and Pedestrian Planning** – Integrate bicycle and pedestrian planning and safety considerations more fully into the planning and design of District roads, transit facilities, public buildings, and parks.
 - b. **Policy T-2.4.1: Pedestrian Network** – Develop, maintain, and improve pedestrian facilities. Improve the city's sidewalk system to form a network that links residents across the city.
40. As found by OP, the Project will advance the following policies of the Housing Element of the Plan:
- a. **Policy H-1.1.1: Private Sector Support** – Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives.
 - b. **Policy H-1.1.3: Balanced Growth** – Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing.
 - c. **Policy H-1.1.5: Housing Quality** – Require the design of affordable housing to meet the same high-quality architectural standards required of market-rate housing. Regardless of its affordability level, new or renovated housing should be indistinguishable from market rate housing in its exterior appearance and should address the need for open space and recreational amenities, and respect the design integrity of adjacent properties and the surrounding neighborhood.
 - d. **Policy H-1.2.1: Affordable Housing Production as a Civic Priority** – Establish the production of housing for low and moderate income households as a major civic priority to be supported through public programs that stimulate affordable housing production throughout the city.
 - e. **Policy H-1.2.3: Mixed Income Housing** – Focus investment strategies and affordable housing programs to distribute mixed income housing more equitably across the entire city, taking steps to avoid further concentration of poverty within areas of the city that already have substantial affordable housing.

APPLICANT'S DRAFT ORDER

- f. **Policy H-1.3.1: Housing for Families** – Provide a larger number of housing units for families with children by encouraging new and retaining existing single-family homes, duplexes, row houses, and three-and four-bedroom apartments.
 - g. **Policy H-2.1.1: Protecting Affordable Rental Housing** – Recognize the importance of preserving rental housing affordability to the well-being of the District of Columbia and the diversity of its neighborhoods. Undertake programs to protect the supply of subsidized rental units and low-cost market rate units.
41. As found by OP, the Project will advance the following policies of the Environmental Protection Element of the Plan:
- a. **Policy E-1.1.1: Street Tree Planting and Maintenance** – Plant and maintain street trees in all parts of the city, particularly in areas where existing tree cover has been reduced over the last 30 years. Recognize the importance of trees in providing shade, reducing energy costs, improving air and water quality, providing urban habitat, absorbing noise, and creating economic and aesthetic value in the District's neighborhoods.
 - b. **Policy E-1.1.3: Landscaping** – Encourage the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity.
 - c. **Policy E-2.1.1: Promoting Water Conservation** – Promote the efficient use of existing water supplies through a variety of water conservation measures, including the use of plumbing fixtures designed for water efficiency, drought-tolerant landscaping, and irrigation systems designed to conserve water.
 - d. **Policy E-2.2.4: Alternative Energy Sources** – Support the development and application of renewable energy technologies such as active, passive, and photovoltaic solar energy, fuel cells, and other sustainable sources. Such technology should be used to reduce the dependence on imported energy, provide opportunities for economic and community development, and benefit environmental quality. A key goal is the continued availability and access to unobstructed, direct sunlight for distributed-energy generators and passive-solar homes relying on the sun as a primary energy source.
 - e. **Policy E-2.2.5: Energy Efficient Building and Site Planning** – Include provisions for energy efficiency and for the use of alternative energy sources in the District's planning, zoning, and building standards. The planning and design of new development should contribute to energy efficiency goals.
 - f. **Policy E-3.1.1: Maximizing Permeable Surfaces** – Encourage the use of permeable materials for parking lots, driveways, walkways, and other paved surfaces as a way to absorb stormwater and reduce urban runoff.

APPLICANT'S DRAFT ORDER

- g. **Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff** – Promote an increase in tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction and adaptive reuse, and the application of tree and landscaping standards for parking lots and other large paved surfaces.
- h. **Policy E-3.2.1: Support for Green Building** – Encourage the use of green building methods in new construction and rehabilitation projects, and develop green building methods for operation and maintenance activities.

42. As found by OP, the Project will advance the following policies of the Urban Design Element of the Plan:

- a. **Policy UD-2.2 Designing for Successful Neighborhoods** – Not all neighborhoods have a strong sense of identity, however. Some are negatively affected by dilapidated buildings, poorly maintained properties, vacant storefronts, and worse. These problems may be exacerbated by the absence of landscaping and street trees. Infill development and the adaptive reuse of historic buildings in such areas create a real opportunity to establish a stronger identity, and to create neighborhood centers where they are lacking today.
- b. **Policy UD-2.2.1: Neighborhood Character and Identity** – Strengthen the defining visual qualities of Washington's neighborhoods. This should be achieved in part by relating the scale of infill development, alterations, renovations, and additions to existing neighborhood context.
- c. **Policy UD-2.2.5: Creating Attractive Facades** – Create visual interest through well-designed building facades, storefront windows, and attractive signage and lighting. Avoid monolithic or box-like building forms, or long blank walls which detract from the human quality of the street.
- d. **Policy UD-3.2.5: Reducing Crime Through Design** – Ensure that the design of the built environment minimizes the potential for criminal activity. Examples of preventive measures include adequate lighting, maintaining clear lines of sight and visual access, and avoiding dead-end streets.

43. As found by OP, the Project will advance the following policies of the Far Southeast Southwest Area Element of the Plan:

- a. **Policy FSS-2.6.3: Bellevue-Washington Highlands Infill** – Encourage refurbishment and/or replacement of deteriorating apartment complexes within Bellevue and Washington Highlands. Where buildings are removed, encourage their replacement with mixed income housing, including owner-occupied single family homes and townhomes as well as new apartments. Every effort shall be made to avoid resident displacement when such actions are taken, and to provide existing residents with opportunities to purchase their units or find suitable housing in the community.

APPLICANT'S DRAFT ORDER

- b. **Action FSS-2.6.A: Great Street Improvements** – Implement the Great Street Plan to beautify South Capitol Street, maintaining the width of the street and landscaping it from Martin Luther King Jr Avenue to the Maryland border.
44. As found by OP, the Project is not inconsistent with and will advance goals and policies from the Bellevue, Embracing the Revitalization Small Area Plan (“BERSAP”). The Project’s housing opportunities provide a mix of incomes with affordable rental opportunities. The Project is also of a similar scale to other multifamily residential buildings in the area and would improve the pedestrian experience along South Capitol Street. Additionally, the Project advances the Urban Design guidelines of the BERSAP through building to the Property line with landscaped public space and courtyards. The Project also furthers the architectural design through articulation, courtyards, the use of balconies, and residential details. The Project includes characteristics commensurate with other developments in the neighborhood, including a setback from the sidewalk, materials generally consistent with the neighborhood, a rear yard, and side yards. Finally, the Project advances the goals of providing parking and loading below-grade. (Ex. 10, 21.)

Agency Reports

45. By report dated February 25, 2019 and by testimony at the public hearing, OP recommended approval of the consolidated PUD and related Zoning Map amendment with a request for additional information regarding residents’ response to the Relocation Plan and additional affordable housing for the life of the Project. OP made additional recommendations, taken from the Department of Energy and Environment (“DOEE”), regarding renewable energy (solar panels) and gains in energy efficiency. At the public hearing, the Applicant provided information regarding OP’s requested information about residents’ responses to the Relocation Plan, and a current resident testified about residents’ positive reactions to the Project. OP and the Commission found the Applicant’s response and the resident’s testimony to be acceptable on the issue of the Relocation Plan. The Applicant’s responses to OP’s request regarding additional affordable housing is described in the “Contested Issues” section below. As described in the Applicant’s filings and testimony and above, the Project will include many sustainable features including a large array of solar panels and Green Communities certification. Accordingly, the Commission finds that these features of Project are sufficiently responsive to DOEE’s recommendations. (Ex. 21; 3/7/19 Tr. at [REDACTED]).
46. By its February 25, 2019 report and testimony at the public hearing, OP found the minimum site area and design flexibility that the Applicant requested to be acceptable. Except for the affordable housing provided for the life of the Project described below in the “Contested Issues,” OP concluded that the consolidated PUD and Zoning Map amendment to the RA-2 zone would be not inconsistent with the Comprehensive Plan, including the FLUM and GPM, and would further the objectives of the Land Use, Transportation, Housing, Environmental Protection, Urban Design, and Far Southeast Southwest Area elements. OP further found that the Project would advance policies in the BERSAP. OP evaluated the Application under the standards set forth in Subtitle X,

APPLICANT'S DRAFT ORDER

Chapter 3 of the Zoning Regulations and concluded that the Project satisfies the standards. OP found that the benefits and amenities proffered for the Project are commensurate with the amount of development and flexibility sought by the Project and gained through the Application. (Ex. 21; 3/7/19 Tr. at [REDACTED]).

47. OP noted comments from the Department of Housing and Community Development (DHCD), the Department of Public Works (DPW), the Department of Employment Services (DOES), the Fire and Emergency Medical Services Department (FEMS), and the Department of Energy and the Environment (DOEE).¹ Each of these agencies provided comments to which the Applicant responded in a written submission. Except for the request from DHCD for additional affordable housing for the life of the Project, the Office of Planning and the Commission found the Applicant's responses sufficient to address agency concerns and requests. (Ex. 20, 21).
48. By report dated February 25, 2019 and revised February 27, 2019, and testimony at the public hearing, DDOT found that the conclusions and analysis in the Applicant's comprehensive transportation review ("CTR") were sound with respect to site design and travel assumptions and stated that it did not object to the Application, with conditions for additional mitigation. DDOT concluded that the Project will generate a small number of vehicle trips that will have minimal impact on the transportation network. DDOT agreed with the Applicant's transportation demand management ("TDM") plan and loading management plan but found that the TDM plan would be insufficient to fully mitigate adverse traffic impacts. However, DDOT stated that with the Applicant's adoption of DDOT's additional recommendations, DDOT's concerns regarding the Project would be fully addressed and adverse impacts would be mitigated. DDOT also recommended further coordination of the design for improvements in public space adjacent to the Project site, development of a curbside management plan, and signage. At the public hearing, the Applicant agreed to all of DDOT's conditions and recommendations. (Ex. 22; 3/7/19 Tr. at [REDACTED]).

ANC 8C Report

49. By report dated March 6, 2019, ANC 8C supported the Application. In particular, the ANC stated its support for the Project's deeply affordable housing. In addition, the ANC lauded the Project's proffered larger, family-sized units as particularly responsive to the community's needs. The ANC also noted the Relocation Plan's importance to its approval so tenants would be able to return to the Property. (Ex. 24.)

Testimony in Opposition

50. Toni Lawson and Chris Otten, writing as "DC 4 Reasonable Development Ward 8 Study Group" ("DC4RD"), filed a letter on March 7, 2019 in opposition to the Project. The letter raised generalized non-specific concerns regarding the Project as a whole. DC4RD objected to (1) the length of time the Project would be affordable; (2) claims of no

¹ In addition to the attendees, OP referred the Application to but received no comment from Metropolitan Police Department (MPD), DC Water, and DC Public Schools (DCPS).

APPLICANT'S DRAFT ORDER

guarantee of return for existing residents; (3) infrastructure costs related to the Project; and (4) jobs for local residents. (Ex. 26.)

51. No one appeared in opposition to the Project at the hearing.

Testimony in Support

52. Tamika Briscoe testified in support of the Project at the hearing. Ms. Briscoe acknowledged that is an employee of the Applicant, but she is also a resident of the Property. Ms. Briscoe testified in support based on her experience with the Applicant as the property manager. She further testified that the Applicant is trustworthy and would relocate residents to nice facilities and return residents to the Property at the improved Project in an acceptable manner. (3/7/19 Tr. at [REDACTED].)

Adverse Impacts and Mitigations

53. As acknowledged by the Applicant and by the Office of Planning, the Project will include an adverse impact on existing residents by causing displacement through the redevelopment. However, the Applicant will sufficiently mitigate this impact. (Ex. 2, 10, 12, 28.)

- a. The Applicant has committed to an extensive Relocation Plan for temporary relocation rather than permanent displacement of existing residents. All current residents will be welcome to return to the Project after it is completed. The Relocation Plan will provide protection and assistance for existing residents for temporary relocation during construction and permanent relocation back to the Project after construction. (Ex. 12A.)
- b. The Applicant further noted the Relocation Plan includes a commitment to monetary compensation for current residents who choose not to return to the Project after construction. (Ex. 12A, 30.)

54. As acknowledged by the Applicant and by DDOT, the Project will include a minor adverse impact on the transportation network through a slight increase in trips to the Property. However, the Applicant will adequately mitigate these impacts. (Ex. 19A, 22.)

- a. The Applicant has committed to a TDM Plan, a loading management plan, the installation of signage on the northbound South Capitol Street SE approach to the Property, and pedestrian improvements adjacent to the Property. The Applicant also committed to all of DDOT's recommendations. (Ex. 19A, 29.)
- b. DDOT reported and testified that the mitigations agreed to by the Applicant stated above will mitigate the adverse impacts on the transportation network. (Ex. 22, 3/7 Tr. at [REDACTED].)

APPLICANT'S DRAFT ORDER

55. The Commission finds that while the Project includes adverse impacts on the existing residents through displacement and on the transportation network through the increase in trips to and from the Project, the Applicant will adequately mitigate these impacts through the Relocation Plan, and the TDM Plan and other transportation-related improvements. Further, the Commission finds that while the Project will result in these adverse impacts, on balance and considering the Project as a whole, the adverse impacts are addressed through mitigation will be outweighed by the benefits and amenities delivered with the Project.

Contested Issues

IZ-Exempt Affordable Units

56. The Commission requested that the Applicant consider increasing the percentage of affordable units provided for the life of the Project at 60% MFI. The Applicant considered the Commission's request and explained the justification for the 11% proffer. The 60-year long-term commitment to deep levels of affordability at the Project is a meaningful benefit of the Project. Providing a large number of family-sized units at 30% and 50% of the MFI for at least 60 years (20 years longer than the typical LIHTC commitment) will create a large amount of affordable housing on a property that currently has no guaranteed affordable units for residents. Additionally, the Applicant has committed to 11% of the project at 60% MFI for the life of the Project, which exceeds the minimum 10% required under Inclusionary Zoning. (Ex. 30.) The Commission is persuaded by the Applicant's justification and finds that the commitment to 11% of the units at 60% MFI is significant and meaningful.

DC4RD Letter

57. As described above, DC4RD raised four generalized concerns in its letter. For the reasons described below, the Commission is unpersuaded by these concerns and find that DC4RD's allegations are not harms of the Project. (Ex. 26.)

- a. Broadly, the issues raised by DC4RD are unsubstantiated, generalized grievances. DC4RD cites no specific aspects of the Project or any evidence about the harms it alleges.
- b. Furthermore, 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. DC4RD's letter did not do so with respect to these issues; it simply presented a list of blanket complaints, without any explanation of how the alleged harms were caused by this Project.
- c. The Applicant did respond to DC4RD's letter at the hearing, specifically to each of the four issues raised in the letter. The Applicant noted that three of the issues

APPLICANT'S DRAFT ORDER

raised in the letter were factually incorrect: (1) all residents are guaranteed the opportunity to return to the Project upon completion, as shown in the Relocation Plan at Exhibit 12A and as described in the Applicant's testimony at the hearing; (2) the Project will include jobs for local residents, as committed by the First Source Agreement at Exhibit 12B; and (3) the Applicant analyzed and is mitigating the infrastructure impacts of the Project, as shown in Exhibits 2, 2F, and 19A. This infrastructure analysis shows that the only negative impact from the Project that warrants mitigation is the transportation-related infrastructure. As described above, the Applicant's commitment to bearing the cost of and implementing the transportation infrastructure-related improvements where the existing infrastructure will be negatively impacted by the Project is shown in Exhibit 19A and Exhibit 29. (3/7 Tr. at [REDACTED].)

- d. Regarding DC4RD's allegation that the 11% of affordable units at 60% of the MFI would constitute a harm, the Applicant responded that all of the existing units at the Property are market-rate and there is no rent level protection for the units. Instead, the Project is providing an all-affordable guarantee, including a guarantee that 11% of the residential units will be available at 60% MFI for the life of the Project, which is greater than the affordable housing that would be required through a matter-of-right development. (3/7 Tr. at [REDACTED].)

CONCLUSIONS OF LAW

1. 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. 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 of the Zoning Regulations.
2. The Project is of exceptional merit and in the best interests of the District, and the Property is located outside of the Central Employment Area and devotes all of gross floor area to residential use. Therefore, in its discretion, the Commission waives the minimum land area requirement of one (1) acre for a PUD in the RA-2 Zone District for the Property, which is 0.9 acre in land area, pursuant to 11-X DCMR §301.2(c).
3. Proper notice of the proposed PUD and Zoning Map amendment was provided in accordance with the requirements in Subtitle Z § 402 of the Zoning Regulations.
4. Based on the above Findings of Fact above, the Commission concludes that the Applicant has satisfied the burden of proof for approval of the consolidated PUD under the PUD evaluation standards in Subtitle X § 304 of the Zoning Regulations. Approval of this Project will provide a high-quality development that provides specific public benefits and project amenities, does not result in unacceptable impacts. Further, the Project's impacts are capable of being mitigated or are acceptable given the quality of public benefits, and is not inconsistent with the Comprehensive Plan.

APPLICANT'S DRAFT ORDER

5. The Applicant has proposed a consolidated PUD and Zoning Map amendment that will rezone the Property to the RA-2 Zone District and increase the total density in the PUD by an additional approximately 1.47 FAR over the matter-of-right limit. 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.” The Commission finds that additional development incentives, flexibility, and related rezoning are appropriate and fully justified by the public benefits and project amenities proffered by the Applicant. In particular, the Commission credits the report of ANC 8C, which acknowledged the strength of the benefits and amenities provided by the Project.
6. The development of this PUD will carry out the purposes stated in Subtitle X § 300 of the Zoning Regulations 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.” The character, scale, use, and design of the proposed PUD will satisfy these purposes, and the proposed development is compatible with the citywide and area plans of the District of Columbia.
7. The Commission concludes that the Project will provide specific project benefits and public amenities that will benefit the surrounding neighborhood and the public in general to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design and architecture; three-bedroom units; significant new affordable housing at deep levels of affordability, site planning and economical land utilization; employment and training opportunities; environmentally sustainable elements; and streetscape and public realm improvements, all are significant public benefits that will be provided to a considerably greater extent than a matter-of-right development would.
8. 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.
 - a. For the reasons detailed in this Order, the Commission credits the testimony of the Applicant’s transportation expert and DDOT and finds that the transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant as well as those proposed by DDOT and accepted by the Applicant; and the impacts are further outweighed by the quality of the public benefits of the PUD. The Commission credits the findings of the Applicant’s transportation expert that the Applicant’s proposed and enhanced TDM plan, loading management plan, street signage, and pedestrian (sidewalk) infrastructure improvements will mitigate transportation impacts from the Project.
 - b. For the reasons described in this Order, the Commission credits the Applicant’s testimony and the testimony in support from an existing resident and finds that the Relocation Plan will provide protection for existing residents to relocate during

APPLICANT'S DRAFT ORDER

construction to nearby properties and to return to the Project once completed. The Relocation Plan also provides monetary and logistical support for moving to prevent a negative economic impact on existing residents during the relocation process. Finally, the Relocation Plan provides monetary compensation for residents who choose to not return to the completed Project. Therefore, the Relocation Plan will mitigate impacts on existing residents from relocation due to the Project.

9. The Commission concludes that approval of the PUD is not inconsistent with the Comprehensive Plan and other relevant planning guidance documents. The Commission agrees with the determination of OP and finds that the Project is not inconsistent with the Property's FLUM and GPM designations, and that the Project will advance numerous goals and policies of the Comprehensive Plan, as described above.
10. The Commission credits the determination of OP and concludes that the proposed PUD-related Zoning Map amendment from the RA-1 to the RA-2 Zone District is not inconsistent with the Comprehensive Plan, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
11. The Commission has judged, balanced, and reconciled the relative value of the Project amenities and public benefits offered, the degree of development incentives and flexibility requested, and any potential adverse effects, and concludes approval is warranted.
12. The Commission is required under D.C. Official Code § 6-623.04 to give great weight to OP's recommendations. OP recommended approval, with certain requests and conditions. The Commission concludes that the Applicant adequately agreed to or responded to these requests and conditions as described above. Accordingly, the Application should be approved.
13. In accordance with D.C. Official Code § 1-309.10(d), the Commission must give great weight to the written issues and concerns of the affected ANCs. As noted by the Court of Appeals, the ANC Act "does not require the BZA to give 'great weight' to the ANC's recommendation but requires the BZA to give great weight to any issues and concerns raised by the ANC in reaching its decision ... While it may be helpful to an applicant seeking a variance or a special exception to have the support of the local ANC, that body's recommendation in favor of a project does not provide any substantial support to justify the BZA's decision." *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016). In this case, ANC 8C recommended approval of the Application. The Commission fully credits the unique vantage point that ANC 8C holds with respect to the impact of the Application on the ANC's constituents and includes the ANC's recommendation as a piece of the Commission's overall conclusion to approve the Application. The Commission notes that while ANC 8D is also an affected ANC, it did not provide a recommendation or comment on the Project.

APPLICANT'S DRAFT ORDER

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia orders **APPROVAL** of the Application for a consolidated PUD and a Zoning Map amendment. This approval is subject to the following guidelines, conditions, and standards of this Order:

A. Project Development

1. The Project shall be developed in accordance with the architectural plans and drawings submitted on February 15, 2019 marked as Exhibits 20D of the record, and as modified by the plans included with the Applicant's post-hearing submission dated March 21, 2019, and marked as Exhibit 30A of the record (collectively the "Plans").
2. The Property shall be rezoned from the RA-1 Zone District to the RA-2 Zone District. Pursuant to 11-X DCMR § 311.4, the change in zoning shall be effective upon the recordation of the covenant discussed in Condition No. D.1.
3. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including 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 plans approved by the order;
 - 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 plans approved by the order;
 - 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 plans approved by the order. 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 (10%), except that the number of 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 number of parking space plus or minus ten percent (10%), so long as the number of parking spaces is at least the minimum number of spaces required by the Zoning Regulations;
 - f. To vary the roof plan as it relates to the configuration of solar panels area, provided that the square footage of the solar panels is not reduced;

APPLICANT’S DRAFT ORDER

- g. 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; and
- h. 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 plans approved by the order and are compliant with the DC signage regulations.

B. Public Benefits

- 1. The Applicant shall provide affordable housing as set forth in this condition.
 - a. The Applicant shall provide the affordable housing set forth in the following chart. The chart assumes that the Applicant will be granted an exemption from the Inclusionary Zoning regulations (“IZ Regulations”) set forth in Subtitle C, Chapter 10 of the Zoning Regulations, pursuant to 11-C DCMR § 1001.6 (“IZ Exemption”). However, the Commission takes no position as to whether the IZ Exemption should be granted;

Residential Unit Type	Floor Area/% of Total*	# of Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	96,481/100%	106	Mixed		
Affordable Non-IZ	20,261/21%	22	Up to 30% of MFI	60 Years	Rental
Affordable Non-IZ	65,607/68%	72	Up to 50% of MFI	60 Years	Rental
Affordable Non-IZ**	10,613/11%	12	Up to 60% of MFI	Life of the Project	Rental

** Refers to the residential gross floor area, but the floor area may be adjusted to subtract the building core factor.*

*** If the IZ exemption is denied, these units shall be Inclusionary Zoning units instead of Affordable Non-IZ units.*

- b. Each control period shall commence upon the issuance of the first certificate of occupancy; and

APPLICANT'S DRAFT ORDER

- c. Should the IZ Exemption be granted, the affordable housing requirements of this condition shall be stated in the covenant required by 11-C DCMR § 1001.6(a)(4); and
 - d. Should the IZ Exemption be denied, the Applicant shall nevertheless provide affordable housing in accordance with this condition, unless the IZ Regulations impose more restrictive standards. The Applicant shall record the covenant required by the Inclusionary Zoning Act as to 10% of the residential gross floor of the building, and shall execute the monitoring and enforcement documents required by 11-X DCMR § 311.6 as to the remaining residential gross floor area.
- 2. **For the life of the Project**, at least 32 of the residential units will be three-bedroom units.
 - 3. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall furnish a copy of its preliminary Enterprise Green Communities certification application to the Zoning Administrator demonstrating that the building has been designed to meet the Enterprise Green Communities standard for residential buildings, as shown on the Enterprise Green Communities Checklist on Sheet G-16 of the Plans.
 - 4. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall demonstrate that it has designed and constructed a minimum of 10,500 square feet of solar arrays located on Project.
 - 5. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall demonstrate that it installed at least one (1) electric vehicle charging station in the garage.
 - 6. **Prior to the issuance of a Building Permit for the Project**, the Applicant shall submit to the Zoning Administrator a copy of the executed First Source Employment Agreement with DOES substantially similar to the form submitted at Exhibit 12B in the Record.
 - 7. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall demonstrate compliance with the Relocation Plan submitted at Exhibit 12A in the Record and provide an update to the Zoning Administrator regarding the number of residents returning to the Project.
- C. Transportation**
- 1. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall install signage on the northbound South Capitol Street SE approach to the site driveway indicating that there is an intersection ahead, subject to DDOT approval.
 - 2. **For the life of the Project**, the Applicant shall provide the following transportation demand management (“TDM”) measures:
 - a. The Applicant will identify a TDM Leader (for planning, construction, and operations) at the building, who will act as a point of contact with DDOT/Zoning

APPLICANT'S DRAFT ORDER

Enforcement with annual updates. The TDM Leader will work with residents to distribute and market various transportation alternatives and options.

- b. The Applicant will provide TDM materials to new residents in the Residential Welcome Package materials.
 - c. The Applicant will meet Zoning requirements to provide bicycle parking facilities at the proposed development. This includes secure parking located on-site and a minimum of 5 short-term bicycle parking spaces around the perimeter of the Site.
 - d. The Applicant will meet Zoning requirements by providing 36 long-term bicycle parking spaces in the development garage, meeting Zoning Requirements.
 - e. The Applicant will provide a bicycle repair station to be located in the secure long-term bicycle storage room.
 - f. The Applicant will install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives.
 - g. Work with DDOT and goDCgo (DDOT's TDM program) to implement TDM measures at the site.
 - h. Share the full contact information of the TDM Leaders for the site with DDOT and goDCgo (info@godcgo.com).
 - i. Post all TDM commitments online for easy reference.
 - j. Offer annual Capital Bikeshare memberships to each resident for the first year after the building opens.
3. **For the life of the Project**, the Applicant shall provide the following loading management plan ("LMP") measures:
- a. A loading manager will be designated by the building management. The manager will coordinate with residents to schedule deliveries and will be on duty during delivery hours.
 - b. Residents will be required to schedule move-in and move-outs with the loading manager through leasing terms.
 - c. The dock manager will coordinate with trash pick-up to help move loading expeditiously between their storage area inside the building and the curb beside the loading area to minimize the time trash trucks need to use the loading area.
 - d. Trucks using the loading area will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR

APPLICANT'S DRAFT ORDER

20 – 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.

- e. The loading manager will be responsible for disseminating DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with District laws and DDOT's truck routes. The dock manager will also post these documents in a prominent location within the service area.

D. 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 Property 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 applicable conditions of this Order (*i.e.*, only those conditions that are required to be satisfied for the particular entitlement the Applicant is seeking at the time) at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.