

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
ZONING COMMISSION**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
Z.C. ORDER NO. 19-19  
Terrace Manor Redevelopment LP  
(Consolidated Planned Unit Development @ Square 5894, Lot 63)  
September 14, 2020**

Pursuant to notice, at its September 14, 2020<sup>1</sup> public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Terrace Manor Redevelopment LP (the “Applicant”) requesting relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified). The Application requested a consolidated planned unit development (“PUD”), pursuant to Subtitle X, Chapter 3, and Subtitle Z, Chapter 3, to construct a new apartment building on Lot 63 in Square 5894 with an address of 3301 23rd Street, S.E., (the “Property”) in the RA-1 zone. The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z. For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**I. BACKGROUND**

**PARTIES**

1. The following were automatically parties in this proceeding pursuant to Subtitle Z § 403.5:
  - The Applicant;
  - Advisory Neighborhood Commission (“ANC”) 8E, in which the Property is located and so an “affected ANC” pursuant to Subtitle Z § 101.8; and
  - ANC 8B, which is located across Savannah Street, S.E., to the south of the Property and so also an “affected ANC” pursuant to Subtitle Z § 101.8.
2. The Commission received no requests for party status.

**NOTICE**

3. The Office of Zoning (“OZ”) sent notice of the July 9, 2020 public hearing, on or before May 21, 2020 to:
  - The affected ANCs 8E and 8B;
  - The ANC 8E03 Single Member District Commissioner, whose district includes the Property;

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<sup>1</sup> The Commission setdown the case at its February 1, 2020 public meeting, for a July 9, 2020 public hearing; at which it approved proposed action; and approved final action at its September 14, 2020 public meeting.

- The Office of the ANCs;
  - The Office of Planning (“OP”);
  - The District Department of Transportation (“DDOT”);
  - The Department of Consumer and Regulatory Affairs (“DCRA”);
  - The Office of the Attorney General;
    - The District Department of the Environment (“DOEE”);
    - The District of Columbia Housing Authority (“DCHA”) Relocation Committee;
    - The Ward 8 Councilmember, in whose district the Property is located;
    - The Chair and At-Large Members of the D.C. Council; and
    - The owners owning property within 200 feet of the Property. (Exhibits [“Ex.”] 16, 17.)
4. OZ published notice of the public hearing in the May 29, 2020, *D.C. Register* (67 DCR 5557) as well as on the calendar on OZ’s website.
  5. The Applicant submitted evidence that it had posted notice of the public hearing on the Property as required by Subtitle Z § 402.3. (Ex. 19.)

**THE PROPERTY**

6. The Property consists of approximately 100,265 square feet of land area, all of which is contiguous and located on a single lot of record. It has a roughly triangular shape with a change in elevation of approximately 31 feet sloping from the north to the south. (Ex. 2.)
7. The Property is located in the Southeast quadrant of the District within Ward 8 and ANC 8E03, in the Randle Heights neighborhood.
8. The Property is currently improved with the 12 dilapidated and vacant buildings of the Terrace Manor apartment complex that had a total of 61 units. (Ex. 2.)
9. The Property is bounded:
  - On the east by forested green space;
  - On the south across Savannah Street, S.E., by a shopping center that includes a supermarket, liquor store, restaurant, and daycare;
  - On the west by forested green space; and
  - On the north by an on-ramp for Suitland Parkway is located across 23<sup>rd</sup> Street, S.E. (Ex. 2.)
10. The Property is served by the 30S and 32 Metrobus Routes that pick up directly across Savannah Street, S.E. from the Property. (Ex. 2.)
11. The Property is located in the RA-1 zone, for which Subtitle F §§ 300.1 and 300.2 establish that the purposes and intent are to:
  - *Permit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for these districts;*

- *Permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones (Subtitle F § 300.1); and*
  - *Provide for areas predominantly developed with low- to moderate-density development, including detached dwellings, rowhouses, and low-rise apartments.*
12. The area surrounding the Property is zoned as follows:
- To the west, north, and east is also the RA-1 zone;
  - To the southeast is the R-2 zone; and
  - To the south, the shopping center across Savannah Street, S.E., is in the MU-3A zone. (Ex. 2.)
13. The Applicant had obtained approval from the Board of Zoning Adjustment (the “Board”) in Application No. 19733 for a special exception under Subtitle U § 421 to authorize for a new residential development on the Property with a height of 40 feet and 128 (±5) dwelling units, including 39 two-bedroom units.

**Comprehensive Plan** (Title 10A DCMR, the “CP”)

14. The CP’s Generalized Policy Map (“GPM”) designates the Property as a “Neighborhood Conservation Area,” which the CP’s Framework Element<sup>2</sup> defines as for areas that are generally residential in character in which new development should be compatible with the area’s existing scale, natural features, and character and density should be guided by the CP’s Future Land Use Map (“FLUM”) and policies. (CP §§ 225.4-225.5.)
15. The FLUM designates the Property for “Moderate Density Residential” uses, which the CP’s Framework Element defines as for neighborhoods that are generally, but not exclusively, suited for rowhouses as well as low-rise garden apartment complexes, with density typically calculated to a 1.8 FAR, although greater density may be possible when complying with Inclusionary Zoning (“IZ”) or if approved as a PUD. (CP § 227.6.)
16. The CP’s Near Southeast/Southwest Area Element, which applies to the Property, includes the following development priorities:
- *Policy FSS-1.1.3: Rehabilitation of Multi-Family Housing Support rehabilitation and stronger and more consistent code enforcement for the many garden apartments in the Planning Area, particularly in Shipley Terrace, Knox Hill, and Washington Highlands. Support city programs which provide financial assistance to renovate such complexes, with the condition that a significant portion of the units are preserved as affordable after renovation (CP § 1808.4); and*
  - *Policy FSS-1.1.10: Minority/Small Disadvantaged Business Development Provide technical assistance to minority-owned and small businesses in the Far Southeast/Southwest to improve the range of goods and services available to the community. Joint venture opportunities, minority business set-asides, business*

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<sup>2</sup> The revised Framework Element that became effective on August 27, 2020, (D.C. Law 23-127) governs the Application because the Commission’s vote occurred after this effective date, although many of the filings referred to the previous Framework Element.

*incubator centers, and assistance to community-based development organizations should all be used to jumpstart local business and provide jobs in the community (CP § 1808.11).*

## **II. THE APPLICATION**

### **THE BUILDING**

17. The Application, as amended (see revisions below Findings of Fact [“FF”] 22-23, proposes to demolish the Property’s existing 12 dilapidated and vacant apartment buildings and replace them with a single L-shaped apartment building (the “Building”) that will achieve LEED Gold certification with:
- A height of 47 feet, seven inches;
  - Approximately 129,936 square feet of gross floor area (“GFA”), all devoted to residential uses, with an approximate 1.296 floor area ratio (“FAR”);
  - Approximately 130 units,
    - 55 of which will be two-bedroom units; and
    - All of which will be affordable housing units with a maximum median family income (“MFI”) of 60%;
  - 52 below grade vehicle parking spaces;
  - 44 long term bicycle parking spaces and seven short term bicycle parking spaces;
  - An approximately 2,145 square-foot community garden; and
  - Amenities including a 24-hour front desk, fitness center, club room/business center, bicycle storage, package room, and an on-site rental office. (Ex. 2, 11, 14A1-14A6.)
18. The Application requested the Commission approved design flexibility to vary certain elements in the Application’s final plans as approved by the Commission and still comply with the requirement of Subtitle X § 311.2 and Subtitle Z § 702.8 to construct the Project in complete compliance with the final plans. (Ex. 2, 30.)

### **RELIEF REQUESTED**

19. The Application requested the Commission approve a consolidated PUD for the Building with:
- The 20% PUD increase to maximum density to allow a 1.296 FAR pursuant to Subtitle X §§ 303.3 and 303.4 from the RA-1 zone’s matter-of-right 1.08 FAR for IZ developments (Subtitle F §§ 302.1, 302.3); and
  - The increased PUD maximum height to 60 feet pursuant to Subtitle X § 303.7 from the RA-1 zone’s matter-of-right 40 feet and three stories. (Subtitle F § 303.1.)
20. The Application did not request any additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1 or a PUD-related map amendment pursuant to Subtitle X § 303.12.
21. The Application requested non-PUD relief for a special exception under Subtitle U § 421 and Subtitle X, Chapter 9, to authorize a new multi-family building in the RA-1 zone, as authorized to be included in a PUD application pursuant to Subtitle X § 303.13.

### APPLICANT'S REVISIONS/SUBMISSIONS

22. The Applicant filed a December 17, 2020 supplemental submission (Ex. 11) addressing initial feedback received from OP that included:
- Updated plans showing revisions to the building façade design;
  - Updates reflecting a LEED Gold target;
  - Reduction of parking spaces from 60 to 52 spaces in response to DDOT's feedback;
  - Enhanced landscape plans;
  - Additional background regarding the amenities for the residents of the Building and of the area; and
  - Additional information regarding the Building's consistency with the recently revised Framework Element of the CP.
23. In its March 10, 2020 and June 19, 2020 pre-hearing filings (Ex. 14-14F, 20-20C), the Applicant responded to requests from OP and the Zoning Commission for additional information. These filings included the following information:
- Updated architectural plans;
  - The addition of an approximately 2,145-square foot community garden proposed to be located to the rear (west) of the north wing of the proposed building;
  - Updated plans reflecting additional façade treatment, color, and materials palette;
  - Confirmation that the Building will achieve LEED Gold certification;
  - Additional information regarding the proposed green roof features and solar panels being proposed;
  - Additional information regarding the Building loading facilities and public space improvements;
  - Information regarding the Applicant's proposal to enter First Source Employment Agreement and Certified Business Enterprise Agreement;
  - Information regarding the Building's affordable housing funding, the duration of the affordability, and affordability levels;
  - An analysis of the Building's consistency with the CP and weighing of proposed public benefits and amenities against the requested PUD flexibility and potential impacts;
  - Traffic Demand Management Plan ("TDMP") and the Loading Management Plan("LDMP") as developed in coordination with DDOT; and
  - Information regarding the Applicant's outreach with ANC 8E and ANC 8E's report supporting the previously approved Board application for a substantially similar new residential building in 2018. (Ex. 20C.)
24. On July 8, 2020, the Applicant submitted updates to the TDMP and LDMP, and an analysis of the Building in relation to the special exception requirements for new apartment buildings required by Subtitle U § 421. (Ex. 27, 28.)

### **Testimony**

25. At the July 9, 2020, public hearing, the Applicant presented the Application, including the testimony of three witnesses:
- Ms. Sarra Mohamed, Senior Building Manager;
  - Mr. Brad Fennell, President of WC Smith; and

- Mr. Nicholas J. Mroczkowski as an expert in architecture, accepted by the Commission as an expert in architecture. (Transcript of July 9, 2020, Public Hearing Meeting [“Tr.”] at 2, 5-6.)
26. In its testimony, the Applicant responded to the OP Hearing Report by noting the following updates to the Building:
- Addition of 18-inch balconies to the Building’s street-facing units;
  - Updates to the proposed garage fenestration;
  - Updated TDMP and LDMP submitted including the reporting requirements requested by DDOT; (Ex. 27)
  - The extensive outreach with the community, ANC 8E, and ANC 8B; and
  - Adjustments to the Building layout and unit mix and configuration in response to the Building’s failure to obtain funding from the District’s Housing Production Trust Fund for the 2020 funding round and the challenges of maintaining the commitment to the previously proposed employment opportunities due to this change in circumstances and the need to adjust the proposed unit mix in response to this change in circumstances. (Tr. 2 at 6-20.)

**Post Hearing Submissions**

27. The Applicant submitted a July 16, 2020, list (Ex. 30) of its draft proffers and conditions that included:
- Further details of the operation of the Building’s initial affordability period and subsequent reversion to IZ; and
  - The commitment to provide two electrical vehicle charging stations in response to feedback from the Zoning Commission.
28. The Applicant filed a July 23, 2020, post-hearing submission (Ex. 31, 31A) that addressed the Commission’s requests for additional information as follows:
- Employment Opportunities. The Applicant agreed to enter a First Source Employment Agreement and Certified Business Enterprise Agreement for the Building;
  - Electrical Vehicle Accommodations. The Applicant proposed to install two electric vehicle charging stations in the Building’s parking garage;
  - Inclusionary Zoning. The Applicant explained that:
    - Pursuant to Subtitle C § 1001.6(a), the Building will be exempt from IZ during the initial affordability period – either 30 years if funded under the DCHFA LIHTC program or 40 years if the Building receives funding from the Housing Production Trust Fund;
    - Participating in IZ during this initial affordability period would be difficult because it would require new tenants to meet the requirements of both the LIHTC and IZ programs; and
    - The Applicant therefore proposed to follow the LIHTC requirements during the initial affordability period and then transition to the IZ program; and
  - Provided updated architectural plans for the Building.

**JUSTIFICATION FOR RELIEF**

**PUD – Subtitle X, Chapter 3**

29. The Application asserted it complied with Subtitle X § 304.4’s requirement to not be inconsistency with the CP as a whole, including its maps and policies, and other public policies, because the Building:
- Would be consistent with the Property’s Neighborhood Conservation Area designation on the GPM since the Building will replace existing dilapidated and vacant housing at the same general level of residential development currently permitted on the site and in the immediate vicinity while also providing additional units of affordable housing beyond the number of units previously provided on the Property;
  - Would not be inconsistent with the Property’s Moderate Density Residential designation on the FLUM since the Building’s low-rise design is typical for this FLUM designation and the Building’s proposed 1.27 FAR is less than the 1.8 FAR anticipated for matter of right development in this FLUM designation;
  - Advances numerous individual objectives of the CP’s District Wide and Area Elements, that encourage the development of additional housing, especially near transit, such as the Building; and
  - Advances the goal of Mayor’s Order 2019-036 (“Mayor’s Housing Order”) of building 36,000 new residential units by 2025, including 12,000 affordable units, by replacing vacant housing in poor condition with a larger number of affordable, modern units. (Ex. 2.)
30. The Application asserted that it complied with Subtitle X § 304.4’s requirement to not create any potential adverse impacts that could not be mitigated or balanced out by public benefits because the Building:
- Would have a positive land use impact by:
    - Replacing existing dilapidated housing to the benefit of the former tenants;
    - Providing additional housing and making all units affordable addressing the District’s need for additional affordable housing identified by the Mayor’s Housing Order; and
    - Replacing a vacant and dilapidated building with a new building to the benefit of the general neighborhood, while remaining within the general density limits of the Property’s Moderate Density Residential FLUM designation; and
  - Would not have an adverse impact on transportation facilities because of the 30S and 32 Metrobus lines that stop across from the Property and the parking spaces provided will adequately serve the Building’s residents while not adding too many vehicles to the surrounding street network. (Ex. 2.)
31. The Application asserted that it complied with Subtitle X § 304.4’s requirement to balance out the zoning flexibility requested and any potential adverse impacts incapable of being mitigated by providing the following six categories of public benefits as defined by Subtitle X § 305:
- **Housing - Subtitle X § 305.5(f).** The Building will replace the existing vacant and dilapidated 61 units with a new building with approximately 130 new residential units;
  - **Affordable Housing - Subtitle X § 305.5(g).** All of the 130 new residential units will be affordable housing, well above the IZ requirement, set aside at 60% MFI. This affordable housing commitment furthers the Mayor’s Housing Order’s goal that

“within the existing planned unit development process, affordable housing shall be treated as a top priority public benefit;”

- ***Superior urban design and architecture, and landscaping - Subtitle X § 305.5(a).*** The Building’s urban design and architecture are superior public benefits because these include:
  - Quality materials;
  - Subtle shifts in the massing and materials break up the façade and refer back to the existing building fabric of the Randle Heights neighborhood; and
  - Balconies for individual units;
- ***Site planning, and efficient and economical land utilization – Subtitle X § 305.5(c).*** The Building’s proposed site plan’s efficient and economical land utilization include the following significant benefits:
  - Redevelopment of the current dilapidated, vacant, and underutilized site;
  - Attractively designed apartment building that benefits the neighborhood aesthetically and is well-sited on the lot, with appropriate setbacks and open green space preserved on the site; and
  - Approximately 2,145-square foot community garden for residents;
- ***Environmental and sustainable benefits – Subtitle X § 305.5(k).*** The Building provides innovative sustainable design elements including:
  - A commitment to achieve LEED Gold certification;
  - Approximately 13,850 square feet (±2%) of rooftop solar panels;
  - Approximately 18,412 square feet (±2%) of green roof features;
  - Advanced stormwater management infrastructure;
  - Landscaping with 100% native plantings; and
  - Two electric vehicle charging stations within the garage; and
- ***Employment Opportunities - Subtitle § 305.5(h).*** The Building will provide employment opportunities for District residents by:
  - A First Source Employment Agreement executed by the Applicant with the Department of Employment Services; and
  - A Certified Business Enterprise Agreement executed by the Applicant with the Department of Small and Local Business Development.

### **Special Exception – Subtitle U § 421**

32. The Applicant submitted evidence showing that the Building met the criteria for the requested special exception for a new residential building in the RA-1 zone. (Ex. 28.)

## **III. RESPONSES TO THE APPLICATION**

### **OP**

33. OP submitted a January 31, 2020, report (Ex. 12, the “OP Setdown Report”) recommending that the Commission set the Application down for a public hearing based on OP’s conclusion that the Building would not be inconsistent with the CP, but requested the Applicant to continue to work with OP on:

- Building and site design details;
- Consider providing usable balconies instead of Juliet balconies;
- Adding an on-site outdoor gathering place or tot lot for residents;



- Details on funding sources for the Building and the duration of the initial affordability period; and
  - Employment opportunities that would be provided for District residents.
34. OP submitted a June 26, 2020 report (Ex. 22, the “OP Hearing Report”) that:
- Recommended approval of the Application based on OP’s conclusions that it had satisfied the PUD requirements because “the proposal would not be inconsistent with the Comprehensive Plan and generally meets the requirements of Subtitle X, Chapter 3,” and that “[i]n general, OP finds that the benefits proffered are commensurate with the relatively small additional density and height being sought in conjunction with the PUD”;
  - Requested that the Applicant providing the following information prior to final action:
    - Consider providing full balconies instead of Juliet balconies;
    - Illustrations of views to the outside from the below-grade units;
    - Information about the types of social services to be offered on-site;
    - Drawings showing the relationship of the community garden to the rear of the building; and
    - Refinement of the security screening of the window-like openings for the garage;
  - Noted that the Application may require a special exception under Subtitle U § 421 to allow a multi-family building in the RA-1 zone but noted that the PUD review encompasses these special exception review criteria and that OP would have no objection to the Commission’s granting such flexibility; and
  - Reported that DOEE recommended that the Applicant provide electric vehicle charging equipment or the capability for this in the future and has encouraged the applicant to explore Net Zero Energy construction and certification under the 2017 DC Energy Conservation and Green Construction Codes.
35. At the July 9, 2020 public hearing, OP testified in support of the Building based on the OP Reports but requested the ability to file a supplemental report after additional review of the Applicant’s revised architectural plans. (Tr. 2 at 46-47.)
36. OP submitted a July 30, 2020 supplemental report (Ex. 34, the “OP Final Report”) that concluded that the updated architectural plans and additional information provided in the Applicant’s post-hearing submission addressed the Commission’s requests and concerns.

**DDOT**

37. DDOT filed a June 30, 2020 report (Ex. 23) that:
- Analyzed the Building’s site design, the sufficiency of the Building’s parking and loading, and the Applicant’s proposed mitigations of potential adverse transportation impacts; and
  - Concluded that DDOT had no objection to the Application provided the approval required the Applicant to implement:
    - The TDMP, including DDOT’s requested compliance reporting requirements; and
    - The LCMP proposed by the Applicant, as developed in coordination with DDOT.

38. At the July 9, 2020, public hearing, DDOT testified that it supported the Application because the Building provides the necessary transportation amenities while accommodating the significant grade changes on the site and enhancing the site's adjacent public space. (Tr. 2 at 48.)

### ANC

39. Neither ANC 8B nor ANC 8E submitted a written response to the Application.
40. The Chair of ANC 8E filed a July 8, 2020 letter (Ex. 29), outlining the Applicant's outreach with the ANC throughout the PUD application process. The letter stated that, "[w]hile the ANC has faced challenges in conducting full public meetings and taking formal votes on pending Buildings during the period of social distancing related to the COVID-19 outbreak, [the Chair wrote to express his] strong support for this Building and ask that the Zoning Commission approve the PUD application."

### OTHER RESPONSES

41. The Terrace Manor Organized for Change Tenant Association, Inc. ("Tenant Association"), representing the remaining tenants of the existing apartment complex on the Property, filed a June 17, 2020 letter (Ex. 21) that:
- Outlined the Property's history and fall into disrepair under previous ownership;
  - Noted that WC Smith paid to move them to other WC Smith-owned properties at the same rent during redevelopment of the Property;
  - Detailed the Tenant Association's work with the Applicant to develop the Building proposed by the Application;
  - Supported the Building's increased number of two-bedroom units and other amenities including the 24-hour front desk, fitness center, business center, bicycle storage, package room, on-site rental office, and community garden; and
  - Requested that the Commission approve the application.

## CONCLUSIONS OF LAW

### AUTHORITY

1. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Rep1.)), the Commission may approve a Consolidated PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 300, as well as special exception relief pursuant to Subtitle X § 303.13.

### **PUD Approval**

2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
- (a) Results in a project superior to what would result from the matter-of-right standards;
  - (b) Offers a commendable number or quality of meaningful public benefits; and
  - (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.

3. Pursuant to Subtitle X §§ 303.1 and 303.13:  
*As part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards. Any such flexibility shall be considered the type of development flexibility against which the Zoning Commission shall weigh the benefits of the PUD.*
4. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application, the Commission must:  
*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;*  
The Commission must also find that the proposed development:
  - (a) *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
  - (b) *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
  - (c) *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
5. A PUD's proposed public benefits must comply with 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.*
6. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP's purposes as:
  - (1) *to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
  - (2) *to guide executive and legislative decisions on matters affecting the District and its citizens;*
  - (3) *to promote economic growth and jobs for District residents;*
  - (4) *to guide private and public development in order to achieve District and community goals;*
  - (5) *to maintain and enhance the natural and architectural assets of the District; and*
  - (6) *to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*
7. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test 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 Building/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) (internal quotation marks and references omitted).)

### **Special Exception Relief**

8. Pursuant to Subtitle X § 303.13:

*As part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards.*
9. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception:
  - *will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map;*
  - *will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map; and*
  - *complies with the special conditions specified in the Zoning Regulations.*
10. The special exception under Subtitle U § 421 impose only application requirements and do not impose any additional “specific conditions.”
11. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board’s discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and “if the applicant meets

its burden, the Board ordinarily must grant the application.” (*First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).)

#### **COMPLIANCE WITH PUD ELIGIBILITY STANDARDS**

12. The Commission concludes that the Application meets Subtitle X § 301.1’s minimum 15,000 square feet of land area for a PUD in the RA-1 zone because the Property consists of approximately 100,265 square feet of land area. (FF 6.)

#### **CONSISTENCY WITH THE CP AND PUBLIC POLICIES (SUBTITLE X § 304.4(A))**

13. Based on the case record and the Findings of Fact above, the Commission concludes that the Building is not inconsistent with the CP, when considered in its entirety, because the Building will further the following CP map designations and elements.
14. The Commission concludes that the Building is consistent with the Property’s “Neighborhood Conservation Area” designation on the CP’s GPM because the Building only modestly increases the size of the Property’s existing apartment buildings. (FF 14.)
15. The Commission concludes that the Building is consistent with the Property’s “Moderate Density Residential” designation on the FLUM, because the FLUM specifically states that this designation allows for “lowrise apartment buildings,” which corresponds to the Building’s height and density. (FF 15.)
16. The Commission concludes that the Building is consistent with the CP’s Near Southeast/Southwest Area Element which applies to the Property because the Building rehabilitates existing dilapidated multi-family housing and preserves it as affordable housing after the renovation. (FF 16.)
17. The Commission concludes that the Building will further the housing goals of Mayor’s Order 2019-036 by replacing dilapidated units with new units and providing additional units, with all 130 units affordable at 60% MFI. (FF 30-32.)

#### **POTENTIAL ADVERSE IMPACTS – HOW MITIGATED OR OUTWEIGHED (SUBTITLE X § 304.4(B))**

18. Based on the case record and the Findings of Fact above, the Commission concludes that the Building will not result in any unacceptable impacts that are not capable of being mitigated or outweighed by the Building’s proffered public benefits, and therefore protects and advances the public health, safety, welfare and convenience as detailed below.
42. The Commission concludes that the Building’s proposed increased height and density will not have an adverse impact on neighboring properties because:
  - The increase in height above that permitted as a matter of right is small (seven feet, seven inches);
  - The increase in FAR above that permitted for IZ developments in the RA-1 zone is relatively small (20%); and
  - The Property is buffered from surrounding development by adjacent open space to the west, north, and east, and by Savannah Street, S.E., to the south. (FF 9.)

43. The Commission concludes that the Application’s proposed TDMP and LCMP, as approved by DDOT, will mitigate the potential adverse impacts on the transportation network of the Building’s increased traffic and loading demand. (FF 24, 25, 27, 38.)

**PUD FLEXIBILITY BALANCED AGAINST PUBLIC BENEFITS (SUBTITLE X § 304.4(C))**

44. Based on the case record and the Findings of Fact above, the Commission concludes that the Application’s requested zoning flexibility is outweighed by the Application’s proposed public benefits as discussed below.
19. The relief requested through the PUD process is limited to the additional seven feet, seven inches in height and additional 20% density permitted under Subtitle X § 303 in the RA-1 Zone District. (FF 19.)
20. The Commission concludes that the Applicant’s proposed public benefits in six different categories - housing and affordable housing, superior urban design and architecture, landscaping, site planning, and efficient and economical land utilization, environmental and sustainable benefits, and employment opportunities – result in a development that is superior to what would result from matter-of-right development. (FF 29.) The Commission particularly notes that the CP’s Framework Element explicitly identifies new affordable housing above and beyond the existing legal requirements is a “high-priority” public benefit. (CP § 224.9.)
21. The Commission concludes that these benefits more than outweigh the relatively modest relief requested, and the potential adverse effects of the Building that are not otherwise favorable or adequately mitigated.

**SPECIAL EXCEPTION STANDARDS (SUBTITLE U § 421)**

22. Based on the case record and the Findings of Fact above, the Commission concludes that the Applicant demonstrated that the Application satisfied the requirements of Subtitle U § 421.

**GENERAL SPECIAL EXCEPTION REQUIREMENTS (SUBTITLE X § 901)**

23. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfied the general special exception requirements because:
- The Building, as a low-rise moderate-density apartment house, is consistent with the intent of the RA-1 zone and therefore is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps; and
  - The Building will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Map as detailed above in the analysis of the Application’s satisfaction of the PUD standards above.

**GREAT WEIGHT TO RECOMMENDATIONS OF OP**

24. The Commission must give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8.

(*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

25. The Commission finds OP's analysis of the Application, its conclusion that the Application satisfied the PUD and special exception requirements, and its recommendation to approve the Application persuasive and concurs with this judgement.

#### **GREAT WEIGHT TO WRITTEN REPORT OF THE ANC**

26. The Commission must give "great weight" to the issues and concerns raised in the written report of an affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
27. Since neither of the affected ANCs 8B and 8E submitted a written response to the Application (FF 40), there is nothing to which the Commission can give "great weight". Nevertheless, the Commission appreciates the ANC 8E Chair's letter (FF 41) and concurs in its support of the Application.

#### **DECISION**

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application subject to the following guidelines, conditions, and standards, for:

- A Consolidated PUD; and
- A special exception under Subtitle U § 421 to authorize a new residential development in the RA-1 zone;

#### **A. BUILDING DEVELOPMENT**

1. The Building shall be constructed in accordance with:
  - The July 9, 2020, plans prepared by Stoiber and Associates (Exhibit 26);
  - As modified by the July 23, 2020, post-hearing submission (Exhibits 31A1-31A4; collectively, the "Approved Plans"); and
  - As modified by the guidelines, conditions, and standards herein.
2. As shown in the Approved Plans, the Building shall be:
  - Constructed to a maximum height of approximately 47 feet, seven inches; and
  - Entitled to flexibility to increase the floor area ratio ("FAR") to a maximum 1.296 FAR.

3. The Property shall be subject to the requirements of the RA-1 zone except as set forth herein or modified hereby as shown on the Approved Plans.
4. The Applicant shall have flexibility from the Approved Plans in the following areas:
  - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the Building as shown on the Approved Plans;
  - b. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction, without reducing the quality of the materials, provided such colors are within the color ranges shown on the Approved Plans; and to make minor refinements to exterior details, dimensions and locations, including curtainwall mullions and spandrels, window frames and mullions, glass types, belt courses, sills, bases, cornices, balconies, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or to address the structural, mechanical, design, or operational needs of the building uses or systems;
  - c. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the Building as shown on the Approved Plans; examples of exterior details include, without limitation, doorways, canopies, railings, and skylights;
  - d. To provide a range in the number of residential units in the Building of plus or minus five percent (5%) relative to the number depicted on the Approved Plans relative to the number depicted on the Approved Plans, with no reduction in the number of three-bedroom units (4);
  - e. To make refinements to the approved parking configuration, including layout and number of parking spaces of plus or minus ten percent (10%), provided the number of parking spaces maintains a ratio of no more than 0.3 spaces per residential unit;
  - f. To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Plans do not change;
  - g. To vary the design of the public space surrounding the Property and/or the selection of plantings in the landscape plan depending on seasonal availability within the range and quality as proposed in the Approved Plans



or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, DCRA, or other applicable regulatory bodies and/or service to the Property from utilities;

- h. To vary the amount, location and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the Building achieves a minimum GAR required by the Zoning Regulations and provides a minimum of approximately 18,412 square feet ( $\pm 2\%$ ) of roof area containing green roof and a minimum of approximately 13,850 square feet ( $\pm 2\%$ ) of roof area containing solar panels and related equipment;
- i. To vary the approved sustainable features of the Building, provided the total number of LEED points achievable for the Building does not decrease below the minimum required for the LEED standard specified by the order;
- j. To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Approved Plans and remain compliant with all applicable penthouse dimensional requirements of the Zoning Regulations; and
- k. To vary the final design and layout of the indoor and outdoor amenity and plaza spaces to reflect their final design and programming and to accommodate special events and programming needs of those areas from time to time.

## **B. BUILDING PERMIT REQUIREMENTS**

- 1. **Prior to the issuance of a building permit for the Building**, the Applicant shall provide the Zoning Administrator with evidence that the Applicant has executed:
  - a. A First Source Employment Agreement with DOES; and
  - b. A Certified Business Enterprise Agreement with DSLBD.

## **C. CERTIFICATE OF OCCUPANCY REQUIREMENTS**

- 1. **Prior to the issuance of a certificate of occupancy for the Building**, the Applicant shall provide the Zoning Administrator with evidence that the Building:
  - a. Has or will achieve the requisite number of prerequisites and points necessary to secure LEED Gold v4 certification from the USGBC;

- b. Has solar panel systems and associated equipment installed that occupy approximately 13,850 square feet ( $\pm 2\%$ ) of roof area; and
  - c. Has green roof features installed that occupy approximately 18,412 square feet ( $\pm 2\%$ ) of roof area.
2. **Following the issuance of a certificate of occupancy for the Building**, the Transportation Coordinator shall submit documentation of the following:
- a. To the Office of Zoning for inclusion in the record of the case - a summary of compliance with the transportation and TDMP conditions of this Order; and
  - b. To the Zoning Administrator, DDOT, and goDCgo every five years (as measured from the final certificate of occupancy for the Building) – a summary of continued compliance with the transportation and TDMP conditions of this Order.

**D. REQUIREMENTS FOR THE LIFE OF THE BUILDING**

1. **For the life of the Building**, the Applicant shall provide and maintain or implement the following:
- a. Affordable housing as set forth in the following chart and provisions (i) through (iii):

Residential Unit Type	Floor Area / % of Total <sup>1</sup>	# of Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	129,936 / 100%	130	Mixed		
Affordable Non-IZ	115,773 / 89.1%	114	Up to 60% of MFI	30 years if the Building does not receive funding from the D.C. Housing Production Trust Fund or 40 years if the Building does receive such funding	N/A
Affordable Non-IZ <sup>2</sup>	14,163 / 10.9%	16	Up to 60% of MFI	Life of the Building	Rental

<sup>1</sup> Refers to the residential GFA, but the floor area may be adjusted to subtract the building core factor.

<sup>2</sup> If at permitting it is determined that the Building does not qualify for the IZ Exemption, these units shall be IZ units instead of Affordable Non-IZ units.

- i. Each control period shall commence upon the issuance of the first certificate of occupancy;
- ii. The chart assumes the Building will be exempt from the IZ regulations of Subtitle C, Chapter 1, pursuant to Subtitle C § 1001.6 (“IZ Exemption”); however, if the Building does not qualify for the IZ Exemption under Subtitle C § 1001.6(a), the Applicant shall

nevertheless provide affordable housing in accordance with this condition, unless the IZ Regulations as of the date of this Order impose more restrictive standards; and

- iii. The affordable housing requirements of this condition shall be stated in the covenant required by Subtitle C § 1001.6(a)(4), which the Applicant shall:
  - Record the covenant required by the Inclusionary Zoning Act as to approximately 10.9% of the residential gross floor of the building; and
  - Execute the monitoring and enforcement documents required by Subtitle X § 311.6 as to the remaining residential gross floor area;
- b. At least four of the residential units as three-bedroom units;
- c. Two electric vehicle charging stations installed within the garage;
- d. A community garden space at the rear (west) of the building consisting of a minimum of 2,145 square feet of area that will be made available for all residents of the Building;
- e. The following transportation demand management (“TDM”) actions:
  - Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile;
  - Identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement;
  - Provide Transportation Coordinators’ contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDMP activities and data collection efforts to goDCgo once per year;
  - Transportation Coordinators shall develop, distribute, and market various transportation alternatives and options to the residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications;
  - Transportation Coordinators shall receive TDMP training from goDCgo to learn about the TDMP conditions for this Building and available options for implementing the TDMP;
  - Provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the

most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing [info@godcgo.com](mailto:info@godcgo.com);

- Provide residents who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future;
- Transportation Coordinators shall subscribe to goDCgo's residential newsletter;
- Post all TDMP commitments on website, publicize availability, and allow the public to see what has been promised;
- Provide a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident;
- Comply with the Zoning Regulations' requirements for short- and long-term bicycle parking, with no fee to the residents to use the bicycle storage room; and
- Long-term bicycle storage rooms shall accommodate non-traditional sized bikes including cargo, tandem, and kids bikes; and

f. The following loading demanding management actions:

- The building's on-duty maintenance technician shall serve as the loading manager during the weekdays, and the front desk/concierge will serve as loading manager on weekends;
- The loading manager shall be on duty from 8:00 am to 5:00 pm and will coordinate with vendors and tenants to schedule deliveries and with the community and neighbors to resolve any conflicts should they arise;
- A lease provision shall require all tenants to use only the loading docks for deliveries and move-in/move-out activities;
- All tenants shall be required to schedule deliveries that utilize the loading dock (any loading operation conducted using a truck 20' in length or larger) and all loading activities shall be required to occur at the loading dock;
- The loading manager shall schedule deliveries such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver shall be directed to return at a later time when a berth will be available so as to compromise safety or impede street or intersection function;
- The loading manager shall schedule residential loading activities so as not to conflict with commercial deliveries, such as FedEx and UPS. All residential loading shall need to be scheduled with the loading manager;
- The loading manager shall monitor inbound and outbound truck maneuvers and shall ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic along Savannah Street SE except during those times when a truck is actively entering or exiting a loading berth;


- Service vehicle/truck traffic interfacing with Savannah Street SE traffic shall be monitored during peak periods and management measures shall be taken if necessary to reduce conflicts between truck and vehicular movements;
- Trucks using the loading dock shall not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to Title 20 DCMR, Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT’s Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route Map ([godcgo.com/truckandbusmap](http://godcgo.com/truckandbusmap)); and
- The loading manager shall monitor the timing of the residential deliveries to see if any adjustments need to be made to ensure any conflicts are minimized.


**C. VALIDITY**

1. The PUD shall be valid for a period of two years from the effective date of this Order, within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.
2. No building permit shall be issued for the Building until the Applicant has recorded a covenant (the “PUD Covenant”) in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Administrator, DCRA. The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the PUD covenant with the Zoning Administrator and the Office of Zoning.

**VOTE (September 14, 2020):**      **5-0-0** (Robert E. Miller, Peter G. May, Anthony J. Hood, Peter A. Shapiro, and Michael G. Turnbull to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 19-19 shall become final and effective upon publication in the *D.C. Register*; that is, on May 7, 2021.

  
 ANTHONY HOOD  
 Chairman  
 Zoning Commission

  
 SARA B. Bardin  
 Director  
 Office of Zoning

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL

APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.