

CONTESTED ISSUES

1. Height and Scale of Project

CRD, and others in opposition to the Project, have stated that the Project is out of context with the surrounding residential and small-scale commercial neighborhood. CRD further states that “[t]he oversized, six-story building Valor building will be a jarring intrusion into the neighborhood of much lower 2-story homes and will destroy the attractive, open vista...on Massachusetts Avenue...Plus, the building, which rises to 81.5 feet and will be built on the property line, will have a wall-like appearance along both Yuma and 48th Streets.” As described below, much of how CRD describes the Project is inaccurate, and in fact the proposed height, scale, and design result in a Project that compliments the scale and development pattern of the adjacent residential and commercial neighborhood and uses.

The proposed design of the Project complements the established character of the surroundings and provides an appropriate transition between the lower-scale residential neighborhood to the north and east and the larger-scale AU Building. Contrary to what many in opposition have stated, the Project does not consist of a six-story building rising to a height of 81.5 feet. Rather, as measured fully in accordance with Subtitle B of the Zoning Regulations, the buildings proposed on Lot 807 have a maximum height of 43’-6” and 4 stories. The 43’-6” height of Building 1 is below the maximum height of 50 feet permitted as a matter-of-right in the MU-4 zone, and is only 3’-6” taller than the maximum height of 40 feet that is permitted in the adjacent R-1-B zone. Moreover, the height of Building 1 will not create a jarring contrast in scale considering the highest point of the roofs of the homes along 48th and Yuma Streets range between 30 and 35 feet from street grade.

In addition to being below matter-of-right height, the Project also contains substantial setbacks from the property line to relate to the pattern of adjacent development. Specifically, in contrast to CRD’s statement that the Project is a “wall along both Yuma and 48th Streets,” 50% of the façade along Yuma Street is set back from the property line, and 64% of the façade along 48th Street is set back from the property line. Combined, 58% of the total façade at ground level along Yuma and 48th Streets is set back from the property line. Together with the width of 48th Street and Yuma Street, both 90-foot wide streets, the distance between the Project and existing development to the east and north will range between 96 AND 137 feet. Furthermore, despite the additional density being aggregated from the historic Massachusetts Avenue Parking Shops (“MAPS”) site, not only is the proposed height of Building 1 below matter-of-right, but the density proposed on Lot 807 is also below the 3.0 FAR permitted as a matter-of-right in the MU-4 zone. Thus, from a bulk perspective the density proposed on Lot 807 does not exceed what would be permitted if the lot was developed on its own.

The Project also incorporates numerous other design features that reduce mass and scale and successfully relate to the surroundings. These include: (i) upper level setbacks along Yuma Street, (ii) setbacks along the north-south alley, (iii) the use of a tripartite/banded façade composition, (iv) varied, high-quality materials, (v) the provision of public and private landscaped courtyards and open spaces, and (vi) the provision of abundant foundation level landscaping.

All of the above described design features work together to relate the Project to the established character of the area and avoid potential for overpowering contrasts in scale. The height, mass, and scale of the Project are appropriate in relation to the context on all sides, including the historic Massachusetts Avenue Parking Shops (“MAPS”). *See* report by the D.C. Historic Preservation Office (“HPO”) (Ex. 187).

2. Calculation of Project Density

Opposition to the application asserts that the Project contains almost 50,000 square feet of gross floor area (“GFA”) more than what is available on Lot 807 as a matter-of-right. Specifically, Citizens for Responsible Development (“CRD”) included a table in their Statement in Opposition (Ex. 118) showing that 185,514 GFA is available for development on Lot 807 as a matter-of-right, and Applicant is proposing 234,629 GFA on Lot 807. CRD presumably points this out in an attempt to convince the Commission that the Project is too dense. However, as discussed below, the density of the PUD is far below what is permitted as a matter-of-right in the existing MU-4 zone, and as previously stated, the height of the proposed buildings on Lot 807 is also below the maximum building height permitted as a matter-of-right in the MU-4 zone. The PUD does not utilize any PUD-related increases in density or height.

As required under 11-X DCMR § 303.2, “the FAR of all buildings shall not exceed the aggregate of the FARs as permitted in the zone or zones included within the PUD boundary, as that may be increased by X § 303.3.” The Applicant agrees with CRD that 185,514 GFA is available for development on Lot 807, and that the GFA proposed on Lot 807 exceeds that amount. However, density for a multi-lot PUD is not measured on a per lot basis, but rather is measured as an aggregate across the entire PUD site (not including the area of public streets or alleys).

On October 7, 2019, Mr. Shane Dettman, the Applicant’s expert in zoning and land use, presented a diagram to the Commission showing how approximately 50,115 GFA of unused density from the historic MAPS site will be used on Lot 807 for purposes of providing a new full-service grocery store and additional housing that would not otherwise be possible under matter of right development. This aggregation of density from the MAPS site to Lot 807 is expressly permitted under the PUD regulations. Further, the Commission’s ability to aggregate density in a PUD has been favorably addressed by the D.C. Court of Appeals (the “Court”).

In *Dupont Circle Citizens Ass’n v. District of Columbia Zoning Commission*, 335 A.2d 550 (D.C. 1976) the Court stated “[t]he very nature of the Planned Unit Development concept as promulgated by the Zoning Commission...suggests that a transfer of development rights from one building to another must have been contemplated as one that was both feasible and appropriate in the development of such a plan...It is not surprising then that the Commission provided...that ‘[t]he floor area of all buildings shall not exceed the aggregate of the floor area ratios as permitted in the several districts included within the project area...’ On the other hand, there is no provision in the PUD regulations that the floor area ratio of each building in the PUD must be within the maximum permitted in the district. The requirement to be met is that the FAR of all buildings does not exceed the ‘aggregate’ permitted within the project area. 335 A.2d 550, 556-57 (D.C. 1976).

As shown in the Applicant's plans, the overall density of the PUD is 2.68 FAR, which is below the 3.0 FAR that is permitted as a matter-of-right under existing zoning, and even further below the 3.6 FAR that is permitted under a PUD in the MU-4 zone. Thus, the Project density complies with the Zoning Regulations.

3. Measurement of Building Height

In its Statement of Opposition, CRD asserts that the Applicant's building height measuring point ("BHMP") for Building 1 violates 11-B DCMR § 307.7. That particular provision of the Zoning Regulations dictates how a BHMP must be established when the curb grade adjacent to a site has been artificially changed by, among other things, an embankment. CRD asserts that the Applicant is not permitted to measure the height of Building 1 from the elevation of the curb along 48th Street, NW because the grade of the curb along 48th Street rests upon an artificially elevated roadway embankment. CRD supports its claim through a series of existing conditions photographs taken along 48th Street. As testified by Mr. Dettman and Mr. Glatfelter, the Applicant's civil engineer, 48th Street does not rest upon an artificial embankment and the height of the Project, and specifically the height of Building 1, is being properly measured as required under the Zoning Regulations.

Pursuant to 11-B DCMR § 307.5, where a building fronts on more than one street, any front may be used to measure the height of the building. In this case, Building 1 fronts on both 48th and Yuma Streets and, as permitted under the Zoning Regulations, the Applicant is measuring the height of Building 1 from the elevation of the curb opposite the middle of the front of Building 1 along 48th Street.¹ According to CRD, the Applicant is prevented under the Zoning Regulations from measuring the height of Building 1 because 48th Street rests upon an artificial embankment. However, the analysis of this issue conducted by Mr. Glatfelter thoroughly demonstrates that the curb grade elevation of 48th Street has remained at generally the same elevation since the street was originally constructed, and that the subsequent construction of the grocery store building and parking structure on Lot 807 had no known impact on the curb grade elevation of 48th Street. (See Applicant's PowerPoint presentation at Ex. 229). Thus, because the "curb grade" of 48th Street has not been artificially changed the Applicant may measure the height of Building 1 from 48th Street. As shown on the Applicant's proposed plans, Building 1 has a maximum height of 43'-6" and contains four stories, as measured from the BHMP on 48th Street.

4. Traffic and Pedestrian Safety

While some opponents have asserted that the Project will have unacceptable traffic impacts, the Applicant's Comprehensive Transportation Review ("CTR") Report finds otherwise. In its Statement of Opposition, CRD states that the number of vehicle and truck trips that may be generated by the Project is unacceptable, but offers no quantitative support to

¹ Measuring the height of Building 1 from 48th Street also complies with the 1910 Height of Building Act (the "Height Act"). Per Section 7 of the Height Act, "If the building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit the greater height." (D.C. Code § 6-601.07)

substantiate its claim. It also states that the Project will increase danger to pedestrians due to increased traffic volume and that trucks will not be able to fit in the alleys.

In contrast, the analysis provided in the Applicant's CTR not only provides an estimate of the number of vehicle and truck trips that may be generated by the Project, it also applies these trips to the surrounding transportation network (together with background trips and pipeline projects) to determine whether the Project will have unacceptable traffic impacts. The CTR also analyzes pedestrian circulation and truck maneuverability along streets and in the alleys. Overall, the results of the CTR show that the Project will not have unacceptable impacts on the transportation network provided the Applicant implements certain mitigation measures. These mitigation measures include improvements to specified intersections around the PUD site, and implementation of a defined TDM Plan and Loading Management Plan. The Applicant has committed to implement the mitigation measures identified in the CTR, and any others requested in the report submitted by DDOT.

With respect to traffic volume, while the Project is projected to generate several more trips than what are currently generated by the existing uses on Lot 807, the CTR finds that all of the intersections analyzed around the PUD site will continue to operate at acceptable levels of service. Regarding truck circulation, the CTR demonstrates through a series of truck maneuver diagrams that vehicles and trucks will be able to access and navigate the alley successfully. CRD has submitted charts showing the potential increase in vehicles and trucks entering and exiting the alleys during peak PM period. However, these charts merely show that the existing alleys are significantly underutilized. For example, according to CRD's charts approximately 13 vehicles currently enter the north-south alley leading from Yuma Street to Massachusetts Avenue during the peak PM period, and approximately 14 vehicles enter the east-west alley off of 48th Street. These are extremely low numbers that do not provide a baseline from which to measure the impacts of the Project on the alley system, especially considering the large majority of the existing retail space on Lot 807 has sat vacant for several years. Based on a scope that was accepted by DDOT, the Applicant's CTR shows that the alley systems will function at an acceptable level. Furthermore, the Applicant's Loading Management Plan will mitigate any potential impacts caused by truck traffic.

Regarding pedestrian safety, despite CRD comments regarding the potential dangers to pedestrian circulation, the record clearly shows there will be substantial improvements to pedestrian safety and circulation around the PUD site. As part of the Project, two very large curb cuts will be eliminated from 48th and Yuma Streets resulting in approximately 80 linear feet of new, unbroken sidewalk for pedestrians to use without the risk of confronting a vehicle crossing the sidewalk. In addition, the Applicant has committed to funding the installation of a new HAWK signal along Massachusetts Avenue between 48th and 49th Streets to address a known safety issue caused by mid-block pedestrian crossings between the Spring Valley Shopping Center and the MAPS/AU Building. As set forth below, the Applicant is also making significant upgrades to public and private spaces in the alleys surrounding the PUD site and on the surrounding sidewalks, which will create a safer and more welcoming pedestrian experience.

5. Pedestrian Safety in Alleys and on Surrounding Streets

Many opponents of the Project have made comments that the Project will jeopardize pedestrian safety in the alley system. Generally, those that have commented on this issue have stated that the significant increase in cars and trucks using the alleys would increase the number of pedestrian-vehicle conflict points, thus endangering the lives of pedestrian using the alleys. Opponents have also stated that the improvements proposed along the alleys to accommodate pedestrians are not adequate and fail to meet safety standards, although opponents have cited no specific standards applicable to the alley improvements. Finally, CRD has stated that the increased traffic entering and existing the site will create more conflict with pedestrians walking along Massachusetts Avenue, 48th Street, and Yuma Street.

With respect to the alley, as has been previously stated by DDOT, the District's design standards do not require sidewalks or pedestrian paths to be provided along alleys. As DDOT has testified, alleys are intended to be used by vehicles and trucks while public sidewalks are intended to be used by pedestrians. It is this hierarchy and separation of travel ways that provides the greatest degree of safety to pedestrians.

Notwithstanding the foregoing, in response to comments regarding pedestrian safety in the alley, the Applicant will provide several improvements along the alley system. These improvements are not required by the District, but rather are being voluntarily provided in order to respond to the community and accommodate any pedestrian circulation that may occur in the alley. The improvements include: (i) widening the north-south alley to accommodate the new trash enclosure while maintaining a 20-foot drive aisle and a 3-foot delineated pedestrian path, (ii) providing a 6-foot wide sidewalk and delineated pavement along the east-west alley, (iii) installing protective bollards and special paving at the alley intersection, (iv) providing a sidewalk at the southern end of the north-south alley (along the west side near MAPS) from Massachusetts Avenue to the intersection of the east-west alley, and (v) installing striping and signage, as necessary, at the entrance to the north-south alley at Massachusetts Avenue. Compared to existing conditions, where there are no pedestrian facilities in the alleys, the several improvements that will be made to the alley as part of the Project will actually improve the safety of pedestrian circulation in the alley to the extent that it occurs.

6. Parking

Several opponents have stated that the Project will cause adverse impacts to parking despite the Applicant agreeing to virtually every condition that was requested by the community to address parking concerns. The Project will provide more than enough parking to accommodate parking demand. The Project will exceed the minimum parking required under the Zoning Regulations. Moreover, in direct response to a request from the community and ANCs, the Applicant has committed to providing one parking space per dwelling unit in Building 1 by allocating a greater percentage of the 236 parking spaces required under the existing easement to Building 1 based upon the final number of dwelling units. Furthermore, also in direct response to a request from the community, the Applicant will impose RPP restrictions on Building 1 residents with the penalty of lease termination.

Finally, in its Statement of Opposition, CRD states that the Commission should ascertain the availability of the parking spaces being provided by the Applicant since the availability of these spaces depends upon the reallocation of spaces that must be shared with AU. CRD also states that the agreement reallocating these spaces should be made public. First, as stated on the record, any agreement between the Applicant and AU, or the Applicant and Regency, is a private, two-party agreement. In addition, any agreements between the property owners within the PUD site do not need to be entered into the record in order for the Commission to review and render a zoning decision on the Project. As related to parking, to the extent the Commission deems it necessary to require the Applicant to devote a specific number of parking spaces to Building 1, it can direct this to happen through a condition in its final order.

7. Deprivation of Sunlight

Opponents to the Project have stated that the Project, specifically Building 1, will deprive adjacent neighbors of sunlight. While the Project will have minimal impact on direct sunlight to the most immediate properties, given the separation provided by adjacent streets, the Project's lower than matter-of-right height, and the substantial ground- and upper-level setbacks the impacts to sunlight will be less than the impacts that would have been caused by a matter-of-right project. As shown on the Applicant's shadow study, between spring and fall the Project has only minor to moderate impacts on sunlight that occur during the later hours of the day on homes immediately east across 48th Street. As expected, the impacts of the Project increase slightly during the winter when the sun is lower in the sky throughout the day.

The Applicant's shadow study clearly shows that a matter of right project would cause significantly more impacts to loss of sunlight than the proposed PUD. Specifically, under a matter-of-right scenario, the building facades along 48th and Yuma Street could be built entirely on the property line to a height of 50 feet, approximately 6'-6" higher than Building 1. Furthermore, with the building constructed up to the property line, its penthouse could be constructed much closer to the property line than currently proposed. The absence of setbacks, greater height, and larger penthouse footprint would most certainly have greater impacts to sunlight.

Finally, as is the case in most shadow studies, the study prepared by the Applicant only reflects impacts to direct sunlight. There is also ambient and reflected light that is cast on properties throughout a day. Further, the Applicant's shadow study does not reflect blockage of direct sunlight that is currently caused by existing vegetation and mature tree canopy. Thus, the Applicant believes the potential impacts on direct sunlight to nearby properties will be less than what would occur with a matter-of-right project, and to the extent impacts occur, such impacts are minimized by the separation provided by 48th and Yuma Streets, and by the lower height and set backs of the Project.

8. Loss of Privacy and Views

While opponents to the Project have claimed that the Project will cause impacts to privacy, there has been no information submitted regarding what this actually means other than a generalized comment about the proposed outdoor terraces on Building 1. Similar to the discussion on impacts to sunlight, the Applicant submits that to the extent views into adjacent

properties are afforded by the Project such views would not be any greater than would be afforded by a matter-of-right project, and quite possibly could be less.

As testified by Mr. Dettman at the public hearing, a matter-of-right project could be constructed entirely along the property lines on Yuma and 48th Streets to a maximum height of 50 feet, plus a 12-foot habitable penthouse. Instead, the proposed Project contains substantial setbacks along Yuma and 48th Streets. Specifically, 50% of the façade along Yuma Street is set back from the property line, and 64% of the façade along 48th Street is set back from the property line. Together with the width of 48th Street and Yuma Street, both 90-foot wide streets, the distance between the Project and existing development to the east and north will range between 96 to 137 feet.

In addition, the upper levels of Building 1 above the grocery store are further set back in response to the decrease in grade that occurs along Yuma Street. Compared to a matter-of-right development, these substantial setbacks from the property line and additional upper level setbacks increase the distance between any proposed outdoor terrace and adjacent residential properties, thus reducing any potential impacts to privacy. In addition, per the agreement with ANC 3E the Applicant has agreed to restrictions on the hours of use of the communal outdoor terrace proposed above the grocery store along Yuma Street. These restrictions will be made a condition in the Commission's final order. Thus, the Applicant believes any potential for impacts to privacy will be mitigated through the setbacks proposed for Building 1, and the aforementioned restrictions on the use of the outdoor terrace.

With respect to views, opponents have stated that the Project will adversely impact existing views. First, there are no historically designated viewsheds associated with the MAPS, and the Project does not intrude upon views along defined rights-of-way. There have been comments regarding the loss of views across the PUD site toward the west from Windom Place. As has been acknowledged by the Commission, unless expressly granted by easement, a property owner has no right to a view across another individual's property. This has been upheld by the Court. Specifically, in *Hefazi v. Stiglitz*, 862 A.2d 901, 911 (D.C. 2004), the Court stated:

“[h]ere, the appellants cannot demonstrate that they have acquired an easement by prescription. In essence, they assert that they have acquired a negative easement - the right to prevent appellee from using his property in such a manner as to affect their use and enjoyment of their own property. However, it is well settled that a negative easement cannot be created by prescription. To the contrary, a negative easement can only be created by an express grant... This rule flows from the basic principle that the actual enjoyment of the air and light by the owner of the house is upon his own land only, and that the owner of the adjoining lands has submitted to nothing which actually encroached upon his rights. Thus, one may obstruct his neighbor's windows at any time and no action can be maintained for obstructing a view ...”

Further, in Z.C. Case No. 11-03 (first-stage PUD for the redevelopment of the Southwest Waterfront), the Commission found that “[t]he viewsheds and property values of the Tiber Island homeowners are not protected by any restrictive covenants or by the Zoning Regulations” (Z.C. Order No. 11-03, Finding of Fact 91). This case was subsequently appealed by the party that

raised the objection regarding impacts to views. The Court did not disturb the findings regarding impacts to views and upheld the Commission's decision (*Randolph v. District of Columbia Com'n*, 83 A.3d 756 (D.C. 2014)). Therefore, the opponents are not entitled to any of the existing views that they claim the Project will interfere with or obstruct.

9. Calculation of Affordable Housing

Opponents to the Project have stated that the Applicant is circumventing the IZ regulations, yet provide no substantive evidence to support this claim. Pursuant to 11-C DCMR § 1003.1(a), the Applicant is required to set aside: (a) the greater of 10% of the GFA dedicated to residential use excluding penthouse habitable space or 75% of the bonus density utilized, and (b) an area equal to 10% of the penthouse habitable space devoted to residential dwelling units. The Applicant is also required to set aside an area equal to 10% of cellar floor area devoted to residential dwelling units and 10% of building projection area devoted to residential use.

As shown on the Applicant's updated IZ chart, specifically the table entitled "Building IZ Required (60% MFI)," based upon the proposed density of the PUD (2.68 FAR) the greater set aside amount is equal to 75% of the bonus density utilized. The chart also shows that penthouse habitable space, cellar floor area, and building projection area are all included in the Applicant's IZ requirements. Thus, it is clear that the Applicant is not circumventing the IZ regulations. In total, under the IZ regulations the Applicant would be required to set aside approximately 27,504 gross square feet ("GSF") to affordable housing. As the Commission knows, the Applicant will exceed this amount through its PUD proffer to devote 12% of the residential GSF in the Project to affordable housing, which amounts to approximately 5,200 GSF (or 20%) more affordable housing than would otherwise be required under IZ. These calculations have been reviewed by the Office of Planning and the Department of Housing and Community Development, and neither has raised any questions or issues. Furthermore, these calculations will be reviewed again by the Zoning Administrator's Office during the building permit application stage.

10. Urban Design, Architecture, and Landscaping as a Public Benefit

The Project's superior urban design, architecture, and landscaping are, indeed, public benefits. In its Statement of Opposition, CRD asserts that the Project's massing and height reductions, large courtyards, façade articulation, upper-level setbacks, and high-quality, context-sensitive materials cannot be proffered as benefits because per 11-X DCMR § 305.9 "[e]lements or items required as mitigation of potential adverse impacts of the PUD shall not also be considered as benefits." However, these elements of the Project's design are not required mitigation measures.

For example, as stated by Mr. Dettman on October 10, 2019, a matter-of-right development on Lot 807 could be constructed to a maximum height of 50 feet entirely at the property line (no setbacks) along 48th and Yuma Streets. Instead, 50% of the façade along Yuma Street is set back from the property line from the ground level, and 64% of the façade along 48th Street is set back from the property line from the ground level. The variety of setbacks add variation and interest to the façade design. This is in addition to numerous other superior design features provided by the Applicant, including: additional upper level setbacks along Yuma Street as the elevation of the street decreases from east to west; additional setbacks along the north-

south alley, the use of a tripartite/banded façade composition and varied, high-quality materials, the provision of public and private landscaped courtyards/open spaces; and the provision of abundant foundation level landscaping around Building 1. All of these design features of the Project are voluntarily provided by the Applicant as part of the PUD process, and all of them will benefit the surrounding neighborhood to a significantly greater extent than would likely result from matter-of-right development.

11. Historic Preservation as a Public Benefit

In its October 10, 2019, responses to the report from HPO, CRD makes several inaccurate statements regarding the historic preservation benefits of the Project and the applicability of D.C. preservation law. Specifically, CRD states that the Project does not provide tangible or quantifiable preservation benefits under 11-X DCMR § 305.5(e), and that density determination and allotment on the MAPS site have not been addressed. As the record clearly demonstrates, both of these statements are inaccurate.

Regarding preservation benefits, CRD states that the HPO report fails to address whether the Project provides tangible and quantifiable preservation benefits, as required under the PUD regulations, but instead only discusses indirect effects that cannot be considered PUD benefits. To support its statement, CRD provides the following quote from the HPO report – “[t]he Project would enhance the character of the Parking Shops by improving its architectural setting through compatible design and superior execution.” The Applicant has never proffered the proposed design of the Project as a historic preservation benefit under 11-X DCMR § 305.5(e), nor does the Applicant read the HPO report as making such a claim. In fact, the HPO report does not in any way opine on the Applicant’s proffered set of PUD benefits and amenities. Thus, the favorable comments in the HPO report regarding the Project design relative to its compatibility with the MAPS are more appropriately read within the context of the Project’s consistency with the policies of the Historic Preservation Element of the Comprehensive Plan, and the benefits provided by the Project in the category of superior urban design and architecture under 11-X DCMR § 305.5(a).

The tangible historic preservation benefit provided by the Project is the permanent reduction of future development that could take place on the MAPS site. CRD claims the Applicant has never made clear the amount of GFA it will purchase from Regency, the present owner of the MAPS. This is inaccurate. At the public hearing, Mr. Dettman presented a diagram to the Commission clearly showing that approximately 50,115 GFA will be purchased from Regency and permanently aggregated on Lot 807 to construct the Project. *See Applicant’s PowerPoint presentation at Exs. 194 and 229.* CRD states that “[t]angible benefits for a landmark included in a PUD would be...monies specifically earmarked for preservation and maintenance.” As stated in the letter to the Commission from Regency, the Project “will greatly assist [Regency] in maintaining the historic integrity and long-term viability of the [MAPS]” (Ex. 227).

In addition, the permanent reduction of development potential on the site of a historic landmark has previously been found by the Commission as being a PUD benefit. Specifically, in the PUD involving the Heurich Mansion site, the Commission found that “[t]he most significant feature of this [PUD] is the proposal to transfer unused density from [the Heurich Mansion]...to

the proposed 12 story office building to be built in the center of the site” (Z.C. Order No. 101, Finding of Fact 7). The Commission further found that:

“The transfer of development rights concept is a recognized means of preserving urban landmarks... The sale of development rights will assure preservation of the Heurich Mansion for two reasons: (1) it will provide the necessary funds to operate and repair the property and (2) it will reduce the economic feasibility of ever selling the property because the development on said property will be permanently reduced to that permitted under the existing zoning minus the development rights sold... Historic preservation ordinances are limited in their ability to preserve historic landmarks because of constitutional restrictions on the taking of property. The transfer of development rights is an effective means of preserving the Heurich Mansion as an historic landmark” (*Id.* Finding of Fact 22).²

CRD also makes several other inaccurate assertions that must be addressed. First, CRD states that “[d]ensity belongs to and is an attribute of the MAPS landmark. Removing such an attribute from a landmark is beyond the purview of the Zoning Commission.” CRD also states that “[t]he open space of the [MAPS] parking lot is as much part of the allocation and use of density as it (sic) the building itself. Therefore, one must consider the parking lot space as already used density.” Finally, CRD states that “MAPS’s density cannot be done simply by subtracting the amount of density (FAR) already used by the landmark building’s footprint on Lots 802 and 803 from what would generally be available under MU-4 zone for those lots.”

Again, the Commission need only refer to the Heurich Mansion PUD to see the inaccuracy of these three statements. First, it is clear that the Commission not only has purview over the allocation of density on properties, but that its purview is an effective means of preserving historic landmarks. Secondly, the MAPS parking lot does not constitute “used density” regardless of whether it is considered part of the designated landmark. The parking lot does not constitute “gross floor area,” as that term is defined in the Zoning Regulations. In addition, historic designation of a building or structure does not automatically zero out the development potential of a property. If that was the case, then the Heurich Mansion site would have had no density to transfer. Rather, historic designation merely makes future development on the site of the historic landmark subject to review by the Historic Preservation Review Board, which may or may not reduce the amount of development that can be constructed on the historic property. Third, the exact way that CRD describes how MAPS’s density cannot be computed is exactly the way it was done in the Heurich Mansion PUD. Specifically, the Commission computed the amount of unused development potential on the Heurich Mansion site by

² The Commission’s decision in the Heurich Mansion PUD was upheld by the Court in *Dupont Circle Citizens Ass’n v. District of Columbia Zoning*, 355 A.2d 550 (D.C. 1976). In upholding the ability to aggregate density under a PUD, the Court stated “[w]e also hold that where the total F.A.R. for the project is the determinative figure, rather than the F.A.R. for each building, there is no impediment to permitting payment for the transfer of such rights from one building owner to another within the same project when agreed to by the parties.” In regards to the Commission’s use of zoning to accomplish historic preservation, the Court found that the Commission is not without jurisdiction to do so under the broad general authority granted to the Commission under the Zoning Act to, in relevant part, “promote the general welfare of the District of Columbia and its planning and orderly development as the national capital.”

subtracting the density of the Heurich Mansion and Carriage House from the total amount of density that would be allowed under the PUD-related map amendment requested in that case (*Id.* at Finding of Fact 8).

12. Applicability of *Durant v. District of Columbia Zoning Commission I, II, and III*

CRD suggests that the *Durant* case is “strikingly similar” to the proposed Project. CRD misinterprets *Durant* as this case certainly works in the Applicant’s favor. First, the *Durant* case involved a PUD-related Zoning Map amendment to establish C-2-B zoning, which appears under the Moderate and Medium Density Commercial FLUM descriptions, on a site that is largely designated as Low Density Residential on the FLUM. Again, the Applicant is not requesting a Zoning Map amendment and the existing MU-4 zoning of the PUD Site is compatible with the PUD Site’s Low Density Commercial FLUM designation.

Next, CRD argues that under *Durant* that the Applicant cannot seek approval of a PUD to construct a 6-story mixed-use building by employing “flawed efforts to diminish the visual impact of the proposed structure” because the Court rejected reliance on architectural features to determine whether a project met a FLUM description. CRD further states that the Project, “unlike the PUD in *Durant*, is not set back from the property line at ground level. Rather, the portions that are directly adjacent to the detached, single family homes on 48th and Yuma Streets mostly sit on the property line.” None of these statements are correct. First, the Applicant is not proposing to construct a 6-story building. Rather, as measured in accordance with Subtitle B of the Zoning Regulations, the Applicant is proposing to construct a 4-story mixed-use building containing residential and a partial level of commercial (retail) use.

Secondly, unlike in *Durant*, no portion of the Project is directly adjacent to detached, single family homes. Rather, the Project is separated from the homes along 48th and Yuma Streets by a minimum of 90 feet. Contrary to CRD’s statement regarding setbacks, approximately 50% of the façade along Yuma Street and 64% of the façade along 48th Street is set back from the property line from the ground level. As testified by Mr. Dettman, as a result of these setbacks, the distance between the Project and the homes along 48th and Yuma Streets ranges between 96 feet – 137 feet. Thus, the Project has substantial setbacks from the property line, with additional upper level setbacks along Yuma Street.

Moreover, the building’s setbacks, along with several other “architectural features,” are not necessary for the Applicant to make its case under the FLUM. Rather, the Project is not inconsistent with the FLUM given the existing MU-4 zoning is expressly stated as being compatible with the PUD Site’s FLUM designation, and the Project is below matter-of-right height and density. The substantial setbacks, courtyards, façade articulation, and high-quality materials are provided as superior design features of the Project and to ensure that the Project related to the scale, character, and development pattern of the surrounding context.

13. Accuracy of Landscaping in Project Renderings

In its visual impact study (Ex. 217), CRD asserts that the Applicant’s “unrealistic depiction of the height, location and maturity of the vegetation surrounding the proposed site distorts the true mass and scale of the proposed building.” CRD’s expert in visual impact studies,

Mr. Curt Westergard, testified to the same at the hearing on October 10, 2019. While CRD makes it appear as if the Applicant is trying to deceive the Commission, in reality CRD appears to be relying upon the wrong set of renderings to evaluate the Project in relation to the existing surrounding context.

The plans submitted by the Applicant contain two versions of each rendering prepared for the Project taken from multiple vantage points around the PUD Site. The first is an “all virtual” version that digitally renders the existing and proposed buildings and surrounding streetscape and landscape. These “all-virtual” renderings are clearly marked as being intended to “best illustrate design intent.” Thus, these renderings are for purposes of analyzing the design of the proposed buildings and nothing more. It should be noted that when asked by the Commission, Mr. Westergard confirmed that the proposed buildings in the “all-virtual” renderings appeared to be accurately depicted, including their relation to the surrounding buildings.

Based on prior requests from the Commission to see the Project in relation to what actually exists, the Applicant submitted a second set of renderings that insert the proposed buildings into a photograph showing the existing surrounding context. These renderings are clearly marked as being “intended to best illustrate design intent in the current context.” (emphasis added). These renderings were prepared in accordance with what the Applicant understands to be industry standard specifications for preparing visual impact studies, which was not challenged by Mr. Westergard during the public hearing. As is clearly labeled, these are the renderings that are intended to be used to evaluate the Project relative to the surroundings.

14. Construction Damage

In its Statement of Opposition, CRD states that “[d]amage to neighboring homes is likely” during construction of the Project. No additional information is provided to substantiate that this will actually occur, and to the extent damage does occur, what will be the nature of the damage. Any development project has the potential to cause damage to neighboring properties. This is why the Applicant, and the contractor it selects to construct the Project, are required under District law to have specific types and amounts of liability insurance. Proof of this insurance is required to be provided at the time of building permit. The Applicant will comply with this and all other applicable laws and regulations regarding building construction to ensure that any impacts will be properly mitigated.

Furthermore, as part of its agreement with ANC 3E, the Applicant is required to abide by several construction mitigation efforts that include vibration monitoring and corrective action should damage occur to surrounding buildings. Therefore, the Applicant will properly mitigate any potential constructed-related impacts to the extent required by law and through its agreement with the ANC.

EVALUATION OF SPECIAL EXCEPTION RELIEF

Pursuant to 11-X DCMR § 303.1, as part of the PUD process, the Zoning Commission may grant relief from any building development standard or other standard referenced in the zone reference table with the exception of use regulations. Pursuant to 11-G DCMR § 409.1 and 11-G DCMR, Chapter 12, exceptions to the development standards for the MU-4 zone are

permitted as a special exception. In this case, the Applicant requested special exception relief from the rear yard and penthouse requirements, but did not request any flexibility from the applicable special exception standards. Thus, the special exception relief is not considered development flexibility against which the Commission should weigh the benefits of the PUD.

Pursuant to 11-G DCMR § 1200.4, relief from the development standards of the MU-4 zone may be granted as a special exception if it is found that the special exception:

- a. Will be in harmony with the general purpose and intent of the MU zone, the Zoning Regulations, and Zoning Maps;
- b. Will not tend to affect adversely the use of neighboring property, in accordance with the Zoning Regulations and Zoning Maps; and
- c. Is subject in each case to any applicable conditions.

As set forth below, the application meets the special exception standard of review set forth in 11-G DCMR § 1200.4, for the rear yard depth for Building 1 and the penthouses for Townhomes 1-4.

Rear Yard Special Exception Relief for Building 1 (11-G DCMR § 405.2). Pursuant to 11-G DCMR § 405.2, a minimum rear yard of 15 feet is required in the MU-4 zone. The Applicant proposed a minimum rear yard depth of 10 feet along portions of Floors 1-3 of Building 1.

The rear yard relief meets the special exception standards of 11-G DCMR § 1200.4 because the rear yard will be in harmony with the general purpose and intent of the Zoning Regulations, Zoning Map, and specifically the MU-4 zone. The overall purpose of the Zoning Regulations is to establish minimum standards for the promotion of public health, safety, morals, convenience, order, prosperity, and general welfare, by (i) providing adequate light and air; (ii) preventing undue concentration of population and overcrowding of land; and (iii) distributing population, business, and industry, and the use of land in a manner that creates favorable conditions. *See* 11-A DCMR § 101.1. The purpose of the MU-4 zone is to permit moderate-density mixed use development that includes facilities for shopping and housing needs and is located in a low- and moderate-density residential neighborhood.

The extent of the rear yard relief is limited to two portions of the west façade of Building 1. Specifically, for the first 20 feet of building height, which generally aligns with the Lower Level of Building 1, the required 15-foot rear yard will be provided, and in fact will be exceeded since the rear yard may be measured from the centerline of the north-south public alley. Above 20 feet, where the rear yard must be measured from the rear property line, the rear yard relief is only necessary at the northwest (Floors 1 – 3) and southwest (Floors 1 – 4) corners of Building 1, and the extent of relief in these areas is only approximately 5 feet since Building 1 will be setback from the rear property line by approximately 10 feet.

Given the much lower height of the MAPS, the 20-foot public alley, and the 10-foot rear yard that will be provided, the special exception relief will be in harmony with the purposes of

the Zoning Regulations stated above. Notwithstanding the requested relief, adequate light and air will be available to the dwelling units located along the rear of Building 1, the MAPS, and into the public alley. Considering the location of the requested rear yard relief toward the interior of the Site, the special exception will not adversely affect the use of neighboring properties. The portion of the MAPS that is closest to the area where the rear yard relief is requested contains back-of-house functions and does not contain any windows. In addition, the special exception will not adversely impact the setting of the historic MAPS when viewed from Massachusetts Avenue, nor will the relief adversely affect circulation in the public alley because the required rear yard will be provided at the ground level.

Based on the foregoing, the proposed rear yard relief is in harmony with the purpose and intent of the Zoning Regulations, Zoning Map, and the MU-4 zone specifically. The rear yard relief also will not adversely affect neighboring property since it allows for additional setbacks and height-step downs where Building 1 is closest to existing residential uses.

In addition to the general special exception standard, the rear yard relief meets the following criteria listed in 11-G DCMR § 1201.1 as follows:

- a. 11-G DCMR § 1201.1(a) –There are no residential dwelling unit windows along the rear of Building 1 that are located within 40 feet directly in front of another building. The only building directly opposite the rear of Building 1 is the MAPS, which does not have any windows along the façade that faces Building 1. Moreover, the height of the MAPS is below the height of the first level of dwelling units that face the alley in Building 1.
- b. 11-G DCMR § 1201.1(b) - This section is not applicable because office use was not proposed.
- c. 11-G DCMR § 1201.1(c) - The rear yard relief will not result in Building 1 being not parallel to the MAPS. In addition, there are no windows along the eastern façade of the MAPS-facing portion of Building 1. Thus, the distance of penetration of sightlines into habitable rooms did not need to be evaluated.
- d. 11-G DCMR § 1201.1(d) - The Project will satisfy all minimum parking and loading requirements and the rear yard relief will not impact access to these facilities because the Project will provide the required rear yard at the lower level and the parking and loading facilities are not located along the north-south alley where the rear yard relief is requested. The Applicant will reduce the number of trash containers in the north-south alley, place trash containers in new enclosures, and ensure that safe and adequate vehicular and pedestrian circulation is provided along the alley by setting back Building 1 from the west property line of Lot 807.

In addition, the Project includes a three-level below-grade parking garage with contains parking spaces in excess of the number of spaces required by the Zoning Regulations. Loading is also provided in an amount that meets the requirements of the Zoning Regulations. Access to the parking and loading facilities is provided on the south side of Building 1, adjacent to the east-west alley, which location

minimizes views and the potential for noise-related impacts on residential uses to the north and east. Providing parking and loading access in this location also improves circulation by positioning these facilities closer to Massachusetts Avenue and away from the trash enclosures and other MAPS-related mechanical equipment located along the north-south alley.

- e. 11-G DCMR § 1201.1(e) –All applicable District agencies had full authority to review and comment on the rear yard relief identified in the application.

Penthouse Special Exceptions for Townhomes 1 through 4 (11-C DCMR § 1500.4).

Pursuant to 11-C DCMR § 1500.4, a penthouse, other than screening for mechanical equipment or a guard-rail required by the D.C. Construction Code for a roof deck, is not permitted on the roof of detached dwelling, semi-detached dwelling, rowhouse, or flat in any zone. However, BZA may approve a penthouse as a special exception under 11-X DCMR, Chapter 9, subject to conditions.

In this case, the Applicant originally requested relief from 11-C DCMR § 1500.4 to permit a penthouse on the roofs of Townhomes 1-4. Each penthouse would contain a limited amount of ancillary storage space and a stairway to provide access to a roof deck. The Applicant had also requested relief from 11-C DCMR § 1500.9 to permit penthouse enclosing walls of unequal heights. At the public hearing on October 10, 2019, the Applicant testified that it would remove the penthouses on Townhomes 1-4 and would provide rooftop access through a hatch that is no more than 5 feet in height. The Applicant maintained its requested relief to provide a penthouse on Townhomes 1-4 in case the final design of the hatch is over 4 feet, and the text of 11-C DCMR § 1500.2 suggests that even a hatch that is less than 4 feet is still considered a penthouse. Further, the Applicant maintained its requested relief to allow a penthouse with walls of unequal height in case the final design of the hatch happens to have a sloped roof similar to some of precedents shown by the Applicant at the public hearing.

The proposed hatches, up to 5 feet in height, will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. Given their modest size, compliant setbacks, and the orientation of the roof decks toward the rear of the Townhomes, the proposed penthouses will not negatively impact the general welfare of the surrounding community. The penthouses will also not have an undue impact on light and air; result in undue concentration of population and overcrowding of land; or create conditions that are unfavorable to transportation. The properties and buildings that are immediately adjacent to the proposed penthouses include Building 1 and the AU Building, both of which will not be adversely affected by the hatches, even if they are 5 feet in height. The closest existing residential uses are located over 110 feet away from the proposed penthouses. Given this substantial distance, the proposed penthouses will not adversely affect the use of neighboring properties in accordance with the Zoning Regulations and Zoning Maps

COMPLIANCE WITH PUD STANDARDS

The application complies with the standards for a PUD set forth in 11-X DCMR, Chapter 3 of the Zoning Regulations.

The Project offers a high level of public benefits and project amenities. When compared with the lack of any development flexibility requested and the potential project impacts, the application satisfies the balancing test required in 11-X DCMR § 304.3, as is further discussed below.

Pursuant to 11-X DCMR § 301.1, a PUD in the MU-4 zone requires a minimum land area of 15,000 square feet. The Project Site has approximately 160,788 square feet of land area, which meets the minimum requirement.

The PUD is not inconsistent with the Comprehensive Plan, as set forth below.

Consistent with the height and density limitations set forth in 11-X DCMR §§ 303.3 and 303.7, the Project has been evaluated under the PUD guidelines for the MU-4 zone. The Project is within the height and density permitted for a PUD within the MU-4 zone. In fact, the Project is well within the height and density permitted as a matter-of-right in the MU-4 zone.

Balancing of Benefits and Amenities, Development Incentives, and Potential Adverse Impacts

Pursuant to 11-X DCMR § 304.3, 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 specific circumstances of the case.

Benefits and Amenities

Pursuant to Subtitle X § 305.12, a project may qualify for approval by being particularly strong in only one or a few categories of public benefits, but must be acceptable in all proffered categories and superior in many. 11-X DCMR § 305.2. The Applicant's final list of proffered benefits and amenities is contained in the case record at Exhibit 230A which reflects the Applicant's commitment to increase its initial affordable housing proffer from 11% to 12%, and to provide a minimum of four, three-bedroom affordable dwelling units.

The benefits of the Project are acceptable in all proffered categories and, as discussed below, superior in the categories of housing, affordable housing, environmental, transportation infrastructure, and uses of special value to the surrounding neighborhood.

Housing (11-X DCMR § 305.5(f)): The Project will replace a long vacant and underutilized site within a designated Neighborhood Commercial Center with a mixed-use development containing approximately 219 new dwelling units (plus/minus 10%) where no dwelling units or residents currently exist. Many of the dwelling units within the Project will be larger-sized dwelling units capable of housing families, including 3 bedroom units. As a result of the aggregation of a portion of the unused density on the historic MAPS site, the amount of housing provided in the Project exceeds the amount of housing that could otherwise be developed through matter-of-right development. The new housing provided by the Project is a significant public benefit considering the critical need to increase the District's housing supply in order to meet housing demand and achieve the District's goal of developing 36,000 new dwelling units by 2025.

Affordable Housing (11-X DCMR § 305.5(g)): In addition to housing in general, there is even a greater need to increase the production of affordable housing in high opportunity areas like the Rock Creek West Planning Area. Indeed, according to the recently released report entitled Housing Equity Report: Creating Goals for Areas of Our City (the “Housing Equity Report”), the Rock Creek West Planning Area presently contains less than one percent of the total number of dedicated affordable units in the District. In the same report, Mayor Muriel Bowser has set a target of 1,990 new dedicated affordable housing units to be developed in the Rock Creek West Planning Area by 2025.

The Applicant has proffered to devote 12% of residential floor area in the Project to affordable housing, which exceeds the 10% of affordable housing that would be required under matter of right development on the PUD site. This represents 20% more affordable housing than would otherwise be required. Further, the Applicant has committed to providing at least four, 3 bedroom affordable dwelling units (1 unit at 50% MFI and 3 units at 60% MFI).

Based upon data contained in the Housing Equity Report, this single proposed development, which is below matter-of-right height and density, will move the District closer to achieving its affordable housing target by increasing the number of dedicated affordable housing units in the Rock Creek West pipeline by approximately 36%. The Applicant’s affordable housing proffer is a significant public benefit that will make a substantial contribution to the overall inventory of affordable housing in the Rock Creek West Planning Area, especially considering that the Applicant is not requesting any development incentives as part of the PUD.

Environmental and Sustainable Features (11-X DCMR 305.5(k)): Currently, Lot 807 is nearly 100% impervious and contains no sustainable storm water management. The Project will improve Lot 807 with a new mixed-use development that will be LEED Gold certified. Under matter-of-right development, the Project would only need to be LEED certified. The Applicant has committed to constructing the Project to LEED Gold v.4 standards. While under the PUD regulations, a project does not have to achieve actual LEED certification to be acceptable as a public benefit, the Applicant has nonetheless committed to completing the LEED Gold certification process. Further, the Project will contain a significant amount of new permeable paving, as well as landscaped and green roof area that will store, infiltrate, evaporate, treat, and detain runoff in close proximity to where the runoff is generated. This will significantly reduce the amount of runoff that currently flows from Lot 807 directly into the District’s municipal sewer system. The environmental benefits provided by the Project substantially improve the environmental quality of the PUD site, and the sustainable features of the Project are consistent with the Sustainable DC Action Plan (v.2.0).

Transportation Infrastructure (11-X DCMR § 305.5(o)): – The Project proposes several transportation related improvements that are not otherwise required to mitigate any potential adverse impacts. The physical improvements proffered by the Applicant include a new high-intensity activated crosswalk (“HAWK”) on Massachusetts Avenue between 48th and 49th Streets, consolidation of trash receptacles in the north-south alley and in public space along Yuma Street to a new enclosure along the north-south alley, and several improvements to the north-south and east-way alleys to increase pedestrian safety and visibility. In addition, the Applicant has proffered several other non-physical improvements including the allocation of \$100,000 to provide means for connecting residents to the Tenleytown Metro station; restrictions

on obtaining Residential Parking Permits for residents of Building 1; a contribution of \$15,000 toward studying other specified physical transportation improvements around the PUD site; and working with DDOT, JUMP bike share, and ride hailing services to identify/designate specific locations around the PUD site for a Capital Bikeshare station, preferred pick-up and drop-up point(s), and alternative modes of transportation. These improvements will provide substantial benefits that will increase access to alternative transportation modes from the PUD site. Further, consistent with the District's Vision Zero Action Plan, these improvements will substantially benefit pedestrian safety through and around the PUD site.

Uses of Special Value to the Neighborhood (11-X DCMR § 305.5(q)): As part of the Project, the Applicant will provide a new full-service grocery store, a use that existed on Lot 807 for several decades until the last grocer closed down several years ago. During its engagement with the ANC and the community, the Applicant received many comments in support of restoring a full-service grocery store use in the neighborhood. The Commission received several letters and testimony also in support of a new full-service grocery store. The Commission also received letters and testimony stating that the proposed grocery store could not be considered a benefit because there were several grocery stores within a 1.1- to 3-mile radius of the PUD site. The Commission notes that the Applicant did not proffer the proposed grocery store under 11-X DCMR § 305.5(j) which stipulates that a grocery store larger than 15,000 square feet can be a benefit in areas where a grocery store does not exist within a 3-mile radius. The Commission notes that this provision of the Zoning Regulations was implemented to address areas of the District, such as Wards 7 and 8, that have historically been underserved due to a complete lack of grocery stores. Rather, the Applicant has proffered the proposed grocery store as a use of special value to the neighborhood per 11-X DCMR § 305.5(q) of the PUD regulations. Based upon the record in this case, there is strong demand for a full-service grocery store in the neighborhood surrounding the PUD site. As such, the proposed full-service grocery store is a superior benefit of the Project that could not be provided through matter-of-right development on the PUD site.

Development Incentives

The Applicant is not requesting any PUD-related development incentives. The Applicant is not requesting to change the zoning of the PUD site through a PUD-related map amendment, which per 11-X DCMR 303.12 would be considered flexibility against which the Commission weighs the benefits of a PUD. The PUD site is currently zoned MU-4, the same zoning that has existed on the site for decades and will remain zoned MU-4 following the Project. As a matter-of-right, the maximum height and density permitted in the MU-4 zone is 50 feet and 3.0 FAR (with IZ respectively). Under a PUD, the maximum height and density permitted in the MU-4 zone may be increased to 65 feet and 3.6 FAR (with IZ respectively). As proposed, the maximum height of the buildings proposed on Lot 807 is 43'-6" and the overall density of the proposed PUD is 2.68 FAR, calculated as an aggregate across the entire PUD site as permitted under 11-X DCMR 303.2. Thus, both the proposed height and density of the proposed PUD are well below what is permitted as a matter-of-right under existing MU-4 zoning, let alone a PUD. Thus, the Applicant is not requesting any PUD-related development incentives as to height or density.³

³ The height of the existing MAPS building is approximately 25 feet. The height of the existing AU Building is approximately 60 feet, which was the maximum permitted building height under the Zoning Regulations at the time

The Applicant has requested special exception relief from the rear yard requirement of 11-G DCMR § 405.2 for Building 1, and from the penthouse regulations to permit a penthouse on the proposed townhomes, and to allow the Townhome penthouses to have walls of unequal heights. Pursuant to 11-X DCMR § 303.13, the requested special exception relief is not considered flexibility against which the Commission shall weigh the benefits of the PUD.

The benefits and amenities proffered by the Applicant far outweigh the degree of development incentives requested since, as noted above, no PUD-related development incentives are being requested.

Potential Impacts

As Mr. Dettman testified on October 7, 2019, the majority of the potential impacts of the Project will be favorable, and any potential non-favorable impacts will be capable of being mitigated, or acceptable given the quality of proffered benefits and amenities. *See* Applicant's PowerPoint Presentation, Exhibit 194, pp. 43-47.

Land Use

The Applicant stated that the potential impacts of the Project on issues relating to land use will be favorable or capable of being mitigated. The land area within the PUD site, and in particular Lot 807, is very underutilized. Lot 807 is currently improved with a vacant grocery store building, some additional retail space that is currently in use, and a large surface parking lot. The Project will redevelop Lot 807 with a new mixed-use development containing many new market rate and affordable dwelling units and a new full-service grocery store.

Mr. Dettman testified that the Project is a significant improvement in terms of the utilization of the land within the PUD site, which is of particular importance given the site's location within a designated Neighborhood Commercial Area, and within an area of the District where there is significant need for more affordable housing yet multi-family housing opportunities are very limited. Therefore, Mr. Dettman testified that where multi-family development opportunities do exist, they should be taken advantage of in a manner that takes into consideration and balances the potential impacts to transportation and the surrounding context.

Parties and individuals opposed to the Project have stated that the proposal will have adverse impacts on the surrounding area that relate to land use. These include impacts to the development pattern and established character of the surrounding area due to the height, mass, scale, and density of the Project; parking; loss of sunlight, privacy, and views; and construction damage.

As described above under Contested Issues, the impacts asserted by those opposed to the Project will not be unacceptable, but rather will be favorable, capable of being mitigated, or acceptable given the quality of the public benefits provided by the Applicant.

that building was constructed. Thus, the height of the AU Building is a legal nonconforming structure. The Applicant is not proposing any changes to the height of the MAPS building or AU Building.

The proposed design of the Project complements the established character of the surroundings and provides an appropriate transition between the lower-scale residential neighborhood to the north and east and the larger-scale AU Building. The height of Building 1 is below the maximum permitted as a matter-of-right in the MU-4 zone, and is only slightly taller than the maximum height permitted in the adjacent R-1-B zone. Moreover, the height of Building 1 is not substantially higher than the highest point of the roofs of the homes along 48th and Yuma Streets from street grade.

In addition to being below matter-of-right height, the Project also contains substantial setbacks from the property line to relate to the pattern of adjacent development. Together with the width of 48th Street and Yuma Street, both 90-foot wide streets, the distance between the Project and existing development to the east and north will range between 96 to 137 feet. The Project also incorporates numerous other design features that reduce mass and scale and successfully relate to the surroundings.

The Project's height, massing, setbacks, façade articulation, and landscaping all work together to relate the Project to the established character of the area and avoid potential for overpowering contrasts in scale on all sides, including the historic MAPS.

To the extent there will impacts to on-street parking, such impacts will be mitigated by the ample on-site parking being provided by the Applicant, TDM measures and other transportation-related benefits of the Project aimed at reducing trips and promoting use of alternative modes of transportation, and the commitment made by the Applicant to impose RPP restriction on residents of Building 1.

Regarding the loss of sunlight, as discussed above under Contested Issues, any potential impacts to direct sunlight will be less than what would occur with a matter-of-right project. To the extent impacts occur, such impacts are minimized by the separation provided by 48th and Yuma Streets, and the lower height and set backs of the Project, and are acceptable given the quality of the public benefits provided by the Applicant.

In regards to privacy, similar to the discussion on impacts to sunlight, to the extent views of adjacent properties are afforded by the Project such views would not be any greater than would be afforded by a matter-of-right project. As discussed above under Contested Issues, considering the setbacks of the Project and width of 48th Street and Yuma Street, the distance between the Project and existing development to the east and north will range between 96 to 137 feet. In addition, per the agreement with ANC 3E the Applicant has agreed to restrictions on the hours of use of the communal outdoor terrace proposed above the grocery store along Yuma Street. These restrictions will be made a condition in the Commission's final order. Thus, any potential for impacts to privacy will be mitigated through the setbacks and landscaping proposed for Building 1, and the aforementioned restrictions on the use of the outdoor terrace.

Finally in regards to impacts from views, as discussed under Contested Issues no individual has a right to a view across another individual's property unless such a view is expressly granted by easement. This follows from the basic legal principle that "the actual enjoyment of the air and light by the owner of the house is upon his own land only, and that the owner of the adjoining lands has submitted to nothing which actually encroached upon his rights.

Thus, one may obstruct his neighbor's windows at any time and no action can be maintained for obstructing a view” *Hefazi v. Stiglitz*, 862 A.2d 901 (D.C. 2004).

Transportation

The potential transportation impacts of the Project will be favorable or capable of being mitigated. The transportation aspects of the Project have been thoroughly analyzed in a CTR that has been reviewed by DDOT. The CTR finds that the Project will not have a detrimental impact on the surrounding transportation network, and that no mitigation is required with respect to roadway capacity and operations.

With respect to transportation impacts, DDOT stated in its hearing report that “no mitigation for traffic impacts is requested by DDOT” (Exhibit 52, p. 2). While DDOT does consider the Project to be “over-parked,” this will be mitigated through the Applicant’s agreement to fund pedestrian improvements at the four adjacent intersections and implementation of a TDM Plan and Loading Management Plan (“LMP”).

The Project will have several favorable transportation impacts as a result of the improvements made to the alley system, the closure of large curb cuts adjacent to Lot 807, the installation of a HAWK signal, contributions for connections to Metrorail and to conduct specified transportation studies, as well as others.

Housing

As stated by Mr. Dettman on October 7, 2019, any impacts to housing will be favorable. The Project will produce approximately 219 new dwelling units in a safe, sought after area of the District that contains high-quality public and private schools, abundant parks and open space, and many neighborhood-serving amenities. Most importantly, the Project will contain 20% more affordable housing than would otherwise be required under matter-of-right development on the PUD Site and do so without requesting any additional PUD-related density. This will result in approximately 30 dedicated affordable housing units devoted to households earning up to 50% and 60% of MFI.

These new market-rate and affordable housing units will greatly help achieve Mayor Bowser’s goal of creating 36,000 new housing units by 2025, of which 12,000 would be affordable. As discussed above, the Project will increase the number of dedicated affordable housing units in the Rock Creek West pipeline by approximately 36%, and will move the District closer to achieving its dedicated affordable unit target for Rock Creek West. This is a significant contribution to the District’s dedicated affordable housing goal for Rock Creek West considering that the Project is below matter-of-right height and density.

Environmental Protection

With respect to the environment, the impacts of the Project will be favorable or capable of being mitigated. The Project will replace an underutilized, impervious property with a new mixed-use development that will be certified LEED Gold v.4. The significant reduction in impervious surface will have favorable impacts on urban heat island effect, and the new

landscaping and green roof will provide new habitat. The Project is not expected to have any impacts on water quality or hydrology.

As testified by Mr. Dettman, the assessment of the environmental impacts of the Project does not conclude with the Commission. Rather there is an entirely separate set of regulatory requirements under the D.C. Environmental Protection Act (the “Environmental Act”) and implementing regulations that require the evaluation of the potential environmental impacts of the Project before it is implemented. Specifically, the Environmental Act mandates environmental review of a project at the permitting stage. The D.C. Court of Appeals has held that “implementation” of a zoning approval occurs when construction actually begins. *See Foggy Bottom Ass’n v. D.C. Bd. Of Zoning Adjustment*, 791 A.2d 64, 73 (D.C. 2002).

As Mr. Dettman testified, at the permit stage the Applicant will be required to complete an Environmental Impact Screening Form which involves analysis of numerous environmental topic areas by several District agencies with expertise in those areas. The topics that are analyzed include water quality, sedimentation and storm water management, watershed protection, air quality (which takes into account the results of the Applicants CTR), underground storage tanks, toxic substances, hazardous waste, and environmental justice. To the extent a reviewing agency identifies impacts that exceed established thresholds the Applicant will be required to work with that agency to avoid, minimize, or mitigate such impacts to the extent necessary before the Project is implemented. To the extent any mitigation measures identified require making changes to the Project, the Applicant would be required to seek approval of a PUD modification from the Commission.

Economic Development

As Mr. Dettman testified on October 7, 2019, the Project will impact the existing businesses on Lot 807. However, while the existing businesses will need to close, new business and many new employment opportunities will be created by the proposed grocery store. In addition, other new employment opportunities at existing businesses in the surrounding area may result in response to additional demand generated by future residents of the Project. Further, the Project will have favorable impacts on tax revenue through increased property, income and sales taxes. While the exact amount of additional revenue is not currently known, the redevelopment of Lot 807 will certainly increase the assessed value of that property, new income tax will result from any residents that move to the Project from other jurisdictions, and the additional business at area retail and service establishments will generate increased sales tax revenue. Overall, the Applicant believes impacts of the Project on the District’s economic development will be favorable or acceptable given the benefits proffered by the Applicant.

Parks, Recreation, and Open Space

The impacts of the Project on parks, recreation, and open space will be favorable. The Project will provide new publicly accessible open spaces in the form of Northwest Plaza and Windom Park. In addition, the Project will make several improvements to adjacent public space. Finally, the D.C. Department of Parks and Recreation has submitted favorable comments on the Project.

Urban Design

Any potential impacts of the Project on urban design will be favorable, capable of being mitigated, or acceptable given the quality of benefits provided by the Applicant. As discussed above and testified by Mr. Dettman, the Project will replace a largely vacant and underutilized property that is almost entirely impervious with a new high-quality mixed-use development that is pedestrian-oriented and has been designed to appropriately relate to the surrounding context. The Project supports a designated neighborhood commercial center by improving the mix of uses that are available to residents and supporting existing businesses through increased residential density. The Project will also provide several improvements to the public realm.

As discussed above under Land Use impacts and Contested Issues, the Project complements the established character of the surroundings and provides an appropriate transition between the lower-scale residential neighborhood to the north and east and the larger-scale AU Building. The height of Building 1 is below the maximum permitted as a matter-of-right, is only slightly taller than the maximum height permitted in the adjacent R-1-B zone, and is not substantially higher than the highest point of the roofs of homes along 48th and Yuma Streets from street grade. The Project is also separated from the homes to the east and north by approximately 96 to 137 feet. The Project also incorporates numerous other design features that reduce mass and scale and create a successful transition to the surroundings.

As discussed above, the Project has only minor to moderate impact on direct sunlight during the later hours of the day on homes immediately east across 48th Street. As expected, the impacts of the Project increase slightly during the winter when the sun is lower in the sky throughout the day. As discussed under Contest Issues, the potential impacts on direct sunlight to nearby properties will be less than what would occur with a matter-of-right project, and to the extent impacts occur, such impacts are minimized by the separation provided by 48th and Yuma Streets, and the lower height and set backs of the Project. The Courts have acknowledged the Commission's use of comparing a proposed development to a matter-of-right development for purposes of evaluating impacts under a PUD. Specifically, in its decision upholding the Commission's approval of the first-stage PUD for the Southwest Waterfront (Z.C. Order No. 11-03), the Court includes a footnote stating "...an exhibit from the record compares 'by-right' development under the previous R-3 requirements with the residential building proposed as part of the PUD. It demonstrates that row houses constructed along Sixth Street without any zoning flexibility would have a substantially similar impact on petitioners' views and their light and air" (*Randolph v. District of Columbia Com'n*, 83 A.3d 756 (D.C. 2014)).

Historic Preservation

As testified by the Mr. Dettman and the D.C. Historic Preservation Office on October 10, 2019, impacts of the Project in historic preservation will be favorable. The Project will permanently reduce the amount of potential GFA that can be developed on the historic MAPS site in the future. In addition, as stated in the HPO report, the Project will improve the setting of the MAPS.

Community Services and Facilities

The Project will not have any adverse impacts on publically-owned land, health care facilities, libraries, emergency services, or community centers. The PUD site is located in a part of the District that has numerous parks and open spaces; recently renovated schools, libraries, and community centers. Also, according to information published by the D.C. Department of Health the site is not located in an area of the city that has health care shortages.⁴ Finally, the Project was reviewed by D.C. Fire and Emergency Management Services and the D.C. Public Library, neither of which expressed objections.

Educational Facilities

The Project will not result in unacceptable impacts to educational facilities. As stated in the report by the Deputy Mayor for Education (“DME”), “DME estimates that the additional impact that the [Project] would have on the three DCPS by-right schools is low. While there is overutilization now and estimated in the future, this development has been incorporated into the [Master Facility Plan] 2018 estimates and DCPS planning efforts. Therefore, the additional small number of students that may live in the Ladybird in the future should not negatively influence decisions about the merit of this PUD case.” As such, any potential impacts to educational facilities that may result from the Project will be acceptable given the quality of public benefits provided by the Applicant. Most notably, consistent with Mayor Bowser’s efforts to increase affordable housing in high-opportunity areas like Rock Creek West, 12% of the residential GSF in the Project will be devoted to affordable housing, including at least four, 3-bedroom affordable units, which will be available to households earning no more than 50% and 60% MFI, including households with children that will have access to the area’s high-quality schools and other public facilities and amenities.

Infrastructure

Any potential impacts to infrastructure will be favorable or capable of being mitigated. With respect to storm water runoff, currently Lot 807 is entirely impervious and what storm water management infrastructure exists does not provide any treatment. The Project will replace the impervious surface with a LEED Gold certified development that will meet or exceed the District’s current storm water management regulations, which are far more stringent than the regulations that existed in the 1960s when the existing improvements on Lot 807 were constructed. Overall, as a result of the extensive amount of green roof, landscaping, and pervious surfaces proposed in the Project the volume of storm water runoff entering the District’s municipal sewer system will be significantly reduced. Finally, comments provided by DC Water and Pepco express no concerns or objections to the Project.

⁴ <https://dchealth.dc.gov/service/shortage-designation>

Agency Review of Project Impacts

In addition to the Applicant's thorough analysis of potential impacts, the Project was also reviewed by a variety of District agencies and utilities.

In its report, OP did not identify any unacceptable adverse Project impacts on the surrounding area. Rather, OP found that the Project impacts would be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the Project. The Project will benefit the neighborhood with the addition of new housing, including affordable housing, and a new neighborhood-serving, full-service grocery store. The Project has been carefully designed to relate to the surrounding context, provide appropriate public outdoor spaces and sustainable landscape design, and establish setbacks to improve circulation along adjacent alleys and relate to the adjacent development.

In addition to OP, the application was reviewed by DDOT, DHCD, DOEE, UFA, DPR, HPO, FEMS, DCPL, DCPS, and DC Water. Each of these agencies issued reports or comments to OP stating their support for or "no objection" to the application. (*See* OP Report, Exhibit 53, pp. 22-25.) The reports/comments provided by these entities support the Applicant's evaluation that impacts related to land use; transportation; housing; environmental protection; economic development, parks, recreation and open space; urban design; historic preservation; community services and facilities; educational facilities; and infrastructure, will either be favorable, capable of being mitigated, or acceptable given the quality of public benefits in the Project. Therefore, the Project will not create any unacceptable adverse impacts that will not be fully mitigated.

The Project is Not Inconsistent with the Comprehensive Plan – McMillan Analysis

During the public hearing on October 7, 2019, the Commission requested information on how the Project meets the Comprehensive Plan balancing test established by the D.C. Court of Appeals in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)) (the "McMillan PUD"). In its decision affirming the Commission's approval of the McMillan PUD, the Court stated the following:

"The Comprehensive Plan is a 'broad framework intended to guide the future land use planning decisions for the District.' *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm'n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). '[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.' *Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous 'occasionally competing policies and goals,' and, '[e]xcept where specifically provided, the Plan is not binding.' *Id.* at 1167, 1168 (internal quotation marks omitted). Thus 'the Commission may balance competing priorities' in determining whether a PUD is consistent with the Comprehensive Plan as a whole.' *D.C. Library Renaissance*

Project/West End Library Advisory Grp. v. District of Columbia Zoning Comm'n, 73 A.3d 107, 126 (D.C. 2013). “[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.” *Friends of McMillan Park v. District of Columbia Zoning Comm'n*, 149 A.3d 1027, 1035 (D.C. 2016) (brackets and internal quotation marks omitted).

During the course of proceedings in the present case, opponents have asserted that the Project is inconsistent with various Comprehensive Plan policies, including policies contained in the Land Use, Urban Design, and Rock Creek West Elements that relate to infill development, preservation of single-family neighborhoods, building transitions, and neighborhood conservation. In several instances, no rationale was provided to substantiate a claimed inconsistency or, where one was provided, it merely consisted of a generalized grievance that was not supported by any measurable evidence.

The Applicant has addressed in prior filings and testimony that most, if not all, of the policies for which the opposition claims an inconsistency are, in fact, not inconsistent with or irrelevant to the Project. *See, e.g.* Applicant’s Comprehensive Plan analysis (Ex. 2F). When asked by the Commission on October 7, 2019, Mr. Dettman specifically addressed how the Project is not inconsistent with the policies raised by the opposition, due to its lower than matter-of-right height and density, massing reductions, upper-level setbacks, large courtyards, high-quality materials, and landscaping. Mr. Dettman also testified that to the extent the Commission believed the Project was inconsistent with one or more of these specific policies, the inconsistency was far outweighed by other competing policies and considerations in the Comprehensive Plan, most notably policies relating to housing, affordable housing, and environmental sustainability.

To further substantiate the Applicant’s position that the Project is not inconsistent with the Comprehensive Plan as a whole, below is a chart identifying each Comprehensive Plan policy with which opponents have asserted the Project is inconsistent, providing the Applicant’s responses thereto. As noted in the chart, upon “balancing the competing policies,” it is clear that any policies the Project is asserted to be inconsistent with are clearly “outweighed by other, competing considerations.”

Therefore, as set forth in the following chart, and particularly when viewed together with the Applicant’s prior filings and testimony demonstrating how the Project is not inconsistent with the FLUM and GPM, Guiding Principles, and other policies within the Citywide and Rock Creek West Elements of the Comprehensive Plan, it is clear that the Project is not inconsistent with the Comprehensive Plan when read as a whole. To the extent the Project may be inconsistent with one or more individual policies, this does not “preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.” Moreover, any potential inconsistencies are far outweighed by the Project’s consistency with other competing policies and considerations.

Inconsistency Asserted by Opposition	Applicant Response
Future Land Use Map	<p>In its Statement of Opposition, CRD asserts that the Project is inconsistent with the Comprehensive Plan Future Land Use Map (“FLUM”). CRD provides no rationale or legal basis to support this assertion. Rather, it merely refers to the size of the existing AU Building and quotes a small portion of the Framework Element description of the “Low Density Commercial” land use designation that says a common feature of areas designated Low Density Commercial “is that they are comprised primarily of one to three-story commercial buildings.”</p> <p>First, the Applicant is not proposing any buildings solely devoted to commercial use. Second, CRD should know the perils of relying upon incomplete quotations from the Comprehensive Plan due to its reliance upon the <i>Durant</i> case. In that case, the D.C. Court of Appeals (the “Court”) found that the Commission erred in relying upon only a portion of a Comprehensive Plan policy while ignoring the rest. The Court concluded that “it is the responsibility of the Commission to recognize and assess the import of omitted portions, which are at least potentially in conflict with the project under consideration.” <i>Durant v. District of Columbia Zoning Comm'n</i>, 65 A.3d 1161, 1171 (D.C. 2013). As discussed below, the portion of the land use description that CRD ignores is the part that expressly states that <u>the existing MU-4 zone (formerly C-2-A under ZR58) of the PUD site is a “corresponding zone district” with the Low Density Commercial land use category.</u> See 10-A DCMR § 225.8 (emphasis added).</p> <p>As proposed, the Project is not inconsistent with the Low Density Commercial FLUM designation of the PUD site. As noted above, the PUD site is zoned MU-4, a zone that is compatible with the Low Density Commercial FLUM designation, and the Applicant is not requesting a PUD-related map amendment as part of the Project. Further, the Project does not utilize any PUD-related flexibility as to height or density, but rather is well within the <u>matter-of-right</u> height and density permitted in the MU-4 zone.</p> <p>As testified by Mr. Dettman on October 10, 2019, in addition to being expressly stated in the Framework Element, the Commission has already thoroughly addressed the question of whether the MU-4 zone is consistent with the Low Density Commercial FLUM definition, including the portion quoted by CRD regarding number of stories. See Z.C. Order No. 08-15, Finding of Fact No. 74(a), stating that “[t]he Comprehensive Plan describes the Low-Density Commercial category as primarily one- to three-story buildings, with retail, office, and service businesses as the predominant uses. The Plan does not require, however, that each block strictly correspond with the general description. The</p>

Plan also specifically states that housing is explicitly permitted in the commercial land use categories, and permits height and density beyond the typical range of one to three stories through the use of the PUD process.” The Commission further found that “the proposed five-story building on the North Parcel and two-story building on the South Parcel will not be inconsistent with the Low-Density Commercial Land Use category. The commercial area will continue to be primarily two- and three story buildings.” *Id.* at Finding of Fact No. 77(a). These determinations by the Commission were upheld by the Court in *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011).

CRD also incorrectly refers to the Project as a “medium-density residential development.” In its Statement of Opposition, CRD states that “the DC Zoning Handbook states that the MU-4 Zone is ‘intended to be applied throughout the city consistent with the density designation of the Comprehensive Plan’ and is ‘intended to ...[p]ermit moderate density mixed use development...’ Thus, the proposed PUD Project is inconsistent with the FLUM and Comprehensive Plan because it is predominately a medium-density residential development” (emphasis added). It is notable that CRD chooses to omit the statement from the Zoning Handbook that states the MU-4 zone is intended to be “located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers.” This statement is critical to the Project as it shows that the MU-4 zone is specifically intended to be located in close proximity to low-density residential zones, and that moderate bulk mixed-use development within the MU-4 zone is appropriate.

According to CRD, the Court in *Durant* noted that “the FLUM designated ‘parts of the parcel for low-density and moderate-density mixed use’ and that the density of each use must be separately evaluated. (emphasis added) Accordingly, in an earlier ruling in *Durant* in 2014, the Court of Appeals held that, even if viewed as a mixed-use project, ‘the residential aspect of the project still apparently would be medium density rather than moderate density,’ and therefore incompatible with moderate density zoning.” The Applicant was unable to find in any of the three *Durant* rulings where the Court required the density of each use to be calculated separately. Nonetheless, perhaps this is how CRD reaches its conclusion that the Project is predominately a medium-density residential development. However, a simple calculation of the Project’s residential density shows that this conclusion is erroneous.

Even when approached conservatively, the Project is clearly not a medium-density residential development. According to the Framework

Element, the RA-2 (R-5-B) and RA-3 (R-5-C) zones are considered compatible with the Medium Density Residential FLUM designation. The RA-2 zone permits a maximum density of 2.16 FAR (with IZ) as a matter of right, and 2.59 FAR as a PUD. As proposed, the residential density of the Project is 1.33 FAR, well below the matter-of-right density permitted in the RA-2 zone. The Project is clearly consistent with the Low Density Commercial FLUM designation of the PUD site. The Project is within MU-4 matter-of-right height and density, and the development on Lot 807 contains only a partial level of the commercial use. The remaining levels are devoted to residential use which, as stated in the Framework Element, is expressly permitted in all commercial FLUM categories.

To the extent that CRD is calculating density based upon the land area of Lot 807 to make its claim that the Project is a medium-density development, such an approach is inconsistent with how density is calculated under the aggregation provision of the PUD regulations (11-X DCMR § 303.2), and would also fail under the precedent set by the Court’s decision in *Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016). In that case, the petitioner claimed that the project was inconsistent with the FLUM because the density on a portion of the site exceeded the site’s FLUM designation. The Court disagreed, stating:

“[w]e agree with the Commission, however, that permitting some high-density development on the site does not necessarily make the PUD inconsistent with the FLUM. The FLUM explicitly contemplates two ways in which more intensive development than is otherwise reflected in the FLUM may be permissible: (1) a larger development that as a whole is consistent with the FLUM designation may contain individual buildings with greater height or density; and (2) the PUD process may permit greater height or density. 10-A DCMR § 226.1 (c) (2016). Here the Commission concluded that, when the entire site is taken into account, the PUD’s overall density is consistent with that permitted in moderate-density commercial zones...The Commission thus reasonably determined that the PUD as a whole was not inconsistent with the FLUM.

Based on the above, it is clear that for Comprehensive Plan purposes the density of a PUD is looked at across an entire PUD site, which is consistent with the Zoning Regulations and precedent established by the Commission and the Court of Appeals. In addition, it is clear that the Comprehensive Plan permits individual buildings within a PUD to exceed described heights and densities, so long as the PUD as a whole is consistent with the applicable designation.

	<p>In the present case, neither of the two circumstances described in the McMillan case as justifying more intense development are present. First, the height and density of the proposed buildings are within matter-of-right development parameters, and second, the Project does not utilize any height or density increases permitted under the PUD regulations. Further, consistent with the PUD regulations (11-X DCMR § 303.2) and the Court’s findings in the McMillan and Heurich Mansion cases, the density of the proposed PUD as an aggregate across the entire PUD site is consistent with MU-4 matter-of-right permissions and the Low Density Commercial FLUM designation. However, even if the height and/or density proposed on Lot 807 within the PUD site was inconsistent with that described on the FLUM, the inconsistency would be far outweighed by the Project’s consistency with numerous other housing, sustainability, and transportation-related Comprehensive Plan policies.</p>
<p>LU-1.4.1: Infill Development</p> <p>LU-2.1.5: Conservation of Single Family Neighborhoods</p> <p>LU-2.4.6: Scale and Design of New Commercial Uses</p> <p>UD-2.2.1: Neighborhood Character and Identity</p> <p>RCW-1.1.4: Infill Development</p> <p>UD-2.2.4: Transition in Building Intensity</p> <p>UD-2.2.7: Infill Development</p> <p>RCW-1.1.1: Neighborhood Conservation</p>	<p>The opposition states that the Project is inconsistent with Land Use Element policies relating to infill development, conservation of single family neighborhoods, and scale of design of commercial uses because it is incompatible with both the two-story residential neighborhoods directly across 48th and Yuma Streets, and the adjacent one-story MAPS. Opponents make similar assertions regarding similar and overlapping policies within the Urban Design and Rock Creek West Elements. As testified by Mr. Dettman at the public hearing and thoroughly discussed below, the Applicant disagrees with the opposition’s assertions and believes that the Project is not inconsistent with each of these policies.</p> <p>These policies encourage infill development on vacant land that complements the established character of an area and does not create sharp changes in the physical development pattern. They also state that new uses within commercial districts should be developed at a height, mass, scale and design that is appropriate within surrounding areas. From an urban design perspective, these policies promote strengthening visual quality, relating infill development to neighborhood context, and establishing appropriate transitions.</p> <p>Consistent with these policies, the proposed design of the Project complements the established character of the surroundings and provides an appropriate transition between the lower-scale residential neighborhood to the north and east and the larger-scale AU Building. The 43’-6” height of Building 1 is below the maximum height of 50 feet permitted in the MU-4 zone as a matter-of-right, and is only 3’-6” taller than the maximum height of 40 feet that is permitted in the adjacent R-1-B zone. Moreover, the height of Building 1 relates comfortably to the</p>

actual roof heights of the homes along 48th and Yuma Streets, which range between 30 and 35 feet from street grade.

In addition to being below matter-of-right height, the Project also contains substantial setbacks from the property line to relate to the pattern of adjacent development. Specifically, 50% of the façade along Yuma Street is set back from the property line, and 64% of the façade along 48th Street is set back from the property line. Together with the width of 48th Street and Yuma Street, both 90-foot wide streets, the distance between the Project and existing development to the east and north will range between 96 to 137 feet. Furthermore, and despite the additional density being aggregated from the MAPS site, not only is the proposed height of Building 1 below the matter-of-right standards, but the density proposed on Lot 807 is also below the 3.0 FAR permitted as a matter-of-right in the MU-4 zone. Thus, from a bulk perspective the density proposed on Lot 807 does not exceed what would be permitted if the lot was developed on its own.

The Project also incorporates numerous other design features that reduce mass and scale and successfully relate to the surroundings. These include: (i) upper level setbacks along Yuma Street, (ii) setbacks along the north-south alley, (iii) the use of a tripartite/banded façade composition, (iv) varied, high-quality materials, (v) the provision of public and private landscaped courtyards and open spaces, and (vi) the provision of abundant foundation level landscaping.

Overall, the reduction in height, upper-level setbacks, façade articulation, high-quality materials, and landscaping will ensure that the Project complements the established character of the surrounding area and avoids any potential for overpowering contrasts in scale. The height, mass, and scale of the Project are appropriate in relation to the context on all sides, including in relation to the historic MAPS. Indeed, as stated in the report submitted by the D.C. Historic Preservation Office (“HPO”) (Ex. 187), “[a]lthough the proposed building is taller, it does not visually overwhelm the landmark...The generous separation between the buildings and their difference in orientation avoids the oppressive visual character that can result from a building rising directly behind and co-planar with historic facades. Overall, the [Project] would improve the architectural setting of the landmark through compatible design ensured through the PUD process.”

Based on the foregoing, the Applicant believes that the Project is not inconsistent with this set of Comprehensive Plan policies. However, the Applicant also understands that matters relating to design can at times be subjective, especially when it comes to determinations of compatibility. Thus, to the extent the Project may be viewed as being inconsistent with one or more of this collection of overlapping policies,

	<p>the Applicant believe the inconsistency is outweighed by the Project’s overwhelming consistency with numerous other housing, sustainability, and transportation-related considerations. This is especially true when considering the District’s sharp focus on taking advantage of opportunities for new multi-family development in high-opportunity areas like Rock Creek West to help achieve recently established affordable housing goals, the District’s ambitious efforts to remain one of the most sustainable cities on the country, and the District’s important efforts to increase pedestrian safety in all areas of the city.</p>
<p>LU-1.4.3: Zoning of Infill Sites</p>	<p>This policy is not applicable to the subject application. The focus of this policy is on ensuring that the zoning of vacant infill sites is compatible with the prevailing development pattern in surrounding neighborhoods. As is acknowledged by the opposition, the PUD site is not a vacant infill site and it is not residentially zoned. The Applicant is not requesting to rezone the PUD site. The PUD site is currently zoned MU-4, and the Project is within matter-of-right height and density. The Applicant is not requesting any PUD-related increases in height or density, but rather is proposing to redevelop Lot 807 in accordance with the matter-of-right parameters of the existing zoning.</p>
<p>LU-2.1.1: Variety of Neighborhood Types</p>	<p>This policy promotes maintaining the variety of neighborhood types in the District. The Project is not inconsistent with this policy. In fact, as a result of the Project the stability of Spring Valley and AU Park will be maintained while - consistent with several Housing Element policies and District housing goals - access to these stable, high-opportunity neighborhoods will be increased to a wider audience of District residents with varying socio-economic characteristics and housing needs. Further, consistent with several Land Use Element policies, the Project will redevelop a long underutilized site in a designated Neighborhood Commercial Center with approximately 219 new housing units and a neighborhood-serving grocery store that will support the vitality of existing and new businesses at the MAPS and Spring Valley Shopping Center (“SVSC”). This will be accomplished all within matter-of-right height and density.</p>
<p>LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods</p>	<p>The Project is not inconsistent with this policy. The policy calls for recognizing “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 policy states that the goal of creating successful neighborhoods requires an emphasis on conservation in some neighborhoods and revitalization in others.</p> <p>Perhaps more than anything else, the Project demonstrates a balancing of District goals and community concerns. The Project will increase housing supply through approximately 219 new dwelling units, of</p>

	<p>which approximately 30 units will be devoted to households earning up to 50% and 60% of the MFI. It will expand neighborhood commerce through a new full-service grocery store and support existing businesses at MAPS and SVSC. It will help achieve District sustainability goals by replacing an impervious site with a LEED Gold mixed-use development. As stated in the report from the D.C. Historic Preservation Office (Ex. 187), the Project will help protect historic resources by improving the MAPS setting. It will also permanently reduce the amount of potential future development on the MAPS site, and assist Regency Centers maintain the shopping center (Ex. 227). As discussed above under LU-1.4.1, the Project will help achieve all of these goals while at the same time being sensitive to surrounding neighborhood character.</p>
<p>LU-2.1.4: Rehabilitation Before Demolition</p>	<p>This policy encourages rehabilitation and adaptive reuse rather than demolition in redeveloping areas that are characterized by vacant, abandoned, and underutilized buildings. First, the PUD site is not located in a redeveloping area that is characterized by vacant, abandoned, and underutilized buildings. Thus, this policy is arguably not applicable to the Project. Second, considering the existing zoning of the PUD site, the amount of time the existing grocery store building has been vacant, and the number of neighborhood-serving amenities that are in close proximity, the potential for the PUD site to help achieve the District’s housing goals is significantly underutilized. Thus, adaptive reuse of the existing buildings on Lot 807 would prevent advancement of several other housing and sustainability goals described in the Comprehensive Plan. Therefore, the Commission could either find that the Project is not inconsistent with this policy and/or that the policy does not apply to the Project.</p>
<p>LU-2.1.11: Residential Parking Requirements</p>	<p>The Project is not inconsistent with this policy. This policy promotes parking requirements for residential buildings that are responsive to demand based upon unit type, size, and location. It also encourages accommodation of parking in a manner that is attractive and minimizes impact to traffic flow.</p> <p>As proposed, all parking for the Project will be provided on-site in the below-grade garage or tuck-in garages that are accessed from the existing alley system. In addition, partly in response to community concerns, the Project will exceed the minimum parking requirements for the residential and retail components of the Project. Specifically, while the Zoning Regulations only require 20 and 75 parking spaces for the proposed retail and residential uses, respectively, the Applicant will provide 59 spaces for the retail use and at least 219 parking spaces for the residential use (comprised of 75 spaces required under the Zoning</p>

	<p>Regulations and at least 144 of the 236 parking spaces required under an existing easement).</p> <p>Moreover, in direct response to a request from the community and ANCs, the Applicant will provide one parking space per dwelling unit by allocating a greater percentage of the parking spaces required under the existing easement should the number of dwelling units increase in accordance with the 10% flexibility requested. Furthermore, also in direct response to a request from the community, the Applicant will impose RPP restrictions on Building 1 residents, with the penalty of lease termination.</p>
<p>LU-2.3.3: Buffering Requirements</p>	<p>This policy seeks to ensure that new commercial development adjacent to lower density residential areas provides effective physical buffers to avoid adverse effects. Buffers may include larger setbacks, landscaping, fencing, screening, height step downs, and other architectural and site planning measures that avoid potential conflicts. CRD states that the Project is inconsistent with this policy because the mass of the Project “essentially extends to the lot line on all sides. The street frontages on Yuma and 48th Streets that face the neighboring residences are simply not buffered or set back from the lot lines.” This is simply not accurate.</p> <p>The Project is not inconsistent with this Comprehensive Plan policy. First, the policy concerns “new commercial development.” The Applicant is not proposing a new commercial development, but rather is proposing a new mixed-use development that contains a partial level of retail use that is within matter-of-right height and density. Notwithstanding, the Applicant is utilizing all of the “buffering requirements” identified in this policy to effectively relate the Project to the surrounding scale and development pattern. As noted above, the PUD site is already substantially separated from adjacent residential uses by Yuma and 48th Streets, both 90-foot wide. In addition, the Project incorporates substantial setbacks from the property line such that the distance between existing and proposed buildings will range between 96 and 137 feet. To further buffer the Project, the Applicant utilizes height step downs and greater upper-level setbacks, landscaping, and architectural façade articulation and material variation. The separation provided by surrounding streets, the matter-of-right height and density of the Project, and the substantial buffers incorporated into the proposed design will be effective at avoiding adverse effects on the adjacent lower density residential area.</p>
<p>LU-2.4.1: Promotion of Commercial Centers</p>	<p>These policies promote the vitality of the District’s neighborhood commercial centers and continued growth of commercial land uses to meet the needs of District residents and expand employment opportunities. They state that commercial centers should be inviting and attractive, and should support social interaction and ease of access for</p>

<p>ED-3.1.1: Neighborhood Commercial Vitality</p> <p>RCW-1.1.3: Conserving Neighborhood Commercial Centers</p>	<p>nearby residents. They also promote retaining existing businesses, attracting new businesses, and improving the mix of goods and services available to residents. In addition, these policies specifically encourage compatible new uses such as multi-family housing within commercial centers to meet affordable housing needs, sustain new neighborhood-serving retail and small businesses, and bring families back to the District. The Project is not inconsistent with all of these policies.</p> <p>The Project is consistent with these policies because it will promote the vitality of the existing Neighborhood Commercial Center by reestablishing a full-service grocery store, which is a use that has a long history in the neighborhood and is desired by the community. Opponents to the Project have identified a number of grocery stores that exists within a 1.3 to 3.0 mile radius of the PUD site; however, such distances do not support “ease of access for nearby residents” in the same way that the proposed neighborhood-serving grocery store will. Further, the proposed multi-family housing, including approximately 30 new dedicated affordable units, will help support the vitality of the existing MAPS and SVSC to a much greater degree than existing conditions.</p> <p>In its Statement of Opposition, CRD notes that the Project will eliminate rather than expand employment opportunities. This statement is not accurate. While the existing businesses on Lot 807 will need to close as a result of the Project, new business and many new employment opportunities will be created by the proposed grocery store. In addition, other new employment opportunities at existing businesses in the surrounding area may result in response to additional demand generated by future residents of the Project.</p> <p>Despite the closure of the businesses on Lot 807, the Applicant continues to believe the Project is not inconsistent with this policy given the new employment opportunities that will be created by the grocery store and the support of existing businesses from new residents. However, to the extent that the Commission finds that the Project is inconsistent with this policy, the Applicant believes this inconsistency is far outweighed by the numerous other Comprehensive Plan housing, sustainability, and transportation considerations that are thoroughly addressed in the Applicant’s filings and testimony</p>
<p>LU-2.3.A: Zoning Changes to Reduce Land Use Conflicts in Residential Zones</p>	<p>This proposed <u>action</u> in the Land Use Element is not applicable to the Project or the Applicant. As described in the Introduction Element, “[a]ctions identify the specific steps to be taken <u>by the District</u> to implement the policies. 10-A DCMR § 108.4. In addition, the existing zoning of the PUD site is not a “land use conflict in a residential zone.” Rather, the PUD site has been zoned for commercial / mixed-use development for decades. It has always been intended to be the</p>

	<p>neighborhood commercial center for the Spring Valley and AU Park neighborhoods.</p> <p>In accordance with this Comprehensive Plan action, if the Commission or the Office of Planning thought that the existing zoning of the PUD site was a “land use conflict in a residential zone” they would have rezoned the site during the comprehensive rewrite of the Zoning Regulations that culminated in the adoption of the current 2016 Zoning Regulations.</p>
<p>LU-2.4.5: Encouraging Nodal Development</p>	<p>As testified by Mr. Dettman on October 7, 2019, the Project is not inconsistent with this policy. This policy discourages auto-oriented commercial “strip” development and encourages pedestrian-oriented “nodes” of commercial development at key locations along major corridors. Further, this policy suggests that height, mass, and scale of development within nodes should respect the integrity and character of surrounding residential areas and should not unreasonably impact them.</p> <p>First and foremost, the Applicant is not proposing a commercial development. The Project is a mixed-use development consisting primarily of residential use with a partial level of commercial (retail) use. Nonetheless, consistent with this policy the Project does not consist of auto-oriented strip development along Massachusetts Avenue, but rather is entirely contained within the designated Neighborhood Commercial Center node that spans both sides of Massachusetts Avenue between 48th and 49th Streets. The proposal will transform a long underutilized property into a new mixed use development that will support the vitality of an existing neighborhood commercial center and create many new housing units within a walkable, high-opportunity neighborhood with a variety of neighborhood-serving amenities.</p>
<p>T-1.1.B: Transportation Improvements</p> <p>T-1.3.A: TDM Strategies</p>	<p>These two Comprehensive Plan <u>actions</u> recommend that the <u>District</u> require TDM measures and transportation support facilities, such as crosswalks, bus shelters, transit resource and information kiosks, and bicycle facilities in large development projects and major trip generators, including projects that go through the PUD process, and to develop TDM strategies and requirements that reduce rush hour traffic and reduce vehicular trips during peak travel periods.</p> <p>As part of its review of the Project, DDOT has identified several TDM measures that the Applicant has committed to implementing. These measures will mitigate any potential transportation impacts of the Project and include a range of programmatic and physical transportation improvements. In addition, the Applicant will implement several other transportation improvements as part of its proffered collection of benefits and amenities. Compared to existing conditions, the number of trips generated by the Project will increase since the existing retail space</p>

	<p>on Lot 807 is only partially occupied. However, the number of trips generated by the Project will be less than if all of the existing retail space on Lot 807 was re-occupied with matter-of-right retail uses. Consistent with this policy, the TDM measures that will be implemented by the Applicant, and some of the other transportation-related benefits proffered, will reduce vehicular trips generated by the Project, particularly during peak travel periods. Therefore, the Project and the proposed TDM mitigation measures and transportation benefits are fully consistent with the goals of these Comprehensive Plan actions.</p>
<p>T-1.2.3: Discouraging Auto-Oriented Uses</p> <p>T-2.4.1: Pedestrian Network</p>	<p>These policies discourage auto-oriented uses such as “drive-through” businesses or stores with large surface parking lots, encourage minimization of the number of curb cuts in new developments, and promote improvements to pedestrian facilities. They specifically note that curb cuts break-up sidewalks, reduce pedestrian safety, and detract from pedestrian-oriented retail and residential areas.</p> <p>CRD acknowledges that the Project will remove two curb cuts; however, CRD states that the increase of traffic entering and existing the alley will endanger pedestrians that cross the alley and that generally risks to pedestrians will increase. CRD’s statement appears to support retention of the existing curb cuts along 48th and Yuma Streets, which is entirely inconsistent with this Comprehensive Plan policy and DDOT policy.</p> <p>The Project is not inconsistent with this policy. Currently, Lot 807 contains a large parking lot/structure that is accessed by similarly large curb cuts along 48th and Yuma Streets. In fact, the existing curb cuts that access the existing parking area are approximately 80 linear feet in total. As promoted by this policy, the Project will eliminate the existing parking lot/structure and close the existing curbs, resulting in approximately 80 linear feet of new uninterrupted sidewalk. This will reduce the number of curb cuts that serve Lot 807 to only the two curb cuts that access the existing alley system. As a result, pedestrian safety will be increased through the increased amount of unbroken sidewalk around the PUD site, with the only curb cuts accessing Lot 807 located at the entrances to the alley system, where pedestrian would expect them to be.</p> <p>In addition, while CRD states that “no significant improvements to sidewalks are being proposed,” the record clearly shows the opposite. As part of the Project, the Applicant will implement several pedestrian improvements through and around the PUD Site, including improvements to nearby intersections, elimination of curb cuts, and installation of a HAWK signal. As stated by DDOT during the public hearing, alleys are not intended for pedestrian circulation and DDOT alley design standards do not require pedestrian facilities in alleys.</p>

	<p>Nonetheless, the Project includes significant alley improvements to accommodate safe pedestrian circulation to the extent that it occurs.</p>
<p>H-1.1.1: Private Sector Support</p>	<p>This policy encourages 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. The Project is not inconsistent with this policy. In fact, through the PUD the Project will provide more housing than would otherwise be provided through matter-of-right development.</p> <p>CRD advocates for a lower-density matter-of-right building, and asserts that “by pushing the envelope on an oversized building, the Applicants have delayed the construction of any new housing.” How CRD can describe a proposal that is within matter-of-right height and density as “pushing the envelope” is unclear. In contrast, as a result of the Applicant’s diligent efforts and the PUD process, the Project will deliver more housing than is possible through matter-of-right development, and will contain 20% more affordable housing than would be required under matter-of-right development on the PUD Site. Consistent with this policy and other District land use policies and objectives, and specifically the Mayor’s recently announced affordable housing target for Rock Creek West, the Project will provide many new market-rate and affordable housing units in a high-opportunity area of the District.</p>
<p>H-1.2.3: Mixed Income Housing</p>	<p>CRD relies upon this policy to make an unrelated and unsubstantiated assertion that the Applicant is circumventing the IZ regulations. First, this policy is not applicable to the Project, but rather calls for focusing investment strategies and affordable housing programs to more equally distribute mixed-income housing throughout the city. The District, and not the Applicant, is not responsible for establishing affordable housing investment strategies and programs. However, consistent with the recently released Housing Equity report, the Project will assist the District in its efforts to more equitably distribute affordable housing throughout the District, and in particular in high-opportunity areas like Spring Valley and AU Park.</p> <p>In regards to CRD’s comments regarding compliance with IZ, it is worth noting that CRD has not provided any substantive evidence to support its claim that the Applicant is circumventing the IZ regulations. CRD’s only attempt to substantiate its claim is to point out that the Applicant is proposing residential dwelling units in cellar area. As shown in the Applicant’s IZ calculations, all of the cellar area devoted to residential dwelling units is subject to IZ, and thus is included in the Applicant’s set aside calculations. As the IZ calculations show, the Applicant is exceeding the amount of affordable housing that would otherwise be required under matter-of-right development on the PUD</p>

	<p>site. Finally, these calculations have been reviewed by the Office of Planning and the Department of Housing and Community Development, and neither has raised any questions or issues.</p>
<p>ED-2.2.6: Grocery Stores and Supermarkets</p>	<p>CRD appears to claim the Project is inconsistent with this policy because there are other grocery stores within three miles of the PUD site, and because residents have adjusted their shopping pattern since the closure of the previous grocery store on Lot 807. These considerations are irreverent to whether the Project is not inconsistent with this policy. This policy promotes the development of new grocery stores, particularly in neighborhoods where residents currently travel long distances for food and other services. It does not advocate against grocery stores in areas that already have them.</p> <p>The Project will restore a neighborhood-serving, full-service grocery store to a site that has a long history of having such a use. While some may continue to travel to grocery stores located within 1.3 to 3 miles of the PUD site, which is not considered within walking distance, others may return to previous travel/shopping habits and utilize the proposed grocery store.</p> <p>CRD also alleges that the new grocery store will take business away from current grocery stores and other stores offering groceries (like Wagshal’s deli and Market). CRD offers no evidence to show that this in fact will occur, and even if it does it would be the result of consumer decision-making and is irrelevant to whether the Project is not inconsistent with this particular Comprehensive Plan policy.</p>
<p>UD-2.2.2: Areas of Strong Architectural Character</p>	<p>The Project is not inconsistent with this policy which promotes preserving the architectural continuity and design integrity of historic districts and other areas of strong architectural character. This policy states that new development within such areas need not replicate prevailing architectural styles exactly, but should be complimentary in form, height, and bulk.</p> <p>The architectural character of the Project is informed by the prevailing Colonial Revival-style architecture of the surrounding context. As discussed in its filings and testimony, the form, height, and bulk of the Project relates to the residential development across Yuma and 48th Streets. The heights of the proposed buildings are below the maximum height permitted as a <u>matter-of-right</u> in the MU-4 zone. In fact, the height of Building 1 is only 3’-6” taller than the maximum height permitted in the adjacent R-1-B zone, and relates comfortably to the roof heights of the homes across the street which range between approximately 30 and 35 feet from street grade.</p>

	<p>In addition, while the entire Project could be constructed up to the property lines along Yuma and 48th Streets, the Project contains significant setbacks from the ground level, with additional upper-level setbacks along Yuma Street where the adjacent grade is lowest. Specifically, 50% of the façade along Yuma Street is set back from the property line, and 64% of the façade along 48th Street is set back from the property line. To further relate the form and bulk of the Project to the context, the proposed design incorporates a tripartite/banded façade composition, façade articulation and bay projections, and varied, high-quality materials. In addition to successfully relating to the architectural character of the residential development along Yuma and 48th Streets, the Project also compliments the MAPS, a DC historic landmark. As stated in the report submitted by the HPO, “[o]verall, the [Project] would improve the architectural setting of the landmark through compatible design ensured through the PUD process.”</p>
<p>HP-2.4.3: Compatible Development</p>	<p>While CRD states that “the Project will tower over and detract from the adjacent historic [MAPS],” the report submitted by HPO finds otherwise. In its report, HPO evaluates the potential impacts of the Project on the MAPS using the <u>compatibility</u> test applied by the D.C. Historic Preservation Review Board, with consideration also given to the purposes of District preservation law. Upon evaluation, HPO states that the Project would positively improve the setting of the MAPS. Contrary to CRD’s statement that the Project will “tower over and detract” from the MAPS, HPO states that “[a]lthough the proposed building is taller, it does not visually overwhelm the landmark...The generous separation between the buildings and their difference in orientation avoids the oppressive visual character that can result from a building rising directly behind and co-planar with historic facades. Overall, the [Project] would improve the architectural setting of the landmark through compatible design ensured through the PUD process.” Therefore, the Project is fully consistent with this policy.</p>
<p>RCW-1.1.6: Metro Station Areas</p>	<p>This policy is not applicable to the Project as it pertains to the areas in Rock Creek West that are around the area’s five Metrorail stations.</p>
<p>RCW-1.1.12: Congestion Management Measures</p>	<p>This policy is focused on congestion management in areas such as the Friendship Heights, Tenleytown, and Connecticut/Van Ness Metro stations, and thus is not applicable to the Project. Notwithstanding, the traffic studies, mitigation measures, and TDM plans promoted for these areas are all being provided in this Project.</p> <p>This policy states that “[w]hen planned unit developments are proposed in these areas, require traffic studies which identify the mitigation measures that must occur to maintain acceptable transportation service levels—and secure a commitment to implement these measures through transportation management plans.” Based on the CTR prepared by the</p>

	<p>Applicant, DDOT has determined that no mitigation measures are required to maintain an acceptable level of service around the PUD site. The only mitigations required for the Project, which the Applicant has agreed to implement, are a result of the Project being over-parked. The mitigation measures include pedestrian improvements to nearby intersections and implementation of a TDM Plan. The Applicant will also implement a Loading Management Plan. Further, and consistent with this policy, the Project will also include several other measures to promote use of transit and alternative travel modes. Thus, to the extent this policy is even applicable, the Project is not inconsistent with this policy.</p>
RCW-1.1.13: Parking	<p>This policy promotes the use of easements with private developers to provide additional public parking in the area’s commercial districts, and states that public parking should not be removed within these districts. The Project is not inconsistent with this policy. The Applicant will not provide additional general public parking in the below-grade garage of Building 1, nor is it mandated to do so under this policy. Providing additional public parking is simply not possible given the need to provide spaces to AU and the request by the community to allocate one space for each dwelling unit. Further, the Project will not result in the removal of any public parking. In addition, the Applicant has committed to imposing RPP restrictions on Building 1 residents in order to minimize impacts on public parking.</p>
RCW-1.2.2: Scenic Resource Protection	<p>The Project is not inconsistent with this policy as it will not unreasonably impact any scenic resources, including any portion of Spring Valley that is developed on hilly terrain on or near a stream valley. To the extent there are impacts to these particular portions of Spring Valley, such impacts would not render the Project inconsistent with this policy, or will be outweighed by the Project’s overwhelming consistency with many other housing, sustainability, and transportation considerations in the Comprehensive Plan.</p>
RCW-1.2.5: Historic Resources	<p>The Project is not inconsistent with this policy. As discussed above, the report submitted by HPO states that the Project will positively improve the setting of the historic MAPS, and will improve the architectural setting of the landmark through compatible design ensured through the PUD process.</p>
RCW-1.2.7: Fire and EMS Services	<p>The Project is not inconsistent with this policy. First, it is not the Applicant’s responsibility to renovate or enlarge fire stations or ensure that there are enough fire stations to serve the needs of an area. As reflected in the report submitted by OP (Ex. 53), the D.C. Fire and Emergency Management Service (“FEMS”) reviewed the Project and did not express any concerns or objections.</p>

<p>RCW-1.2.8: Schools and Libraries</p>	<p>The Project is not inconsistent with this policy. As stated in the report by the Deputy Mayor for Education (“DME”) attached to the OP report (Ex. 53), “DME estimates that the additional impact that the [Project] would have on the three DCPS by-right schools is low. While there is overutilization now and estimated in the future, this development has been incorporated into the [Master Facility Plan] 2018 estimates and DCPS planning efforts. Therefore, the additional small number of students that may live in the Ladybird in the future should not negatively influence decisions about the merit of this PUD case.” Furthermore, comments received from D.C. Public Library state that the Project will not have an undue burden on library operations.</p>
<p>RCW-2.2.2: Tenleytown Metrorail Station Area</p>	<p>This policy is not applicable to the Project since the PUD site is not near the Tenleytown Metrorail station.</p>