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October 5, 2020

VIA IZIS

Zoning Commission for the
District of Columbia
441 4th Street, NW, Suite 210S
Washington, D.C. 20001

**Re: Z.C. Case No. 20-06 – 1st Stage and Consolidated PUD and Related Zoning
Map Amendment @ 1333 M Street, SE
Applicant's Proposed Findings of Fact and Conclusions of Law**

Dear Members of the Commission:

On behalf of Felice Development Group (the "Applicant"), we hereby submit the Applicant's proposed Findings of Fact and Conclusions of Law, as requested by the Zoning Commission at the conclusion of its public hearing on September 10, 2020.

We remain hopeful for the Commission's favorable consideration of this application at its public meeting on October 15, 2020. Should the Commission have any questions or need additional information, please do not hesitate to have Office of Zoning staff contact us.

Sincerely,

HOLLAND & KNIGHT LLP



Leila M. Jackson Batties
Christopher S. Cohen

Encl.

cc: Certificate of Service
Ms. Sharon Schellin, Secretary to the Zoning Commission

ZONING COMMISSION
District of Columbia
CASE NO.20-06
EXHIBIT NO.75

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 5, 2020 a copy of the Applicant's draft Findings of Fact and Conclusions of Law was submitted into the public record for Z.C. Case No. 20-06 via IZIS, and was served on the following persons as follows:

**Zoning Commission for the
District of Columbia**
441 Fourth Street, NW
Washington, D.C.

VIA IZIS

D.C. Office of Planning
Ms. Jennifer Steingasser
Mr. Joel Lawson
Mr. Stephen Cochran
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VIA EMAIL dated 10/5/2020

District Department of Transportation
Ms. Anna Chamberlin
Mr. Aaron Zimmerman
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VIA EMAIL dated 10/5/2020

Advisory Neighborhood Commission 6B
c/o Commissioner Brian Ready
6b03@anc.dc.gov

VIA EMAIL dated 10/5/2020

Commissioner Corey Holman
Single-Member District 6B-06
6b06@anc.dc.gov

VIA EMAIL dated 10/5/2020



Christopher S. Cohen
Holland & Knight LLP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 20-06

Case No. 20-06

Felice Development Group

First Stage and Consolidated Planned Unit Development

and Related Zoning Map Amendment from PDR-4 Zone to MU-9 Zone @

Square 1025-E, Lot 802; Square 1048-S, Lots 1, 801, & 802; and RES 129 and RES 299

[1333 M Street, SE]

[INSERT DATE]

Pursuant to notice, at its public hearing on September 10, 2020, the Zoning Commission for the District of Columbia (the “Commission”) considered an application of Felice Development Group (the “Applicant”) for the review and approval of a (1) first-stage planned unit development (“PUD”) for the project described herein; (2) consolidated PUD for phase one of the project; and (3) related Zoning Map amendment from the PDR-4 zone to the MU-9 zone (the “Application”) for the parcel located at 1333 M Street, SE, which is more particularly described as Square 1025-E, Lot 802; Square 1048-S, Lots 1, 801, and 802; and RES 129 and RES 299 (collectively, the “Property”). The Commission considered the Application pursuant to Subtitle X Chapters 3 and 5, and Subtitle Z of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations”, to which all references are made unless otherwise specified). For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

Notice

1. On June 18, 2020, the Office of Zoning (“OZ”) sent notice of the hearing to:
 - Advisory Neighborhood Commission (“ANC”) 6B (the “ANC”), the “affected ANC pursuant to Subtitle Z § 101.8;
 - ANC Single Member District 6B-06;
 - Gottlieb Simon, Director of the DC Office of ANCs;
 - Councilmember Charles Allen
 - Office of Planning (“OP”);
 - District Department of Transportation (“DDOT”);
 - District of Consumer and Regulatory Affairs (“DCRA”);
 - District of Columbia Housing Authority (“DCHA”)
 - Office of the Attorney General (“OAG”)
 - Department of Energy and the Environment (“DOEE”);
 - At-Large DC Councilmembers; and

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- Property owners within 200 feet of the Property. (Exhibit [“Ex.”] 21.)
2. OZ also published notice of the hearing in the *D.C. Register* on June 26, 2020 (67 DCR 27) as well as through the calendar on OZ’s website. (Ex. 20.)

Parties

3. The only parties to the case were the Applicant and ANC 6B.

The Property

4. The Property is a triangular shaped parcel consisting of approximately 127,400 square feet (2.92 acres \pm) located in the southeast quadrant of the District on the south side of M Street, and is bordered by the unimproved right-of-way for Virginia Avenue and the right-of-way for Water Street.
5. The high point of the Property along M Street is on a bluff 36 feet above the Anacostia River, and slopes steeply downward to 18 feet at Water Street and the foot of Virginia Avenue.
6. The existing Property is underutilized, as it currently contains fuel pump storage facilities, both paved and gravel parking areas, and vegetated but unimproved land. The easternmost portion of the Property is covered with trees and an overgrown bush. The westernmost portion of the Property is used as an overflow parking area.
7. The Property is east of Maritime Plaza, where two five-story office buildings (of a projected five-building redevelopment). The Property is north of the open space and slips for private boats along the Anacostia River (“Boathouse Row”). Residential uses (e.g., rowhouses and mid-rise apartment buildings of the Capitol Hill East neighborhood) are to the north, across M Street and the end of the Southeast/Southwest Freeway, as well as the CSX railway.
8. The Comprehensive Plan’s (“CP”) Generalized Policy Map (“GPM”) designates the Property as a Land Use Change Area, and the Future Land Use Map (“FLUM”) designates the Property for Mixed use Medium Density Commercial and Institutional. In addition, the Property is within the boundaries of the Anacostia Waterfront Framework Plan.
9. The Property is currently zoned PDR-4. The PDR zone district is intended to minimize encroachment by uses that incompatible with production, distribution, and retail uses, including residential uses, which could impair existing PDR activities. (Subtitle J § 100.2(d).)

Application

Filings Prior to Set Down

10. On January 24, 2020, the Applicant gave Notice of an Intent to file the Application, as required by Subtitle Z § 300.7. (Ex. 3H.)

11. On March 13, 2020, the Applicant filed the Application with the Commission for a (i) first stage PUD; (2) consolidated PUD for phase one of the project; and (3) related Zoning Map amendment to rezone the Property from PDR-4 to MU-9. (Ex. 1-3J.)
12. On March 27, 2020, the Applicant made a supplemental filing that included revised sheets to the architectural drawings and plans submitted with the initial Application, a list of the requested areas of flexibility, and details of the PUD benefits and how the PUD advances various objectives and policies of the CP. (Ex. 12-12A.)

Setdown of Application

13. During its public meeting on May 11, 2020, the Commission voted to set down the Application for a public hearing. (Vice Chair Miller, Commissioner Turnbull, 5-0-0.) At the public meeting, the Commission concurred with the findings and requests made in the OP Preliminary Report, and requested that the Applicant make certain design changes and address the issues and concerns raised in the OP Preliminary Report, as well as other inquiries, such as the District's future plans for the 14th Street bridge connection. (May 11, 2020 Public Meeting Transcript, at 66-81.)

Pre-Hearing Submissions

14. On June 8, 2020, the Applicant filed its prehearing submission that included an updated development program and supplemental information on the Application, which responded to OP's Preliminary Report filed on May 1, 2020 (Ex. 14), as well as the questions and comments raised by the Commission at set down on May 11, 2020. (Ex. 17-17E.)
15. On August 10, 2020, the Applicant submitted a copy of its Comprehensive Transportation Review ("CTR") to the Commission in accordance with Subtitle Z § 401.8. (Ex. 28A.)
16. On August 21, 2020, the Applicant filed a supplemental prehearing submission pursuant to Subtitle Z § 401.5, which provided an expanded benefits and amenities package, withdrew flexibility requests for vehicle and bicycle parking, and provided updated plans and supplemental drawings and graphics. The Applicant's supplemental prehearing submission also provided further analysis regarding the PUD's consistency with the FLUM, and evaluated potential inconsistencies with the CP. (Ex. 29-30B.)
17. On September 9, 2020, the Applicant submitted responses to the OP Final Report dated August 31, 2020, which clarified several aspects of the Application. (Ex. 59-59C.)

First-Stage PUD

18. The PUD is a mixed use project consisting of approximately 786,160 square feet of gross floor area ("GFA"), including approximately 900 dwelling units and up to 44,092 square feet of GFA for retail/non-residential uses (the "Project").
19. The Project will consist of two buildings. Building 1 will have two towers – the East Tower and the West Tower. The East Tower, including the entire below grade parking garage for

Building 1, will be constructed as Phase 1 of the Project, and is the subject of the Consolidated PUD. The West Tower and Building 2 will be constructed in Phase 2 of the Project.

20. The Project will be constructed on two theoretical lots. Building 1 will be constructed on a theoretical lot consisting of a land area of 118,633± square feet. Building 2 will be constructed on a theoretical lot consisting of a land area of 8,666± square feet. Calculated over the theoretical lots, the Project will have a lot occupancy of 63.1%.

21. The overall density for the Project will amount to a FAR of 6.17.

22. Building 1.

- a. The East Tower will have approximately 475,671 square feet of GFA yielding approximately 496 dwelling units, and approximately 32,217 square feet of GFA dedicated to retail/non-residential uses.
 - b. The West Tower will have approximately 237,516 square feet of GFA yielding approximately 307 dwelling units, and approximately 9,971 square feet of GFA dedicated to retail/non-residential uses.
 - c. For both functional and technical zoning purposes, the East Tower and the West Tower will be connected at the second level via a bridge element. The West Tower will be constructed in the second phase as an addition to the East Tower through the bridge connection, which will satisfy all of the applicable connection criteria under Subtitle B § 309 of the Zoning Regulations. From a functional perspective, the proposed connection will provide residents in the West Tower access to the amenities in the East Tower and will allow for shared loading.
23. Building 2. Building 2 will consist of approximately 72,973 square feet of GFA yielding approximately 97 dwelling units, and approximately 1,904 square feet of GFA dedicated to retail and non-residential uses. The building will have a maximum building height of 92 feet, measured from the midpoint of Building 2 along M Street.
24. The PUD will have two levels of parking located below Building 1 will be accessed from M Street, S.E. The parking garage will have 174 vehicular parking spaces, which satisfies the minimum number required under the Zoning Regulations. (Subtitle C § 701.5.) The PUD will also provide 254 bicycle spaces (196 long-term; 58 short-term).
25. Building 1 will include one 55-foot loading berth, two 30-foot loading berths, and two service spaces. All of these loading and service functions will occur along a private road that bisects the PUD site connecting M Street to Virginia Avenue. Loading and service functions for Building 2 are proposed to occur along M Street, pursuant to the flexibility discussed in FF No. [REDACTED].

Consolidated PUD for Phase I / Building 1- East Tower

26. The East Tower of Building 1 will be constructed as Phase 1 of the Project. It will consist of approximately 443,554 square feet of residential GFA generating approximately 496 units. The approximate unit mix in the East Tower will be as follows: 177 studio units (35.7% of unit mix); 255 one-bedroom units (51.4% of unit mix); 64 two-bedroom units (12.9% of unit mix).
27. Twelve percent (12%) of the residential gross floor area will be reserved for households with incomes not exceeding 60% of the median family income (“MFI”), except that three (3) of the six (6) two-bedroom IZ units shall be reserved for households with incomes not exceeding 50% of MFI.

Proffered PUD Benefits and Amenities

Affordable Housing

28. The Applicant agrees to reserve 12% of the PUD’s gross residential floor area for households with incomes not exceeding 60% of the median family income (“MFI”), except that three (3) of the six (6) two-bedroom IZ units in the first phase of the PUD shall be reserved for households with incomes not exceeding 50% of MFI. Also, one two-bedroom unit in the second phase of the PUD shall be reserved at 50% of MFI.

Public Space Improvements

29. The PUD will result in a significant level of improvements in the public space, which are discussed, generally, below:
- a. M Street. The Applicant will fully reconstruct a 22-foot portion of the 72-foot right-of-way of M Street, S.E. and install a small traffic circle to facilitate better circulation near and around the Property. (See FF No. **Error! Reference source not found.**). In addition, the Applicant will relocate the Anacostia Bike Trail to the north side of M Street in order to provide a better connection to the existing trail to the west. The Applicant will reconstruct the bike trail to DDOT’s current standard width of ten feet. Further, this bike trail to be relocated to the north side of M Street will be maintained by DDOT.
 - b. Virginia Avenue. The Applicant will re-establish Virginia Avenue and construct the roadway to current DDOT standards and will include bioretention facilities.
 - c. Arrival Plaza. The Arrival Plaza will be improved with an expansive green lawn and function as a pedestrian promenade and plaza. The Applicant will maintain the improvements in the Arrival Plaza for the life of the Project.
 - d. Waterfront Plaza. The Waterfront Plaza at the terminus of Virginia Avenue will include a monumental staircase and accessible walkways, and is designed to accommodate outdoor dining, small gatherings, art fairs, a farmers’ market and other similar community activities. The Applicant will maintain the improvements in Waterfront Plaza for the life of the Project.

- e. 14th Street Corridor Plaza. The 14th Street Corridor Plaza is designed to provide a connectivity area between the proposed Southeast Boulevard Pedestrian Bridge and the lower Retail Promenade and Water Street. The Applicant will maintain the connectivity area for the life of the Project.
 - f. Lower Retail Promenade. The Lower Retail Promenade will be improved with a great lawn and provide access to Water Street and the Anacostia Bike Trail. The Applicant will maintain the Lower Retail Promenade for the life of the Project.
30. The paved path connecting the upper Waterfront Plaza and Water Street will be a non-vehicular connection open only to pedestrians and bicyclists.

Environmental

31. The PUD will be designed to the equivalent LEED Gold Standard.
32. Additionally, the Applicant will install solar panels on top of the Building 1 West Tower, which will generate at least one percent (1%) of the energy for the tower.
33. The Applicant will also install a composite of extensive, intensive green roof systems, and hardscaped areas will be created for the roof terrace on Building 2. The roof shall include a garden or other green roof infrastructure that is as large as commercially and operationally feasible, but not smaller than 45% exclusive of areas needed for mechanical equipment and elevator overruns.
34. The PUD will achieve a Green Area Ratio no less than 0.225 where 0.2 is required.

Monetary Contribution to Support Senior Programming¹

35. The Applicant agrees to contribute \$25,000 to the Department of Parks and Recreation to support the programming for seniors at the Arthur Capper Recreation Center.
36. The Applicant agrees to expend \$225,000 to cover the cost of professional services related to efforts to secure a site for an adult day care center in the Capitol Hill neighborhood of Ward 6 or Hill East Reservation 13. Consistent with the Scope of Project marked as Exhibit 33 of the case record, the funds will be used to engage one or more consultants or non-profit organizations (e.g. Capitol Hill Village and Iona) to, among other things, evaluate the demand

¹ Originally, the Applicant proffered a voluntary monetary contribution of \$25,000 to a non-profit or the District to fund (i) items or services for an event or programming for seniors in Ward 6, or (ii) the cost of professional services related to securing a site for an adult daycare center in Ward 6. At the public hearing, the Applicant increased the amount of the proffer to \$250,000, with \$25,000 being donated to the Department of Parks and Recreation to support the programming for seniors at the Arthur Capper Recreation Center and \$225,000 being donated to the Department of Aging and Community Living (“DACL”), with the request that the funds be earmarked to assist a non-profit organization with the cost of professional services related to securing a site for an adult daycare center in the Capitol Hill area of Ward 6. Subsequent to the public hearing, the Applicant confirmed that, because of the lengthy and complicated budget process, DACL could not accept the monetary contribution. Given the circumstances, the Applicant further revised the proffer as reflected in this Order.

and demographic data for adult day care; identify potential sites for an adult day care center; deliver a matrix of prioritized adult day care service needs and the square footage required to meet those needs; test fit or preliminarily design a proposed space; and identify adult day care providers. Prior to the issuance of a certificate of occupancy for Phase I of the PUD, the Applicant will file documentation with the Zoning Administrator demonstrating that this proffer has been satisfied as set forth above.

Superior Urban Design and Architecture

37. The overall massing solution for the Project was created to respond to the various contextual edges that border the Property. This includes the orthogonal grid to the north facing Capitol Hill, the diagonal orientation of Virginia Avenue to the south, and the irregular waterfront edge to the east along Water Street. Two view corridors have been preserved through the site at the private road and the 14th Street right of way. This ensures that views of the river and Anacostia Hills will be preserved from the north. Additional porosity has been achieved through the introduction of a “cut-out” at floors 3 thru 6 along the façade of the East Tower.
38. The development program is distributed across three building structures organized within this unique triangular site. The East Tower and the West Tower are connected at the second level through a bridge element that provides access for all building residents to a series of dynamic interior and exterior amenity spaces. Building 2 is a standalone structure located at the eastern edge of the site. Its building massing is reminiscent of the traditional sailboat form, with a tapered edge at the intersection of M and Water Streets. In order to take advantage of the steep topography running north/south across the site, a series of retail plazas, outdoor courtyards and private terrace spaces have been organized to create dynamic pedestrian experiences overlooking the Anacostia Waterfront at multiple levels.
39. Additionally, the Project includes two levels of underground parking with ingress and egress located along M Street. All loading and service function for the East Tower and the West Tower will occur along a private road that bisects the site connecting M Street to Virginia Avenue. Loading and service functions for Building 2 will occur along M Street.
40. The overall development program includes retail tenant space and residential lobbies at grade along M Street and Virginia Avenue. Additional retail uses continue at the upper and lower plaza levels facing the waterfront. Residential units and amenity spaces occupy the upper floors of the buildings. Additional amenity space is located at the rooftop, with a pool, garden elements at the East Tower.

Site Planning and Efficient and Economical Land Utilization

41. Given the character and current conditions of the Property, the Applicant proposes a visionary mixed use development that reactivates the Anacostia River and provides evocative public spaces giving a full life cycle to this underutilized site. The site is located adjacent to “Boathouse Row” and will likely encourage additional waterfront activity, and the overall Project is designed to accommodate a potential bridge connection over Southeast Boulevard.

Development Flexibility Requested

Map Amendment

42. The Property is currently zoned PDR-4. The Application requests to rezone the Property from the PDR-4 zone to the MU-9 zone to allow for the proposed development. Subtitle X § 303.12 provides that a PUD-related Zoning Map amendment shall be considered flexibility against which the Commission shall weigh the benefits of the PUD.
43. The PDR-4 zone is intended regulate the use of land and structures and the erection and modification of structures in areas characterized by PDR uses, typically with heavy truck traffic and loading and unloading operations; encourage the retention of viable land to accommodate production, warehousing, distribution, light and heavy industrial, and research and development activities; allow compatible office and retail uses and development; minimize encroachment by uses that are incompatible with PDR uses, including residential uses, which could impair existing PDR activities; manage transitions between PDR-zoned areas and surrounding neighborhoods; and ensure the environmental performance of development. (Subtitle J § 100.2(f).)
44. As a matter-of-right, the PDR-4 zone permits a maximum overall density of 6.0 FAR, of which no more than 1.0 can be devoted to Restricted Uses. (Subtitle J §§ 202.1, 803.2.) Utilizing the Inclusionary Zoning (“IZ”) bonus (e.g., 20%), a maximum density of 7.2 FAR is permitted in the PDR-4 zone. (Subtitle C § 1002.3.) Under a PUD, a maximum overall density of 8.64 FAR is permitted in the PDR-4 zone, of which no more than 2.04 FAR may be devoted to non-residential uses. (Subtitle J § 202.1; Subtitle X §§ 303.3, 303.4.)
45. In the PDR-4 zone, the maximum permitted building height, not including the penthouse, is 90 feet, with no limit on the number of stories. (Subtitle J § 203.1.) The maximum building height in the PDR-4 zone is also 90 feet as a PUD. (Subtitle X § 303.7.) Above the maximum building height, a penthouse of 20 feet and one story is permitted for penthouse habitable space, with a mezzanine or a second story permitted for penthouse mechanical space. The same limitations apply for a PUD development. (Subtitle J § 203.6; Subtitle X § 303.18.)
46. Multifamily residential use is not permitted in the PDR-4 zone. New residential uses are limited to either: (1) an apartment unit for a caretaker watchman, or janitor employed on the premises; or (2) an apartment unit that is integrated with an accessory to an artist studio. (Subtitle U § 801.1(w).)
47. The MU-9 zone is a mixed-use zone that is intended to be applied throughout the city consistent with the density designation of the CP. A zone may be applied to more than one (1) density designation. (Subtitle G § 400.1.)
48. Specifically, the MU-9 zone is intended to permit high-density mixed-use development including office, retail, and housing with a focus on employment; and be located in or near the Central Employment Area, on arterial streets, in uptown and regional centers, and at rapid transit stops. (Subtitle G § 400.8.)

49. As a matter-of-right, the MU-9 zone permits a maximum overall density of 6.5 FAR. (Subtitle G § 402.1.) Utilizing the Inclusionary Zoning (“IZ”) bonus (e.g., 20%), a maximum density of 7.8 FAR is permitted in the MU-9 zone. (Subtitle C § 1002.3.) Under a PUD, a maximum overall density of 9.36 FAR is permitted in the MU-9 zone, of which no more than 3.18 FAR may be devoted to non-residential uses. (Subtitle G § 402.1; Subtitle X §§ 303.3, 303.4.)
50. In the MU-9 zone, the maximum permitted building height, not including the penthouse, is 90 feet, with no limit on the number of stories. (Subtitle G § 403.1.); however the maximum building height in the MU-9 zone is 130 feet as a PUD. (Subtitle X § 303.7.) Above the maximum building height, a penthouse of 20 feet and one story is permitted for penthouse habitable space, with a mezzanine or a second story permitted for penthouse mechanical space. The same limitations apply for a PUD development. (Subtitle G § 403.3; Subtitle X § 303.18.)

Areas of Technical Flexibility

51. Pursuant to Subtitle X § 303.1, the Applicant also requests technical flexibility with respect to the following areas:

- a. Conversion of Retail Space. The Applicant seeks flexibility to convert up to 25,000 square feet of retail space in the Building 1 East Tower to residential use or any other use permitted in the MU-9 zone district. The conversion to residential use shall be subject to the Applicant filing an application for a Modification of Consequence for approval of the revised building design, and the Commission’s approval of the same. Further, the additional residential square footage shall be subject to the IZ requirement approved for the PUD.
- b. Courts / Yards – West Tower. According to the Court and Yards Diagram on Sheet A-7 of the First-Stage PUD Plans, for the West Tower (Ex. [REDACTED]), the PUD requires flexibility in order for Court C1 to have a width of 36’-7” where a width of 39’7” is required.
- c. Courts / Yards – Building 2. According to the Courts and Yards Diagram on Sheet A-7 of the First-Stage PUD Plans, for Building 2 (Ex. [REDACTED]), the PUD requires flexibility to permit a rear yard of 12’-7” where a rear yard of 23’-5” is required. Also, flexibility is required in order for Court C-7 to have a width of 17’-1” where 32’-8” is required.
- d. Loading. The Applicant seeks flexibility to waive the loading and service requirements for Building 2.

Minor Design Flexibility from the Approved Plans

52. The Applicant also requests design flexibility to make minor modifications to the approved plans in the following additional areas:

- a. Number of Dwelling Units – Phase One. The East Tower of Building 1 will have 496 units. The Applicant seeks flexibility to increase the number of units by up to five percent (5%) or decrease the number of units by up to ten percent (10%). Notwithstanding, any flexibility in number of units will not result in fewer than 64 two-bedroom units;
- b. Interior Components. To vary the location and design of all interior components, including amenities, partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configurations of the building;
- c. Exterior Details. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the approved plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylight;
- d. Exterior Materials. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown in the approved plans;
- e. Retail Use Types. To vary the types of uses designated as “retail” use on the approved plans to include any use permitted in the MU-9 zone district.
- f. Signage. To vary the message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved plans;
- g. Affordable Units. To vary the number and mix of IZ units of the total number of dwelling unit changes, provided that the location and proportionate mix of IZ units generally conforms to the layout shown in the approved plans;
- h. Streetscape Design. To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division; and
- i. Sustainable Features. To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the PUD does not decrease below the minimum required for the LEED standard specified by this Order (e.g., LEED Gold).

Application’s Compliance with PUD Evaluation Standards

Not Inconsistent with the CP

53. The Application asserts that the proposed map amendment and the Project will be not inconsistent with the CP’s maps, including the GPM, and the FLUM. In its filings to the case record and through its testimony at the public hearing, the Commission finds that the Applicant

thoroughly addressed the CP policies advanced by the Application, including how each of the policies for which the opposition claims the Project is inconsistent are either favorably advanced by the Project, outweighed by other competing considerations, or not applicable.

54. Pursuant to 11-X DCMR § 304.4(a), the Commission shall find that the proposed development is not inconsistent with the CP and with other adopted public policies and active programs related to the subject site. As part of its initial application, the Applicant submitted an analysis of how the Project is not inconsistent with the CP as a whole, including the GPM, the FLUM, and the Lower Anacostia Waterfront/Near Southwest Element. (Ex. 3.). The Applicant provided additional CP analysis in its Supplemental Filing, dated March 27, 2020 (Ex. 10) and its Supplemental Prehearing Statement, dated August 21, 2020, which specifically detailed how the Project is not inconsistent with the Property's FLUM designation (e.g., Mixed Use (Medium Density Commercial / Institutional)). The Applicant's Supplemental Prehearing Statement also included an evaluation specifically addressing potential CP inconsistencies. (Ex. 30 at p. 6-17.). The Applicant provided a further evaluation of how the Project is not inconsistent with the CP and other adopted plans in its Post-Hearing Submission. (Ex. 70.) Furthermore, Mr. Shane Dettman, who was accepted by the Commission as an expert in land use and zoning, thoroughly analyzed the Project for overall consistency and potential inconsistencies with the CP and other adopted plans during the public hearing. (*See* FF No. 74; *see also* September 10, 2020 Public Hearing Transcript [the "Hrg. Tr."] at 33-49, and 104-108; Ex. 58A4.)
55. The Commission's evaluation of the Application relative to the CP, and specifically how the Commission shall weigh a proposal's potential CP inconsistencies with a proposal's consistency with the CP when read a whole, is guided by several recent D.C. Court of Appeals decisions. When making a determination as to whether a proposal is "not inconsistent" with the CP, the Court has provided the Commission with the following guidance:

"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).

56. The Commission finds the following with respect to evaluating the Project’s consistency with the CP:

- a. Density. The Applicant is requesting to rezone the Property to MU-9, which, under the CP Framework Element in effect at the time of the public hearing, is described as being consistent with High Density Commercial. While the Framework Element describes High Density Commercial as having densities greater than 6.0 FAR, the overall density of the Project is well within the range described in the Framework Element for Medium Density Commercial, consistent with the Property’s FLUM designation. According to the Framework Element, matter-of-right development within areas designated Medium Density Commercial typically range from 4.0 – 6.0 FAR, with greater density possible when complying with IZ or when approved through a PUD. The zone districts specifically identified in the Framework Element as being consistent with the Medium Density Commercial FLUM category include MU-8 and MU-10, *although other zones may apply*. Under a PUD, the MU-8 and MU-10 zones permit a maximum density of 7.2 FAR and 8.64 FAR, respectively. 11-X DCMR §§ 303.3 and 303.4. At 6.2 FAR, the overall density of the Project is within the matter-of-right guidance provided in the Framework Element, and is significantly below the densities that could be achieved under a PUD in the MU-8 and MU-10 zones.
- b. Height. The height of the proposed PUD is not inconsistent with the FLUM. The proposed height enables the Applicant to deliver the proposed benefits and amenities package (e.g., affordable housing, public open space), and to advancing many Comprehensive Plan policies relating to land use, housing, open space, and environmental protection. The PUD process provides the Commission with flexibility to approve greater height (or density), provided that the Project offers a commendable number or quality of public benefits, and protects and advances the public health, safety, welfare and convenience. (10A DCMR § 224.7.)

The Commission finds that exercising such flexibility in this case is appropriate, as the Applicant has demonstrated, through its filings and testimony at public hearing, that the proposed height is necessary to increase residential density, retain view sheds, and leverage the creation of a connected system of parks and open space along the Anacostia Waterfront. (*See, e.g.*, Ex. 58A4 at 19-22.) The 92-foot height of Building 2 is only slightly above what is considered typical in areas designated Medium Density Commercial. Further, while the 130-foot height of Building 1 exceeds even the 110-foot height that can be achieved under a PUD in the MU-10 zone, this is not necessarily an inconsistency with the FLUM. On balance, the

proposed height is acceptable through the flexibility afforded in the PUD process, and allows for the advancement of several other CP policies. (Ex. 30 at 10-12.; *see also* Hrg. Tr. at 44-47.)

- c. CP – Citywide Elements. The Commission finds that, as a whole, the Project is not inconsistent with the policies of the CP Citywide Elements. Most notably, the PUD in particular advances the following policies related to land use, housing, environmental protection, open space, and urban design:
 - i. **Land Use:** LU-1.1.5 (Urban Mixed Use Neighborhoods); LU-2.1.1 (Variety of Neighborhood Types); LU-2.2.4 (Neighborhood Beautification); and LU-3.1.4 (Rezoning of Industrial Areas).
 - ii. **Housing:** H-1.1.1 (Private Sector Support); H-1.1.3 (Balanced Growth); and H-1.4.4 (Mixed Use Development).
 - iii. **Environmental Protection:** E-1.1.1 (Street Tree Planting and Maintenance); E-1.1.3 (Landscaping); E-2.2.1 (Energy Efficiency); E-3.1.2 (Using Landscaping and Green Roofs to Reduce Runoff); and E-3.2.2 (Support for Green Building).
 - iv. **Parks, Open Space, and Recreation:** PROS-3.2.3 (Linkages Between the Waterfront and Nearby Neighborhoods); PROS-3.2.4 (Waterfront Visibility and Accessibility); and PROS-4.3.3 (Common Open Space in New Development).
 - v. **Urban Design:** UD-1.3.1 (DC as a Waterfront City); UD-1.3.2 (Waterfront Public Space and Access); UD-1.3.3 (Excellence in Waterfront Design); UD-1.3.6 (“Activating” Waterfront Spaces); and UD-1.3.7 (Neighborhood Connectivity).
 - d. CP – Area Elements. The Commission finds that the Project is not inconsistent with the policies of the Lower Anacostia Waterfront / Near Southeast Element, and cites to Ex. 3, Ex. 10 and Ex. 30 of the case record in support of its finding. In particular, the Project advances the following policies: AW-2.3.1 (Restoring the Urban Pattern of Near Southeast); AW-2.3.2 (Near Southeast Shoreline Access); AW-2.3.3 (Near Southeast Housing Opportunities); AW-2.3.4 (M Street Southeast); and AW-2.3.6 (Near Southeast Urban Amenities).
57. Evaluation of Potential Comprehensive Plan Inconsistencies. In evaluating whether a proposal is “not inconsistent” with the CP, it is not sufficient for the Commission to simply identify the CP policies that would be favorably advanced. Rather, because of the overlap within and between the CP elements, the evaluation must also recognize where there may be inconsistencies. As related to the evaluation of potential CP inconsistencies, the Court has stated:

“The Commission cannot simply disregard some provisions of the Comprehensive Plan on the ground that a PUD is consistent with or supported by other provisions of the Comprehensive Plan. Rather, if 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...” *Durant I*, 65 A.3d at 1170.

58. As the Project’s design and proffered benefits and amenities were refined throughout the PUD process in response to input received from the Commission, OP, and ANC 6B, the Applicant continued to ensure that the PUD, including the related map amendment to MU-9, would not be inconsistent with the CP. In addition, the Applicant specifically analyzed the PUD for potential inconsistencies with the CP. (Ex. 30, Ex. 70; Ex. 58A4 at p. 24; *see also* Hrg. Tr. at 47-48.) The Commission concurs with the Applicant’s analysis regarding potential CP inconsistencies, and adopts the findings below:

- a. LU-3.1.2: Redevelopment of Obsolete Industrial Uses (10A DCMR § 314.8 and ED-2.5.1: Industrial Land Retention (10A DCMR § 711.5). These policies encourage the retention of an adequate supply of industrially zoned land in the District and the redevelopment of outmoded and non-productive industrial sites, such as vacant warehouses and open storage yards, with higher value PDR uses and other activities which support the core sectors of the District economy (federal government, hospitality, high education, etc.). Despite its existing PDR-4 zoning, the Property has sat vacant and underutilized for many years, and there does not appear to be any strong interest in establishing new, higher value industrial uses. Furthermore, the D.C Council amended the Property’s FLUM designation from PDR to its current designation – Mixed Use (Medium Density Commercial / Institutional) – some time prior to 2006, thus reflecting the District’s land use policy that the Property no longer be used for industrial purposes.² Furthermore, the Commission refers to the numerous other CP policies that promote redevelopment of, and increasing access to the District’s waterfront; increased housing, including housing along the waterfront; and improving the environmental quality of the waterfront. *See* UD-1.3.1, UD-1.3.2, E-3.1.2, PROS-3.2.3, AW-2.3.2, and AW-2.3.3. Based on the foregoing, the Commission finds the CP policies favoring retention of industrial uses are outweighed.
- b. UD-1.3.5: River Views and UD-2.2.4: Transitions in Building Intensity. These policies seek to protect and enhance river views in the design of buildings and other improvements on or near waterfront sites. They encourage the scale, density, and

² It is worth noting that, while not yet in effect, the Comprehensive Plan amendments currently under review by the D.C. Council would change the FLUM designation for the Property to Mixed Use (High Density Residential / High Density Commercial). While the Commission’s evaluation of the Application’s consistency with the CP is in no way reliant upon this proposed FLUM designation, the Commission views this as being further reflective of the District’s preference for the Property to no longer be used for industrial / PDR purposes.

building form along the city's waterfronts to be human-scale, pedestrian oriented, and protect views from important sites. These policies also recommend establishing gradual transitions between large-scale and small-scale development. It is further recommended that larger buildings be designed in a manner that reduces their apparent size to relate to lower scale neighborhoods. The Commission finds that the PUD is not inconsistent with these particular policies. The Project does not intrude upon any view corridors towards the waterfront. The PUD also aligns with the original L'Enfant Street grid to the north extended to the waterfront, namely 13th and 14th Streets, and maintains and improves the view shed along Virginia Avenue toward the Anacostia River. Further, the Project also does not result in an overpowering contrast in scale in relation to the Capitol Hill neighborhood to the north due to the significant distance and topography change that maintains an appropriate transition. Finally, inconsistency with these specific policies are outweighed by several other policies contained in the Urban Design, Housing, Environmental Protection, and Parks, Recreation, and Open Space Elements. (*See* FF No. 56.c.)

- c. Mr. Flanagan's written testimony in opposition argued that the Project is inconsistent with five specific CP policies, some of which are addressed above. (Ex. 60.) The Applicant thoroughly responded to Mr. Flanagan's testimony and demonstrated that the Project is in fact "not inconsistent" with those policies. (Ex. 70.) The Commission concurs with the Applicant's analysis, and finds that the PUD and related Zoning Map amendment are not inconsistent with LU-2.1.1 (Variety of Neighborhood Types); E-1.2.1 (River Conservation); E-2.2.1 (Energy Efficiency); UD-1.3.3 (Excellence in Waterfront Design); AW-1.1.5 (River Basins as a Planning Guide).

Project Impacts

59. Pursuant 11-X DCMR § 304.4(b), the Commission shall find that the proposed development does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project.
60. At public hearing, the Applicant acknowledged and evaluated the potential impacts of the Project. (Ex. 58A4 at p. 8-11; *see also* Hrg. Tr. at 39-40). Based upon the Applicant's testimony, the recommendation of OP and other District agencies, and the overall case record, the Commission finds the following:
 - a. Land Use. The Commission finds the potential impacts to land use as favorable or capable of being mitigated. Such favorable impacts include better utilization of underutilized land, and the provision of substantial new housing (market rate and affordable). To the extent the proposed design of the Project causes impacts to land use, such impacts are mitigated through the Applicant's use of multiple buildings, retention of view sheds through the site, provision of substantial open space, and the substantial distance between the Property and existing development to the north.

As part of its evaluation of potential impacts to land use, the Commission notes OP's recommendation in support of the PUD.

- b. Transportation. The Commission finds the potential impacts to transportation as being favorable or capable of being mitigated through implementation of improvements to specified intersections, the Transportation Demand Management Plan, and the Loading Management Plan. (See FF No. 70-70.) As part of its evaluation of potential impacts to transportation, the Commission notes that DDOT has no objection to the PUD.
- c. Housing. The Commission finds the potential impacts to housing as being favorable as the PUD will provide approximately 900 new housing units where no housing is currently permitted. Most notably, the PUD will provide a substantial amount of new affordable housing (12% of residential GFA), which will make a notable contribution toward achieving the District's affordable housing goals. As part of its evaluation of potential impacts to housing, the Commission notes OP's recommendation in support, and DHCD's comments stating no objection to the PUD.
- d. Environmental Protection. The Commission finds the potential impacts to environmental protection as being favorable. The PUD will replace an obsolete, impervious site in close proximity to the waterfront with a sustainable, mixed-use development that will be designed to LEED Gold design equivalency. Further, the PUD will employ renewable energy sources in the form of rooftop solar panels. As part of its evaluation of potential impacts to environmental protection, the Commission notes that DOEE and UFA have no objection to the PUD.
- e. Economic Development. The Commission finds the potential impacts to economic development as being favorable. The PUD will put back to productive use a currently underutilized property, thus increasing property, income, and sales tax revenue for the District. In addition, the additional housing and retail will support the District's retail sector by expanding retail offerings and supporting nearby businesses.
- f. Parks, Recreation, and Open Space. The Commission finds the potential impacts to parks, recreation, and open space as being favorable. The PUD will provide substantial new publicly accessible open spaces that will bring favorable impacts to this waterfront area. As part of its evaluation of potential impacts to parks, recreation, and open space, the Commission notes that DPR has no objection to the PUD.
- g. Urban Design. The Commission has carefully considered the impacts of the proposed building design, and finds that the urban fabric will benefit from the proposed development. The Commission finds any potential adverse impacts to be acceptable given the design quality and proffered public benefits. In addition, the Applicant has provided shadow studies (see Sheet A-37 through A-42 of the

Consolidated PUD Plans) and a noise analysis (*see* Ex. 70C, 70D) to demonstrate that construction of the proposed PUD will not result in any unacceptable impacts to the immediate neighborhood. As part of its evaluation of potential impacts to urban design, the Commission notes OP's recommendation in support of the PUD.

- h. Historic Preservation. The Commission finds that the retention and improvement of views through the Property along 13th Street, 14th Street and Virginia Avenue to be favorable impact. As part of its evaluation of potential impacts to historic preservation, the Commission notes that HPO has no objection to the PUD.
- i. Community Services and Facilities. The Commission finds that any impacts to community services (e.g., publicly-owned land, healthcare facilities) are favorable or capable of being mitigated. As part of its evaluation of potential impacts to community services and facilities, the Commission notes that FMES has no objection to the PUD.
- j. Educational facilities. Any impacts the Project might have on educational facilities (e.g., influx in DCPS students) are capable of being mitigated. As part of its evaluation of potential impacts to educational facilities, the Commission notes that DCPS has no objection to the PUD.
- k. Infrastructure. The Commission finds that the Project will result in a reduced impact on storm water infrastructure. As such, any infrastructure impacts are favorable or capable of being mitigated. As part of its evaluation of potential impacts to infrastructure, the Commission notes that DC Water and Pepco have no objection to the PUD.

Public Benefits and Amenities

- 61. The Commission must find that the proposed development includes specific public benefits and project amenities that are not inconsistent with the CP or with other adopted public policies and active programs related to the PUD site. (11-X DCMR § 304.4(c).)
- 62. 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. 11-X DCMR § 304.3. 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 § 305.12.
- 63. In this case, the Commission finds that the Project offers a high level of public benefits and project amenities, and that when compared with the amount of development flexibility requested (*see* FF No. [REDACTED] and FF No. [REDACTED]) and the potential project impacts (*see* FF No. [REDACTED]), the Application satisfies the balancing test required in 11-X DCMR § 304.3. The Commission also finds that the benefits and amenities of the Project are acceptable in all proffered categories and are superior in the categories of urban design and architecture, landscaping, site planning,

affordable housing and housing, sustainability, streetscape plans, transportation infrastructure, and uses of special value to the District.

OP Response to Application

64. On May 1, 2020, OP submitted a Preliminary Report recommending setdown of the Application. (Ex. 14.) The OP Preliminary Report stated that the Project “would be: on balance, not inconsistent with the [CP FLUM], which currently shows the site as being suitable for a medium density mixed use of commercial and institutional uses; not inconsistent with the [CP GPM], which designates the Near Southeast site as one where land use change is expected and encouraged; [and] consistent with the Anacostia Waterfront Framework Plan, which envisions a mixed-use project on the site, with extensive open space and connections between Virginia Avenue and the waterfront.” (Ex. 14 at p. 1.)
65. The OP Preliminary Report requested that the Applicant provide additional information on the Application, which the Applicant responded to in its Prehearing Statement dated June 8, 2020. (Ex. 17A1 – 17AA10.)
66. On August 31, 2020, OP Submitted a Final Report. (Ex. 31.) OP recommended that the Commission approve the Application, subject to the Applicant providing information and clarifications for the following items: affordable units, specifically the number and mix of units; solar panels; balconies; the view corridor to the Anacostia River from the monumental stair extension; signage; the proposed relocation of the Anacostia Bike Trail to the north side of M Street and associated maintenance; and additional benefits.
67. The Applicant provided the information and clarifications requested in the OP Final Report in its supplemental prehearing submission dated September 9, 2020, titled “Applicant Responses to OP Final Report”. (Ex. 59-59C.)

Interagency Meeting

68. The OP Final Report noted that OP held an interagency meeting with eight District agencies in attendance on August 17, 2020. (Ex. 31 at p. 29.) The comments received were as follows:
- a. DDOT. DDOT stated that it had met with the Applicant regularly throughout the Application process. The details of DDOT’s coordination with the Applicant and responses to the Application are further discussed in FF Nos. [REDACTED].
 - b. District Department of Energy and the Environment (“DOEE”). DOEE encouraged the Applicant to pursue forward-look Building Energy Performance Standards to meet the goals of Sustainable DC 2.0 and Clean Energy DC’s plans to reduce greenhouse emissions. DOEE requested that the Applicant integrate other sustainability measures within the Project as well, including the installation of solar panels and electric vehicle charges.

- c. District Department of Parks and Recreation. The District Department of Parks and Recreation (“DPR”) noted the Applicant’s commitment to constructing and maintaining the open space or park facilities that are in public space or that are in private space but accessible to the public. (*See, e.g.*, Finding of Fact No. [REDACTED].)
 - d. Department of Housing and Community Development (“DHCD”). DHCD commented that it had worked extensively with OP on the Applicant’s IZ proffer and attended the meeting, but did not provide any comments.
 - e. Other agencies. The Department of Consumer and Regulatory Affairs, the Department of Fire and Emergency Services, the Department of Works, DC Public Schools, and the Executive Office of the Mayor all attended the interagency and/or were invited to attend, but did not provide comments to OP.
69. OP also consulted with the State Historic Preservation Office (“HPO”) within OP about the Project’s relationship to the L’Enfant Plan. It was determined that none of the existing or former rights of way are within or adjacent to the Project have historic status, but HPO has encouraged the Applicant to retain and improve certain view sheds.

DDOT Response to Application

70. On September 3, 2020, DDOT submitted a report (the “DDOT Report”), which expressed no objection to the Application subject to certain conditions. As noted in the Applicant’s posthearing submission (Ex. 70), DDOT and the Applicant agreed to all of DDOT’s requested conditions as follows:

- Construct the missing curb ramp on the east side of 12th Street approximately 200 feet south of M Street (Maritime Plaza I driveway), subject to DDOT approval;
- Install one (1) four-dock expansion plate to the existing CaBi station at Potomac Avenue and 8th Street, subject to DDOT approval;
- Construct and install at least five (5) missing tree boxes and street trees along the off-site segment of M Street between 12th Street and Virginia Avenue, subject to DDOT approval;
- Install a Transportation Information Center Display (electronic screen) within each residential lobby containing information related to local transportation alternatives. At a minimum, the display should include information about nearby Metrorail, Circulator, and Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
- Increase the number of lockers and showers provided for retail employees to meet the ZR16 minimum;
- The minimum cost of residential parking will be established based on the average market rate within a quarter mile of the site;

- Provide one (1) collapsible shopping cart (utility cart) for every 50 residential units, for a total of 18 utility carts, in order to encourage residents to walk to the grocery store and run errands;
- Following the issuance of a certificate of occupancy for the project, the Transportation Coordinator shall submit documentation to DCRA summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case; and
- Following the issuance of a certificate of occupancy for the project, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final certificate of occupancy for the project) summarizing continued substantial compliance with the transportation and TDM conditions in the Order, unless no longer applicable as confirmed by DDOT.
- Work with another entity (e.g., Capitol Riverfront BID) to provide a shuttle service between the PUD site and a nearby Metrorail Station. The shuttle shall operate with headways between 10-15 minutes and shall operate during the weekday AM and PM commuter peak periods. The exact shuttle route and pick-up/drop-off areas in public space shall be coordinated with DDOT. The shuttle shall run until such time as the pedestrian bridge over Southeast Boulevard is constructed and open for use. In the event there is a desire to eliminate shuttle service prior to the construction of the pedestrian bridge due to low ridership, the Applicant will work with DDOT to understand reasons why the ridership is low (e.g. other alternative transportation options are available, biking/walking is preferred over shuttle, etc.) and collaborate on how to improve service and ridership. If increased vehicular traffic related to the project is determined to be the reason for low ridership, the Applicant will work with DDOT to determine if a substitute TDM measure is necessary.
- Develop a concept to convert Water Street from an automobile-oriented connection between 12th Street and M Street to a shared street (a.k.a. “neighborhood greenway”) in which bikes and pedestrians have priority over vehicles, subject to DDOT approval, with the additional guidance:
 - (a) This will be limited to new signage and pavement markings, including Anacostia Riverwalk Trail branding.
 - (b) Other elements would be limited to lower speed limit, use of flex posts, and automobile restrictions achieved through geometric changes at Water Street’s intersections with both 12th Street and M Street to discourage non-local vehicle use. Any geometric changes at the Water Street/M Street intersection will be incorporated into the Applicant’s plans to reconfigure the intersection with a traffic circle. Any geometric changes at the Water Street/12th Street intersection would be limited to installation of flex post delineators.

- (c) The Applicant will collect current daily traffic counts on Water Street and at driveways along Water Street (at the time the concept is being developed) to better inform the design.
 - (d) The Applicant will involve a representative from the ANC throughout the design process.
 - (e) If DDOT is unable to come to an agreement with the Applicant on the design of Water Street, then a new 10-foot trail along the Water Street frontage will be constructed.
 - (f) During permitting for the first phase of the PUD, the Applicant shall submit to DDOT a signage and striping plan for Water Street SE between 12th Street SE and M Street SE (either as part of the public space application for M Street and Virginia Avenue or as a separate public space application). Subject to DDOT's review and approval, the Applicant agrees to implement the plan during construction of the second phase of the PUD.
- Implement a Loading Management Plan with the following provisions:
 - (a) A member of the on-site management team will be designated as a loading coordinator (duties may be part of other duties assigned to the individual). He or she will coordinate all loading activities for Building #2 (including deliveries, trash disposal, and residential move-in and moveout activities) and ensure bicycle and pedestrian safety is not compromised or traffic impeded on M Street SE from these activities.
 - (b) The loading coordinator will be responsible for informing residential and retail tenants of the guidelines and procedures for loading and delivery operations.
 - (c) The loading coordinator will inform tenants of DDOT's regulations for moving trucks and will work with tenants when applying for DDOT "Emergency, No Parking" signs for moving trucks.
 - (d) The Applicant or loading coordinator will file a permit application with DDOT and coordinate with DDOT's Parking and Ground Transportation Division (PGTD) on the appropriate signage and size of loading or "no parking" zone on M Street adjacent to Building #2.
 - (e) In the event the designated on-street loading or "no parking" zone is full, the loading coordinator may direct the truck driver to return at another time, reroute trucks to the loading berths of Building #1A or #1B, or reroute trucks to Virginia Avenue or the internal north-south private driveway.
 - (f) All tenants of Building #2 will be required to notify the loading coordinator before moving in or out. The tenant shall provide the loading coordinator the following information: time and date that the truck is anticipated to arrive, size of truck being used, and name of the moving service (if applicable).

- (g) The loading coordinator will ensure that moving trucks use the designated loading zone on M Street adjacent to Building #2. If multiple move-in/move-out events overlap, additional moving trucks will be required to obtain a permit from DDOT to establish a temporary on-street no parking zone nearby.
- (h) The privately hired trash company will roll trash bins out the side of the building to the M Street curb at the time of trash pick-up and then back inside as soon as trash collection is complete. Trash and recycling bins will not be stored in public space.
- (i) Trash and delivery trucks will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight). The loading coordinator will distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws.
- (j) The loading coordinator will be responsible for disseminating suggested truck routing maps to drivers from delivery and trash pick-up services that frequently serve Building #2, as well as notifying drivers of any access or egress restrictions.

ANC 6B Response to Application

- 71. In a report dated April 19, 2020, ANC 6B recommended that Zoning Commission set down the case, subject to the Applicant providing additional renderings, shadow studies, and additional details on the public space, and noted that the proposed bike trail should include shade and landscaping where possible. (Ex. 11C.) The Applicant provided additional materials in response to the ANC report in its Prehearing Statement marked as Ex. 17 – 17E of the record and its Supplemental Prehearing Statement marked at Ex. 30 of the record.
- 72. In a letter dated August 7, 2020, ANC 6B advised the Zoning Commission of all of its past and scheduled meetings with the Applicant; a total of 8 meetings were listed.
- 73. ANC 6B submitted a resolution indicating that at a properly noticed virtual public meeting on September 8, 2020, with nine commissioners present (six constituting a quorum), the ANC voted 7-1-1 to approve a report conveying its opposition to the Commission's approval of the Project (the "Original ANC Report"). (Ex. 54.) The Original ANC Report stated various issues and concerns with the Application, namely that the proffered public benefits were insufficient. However, the Original ANC Report also stated, "[w]ith proffers increased, ANC 6B believes that the Zoning Commission should approve the project", if other issues and concerns were addressed and/or resolved during the public hearing and any post-hearing filings.

Public Hearing of September 10, 2020

74. On September 10, 2020, the Commission held a virtual public hearing on the Application. On behalf of the Applicant, the Commission accepted Mr. Craig McClure as an expert in landscape architecture; Ms. Jami Milanovich as an expert in transportation engineering; and Mr. Shane Dettman as an expert in planning and zoning. (Hrg. Tr. at 7-8.) The Applicant provided testimony from these experts, as well as from other principal witnesses on behalf of the Applicant, including Mr. Rick Felice of Felice Development Group and Ms. Colline Hernandez-Ayala of GTM Architects of Washington DC, LLC.
75. On behalf of OP, Mr. Stephen Cochran testified that OP recommends that the Commission grant preliminary approval to the Application. (Hrg. Tr. at 120.) Mr. Cochran noted that the PUD proffers further other important elements in the CP, such that the PUD would not, on balance be inconsistent with the CP. (Hrg. Tr. at 124.)
76. On behalf of DDOT, Aaron Zimmerman testified that DDOT was very supportive of the applicant's proposal and that the Project would achieve substantial upgrades to the transportation network. (Hrg. Tr. at 125.) Mr. Zimmerman also noted that DDOT requested that three conditions be included in this Order: (i) the loading and management plan to address the loading relief for Building 2; (ii) the TDM plan to encourage more usage of non-auto modes of travel and to mitigate traffic impacts; and (iii) the Applicant collaborate with DDOT and the ANC to create and implement a new vision for Water Street as an extension of the Anacostia Riverwalk Trail. (Hrg. Tr. at 125-26.)
77. Commissioner Corey Holman, the Single Member District Representative for ANC 6B-06 testified at the public hearing. He stated that the ANC opposed the Application on the grounds that the originally proffered public benefits were insufficient; that the ANC would find the proffered public benefits sufficient if the contribution to support senior programming is raised to \$250,000; and that the Applicant's increased monetary contribution to \$250,000 as stated during the public hearing addressed the ANC's concerns.
78. Commissioner Holman also requested that the Zoning Commission give great weight to the issues and concerns in the ANC report related to: affordable housing and the unit mix; the improvement of Water Street; the BikeShare location; the design of Virginia Avenue; the Virginia Avenue view corridor; the project architecture and design; public access to private spaces; and the LEED Gold equivalency.

Persons in Support

79. The following organizations and persons submitted letters in support of the Application:

- 11th Street Bridge Park, submitted a letter in support of the Application. (Ex. 23.)
- The Capitol Riverfront Business Improvement District submitted a letter in support of the Application. (Ex. 24.)

- Stephen E. Budorick, President and Chief Executive Officer of Corporate Office Properties Trust (“COPT”). (Ex. 25.)

80. Several residents conditioned support of the Application upon the provision of an adult daycare center and/or funds that would facilitate the establishment of a comparable center in the Capitol Hill area that would enable seniors to age in place. (Ex. 36, 37-52, 61-67.)

Persons in Opposition

81. The case record includes three submissions (e.g., letters/written testimony) that expressed opposition to the Application:

- On September 9, 2020, a resident of the 1300 block of L Street, SE filed a letter opposing the project, citing anticipated noise pollution and incompatibility with the surrounding area. (Ex. 53.)
- Also on September 9, 2020, a letter in opposition was filed that argued the Applicant’s proffers were inadequate. (Ex. 56.)
- On September 10, 2020, the Commission received a letter in opposition from Neil Flanagan, which addressed the Application’s public benefits, urban design and architecture, and certain inconsistencies with the CP. (Ex. 60.)

82. The following persons testified at the public hearing as opponents to the Application:

- a. Dr. Deborah Edge testified in opposition to the Project, citing the need for an adult daycare center in Ward 6, however stated that she was encouraged by the Applicant’s increased monetary proffer related to an adult day care center in the Capital Hill area. (Hrg. Tr. at 146-49.)
- b. Mr. Lawrence Johnston testified in opposition to the Project, expressing speculation that the Applicant’s monetary proffer would achieve the intended objective. (Hrg. Tr. at 149-51.)
- c. Mr. Neil Flanagan testified in opposition to the Project, reiterating the sentiments expressed in his written testimony dated September 10, 2020 (*see* Ex. 60). (Hrg. Tr. at 151-55.)
- d. Ms. Judy Berman, the executive director of Capitol Hill Village, stated that she was no longer necessarily opposed, and was happy that the Applicant “is now willing to provide a meaningful proffer” related to an adult day care center in the Capital Hill area (Hrg. Tr. at 158-160.)
- e. Ms. Mary Procter, a founding member of Capitol Hill Village, was pleased with the Applicant’s increased monetary proffer related to an adult day care center in the Capital Hill area. (Hrg Tr. at 160-162.)

- f. Mr. Chander Jayaraman expressed appreciation for the Applicant's monetary proffer related to an adult day care center in the Capital Hill area. (Hrg. Tr. at 164-65.)

Undeclared Persons

83. Ms. Kelly Waud, a resident of 1333 L Street, SE, expressed concerns about noise pollution and the increased traffic that would adversely impact the surrounding neighborhood. (Hrg. Tr. at 162-164.) Ms. Liza Zamd stated that she was "heartened" about the Applicant's increased monetary proffer related to an adult daycare center, however urged the Commission to consider potential amplification of sound. (Hrg. Tr. at 165-67.)

Post Hearing Submissions

Applicant

84. On September 25, 2020, the Applicant submitted its Post Hearing Submission (Ex. 70), which included: (a) revised building designs and additional plans; (b) a copy of the signed Memorandum of Understanding between the Applicant and the ANC; (c) the original and supplemental reports from Phoenix Noise & Vibrations; (d) information about parking accommodation and the DDOT conditions; (e) an updated discussion on the PUD benefits and amenities.
85. In response to the concerns raises about noise pollution, the Applicant provided two reports prepared by Phoenix Noise & Vibration, LLC ("Phoenix"). The original report, dated August 28, 2020, concluded that the noise level increase from the construction of the buildings at 1333 M Street will be imperceptible and most likely immeasurable at the residences on L Street. (Ex. 70C.) In Phoenix's supplemental report, dated September 24, 2020, the report further evaluated potential railway and helicopter noise reflecting from the buildings at 1333 M Street, increasing noise for the residents on L Street, and concluded that any increase in noise level (at the L Street residences) will be imperceptible and most likely immeasurable. (Ex. 70D.)
86. In response to the comments provided by Mr. Flanagan (Ex. 60), as well as the testimony provided by Mr. Flanagan at public hearing (*see* FF No. [REDACTED]), the Applicant provided a narrative asserting that the Project was of superior architecture and urban design, especially that the urban design and architecture of the Project is superior to a matter-of-right development under the Property's existing PDR-4 zoning, that the Applicant's environmental and sustainability proffer qualify as public benefits, and that the Project is not inconsistent with the CP. (Ex. 70 at p. 11-19.)
87. On _____, the Applicant filed comprehensive sets of the updated architectural plans and renderings reviewed and approved by the Zoning Commission:
- a. "First-Stage PUD Approval for 1333 M Street, SE" as prepared by GTM Architects – DC, and dated _____ (Ex. _____) (the "First-Stage PUD Plans"), and

- b. “Consolidated PUD for Phase 1 / 1333 M Street, SE” as prepared prepared by GTM Architects – DC, and dated _____ (Ex. ____) (the “Consolidated PUD Plans”).

(collectively, the “**Approved Plans**”)

ANC 6B

88. On September 30, 2020 the ANC submitted a resolution indicating that at a properly noticed virtual special call meeting on September 29, 2020, with a quorum of six commissioners present, the ANC voted 6-0-0 to approve a report that withdrew its objection to the Application (the “Supplemental ANC Report”). (Ex 73.). The Supplemental ANC Report stated that the Applicant’s follow-up monetary proffer in the post-hearing statement further aligns, clarified, and addressed the concerns outlined in the Senior Programming Proffer section in the Original ANC Report, and that based on the increased proffer, the ANC withdraws its objection to the Application and supports approval of the Application. The Supplemental ANC Report also provided comments on other items of the Applicant’s Post Hearing Submission.

OP

89. On October 5, 2020, OP submitted its Supplemental Report. (Ex. 74.) The Supplemental Report provided comments on the Applicant’s Post-Hearing Submission (Ex. 70-70F), and responses to questions asked by the Commission and by Commissioner Holman during the public hearing.

Memorandum of Understanding

90. The Applicant and ANC 6B entered into a Memorandum of Understanding (“MOU”), which included, among others, the following agreements that may be included as conditions to the approval of the Application:

- Affordable Housing. The Applicant shall reserve 12% of the Project’s gross residential floor area for households with incomes not exceeding 60% of the median family income (“MFI”), except that three (3) of the six (6) two-bedroom IZ units in the first phase of the PUD shall be reserved for households with incomes not exceeding 50% of MFI. Also, one two-bedroom unit in the second phase of the PUD shall be reserved at 50% of MFI.
- Public Space Improvements. Prior to issuance of the first certificate of occupancy for the Project, the Applicant shall construct the following improvements in public space and/or for the use by the public.
 - a. M Street. The Applicant will relocate the Anacostia Bike Trail to the north side of M Street in order to provide a better connection to the existing trail to west. The Applicant will reconstruct the bike trail to DDOT’s current standard width of 10 feet.
 - b. Virginia Avenue. The Applicant will re-establish Virginia Avenue and construct the roadway to current DDOT standards and will include bioretention facilities.

- c. Arrival Plaza. The Arrival Plaza will be improved with an expansive green lawn and function as a pedestrian promenade and plaza. The Applicant shall maintain the improvements in the Arrival Plaza for the life of the project.
 - d. Waterfront Plaza. The Waterfront Plaza at the terminus of Virginia Avenue will include a monumental staircase and accessible walkways, and is designed to accommodate outdoor dining, small gatherings, art fairs, a farmers' market and other similar community activities. The Applicant shall maintain the improvements in Waterfront Plaza for the life of the project.
 - e. 14th Street Corridor Plaza. The 14th Street Corridor Plaza is designed to provide connectivity between the proposed Southeast Boulevard Pedestrian Bridge and the lower Retail Promenade and Water Street. The Applicant shall maintain the connectivity for the life of the project.
 - f. Lower Retail Promenade. The Lower Retail Promenade will be improved with a great lawn and provide access to Water Street and the Anacostia Bike Trail. The Applicant shall maintain the Lower Retail Promenade for the life of the project.
 - g. Water Street SE. Water Street SE. During permitting for the first phase of the PUD, the Applicant shall submit to DDOT a signage and striping plan for Water Street SE between 12th Street SE and M Street SE. Subject to DDOT's review and approval, the Applicant agrees to implement the plan during construction of the second phase of the PUD.
- Vehicular and Bicycle Parking. The Developer agrees to withdraw its request for flexibility from the vehicular parking spaces and bicycle parking requirements. The Project shall provide the minimum number of vehicular and long-term and short-term bicycle parking spaces required by the Zoning Regulations.
 - Environmental. The PUD shall include the following sustainable design elements/features:
 - a. Riparian oriented plant material for areas in close proximity of the waterfront to mitigate stormwater runoff and tolerate flood events.
 - b. Bioretention planters strategically placed throughout the streetscapes and interior open spaces in order to collect, filter, and detain runoff in close proximity to each planter.
 - c. Extensive and intensive green roof systems incorporated on the building terraces to collect, filter, and detain stormwater runoff.

- d. Permeable paver street parking spaces in order to collect, filter, and detain runoff.
 - e. Project shall achieve a Green Area Ratio no less than 0.225.
 - f. All buildings shall be designed to LEED Gold equivalent.
 - g. The West Tower of Building 1 will include solar panels that are sufficient to generate at least one percent of the energy for the building.
 - h. The roof of Building 2 shall include a garden or other green roof infrastructure that is as large as commercially and operationally feasible, but shall be no smaller than 45% exclusive of areas needed for mechanical equipment and elevator overruns.
- Transportation Demand Management
 - a. A one-year bikeshare membership for each residential unit at initial occupancy.
 - b. Fund and install a 23-dock Capital Bikeshare (CaBi) station with 12 bikes and fund one year of maintenance and operations costs. Subject to DDOT's approval, the Bikeshare station shall be sited in such a way to allow expansion of the dock up to 47 docks, being free and clear of obstructions such as utility access holes, trees, or other locations that would prevent expansion of the station.
 - c. Provide a bicycle repair station in the garage.
 - Operations
 - a. The following uses, even though permitted as a matter of right, with a special exception, or with a variance in the MU-9 zone district are not permitted on the Property:
 - 1. Sexually-Oriented Business Establishment as defined in Subtitle B, Sec. 100.2;
 - 2. A check-cashing establishment;
 - 3. A pawnbroker;
 - 4. A nightclub as defined by the Alcoholic Beverage Regulation Administration; and
 - 5. Firearm Sales.
 - b. The open space and green areas on the Property adjacent to the areas identified as Waterfront Plaza, Arrival Plaza, the 14th Street Corridor Plaza, and Water Street as reflected on Sheet L-24 of the landscape plans for the Consolidated PUD, shall be accessible to the public at all times; except that public access to the open space adjacent to the Lower Level Retail Plaza, building elevators, and lobby areas may be limited to 9 a.m. to 9 p.m.
 - c. The restrooms identified on A-10 of the architecture plans for the Consolidated PUD (Exhibit 17AA) shall remain open to the public from 9:00 AM to 9:00 PM.

Preliminary Approval

91. During its public meeting on October 15, 2020, the Commission took proposed action to approve the Application.

NCPC Review

92. The proposed action was referred to NCPC on October [REDACTED], 2020, pursuant to § 492 of the Home Rule Act.

CONCLUSIONS OF LAW

1. Pursuant to Subtitle X § 300.1 of the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that the PUD:
 - a. Results in a project superior to what would result from the matter-of-right standards.
 - b. Offers a commendable number of quality or meaningful public benefits; and
 - c. Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the CP.
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the Application as a first stage PUD or a Consolidated PUD. The Commission may impose development conditions, guidelines, and standard which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts.
3. Development of the property included in this Application carries out the purposes of 11-X DCMR, Chapter 3 of the Zoning Regulations to encourage the development of well planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. A PUD application may include a related zoning map amendment, as in this case, where the Applicant requests to rezone the Property to the MU-9 zone district. A PUD-related zoning map amendment is valid only in combination with and contingent upon a project being built and operated under the conditions of a PUD approval. PUD-related map amendments establish no precedent for the Commission's consideration of permanent changes to the zoning of the PUD site or adjacent areas or for consideration of future PUDs. (Subtitle X § 300.4.).
5. The Project, as approved by the Commission, complies with the applicable matter-of-right height, bulk, and density standards of the Zoning Regulations, as measured in accordance with the PUD regulations. The proposed mix of uses is appropriate for the Site, and the

potential impacts of the Project on the surrounding area will not be unacceptable. Accordingly, the Application should be approved.

6. The Application can be approved with conditions to ensure that any potential adverse impacts on the surrounding area will be mitigated.
7. The Applicant's requested flexibility from the Zoning Regulations is commensurate with the proffered public benefits and amenities package.
8. The Commission finds that any other potential impacts are outweighed by the quality of the public benefits of the Project.
9. The Commission also notes that the Application is proposing significant benefits in terms of superior urban design and architecture, public open spaces, site efficiency, housing and affordable housing, environmental and sustainable benefits, streetscape improvements, upgrades to surrounding and transportation infrastructure. The Commission also recognizes that voluntary contribution proffer that is related to senior programming. (See FF No. [REDACTED].)

PUD Evaluation Standards

Not Inconsistent with the Comprehensive Plan (Subtitle X § 304.4(a).)

10. As set forth in Exhibits 3, 10, 30, 58A4, and 70 of the case record, and particularly when viewed together with OP's recommendation that the Project is not inconsistent with the FLUM and GPM, guiding principles, and other policies within the Citywide and Lower Anacostia Waterfront / Near Southeast Elements of the CP, the Commission concludes that the Project is not inconsistent with the CP 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 finding that the Application is consistent with the CP as a whole. Moreover, the Commission finds that any potential inconsistencies are far outweighed by the Project's consistency with other competing policies and considerations, and in particular those policies relating to housing, affordable housing, transportation, parks, open space and recreation, urban design, and environmental sustainability. See FF No. [REDACTED].

Potential Impacts – Mitigations (Subtitle X §§ 304.3 & 304.4(b).)

11. Pursuant to the findings made above in FF No. [REDACTED], the Commission concludes that the PUD does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead are either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the Project.

Balancing Public Benefits with Requested Development Incentives (Subtitle X §§ 304.3 and 304.4(c).)

12. Pursuant to the findings made above in FF No. [REDACTED], the Commission concludes that the proffered benefits and amenities of the Project are not inconsistent with the CP or with other adopted public policies and active programs related to the Property.


13. The Commission is required under § 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 (2001)), to give great weight to OP's recommendations. The Commission carefully considered the OP reports in this case and, as explained herein, finds OP's recommendation to grant the Application persuasive.
14. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. As discussed above, ANC 6B filed the Original ANC Report, which recommended that the Commission deny the Application unless the Applicant enhanced the Project's benefits and amenities package. (See FF No. [REDACTED].) Subsequently, after public hearing, ANC 6B filed the Supplemental ANC Report which indicated that it had withdrawn its objection to the Application and supports approval of the Application. (See FF No. [REDACTED].) ANC 6B also executed a signed MOU, the terms of which have been included as conditions in this Order, to the extent appropriate. The Commission gives great weight to the issues and concerns expressed in both the Original ANC Report and the Supplemental ANC Report, and recognizes its support for the Application.
15. The Application for a first stage and Consolidated PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2- 1401 et seq. (2007 Repl.)

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a: (1) First Stage PUD; (2) Consolidated PUD; and (3) the related Zoning Map amendment to rezone the Property from the PDR-4 to the MU-9 zone, subject to the following guidelines, conditions, and standards (where compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in **bold and underlined text**):

A. PROJECT DEVELOPMENT

1. The Project shall be developed in accordance with the Approved Plans marked as Ex. [REDACTED] and Ex. [REDACTED] of the record, except as modified by the other conditions herein.
2. The PUD shall have flexibility from the requirement of the Zoning Regulations as follows:
 - a. Courts / Yards – West Tower. Court C1 in the West Tower of Building 1 is permitted to have a width of 36'-7" where a width of 39'7" is required, as reflected on the Court and Yards Diagram on Sheet A-7 of the First-Stage PUD Plans, for the West Tower (Ex. [REDACTED]).

- b. Courts / Yards – Building 2. Building 2 is permitted to have a rear yard of 12’-7” where a rear yard of 23’-5” is required and Court C-7 with a width of 17’-1” where 32’-8” is required, as reflected on the Courts and Yards Diagram on Sheet A-7 of the First-Stage PUD Plans, for Building 2 (Ex. .
- c. Loading for Building 2. The Applicant is granted flexibility to waive the requirements for loading and service facilities for Building 2.
3. The East Tower of Building 1, constructed as Phase 1 of the Project, shall have the following flexibility from the Approved Plans:
- a. Conversion of Retail Space. The Applicant has the flexibility to convert up to 25,000 square feet of retail space in the Building 1 East Tower to residential use or any other use permitted in the MU-9 zone district. The conversion to residential use shall be subject to the Applicant filing an application for a Modification of Consequence for approval of the revised building design, and the Commission’s approval of the same. Further, the additional residential square footage shall be subject to the IZ requirement approved for the PUD.
 - b. Number of Dwelling Units – Phase One. The East Tower of Building 1 will have 496 units. The Applicant seeks flexibility to increase the number of units by up to five percent (5%) or decrease the number of units by up to ten percent (10%). Notwithstanding, Phase 1 of the Project shall not have fewer than 64 two-bedroom units;
 - c. Interior Components. To vary the location and design of all interior components, including amenities, partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not changes the exterior configurations of the building;
 - d. Exterior Details. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the approved plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylight;
 - e. Exterior Materials: To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown in the approved plans;
 - f. Retail Use Types. To vary the types of uses designated as “retail” use on the approved plans to include all uses permitted within the MU-9 zone district.

- g. Signage. To vary the message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved plans;
- h. Affordable Units. To vary the number and mix of IZ units of the total number of dwelling unit changes, provided that the location and proportionate mix of IZ units generally conforms to the layout shown in the approved plans;
- i. Streetscape Design. To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division; and
- j. Sustainable Features. To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the PUD does not decrease below the minimum required for the LEED standard specified by this Order, which is LEED Gold equivalency.

B. PUBLIC BENEFITS

Affordable Housing

1. The Applicant shall reserve 12% of the Project's gross residential floor area for households with incomes not exceeding 60% of median family income ("MFI"), except that three (3) of the six (6) two-bedroom IZ units in the first phase of the PUD shall be reserved for households with incomes not exceeding 50% of MFI. Also, one two-bedroom unit in the second phase of the PUD shall be reserved at 50% of MFI.
2. In the East Tower of Building 1, constructed as Phase 1 of the PUD, for the life of the Project, the affordable units shall be in accordance with the following chart:

Residential Unit Type	Residential GSF ³ / Percentage of Total	# of Units	Reserved for household earning equal to or less than	Affordable Control Period	Affordable Unit Type
Total	443,454 / 100%	496			
Market Rate	[sf] /	417	Market Rate		
IZ	[sf] /	76	60% MFI	Life of the Project	

³ Square footages shown represent gross square feet ("GSF") of residential use within the project. GSF is inclusive of building area devoted to residential use that meets the definition of "gross floor area" under the 2016 Zoning Regulations ("ZR16"), including building area devoted to residential dwelling units within a penthouse, and also includes building area devoted to dwelling units located within a cellar and building area devoted to residential use within building projections into public space.

(Studio and 1-BR)					
IZ (2-BR)	[sf] /	3	50% MFI	Life of the Project	

*The number of IZ units is approximate based on the current dwelling unit count and layout. In accordance with the flexibility requested by the Applicant, the mix of IZ units may change if the total number of dwelling units changes within the range of flexibility requested, provided that the location and proportionate mix of the inclusionary units substantially confirms to the layout shown on the IZ Unit Location Plan included as Exhibit ____ of the record (*see* Sheet A-6);

Public Space Improvements

3. **Prior to the issuance of the first certificate of occupancy for the Project,** the Applicant shall construct the following improvements in public space and/or for the use by the public:
 - a. M Street. The Applicant will relocate the Anacostia Bike Trail to the north side of M Street in order to provide a better connection to the existing trail to west. The Applicant will reconstruct the bike trail to DDOT's current standard width of 10 feet.
 - b. Virginia Avenue. The Applicant will re-establish Virginia Avenue and construct the roadway to current DDOT standards and will include bioretention facilities.
 - c. Arrival Plaza. The Arrival Plaza will be improved with an expansive green lawn and function as a pedestrian promenade and plaza. The Applicant shall maintain the improvements in the Arrival Plaza for the life of the project.
 - d. Waterfront Plaza. The Waterfront Plaza at the terminus of Virginia Avenue will include a monumental staircase and accessible walkways, and is designed to accommodate outdoor dining, small gatherings, art fairs, a farmers' market and other similar community activities. The Applicant shall maintain the improvements in Waterfront Plaza for the life of the project.
 - e. 14th Street Corridor Plaza. The 14th Street Corridor Plaza is designed to provide connectivity between the proposed Southeast Boulevard Pedestrian Bridge and the lower Retail Promenade and Water Street. The Applicant shall maintain the connectivity for the life of the project.
 - f. Lower Retail Promenade. The Lower Retail Promenade will be improved with a great lawn and provide access to Water Street and the Anacostia Bike Trail. The Applicant shall maintain the Lower Retail Promenade for the life of the project.

- g. Water Street SE. Water Street SE. During permitting for the first phase of the PUD, the Applicant shall submit to DDOT a signage and striping plan for Water Street SE between 12th Street SE and M Street SE. Subject to DDOT's review and approval, the Applicant agrees to implement the plan during construction of the second phase of the PUD.

Environmental

4. **The Applicant shall submit with its building permit application,** a checklist evidencing that the Project has been designed to LEED-Gold standards under the LEED-v4 for BD+C: New Construction and Major Renovation standard.
5. **Prior to the issuance of a final certificate of occupancy for the Project,** the Applicant shall provide a signed affidavit to the Zoning Administrator evidencing that the Applicant has registered the Project under the LEED-v4 for BD+C: New Construction and Major Renovation standard. The signed affidavit shall also include the steps taken by the Applicant towards certification of the Project under the LEED-v4 for BD+C: New Construction and Major Renovation standard.
6. In addition, the Project shall include the following sustainable design elements and features:
 - a. Riparian oriented plant material for areas in close proximity of the waterfront to mitigate stormwater runoff and tolerate flood events.
 - b. Bioretention planters strategically placed throughout the streetscapes and interior open spaces in order to collect, filter, and detain runoff in close proximity to each planter.
 - c. Extensive and intensive green roof systems incorporated on the building terraces to collect, filter, and detain stormwater runoff.
 - d. Permeable paver street parking spaces in order to collect, filter, and detain runoff.

Monetary Contribution for Senior Programming

7. **Prior to the issuance of a building permit for the Project,** the Applicant shall contribute \$25,000 to the Department of Parks and Recreation to support the programming for seniors at the Arthur Capper Recreation Center.
8. **Prior to the issuance of a certificate of occupancy for the East Tower of Building 1,** the Applicant agrees to expend \$225,000 to cover the cost of

professional services related to efforts to secure a site for an adult day care center in the Capitol Hill neighborhood of Ward 6 or Hill East Reservation 13. Consistent with the Scope of project marked as Exhibit 33 of the case record, the funds will be used to engage one or more consultants or non-profit organizations (e.g. Capitol Hill Village and Iona) to, among other things, evaluate the demand and demographic data for adult day care; identify potential sites for an adult day care center; deliver a matrix of prioritized adult day care service needs and the square footage required to meet those needs; test fit or preliminarily design a proposed space; and identify adult day care providers. **Prior to the issuance of a certificate of occupancy**, the Applicant shall file documentations with the Zoning Administrator demonstrating that this condition has been satisfied as set forth above.

Operation and Use of the Project

9. The following uses, even though permitted as a matter of right, with a special exception, or with a variance in the MU-9 zone district shall not be permitted on the Property:
 - a. Sexually-oriented business establishment as defined in Subtitle B, Sec. 100.2;
 - b. Check-cashing establishment;
 - c. Pawnbroker
 - d. Nightclub as defined by the Alcoholic Beverage Regulation Administration; and
 - e. Firearm sales.
10. The open space and green areas on the Property adjacent to the areas identified as Waterfront Plaza, Arrival Plaza, the 14th Street Corridor Plaza, and Water Street as reflected on Sheet L-24 of the landscape plans for the Consolidated PUD, shall be accessible to the public at all times; except that public access to the open space adjacent to the Lower Level Retail Plaza, building elevators, and lobby areas may be limited to 9 a.m. to 9 p.m.
11. The restrooms identified on A-10 of the architecture plans for the Consolidated PUD (Exhibit 17AA) shall remain open to the public from 9:00 AM to 9:00 PM.

C. TRANSPORTATION DEMAND MANAGEMENT MEASURES

1. **Prior the issuance of a certificate of occupancy for the PUD**, the Applicant shall satisfy the following conditions:
 - a. Construct the missing curb ramp on the east side of 12th Street approximately 200 feet south of M Street (Maritime Plaza I driveway), subject to DDOT approval;

- b. Install one (1) four-dock expansion plate to the existing CaBi station at Potomac Avenue and 8th Street, subject to DDOT approval;
- c. Construct and install at least five (5) missing tree boxes and street trees along the off-site segment of M Street between 12th Street and Virginia Avenue, subject to DDOT approval;
- d. Install a Transportation Information Center Display (electronic screen) within each residential lobby containing information related to local transportation alternatives. At a minimum, the display should include information about nearby Metrorail, Circulator, and Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
- e. Increase the number of lockers and showers provided for retail employees to meet the ZR16 minimum;
- f. The minimum cost of residential parking will be established based on the average market rate within a quarter mile of the site;
- g. Provide one (1) collapsible shopping cart (utility cart) for every 50 residential units, for a total of 18 utility carts, in order to encourage residents to walk to the grocery store and run errands;
- h. Work with another entity (e.g., Capitol Riverfront BID) to provide a shuttle service between the PUD site and a nearby Metrorail Station. The shuttle shall operate with headways between 10-15 minutes and shall operate during the weekday AM and PM commuter peak periods. The exact shuttle route and pick-up/drop-off areas in public space shall be coordinated with DDOT. The shuttle shall run until such time as the pedestrian bridge over Southeast Boulevard is constructed and open for use. In the event there is a desire to eliminate shuttle service prior to the construction of the pedestrian bridge due to low ridership, the Applicant will work with DDOT to understand reasons why the ridership is low (e.g. other alternative transportation options are available, biking/walking is preferred over shuttle, etc.) and collaborate on how to improve service and ridership. If increased vehicular traffic related to the project is determined to be the reason for low ridership, the Applicant will work with DDOT to determine if a substitute TDM measure is necessary.

2. **Following the issuance of a certificate of occupancy for the Project**, the Applicant shall comply with the following conditions:

- a. The Transportation Coordinator shall submit documentation to DCRA summarizing compliance with the transportation and TDM conditions of the

Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case; and

- b. The Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final certificate of occupancy for the project) summarizing continued substantial compliance with the transportation and TDM conditions in the Order, unless no longer applicable as confirmed by DDOT.
3. The Applicant shall develop a concept to convert Water Street from an automobile-oriented connection between 12th Street and M Street to a shared street (a.k.a. “neighborhood greenway”) in which bikes and pedestrians have priority over vehicles, subject to DDOT approval, with the additional guidance:
 - a. This will be limited to new signage and pavement markings, including Anacostia Riverwalk Trail branding.
 - b. Other elements would be limited to lower speed limit, use of flex posts, and automobile restrictions achieved through geometric changes at Water Street’s intersections with both 12th Street and M Street to discourage non-local vehicle use. Any geometric changes at the Water Street/M Street intersection will be incorporated into the Applicant’s plans to reconfigure the intersection with a traffic circle. Any geometric changes at the Water Street/12th Street intersection would be limited to installation of flex post delineators.
 - c. The Applicant will collect current daily traffic counts on Water Street and at driveways along Water Street (at the time the concept is being developed) to better inform the design.
 - d. The Applicant will involve a representative from the ANC throughout the design process.
 - e. If DDOT is unable to come to an agreement with the Applicant on the design of Water Street, then a new 10-foot trail along the Water Street frontage will be constructed.
 - f. **During permitting for the first phase of the PUD**, the Applicant shall submit to DDOT a signage and striping plan for Water Street SE between 12th Street SE and M Street SE (either as part of the public space application for M Street and Virginia Avenue or as a separate public space application). Subject to DDOT’s review and approval, the Applicant agrees to implement the plan during construction of the second phase of the PUD.

4. A one-year bikeshare membership for each residential unit at initial occupancy.
5. Fund and install a 23-dock Capital Bikeshare (CaBi) station with 12 bikes and fund one year of maintenance and operations costs. Subject to DDOT's approval, the Bikeshare station shall be sited in such a way to allow expansion of the dock up to 47 docks, being free and clear of obstructions such as utility access holes, trees, or other locations that would prevent expansion of the station.
6. Provide a bicycle repair station in the garage.

D. LOADING MANAGEMENT PLAN

1. For the life of the Project, the Applicant shall implement the LMP that is set forth below:
 - a. A member of the on-site management team will be designated as a loading coordinator (duties may be part of other duties assigned to the individual). He or she will coordinate all loading activities for Building #2 (including deliveries, trash disposal, and residential move-in and moveout activities) and ensure bicycle and pedestrian safety is not compromised or traffic impeded on M Street SE from these activities.
 - b. The loading coordinator will be responsible for informing residential and retail tenants of the guidelines and procedures for loading and delivery operations.
 - c. The loading coordinator will inform tenants of DDOT's regulations for moving trucks and will work with tenants when applying for DDOT "Emergency, No Parking" signs for moving trucks.
 - d. The Applicant or loading coordinator will file a permit application with DDOT and coordinate with DDOT's Parking and Ground Transportation Division (PGTD) on the appropriate signage and size of loading or "no parking" zone on M Street adjacent to Building #2.
 - e. In the event the designated on-street loading or "no parking" zone is full, the loading coordinator may direct the truck driver to return at another time, reroute trucks to the loading berths of Building #1A or #1B, or reroute trucks to Virginia Avenue or the internal north-south private driveway.
 - f. All tenants of Building #2 will be required to notify the loading coordinator before moving in or out. The tenant shall provide the loading coordinator the following information: time and date that the truck is anticipated to

arrive, size of truck being used, and name of the moving service (if applicable).

- g. The loading coordinator will ensure that moving trucks use the designated loading zone on M Street adjacent to Building #2. If multiple move-in/move-out events overlap, additional moving trucks will be required to obtain a permit from DDOT to establish a temporary on-street no parking zone nearby.
- h. The privately hired trash company will roll trash bins out the side of the building to the M Street curb at the time of trash pick-up and then back inside as soon as trash collection is complete. Trash and recycling bins will not be stored in public space.
- i. Trash and delivery trucks will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight). The loading coordinator will distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws.
- j. The loading coordinator will be responsible for disseminating suggested truck routing maps to drivers from delivery and trash pick-up services that frequently serve Building #2, as well as notifying drivers of any access or egress restrictions.

E. MISCELLANEOUS

- 1. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
- 2. The PUD shall be valid for a period of two (2) 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 (3) years of the effective date of this Order.

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

VOTES:

PROPOSED ACTION (October 15, 2020):

FINAL ACTION (insert date):

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

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ANTHONY HOOD
Chairman,
Zoning Commission

SARA B. BARDIN
Director,
Office of Zoning